

**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)

November 23, 2020

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

RE: Investigation of the shooting death of Antonio Blackbear DOB 02/18/1979, which occurred on September 9, 2020 at 10<sup>th</sup> Ave. & Inca St. in Denver, Colorado. Denver Police Department General Offense # 2020-544712

Dear Chief Pazen,

The investigation and legal analysis of the death of Antonio Blackbear is complete. I conclude that under applicable Colorado law no criminal charges are warranted against Officers Kyle Saunier (Badge #) 13099 and Lynnea Vento (Badge #15073). This letter will be posted on our website and our file will be available for interested members of the public to review. My decision, based on criminal law standards, does not limit administrative action by the Denver Police Department, in which non-criminal issues can be reviewed, or civil action where less stringent laws, rules and legal levels of proof apply.

#### **STATEMENT OF FACTS**

On September 9, 2020, at approximately 5:00 p.m., Officers Saunier and Vento were arriving at the underground parking garage of Denver Police Department Headquarters at 1331 Cherokee Street to end their workday. The officers are partners assigned to the Denver Police Department's Citywide Impact Team. That team provides focused, extended-term enforcement and patrol efforts when pressing safety issues arise. For that day, they were assigned to a white unmarked Chevy Tahoe with spotlights on each side and a black police "push-bar" in the front. Both officers were dressed in Denver Police Department uniforms with a badge displayed on their chests. Officer Saunier was the acting supervisor for the entire Citywide Impact Team this day and he planned on finishing his workday by completing an "end-of-watch" report for the next shift supervisor. As the officers pulled into the parking garage, an emergency dispatcher

related over the radio that there was a man moving in and around the area near Inca Street and West 10<sup>th</sup> Avenue with a handgun. Several citizens called in this report through the 911 system.

The subject of these 911 calls was later determined to be Antonio Blackbear. The handgun he possessed was a replica airsoft pistol designed to look like a Gen 3 Glock 17 Handgun. Subsequent investigation by a Denver Homicide Unit detective located Mr. Blackbear on surveillance video at several nearby locations immediately prior to the shooting.

- At 4:54:14 p.m. Mr. Blackbear was at the Colfax and Auraria Light Rail Station and was observed running towards a southbound light rail train.
- At 4:54:35 p.m. Mr. Blackbear was at the Colfax and Auraria Light Rail Station is observed walking towards the light rail train, the replica handgun is visible in his right hand.



Figure 1. Mr. Blackbear at the Colfax and Auraria Light Rail Station at 4:54:35 p.m. shows Mr. Blackbear walking towards the light rail train, the replica handgun is visible in his right hand.

- At 4:54:50 p.m. Mr. Blackbear was at the Colfax and Auraria Light Rail Station and observed boarding the light rail train. The replica handgun still is visible in his right hand.
- At 4:59:04 p.m. Mr. Blackbear was at the 10th and Osage Light Rail Station and was observed walking near an unknown male towards the Buckhorn Exchange Restaurant located at 1000 N. Osage St.

- At 4:59:37 p.m. Mr. Blackbear and the unknown white male moved towards the front of the Buckhorn Exchange. Through the course of the interaction, it appeared the unknown white male handed something to Blackbear. At one point, an object consistent with the replica handgun later found in Blackbear's possession was visible in his right hand.
- At 5:09:06 p.m. Mr. Blackbear was outside 990 N. Kalamath St. and observed walking eastbound on West 10th Ave. The replica handgun is observed in his right hand.

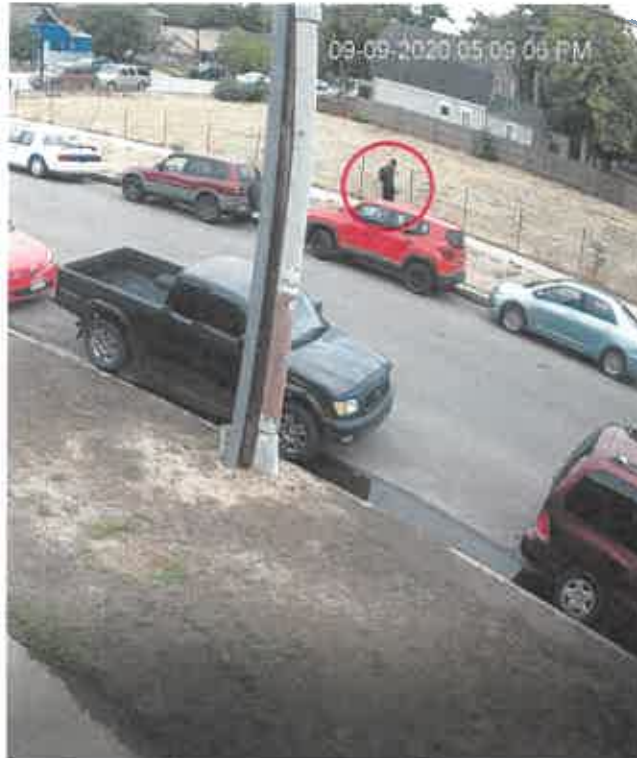


Figure 2. At 5:09:06 p.m. Mr. Blackbear was outside 990 N. Kalamath St. and observed walking eastbound on W. 10th Ave. The replica handgun is observed in his right hand.

Realizing that they were only a few blocks away, Officer Saunier turned their vehicle around and exited the Police Department underground parking garage. He did not activate their lights or sirens. The pair of officers responded to the area and quickly located Mr. Blackbear, at 10<sup>th</sup> Ave. and Inca St. at 5:19:16 p.m. When the officers arrived, Mr. Blackbear was turned away from them and advancing on a black Ford Explorer. Mr. Blackbear pointed the replica handgun at the occupants of the Ford Explorer who described being terrified. Officer Saunier stopped the car at the north end of the intersection and slightly canted the vehicle so its front was pointed slightly toward Mr. Blackbear but still in a more northerly direction. A nearby surveillance camera partially captured the moment the officers arrived.



Figure 3. A still image from a nearby auto repair shop. The black Ford Explorer occupied by two men is stopped on W. 10th Ave. between N. Santa Fe Dr. The wheels of the responding officer's vehicle is observed arriving on scene and stopping in the 1000 block of N. Inca St. Mr. Blackbear is observed walking towards the front of the Ford Explorer. The time stamp on the video is approximately two minutes behind actual time.

The following events took place in less than fifteen seconds. Without alerting Mr. Blackbear to their presence, both officers un-holstered their handguns and exited their car. Officer Saunier positioned himself between his open driver door and the "A-pillar" of the Tahoe. Officer Vento stepped out of her side of the car, first positioning herself between her open passenger-side door and the Tahoe's "A-pillar".



Figure 4. A still image from Ofc. Vento's body worn camera captures the scene when she and Ofc. Saunier arrive at the scene. Mr. Blackbear is in the center of the image pointing a replica handgun at a black Ford Explorer.



Figure 5. An enlargement from the previous still showing Mr. Blackbear pointing a replica handgun at the occupants of a black Ford Explorer.

Officer Vento then briefly retrieved a set of keys that fell to the ground from the vehicle after they stopped. She then positioned herself next to her open passenger-side door. At that moment a black pickup truck travelling east on W. 10<sup>th</sup> Avenue passed between the officers and Mr. Blackbear. As the truck passed, Mr. Blackbear pointed the replica handgun pistol at the occupants of the pickup truck, a man and his ten-year-old son on their way to football practice. After the truck passed, the driver of the black Ford Explorer exited the vehicle. With her handgun in her right hand, Officer Vento motioned with her left hand for the driver of the Explorer to move away from the vehicle. The driver moved across the street to take cover in between two parked cars. At the same time, an un-involved bystander to the west moved behind a parked car. A moment later the passenger door of the Explorer opened and the passenger took cover behind the Explorer.

With the backdrop clear of bystanders Officer Saunier commanded Mr. Blackbear to “Show Me Your Hands!” Upon hearing this Mr. Blackbear turned toward the officers and pointed the replica handgun at them while advancing across the street, towards and slightly to the west of the officers. Due to Mr. Blackbear’s movement Officer Vento began to search for more adequate cover and she again briefly positioned herself in between her open door and the “A-pillar” of the vehicle. Officer Saunier was still positioned on the drivers-side of the Tahoe between his open door and the “A-pillar.” With Mr. Blackbear pointing the replica gun at them, both officers fired at Mr. Blackbear. Officer Saunier fired several times. Officer Vento fired four times.



Figure 6. A still image from a bystander witness' cell phone video captures the scene immediately before the officers fired their weapons. In the center-right of the image, Mr. Blackbear is shown pointing a replica airsoft pistol at the officers. The front end of the officer's Tahoe is shown in the upper left corner of the image. The black pick-up truck Mr. Blackbear menaced is visible in the street in the upper right corner of the image. The open door of the Ford Explorer Mr. Blackbear attempted to carjack can be seen on the upper far right side of the image. The exited driver of the Ford Explorer is shown taking cover between two dark colored parked cars in the center of the image. Another bystander is shown taking cover behind a light-colored parked car in bottom right side of the image.

The first rounds the officers fired did not hit Mr. Blackbear and he continued across the street while pointing the replica handgun at the officers. Officer Vento realized that as Mr. Blackbear advanced he would quickly outflank her leaving her exposed on the side of the Tahoe. Officer Vento then ran around the back of the Tahoe to the driver's side. As she ran, she announced "shots fired" over the radio. Officer Saunier continued to fire his weapon at Mr. Blackbear. As Mr. Blackbear approached the north curb line, one fired bullet struck Mr. Blackbear in the head and he fell to the ground with his legs in the street and his torso on the grass strip between the north curb line and the sidewalk. Officer Saunier fired his weapon a total of nine times.

After the shooting, not knowing the extent of Mr. Blackbear's injury, Officers Saunier and Vento made sure the scene was secure by continuing to request the bystanders move away. Both Officer Vento and Officer Saunier radioed for additional officers. Additional officers quickly arrived and together they approached Mr. Blackbear. Next to him in the gutter of the street was the replica handgun. As backup officers secured Mr. Blackbear's hands, Officer Saunier slid the replica handgun away with his foot. Another officer later secured the handgun in a police vehicle. Officers rendered medical aid to Mr. Blackbear until an ambulance arrived and transported him to the hospital. Responding officers secured the scene for the Denver Police

Department's Crime Lab criminalists. Both officers were separated from others and their body-worn cameras were confiscated.

Mr. Blackbear was treated at Denver Health Medical Center, but died from his injuries at 12:07 a.m. on September 10, 2020.

### **Officer Saunier**

Officer Saunier was interviewed on September 11, 2020. Prior to his interview, he did not review his body-worn camera footage. Officer Saunier explained to a Denver police lieutenant and a representative of the Denver District Attorney's office what happened the day of the shooting.

Officer Saunier described entering the garage at the end of his shift. He and his partner, Officer Vento, heard a call over the radio of a man with a gun waving it at people in the area of Inca and Santa Fe Drive, and West 10th, 11th and also 12<sup>th</sup> avenues. They realized they were likely the closest car to the area and turned around to exit the garage and respond.

Officer Saunier described nearing the intersection of 10th Avenue and Inca Street, and "instantly" recognizing that the suspect had a black handgun in his right hand and a butane-torch lighter in his left hand. He described that it appeared the suspect wasn't aware of the officers' presence. He stooped and canted his vehicle so that he and he partner would have some cover when they exited.

Officer Saunier exited his vehicle and saw the suspect pointing his gun at the occupants of the Ford Explorer. At that point Officer Saunier realized that the two victims in the Explorer were in his potential line of fire. Therefore, he waited to make the officer's presence known to the suspect. Once the driver and the passenger exited the Explorer, Officer Saunier felt it was safe to challenge the suspect. He described what happened next:

*He started to take a step toward the car, and at that point, I yelled out to him, "Show me your hands!" And instantly, he pivoted on his right, faced us, and the gun was up pointing at us. At no point did he raise his hands or drop his – anything. I mean the gun was on it. It was rigid. I could see down the barrel.*

*And it – I mean at that time, I was worried for my partner's life, I was worried for – I mean this is the middle of the afternoon. There's people walking around. I'm scared for their safety and I'm scared for my life. And as that – as that's starting to process, I hear the first gunshot and it was at that time that I discharged my firearm. And I fired until he was no longer a threat. Approximately seven to eight times.*

Officer Saunier believed Mr. Blackbear fired his weapon at the officers. Officer Saunier also described approaching Mr. Blackbear when he was on the ground and seeing his gun on the ground and recognizing the "Glock" logo on the magazine.

## Officer Vento

Officer Vento was interviewed on September 11, 2020. She did not view her body-worn camera footage prior to giving her interview. She was interviewed by a Denver police lieutenant and a representative of the Denver District Attorneys' Office.

Officer Vento described arriving at 10<sup>th</sup> and Inca. Officer Saunier parked their vehicle without any lights or sirens. When they arrived, the suspect did not notice them and did not turn around or glance at them. Instead, the suspect kept his attention focused on the occupants of the Ford Explorer with his weapon pointed at them. Officer Saunier then saw the driver's side door open up and a male standing up very slowly with his hands up. She described what happened next:

*It was – my thoughts was this is something like I've never seen before. My thoughts were he – it was different. His motions were slow, and he was so fixated on what he was doing and how he was pulling them out. And – and I just distinctly – remembering, do not let him grab hold of that – the driver. We're going to have a hostage situation or he's just going to fire a shot if we start screaming.*

*And that – I believe that's why I didn't say anything and I have confidence that Kyle, too, saw all of that and then – then that's when I just started flagging – motioning for the driver to move north. But I mean, just because like I said, we're going south. All the cars are parked. It's like a packed street. No movement. And he was the only thing that was moving and he was so fixated on what he was doing. And I just remember the driver being very slow when he got out and the eye contact with him.*

Officer Vento then motioned to the driver to move away. The suspect's attention moved from the driver's side to the passenger side and the passenger side door flew open. Officer Vento then described what happened once the immediate area near the suspect was clear of bystanders:

*So Kyle's – "Shows us your hands! Show us your hands!" And I mean the suspect did not – it wasn't like he looked over his shoulder to see who was calling him. He was at the – at the passenger and he just fully turn – so he went from – I was on the passenger side, so he turns towards the mountains, towards the north parking lot and just directly towards me. Kyle is still saying "Show me your hands! Show me your hands!" And I mean simultaneously just heard gunshots. At this point, I shot two or three times, and then I distinctly remember him just advancing. Advancing, not like towards the – not towards our windshield, but almost like circling where I was.*

*And I remember saying you're going to get shot. You're going to get a head shot. You need to get down. So I just go – dropped, and I believe I went this way because after debriefing I was like why wouldn't I go this way? Why would I give him my head? And I go like this, and I remember thinking you're in a shooting. And then I remember saying, Lord, protect us, protect us.*



Officer Vento also believed Mr. Blackbear fired his weapon at the officers.

**Lay Witness: J.Z.**

Lay Witness J.Z. was interviewed by police and described what prompted her to call the police. She stated that she and her boyfriend were driving in the area near Inca St. They came to a stoplight at an intersection and noticed an angry looking guy crossing the street. He was in the crosswalk when the light turned green. Her boyfriend honked his horn. The person looked like he wanted to get hit by a car or start a fight with someone. As the couple drove by, J.Z.'s boyfriend told her "he has a gun." The couple drove down the street near West High School (two blocks to the east of the scene of the shooting) and called 911. As they were on the phone, they could see the officer's white Tahoe arrive down the street. She described what happened next:

*And I know he was like telling him something but I didn't hear what. And then after that, we just – I just started hearing gunshots, and that guy, it looked like he pointed it at some lady in the street, like he shot at her. And then he pointed his gun at the cop, shooting at him. And that's when my boyfriend – like we still had dispatch on the phone, and he was like – he was yelling, he's like can you take – bring more cops? He needs backup. And then, that's when we like drove off because we were scared.*

J.Z. also described thinking that Mr. Blackbear looked "like he wanted like to hurt someone." And that "[y]ou could tell he wanted something bad to happen."

J.Z. believed Mr. Blackbear fired his weapon at the officers.

**Lay Witness/Victims: D.G. & M.M.**

Lay Witness/Victims D.G. & M.M. were the occupants of the black Ford Explorer. Through their interviews with police, it was learned that D.G. was giving his friend M.M. a ride to an auto repair business on the corner of West 10th Ave. and North Inca St. When they arrived, they parked on the south curb of the street. They were both inside the Explorer when a male approached on foot and stood in front of their vehicle. The person was wearing all black and walked to the front of the Explorer and pointed a black handgun at the two men. The suspect told them to get out of the vehicle. D.G. exited the vehicle and observed two police officers arrive on the scene. M.M. also exited the vehicle. The officers gave commands to the man with the gun. The person then turned towards the officers and pointed the gun at them. Both D.G. and M.M. believed the suspect fired at the offices and they returned fire.

**Lay Witness: E.B.**

Lay Witness E.B. was the driver of the black pick-up truck that drove through the scene. E.B. was taking his ten-year-old son to football practice. He was driving his black Chevy Silverado eastbound on West 10<sup>th</sup> Ave. when he observed the suspect walking across West 10<sup>th</sup> Ave.. He saw the suspect display a handgun and he pointed it at E.B. The suspect then walked towards a black SUV that was occupied by two people. Both people had their hands in the air. E.B.

pushed his son down. E.B.'s window was partially down and as he drove by, he heard the male in the SUV say "Don't shoot." At this time, E.B. observed a white SUV police vehicle going southbound in the 1000 block of Inca St. Two officers exited the vehicle and told the suspect to put the gun down and put his hands up. The suspect turned around and E.B. heard several gunshots and saw the suspect fall to the ground.

E.B. described the suspect's gun as a black semi-automatic handgun. E.B. believed the gun was real.

### **POSTMORTEM EXAMINATION**

On September 10, 2020, a medical doctor at the Denver Office of the Medical Examiner performed a postmortem examination of Mr. Blackbear. Denver Crime Lab criminalists, Denver Police detectives and a Denver District Attorney Office representative attended the postmortem examination.

The Denver Medical Examiner determined that Mr. Blackbear died as a result of a single gunshot wound of the head. There was an entrance wound on the top of the head, approximately 2 1/4-inches below the top of the head and 5/16 inches to the right of the anterior midline. There was an exit wound at the back of the head, approximately 2 and 1/8th inches to the left of the midline, and 3 and 3/8th inches from the bottom of the head. There were abrasions on Mr. Blackbear's face consistent with Mr. Blackbear falling to the ground after he was shot. Toxicological results revealed that Mr. Blackbear's blood alcohol concentration was .144 g/ml.<sup>1</sup>

### **CRIME SCENE**

Immediately after the shooting, officers secured the airsoft hand gun and then secured the scene with crime scene tape. At 6:13 p.m., representatives of the Denver Police Department's Crime Scene Unit responded to process the scene.

While at the scene, crime scene investigators collected an airsoft handgun indistinguishable from a Glock 17 Gen 3 semi-automatic handgun.

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<sup>1</sup> In Colorado, Driving Under the Influence or "DUI per se" means driving with a blood alcohol concentration of 0.08 g/ml. or more. Colo. Rev. Stat. § 42-1-102.



Figure 7. The realistic airsoft pistol Mr. Blackbear pointed at bystanders and officers.



Figures 8. A "Glock" logo on the pistol slide and pistol grip



Figure 9. An actual Gen 3 GLOCK 17 model handgun. <https://us.glock.com/en/pistols/g17> (accessed October 28, 2020).

Crime scene investigators collected 13 spent 9mm cartridge cases consistent with those issued by the Denver Police Department Firearms Bureau:

- One cartridge case was on the street near the driver's side of the officer's Tahoe;
- Six cartridge cases were located near the windshield wipers of the Tahoe;
- Four cartridge cases were located near the west curb on Inca St., north of 10<sup>th</sup> Ave.; and,
- Two were located on the roof of the Tahoe.

Officer Saunier's handgun was collected by investigators. He was carrying a Smith & Wesson M&P 9mm semi-automatic handgun. The magazine Officer Saunier had in his weapon during this shooting has the capacity to hold 17 rounds. Officer Saunier indicated that prior to the shooting the magazine was loaded to capacity and that he chambers a round and tops off the magazine. Before the shooting, Officer Saunier had a total of 18 rounds in his weapon. At the time of the unload, he had nine rounds of total ammunition in the gun chamber and magazine. Thus, Officer Saunier fired his gun nine times.

Officer Vento's handgun was collected by the criminologists. She was carrying a Glock 17 Gen 4 semiautomatic 9mm handgun. The magazine Officer Vento had in her weapon during this shooting has the capacity to hold 17 rounds. Officer Vento indicated that magazine was fully loaded, and she chambers a round and tops off the magazine. Before the shooting, Officer Vento had a total of 18 rounds in her weapon. At the time of the unload, she had 14 rounds of total ammunition in the gun chamber and magazine. Thus, Officer Vento fired her gun four times.

## 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.

### Use of Force by a Peace Officer

The justification for a peace officer's use of physical force is described in Colo. Rev. Stat. § 18-1-707 - **Use of physical force in making an arrest or in preventing an escape:**

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When physical force is used, a peace officer shall:

(a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

- (b) Use only a degree of force consistent with the minimization of injury to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury, would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

Colo. Rev. Stat. § 18-1-707

These justifications are “affirmative defenses.” This means that a person accused of a crime for using force need not 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 Officers Saunier and Vento acted without lawful justification?**

Here, turning to the requirements of Colo. Rev. Stat. § 18-1-707 (1), it was not possible for Officers Saunier and Vento to apply nonviolent means before resorting to physical force. The officers responded to a report of a man who was pointing a gun at citizens. When they arrived at the scene, they encountered Mr. Blackbear in the midst of an aggravated robbery and/or kidnapping. Several citizens also were in the immediate area. When confronted, Mr. Blackbear immediately pointed a very realistic pistol at the officers. Within seconds of arrival, these officers were presented with a risk of imminent serious bodily injury and death. There was no time to use any force other than deadly force. Nonviolent means would have been ineffective in

preventing this imminent threat of serious bodily injury or death to the officers and other persons.

Officers Saunier and Vento were justified in using physical force against Mr. Blackbear pursuant to Colo. Rev. Stat. § 18-1-707 (2). Mr. Blackbear was in the midst of committing serious and potentially violent offenses classified by Colorado law as a “Crimes of Violence.” The officers used only a degree of force consistent with the minimization of injury to others. Indeed, the officers waited until their backdrop was clear of bystanders before firing their weapons. Once it was clear Mr. Blackbear no longer posed a threat, responding officers rendered aid to Mr. Blackbear and he was transported by ambulance in an attempt to save his life. Mr. Blackbear’s wife was notified of his death on September 10, 2020, the day after the shooting.

Officers Saunier and Vento were justified in using deadly force to arrest Mr. Blackbear pursuant to Colo. Rev. Stat. § 18-1-707 (3) & (4). Under these circumstances, other means of apprehension were unreasonable. Mr. Blackbear was in the midst of committing several felonies and he posed an immediate threat to the officers and others in the area. Finally, the officers waited until the area behind Mr. Blackbear was clear of bystanders before confronting him so as not to create a substantial risk of injury to other persons. To provide earlier or additional commands would have unduly placed the officers and civilians at risk of injury and would create a risk of death to other persons in the immediate area.

Finally, in regard to the justification of deadly force by a peace officer provided in Colo. Rev. Stat. §18-1-707 (4.5), Officers Saunier and Vento both had an objectively reasonable belief that a lesser degree of force would be inadequate. The handgun Mr. Blackbear pointed at bystanders and at the officers was a realistic airsoft pistol designed to look like a real Glock brand handgun. Officers Saunier and Vento also both had an objectively reasonable belief that they or another person was in imminent danger of being killed or receiving serious bodily injury. Mr. Blackbear was pointing and aiming the pistol as if it were a real handgun capable of causing death. Both officers, fearing for their lives, took cover behind their vehicle as Mr. Blackbear pointed the pistol at them. In Officer Saunier’s body-worn camera video, Officer Vento can be seen attempting to take cover as Mr. Blackbear turns to her. Fearing for her life, Officer Vento fired her weapon, then realized she might be outflanked by Mr. Blackbear so she retreated to the rear of her vehicle and then ran around to the other side of the vehicle. There is no doubt that these officers thought this was a real gun capable of causing death to themselves and the bystander in the area. This belief was objectively reasonable. Indeed both officers as well as several witnesses believed Mr. Blackbear fired his replica gun at the officers.

#### **Use of Physical Force in Defense of Person**

In addition to the justification of force by a peace officer provided in Colo. Rev. Stat. §18-1-707, an officer, like all citizens charged with a crime, may avail him or herself of the affirmative defense of self-defense under Colo. Rev. Stat. § 18-1-704 **Use of Physical Force in Defense of a Person**. As pertinent to this case, Colo. Rev. Stat. § 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.” Colo. Rev. Stat. § 18-1-704(2)(a).

Here, for the reasons outlined above, the belief that Mr. Blackbear was about to use unlawful deadly force and that these officers and others in the area were in imminent danger of being killed was reasonable. In this situation, Officers Saunier and Vento had lawful and justifiable claims of self-defense. Their judgment that Mr. Blackbear was pointing a real handgun at them, and about to kill them or others in the area, was reasonable. Therefore, it was reasonable and lawfully justified for Officers Saunier and Vento to defend themselves with deadly physical force under Colorado Statutes.

The Supreme Court of the United States has commented 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.

Records related to this case will be made available upon request to the Denver District Attorney’s Office. Any interested party may seek judicial review of my decision under Colo. Rev. Stat. § 16-5-209.

This letter and our officer-involved-shooting protocol will be published on our website.

Sincerely,

A handwritten signature in black ink that reads "Beth McCann". The signature is written in a cursive style and is positioned above a horizontal line.

Beth McCann  
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck; Division Chief Joe Montoya; Lieutenant Matthew Clark, Sergeant. Scott Murphy; Sergeant. Brock Ellerman; Sergeant. Scott Hagan; Detective Adam Golden; Detective John Joyce; Officer Lynnea Vento; Officer Kyle Saunier; Alex Pass, Esq., attorney for Officers Vento and Saunier; Kristin Bronson, Denver City Attorney, and Independent Monitor Nicholas E. Mitchell.