

Beth McCann
District Attorney
Second Judicial District



201 W. Colfax Ave. Dept. 801
Denver, CO 80202
720-913-9000

Beth.McCann@denverda.org

Dec. 20, 2023

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

Re: Investigation of the officer-involved shooting on August 5, 2023, in the 2300 block of West Cedar Ave., Denver, CO, which resulted in the death of Brandon L. Cole (dob 12-7-1986); GO# 2023-421093

Dear Chief Thomas,

Our office has reviewed the investigation of the officer-involved shooting that occurred on August 5, 2023, in the 2300 block of West Cedar Avenue, which resulted in the death of Brandon L. Cole (36 years old). The shooting occurred after two officers were dispatched to a domestic violence incident occurring outside the residence at 2365 W. Cedar Ave. When the officers arrived and gave some commands, Mr. Cole responded aggressively to them, challenging them to a confrontation. He ultimately ran toward Officer Audrey McAndrews (19059), carrying an object that both officers and some witnesses thought was a knife. A taser fired by Officer Steven Watson (21004) at Cole did not deter him. As Cole charged toward her, Officer McAndrews yelled: "Don't! Don't!" When he got within a few feet of her, Officer McAndrews fired two gunshots at him as she was backing away. The first gunshot struck him and entered his chest, penetrating his heart. He fell to the sidewalk and was later pronounced deceased at the hospital. This letter is to inform you of the reasons for my conclusion that the force used by both officers against Mr. Cole was justified by C.R.S. §18-1-704 and C.R.S. §18-1-707.

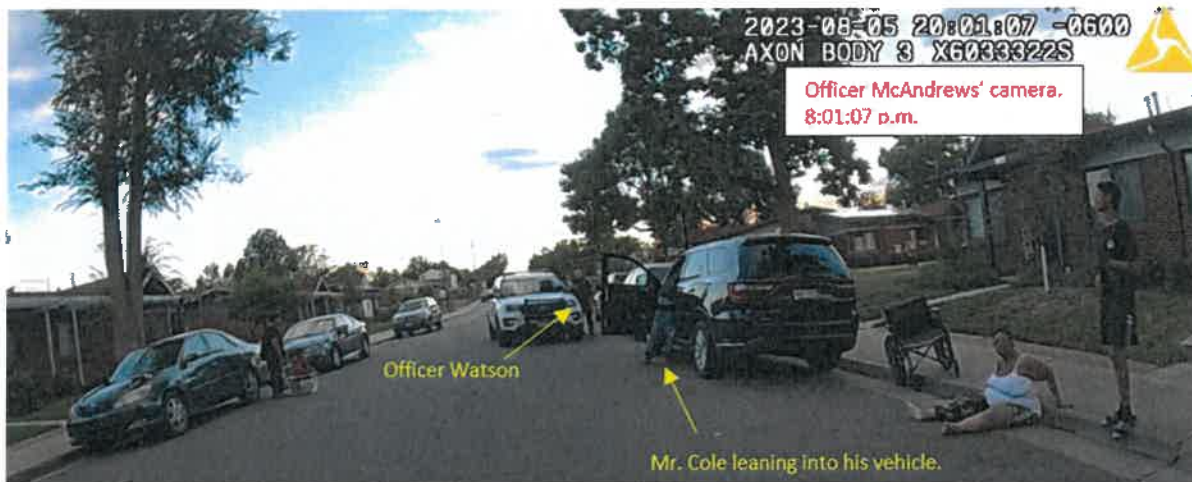
Summary of Facts

On Saturday, August 5, 2023, Mr. Brandon Cole and his wife, Ebony Cole, were drinking in the afternoon and early evening at their home. According to their then thirteen-year-old son, they were arguing with each other off-and-on during the evening. Ms. Cole asked Mr. Cole to leave and he went to his SUV but had to come back inside because he didn't have his car keys. At that point, Ms. Cole, who needed the aid of a wheelchair, wanted to go outside to their SUV. Her son took her to the vehicle in the wheelchair. The SUV was parked on the north side of West Cedar Avenue in front of their home. She opened the passenger door, but Mr. Cole came outside and pushed her away from the vehicle, causing her to fall off her wheelchair. After seeing this, their son asked the neighbor to call the police. At approximately 7:56 p.m., the neighbor called 911.

She told the 911 call-taker that it appeared that Mr. Cole had pushed his wife out of her wheelchair, and she thought he must be drunk because he usually was a very good, calm, nice man.

Officers were dispatched to the location. The man was described as a Black male in his 40's, 6'02" and wearing black clothing. Brandon Cole was the name given to the officers with a note that he had been hostile with police in the past.

Two officers responded to the scene in front of 2365 W. Cedar Avenue from opposite directions. Officer Watson parked on Cedar Avenue facing east. Officer McAndrews parked facing west. Mr. Cole was between them, standing beside the open driver's door of his SUV leaning inside the vehicle. Ebony Cole was sitting behind the SUV in the street gutter at the curb. Her wheelchair was near her. The Coles' 13-year-old son was standing on the sidewalk next to her. Both officers got out of their vehicles at the same time, 8:01 p.m. Their body worn cameras were recording.¹



Cole did not acknowledge the presence of the officers. He continued leaning into the SUV as if he was looking for something. Officer Watson called out to him: “Yo”. Cole did not respond. Officer Watson’s view of Cole was blocked by the open door of the SUV, so he walked around the back his police vehicle to the middle of the street.

¹ Both body camera recordings clearly show that Cole was holding something in his hand during this incident. However, even viewing frame by frame, neither recording clearly shows what Cole was holding before the shooting occurred. Both officers thought it was a knife. One citizen witness said it was a knife; one said it was possibly a knife, not a gun; one said it was a gun; one said nothing was in his hands. Nobody recognized the object he was holding as a marker pen.



Cole is holding something in his hand. Nobody recognized it as a marker pen.

Officer Watson called out again, “*Yo, Brandon.*” [8:01:13 p.m.] Cole closed the driver’s door and replied, “*What’s up?*” Cole moved to his left, facing Officer Watson, and he assumed a crouching posture. Cole had his right elbow bent and kept his right hand at his right hip and behind his back, concealing his hand from Officer Watson’s view. Neither officer had any weapons drawn at this point. Officer McAndrews was behind Cole. She yelled to him: “*Let me see your hands!*” [8:01:15 p.m.] However, Cole made no effort to show that he was unarmed. Instead, he held his right arm and hand as if he was in fact carrying a weapon.



Cole walked to the middle of the street and began aggressively yelling challenges at Officer Watson, giving the impression he wanted to provoke a confrontation.

- Officer Watson:* “*Brandon. Don’t!*”
- Cole:* “*Pull it out!*”
- Officer Watson:* “*Do not!*”
- Cole:* “*Pull it out!*”
- Officer McAndrews:* “*Stop!*” (She was moving toward the south sidewalk).
- Cole:* “*Let’s go! Let’s go!*”

Off Watson radioed: "32 Charlie. Start sending cars, Code 10." [8:01:23 p.m.]
Cole: "Fuck that. Let's go!"
Officer Watson: "Listen to what I'm saying, Brandon."
Cole: "No! Fuck that!"



Officer McAndrews had moved to the south sidewalk. She announced on her radio: "32 Baker. He's armed with a knife." [8:01:29-31 p.m.] Officer Watson drew his Taser. [8:01:29 p.m.] Cole's wife yelled loudly at him, "Stop!" Cole turned toward her and yelled, "Fuck you!" From the south sidewalk, Officer McAndrews tried to get Cole's attention: "Hey, Brandon! Look at me! Stop!"

Cole ignored her and began advancing toward Officer Watson. [8:01:33 p.m.] As he advanced, he held his right arm back, as if he was poised to swing it forward in a stabbing motion. Officer Watson backed up, pointing his Taser at Cole.



Officer McAndrews drew her handgun and moved west on the sidewalk to parallel Cole so she could provide cover for Officer Watson. There were two cars parked along the south sidewalk where this was occurring. A grandmother and her grandchild were moving slowly between the two cars toward the south sidewalk. Officer McAndrews tried to get them to move away. "Move! Move!", she told them, as she motioned with her left hand for them to move.



Officer McAndrews called to Cole as she moved further west: “Brandon! ... Stop!” Cole then turned his attention to his left to Officer McAndrews. [8:01:37 p.m.] Cole saw her and he turned to run toward the sidewalk, which was only five steps from him. Officer Watson fired his Taser. [8:01:39 p.m.] It appears that Cole felt some of the Taser’s electrical current, but it did not deter him from continuing toward Officer McAndrews. Officer McAndrews yelled, “Don’t! ... Don’t!” Cole planted his left foot on the sidewalk to cut 90 degrees to his right, turning at the front right corner of the car. As he stepped toward Officer McAndrews, he was facing her and she was backing up, pointing her gun at him. He raised his arms in front of his face. He was less than a car’s length from her. Officer McAndrews fired. This shot struck Cole in the right forearm. The bullet went through his forearm and penetrated the center of his chest.



Views from Officer McAndrews’ camera during the moments of the first gunshot.



Views from Officer Watson's camera of the first gunshot.

Officer McAndrews fired a second shot. Cole was falling forward, causing this second shot to graze his upper left back. Both shots were fired within one second.



Cole fell on the sidewalk. The object he was holding in his right hand fell to the sidewalk and rolled to the curb. When it was later recovered, it was found to be a black felt marker pen.



Officer McAndrews radioed that shots were fired and requested an ambulance. Moments later, both officers administered first aid to Cole as they awaited the arrival of paramedics and an ambulance. Tourniquets were applied and a chest seal was placed over the chest wound. Other officers arrived and assisted Officer Watson in performing CPR on Cole.

Officer McAndrews was taken to a police car to be sequestered and the investigation of this officer-involved shooting began. The investigation was conducted by the Denver Police Department in conjunction with the Colorado Bureau of Investigation and the Colorado State Patrol. Denver Police Department Homicide Detectives Phillip Coleman (04119) and Steven Seidel (13062) were assigned as primary and secondary investigators, respectively. The investigation is reported under DPD GO #2023-421093.

Statements

Officer Steven Watson

Officer Watson was interviewed on August 8, 2023, at DPD Headquarters by CBI lead investigator Gregg Slater. When he arrived, he saw Mr. Cole “digging” in the center console of a car on the north side of West Cedar. He said Mr. Cole began to approach him “aggressively”. He was concealing his right hand which caused Officer Watson to believe he was armed with a weapon. He saw Mr. Cole suddenly change directions and begin moving toward Officer McAndrews. He indicated that the reason he fired his Taser at Cole was because he thought Cole “*was going to go around the car and stab Officer McAndrews.*” He described the moment just before he fired his Taser:

We were at the middle of the street. And then, as he starts walking, he kind of turns away from me. And then, as he gets closer to the car, I see what appears to be a knife in his right hand. And the way he's holding it makes it appear that, like, makes the knife look like he's getting ready to use it. I deploy my taser. There is no response from him. It doesn't seem to work. I drop my taser somewhere. I pulled out my handgun and as soon as -- the best I remember this -- as I pull my handgun out, Officer McAndrews, I think, fires two shots as he's coming at her. And then, he stops.

Officer Audrey McAndrews

Officer McAndrews was interviewed on August 8, 2023, at DPD Headquarters by DPD Commander Matthew Clark (01039). As she arrived, she observed Mr. Cole reaching into the driver's door of an SUV. Describing the moments before she aired on the police radio that Cole was armed with a knife, she said:

At this point, the suspect sees officers or -- sees Steve -- and immediately it becomes aggressive. And by that, I mean he -- his attention is diverted from the car to Steve, and he comes around the door and he pulls up his pants like he's going to fight. Like, he's in a fighting stance. At this point, he starts to walk, or he places his right hand behind his back and that's when I observe the black knife in his right hand.

... I immediately get on the air and air that he was armed with a knife to get more cars to come in 10.

She thought Mr. Cole was trying to hide the knife from Officer Watson, and she was concerned that he might stab Officer Watson. She described her thoughts during the final moments just before she fired:

I said, "Brandon." I know I said his name... because the minute he heard his name, or the minute I spoke, he turned his attention towards me and starts sprinting towards me. ... This all happened so quick. I can't even, like, tell you guys how quick it happened.

He comes around the car and that's when Officer Watson tases him and it -- it's ineffective. It doesn't work because he is still able to come around the car. And at this point I'm facing, like, he's facing directly in front of me. And I'm back pedaling, and he -- he just lunges at me with the knife in his hand. ... And, I thought he was going to stab me, so I discharged my firearm.

He was so close that I thought not only is he going to stab me, but that he was going to take my gun, and disarm me, and overpower me and take my gun, and kill me with my own gun. ... And I was concerned for my life, but not only, my partners life if he got ahold of my weapon.

Witness Statements

Several witnesses were interviewed. One neighbor said the male "went to a car and appeared to be hiding and upset, then the male took something out of a vehicle. The female officer told the male to stop three times, but he began advancing toward her. This witness said the male appeared to be holding a knife. She said the male did not say anything to the officers.

Another neighbor said the male's son asked her to call the police and said his father had pushed his mother out of her wheelchair and that the father might hit her. She described Mr. Cole as "cussing" at the officers. She said he had his arms up while cussing and she thought the taser did not work. She said Mr. Cole did not have a weapon and she thought he was drunk based on his behavior.

Another witness said the officers told Mr. Cole to come out, stop and go face down on the ground but he did not comply. Mr. Cole's hands were part-way up but below his shoulders and he had something in his left hand that was dark and looked like a gun or a knife.

The woman who was in the road with her great grandson said that she saw Mr. Cole holding a handgun and one of the officers tased Mr. Cole and he fell. She heard 5-6 gunshots and said that she was in the line of fire. She said she did not hear the officers say anything to her during the incident.

Mr. Cole's son, Jayden (13), stated that his parents had been drinking that afternoon and when his father drank, he would get angry and argumentative. His father was "not in his right mind" at that time. When Brandon went to get in his car, the son rolled his mother's wheelchair out in response to her request. She tried to get into the passenger side, but his dad got angry and grabbed his mother to keep her out of the car. The wheelchair rolled and she ended up getting knocked to the ground. He asked the neighbor to call 911.

Jayden reported his father saying that he was going to "die tonight" but Jayden did not believe him and that he had been suicidal in the past.

When the police arrived, Jayden said Brandon was mad and put his arms out and said something like "let's go." He saw one officer use a taser that didn't appear to work. Then his father ran toward another officer who fired at him. Jayden did not see anything in Brandon's hands and did not think he had a weapon.

Body Worn Camera

The body worn cameras of both Officer Watson and Officer McAndrews were activated during this incident. Based on the time on Officer McAndrew's bwc, the entire incident lasted approximately 40 seconds. The video from the body worn cameras reflects the events as described by the officers.

Autopsy

An autopsy was performed on Mr. Cole's body by forensic pathologist Sterling J. McClaren, M.D., Assistant Medical Examiner at the Denver Office of the Medical Examiner on August 7, 2023. It revealed the following:

Cole had a gunshot wound to his right forearm. The bullet passed through his forearm, causing an entrance wound and an exit wound.

Cole died because of a gunshot wound to the chest. The bullet entered the center of his chest on the anterior midline at approximately 17 5/8-inches below the top of his head. The bullet trajectory relative to this body was right to left, front to back, and downward. The bullet passed through his sternum, pericardial sac, heart, and left lung. It was recovered from his left back.²

Cole had a superficial graze wound on the upper left back at approximately 17 1/4-inches below the top of his head and 3 1/2-inches to the left of the posterior midline.³

Cole had a postmortem femoral blood alcohol concentration of .255 g/100ml.

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 it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The statutory justifications for using

² The evidence from Officer McAndrews' body worn camera makes it apparent that the bullet from her first shot caused both the forearm and chest wounds. Mr. Cole had his forearms crossed in front of his upper body when she fired.

³ It is apparent that this graze wound was caused by Officer McAndrews' second shot, grazing Cole's upper left back as he was falling after being struck by the first shot.

physical force and deadly physical force that govern my analysis are set forth in C.R.S. §18-1-704 and in C.R.S. §18-1-707 (4.5).

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 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. §18-1-707 pertains to the use of physical force by peace officers while carrying out their duties. 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 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 raise an issue of self-defense or defense of another, as they do in this case, the person charged does not have a burden to prove that he or she acted with justification. Instead, the prosecution must show the justification does not apply by proving all the elements of the crime beyond a reasonable doubt.⁴

Accordingly, the question I consider in deciding whether to file charges in this case is: After considering the statutory justifications for the use of physical force and deadly physical force, would a jury find, unanimously and beyond a reasonable doubt, that all the elements of a crime have been proved against either of these two officers. My conclusion, as explained below, is that a jury would not find any criminal culpability by either officer.

Both officers told investigators they believed Cole was holding a knife in his right hand. Both believed that Cole presented actual grave danger to Officer McAndrews as he ran toward her. I believe both officers honestly believed they saw a knife; no evidence suggests they did not believe this. However, Cole was holding a black felt marker pen, not a knife.

In analyzing the significance of these facts -- since actual danger from a knife did not exist -- it is important to note that neither C.R.S. §18-1-704 nor C.R.S. §18-1-707 (4.5) require the presence of actual danger to use force lawfully in self-defense or defense of another. The principle that actual danger is not required to act in self-defense has long been a principle of Colorado's self-defense law. This applies equally to all persons, not just to police officers.

In 1910, the Colorado Supreme Court noted that actual danger is not required, and noted "apparent necessity" would justify self-defense in certain circumstances:

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one's right to act on appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that actual danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well-grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real

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

necessity. ... When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed, or of receiving great bodily harm, is imminent, he may act on such appearances and defend himself, even to the extent of taking human life when necessary, although it may turn out that the appearances were false, or although he may have been mistaken as to the extent of the real or actual danger. Young v. People, 107 P. 274, 276 (Colo.1910).

In 1990, the Colorado Supreme Court, in *Beckett v. People*, 800 P.2d 74, (Colo.1990), again recognized the principle of “apparent necessity” and found that the language of Colorado’s self-defense statute⁵ encompassed the principle of apparent necessity as expressed above by the Court in *Young v. People*. The Court in *Beckett* stated:

We do not construe section 18-1-704 as eliminating an individual’s right to use self-defense based on “apparent necessity.” The statute “reflects what has long been the settled law of this jurisdiction, namely, reasonable belief rather than absolute certainty is the touchstone of self-defense.” People v. Jones, 675 P.2d 9, 13 (Colo. 1984). Beckett v. People, 800 P.2d 74 (Colo.1990).

Thus, Colorado law directs me to focus on what the officers reasonably believed about the danger presented by Cole; and whether they reasonably believed the degree of force they used was necessary to defend against the danger. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than in 20/20 hindsight. Objective factors must justify the belief of an immediate threat. As to Officer McAndrews, I also need to determine whether she reasonably believed that less than lethal force was inadequate.

Part of this analysis, of course, is whether it was reasonable to believe, albeit incorrectly, that Cole had a knife. On that point, I note that it was Cole who was responsible for creating the incorrect belief that he was wielding a knife. The body worn camera evidence shows that despite a command to “let me see your hands”, he never tried to show that he was unarmed. Instead, by concealing his hand and by his movements, he made it very difficult for the officers to gain a clear view of what he was holding. Moreover, his behavior seemed purposefully designed to lead the officers to believe that he had a weapon. He challenged the officers with his language, fighting posture, and his advancement toward Officer Watson while drawing back his arm. By using challenging words, “Pull it out!”, “Let’s go!”, and finally by running at Officer McAndrews, he left the impression, probably fueled by alcohol intoxication, that he wanted to fight the officers despite knowing they had handguns. Based on the evidence, it was reasonable for the officers to believe that Mr. Cole held a knife and that he would use it against them.

The fact that other witnesses believed Cole had a weapon is persuasive that it was reasonable for the officers to have the same belief. None of the witnesses said it looked like Cole was holding a marker pen.

The danger perceived by the officers was not solely that Cole appeared to have a knife. Officer McAndrews was dispatched to a report that Mr. Cole had assaulted his wife and when she arrived,

⁵ Section §18-1-704, 8B C.R.S. (1986). The statutory provisions considered in *Beckett* were identical to the provisions of C.R.S. § 18-1-704 (1) and (2) that are applicable today.

Ms. Cole was seated on the roadway with a knee brace, and her wheelchair was a few feet away. Officer McAndrews saw Mr. Cole reaching inside the driver's door of a vehicle and then assume a fighting stance with respect to Officer Watson with something she believed to be a knife behind his back. Both officers attempted to talk to Mr. Cole to relieve the tense situation but their efforts to de-escalate the situation were not successful and Mr. Cole yelled: "Let's go" and "Fuck that."

Officer McAndrews moved to a position behind a parked car to create time and distance and tried to distract Mr. Cole from approaching Officer Watson. Then he turned his attention to her and engaged in a determined physical charge toward Officer McAndrews in what appeared to be an aggressive attempt to attack her, perhaps to tackle her and overpower her. Cole was 6 feet tall and weighed 173 pounds. The body worn camera recordings show he was agile enough to sprint to the sidewalk and to cut sharply at a ninety-degree angle with just one foot-plant on the sidewalk. He did this without touching the car for balance or support and without slowing his pace as he ran toward Officer McAndrews. He was obviously capable of making a physical attack. His charge on Officer McAndrews presented an imminent threat to her of being overrun by him as she was back-pedaling away. This presented a danger not only that he could stab her but also that Cole could attempt to wrest control of her handgun.

In her interview, Officer McAndrews described being in fear for her life in the critical moments before the shooting. That is why she shot. Her fear was not restricted to her belief that Cole had a knife, but she also feared what Cole could do if he overpowered her and took her weapon. Body worn camera video shows she had reasonable grounds for those fears.

Since the reasonableness of the officers' beliefs about the danger Cole presented is central to this case, I quote guidance from the United Supreme Court about judging "reasonableness" in police use of force encounters:

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies... even if it may later seem unnecessary in the peace of a judge's chambers....

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), pp. 396-397.

Mindful of this guidance, and based on a thorough review of all the evidence, I make the following factual findings and the following judgments:

Both officers believed that Cole was holding a knife. Other witnesses did as well. That was an objectively reasonable belief under these circumstances.

Officer Watson reasonably believed that Cole was initiating an attack on Officer McAndrews when he turned to run toward her. Officer Watson's use of force by the Taser was justifiable in defense of Officer McAndrews.

When that failed to stop him, Cole went quickly around the car, which was Officer McAndrews' only cover, and onto the sidewalk. Now unobstructed, he could advance to attack her much more quickly than she could back up. He collapsed the distance between them to a point where she could not avoid him. By doing this, Cole reduced Officer McAndrews' options to only two choices: to fire or to not fire. Either choice could produce a lethal result. Officer McAndrews reasonably believed she was in actual imminent danger.

Officer McAndrews was not expected, nor required by law, to wait to be stabbed, assaulted, or tackled before trying to protect herself. Nor was she expected to wait to see if she could win a fight to maintain possession of her gun. It was reasonable for Officer McAndrews to act defensively in that final moment; and it was reasonable for her to believe that less powerful force than firing her gun would be inadequate to defend herself from imminent serious injury. I find that her use of deadly physical force was reasonable, not reckless, not negligent. Her shots were precise and justified based on Colorado criminal law. Questions related to the backdrop are for the administrative review.

Conclusion

Officer Watson's use of physical force was justified by C.R.S. 18-1-704 (1). Officer McAndrew's use of deadly physical force was justified by C.R.S. 18-1-704 (2) (a) and C.R.S. 18-1-707 (3)(b) and (4.5). Therefore, no criminal charge against either officer is appropriate.

Sincerely,



Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Deputy Chief Joe Montoya; Commander Matt Clark; Lieutenant Joel Bell; Sergeant Scott Murphy; Sergeant Scott Hagan; Sergeant Tony Lopez, Jr.; Detective Phillip Coleman; Detective Steven Seidel; Officer Audrey McAndrews; Officer Steven Watson; John Davis, Esq., Attorney for both officers; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle.