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District Attorney
Second Judicial District



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March 1, 2023

Ron Thomas
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting and injuring of Daniel Eli Cheeseman (dob 11-27-89) on November 28, 2022, in the vehicle parking area of the sally port at the Denver Detention Center at 490 West Colfax Ave., Denver, Colorado.
DPD General Offense #2022-612175.

Dear Chief Thomas,

Our office has reviewed the investigation of the officer involved shooting that occurred at 10:56 p.m. on November 28, 2022, in the detention center sally port at 490 West Colfax Ave. in Denver. The shooting occurred after Daniel Eli Cheeseman, who was in police custody and handcuffed in the back seat of a police SUV, fired four rounds from a handgun, one round striking Officer Jordan Archuleta (15066) in the neck, injuring him. At the time he was arrested prior to this incident, Cheeseman concealed a 9mm semiautomatic handgun which went undetected by arresting officers. Corporal Thomas Schmidt (15024), who was in the sally port in a different police vehicle, responded to the shots fired by Daniel Cheeseman by firing nine gunshots, seriously injuring Cheeseman. Cheeseman has been charged with attempted murder and other felony charges.

I am writing to inform you that I find the force used by Corporal Schmidt was legally justified under Colorado law, and no criminal charges will be filed.

Since there are criminal charges pending against Mr. Cheeseman, I will not hold a public meeting to discuss my conclusion as is my general practice. This letter will be posted to our website.

Summary of Facts

Arrest of Daniel Cheeseman

On November 28, 2022, Denver Police Department Officers Jordan Archuleta and Alicia Martinez (15085) were working together in a black police SUV in their regular assignments to the Impact Team of District Four. Officer Archuleta was the driver of the SUV that night, and Officer Martinez was the front seat passenger. They were asked to assist other officers investigating a motor vehicle theft. A man, later identified as Daniel Eli Cheeseman, was seen driving a suspected

stolen pickup truck. The license plates on the truck did not match the registration information for that vehicle. When Officers Archuleta and Martinez initiated a traffic stop, Cheeseman drove away and eluded the officers. Later, Cheeseman was spotted on foot walking on South Michigan Way. When the officers tried to contact him again, he ran. After a short foot chase, which included two other officers, Cheeseman was apprehended in the front yard of 1637 South Michigan Way. When Officers Archuleta and Martinez reached Cheeseman, he was on the ground struggling with the other two officers. Officer Martinez used her handcuffs to handcuff Cheeseman, securing both of his hands behind his back.

Officers Archuleta and Martinez then walked Cheeseman to their police SUV. Cheeseman was wearing a backpack. At the vehicle, the backpack was removed. Cheeseman was then searched. Cheeseman's hands were in handcuffs behind his back while the search of his person was conducted. Officer Martinez told investigators later that both she and Officer Archuleta participated in searching Cheeseman. However, Officer Archuleta told investigators that he did not recall searching Cheeseman, but he did recall searching the backpack.

No weapons were found during the search of Cheeseman's person. Officer Martinez placed him into the rear seat of the police SUV, behind the driver's seat. His hands remained handcuffed behind his back while he was in the police SUV.

The backpack contained a Sig Sauer 9mm handgun; a large quantity of blue fentanyl pills in clear plastic bags; a digital scale; and other items.

Cheeseman was then transported downtown to the detention center by Officers Archuleta and Martinez. He remained silent and was lethargic, not moving much, mostly leaning back, giving the appearance of being asleep. When asked if he was okay, he acknowledged yes, with few words.

In the sally port of the Denver Detention Center

A surveillance camera above the vehicles recorded much of what transpired in the detention center sally port. The officers arrived with Cheeseman and parked facing east along the east wall of the sally port at 9:39 p.m. Their SUV is the black one shown in the pictures below. Inside the vehicle, they began the computer work necessary to take Cheeseman into the detention center to be held in custody. This was a long process, taking over an hour.

During this time, a white police SUV arrived and parked next to their driver side north of them. Officer Chance Ward (22009) was driving this SUV, Corporal Thomas Schmidt (15024) was in the front passenger seat, and an adult male was in custody in the rear. Later, another white police SUV arrived and parked next to Officer Archuleta and Martinez's vehicle on the south side.

A check of Cheeseman's criminal record revealed that he had prior convictions for felonies. Based on the information they had, the officers decided Cheeseman should be placed in the detention center for potential felony criminal charges of Aggravated Motor Vehicle Theft; Possession of a Controlled Substance with Intent to Distribute; and Possession of a Weapon by a Previous Offender.

When the officers were ready to take Cheeseman into the detention center, Officer Archuleta said he would take him. Officer Martinez offered to do that with him, but Officer Archuleta suggested she stay in the car and work on additional reports they needed to complete. Officers are not permitted to bring firearms into the detention center, so before getting Cheeseman out of the back seat, Officer Archuleta removed his service weapon and placed it on the driver's seat.

At 10:54:35 p.m., Officer Archuleta opened the rear driver side door next to Cheeseman. On the surveillance video, Cheeseman can be seen sitting upright and speaking, apparently in conversation with Officer Archuleta.¹ After a few seconds, Cheeseman stood up in the doorway. The door and window blocks most of our view of him. Officer Archuleta was standing close to him, in front of him and facing him, and was directing his attention to him. Cheeseman took a small step or two but was still behind the door. Then he hesitated and leaned back, away from Officer Archuleta. Moments later, Cheeseman was returned to his seat by Officer Archuleta. He was still handcuffed with his hands behind his back.

Officer Archuleta later explained to investigators that “something seemed off” when he was interacting with Cheeseman, so he returned him to the rear seat. “It was the hands” that bothered him. “His right hand was kind of underneath his shirt a little bit. I couldn't fully see the hand. It's just – also, just a weird feeling.”

Officer Martinez told investigators later that she noticed Cheeseman get back in, so she decided to come help Officer Archuleta so they would both take him inside. She disarmed herself by placing her service weapon on the front passenger seat. She walked around the rear of the SUV to the driver side toward Officer Archuleta, who was standing in the open doorway next to Cheeseman's seat, facing Cheeseman.



Corporal Schmidt.
Photos from Officer Martinez's BWC.

Officer Archuleta.



Cheeseman in the rear seat.

Officer Martinez paused at the doorway momentarily, then she continued toward the front of the SUV, passing along the outside of the open door.² Officer Archuleta was on the inside of the door near Cheeseman. He leaned forward closer to Cheeseman. Officer Archuleta later told

¹ Officer Archuleta's body worn camera was not activated at this point, so it has no audio or video recording of this interaction.

² Officer Martinez said she was intending to raise the driver's window to secure the car, and therefore the officers' weapons, before taking Cheeseman inside.

investigators that he was reaching to check Cheeseman's right hand, which he could not see. At that moment, Cheeseman suddenly leaned to his right and fired at least one gunshot. This is seen on the next two photos. The window of the car door shattered. It was 10:55:45 p.m.

1_Vehicle_SP_West_View



Cheeseman is sitting up. His hands are handcuffed behind his back. Officer Archuleta is standing next to him, but the door blocks our view. Officer Martinez is moving to her left at this point.

1_Vehicle_SP_West_View



Cheeseman has suddenly leaned to his right to fire his gun at Officer Archuleta. The window glass is shattering in this photo.



Photos from Officer Martinez's BWC. We see her left hand. These are two frames at 10:55:45 p.m. when the glass shatters.

A bullet struck Officer Archuleta in the neck, and he fell to the ground. Officer Martinez ducked and continued forward, then turned to her left at the front of Corporal Schmidt's white SUV. Cheeseman sat up again. At 10:55:49 p.m., Cheeseman was sitting upright, looking to his left. Corporal Schmidt was to Cheeseman's left, in the front seat of the white SUV. Officer Archuleta was down, out of view, trying to scoot himself to the rear of the black SUV.



Cheeseman is sitting up again after firing at least one gunshot. Corporal Schmidt is the front passenger in the white SUV.

Within seconds, Cheeseman leaned over again. When Corporal Schmidt trying to open his door and get out of his SUV, Cheeseman fired another bullet that shattered the exterior mirror attached to his door. Corporal Schmidt was struck by the shattered glass on his left forearm and on the left side of his forehead.

The muzzle flash from Cheeseman's gun was recorded on the overhead surveillance video at 10:55:57 p.m. while Cheeseman was leaning over to his right.



Cheeseman has leaned to the right and fired the gun with his hands behind his back. Corporal Schmidt is heading to the rear of the black SUV. Officer Archuleta is behind the black SUV, hidden from view. Officer Martinez is at the rear corner of the white SUV. This shot struck the mirror of the white SUV.

Officer Archuleta got to his feet and ran to the far side of the white SUV to the south. Corporal Schmidt ran around the rear of the black SUV and to the passenger side to confront Cheeseman.



Officer Archuleta running. Corporal Schmidt running to the passenger side of the black SUV.

Corporal Schmidt approached the rear passenger side door of the black SUV. He had his gun in the ready position. He fired his first shot through the window at Cheeseman at 10:55:59 p.m. We

can see the first indication of the rear passenger window beginning to shatter on the recording from his body worn camera, time stamped at 22:55:59. He fired nine gunshots directed at Cheeseman from his position near the rear passenger window.



From Corporal Schmidt's BWC.



Corporal Schmidt's first shot. The Window is shattering.



Corporal Schmidt fired nine shots.

Officer Ward is crouching.

Officer Martinez is running.

Corporal Schmidt stopped firing by 10:56:02 p.m. No shots were fired after this. He was then able to activate his body worn camera and the audio began recording. He is heard calling on the radio for help, asking for “code 10 cover down at the jail; a prisoner and I fired shots.” He also requested an ambulance code 10. “The prisoner in the back seat has been shot. And we have an officer down.”

Officer Martinez ran to help Officer Archuleta. She saw a wound on the front of his neck and began to check him to see if he was hit anywhere else. Officer Martinez also called for an ambulance and announced that shots had been fired.

While waiting for help to arrive, Corporal Schmidt maintained a position with his gun trained on Cheeseman. Officer Ward did also. Cheeseman was not moving, but he was breathing and sitting upright, and nothing had occurred to indicate that Cheeseman had dropped his gun.

Many DPD officers responded to the sally port to help. Several of the first to arrive formed a team to approach Cheeseman and extricate him from the SUV. He was pulled out of the SUV through the passenger side rear door by Officer Joseph Stewart (19030) and placed on the ground. At that time, officers noticed a holster worn inside his back waistband. A semiautomatic pistol was found in the cloth windbreaker Cheeseman wore. Both the gun and holster were removed and placed on the ground near the SUV. The officers then began applying tourniquets and rendering aid to Cheeseman while waiting for an ambulance to arrive. Nurses came out from the detention center and provided aid to Cheeseman. He was taken on a gurney to the ambulance at 11:05 p.m.

Injuries

Officer Archuleta suffered one gunshot wound to his neck. It was considered “serious bodily injury” by treating doctors. His wound was a “through and through” wound that did not seriously damage structures, arteries, or nerves in his neck. Cheeseman suffered multiple gunshot wounds that were considered “serious bodily injury” by treating doctors.

Crime Scene / Firearms / Casings

Crime Scene Unit investigators from the DPD Crime Laboratory, Forensic and Evidence Division, responded to the scene of the shooting. Photographs and video recordings were taken to document the scene and evidence was marked and collected. Thirteen spent cartridge cases were recovered on the ground. Multiple bullet fragments were collected, some from the ground and some from inside the black SUV. The windows of both rear passenger doors of the black SUV were shattered. Multiple bullet defects to the black SUV were noted. There were also bullet defects on the passenger side of Corporal Schmidt’s white SUV. Its passenger side mirror was shattered by a bullet strike to the mirror housing, and the right front fender was struck above the right front tire. The gun and holster that were removed from Cheeseman were recovered.



This is the area where Cheeseman was placed on the ground.



The holster and gun taken from Cheeseman’s clothes.

Corporal Schmidt's firearm and Cheeseman's firearm were both Smith and Wesson 9mm Luger caliber semiautomatic pistols. Each handgun was examined and test-fired by the Crime Laboratory Firearms Unit and found to be working properly. The thirteen cartridge cases recovered from the scene were examined microscopically and compared to cartridge cases that were test-fired in each gun. Four of the spent cartridge cases from the scene were identified as having been fired by Cheeseman's handgun; nine were identified as having been fired by Corporal Schmidt's handgun. This was consistent with the weapons unload accounting, separately conducted earlier at Denver Police Department headquarters, which showed that Corporal Schmidt fired nine bullets.

The firearms unload also showed that Cheeseman's handgun was still loaded when taken from him, with one live round in the chamber and one live round remaining in the magazine, which had a capacity of eight rounds.

Officer Statements

Officer Jordan Archuleta

Officer Archuleta was interviewed at DPD Headquarters on December 5, 2022, by Denver Police Department Detective Brian Lang (03014) and Colorado Bureau of Investigations Agent In Charge, Gregg Slater. When describing the moment when Cheeseman fired his first shot, Officer Archuleta said:

"I remember reaching back into the car and I remember being able to see his left hand, but I couldn't see his right hand. And I don't remember if it was his shirt or his jacket over it, but I couldn't see his right hand. So, I reached in, and I could feel his left hand. And I'm going to feel his right hand, and that's when he pulls back really fast and shoots me. I heard the first shot and felt it. I immediately fell to the ground."

Corporal Thomas Schmidt

Corporal Schmidt was interviewed on December 1, 2022, at DPD headquarters by Denver Police Department Lieutenant Joel Bell and Senior Chief Deputy District Attorney Dawn Weber, of the Denver District Attorney's Office.

He described the moment of the first shot he noticed, and then the shot that shattered his mirror:

"I heard a bang, or a loud noise. And I didn't really know what it was at first. As I turned around [from facing Officer Ward], I can see that Officer Archuleta is kind of throwing himself to the back of our vehicles, in between our vehicles. It kind of took me a second to figure out what was going on. But he, at some point, says that he's been shot, and he [Cheeseman] has a gun."

"So, I'm trying to get out of the car. I'm trying – our cars, the newer Tahoe – when you put them in drive, the doors automatically lock. So, I'm trying to open the door. And if you pull on it more than once, then the doors do open. But I've got one hand on the door. I'm trying to pull the handle open, and that's when another shot comes from the back seat of that car. Hits my side mirror and

*throws a bunch of the broken glass and hits me. And I got hit in the – the left forearm, and I got a cut on my forehead on the left side.*³

“By that point, I’m able to get the car door open. I get out of my car and come around to the rear passenger side of his vehicle. Through the back window, I can see that he is trying to get out of the car. So, I fired several shots through the closed passenger side window at the suspect until he stopped trying to get out of the car.”

Later in the interview, he is asked to describe what Cheeseman was doing to get out of the car. He indicated that Cheeseman was looking toward the driver’s side door, which was open, and “he’s trying to slide over – he’s like trying to scoot his butt over”.

When asked why he fired, he said:

“This person has already shown his intent. He has already shot, and injured Officer Archuleta and he had fired a round at me. If he gets out of his vehicle, he’s going to be an imminent threat to anybody in this jail that tries to come out and assist us. And knowing that everyone else that comes out is going to be unarmed, it’s – he’s going to be a very big threat.”

Legal Analysis

Criminal liability is established only if it is proved beyond a reasonable doubt that all elements of an offense defined by a statute have been committed, and the offense was committed without legal justification as set forth in Colorado statutes.

Colorado’s statutory 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 states:

- (1) ... 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 grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury....

The justification of the use of physical force by peace officers while carrying out their duties is described in C.R.S. §18-1-707. As pertinent to this case, C.R.S. §18-1-707 states:

³ Later in the interview, Officer Schmidt said that, while he did not see the gun, he was facing Cheeseman directly and could see the “illumination” inside the vehicle from the gunshot that struck his mirror.

- (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 injury 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 of death or serious bodily injury 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.

Under Colorado law, when the facts of a case on trial raise an issue of self-defense or defense of another, the person charged does not have a burden to prove that he or she acted within the justification for self-defense or defense of another. Instead, the prosecution must show the justification does not apply by proving all the elements of the crime beyond a reasonable doubt.⁴

⁴ For crimes alleging a culpable mental state of acting intentionally or knowingly (e.g., murder), the issue of self-defense or defense of another is handled at trial as an “affirmative defense”, which is a defense that admits the commission of the elements of the charged crime but argues the defendant’s actions were legally justified or excused. This affirmative defense becomes an additional element of the charge at trial, and it is the prosecution’s burden to disprove it beyond a reasonable doubt. For crimes alleging a culpable mental state of acting recklessly, or with criminal negligence or extreme indifference, the evidence of self-defense or defense of another is handled as a “traverse” defense that seeks to refute, or to cast doubt upon, the proof of the mental state element alleged. The

Accordingly, the question I must consider is: After considering the statutory justifications for using force, would a jury deciding the facts of this case find, unanimously, and beyond a reasonable doubt, that all the elements of a crime have been proved against Corporal Schmidt? My conclusion is that no reasonable jury would find any criminal culpability by Corporal Schmidt.

Based on all the evidence from this investigation, I find that Corporal Schmidt reasonably believed the people in the sally port, including himself, were in imminent danger of being killed or of being seriously injured by Cheeseman. I further find that it was objectively reasonable for him to have that belief particularly given the fact that Mr. Cheeseman had already fired a shot that injured Officer Archuleta and continued to fire shots after that first shot. I also find that Corporal Schmidt used a degree of force that he believed, and reasonably believed, was necessary to defend himself and others, and that he believed, and reasonably believed, a lesser degree of force was inadequate.

Cheeseman was still armed with his loaded weapon after he fired his first four rounds. There was nothing preventing Cheeseman from emerging from the police SUV. The door was open. Just a few feet away, there was a man in police custody in Corporal Schmidt's SUV. Unarmed officers were in the sally port. Since Corporal Schmidt knew that Cheeseman had fired the gunshots, there was no reason for him to trust that his hands were adequately constrained by handcuffs. It was reasonable for Corporal Schmidt to believe that the threat from Cheeseman would be much greater if he were able to get out of the police SUV. He had already shown that his intention to fire upon police officers was more persistent than firing only one shot at Officer Archuleta.

Therefore, Corporal Schmidt accurately assessed the danger of the situation and acted reasonably in response. None of his actions were negligent or reckless. His shots were in defensive response to a nearly deadly attack by Cheeseman. He was not required to wait for Cheeseman to fire additional shots from the back seat before firing upon him.

I find that Corporal Schmidt's use of force was reasonable and was justified by C.R.S. 18-1-704 (1). I also find that Corporal Schmidt's actions were justified under C.R.S. 18-1-704 (2) (a) and C.R.S. 18-1-707 (4.5) in using deadly physical force in this situation.

Conclusion

Because Corporal Schmidt acted with lawful justification, no criminal charges will be filed.

Sincerely,



Beth McCann
Denver District Attorney

prosecution must prove the alleged mental state element beyond a reasonable doubt. See C.R.S. 18-1-704 (4); *People v. Pickering*, 276 P.3d 553 (Colo. 2011).

cc: Armando Saldate, Director of Public Safety; Deputy Chief Barb Archer; Division Chief Joe Montoya; Commander Matt Clark; Commander Layla DeStaffany; Lieutenant Joel Bell; Sergeant Scott Murphy; Sergeant Scott Hagan; Sergeant Tony Lopez, Jr.; Detective Brian Lang; Detective Louis Estrada; Corporal Thomas Schmidt; John Davis, Esq., Attorney for Corporal Schmidt; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle

