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Second Judicial District



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Paul Pazen
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the death of
Trevante Johnson DOB 9/22/1993, which
occurred on July 31, 2019, at the
intersection of 26th and Curtis St. in
Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the death of Trevante Johnson has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Andrew Niccum (badge number 17051). My decision, based on standards of criminal law, does not limit administrative action by the Denver Police Department where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply.

STATEMENT OF FACTS

On July 31, 2019 at 11:56 pm, uniformed Denver Police officers were dispatched to the area of 1045 25th Street on the report of a prowler; the caller indicated that there was a man trying to open the door to a residence. Officer Niccum responded and attempted to make contact with Trevante Johnson, who was outside of the residence. No one else was present. As Officer Niccum approached, Mr. Johnson hid behind cars parked in the street outside the residence, but he quickly elected to flee on foot. Officer Niccum pursued him while identifying himself as a Denver Police Officer.¹

During the foot pursuit, Mr. Johnson turned northbound on Curtis Street, and as Officer Niccum was ordering him to stop, Mr. Johnson turned around and fired two rounds at Officer Niccum. Officer Niccum drew his own firearm and returned fire. Officer Niccum believed that he had

¹ He was also in full police uniform.

struck Mr. Johnson, because Mr. Johnson again began running away, but this time with a limp. At this time, Officer Niccum told Mr. Johnson that he should give up, since he was wounded, and to drop his gun. In response, Mr. Johnson again shot toward Officer Niccum, firing while continuing to run northbound. Officer Niccum returned fire. Mr. Johnson fell to the ground, but immediately jumped up again and continued to run.



Gun found next to Mr. Johnson's body.

Officer Niccum then saw Mr. Johnson make a throwing gesture to his right, leading the officer to believe that Mr. Johnson had thrown his weapon.² Seconds later, however, Mr. Johnson put the gun to his head and pulled the trigger. He dropped to the ground. Officer Niccum ran to Mr. Johnson but unfortunately observed that Mr. Johnson had passed away. He waited for other officers to arrive, then separated himself from the others, sitting in his patrol vehicle until a sergeant joined him. Detectives arrived at the scene and located a handgun in close proximity to Mr. Johnson's body.

Officer Niccum gave a voluntary interview less than four hours after the shooting. He stated that he responded to the scene of 25th and Curtis on an initial report of a burglary in progress. As he made his way to the scene, that report was changed to a "suspicious occurrence." As he arrived at the scene, he saw Mr. Johnson outside the building that was the subject of the call. According to Officer Niccum, he "yelled at him to stop, Denver Police...It was pretty probable that he was maybe one of the people involved trying to – trying to open up the doors down there because there was nobody else around."

Mr. Johnson ran from Officer Niccum. Officer Niccum stated "once we got northbound on

² It was dark in this area at this time of night. When detectives searched the area where Mr. Johnson had made the throwing gesture, they discovered a baggie of what appeared to be crack cocaine.

Curtis, I yelled again, I was like ‘you better stop. Denver Police. You better stop.’ And he turned around and fired two rounds at me.” Officer Niccum returned fire and stated that “he looked like he got hit. He started limping. And then he turned around and started to go away. I didn’t fire any more rounds. I said I wanted to give him a chance to give up because it looked like he was wounded...I was giving commands like ‘drop the gun, drop the gun, drop the gun’ ... but he turned around and he jerked around with his left hand shooting at me sideways, and then I shot two rounds.”

Mr. Johnson then made a throwing gesture, “the motion made me think that he threw the gun... And then I could see – it wasn’t until he started reaching over that I saw the barrel sticking out again, and once he reached over, took it like this and then put it to his head. And at that point, I mean he wasn’t pointing it at me at any point, and I gave him commands not to do it, and he shot himself.” When asked what was his state of mind when he shot at Mr. Johnson, Officer Niccum related “I thought I was done, because I’m in a really bad spot and I was in [a bad tactical position]. He got the drop on me. He’s already got two rounds off, you know? As – and I thought that, you know, that I was going to for sure get hit or – or die.”

Officer Niccum’s duty weapon was examined by the Denver Crime Lab. Based upon that examination, and based upon the examination of shell casings left behind at the scene, detectives determined that Officer Niccum fired 11 rounds. Three casings recovered from the scene were identified as having been shot by Mr. Johnson’s handgun.

Forensic pathologists conducted an autopsy on Mr. Johnson. They determined that Mr. Johnson suffered from four gunshot wounds. Three of these gunshot wounds were of the extremities – to the left thigh, right thigh, and right forearm. According to the pathologists, none of these wounds was lethal. Mr. Johnson also suffered from one close-range gunshot wound to the head; the pathologists concluded that this injury was fatal. They concluded that the manner of Mr. Johnson’s death was suicide.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The justification of using physical force in self-defense is described in C.R.S. § 18-1-704. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

Deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable grounds to believe, and does believe, that he or

another person is in imminent danger of being killed or of receiving great bodily injury.” C.R.S. § 18-1-704(2)(a).

The justification for a peace officer’s use of physical force while attempting to make an arrest is described in C.R.S. § 18-1-707. As pertinent to this case, C.R.S. § 18-1-707 (1) states:

... 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 ... 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

C.R.S. § 18-1-707(2) states that:

[a] peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) to effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) has committed or attempted to commit a felony involving the use of threatened use of a deadly weapon; or...
 - (II) otherwise indicates ... that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

These justifications are “affirmative defenses.” This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt, that Officer Niccum acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that this officer *had* lawful justification to fire at Mr. Johnson in self-defense.

Officer Niccum was correct to attempt to contact the sole person in the area of a report of a possible burglary. Rather than obey a lawful command, Mr. Johnson fled from the officer. As the officer gave chase, Mr. Johnson pulled out a handgun and shot at Officer Niccum. Officer Niccum stated that he was in a vulnerable position and returned fire to protect himself from death or serious injury. This belief was reasonable and therefore Officer Niccum was justified in returning fire at Mr. Johnson.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

Graham v. Connor, 490 U.S. 386 (1989) at pp. 396-397.

Under these dangerous circumstances, Officer Niccum was forced to make a split-second judgment, and his decision to shoot Mr. Johnson in self-defense was justified under Colorado law. It was tragic that Mr. Johnson then shot himself which resulted in his death.

Thus, it is my conclusion that Officer Niccum was lawfully justified and used appropriate and reasonable force under Colorado law.

This letter will be posted on our website.

Sincerely,



Beth McCann
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Kathy Bancroft, District 2; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Bruce Gibbs; Officer Niccum; John Davis, Attorney for Officer Andrew Niccum; Kristin Bronson, City Attorney; and Nicholas E. Mitchell, Office of the Independent Monitor.