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March 20, 2024

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

Re: The Officer-Involved Shooting in
Commons Park on November 20, 2023,
that resulted in the death of Joshua Thomas
Mitchell (dob 1/21/81); GO# 2023-625810

Dear Chief Thomas,

Our office has reviewed the investigation of the officer-involved shooting that occurred in Commons Park on November 20, 2023. This shooting resulted in the death of Joshua T. Mitchell, age 43. The shooting occurred when Mitchell fired multiple shots from an AK-47 style rifle at officers. Two officers returned fire at Mitchell, who died at the scene. The force used by both officers was legally justified by C.R.S. 18-1-704 and C.R.S. 18-1-707 (4.5).

Summary of Facts

On November 20, 2023, at 3:39 p.m. a 911 caller reported a man at 16th Street and Platte Street, walking towards Commons Park carrying a rifle covered by a blanket. The man was described as a white male, in his mid-thirties, 5'10" tall, wearing a black jacket and blue jeans. He was carrying a blue Walmart bag with him. The caller reported that the man had yelled at three African American males, and yelled at the caller saying, "you're not 100% white". The man started to chase the caller, so the caller left the area. Another 911 caller reported similar information about a man carrying a rifle under a blanket and threatening people in Commons Park.

Commons Park is east of the Platte Street intersection with 16th Street and is on the east side of the South Platte River. Several DPD officers were dispatched and responded to Commons Park. A man fitting the description given, was spotted north of the Highland Cable Bridge, a pedestrian bridge that crosses over the South Platte River to the park. This was Mitchell. He was sitting on a park bench facing east.

Just east of the park bench where Mitchell sat is an expanse of grass, and a hill. Some officers approached this area in front of Mitchell by driving their fully marked police vehicles onto the hill. Other officers approached by driving on a concrete pathway southeast of the park bench. Officer Pablo Carrera (19109) drove onto the hill. Officer John Allred (16022) drove on the concrete path. The paired photos below show where officers Carrera and Allred stopped their vehicles, and where Mitchell was located on the bench, as marked by them on the photos during their interviews.



Drawing from Officer Carrera's interview.



Drawing from Officer Allred's interview.

The screenshot below from Officer Allred's body worn camera shows where officers Carrera and Allred were standing in relation to Mitchell on the bench moments before the shooting.



When Officer Allred stopped his police SUV on the concrete path, he saw Mitchell on the bench. Officer Allred got out of the vehicle and got his AR-15 style rifle from the back cargo area. He loaded the rifle..

His body worn camera recorded that he stood at the right rear corner of his SUV, and at 15:47:54-56 he yelled at Mitchell: "Hey! Drop the gun! Drop the gun!" One second later, at 15:47:57, the sound of Mitchell's first gunshot was recorded. He was firing at officers on the hill. Immediately, also at 15:47:57, Officer Allred fired at Mitchell. Sounds of multiple more gunshot followed. Two of those gunshots were fired by Officer Allred, one at 15:47:58, and one at 15:47:59. The last gunshot heard, fired by Officer Carrera on the hill, was recorded at 15:48:00.

When Officer Carrera drove onto the hill, he saw Mitchell down the hill to the west, sitting on the park bench. Mitchell was facing the passenger side of the police SUV. Cadet Ashley Piper (22014) was in the passenger seat. Officer Carrera got out and advised her to go around to the driver side. He then moved forward toward the left front corner of the vehicle with his AR-15 style rifle.

Just seconds before Mitchell began firing from the bench, Cadet Piper got out of the vehicle to seek protection by moving around the back to the driver side. She is not in view of Officer Carrera's camera during that movement, but at 15:47:58 she is in camera view again on the driver side near the rear tire. She is seen moving forward, ducking down, and going to the ground as the sound of gunshots are heard. (She did not have a body worn camera).

Officer Carrera's body worn camera recorded that he yelled two times at Mitchell: *"Drop the rifle!"* at 15:47:53-55. Then, at 15:47:57, the first gunshot sound was recorded. This was Mitchell's first shot from the bench. The sound of multiple more shots ensued in rapid succession. These were shots fired by Mitchell as well as by officers Allred and Carrera. Officer Carrera fired four shots. The last shot fired was by Officer Carrera at 15:48:00.

The gunfire lasted about three seconds. Mitchell had been struck by three bullets and his rifle fell from his hands. He remained seated on the bench, with his head slumped down. Officers approached. Mitchell's rifle was recovered at his feet and was moved away onto the grass. The officers observed that Mitchell's wounds were severe and that he was obviously deceased. An ambulance responded and Mitchell was pronounced deceased at 4:01 p.m.



Other DPD officers, supervisors, and crime scene investigators arrived. The scene was secured for investigative purposes and DPD's Officer Involved Shooting Protocol was followed. Detectives Mary McIver (00117) and Christopher Fayles (15006) of the DPD Homicide Unit were

assigned as primary and secondary investigators, respectively. Investigators from the Colorado State Patrol and the Colorado Bureau of Investigations also assisted with the investigation.

Statements of Involved Officers

Officer Pablo Carrera (19109)

Officer Pablo Carrera was interviewed on November 22, 2023, at DPD Headquarters by DPD Commander Matthew Clark (01039) and Chief Deputy District Attorney Dawn Weber.

Officer Carrera and Cadet Ashley Piper were dispatched to this call. Officer Carrera was driving. When they entered Commons Park, it was radioed that the suspect was located on the west side of the park. Officer Carrera drove to the top of a hill to get a better view of that area. At the bottom of the hill to the west, on the passenger side of his vehicle, he saw Mitchell sitting on the park bench. He estimated that Mitchell was approximately one hundred feet away and was about twenty to thirty feet lower in elevation. Officer Carrera got out of the vehicle on the driver side. He saw officers to his left, south of him, down the hill on the path.

Describing the moment the shooting began, he said:

He looked right at me, grabbed a blanket, pulled it off and away from him, and then aimed his rifle at me as fast as he could and began firing shots.¹

... I began to fire shots back at him. I was scared that he was going to hit either me or the cadet or any officers that were behind me at the time.

... I quickly stopped firing as soon as I saw that he went limp, that he wasn't moving.

Officer Carrera saw three or four muzzle flashes from Mitchell's rifle and heard his shots.

Officer John Allred (16022)

Officer John Allred was interviewed on November 22, 2023, at DPD Headquarters by DPD Commander Matthew Clark (01039) and Chief Deputy District Attorney Dawn Weber.

Officer Allred said he followed Corporal Breanna Cordova (14065) into the park. As they drove on the concrete path, Corporal Cordova radioed that she saw a man matching the suspect's description sitting on a park bench. She pointed to him, and Officer Allred then saw Mitchell on the park bench and saw that he matched the description.

He went to the rear of his vehicle to get his AR-15 style rifle, load it, and make it ready. His rifle was equipped with a magnifying scope as well as a red dot optic which assists in firing accuracy. He took a position at the rear right corner of his vehicle, looking at Mitchell. He estimated that Mitchell was about fifty to sixty meters away. He knew police officers were on the hill to his right.

¹ Cadet Piper told investigators she saw Mitchell pulling the blanket off and then she saw the rifle. Mitchell was drawing the gun out as she was getting out of the vehicle. She ran behind the vehicle for cover and then heard the gunshots.

He looked at Mitchell through his magnifying scope and checked that the backdrop was safe. At first, he did not see Mitchell's weapon, but then he saw Mitchell pull a rifle up and manipulate it to charge it. He recognized the rifle as an AK-47 style rifle. He then saw Mitchell quickly aim and begin firing at the officers on the hill. Officer Allred then fired at Mitchell. Officer Allred said he had no opportunity to yell a warning that he intended to shoot at Mitchell.

He described his thoughts when he fired at Mitchell:

And then he fired. He started firing. And at that second, you know, ... I thought he was going to kill those officers. I knew there were officers there. ... I was in fear for the life of officers. I knew there was a lot of people in the park. And then I was scared. I thought: What if he starts? -- I knew that that was an AK-47 style rifle. I could see that. I knew from my experience in the military that that's what that was. And I know how dangerous they are.

I had my red dot on him when he opened up. So, he fired first. And I fired. I think it was three rounds -- estimating three rounds -- in a controlled manner with my red dot on him to keep those rounds hitting him and not missing.

Autopsy

An autopsy was performed on Mr. Mitchell's body by Meredith Frank, M.D., Forensic Pathologist at the Denver Office of the Medical Examiner. Mitchell suffered three gunshot wounds. One bullet struck him in the right cheek and exited his left cheek. Another bullet struck him on the right side of his neck, passed through his cervical spine, and exited the left side of his neck. One bullet struck him in the right lateral chest, passed into his left chest cavity, through his left lung, and came to rest in his left chest. This bullet was recovered. A written autopsy report is pending.

Crime Scene Evidence / Firearms Unit Analysis

DPD Crime Scene Unit personnel responded to the scene. Evidence was marked and collected. Photographs and measurements were taken to document the scene. Measurements from the park bench to the officers' police vehicles indicate that Officer Allred was approximately 137 feet from Mitchell when he fired, and Officer Carrera was about 130 feet away when he fired.

Mitchell's rifle was a Romarm Model WASR-10 rifle. It had a one bullet in the firing chamber and 33 bullets in the magazine.



Under his outer jacket, Mitchell was wearing a tactical vest, but the pouches contained loaded magazines for his rifle. The vest contained eight magazines, each fully loaded with 30 rounds of live ammunition. In the blue Walmart bag next to him were four magazines, taped together in pairs, each similarly loaded with 30 rounds of ammunition. Another magazine in his left front pants pocket contained 10 rounds. In all, Mitchell was carrying over 400 bullets for his rifle.



8 magazines with 30 rounds each in pouches of the vest.



4 magazines (2 pairs), 30 rounds each, in the blue bag.

Investigators found that two shots fired by Mitchell struck the side of the hill at separate spots downhill from Officer Carrera's car. One bullet was recovered from the hill. The Crime Lab Firearms Unit microscopically identified this bullet as fired by Mitchell's rifle.

Investigators also determined that three bullets from Mitchell traveled beyond the hill and struck a high-rise apartment building to the east. Two of those bullets penetrated a window in one apartment, and the other bullet penetrated a window of a second apartment. Interior damage was caused to both apartments, but no one was injured. Bullet fragments were found inside both apartments. One fragment was identified as fired from Mitchell's rifle.

The hood and front right quarter panel of Officer Carrera's police SUV were damaged by bullets. Investigators determined that this damage was caused by Officer Carrera firing at Mitchell.

Three spent cartridge cases were located near where Officer Allred stood when he fired. They were microscopically identified by the Firearms Unit as fired in Officer Allred's rifle. Body worn camera recordings confirm that Officer Allred fired three shots.

Three spent cartridge cases were found near Officer Carrera's vehicle on the hill. These were microscopically identified to Officer Carrera's rifle. However, Officer Carrera's camera records the sound of him firing four shots, indicating that one spent cartridge case was not found.

Four spent cartridge cases were found near the bench where Mitchell fired. These four cases were microscopically identified to Mitchell's rifle. However, the evidence of two bullet strikes to the hill and three bullet strikes to the apartment windows indicate that Mitchell fired at least five shots, and that at least one of his spent cartridge cases was not located.

Legal Analysis

Legal justification for the use of physical force, including deadly physical force

Criminal liability is established only if it is proved beyond a reasonable doubt that all elements of a criminal offense have been committed without legal justification.² In this case, the legal justifications for using force in self-defense, or in defense of another person, govern my analysis of whether either officer should be criminally liable for firing at Mitchell. The specific legal justifications are set forth in C.R.S. §18-1-704 (1) and (2) 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 (4.5) provides:

- (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.

The evidence in this case, including the body worn camera evidence, clearly shows that both officers were acting defensively and lawfully with legal justification. Mitchell was firing a very powerful deadly weapon toward Officer Carrera and Cadet Piper on the hill. Bullets struck the side of the hill short of their vehicle, and others missed and traveled beyond them. Clearly, both Officer Carrera and Cadet Piper were in imminent danger of being killed or of being seriously wounded. Other officers on the hill faced a similar danger, especially if Mitchell was able to continue shooting. The evidence shows that the use of defensive force against Mitchell was

² Note that under Colorado case law a person accused of a crime does not have to prove he or she acted with legal justification. Instead, the prosecution has the burden of proof to show the legal justifications do not apply by proving all the elements of the crime beyond a reasonable doubt. 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).

immediately necessary to stop him, and using a degree of force that was less than deadly force would have been inadequate under these circumstances.

I find that Officer Allred and Officer Carrera had reasonable grounds to believe, and did believe, that the officers on the hill were in imminent danger of being killed or of receiving serious bodily injury from Mitchell's unlawful use of force. I also find that both officers had objectively reasonable beliefs that less than deadly force was inadequate to defend against Mitchell's actions. Both officers were legally justified to use physical force, including deadly physical force.

Other requirements of C.R.S. 18-1-707 (1), (2), (4) regarding a peace officer's use of force

Other provisions of C.R.S. §18-1-707 are not specific to self-defense, or to defense of another, but are relevant to the use of force generally by a peace officer. Those provisions are:

C.R.S. §18-1-707(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.

C.R.S. §18-1-707(2)(b): When physical force is used, a peace officer shall use only a degree of force consistent with the minimization of injury to others.

C.R.S. §18-1-707(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.

C.R.S. §18-1-707(2) also requires (after force is used) that a peace officer shall: (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.

I find that these requirements of C.R.S. 18-1-707 were sufficiently and appropriately met in this case. It had to be clear to Mitchell that police officers were present. It was daylight and they arrived at the park in multiple fully marked police vehicles, and they were wearing police uniforms. Officer Carrera and Officer Allred yelled at Mitchell to drop his weapon. Immediately after those commands, Mitchell intentionally began firing at the officers on the hill. It was imperative to stop Mitchell immediately. Any delay to yell again at Mitchell to warn that the officers intended to discharge their firearms would have endangered officers more and would have been a futile gesture. Despite that urgency, both officers were cognizant of the backdrop behind Mitchell to minimize the chance of injury to others. Nobody but Mitchell was injured by the officers' shots. The officers did call for medical attention but it was clear to them that Mitchell had died at the scene.

Conclusion

It was certainly of concern to officers when the call came in that a man had been threatening people in the park with a rifle. Then when they saw the man and he immediately began shooting at them, it was reasonable for them to believe Mitchell was trying to kill police officers. To defend against Mitchell, the legal requirements for the use of physical force, including the use of deadly physical force under C.R.S. 18-1-704 (2)(a) and C.R.S. 18-1-707 (4.5), were clearly justified. Therefore, no criminal charges will be filed against either officer.

Sincerely,

A handwritten signature in black ink that reads "Beth McCann". The signature is fluid and cursive, with a long horizontal line extending to the right.

Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Deputy Chief Joe Montoya; Commander Matt Clark; Commander Ed Leger; Sergeant Scott Murphy; Sergeant Scott Hagan; Sergeant Tony Lopez, Jr.; Detective Mary McIver; Detective Christopher Fayles; Officer John Allred; Officer Pablo Carrera; John Davis, Esq.; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle.