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Paul Pazen
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of
Carnell Nelson DOB 2/28/89, in which
Denver Police Officer Travis Lloyd, fired
shots on June 13, 2018, near 551 E.
Colfax, Denver, Colorado.

Dear Chief Pazen:

The investigation and legal analysis of the shooting death of Carnell Nelson, in which gunfire was returned by Denver Police Department (DPD) Officer Travis Lloyd, 15-022, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Lloyd. My decision, based on Colorado criminal law, does not limit potential administrative action by the DPD where non-criminal issues may be reviewed, or potential civil actions where less-stringent laws, rules, and legal levels of proof apply.

STATEMENT OF FACTS

On June 13, 2018, at approximately 7:53 p.m., A.T.¹, who was the store clerk at the 7-11 convenience store at 551 E. Colfax, cleared the store and stepped outside for a smoke break. Carnell Nelson approached the store and wanted to enter. A.T. told Mr. Nelson he would have to wait to enter the store until A.T. finished his break. A.T. later reported, "This man just walks by me as I tell him four straight times, please don't go in the store." Mr. Nelson ignored A.T.'s requests, and Mr. Nelson went into the unattended store. A.T. followed Mr. Nelson into the store

¹ I use initials to maintain the privacy of the victim and citizen-witnesses

and repeatedly asked him to wait outside. Mr. Nelson asked why he had to wait outside. A.T. concluded that Mr. Nelson was “altered,” and appeared intoxicated.²

As Mr. Nelson and A.T. were inside the 7-11, A.T. saw that Mr. Nelson had a gun in his hand, and Mr. Nelson pulled from his pocket an ammunition clip, and prepared to load his handgun. A.T. feared for his life, as well as the for the lives of the handful of customers who had entered the store. A.T. ran through the store telling the customers to leave and that Mr. Nelson was armed, and A.T. ran out of the store onto Colfax, and looked for help.

When A.T. ran from the store, Mr. Nelson went behind the 7-11 clerk’s counter and stole the cash register drawer.



06/13/2018 07:52:34 PM [play] [stop] [rewind] [fast forward] [full screen] [volume] [speed] Speed: 2x Camera: [dropdown]

The 7-11 surveillance camera showing Mr. Nelson taking the cash drawer. L.P., who is subsequently shot by Mr. Nelson, can be seen wearing a pink dress and fleeing out of the door.

A.T. described the following fortuitous events:

I ran out the door, run right. As I'm running right out the door, it just so happens, only God -- there's a cop just happened to be going by. Just happens to be going by right there as I'm -- as I'm running out of the store to the right. I immediately stop him. Hey, stop. There's a guy inside with a gun. B[e] careful, because there's a guy inside with a gun. The two gentlemen immediately hopped out. Two officers immediately hop out, hands on their -- how they're supposed to

² Previously, Mr. Nelson had been to the store and A.T. vaguely recognized Mr. Nelson (A.T.. Interview, p. 14). The subsequent autopsy and toxicology reports showed Mr. Nelson had a BAC of 0.117 and he also had cocaine, THC and other drugs in his system. Dr. Caruso Autopsy Report, p. 2.

have it, no other way, especially going into something like that. I reiterate again, be careful; he has a gun.

At that moment, DPD Officers Sean Drew and Travis Lloyd, were driving eastbound on Colfax, and were flagged down by A.T. This area of Colfax is a high crime area, and the Officers were initially uncertain why the 7-11 clerk would be on Colfax flagging them down. It was clear to the Officers that there was an emergency. As can be seen on Officer Drew's Body-Worn Camera (BWC), A.T. and another female witness, L.P., were shouting at the Officers as they got out of their patrol car, informing the Officers that Mr. Nelson was armed, and they pointed in the direction Mr. Nelson was fleeing.



Officer Drew's BWC showing A.T. and L.P. reporting Mr. Nelson is armed and his direction of flight.

Officer Drew recalled³ seeing Mr. Nelson move eastbound on Colfax and he was carrying a cash drawer. Officers Drew and Lloyd moved quickly east towards the fleeing Mr. Nelson. As Officer Drew crossed in front of the 7-11, he looked inside the store and then heard multiple gunshots. Officer Drew immediately realized that his partner, Officer Lloyd, had been shot, and Officer Lloyd was returning fire to the east towards Mr. Nelson. After the shooting stopped, Officer Drew attended to Officer Lloyd and quickly placed a tourniquet on Officer Lloyd's upper thigh. Officer Drew never fired his weapon.

³ Officer Drew was interviewed just after midnight on June 14, 2018. He did not review his BWC prior to his interview (Officer Drew Transcript, p. 12, line 431).

Officer Lloyd later reported⁴ he saw who he knew to be the 7-11 clerk flagging them down, and gave the “universal sign” for help by waiving his hands. They stopped their patrol car, and Officer Lloyd recalled the clerk telling him he was just robbed and the suspect was armed and fleeing. Officer Lloyd then saw Mr. Nelson walking east on Colfax and he was carrying a cash drawer. At that time, Officer Lloyd did not see Mr. Nelson’s weapon. As can be seen on Officer Drew’s BWC, Officer Lloyd pursued Mr. Nelson east down the sidewalk, and 8 seconds after the Officers got out of their patrol car, Mr. Nelson started shooting his .40 caliber handgun at the pursuing Officers.

Mr. Nelson shot first. As can be seen in the below photo, from Officer Lloyd’s BWC, Mr. Nelson is seen with the cash drawer under his left arm. In the area highlighted below, the gun smoke from the barrel of Mr. Nelson’s gun can be faintly detected. From the autopsy report and the location of the fatal wound, it is clear that Mr. Nelson was turned toward the Officers when shot. Further, the audio from the Officers’ BWC indicates that the first gunshot sounds from a distance. Finally, a witness, who was not identified, made a statement to Officer Bolton on BWC and reported that Mr. Nelson first pulled his gun on the officers.



BWC from Officer Lloyd, showing Mr. Nelson walking eastbound on Colfax with the cash drawer and firing his weapon.

⁴ After being shot by Mr. Nelson, Officer Lloyd was immediately taken to Denver Health Medical Center for treatment for his gunshot wound. Officer Lloyd was not interviewed until June 15, 2018, after his release from DHMC. Officer Lloyd did not review his BWC before his interview. (Officer Lloyd Transcript, p. 8, line 280).

Mr. Nelson fired his .40 caliber handgun 5 times. Shooting back toward the west, Mr. Nelson shot one of the several bystanders, L.P., who suffered serious bodily injury.⁵ Mr. Nelson also shot Officer Lloyd in his right upper leg.⁶

Officer Lloyd returned fire and he shot his 9 mm handgun 13 times⁷, one of which hit Mr. Nelson in the chest. Mr. Nelson died as a result of the gunfire returned by Officer Lloyd.⁸

Officer Lloyd described the quickly-emerging situation and he described his thought process:

There's a guy with a gun that just robbed a store that's now walking down the middle of the street in front of people, you know? I don't know -- I don't know the guy, so I don't know what his history is or his likelihood, but he is a guy with a gun that just committed a felony -- a violent felony, you know? He's willing to rob somebody at gunpoint to take their money...

Officer Lloyd described the situation as “deadly force encounter.” He was then asked what were his concerns during this deadly force encounter, and he stated:

Dying. The best way to put it is I don't -- I guess you never know how you're going to react when you're getting shot at, but once I recognized that I was getting shot at, I was -- I was not going to let him kill me... I'm not going to let him get away, you know, after shooting me -- I mean he shoots me, I'm going to make sure that he stops shooting at me and doesn't have the ability to kill somebody else, you know, or try to kill somebody else.

I don't know -- I mean it's easy to say this now, because now I'm thinking about how I -- you know, how I reacted, but in the seconds that it happens, it's just you're not going to kill me or anybody else....

Other Officers quickly responded to this shooting, and located Mr. Nelson a short distance from the 7-11, in an alcove to another business. Mr. Nelson was unresponsive when the other Officers contacted him.

⁵ L.P. was standing to the west of Mr. Nelson and behind the officers. Only Mr. Nelson aimed his gun to the west. L.P.'s gunshot wound passed through her foot and the bullet was not recovered and therefore not compared to Mr. Nelson's gun.

⁶ It is important to note, that even after Officer Lloyd was shot, with a tourniquet around his leg, he hobbled over and attended to the other shooting victim, L.P.

⁷ The Crime Lab testing of the 9 mm bullet fragments found at two nearby businesses, east of the shooting, could not be conclusively determined to have been fired by Officer Lloyd. However, given the direction of the shots, the number of shots fired, it is likely these were remnants from Officer Lloyd's gunshots.

⁸ During the autopsy it was discovered that Mr. Nelson had previously been shot in the head, and the remains of that gunshot wound were discovered during the autopsy, as a “remote gunshot wound with retained projectiles.” Mr. Nelson was an active suspect in at least two other violent robberies in June 2016.



A still from the BWC of Officer Blanchard. The 7-11 cash drawer is to the right of Mr. Nelson and his .40 caliber “Glock,” with a laser sight and extended magazine, is to the left. This gun was a “ghost gun” constructed from a “build kit” and was not registered. Five .40 caliber shell casings were also recovered in this immediate area. More than \$180 in cash was also recovered in this area and in the cash drawer.

There were numerous witnesses to these events. The civilian-witness accounts⁹ are remarkably similar and are consistent with the BWC and Officers Lloyd’s and Drew’s reports.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the 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.

⁹ For examples, see the reports by Detective Torgeson and Aurora Detective Fredericksen and their interviews with eyewitness J.S. and Detective Torgeson and Detective Gibbs interviews with Q.P., an eyewitness and son of L.P. who was also shot by Mr. Nelson, and Officer Bolton’s BWC interview of unidentified witness.

The justification for a peace officer's use of physical force while attempting to make an arrest is set forth in §18-1-707, C.R.S. As pertinent to this case, §18-1-707 (1), C.R.S. states:

... a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) To effect an arrest ... unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest

Further, §18-1-707(2), C.R.S. provides:

A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - (II) Is attempting to escape by the use of a deadly weapon; or
 - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

These justifications are “affirmative defenses.” This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury could find, beyond a reasonable doubt, that Officer Lloyd used deadly physical force without lawful justification?**

CONCLUSION

The question presented in this case is whether, at the instant after Officer Lloyd was shot and he returned fire, the legal justifications for using deadly physical force as set forth in §18-1-707(1) and §18-1-707(2), C.R.S. were applicable. I conclude that they were. Officer Lloyd was aware that Mr. Nelson had just then committed an armed robbery. Further, concerned citizen-

witnesses, A.T. and L.P., also feared for Officer Lloyd's (and Drew's) safety when they warned the Officers that Mr. Nelson had a gun. As such, it was reasonable for Officer Lloyd to attempt to apprehend Mr. Nelson as a fleeing and armed robber. Moreover, as can be seen in the BWC, Mr. Nelson immediately shot first, striking Officer Lloyd.

Colorado law allows an officer to use deadly force when he or she reasonably believes that the person involved is likely to endanger human life or inflict serious bodily injury to him or herself or to another. At the time Officer Lloyd fired, Mr. Nelson had just shot Officer Lloyd in the leg and apparently shot the witness, L.P.

Under these quickly emerging circumstances, pursuant to Colorado law, specifically, §18-1-707(2), C.R.S., Officer Lloyd reasonably used "deadly physical force," to defend himself and/or to effect the arrest of Mr. Nelson, and/or to protect the innumerable witnesses standing in harm's way on Colfax.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

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) at pp. 396-397.

Under these extremely dangerous circumstances, Officer Lloyd made a split-second judgment, and his decision to return fire after being shot and shoot Mr. Nelson in self-defense, in defense of others, and to effectuate an arrest, was clearly justified under Colorado law. He may well have prevented injury not only to himself or his partner, but also to those in the vicinity.

As in every case we handle, records related to this case will be made available upon request at the Denver District Attorney's Office. Any interested party may seek judicial review of my decisions under C.R.S. §16-5-209.

Yours truly,



Beth McCann
Denver District Attorney

CC: Officer Travis Lloyd; Kristin Bronson, Denver City Attorney; Troy Riggs, Executive Director, Department of Safety; Barb Archer, Deputy Chief of Police; Joe Montoya, Division Chief of Investigations; Mark Chuck Commander of Major Crimes Division; Aaron Sanchez, Commander of District 6; Michael Batista, Commander of Internal Affairs; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Dan Andrews, Homicide; Nicholas E. Mitchell, Office of the Independent Monitor and John Davis, Davis Law Firm.