

Beth McCann
District Attorney

Second Judicial District



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

720-913-9000

Beth.McCann@denverda.org

February 19, 2021

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

Terry Tauai
Deputy Chief
Special Investigations
Burlington Northern Santa Fe Police
3001 Lou Menk Drive
Fort Worth, TX 76131

RE: Investigation into the shooting death of William Wallace (DOB 10-26-1965), which occurred on August 15, 2020, in the area of 46th Avenue and Packing House Road in Denver, Colorado.

Dear Chief Pazen & Deputy Chief Tauai:

The investigation and legal analysis of the death of William Wallace is complete. I conclude that under applicable Colorado law no criminal charges are warranted against Burlington Northern Santa Fe (BNSF) Railroad Agent Derek Goodyear (Badge #647). My decision, based on criminal law standards, does not limit administrative action by BNSF Railroad Police, in which non-criminal issues can be reviewed, or civil action where less stringent laws, rules and legal levels of proof may apply. This letter will be posted on our website and our file will be available for interested members of the public to review.¹

STATEMENT OF FACTS

On August 15th, 2020, at approximately 9:00 a.m., BNSF Railroad Agent Derek Goodyear made contact with Mr. William Wallace in the area near East 46th Avenue and Packing House Road, adjacent to BNSF railroad tracks. Packing House Road is a private road that runs south from East 46th Avenue

¹ Parties interested in reviewing the file should visit our website at www.denverda.org/records-request/. Our officer-involved protocol is available on our website at <https://www.denverda.org/wp-content/uploads/2017/10/DENVER-DA-OFFICER-INVOLVED-SHOOTING-PROTOCOL-2017-.pdf>

under Interstate 70 and opens into a clearing owned by BNSF Railroad that is used for storing construction material.



Figure 1. Aerial photos of the incident area (Source: Google maps)

Beyond that area is a bridge that spans the South Platte River. This bridge contains railway tracks only. Access to the location under the bridge is from the sloping sides of the Platte. This area was known to Agent Goodyear as an area with many homeless camps and trespassers. It is posted “No Trespassing.”



Figure 2. The distance from Agent Goodyear's vehicle to the bridge.



Figure 3. The opening to the area under the railroad bridge.

Agent Goodyear walked under the bridge and came upon the makeshift camp of a sleeping Mr. Wallace. Agent Goodyear broadcast on the Colorado State Patrol Dispatch Channel/Adams County Region that he was contacting a suspect for trespassing. Agent Goodyear woke up Mr. Wallace, and asked for his identification. Agent Goodyear then requested a clearance of Mr. Wallace's name and date of birth. The dispatch operator advised Agent Goodyear that Mr. Wallace had a felony warrant for his arrest from Arapahoe County. When told he was being arrested Mr. Wallace balked about not being able to take his possessions but was generally compliant. Mr. Wallace said that he did not want to go back to jail and that he didn't do anything wrong.

Mr. Wallace got dressed and grabbed a black backpack, milk jug and marijuana pipe. Agent Goodyear made the decision not to handcuff him at this point due to the unsure footing under the bridge and the balance needed to negotiate it. If Mr. Wallace had fallen while handcuffed, he could not have caught himself.

As Agent Goodyear was escorting Mr. Wallace out from under the bridge, Mr. Wallace attempted to veer off to the left in the direction of the South Platte River in an apparent attempt to evade arrest. Agent Goodyear was able to redirect Mr. Wallace by taking a hold of his backpack as he walked. Then Mr. Wallace began to smoke marijuana from his pipe in an apparent attempt to stall the arrest.

At this point Agent Goodyear decided to place Mr. Wallace in handcuffs. Mr. Wallace dropped his backpack and milk jug and faced Agent Goodyear in a stance that indicated he was going to fight. Agent Goodyear went to grab Mr. Wallace's arms in an attempt to control him and Mr. Wallace started to fight. During the first moments of the fight the two men fell to the ground. Mr. Wallace started to get up and Agent Goodyear pulled him to the ground again, pulling out some of Mr. Wallace's hair in the process. At this point the two men are chest-to-chest on the ground. Agent Goodyear tried to gain control using several methods, including a pressure point under Mr. Wallace's cheekbone but he was unsuccessful in gaining compliance. Mr. Wallace grabbed at the vest and gear of Agent Goodyear during the struggle. Agent Goodyear repeatedly knocked his hands away. Mr. Wallace then grabbed at the butt of Agent Goodyear's gun. However, the gun was in a hood retention holster and Mr. Wallace tugged at it to free the handgun, albeit unsuccessfully.

Agent Goodyear was not able to remove Mr. Wallace's hands from his firearm so he arched back and punched Mr. Wallace as hard as he could. At that point, Mr. Wallace let go of the gun, but did not stop fighting. Agent Goodyear then punched him again to no avail. Mr. Wallace grabbed at the agent's vest and started punching him (so Agent Goodyear thought) in the left flank. Agent Goodyear then saw that his punch-dagger² (which had been in his vest) was in Mr. Wallace's right hand and realized that what he perceived as punches were actually stabs to his left chest, ribs and armpit area.

Agent Goodyear reared back, drew his firearm and shot Mr. Wallace in the neck. He saw Mr. Wallace still holding the punch-dagger and fired again. At this point, Mr. Wallace's arms dropped and he was no longer fighting. Agent Goodyear saw the punch-dagger in Mr. Wallace's right hand. Agent Goodyear radioed for help while he kept his gun aimed at Mr. Wallace. He then turned Mr. Wallace over and put handcuffs on him. He called for assistance and stated he had been involved in a shooting.

Colorado State Patrol (CSP) Sergeant Patrick Williams and CSP Trooper Sean McCall were the first to respond to the location. The Denver Combined Communication Center received a call for help from the CSP dispatch center that a BNSF agent was involved in a shooting. Two Denver Police Homicide Unit detectives were assigned to the investigation. They went to the location and secured the scene. Another Denver police detective was assigned to respond to the Denver Health Medical Center (DHMC) where Agent Goodyear was taken. The Denver District Attorney's Office and the Aurora Police Department also were notified and responded per the Officer Involved Shooting (OIS) protocols and multi-agency agreements.

² A punch-dagger is a short bladed dagger with a "T" handle designed to be grasped in the hand so that the blade protrudes from the front of one's fist.

At the scene Denver detectives learned there were no eye witnesses other than Agent Goodyear. There they spoke with Sergeant Williams and Trooper McCall who reported that upon their arrival they observed the BNSF agent standing adjacent to his vehicle and saw a handcuffed male face down on the ground. Sgt. Williams approached and observed the male on the ground to be bloody. Sgt. Williams grabbed a small “punch knife” which was near the male’s handcuffed hands. Sgt. Williams secured the knife and placed it on the hood of his patrol vehicle. Trooper McCall observed blood on BNSF Agent Goodyear’s clothing, but was initially unaware of injuries to the officer. The officers assisted Agent Goodyear in removing some of his clothing and tactical gear and found he was stabbed multiple times in his left armpit area. All of Agent Goodyear’s equipment and some of his clothing was placed on the hood of Sgt. Williams’s vehicle.

A Denver Police Homicide Unit detective contacted BNSF Senior Special Agent Jeff Matthews who advised he was the shift supervisor and responded to the location after being contacted by Agent Goodyear. Special Agent Matthews initially received a voicemail from Agent Goodyear saying he was involved in a shooting. Matthews called back and spoke to Agent Goodyear who reported he was being transported to the hospital.

A Denver Health Medical Center ambulance arrived on scene. After communication with an emergency room doctor, Mr. Wallace was pronounced dead at 9:22 a.m. The paramedics examined Agent Goodyear and found several stab wounds near his left armpit. He was transported by ambulance to Denver Health Medical Center for treatment. Agent Goodyear had five sharp force injuries to his left shoulder and armpit area. An emergency room doctor, Anna Engel, opined that Goodyear had sustained serious bodily injury in the form of multiple lacerations requiring repair with a risk of permanent scarring.



Figure 4. A photo of Agent Goodyear's injury to his shoulder area.



Figure 5. A phot of Agent Goodyear's injuries to his armpit area.

AGENT DEREK GOODYEAR

On August 21, 2020, Agent Derek Goodyear came into Denver Police headquarters for an interview. His attorney accompanied him. Agent Goodyear gave a statement to officials with the Denver Police Department and the Office of the District Attorney regarding the August 15, 2020 incident. The interviewers had the opportunity to ask questions and seek clarification.

Agent Goodyear related he has been employed with Burlington Northern Santa Fe Railroad Police since April 2019. Prior to that, he was a deputy with the Arapahoe County Sheriff's Department for

approximately 11 years and was employed by the Colorado Department of Corrections for two years prior to his work with Arapahoe County.

Working with BNSF police, he is involved in both investigations and patrol. Agent Goodyear works as a uniformed law enforcement officer and part of the Poudre River Division. This area extends from Wyoming to East Texas and Kansas to East Utah. He is headquartered in Denver. He works in a solo capacity and is directed to be proactive, meaning to go where the crime is. He spends much of his time in Denver, Commerce City and Colorado Springs.

Agent Goodyear described the uniform and equipment he regularly carries. Notably, he wears a tactical vest that contains three knives and three magazines. One of these knives is known as a “p-dagger” or “punch dagger”. This type of knife allows the user to hold the handle in a closed fist with the blade pointing through the fingers, to be used in a punching motion. He kept the punch dagger on the left side of his vest behind another item. On his duty belt he also has his firearm in a holster equipped with a retention device which is a hood that covers the firearm allowing the user to access the firearm but resists use by others.

Agent Goodyear explained what he did that day as he proceeded to the scene. He went to the area as he knew there are often homeless camps there. Agent Goodyear found Mr. Wallace sleeping under the bridge. After he learned of Mr. Wallace’s outstanding warrant, Agent Goodyear told Mr. Wallace he was going to be arrested. Mr. Wallace was generally compliant but said he did not want to go to jail.

Agent Goodyear described encountering Mr. Wallace under the bridge and escorting him toward his car. After Mr. Wallace demonstrated he was trying to stall the arrest, he told Mr. Wallace “I’m putting you in handcuffs.” At that point he dropped his belongings and turned to fight Agent Goodyear. During the fight Agent Goodyear yelled at Mr. Wallace to stop fighting and to stop resisting. He also described the different tactics and effort he made to try to control Mr. Wallace. Then he related how Mr. Wallace reached for his gun and then grabbed his punch-dagger from his vest and started stabbing him. Agent Goodyear told investigators:

And I thought, okay. So, he's stabbing me. He's hitting me in the ribs. I thought, you know, he's either killed me and I don't know it yet, or he's gonna kill me because where he's hitting me at is my lungs and my heart. I don't know how hard or how deep he's hitting me, but I know where he's hitting me at is, you know, right up underneath my arm and I know my —my ribs are right there. I know, you know, all kinds of tendons are right there. There's nothing basically blocking a major trauma to that area, outside of my ribs. I mean there's t-shirt material. So my vest isn't going to help me. Nothing is going to help me. So I'm like —in my mind, I'm like he —he's killed me. I'm just waiting to die. My body must be just jacked up on adrenaline and I'm —I'm dead.

So I rear back and I'm like he — I see the knife. I'm like he —in my mind, I think he must think that this isn't effective, because he's hit me I know —I felt like three times. He's hit me, so he must think he's not being effective and/or I'm just dying slow. So I —when I saw the knife, I thought if, you know, I thought he —his next moves, he's going to hit me in the neck, because he's obviously stabbing me a bunch of times and it's not killed me yet, so his next thought, in my mind, was all

right, he's going to bit you in the neck. He's going to bit you in the neck. He's going to go somewhere else to —to put you down.

Agent Goodyear then described rearing back, pulling out his hand gun, pointing it at Mr. Wallace and shooting him in the neck. This caused Mr. Wallace finally to stop fighting. Agent Goodyear radioed for help while he kept his gun aimed at Mr. Wallace. He turned Mr. Wallace over and put handcuffs on him. Agent Goodyear explained how tired he became at this point. He did not know the extent of his injuries and knew it was going to be difficult for anyone to get to him based on his location. The CSP got there first, followed by DPD and then the ambulance that took him to the hospital.

CRIME SCENE AND WEAPON UNLOADING

Personnel with DPD's Crime Scene Unit (CSU) responded to the scene. Agent Goodyear did not have a body worn camera nor was his vehicle equipped with a dash cam. The BNSF police do not possess such equipment. Detectives did not locate any video showing what occurred.

The primary scene consisted of the BNSF agent's patrol vehicle and the body of Mr. Wallace. The ground around Mr. Wallace was disturbed, with gravel moved around in a manner consistent with a struggle and pieces of hair found on the ground were consistent with those of Mr. Wallace. A single spent cartridge case was initially observed along with the agent's badge, covered in blood, adjacent to Mr. Wallace's head. Upon further investigation, two more spent cartridge cases were located.

Mr. Wallace was still on scene lying face down on the ground with his hands cuffed behind his back. His legs were straight with his left leg slightly over the right leg. Mr. Wallace was wearing a blue shirt, blue jeans and black shoes. A large amount of suspected blood was present near Mr. Wallace's head. CSU observed one cartridge case near Mr. Wallace's body during the initial walkthrough. Two additional cartridge cases were located as the CSU processed the scene. CSU observed a black backpack and a milk jug on the ground near Mr. Wallace. A black jacket was observed about 100-yards away under a nearby bridge that spanned the South Platte River.

On the hood of a gray Colorado State Patrol vehicle was Agent Goodyear's duty belt, gun, bloody clothing and equipment. Agent Goodyear carried a 9mm HK, Model VP9, semi-automatic pistol. The magazine in that weapon held 15 rounds. Agent Goodyear's weapon was unloaded. The weapon had one round in the chamber and a magazine with 12 rounds. From the unloading of the firearm, it appears Agent Goodyear fired his weapon three times. This is consistent with the three spent cartridge cases found near Mr. Wallace.



Figure 4. Agent Goodyear's firearm.



Figure 7. Agent Goodyear's firearm after it was unloaded.

Crime Scene Unit personnel also located two black shirts belonging to Agent Goodyear with apparent puncture holes near the left armpit. CSU personnel also recovered a "punch-dagger" with a black handle and suspected blood.



Figure 8. A photo of Agent Goodyear's "p-dagger" or "punch dagger".

On the ground near Mr. Wallace, CSU personnel located three spent cartridge cases.

AUTOPSY REPORT

On August 17, 2020, at approximately 8:45 a.m. an autopsy was performed on Mr. Wallace by a forensic pathologist at the Denver Office of the Medical Examiner. Law enforcement personnel and CSU investigators were present during the external examination of Mr. Wallace.

The medical examiner determined that Mr. Wallace, died as a result of two gunshot wounds to the

neck. The first³ gunshot wound was situated on the anterior left neck area. The bullet's trajectory is front to back, left to right, and not significantly downwards nor upwards. The wound path perforates the skin and soft tissues of the anterior neck, the strap muscles, the soft tissues around the larynx, the 4th and 5th vertebrae of the cervical spine and underlying spinal cord and penetrates the soft tissues of the posterior neck. This wound likely is a fatal wound.

The second gunshot wound was at the lateral left neck area. This bullet's trajectory is front to back, downward, and left to right. A black-red circumferential abrasion with soot embedded in the surrounding skin is present. This is consistent with an injury caused by a gun being fired within six inches of the skin. The wound path perforates the skin and soft tissues of the left neck and penetrates the soft tissues of the upper right back.

Both bullets were recovered.

Mr. Wallace had a number of blunt force injuries to his head including abrasions to the forehead, behind the right ear, the left side of the face, the left ear, and several to the scalp area. He had abrasions to the middle of his chest, the right side of his chest, his right shoulder, the upper back, and the lower back. Finally, abrasions were noted on Mr. Wallace's left elbow, right elbow, right forearm and both legs.

Postmortem toxicology was positive for methamphetamine (and metabolite) and cannabinoids (and metabolite) in postmortem femoral blood.

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 a police officer using physical force is described in C.R.S. § 18-1-707. As pertinent to this case and as recently amended, C.R.S. § 18-1-707 (1) states:

- (1) 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.

The justification for a peace officer's use of deadly physical force while attempting to make an arrest is described in C.R.S. § 18-1-707(3) (4) and (4.5), and as pertinent to this case states that:

- (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;

³ Labelling these wounds as "first" and "second" does not indicate the order in which they occurred.

- (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.

Another statute at issue is C.R.S. §18-1-704 - Use of physical force in defense of a person which states:

- (1) Except as provided in subsections (2) and (3) of this section, 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.
- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and
 - (a) 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;

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 Agent Derek Goodyear acted without lawful justification?**

After a thorough review of the evidence, I conclude that Agent Goodyear was legally justified in his use of force, including firing his firearm at Mr. Wallace as he acted necessarily in self-defense and appropriately used deadly physical force as a peace officer.

Agent Goodyear at the minimum had the right to self-defense under C.R.S. §18-1-704. When Mr. Wallace turned to fight him, Agent Goodyear could legally defend himself against the actions of Mr. Wallace. The situation continued to escalate even though the Agent Goodyear was yelling to Mr. Wallace to stop fighting and stop resisting. Agent Goodyear tried lesser degrees of force initially.

These were of no effect. Mr. Wallace increased the degree of force by attempting to gain control over Officer Goodyear's firearm. Agent Goodyear used additional physical force in punching Mr. Wallace to keep control of the firearm. When Agent Goodyear became aware that Mr. Wallace was stabbing him with the punch knife, he reasonably believed that he was in imminent danger of serious injury or death. At this point, Agent Goodyear was justified in using deadly physical force to defend himself as a lesser degree of force would have been inadequate.

The analysis is similar under C.R.S. §18-1-707, specifically as the statute relates to a peace officer. Nonviolent means were ineffective against Mr. Wallace's actions to injure Agent Goodyear and were ineffective to arrest Mr. Wallace. Pursuant to C.R.S. § 18-1-707 (3), Agent Goodyear was justified in using deadly physical force when other means of apprehension were unreasonable and after being stabbed five times. Mr. Wallace presented an immediate threat to the officer and the force employed did not create a substantial risk of injury to any other person.

Here, there was no need for the officer to re-identify himself as he had already identified himself as an officer. There was also no time to warn Mr. Wallace about the use of deadly force. Agent Goodyear was already injured although he did not realize how badly at the time. Agent Goodyear reasonably believed that he was in danger of further serious injury or possible death once he realized Mr. Wallace had a knife and was using it against him. Given the situation presented, Agent Goodyear had substantial reason to believe—and did believe—that lesser force would have been inadequate and that he was in imminent danger of being killed or of receiving serious bodily injury.

For these reasons, Officer Goodyear has a justifiable claim of self-defense pursuant to C.R.S. §18-1-704 and was justified in his use of physical and deadly physical force against William Wallace pursuant to C.R.S. §18-1-707.

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.

After careful review of the evidence in this situation and the applicable statutory and case law, I conclude that Agent Goodyear had a justifiable claim of self-defense and thus no criminal charges are warranted against him.

Sincerely,



Beth McCann,
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Lieutenant Matthew

Clark, Major Crimes; Sergeant Scott Murphy; Sergeant Brock Ellerman; Sergeant Scott Hagan; Sergeant Abel Salas; Detective Daniel Tregembo; Detective Jami Sisneros; Agent Derek Goodyear, Reid Elkus, attorney for Agent Goodyear