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

Re: Officer-involved shooting in the parking lot of 888 S. Oneida Street, Denver, CO, on November 27, 2023, which injured Zachary Arthur Yates (dob 8/26/91); GO# 23-636727

Dear Chief Thomas,

Our office has reviewed the investigation of the officer-involved shooting on November 27, 2023, in which two Denver Police Officers fired their weapons at Mr. Zachary A. Yates, 33 years old. The shooting occurred after Mr. Yates refused to comply with police commands for a prolonged period of time and then suddenly reached behind his back to a semi-automatic pistol that was tucked inside his belt. Based on his actions, I have concluded that the officers were legally justified in discharging their weapons for defensive purposes under C.R.S. §18-1-704 (1).

Summary of Facts

888 South Oneida Street is the address of the Cedar Run Apartment complex and its parking lot. On November 27, 2023, at 1:39 p.m., Mr. Zachary Yates was in the northeast corner of that parking lot. He had parked his black pickup truck facing north, abutting a concrete wall that ran east to west and that formed the north boundary of the parking lot. He had gotten out of the pickup truck and was standing a few feet to the west of it, facing north toward a trash dumpster. Loud music was playing on the sound system of the pickup truck and both doors on the driver side were open. Yates was doing something with some cardboard boxes on the ground near the dumpster. His back was facing south toward any vehicles or pedestrians that may approach from the south.

Officer Nathaniel Gorham (19026) and Officer Marty Deal (17078) had finished handling an unrelated police matter near the southeast corner of the same parking lot, and each of them was driving northbound approaching the northeast corner. Each officer drove a fully marked Denver Police SUV. Officer Gorham was in the lead. He noticed Yates near the dumpster. Yates' back was toward Officer Gorham. Officer Gorham saw that Yates had a large black semi-automatic handgun tucked into his belt behind his back. Officer Gorham later told investigators that he could see the entirety of the handgun except where it was covered by the belt. Knowing that "open carry" of a gun is illegal in Denver, Officer Gorham decided to stop to contact Yates.

Both officers stopped and got out of their vehicles. Yates did not seem to notice them. To get his attention above the loud music, Officer Gorham yelled: "Don't Move!" Yates showed no reaction. Officer Deal yelled: "Denver Police. Drop the gun!" Yates turned his head to look back toward the officers. Officer Deal yelled: "Don't go for the gun!" The officers were in full uniforms and their guns were pointed at Yates. Both officers saw the large semi-automatic handgun being carried at Yates' lower back, strapped to his back by his belt.



This photo, taken after the shooting, shows how Yates' handgun was tucked in his belt behind his back.

Both officers gave commands to Yates. Officer Gorham said: *“Don’t move. Do not move. Hands on top of your head.”* Both officers repeated this command several times. Yates did not put his hands on his head. Instead, he looked at the officers for a few seconds, pointed to his forehead, and said, *“Why don’t you shoot me, dude?”*, and then held his arms out from his sides.

The officers told Yates: *“You have a gun in your waistband.”* Yates asked: *“Is that illegal?”* Both officers said: *“Yes”*. Yates began to argue: *“It’s not concealed carry. It’s open carry.”* Officer Deal told him: *“Open carry is illegal in Denver.”* Yates continued to show indifference to the orders, saying: *“Go ahead and shoot me”*, and pointed to his forehead with his left hand and dropped his right hand to his side. Seeing the right hand move to his side prompted Officer Gorham to yell urgently: *“Do not!”* -- *“Hands on top of your head. Get down on your knees.”* Yates held his left hand to his forehead and said: *“Go ahead.”* After a short pause he said: *“Come on. One shot. I’m a suicidal disabled veteran. Go ahead.”*

Officer Deal tried to de-escalate the situation by speaking calmly to Yates, trying to reason with him, asking about him, telling him that he was a veteran too, and trying to gain his compliance. Officer Deal explained they were there because of the gun in his waistband, but that Officer Deal did not want Yates to touch the gun. He said: *“I don’t want you touching it. Just put your hands on your head. Get on your knees. We’ll take it from you. We’ll figure out if it’s all good.”*

Yates persistently refused to comply with any requests or directives. His argument was: *“The constitution allows me to carry anywhere. ...So this is bullshit to begin with. If you want to shoot me, go ahead.”* Officer Deal told him: *“I don’t want to shoot you. What I want you to do is put your hands on your head and get on your knees.”* Yates said: *“I’m not doing that.”*

The interaction with Yates lasted over four minutes. During this time, four more officers arrived and took positions near their vehicles. Officer Ryan Armand (19033) was to Officer Gorham’s left; Officer Ivan Salazar-Reyes (19127) was to Officer Gorham’s right, east of him; Officers Alec Garcia (22007) and Brian Klaus (04093) were further to the east. Officer Salazar-Reyes asked Officers Gorham and Armand if they had a “40” (a 40mm less lethal projectile launcher). Officer Armand replied “yes” and moved behind his SUV to get the 40 from inside the rear cargo area.



At 1:43:37 p.m., body worn camera evidence shows the movement made by Yates that caused two officers to shoot. Yates was looking at Officer Deal, arguing why he did not want to comply, and gesturing with his right hand in front of him. Suddenly, in one quick movement, Yates dropped his right hand, pulled it behind his back, and put his hand on his gun. Below are views from the cameras of Officers Deal, Gorham, and Salazar-Reyes.





Officer Gorham saw Yates' hand move to his gun and perceived it as a deadly threat. He fired four shots. Officer Salazar-Reyes fired once; the last shot fired.

Yates was struck and fell to the ground. Officers approached him, took the gun out of his belt, immediately called for an ambulance, and began rendering first aid. They stemmed the bleeding from the one penetrating wound they found, which was above his right clavicle near the base of

his neck. As they were helping him, Yates made comments expressing suicidal wishes. The officers spoke to Yates, encouraging him to stay conscious. Yates received medical treatment in the ambulance from a Denver Health Paramedic and was taken to Denver Health Medical Center.

Other DPD officers and supervisors arrived. The scene was secured for investigative purposes and Denver's Officer Involved Shooting Protocol was followed. Detectives Brandi Thomas (06087) and Daniel Andrews (96015) from the Denver Homicide Unit were assigned as primary and secondary investigators, respectively. Investigators from the Colorado State Patrol and the Colorado Bureau of Investigations were notified, and they assisted with the investigation.

Officer Statements

All six officers present at the time of the shooting were interviewed by investigators at DPD headquarters. Officer Armand said he was at the back of his police vehicle getting his 40mm less lethal weapon ready when the shots were fired, so he did not have a view of the shooting. Officer Garcia, who was positioned to the right of Officer Salazar-Reyes on the east side of their police vehicle, said he did not see the movement of Yates' hand behind his back, and he did not fire. Officer Klaus was positioned behind Officer Deal, who was in his line of sight toward Yates. He said he did not see the movement by Yates before the shots, and he did not fire.

Officer Gorham

Officer Gorham was interviewed at DPD headquarters the evening of this shooting. He was questioned by Matthew Clark, Commander of the DPD Major Crimes Unit, and by Chief Deputy District Attorney, Dawn Weber. Officer Gorham explained what caused him to fire:

"I observed the suspect reach towards the back of his waistband where I knew where the gun was -- and I could see the gun. And I felt as though he was about to draw that weapon and fire it at me or my fellow officers. And fearing for that, I discharged my weapon."

...

"I felt if I had waited any longer, that it would've put officers in danger."

Officer Salazar-Reyes

Officer Salazar-Reyes said he fired after he heard gunfire [from Officer Gorham] and saw that Yates had moved his hand behind his back toward his waistband.

"I was concerned for Officer Deal. I knew that this guy had a gun somewhere in his waistband. So, when I saw his hand towards the rear of his waistband, I was concerned that he was going to shoot Officer Deal."

Officer Deal

Officer Deal said that he did not see the movement of Yates' hand behind his back as it was occurring.¹ Officer Deal explained:

¹ Officer Gorham's camera recording shows Officer Deal turn his head to the left as Yates moved his hand to his gun.

“I lose track of his right hand because I’m in this dialogue with him, kind of focusing on that. And I’m like, ‘wait – where did his right hand go? And it takes me a second... I’m thinking he’s probably going for that gun. As I’m in that thought process, I hear the shots and then I see him go down ... as I’m kind of moving my finger towards the trigger, inside the trigger guard.”

...
“I felt like he was about to shoot us.”

Handguns and Spent Casings Recovered

The weapon Yates had in his belt was a black Glock, Model 17, Gen5, 9mm semi-automatic handgun. It was loaded with one live bullet in the chamber and 16 live bullets in the magazine.

The handguns fired by Officer Gorham and Officer Salazar-Reyes were unloaded by the Crime Scene Unit and the ammunition was counted. The guns were then submitted to the Denver Crime Lab Firearms Unit for examination and testing. The officers’ guns were fired to obtain cartridge cases marked by each firearm in order to microscopically compare them to the five spent cartridge cases recovered at the shooting scene. Four spent cases from the scene were identified as having been fired in Officer Gorham’s handgun. One was identified to Officer Salazar-Reyes handgun. This comports with the body worn camera evidence showing that Officer Gorham fired four gunshots and Officer Salazar-Reyes fired one gunshot.

Injuries

Yates suffered a serious gunshot wound near the base of his neck above his right clavicle. Body worn camera recordings show that Officer Gorham fired the bullet that caused this wound. Yates also received a graze wound on his right forearm. It is not known which of the two officers fired the bullet that grazed his forearm. We do not have access to Yates’ private medical records to describe his injuries with more specificity.

Legal Analysis

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. The legal justification for the use of physical force² that governs my analysis in this case is set forth in C.R.S. §18-1-704 (1). It states the legal justification for using physical force in self-defense and in defense of another.

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

²Note that since death was not caused, physical force, 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.

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.

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:
 - (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 appropriately met in this case.

As to C.R.S. §18-1-704 (1), when self-defense or defense of another is an issue in a case, as it is here, Colorado law provides that the accused is not required to prove he or she was justified in using physical force. Instead, the prosecution must show the force used was not justified.³ Thus, the question I consider in deciding whether to bring criminal charges against Officer Gorham or Officer Salazar-Reyes is: After considering C.R.S. §18-1-704 (1), would a jury find that all the elements of a crime can be proved beyond a reasonable doubt against either officer?

Based on the facts shown by this investigation, I conclude that a jury would find the use of force by each officer was justified under C.R.S. §18-1-704 (1). My analysis is summarized below.

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 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).

Did each officer reasonably believe Yates was imminently about to use unlawful physical force against them? Yes. Body-worn camera evidence shows Yates suddenly and quickly pulled his right arm behind his back to reach his gun. This action gave the impression that he was intending to grab the gun to pull it out and immediately use it. I find that when Officer Gorham and Officer Salazar-Reyes saw Yates' arm behind his back it was objectively reasonable for them to believe Yates was immediately intending to use unlawful and potentially deadly force. In this circumstance it was too dangerous for the officers to hesitate in order to issue a verbal warning or to wait to see if Yates would actually pull the gun out of his belt.

Did each officer reasonably believe the degree of force used by them was necessary? Yes. They saw that Yates was armed with a deadly semi-automatic handgun capable of firing multiple bullets in very quick succession. Officer Deal was directly in front of Yates without any cover if Yates fired. Officer Gorham and Officer Salazar-Reyes were exposed as well. At the critical moment, their only option to employ effective defensive force was to use their handguns.

Conclusion

I find that the physical force used by both officers was justified under Colorado law. A criminal charge against either of these officers would not be appropriate.⁴

Sincerely,



Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Deputy Chief Joe Montoya; Commander Matt Clark; Commander Joel Bell; Sergeant Scott Murphy; Sergeant Scott Hagan; Sergeant Tony Lopez, Jr.; Detective Brandi Thomas; Detective Daniel Andrews; Officer Nathaniel Gorham; Officer Ivan Salazar-Reyes; John Davis, Esq.; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle; City Council members.

⁴ Zachary Yates has been charged with violating Denver Revised Municipal Code 38-118 (b): "Unlawful Open Carry of Weapons" and 38-121 (g): "Large Capacity Ammunition Feeding Device Prohibited".