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Second Judicial District



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January 15, 2020

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

RE: Investigation of the shooting death of Juan Carlos Macias DOB 10/6/1981, which occurred on August 31, 2019 in the 1500 block of Central Street in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the death of Juan Carlos Macias is complete. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Thomas Schmidt (badge number 15024). 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 August 31, 2019 at approximately 10:03 pm, a woman called the Denver Police emergency line to report that a man was following her. Uniformed Denver Police officers were dispatched to the area of 15th Street and Central Street on the report of a man harassing women. The first caller, S.W.¹, reported that a man, who was armed with a handgun, was following her and repeatedly trying to grab her. She reported that he was trying to get her to come with him. She stated that he had pulled out a gun and fired one round in the air, scaring her. S.W. also stated that a second man was possibly with the first one, though that report was vague.² Soon after, a second woman called. She, too, reported being followed by a man in the same area as S.W. The man was trying to get her to come with him. Both women provided similar descriptions of the suspect.

¹ I use initials to protect the privacy of the civilian witnesses.

² In a later interview, S.W. clarified that this second unknown male remained with her to keep her safe from the suspect.

Officers Ramses Aranda and Thomas Schmidt interviewed the women and then searched the area looking for the suspect. They were in full uniform and in marked patrol cars. When they reached a restaurant at 16th and Central, the manager reported that he, another male employee, and a female employee had been sitting on the patio in front of the restaurant when a man came up and made the female employee uncomfortable. She went back inside the restaurant. The manager pointed out this person, who was now standing in front of the restaurant at 1535 Central Street. This man matched the description provided by the two female callers.

The officers approached the patio of the restaurant and contacted the suspect, identified as Juan Carlos Macias. They identified themselves as police officers and stated that they were responding to reports of a male acting aggressively with a number of women. According to the officers, as well as the civilian witnesses who were seated nearby, the conversation was polite. Mr. Macias gave his information to the officers. Officer Schmidt stepped a few feet away to clear him on the radio. Officer Aranda was still speaking cordially with Mr. Macias. All of a sudden, Mr. Macias pulled a revolver from his waistband. He pointed it at Officer Aranda and fired one round. Officer Aranda managed to avoid the shot by running into the street, narrowly avoiding being hit by a passing car. As he ducked, he yelled “gun!”

Officer Schmidt saw Mr. Macias pull the handgun and point it at Officer Aranda. Officer Schmidt, whose gun was still in its holster, drew his duty weapon and fired several rounds, striking Mr. Macias. Mr. Macias fell to the ground, still holding his revolver. By this time, Officer Black had arrived at the scene; he kicked the gun away from Mr. Macias’s hand. Officer Schmidt aired that shots had been fired and the scene was secured for detectives. When detectives arrived at the scene, they located a handgun in close proximity to Mr. Macias. He was transported to the hospital, where he passed away several days later.



Photo of Mr. Macias’s revolver

Officer Aranda gave a voluntary interview within hours of the shooting. He stated that the night of the shooting, he responded to two calls of a man harassing women in the area he patrolled. His intent at the time was to locate the male and conduct a welfare check to determine if he was in distress or needed any assistance. He and Officer Schmidt ultimately contacted Mr. Macias in front of 1535 Central Street. He was watching Mr. Macias as Officer Schmidt cleared the suspect. Officer Aranda remembered S.W.'s report that a second male may be involved; he looked around to determine whether this second male was nearby. As he turned back to Mr. Macias, he saw Mr. Macias pull a gun from his waistband and point it at his face. The gun was two to three feet away from him. He turned, yelling "gun" at the same time that Mr. Macias shot one round at him. He heard Mr. Macias "take the shot." Mr. Macias was so close to Officer Aranda that Officer Aranda could taste the gunpowder in his mouth. Officer Aranda then heard "an array of shots" but did not know if it was Officer Schmidt or Mr. Macias shooting. When he emerged from cover, Officer Aranda saw Officer Schmidt fire one last time. He did not fire his weapon because by the time he was able to re-engage with Mr. Macias, the latter was already on the ground and was no longer a threat. He stated that he was scared for his life and the lives of others nearby, and that Officer Schmidt saved his life.

Officer Schmidt also agreed to be interviewed. He stated that he and Officer Aranda had contacted the suspect in front of 1535 Central Street. He said the suspect was leaning against the railing and that the conversation was "very casual."³ Officer Schmidt said he identified himself as a police officer and told Mr. Macias "I'm here because I heard you were being a little aggressive with some of these girls around here. We've gotten two calls now about you, so can I get your name and your birthday?" As he was clearing Mr. Macias's information, he was several feet away from Officer Aranda and Mr. Macias. He then stated:

So while I'm waiting for my clearance to come back, I shine my light down to my left at [Officer] Black, to let him know that we're, you know, on the other side of the block and right next to our cars. Aranda is getting on the radio to tell them to come over to us, and then when I turned around to look back at Aranda, I see the – the person that was standing there on the railing – I see him pull out a silver revolver and shoot off a round at Aranda.

When that happens, Aranda runs out backwards into the street and I kind of lost sight of him. And then I engaged this – this person with the – with the revolver. I fired several rounds until he fell down and let go of the gun.

When asked about the distance between Officer Aranda and Mr. Macias, Officer Schmidt said "I mean they were so close that I – I don't know how Aranda didn't get hit... I mean, four or five feet off the – at the end of the gun to where Aranda was standing." When asked specifically why he shot Mr. Macias, he said "I thought he had just shot Aranda and I didn't want to get shot next. The distance between him and Aranda I thought was – it was so close, I'm like, you know, for sure he had gotten hit, if he's not dead." He also stated that he was concerned for the safety of the people who were enjoying the holiday weekend in the area. Schmidt stated that he stopped

³ The casual nature of the conversation -- as well as the suddenness of Mr. Macias's shooting at Officer Aranda -- was confirmed by the civilian witnesses standing within several feet of this encounter.



Case containing the live rounds.

Forensic pathologists conducted an autopsy on Mr. Macias. They determined that Mr. Macias suffered from six to seven⁴ gunshot wounds.

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 ground 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).

⁴ One of the injuries was noted as a “possible graze wound” to the left lower abdomen.

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:

[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, or 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 Schmidt 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. Macias in self-defense and in defense of others.

Officers Schmidt and Aranda were properly engaged in the performance of their duties when they contacted Mr. Macias. They had received several reports that Mr. Macias was involved in aggressive behavior toward women. When they contacted Mr. Macias, they were clearly identifiable as peace officers, and they cordially explained the reason they wanted to speak with him. When Mr. Macias drew his firearm, aimed it at Officer Aranda, and fired a shot, the officers reasonably believed that they faced imminent serious bodily injury or death. Indeed, Officer Schmidt believed that Officer Aranda had been shot. Officer Schmidt, believing that he and others were in danger of coming to serious harm, fired in defense of himself, of Officer

Aranda, and of others who were nearby. This belief was reasonable and therefore Officer Schmidt was justified in firing at Mr. Macias.

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 Schmidt was forced to make a split-second judgment, and his decision to shoot Mr. Macias in self-defense and in defense of others was justified under Colorado law.

This letter will be posted on our website.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beth McCann", with a long horizontal flourish extending to the right.

Beth McCann
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Jeffrey Martinez District 1; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Bruce Gibbs; Officer Thomas Schmidt; John Davis, Attorney for Officer Schmidt; Kristin Bronson, City Attorney; and Nicholas E. Mitchell, Office of the Independent Monitor.