

**Beth McCann**  
District Attorney

Second Judicial District



201 W. Colfax Ave. Dept. 801  
Denver, CO 80202

720-913-9000

[Beth.McCann@denverda.org](mailto:Beth.McCann@denverda.org)

April 24, 2018

Robert White  
Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204

RE: Investigation of the shooting of J.V.<sup>1</sup>,  
DPD # 808922, by Officer Ivan Salazar-  
Reyes, Badge 17-032,  
on January 26, 2018, near 12015 E. 46<sup>th</sup>  
Avenue.

Dear Chief White:

The investigation and legal analysis of the shooting and wounding of J.V., in which four shots were fired by Denver Police Department (DPD) Officer Ivan Salazar-Reyes, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Salazar-Reyes. My decision, based on Colorado criminal law, does not limit potential administrative action by the DPD, where non-criminal issues can be reviewed, or potential civil actions where less-stringent laws, rules, and legal levels of proof apply

#### **SUMMARY of FACTS**

On January 26, 2018, at nearly 9:00 p.m., D.E.,<sup>2</sup> V.H-P, and M.P-L., were outside the home of D.E. in the 14000 block of E. Maxwell Place. The men were approached by J.V. and another juvenile, D.P.<sup>3</sup> J.V. showed the victim, D.E., a handgun in his waistband and “aggressively” demanded money. D.E. gave him some cash, and J.V. then demanded more money. D.E. complied and gave J.V. more cash.

After this armed robbery, the two fled and got on an R.T.D. bus on Maxwell Place. D.E. immediately called 911 and reported the armed robbery and flight of the suspects. Denver

---

<sup>1</sup> The suspect is a juvenile. He is charged in a criminal case concerning this shooting and because he is a minor, I cannot disclose his identity.

<sup>2</sup> I use initials to maintain the privacy of the citizen-witnesses.

<sup>3</sup> As another juvenile, who was not injured or charged in this event, I use initials to maintain his privacy.

Police Department (DPD) dispatch quickly determined which bus the suspects boarded and advised officers that they were en route to the R.T.D. Park-and-Ride near 46<sup>th</sup> and Peoria. At the time of the emergency city-wide simulcast dispatch, Officers Salazar-Reyes, Corporal Amalio Payan, and other officers, were at DPD District 5 police station completing roll call. Officers were directed to the R.T.D. Park-and-Ride near 46<sup>th</sup> Ave. and Peoria, less than a block from the District 5 police station. Several officers responded to this location, and Officer Salazar-Reyes and Corporal Payan working together in the same car, quickly located the suspects, as they matched the description given by D.E. to DPD dispatch. Officers followed the suspects in police cars, and Officer Salazar-Reyes and Corporal Payan eventually pursued on foot as the suspects ran from them.<sup>4</sup>

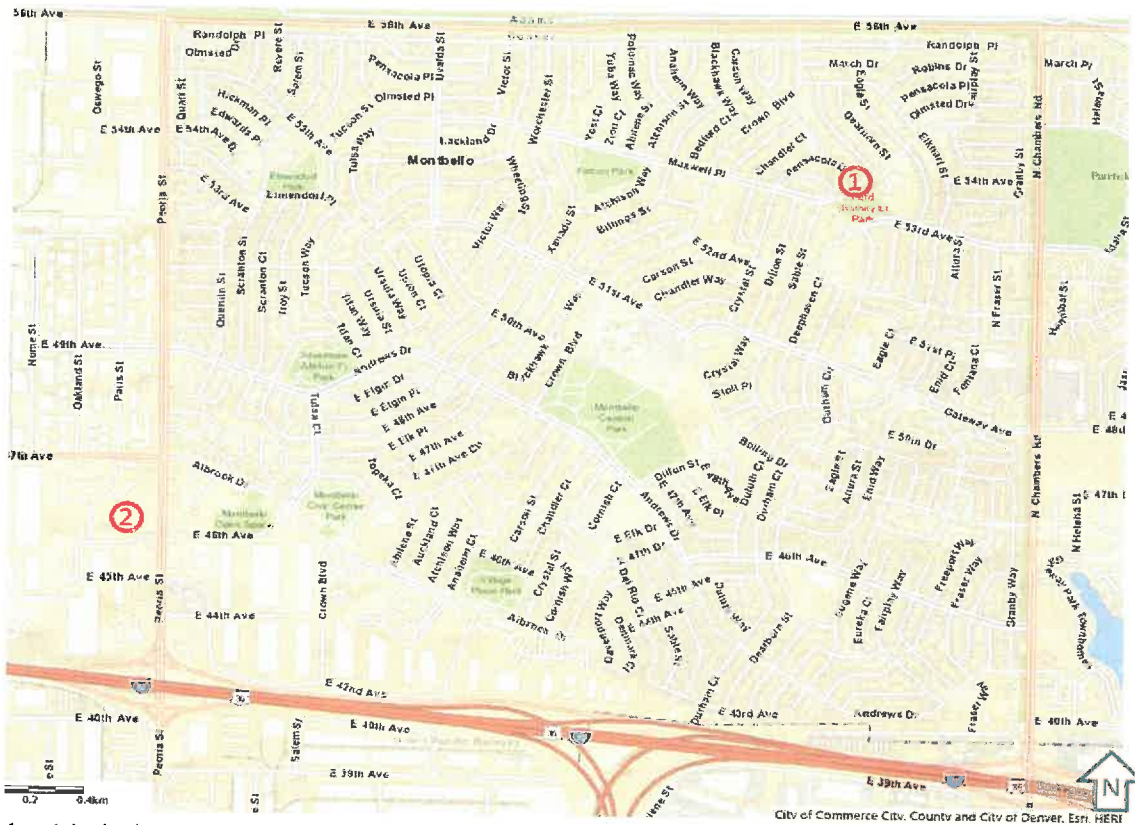
Officer Salazar-Reyes and Corporal Payan followed J.V.,<sup>5</sup> on foot as he sprinted westbound away from the officers. As J.V. ran, he had his hand concealed in the front pocket of his hoodie. Officer Salazar-Reyes reported that, given the report of an armed robbery, he believed that J.V. was holding a gun in his pocket. Corporal Payan repeatedly gave commands to J.V. to stop running and to show his hands. J.V. refused to follow the commands. During the pursuit of J.V., Officer Salazar-Reyes feared that J.V. would shoot him. Corporal Payan can be heard on Body Worn Camera (BWC) repeatedly telling J.V. to stop and show his hands.<sup>6</sup> J.V. refused, and continued to run from officers, running south-west from the bus stop toward the strip mall at 4611 Peoria St. He cut through a breezeway in the strip mall and continued west into the parking lot of an office building at 12015 E. 46th Ave.

---

<sup>4</sup> Officer Salazar-Reyes did not activate his BWC until after J.V. was arrested. He reported that as he ran with his gun in his right hand, with his concern for his safety and that of the other officers, he failed to activate his BWC. Corporal Payan did timely activate his BWC and some of the foot pursuit is caught on video.

<sup>5</sup> J.V. and D.P. split up when officers arrived. D.P. initially ran eastbound, circled back and was eventually taken into custody at a driveway entrance to the office building in the 4600 blk. of Paris St. A second handgun was located in a trashcan generally along the path that D.P. fled.

<sup>6</sup> During the pursuit and shooting, Officer Salazar-Reyes was generally aware of Corporal Payan, but he did not recall any specific commands given by Corporal Payan.



Marker 1 is the location of the armed robbery. Marker 2 is the approximate location of the shooting.

At this point, Sergeant Steve Clayborn was in his police car paralleling the foot pursuit. Sergeant Clayborn, while attempting to intervene, drove next to J.V. as J.V. continued to run and was looking at Sergeant Clayborn. As Sergeant Clayborn continued to parallel J.V., J.V. then ran into Sergeant Clayborn's police car. Later<sup>7</sup>, Officer Salazar-Reyes would describe the following events:

[J.V.] runs into the vehicle and falls to the ground. At that point, I'm still running up to where that is happening. I'm running with my gun in my hand . . . I had my gun in my hand with my weapon light mounted on him so the other officers can see who we're chasing.

So he -- he collides with the vehicle, he falls to the ground. I'm still making my way there running. I can see [J.V.] get back up and I can see the gun in his hand, so I order him to put the gun down, which he doesn't do.

At that point, [J.V.] starts -- his weapon starts coming down and I don't know if it's going to be pointed at me, or towards the officer that was driving the vehicle, so when I see the revolver start to come down, I make the decision to fire -- and I believe I fired three rounds -- that's my recollection of it.

After I fired my three rounds, the [J.V.] again starts to run. Again, I'm chasing him with gun in my hand. I order him to stop -- stop running, to drop the gun. We

<sup>7</sup> Officer Salazar-Reyes gave his videotaped statement on January 27, 2018, at approximately 2:30 AM.

make a left turn on the building that was there. We continue to run, and he dumps the handgun but continues to run...

Standing less than ten feet apart, as Officer Salazar-Reyes saw J.V. moving the gun toward the officers, but before J.V. could take aim and shoot, Officer Salazar-Reyes discharged his Smith and Wesson 9mm handgun four times.<sup>8</sup> Only one shot hit J.V., in his left hand. J.V. again fled on foot, so Officer Salazar-Reyes stopped shooting and continued to pursue J.V.

After J.V. was shot, he continued to run. He ran to an electrical box in the business park and abandoned the handgun that he used in the robbery and to menace Officer Salazar-Reyes. Detectives and DPD Crime Scene Investigators later documented and recovered the handgun dropped by J.V. A silver revolver was found on the cement pad on the east-side of the large electrical box. The gun was a silver Smith and Wesson .38 Special, 5 shot revolver. The revolver had 5 live rounds in the cylinder.



The handgun used by J.V. and abandoned as he continued to flee.

---

<sup>8</sup> Four shell casings discharged by Officer Salazar-Reyes were recovered at the crime scene. Three bullet strikes, presumably from Officer Salazar-Reyes' handgun, were located on the office building at 12015 E. 46<sup>th</sup> Ave.





When finally placed under arrest, J.V. told Officer Hnat, "Someone gave me the gun and told me to run because they had warrants." Another unknown officer can be heard on BWC saying to J.V., "You shouldn't have pulled out a gun." J.V. responded, "I was trying to throw it. That's not even my fucking gun."

Officers brought the victim and the witnesses to the arrest scene and conducted an on-scene identification procedure. D.P.<sup>9</sup> was identified as being present during the robbery. Later, J.V. was positively identified in a photo lineup as the man with the gun at the robbery.

J.V. was transported to Denver Health Medical Center (DHMC) where he was treated for the gunshot wound to his left hand. Given the broken bone in his hand, the treating doctor concluded that J.V. suffered "serious bodily injury."

<sup>9</sup> After further investigation, it was determined that D.P. did not participate, nor was he complicit, in the armed robbery. Consequently, no charges were brought against D.P.

After his release from DHMC, on January 28, 2018, at approximately 3:25 AM, J.V. was fully advised<sup>10</sup> and elected to make a statement. J.V. denied any involvement in the armed robbery. As for his possession of the gun and the shooting, he essentially said that an unspecified friend gave him the gun, and although he ran from the police, he was trying to give the gun to the police when the police shot him.

### LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another person is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force by a peace officer is justified. As the evidence established that J.V.'s injuries resulted from a shot fired by Officer Salazar-Reyes, the determination of whether Officer Salazar-Reyes' conduct was criminal is primarily a question of legal justification.

Section 18-1-707, C.R.S. defines the circumstances under which a peace officer can justifiably use physical force in Colorado. In pertinent part, the statute provides:

(1) [A] peace officer is justified in using reasonable and appropriate **physical force** upon another person when and to the extent that **he reasonably believes it necessary**:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

Additionally, an officer may justifiably rely on the Colorado law regarding self-defense, and the defense of others, §18-1-704, C.R.S., which is applicable to all citizens.

The issue in this case is whether the use of physical force by Officer Salazar-Reyes was justified and whether the nature of the force used was appropriate. The test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances.

The United States Supreme Court has analyzed a police officer's use of force<sup>11</sup> in several landmark opinions. Notably, the Court has firmly stated:

---

<sup>10</sup> As a juvenile, J.V.'s father was also present and consented to the interview of his son.

<sup>11</sup> Much of the law from the U.S. Supreme Court is in the context of "deadly physical force." Here, although Officer Salazar-Reyes used a gun that could have caused death, since no death was caused, under Colorado law, it is not considered "deadly physical force." Whether "deadly physical force" or "appropriate physical force," the legal analysis is the same.

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

*Tennessee v. Garner*, 471 U.S 1, 11-12 (1985); see *Crouse v. City of Colorado Springs*, 766 P.2d 655, 662 (Colo. 1988).

Further, police officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964); *People v. Silva*, 987 P.2d 909 (Colo. App. 1999). It is legally immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity.

*Young v. People*, 107 P. 274, 275-276 (Colo. 1910).

Given this well-settled legal framework, the issues are whether, at the time Officer Salazar-Reyes discharged his firearm, he reasonably believed that he or another person was about to be subjected to unlawful physical force, and furthermore, whether his actions in defending against that force were objectively reasonable. Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that he was in imminent life-threatening danger and that it was necessary to discharge his firearm to defend himself or another in order to stop the threat that J.V. presented. Officer Salazar-Reyes’ actions would also be justified if a reasonable police officer could have concluded that under the totality of the circumstances, it was necessary to discharge his firearm to take J.V. into custody, given Officer Salazar-Reyes’ knowledge that J.V. had just committed an aggravated robbery.

## CONCLUSION

Given the facts of this situation, Officer Ivan Salazar-Reyes was justified using the force he used pursuant to Sections 18-1-707(1)(a), 18-1-707(1)(b) and 18-1-704(1), C.R.S. Officer Salazar-Reyes was confronted by an armed man, who had just committed the felony of armed robbery, who was determined to escape. Officer Salazar-Reyes was responding to an emergency call of an armed robbery that had just occurred in which J.V. had already threatened at least one other person with his handgun. Officer Salazar-Reyes, Corporal Payan, and Sergeant Clayborn (among other officers) all attempted to safely take J.V. into custody, but he was noncompliant. Further, J.V. was armed with a loaded .38 Special handgun, that earlier he had brandished when robbing D.E.

All of these circumstances caused by J.V. placed Officer Salazar-Reyes, Corporal Payan, Sergeant Clayborn -- and the other officers -- in imminent life-threatening peril. Moreover, eventually J.V. decided to turn and confront Officer Salazar-Reyes when he directed his handgun toward Officer Salazar-Reyes.

Officer Salazar-Reyes reasonably believed that J.V.'s use of unlawful physical force against him and other officers was imminent. Given the totality of the circumstances, and under controlling Colorado law, Officer Salazar-Reyes' use of a firearm to defend himself, defend other officers, and to apprehend J.V. were objectively reasonable.

The Denver Police Department is the custodian of records related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department. As in every case we handle, any interested party may seek judicial review of our decision under §16-5-209, C.R.S.

This letter will be posted on the Denver District Attorney website.

Sincerely,



Beth McCann  
Denver District Attorney

CC: Officer Ivan Salazar-Reyes; Chief Robert White; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Barb Archer, Commander of Major Crimes Division; Ron Thomas, Commander of District 5; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Marty Smith, Homicide; and Nicholas E. Mitchell, Office of the Independent Monitor.