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Robert White
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of John T. Bazemore DOB 2/17/92, in which Denver Police Officer Brent Cairns, fired shots on November 10, 2017, near 600 16th Street, Denver, Colorado.

Dear Chief White:

The investigation and legal analysis of the shooting death of John Bazemore, in which two shots were fired by Denver Police Department (DPD) Officer Brent Cairns, 13-039, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Officer Cairns. 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 November 10, 2017, at approximately 12:57 p.m. John Bazemore entered the ANB Bank at 600 16th Street. Mr. Bazemore entered the bank wearing a mask covering his face and approached the teller at gunpoint and specifically demanded \$1500.00. The teller, N.C.,¹ gave Mr. Bazemore \$1500 in cash. ANB Bank Vice President, A.W., became aware of the situation and realized the bank was being robbed. As A.W. watched the robbery, and as seen on the bank surveillance video, Mr. Bazemore also brandished his handgun at A.W. as he had at the teller. The bank employees saw Mr. Bazemore, still masked, flee the ANB Bank onto the 16th Street Mall.

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



ANB Bank
600 16th Street

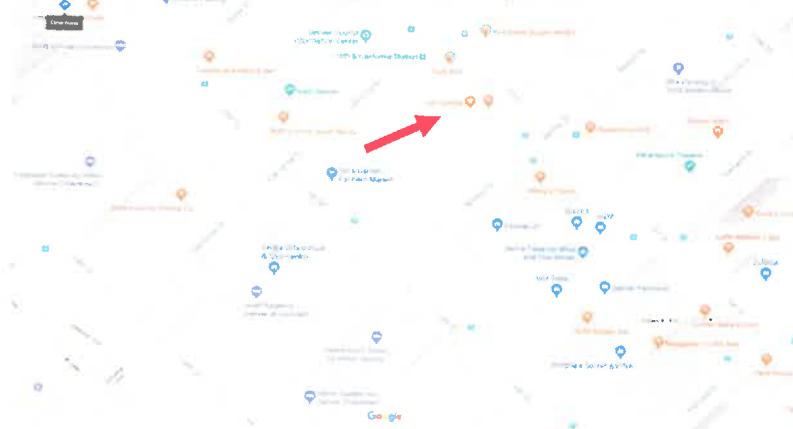


ANB Bank Surveillance Video

Bank employees, A.W. and T.B., followed Mr. Bazemore out of the bank and onto the 16th St. Mall. T.B. almost immediately located Officer Cairns in his police car at the intersection of 16th and Welton.² T.B. reported to Officer Cairns that he had just been robbed and the suspect was fleeing. At that same time, A.W. was following Mr. Bazemore and yelled out to other people on the 16th St. Mall that the still masked Mr. Bazemore had just robbed the bank. A citizen-witness,

² Officer Cairns had just reported, but had not yet begun his assignment, as extra police patrol on the 16th Street Mall (Officer Cairns Interview of 11-14-17 at p. 6).

L.R., pointed out to Officer Cairns that Mr. Bazemore had just turned down a nearby alley³ and he had entered an enclosed area that surrounded a large commercial dumpster.



Arrow - approx location of dumpster

After receiving the excited report of the robbery, Officer Cairns drove his police car to the area identified by witnesses as where Mr. Bazemore had fled. L.R. directed Officer Cairns to the enclosed dumpster area off the alley. As Officer Cairns approached the enclosed area, A.W. could see Mr. Bazemore emerge from his concealment in the enclosure and encounter Officer Cairns. A.W. reported that as Officer Cairns approached the enclosure he and other citizen-witnesses were repeatedly shouting that Mr. Bazemore had a gun. L.R. was interviewed by Denver police. He stated that he saw the bank robber inside the enclosure and told the officer where he was. L.R. stated that when the officer approached the suspect, the suspect was approaching him with his right hand behind his back between his coat and back. After the Officer told the suspect to show his hands L.R. then saw the gun in the suspect's hand behind his back. He then yelled "gun, gun, gun."



Enclosed Commercial Dumpster

³ The alley is near the ANB Bank, to the northwest, between Welton and California Streets, perpendicular to the 16th St. Mall. The location of the eventual shooting is just off the 16th St. Mall to the southwest of ANB Bank down the alley, in an area that enclosed a large commercial dumpster.

At this same time, J.S. had just pulled into this parking lot area as these events unfolded, and he reported that he was approximately 15-20 feet away from the dumpster enclosure when Officer Cairns approached Mr. Bazemore. J.S. said, “the guy in the blue coat hiding by the dumpster came around and by then the police officer was facing him and I saw [Mr. Bazemore] had a gun behind his back... I saw the gun, he definitely had a gun and the police officer was in danger for sure.” J.S. further reported Mr. Bazemore “had his finger on the trigger, he was holding it like he was ready to use it and that is why I panicked and ran, I thought he was going to start shooting” and “when I saw the gun my heart just jumped out of my chest and I ran.” J.S. and other citizen-witnesses watching this all reported that Officer Cairns loudly gave multiple commands to Mr. Bazemore.

The attorney for Mr. Bazemore’s father provided me with video interviews of two young women who were in the vicinity at the time of the shooting. Both of these witnesses were interviewed by the police immediately following the incident. One young woman, C.M., stated at that time that she and her friend, A.G., were walking across the parking lot when they saw the police car come down the alley and heard people yelling, “there he is” and pointing to the man in the dumpster area. She heard people say “he has a gun,” and thinks a young woman yelled that. She and her friend ducked between two cars and she later got under a car. She said she did not see the man holding a gun, and she did not hear the man or the police officer say anything before the officer shot the man. She stated that the man looked “really scared.” C.M. said that she and her friend left the area and went back to school. However, they left school and were sitting at a deli on the mall when police officers asked them to come to the station to make statements. In the recent interview with the defense investigator, C.M. stated that she did not hear anyone say that the man had a gun and she confirmed that she did not see a gun in Mr. Bazemore’s hand before he was shot.

Her friend, A.G., stated that she saw the man by the dumpster, and she saw the police officer approach him with his gun drawn. She heard people yelling that he had a gun, but she did not see a gun in the hands of the man although she said she could see his hands. She said there were no words spoken by the man or the police officer before the police officer shot the man. Her more recent statement related similar facts.

I have considered the statements of these two witnesses and find their accounts differ considerably from the other witnesses who clearly saw a gun in Mr. Bazemore’s hand and consistently stated the officer told Mr. Bazemore to drop the gun and show his hands before he fired his handgun. The statements of the other witnesses are consistent with Officer Cairns’ statement which was given immediately after the shooting without benefit of knowing the statements of any other witnesses. Clearly Mr. Bazemore had a gun as he had just robbed the bank at gunpoint, and his gun was found next to him after the shooting.

Officer Cairns reported in his videotaped statement⁴ that as he drove near the enclosed dumpster a citizen-witness pointed out the dumpster enclosure where Mr. Bazemore had run. Officer

⁴ Officer Cairns provided his statement on November 14, 2017.

Cairns said as he approached the enclosed dumpster he could see Mr. Bazemore in the rear of the enclosure and Officer Cairns thought the robbery suspect was attempting to flee from the area⁵.

Officer Cairns reported that he drew his weapon and entered the enclosure. When he encountered Mr. Bazemore, Officer Cairns could not see Mr. Bazemore's right hand, as Mr. Bazemore was at angle to the Officer with his back mostly turned towards Officer Cairns⁶. At gunpoint, Officer Cairns repeatedly told Mr. Bazemore to "show his hands."

Mr. Bazemore did not comply and stated that he could not show his hands to Officer Cairns. Officer Cairns then remembered from training that when an officer asks someone to show his hands, if the person has a gun, he would be asking him or her to point the gun at the officer.

In response, although he did not at that point see the gun, Officer Cairns grabbed Mr. Bazemore's right arm to minimize his ability to use a gun. At this point, Officer Cairns had his gun up to the suspect's chest. Officer Cairns stated that he heard one of the citizen witnesses yell that the suspect had a gun, either right before he confronted the suspect or right after he grabbed his arm. Officer Cairns then repeated "drop the gun." As the suspect began to turn away, the officer's arm dropped from the suspect's arm and the officer's gun moved to the suspect's side. As this happened, "from less than a foot away" the suspect raised his right arm with a gun in his hand and pointed it at Officer Cairns' stomach area and Officer Cairns braced to be shot. Witness A.W. confirmed that he saw the suspect raise his right arm and that the Officer told the suspect several times to drop the gun. When Mr. Bazemore aimed his gun at Officer Cairns, the officer fired twice, hitting Mr. Bazemore in his side and killing him.

Mr. Bazemore fell to the ground, and Officer Cairns then kicked away the gun used by Mr. Bazemore. Later, recovered from the crime scene, was the semi-automatic .25 caliber handgun possessed by Mr. Bazemore. It was loaded and had a bullet in the firing chamber. Also recovered was \$1460⁷ from the ANB armed robbery, and the mask worn by Mr. Bazemore during the bank robbery. The two shell casings discharged by Officer Cairns were also recovered at the crime scene.

⁵ Officer Cairns explained that he did not activate his Body Worn Camera (BWC) until after the encounter and shooting (Officer Cairns Interview pp.12-13, 26). This failure may be attributable to the fact that Officer Cairns had not started his shift and that this emergency situation evolved very quickly. There is no known BWC that captures the encounter or the shooting.

⁶ Mr. Bazemore was 6 foot 3 inches tall (Autopsy of Dr. Timm)

⁷ UMB Bank reported a robbery of \$1500. If indeed \$1500 was seized by Mr. Bazemore, the whereabouts of the other \$40 is unknown.



Mr. Bazemore's .25 caliber semi-automatic ANB Bank money taken by Mr. Bazemore

Using his Glock 9mm, Officer Cairns shot Mr. Bazemore twice. Per the autopsy of November 11, 2017, Dr. Krista Timm determined these gunshot wounds caused the death of John Bazemore.

LEGAL ANALYSIS

Criminal liability in Colorado 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.

The justification for a peace officer's use of physical force while attempting to make an arrest is set forth in C.R.S. §18-1-707. As pertinent to this case, C.R.S. §18-1-707 (1) 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, C.R.S. §18-1-707(2) states that:

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.

The determination of whether Officer Cairns conduct was criminal is primarily a question of legal justification. The issues are, therefore, whether at the time Officer Cairns discharged his firearm, he reasonably believed that he was about to be subjected to unlawful physical force, and furthermore, that his actions in defending himself against that force were objectively reasonable. Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that he was in imminent life-threatening danger and that it was necessary to discharge his firearm to defend himself or to prevent injury to another. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury could find, beyond a reasonable doubt, that Officers Cairns acted without lawful justification?**

CONCLUSION

The question presented in this case is whether, at the instant Officer Cairns fired his weapon, the legal justifications for using deadly physical force as set forth in C.R.S. §18-1-707(1) and §18-1-707(2) were applicable. I conclude that they were. Officer Cairns was aware that Mr. Bazemore had, moments before, committed a bank robbery. Further, concerned citizen-witnesses feared for Officer Cairns safety when they repeatedly warned Officer Cairns that Mr. Bazemore had a gun.

Further, Mr. Bazemore demonstrated his willingness to again use his weapon when he refused to show his hand or disarm, even after Officer Cairns gave repeated commands to do so. Moreover, Mr. Bazemore then aimed his semi-automatic handgun, from point-blank range, at the

midsection of Officer Cairns. Officer Cairns stated that he was preparing to be shot when he fired his weapon. These circumstances caused by Mr. Bazemore placed Officer Cairns in imminent life-threatening peril.

Under these circumstances, pursuant to Colorado law, specifically, §18-1-707(2), Officer Cairns reasonably used “deadly physical force,” to defend himself and to effect an arrest of a person whom he reasonably believed was likely to endanger human life or inflict serious bodily injury to another if not apprehended without delay.

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 dangerous circumstances, Officer Cairns made a split-second judgment, and my conclusion is that a jury could not reasonably find, beyond a reasonable doubt, that Officer Cairns acted without legal justification as provided in Colorado law. Therefore, no criminal charges will be filed against Officer Cairns.

The Denver Police Department is the custodian of records related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department. This letter will be posted on the Denver District Attorney website and our investigative file will be available for interested citizens to review upon request. As in every case we handle, any interested party may seek judicial review of my decision under C.R.S. §16-5-209.

Sincerely,



Beth McCann
Denver District Attorney

CC: Officer Brent Cairns; Chief Robert White; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Barb Archer, Commander of Major Crimes Division; Ron Sauiner, Commander of District 6; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman Detective Bruce Gibbs, Homicide; and Nicholas E. Mitchell, Office of the Independent Monitor.