

**Beth McCann**  
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Second Judicial District



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July 6, 2021

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

RE: Investigation of the shooting death of Raul Rosas-Zarsosa, DOB 09/20/68, in which Denver Police Department Officer Katie Phillips (badge number 19066) fired shots on May 19, 2021 on Federal Blvd. at Harvard Ave. in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the shooting death of Raul Rosas-Zarsosa, in which shots were fired by Denver Police Officer Katie Phillips, has been completed. I conclude that under applicable Colorado law, no criminal charges are warranted against this officer. 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 May 19, 2021, the Denver Police Department received a 911 call relating that there was a man with a knife under a tree on the east side of Federal Boulevard at Harvard Avenue. The caller reported that the man was cutting himself and was bleeding. Officers Katie Phillips and Jordan Archuleta were dressed in full uniform and each driving alone in a marked patrol vehicle. They responded with emergency lights and sirens activated. As they arrived at the scene, they noted that Denver Fire Department personnel and paramedics were already staged nearby. They parked their patrol vehicles in the northbound lanes of traffic approximately 90-100 feet from this man, who was later identified as Raul Rosas-Zarsosa. Wanting to help him, but aware that he possessed a deadly weapon, Officers Phillips and Archuleta developed a plan to approach to speak with him; Officer Archuleta intended to slowly drive his patrol car as cover while Officer Phillips approached him on foot. A civilian walking his dog was very close to this man, and officers, fearing for his safety, directed him away from the man with the knife.

It appears that in calling out to the man with the dog, the officers alerted Mr. Rosas-Zarsosa to their presence. Before Officers Phillips and Archuleta could carry out their plan, Mr. Rosas-Zarsosa began walking toward them at a steady and rapid pace. Both officers could see a knife in Mr. Rosas-Zarsosa's hand. Officer Phillips deployed her pepper ball gun several times; while several pepper balls struck him, they had little effect on Mr. Rosas-Zarsosa, who continued to advance rapidly toward them. Officer Archuleta, who was standing to the right of Officer Phillips and at least one step ahead of her, then deployed his Taser. Because only one probe of the Taser hit Mr. Rosas-Zarsosa, this too had no effect. At this time, Officer Phillips determined that Officer Archuleta was in danger of being injured by Mr. Rosas-Zarsosa, who was still holding the knife and advancing on the officers. She threw the pepper ball gun to the ground and unholstered her duty weapon. Officer Phillips shot five times, at which point Mr. Rosas-Zarsosa fell to the ground. While on the ground, Mr. Rosas-Zarsosa threw the knife away from his body. Cover and emergency aid arrived within less than two minutes, and officers approached Mr. Rosas-Zarsosa. Mr. Rosas-Zarsosa was treated immediately for his wounds and was transported to Denver Health Medical Center, where he passed away from his injuries. Officers Archuleta and Phillips were separated and transported to Denver Police Headquarters. Officer Archuleta made a statement that evening; Officer Phillips participated in a voluntary interview the following afternoon.

A multijurisdictional team comprised of the Denver Police Department Homicide Unit, Aurora Police Department Major Crimes Unit, and the Denver District Attorney's Office responded to conduct the investigation. Investigators determined that Officer Archuleta did not fire his weapon. They concluded that Officer Phillips fired five rounds. Through the measuring tool embedded in the FARO scene software and after observation of the body worn camera footage of the officers, DPD Homicide Detective Bueno was able to estimate the distance between Officer Phillips and Mr. Rosas-Zarsosa as 12 feet when Officer Phillips discharged her firearm. Forensic pathology fellow, Dr. McLaren, conducted the autopsy of Mr. Rosas-Zarsosa on May 20, 2021. She determined that he had sustained five gunshot wounds and one graze wound. The gunshot wounds were to the left abdomen; to the lower left abdomen; to the left buttock; and to the left and right forearms.<sup>1</sup> The graze wound was to the right shoulder. Dr. McLaren concluded that the cause of Mr. Rosas-Zarsosa's death was multiple gunshot wounds.

## STATEMENTS OF CIVILIAN WITNESSES

Civilian witness R.H.<sup>2</sup> was sitting in his car facing westbound on Harvard Ave. at Federal Blvd. He was accompanied by civilian witness T.B., who was in the passenger seat. He heard sirens, pulled over, and saw that first an ambulance and then the Denver Fire Department responded to the area, stopping in the Auto Zone store at the northeast corner of Federal Blvd. and Harvard Ave. Having previously been a paramedic, R.H. recognized that they were "staging," or waiting at the scene until it was safe enough to render aid to any eventual patient. He saw a man in black under a tree on the east side of Federal Blvd. to the north of him and his vehicle. This man was squatting or kneeling under the tree and gesturing around his head and face. R.H. then saw two police vehicles come "flying [northbound] down Federal Blvd." R.H. got out of his car and saw a

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<sup>1</sup> These findings can be reconciled with the determination that Officer Phillips fired five rounds. One of the bullets which traveled through the forearms likely went through the forearm and into the body. Four bullets were recovered from inside the decedent's body.

<sup>2</sup> I use initials to protect the privacy of civilian witnesses.

police officer get out of his car and stand behind the open door. The man in black got up and was stomping on the ground and raising his hands. R.H. stated that he saw that the officer had a rifle<sup>3</sup> and very distinctly said the word “stop!”. The man in black was doing something with his hands. R.H. said “at that almost exact point, the man in black ran straight toward the – straight toward the officer.”<sup>4</sup> R.H. then believed that he heard something to the effect of “put it down” or “get down,” although it was difficult to hear due to the sirens in the background. The man, as he was running, had his right arm up, “unusually high,” and then, he believed, the officer shot twice.<sup>5</sup> The man had “pretty much made it to the front of the [police] car. He had made some ground running.” He said that the man had made it fairly close to the officer before the shots were fired. The paramedic and Fire Department personnel ran to the scene to assist; R.H. said the medical response “was pretty quick”. When asked if he had anything else to add to his statement, R.H. said “everything just happened so fast.”

Civilian witness T.B. also agreed to be interviewed. She stated that she was in the passenger seat of R.H.’s car, which was stopped on Harvard Avenue at Federal Blvd. during the relevant time frame. She saw a man, who she thought might be homeless, kneeling down. The man started to get up, waving an item in his hand. T.B. said that both she and R.H. believed it to be a gun. R.H., believing them to be in the line of fire, backed up their car. The man with the item in his right hand was shouting something while an officer yelled to back up. T.B. said she heard two shots but did not know if the “homeless” gentleman shot first and was then shot by the police. She stated, “all I know is that [the “homeless man”] went down”. She said, “the cops showed up and he went after them”. He was “going after them very aggressively.” According to T.B., the “guy got pretty close before the officer shot him”. In another part of the interview, T.B. said that he was “nerve-rackingly close” to the officers. At that time, she thought to herself “Oh my gosh, do something please! He’s going to harm somebody!”. Immediately after the officers had secured the scene, T.B. saw paramedics and fire personnel run up and render care to someone; because of the number of people blocking her view at that point, she did not know if the person who had been injured was an officer or the man who had had the weapon in his hand. She said the incident “felt so fast”.

Civilian witness C.W. said that he was walking on Federal Blvd. when he noticed a man who was bleeding and appeared to be in distress. The man was holding a knife. He said officers responded to assist the man, and C.W. backed up at the same time that officers told him to get back. He said that officers told the man to put down the knife. C.W. said there was a male and a female officer, and it was the female officer making the demands. C.W. said there was “a paint ball gun type of situation before the shots were fired”. C.W. said he heard five to six shots after the man had started walking toward them.

Civilian witness A.L. stated that she was in a car with her husband, J.S., on Federal Blvd. They were stopped in traffic, facing northbound, as officers were responding with lights and sirens. She saw officers point a “paint ball gun” at a “suspect”. They were telling him to stop but the suspect refused to follow those commands. Rather, he continued to approach them, and the two

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<sup>3</sup> It is unclear whether R.H. saw Officer Phillips’s pepper ball gun or Officer Archuleta’s Taser or Officer Phillips’s handgun. I am unaware of any evidence that a rifle was present at the scene.

<sup>4</sup> In another part of the interview, R.H. described the man as “charging” at the officer.

<sup>5</sup> It should be noted that R.H. had realized that he would be in the line of fire and around this time he moved his car to protect himself and T.B., his passenger.

officers again yelled for him to stop, shooting from the “paint ball” gun. He continued to approach them; she then saw an officer “shoot the gentleman” and he went down to the ground. She said that she had a clear line of sight to the officers, but only a partial view of the suspect. She did not see anything in his hands. As he was approaching the officers, the officers were backing away from the suspect.

Civilian witness J.S. stated that he was in his car with his wife, A.L. They were headed northbound on Federal Blvd. when he saw two police cars parked in the roadway, blocking the traffic in the northbound lanes. He saw two officers, one with a “paint ball” gun, telling someone to stop and backing up from the individual, who had blood on his shirt. He then heard five to six “paint ball” shots. The person coming toward them was in front of the police vehicle at that time and J.S. may have heard at that time another command to stop. Because the individual continued to approach, an officer then shot three rounds or possibly four. When asked how far away the individual was from the officers, J.S. estimated as “ten feet tops”. He did not see anything in the individual’s hands. J.S. had noticed that there was an ambulance already on scene, facing southbound on Federal Blvd., so medical assistance arrived within approximately one minute.

Civilian witness O.M. stated that he was outside on Federal Blvd. when he saw a man sitting on a sidewalk. He appeared to be hurt. There was a man on a phone nearby; that man was with his dog. An ambulance arrived and then officers arrived. The man who had been sitting on the sidewalk “rushed” the officers with his hands up and “chased them around”. The officers gave commands, moving back “to try to just stay out of his way.” The man sounded as if he wanted to fight with the police. O.M. said he heard the officers give commands with their guns out then heard four to five shots. O.M. was on the west side of the street and a good distance away from the scene.<sup>6</sup> He believed that both officers shot with handguns; he did not see any other weapons used by the police. He did not see any weapons in the hands of the man who engaged with the officers.

## OTHER EVIDENCE

Both Officers Archuleta and Phillips activated their body-worn cameras prior to encountering Mr. Rosas-Zarsosa. The videos are of good quality and display the events as perceived by the officers. Additionally, there is Ring video of good quality, albeit from some distance away.

The Ring video shows two marked police vehicles traveling northbound. One officer emerges from each vehicle. One can see a man approaching the vehicle while a female voice yells “get back!” numerous times. A male voice is likewise issuing commands to “get back”. One of the officers<sup>7</sup> is ahead of the other one, closer to the person later identified as Mr. Rosas-Zarsosa. As commands are being given, the officer who is closer to Mr. Rosas-Zarsosa backs up until she is next to the other officer. One can see one of the officers backing up as they are issuing these commands. One can then hear approximately ten shots consistent with the pepper ball being deployed. The female voice becomes more alarmed and yells “stop!” and “don’t do it!”. The officers are continuing to back away from the man. One then hears five gunshots and immediately the female voice yells “shots fired.” One minute and seven seconds later, other

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<sup>6</sup> O.M. estimated that he was a good hundred yards away from the incident.

<sup>7</sup> Although one cannot see it in this Ring video, it is clear from other evidence that this is Officer Phillips.

police cars arrive. The video footage shows people in uniform advancing; based upon other evidence, we know these individuals to be firefighters approaching the scene to render medical assistance to Mr. Rosas-Zarsosa.

Officer Archuleta was wearing his body-worn camera which he activated as he exited his patrol car. In the relevant portion of the video, Officer Archuleta yells to a man with a dog to come closer to the officers and away from the man who would eventually be identified as Mr. Rosas-Zarsosa. He then tells Officer Phillips to get to his (Archuleta's) side of his patrol car. As Officer Archuleta is backing up toward the driver's seat of his car, one can hear Officer Phillips yell "get back!" numerous times. Officer Archuleta then yells to get back as well. One can see the silhouette of Officer Phillips holding the pepper ball gun and one can hear ten pepper ball shots. As Officer Phillips is yelling "stop!" and "don't do it!" Officer Archuleta tells her he has his Taser. As Officer Phillips continues to give commands, and as Mr. Rosas-Zarsosa advances, Officer Archuleta yells "drop it now!" and deploys his Taser, which has no apparent effect on Mr. Rosas-Zarsosa. Rather, he continues to approach the officers. Almost simultaneous to the Taser deployment, one hears five shots fired. Immediately after the shots, one hears a distressed Officer Phillips yell "shots fired! Shots fired!" The officers then approach Mr. Rosas-Zarsosa and yell at him to drop the knife. With his right hand, Mr. Rosas-Zarsosa tosses a knife, which lands in the roadway. Twenty seconds after the last shot, Officer Archuleta calls for an ambulance.<sup>8</sup> They appear on the video one minute and six seconds later. As medical aid is being rendered, an officer tells Officer Phillips to get into his car, separating her from the scene. From the first commands issued by Officer Phillips, until the first shot was fired, 14 seconds elapsed.



*Figure 1. Screen capture from Officer Archuleta's body-worn camera. One can see the knife in Mr. Rosas-Zarsosa's right hand.*

<sup>8</sup> One can see a fire engine with its lights on at the next intersection to the north of this scene.

Officer Phillips likewise activated her body-worn camera as she arrived at the scene. In the relevant portion of the video, she emerges from her patrol vehicle holding the pepper ball. She approaches the area where the man with the dog is on the phone and is on the passenger side of Officer Archuleta's vehicle. Officer Archuleta says that they should take the car up toward the man who is later identified as Mr. Rosas-Zarsosa, and Officer Phillips agrees. She then moves around the front of that vehicle and begins yelling "get back!" several times. Mr. Rosas-Zarsosa does not respond to these orders and continues moving steadily toward the officers. Officer Phillips deploys the pepper ball, and this too has no effect on Mr. Rosas-Zarsosa. Officer Phillips then backs up and one can see Officer Archuleta approach Mr. Rosas-Zarsosa saying he has a Taser, which one can see in Officer Archuleta's hand. Officer Archuleta is closer to Mr. Rosas-Zarsosa and is to the right of Officer Phillips. Emergency medical services are visible in the background. The pepper ball is on the ground in front of Officer Phillips.



*Figure 2. Screen capture from Officer Phillips's body-worn camera. Officer Archuleta is to the right and front of Officer Phillips.*

Mr. Rosas-Zarsosa continues to approach and Officer Archuleta deploys his Taser with no effect. Officer Phillips then shoots five times. She then yells "shots fired! Shots fired!" She is clearly upset in the moments after she shot, and she is visibly shaking, but she continues to secure the scene until other officers arrive and take on those duties, and as medical assistance is rendered to Mr. Rosas-Zarsosa. She is then contacted by another officer who tells her to secure her weapon and to sit in his patrol car to separate herself from the investigation. She turns off her camera as she enters that patrol vehicle.



*Figure 3. Screen from Officer Archuleta's camera, showing Mr. Rosas-Zarsosa tossing the knife away from his body.*



*Figure 4. The utility knife at the scene.*



*Figure 5. The utility knife at the scene.*

Involved Officer Phillips (19066) was dressed in a Denver Police officer uniform. Officer Phillips had a handgun and two additional magazines on her duty belt.

The following was recovered from a firearm unload for the handgun belonging to Officer Phillips:

One black Glock 19 Generation 5 9x19 firearm with serial number BGZW598. The firearm contained one WIN 9mm Luger live round of ammunition in the chamber and one 15 capacity magazine containing 10 WIN 9mm Luger live rounds of ammunition which is consistent with Officer Phillips having fired 5 rounds (as she kept one in the chamber).



## OFFICERS' STATEMENTS

### Officer Archuleta

Officer Archuleta agreed to be interviewed the evening of the incident. He stated that he responded to a call of a man with a knife who was cutting or stabbing himself. He and Officer Phillips responded emergently. When they arrived at the scene, he saw a man under a tree bleeding heavily from his neck. There was a civilian with a dog nearby; this man was on the phone and officers feared for his safety, as he was close to the man with the knife. Officer Phillips called out to this man and told him to get back. He estimated that the officers parked approximately fifty feet away, and the man with the knife immediately and rapidly approached them. Officer Phillips made numerous verbal commands to the man, yelling at him to stop and to get back. When he continued to advance, and he was within approximately twenty to twenty-five feet of Officer Phillips, she deployed her pepper ball gun, but it had no effect. Officer Phillips then threw the pepper ball gun behind her and Officer Archuleta deployed his Taser against Mr. Rosas-Zarsosa, also with no effect. Officer Phillips was backing up while continuing her commands that Mr. Rosas-Zarsosa "stop" and "get back." Officer Archuleta likewise ordered Mr. Rosas-Zarsosa to stop; he complied with none of the commands issued by the officers. Rather, Mr. Rosas-Zarsosa continued to advance rapidly; according to Officer Archuleta, he got "dangerously close" and he still had a knife in his hand. Officer Archuleta stated that the blade was pointed at them. At that time, he heard Officer Phillips fire her weapon. He estimated that when she shot, Mr. Rosas-Zarsosa was within ten to twelve feet of Officer Phillips.

When asked whether he had reviewed his body worn video prior to the interview, he said that he had not. When asked whether he had spoken with other witnesses prior to the interview, he likewise stated that he had not.

### Officer Phillips

Officer Phillips agreed to be interviewed on May 20. During this interview, she stated that she had not seen any video footage of the event, and she had not spoken with other witnesses about the incident. She stated that on May 19, she and Officer Archuleta responded to the area of Federal Blvd. and Vassar on the report of a man with a knife who was actively cutting or stabbing himself. As she responded to that area, she unzipped the pouch that contained her pepper ball gun in case she should need it. When she arrived at the scene, she noted the presence of the Denver Fire Department and paramedics, who were staged at Federal and Harvard, near the Auto Zone. She also saw a man under a tree, on the east side of Federal between Vassar and Harvard. He was covered in blood. A man with a dog was nearby and she worried for his safety.

Both Officers Archuleta and Phillips parked their patrol vehicles in the northbound lanes of Federal Blvd. Their plan was for Officer Archuleta to drive slowly toward the man with the knife while Officer Phillips walked next to the police car. They hoped to speak with and render aid to the man with the knife. Once the man became aware of their presence, he began to approach them "fast." She described the pace as something less than a run, possibly a speed walk. Officer Phillips gave commands to this man, but he did not respond. Officer Phillips noted that the man had his hands balled up and he was "gripping the knife so hard." At this point, Officer Archuleta was to her right. She said he was "walking at us super aggressively" so she fired her pepper ball

gun at him. She knew she had hit him with the pepper ball because he “reacted a tiny bit to it,” but “he didn’t stop. I don’t even think he paused in his stride and he kept coming.” He was still gripping the knife in his hand. According to Officer Phillips, “he had a knife and he was coming.”

Officer Archuleta was to her right, and he told her he had his Taser. Officer Phillips took a step to her left and was backing up. She stated that she moved in this manner because she was aware that there were at least Denver firefighters and paramedics to the north of her on Federal Blvd. She was aware, however, that there would be no one in the line of fire if she pointed her weapon toward the east. Because Mr. Rosas-Zarsosa was still coming toward them, Officer Archuleta deployed his Taser, but she saw that it had had no effect. She stated that “he looked mad” and still had the knife in his hand. He then “got really close to [Archuleta].” It was at this point that Officer Phillips shot Mr. Rosas-Zarsosa, explaining “I was scared, and I shot him”. Later in the interview, when asked why she shot, she said she was afraid that the man would stab Officer Archuleta. Her intent upon arrival at the scene was to render aid to Mr. Rosas-Zarsosa. When he began to approach them and she fired her pepper ball gun, she said that her intent was merely to stop him from approaching the officers. When she fired her weapon, she said it was to prevent the man from seriously injuring or killing herself or Officer Archuleta, who was closer to Mr. Rosas-Zarsosa than she was. She stated that when she shot, he was “so close.” He was “just within the distance that if I didn’t shoot him, he was going to be on us.” She stopped shooting when the man no longer posed a threat. When asked whether she announced her intention to deploy deadly force, Officer Phillips stated “I did not have an opportunity to do that.” She said “he was coming so fast... I didn’t have time.”

After the shooting, she separated herself from the other officers and sat in a patrol vehicle until she was transported downtown. Personnel with the Denver Crime Lab collected Officer Phillips’ weapon and she was segregated from all witnesses while at headquarters.

## LEGAL ANALYSIS

Criminal liability is established when 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 or defense of others 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).

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 states:

(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 or 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.

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, beyond a reasonable doubt 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 Phillips 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. Rosas-Zarsosa in defense of her fellow officer and in self-defense, pursuant to C.R.S. §18-1-704. Furthermore, it is my belief that the People cannot disprove beyond a reasonable doubt the circumstances outlined in C.R.S. §18-1-707(4.5).

At the moment she discharged her firearm, Officer Phillips reasonably believed that both she and Officer Archuleta were in danger of being killed or receiving serious bodily injury. Mr. Rosas-Zarsosa was armed with a knife and was steadily approaching Officers Phillips and Archuleta when they attempted to stop him from approaching further. They issued commands to no avail. In order to stop him, Officer Phillips attempted a lesser amount of force – the pepper ball – with no effect. Additionally, she saw that Mr. Rosas-Zarsosa failed to react to the Taser deployed by Officer Archuleta. Once these less than lethal weapons failed to protect the officers, and as Mr. Rosas-Zarsosa continued to approach the officers with the knife in his hand, Officer Phillips reasonably believed that her only remaining option was to discharge her weapon. Mr. Rosas-Zarsosa was approximately twelve feet away from Officer Phillips when she shot; Officer Archuleta was even closer and had only a (heretofore ineffective) Taser to defend himself. It is clear that a lesser degree of force was inadequate to stop the threat that both officers perceived.

I therefore conclude that a jury would find that the actions taken by Officer Phillips were reasonable and necessary in light of the totality of the circumstances and that we cannot disprove the circumstances in C.R.S. §18-1-704 and C.R.S. §18-1-707(4.5) beyond a reasonable doubt.

Furthermore, I find that Officer Phillips complied with C.R.S. 18-1-707 in that both she and Officer Archuleta were clearly identified as police officers. They were unable to announce their intention to deploy deadly force because events unfolded too quickly for them to do so. After the shots were fired, aid was rendered as quickly as possible. Additionally, investigators notified Mr. Rosas-Zarsosa's family within a reasonable amount of time after he was identified at his postmortem. Officer Phillips attempted to employ less than lethal force when she discharged the pepper ball gun. She also saw that Officer Archuleta's attempt at using less than lethal force failed when the Taser did not stop Mr. Rosas-Zarsosa. By the time that she employed deadly physical force, Officer Phillips reasonably concluded that she had no other choice but to fire her duty weapon. Finally, I have determined that the officers acted in a way that minimized the likelihood of injury to others; their shots were at fairly close range, directed solely at Mr. Rosas-Zarsosa, with no one in the line of fire.

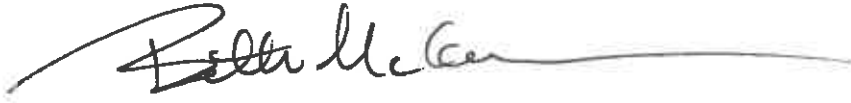
The United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

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 Phillips was forced to make a split-second judgment, and her decision to shoot Mr. Rosas-Zarsosa in self-defense and in defense of others was justified under Colorado law, C.R.S. §18-1-707 (3)(b) and (4.5) and C.R.S. §18-1-704(1).

Sincerely,

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

**Beth McCann**  
**Denver District Attorney**

**cc: Deputy Chief Barb Archer; Division Chief Joe Montoya; Commander Matt Clark; Commander Mark Fleecs; Lieutenant Joe Bell, Sergeant Scott Murphy; Sergeant Brock Ellerman; Sergeant Scott Hagan; Detective Daniel Andrews Trujillo; Detective Mary McIver; Officer Katie Phillips; John Davis, Esq., Attorney for Officer Phillips; Denver City Attorney Kristin Bronson; and, Interim Director of the Office of Independent Monitor Gregg Crittenden.**