

Beth McCann
District Attorney
Second Judicial District



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

Beth.McCann@denverda.org

Oct. 3, 2024

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

Re: The officer-involved shooting on August 3, 2024, in the parking lot at 19th Street and Market Street in Denver, CO, which injured Luis Hansell Villar-Mejia (dob 1/22/2000); GO# 24-416069.

Dear Chief Thomas,

Our office has reviewed the investigation of the officer-involved shooting on August 3, 2024, in which Denver Police Officer Nathaniel Trobee (17086) fired one shot from his service weapon at Mr. Luis Hansell Villar-Mejia when Mr. Villar directed a gun at Officer Trobee. Villar's right arm and shoulder were injured when he was struck by the bullet. After reviewing the facts of this case, my conclusion is that Officer Trobee was legally justified in firing his weapon.

Summary of Facts

Officer Trobee is assigned to the DPD District 6 Impact Team, an assignment in which officers patrol areas of high crime and violence. On August 3, 2024, he was on duty with other officers, on foot, monitoring the out-crowd leaving bars and restaurants in the LoDo area. It was busy and crowded. Some fighting was occurring that drew the officers' attention. While on 19th Street between Blake and Market Streets, they heard a gunshot in the parking lot south of them.



Officer Trobee thought the shot came from the middle of the parking lot. He and four other officers¹ began walking into the parking lot toward the sound of the gunshot. They were walking southwestward between a row of parked cars on their left and a row on their right. Each officer was wearing DPD police uniforms with police badges and markings.

A man walking toward them, and recognizing them as police officers, alerted them that a man at the white Audi, parked just ahead of them on their right, was holding a gun. He specified: *“The white Audi – he’s holding a gun.”* Officer Trobee called out to Officer Austin Barber (18059), who was to his left, to make sure he was aware of this information. The front of the Audi was facing southeast with its driver side facing Officer Trobee. As the officers neared the white Audi, Officer Trobee was in the lead. His body worn camera recorded the events that transpired next. It recorded the following:

As he is walking past other parked cars towards the white Audi, Officer Trobee pulls out his flashlight with his left hand. The driver’s side of the white Audi is visible to him. Mr. Villar is on the driver’s side. He is walking from right to left, moving toward the open driver’s door of the car. His arms are down by his sides, but his right hand is not visible to the camera or to Officer Trobee. The sound of Officer Trobee drawing his service weapon from its holster is heard on the recording.² (Officer Trobee is right-handed). As Villar stands inside the open driver’s door, next to the driver seat, the door and tinted window obstruct the view of his hands.

¹ The other four officers: Officers Austin Barber (18059), Samuel Powell (21009), Connor Miller (22042), and Cory Kambic (19082).

² Officer Trobee later explained in his interview: *“I pulled my gun out ... because of the information that I had that he was armed with a firearm and with ... already shots fired in that parking lot.”*



Officer Trobee directs clear commands to Villar (01:59:40):

Let me see your hands!

Let me see your hands, right now!

Villar raises both arms from his sides, outstretched at shoulder level above the car window. He looks at Officer Trobee. Villar's left hand is empty, but a black semi-automatic handgun is in his right hand. Officer Trobee immediately yells, "Put it down!" This occurs at 01:59:42 on the camera recording. Other officers join in yelling commands at Villar to drop the gun.

Villar does not immediately drop the gun. He is holding the gun by the grip, but not with a firm shooter's grasp. He appears to be holding it loosely with his fingers and is directing the barrel toward the ground. See the photo below and a zoomed-in view (01:59:43).

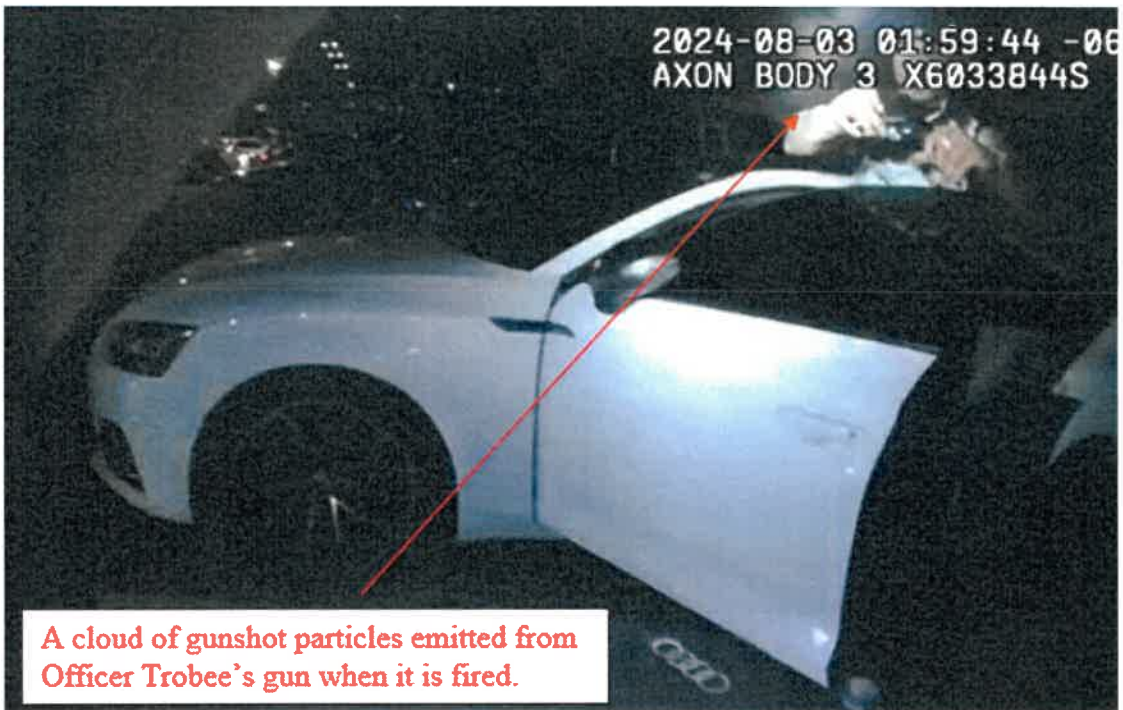


As the officers yell at him to drop it, Villar looks at the gun and changes how he holds it, raising the muzzle and causing it to be almost parallel to the ground. He moves the gun laterally, so the muzzle points toward Officer Trobee. While doing this, he is also drawing his hands in to bring them together in front of him. As his left hand nears the gun, Villar is looking at Officer Trobee, who is pointing his weapon at him, but Villar has not released his gun.

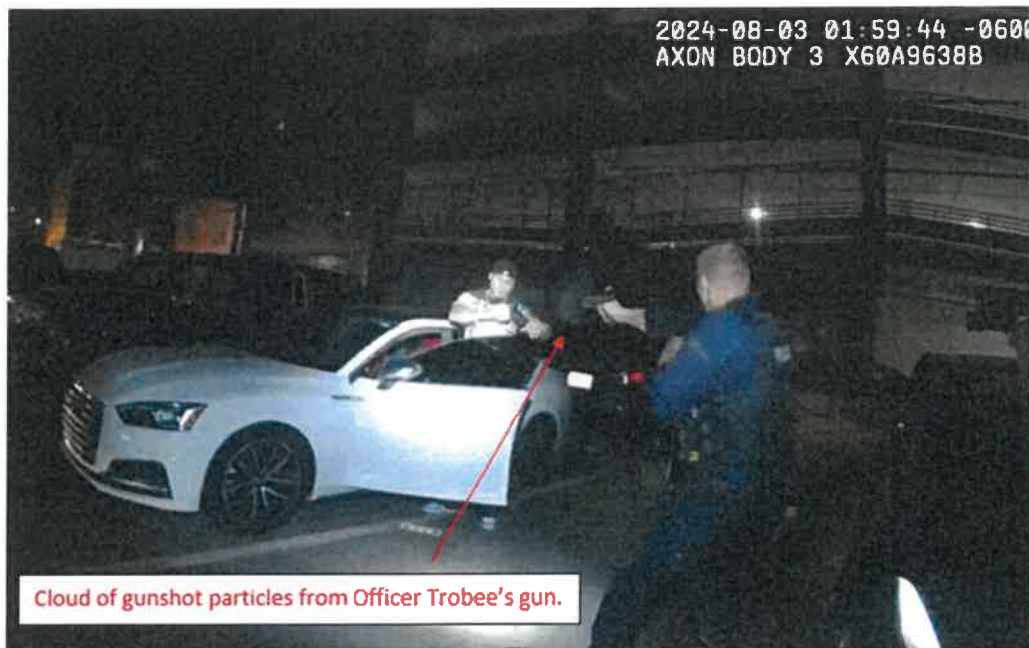




When Villar's left hand is at the gun, the camera records the sound of a shot in the distance (not fired by Officer Trobee). Then, Officer Trobee fires one shot at Villar (01:59:44).



Below is the view from Officer Barber's body worn camera when Officer Trobee fired.



Immediately following Officer Trobee's gunshot, multiple additional gunshots are heard in the parking lot south of the Audi. These shots continue for several seconds.

Villar was struck in his right bicep by Officer Trobee's bullet. He dropped the gun in front of the car door, then he knelt to the ground behind the door. Officer Trobee went to him, handcuffed him, located his wounds, placed a tourniquet on his upper right arm and called for an ambulance. Other officers assisted. Some of the officers directed their attention to the area where the other gunshots were fired in the parking lot.

As Officer Trobee was handcuffing him, Villar said, *"I am not a criminal. Please. I am not a criminal. I was just trying to save myself."* Officer Trobee told him, *"You just pointed your fucking gun at me, dude!"* Villar said, *"No. No. No. I put it down."* Then, he apologized: *"Sorry. Sorry about that Sorry about that, mate."* After several more apologies, Villar said, *"I was trying to put it down. Sorry. Sorry."*

An ambulance arrived and took Villar to the Denver Health Medical Center. The scene was secured and the protocol for Officer Involved Shootings was followed. Homicide Unit Detective Christopher Williams (08011) was assigned as the lead investigator and Homicide Unit Detective Daniel Tregembo (05041) was assigned as the secondary investigator. Investigators from the Colorado Bureau of Investigations and the Colorado State Patrol responded to the scene and to DPD Headquarters to assist with the investigation and interviews. Police officers who witnessed the shooting voluntarily gave recorded interviews at DPD headquarters. Statements of other witnesses and of Villar were also obtained.

Officer Trobee was interviewed by DPD Lieutenant Richard Laber (04066) and Denver Chief Deputy District Attorney Matthew Wenig. Officer Trobee explained why he fired:

At that point in time ... his left hand comes up towards the gun and I can see him changing his grip on the handgun. And it appears to me that he's, like, putting his hands together in order to shoot. And at that point in time, the barrel goes from pointing down to pointing at me, Officer Barber, [and] citizens that are in the parking lot. So then, I fired one round.

...

I believed he was going to shoot at me or my partners.

Chief Deputy District Attorney, Matt Wenig: *"What did you think he was doing with the gun as he brought his hands together?"*

Officer Trobee: *"I thought he was getting a better grip on the gun in order to shoot at us."*

After his treatment at the hospital, Detective Williams interviewed Villar. Villar indicated that he knew they were police officers addressing him, and he did not intend to point his weapon at them. He believes he did not point his weapon at anybody, and the police just automatically shot him.

Injuries

Villar suffered a gunshot entrance wound to his right bicep and a corresponding wound from the bullet's path that extended to the back of his right shoulder area. He received medical care for his wounds. We do not have access to Villar's medical records to further describe his injuries or medical treatment.

Handguns and Spent Casing Recovered

One spent cartridge case was ejected from Officer Trobee's weapon when he fired. It was recovered on the pavement. Officer Trobee's handgun was unloaded by the Crime Scene Unit and the ammunition was counted. This confirmed that Officer Trobee fired one shot.

Villar's gun was made safe at the scene by Officer Kambic and was later examined by Denver Crime Scene Unit investigators. It was a black Glock semi-automatic 9-millimeter handgun. A bullet was not in the firing chamber. It had a magazine containing 10 live bullets.

Legal Analysis

Criminal liability is established only if it is proved beyond a reasonable doubt that a criminal offense has been committed without legal justification. When self-defense is an issue, as it would be here, the prosecution must convince a jury beyond a reasonable doubt that the force used by the accused was not justified under the applicable justification statute.³

³ For crimes alleging a culpable mental state of acting intentionally or knowingly, 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

The applicable legal justification statute for the use of physical force⁴ that governs my analysis in this case is set forth in C.R.S. §18-1-704 (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.

When Villar recognized that police officers were present, he could have dropped his gun, which was in his right hand, onto the driver seat next to him. Instead he held onto it. After he complied with the first command by raising his arms, the officers immediately and emphatically yelled for him to drop the gun. He could have instantly released his grip without looking at it. Instead, he continued to hold it, moved his hand, raised the barrel, and moved the gun so it pointed toward Officer Trobee. These decisions and movements, coupled with moving his hands closer together, gave the appearance to Officer Trobee that Villar intended to get a second hand on the gun to shoot. I consider how these facts appeared to Officer Trobee from his perspective in front of the gun, knowing he had heard gunfire in the parking lot moments before he was warned about Villar.

The issue for my decision is not whether Villar intended to shoot, or what he was thinking as he was holding the gun and moving it. The issues are whether Officer Trobee objectively reasonably believed that Villar was about to use unlawful force against him, and whether Officer Trobee reasonably believed he needed to defend himself with the amount of physical force that he used.

I conclude from the facts of this investigation that Officer Trobee reasonably believed that Villar was about to shoot at him, and that he reasonably believed that firing his weapon was necessary to defend himself and the other nearby officers. Officer Trobee had no physical obstacle for protection, and he had no other effective alternative to defend himself. I note that the body worn camera evidence strongly corroborates Officer Trobee's description in his interview of what he observed, and strongly supports his credibility.

C.R.S. §18-1-707 also 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:

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).

⁴ Note that even though Officer Trobee fired a deadly weapon, since death was not caused, "physical force", and not "deadly physical force", was used in this incident. Deadly physical force is defined in C.R.S. 18-1-901(3)(d): "Deadly physical force" means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

- (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) ... [Not applicable – pertains to the use of deadly physical force to make an arrest].
- (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.

I find the requirements of C.R.S. §18-1-707 were met in this case. This encounter occurred very quickly, and decisions had to be made in an instant. With the gun moving toward being directed at Officer Trobee, any delay to give a verbal warning that he was going to fire his weapon would have unduly placed him in greater danger. I also note that Officer Trobee exercised considerable restraint in this situation, only firing once, and ceasing fire once the suspect had been hit. This situation could have resulted in a much more tragic result were it not for Officer Trobee's excellent judgment and restraint.

Conclusion

I find that Officer Trobee was justified under Colorado law in firing his weapon. A criminal charge would not be appropriate.

Sincerely,



Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Deputy Chief Joe Montoya; Commander Matt Clark; Commander Kim Bowser; Lieutenant Richard Laber; Sergeant Scott Hagan; Sergeant Tony Lopez; Sergeant Joshua Vasconcellos; Detective Christopher Williams; Detective Daniel Tregembo; Officer Nathaniel Trobee; John Davis, Esq.; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle; City Council members.