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Second Judicial District



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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 Christopher Barela DOB 5/17/1997, which occurred on July 1, 2019, in the 1000 block of Lincoln Street in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the death of Christopher Barela has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against Corporal Scott Mattos (badge number 01051). My decision, based on standards of criminal law, does not limit administrative action by the Denver Police Department where tactical issues may be reviewed or civil actions where less-stringent laws, rules and legal levels of proof apply.

STATEMENT OF FACTS

On July 1, 2019 at 6:25 am, Christopher Barela stepped in traffic to stop and board an RTD bus. After being permitted to board the bus, Mr. Barela created a disturbance such that he was asked to get off the bus at the next stop, E. 1st Avenue and N. Lincoln St. After refusing for several minutes, Mr. Barela eventually descended, throwing a bottle at the bus's windshield and breaking it as he left the area. RTD officers responded to the area and contacted Mr. Barela at 7th and Lincoln. RTD Officer Torres approached Mr. Barela, who reached into a small handbag. Officer Torres drew his service weapon and ordered Mr. Barela to show his hands. In response, Mr. Barela drew what appeared to Officer Torres to be a possible handgun. As the face-off continued, off-duty Detective Malik Gatling drove past. He observed Mr. Barela as well as Officer Torres, who Detective Gatling noted was in uniform. Each was pointing a handgun at the other. RTD Officer Torres did not fire because he thought that the gun might be a BB gun. Detective Gatling dialed 911, reporting the incident while also controlling traffic so as to reduce the likelihood of injury to civilians.

Detective Gatling followed Mr. Barela as the latter traveled up Lincoln St. As he approached 9th Avenue, he discharged his weapon into the air. He was also swinging the gun around Lincoln St. At this time, other officers responded to the area. Corporal Mattos was on duty that morning training a new recruit officer, Officer Sanchez-Patriquin. He approached from the south armed with a rifle. He saw the handgun in Mr. Barela's hand. He saw that other officers nearby had no cover. He was also worried that the recruit officer he was training likewise had no cover. While he was assessing the situation, Mr. Barela manipulated his handgun as if there were a malfunction. He then appeared to have cleared the malfunction, and Mr. Barela fired one shot in the air. He then lowered the gun and pointed it at Corporal Mattos. Corporal Mattos then fired twice. Mr. Barela fell to the ground, but was still holding the handgun or had it close by. From Corporal Mattos's vantage point, Mr. Barela's hand appeared to be reaching toward the gun or to pull the gun up. Corporal Mattos, fearing for the safety of the officers approaching Mr. Barela, fired once more.



RTD Officer Torres and Mr. Barela facing off with weapons.

Only hours after the incident, Corporal Mattos provided a voluntary interview. He stated that as he approached Mr. Barela, it was rush hour traffic and he was concerned for citizens traveling

through this busy area. Through his optic, he noted that Mr. Barela was armed with a handgun. Corporal Mattos also noted that officers nearby were in a position against a building that provided them very little cover. The way he described it, those officers were “sitting ducks.” As Corporal Mattos continued to approach Mr. Barela, the officer ordered Mr. Barela to put down his weapon. Mr. Barela replied “no,” making other statements that were not entirely clear to Corporal Mattos. He stated that it appeared that Mr. Barela “was trying to pull the trigger towards the officers that were against that building.” A short time later “he racks the slide and pops off a round.” It appeared to Corporal Mattos that Mr. Barela’s gun had malfunctioned and that he had now been able to fix that malfunction. At that moment, Corporal Mattos feared for his own safety as well as the safety of nearby officers. He knew that his recruit officer was somewhere immediately behind him. Corporal Mattos stated “he just cleared his malfunction and he’s ready to go and he’s going to shoot – he’s going to shoot a police officer. And as soon as he fired that round off, he came down and he pointed the gun directly in my direction and Officer Sanchez-Patriquin, and I fired two rounds.”



Mr. Barela pointing his handgun toward citizens and officers stopped on Lincoln Street.



The yellow arrow to the left points to Mr. Barela. The yellow arrow to the right points to civilian pedestrians.

When detectives arrived at the scene, they observed and collected a handgun lying next to Mr. Barela. Further, Corporal Mattos's weapon was examined by the Denver Crime Lab. Based upon that examination, and based upon the examination of shell casings left behind at the scene, detectives determined that Corporal Mattos fired 3 rounds. One fired cartridge casing recovered from the scene was identified as having been shot by Mr. Barela's handgun. Furthermore, one live round was recovered from the scene; this evidence suggests that Mr. Barela was indeed attempting to clear a possible malfunction. The handgun recovered from Mr. Barela was tested by the Denver Crime Lab, who determined that it did function properly. Finally, Mr. Barela's fingerprint was obtained from this handgun.



The handgun recovered from Mr. Barela



The live round recovered near Mr. Barela.

Forensic pathologist Meredith Frank conducted an autopsy on Mr. Barela. She determined that Mr. Barela sustained two gunshot wounds. One of these gunshot wounds was to the upper trunk; the other was to the lower trunk. A toxicological screen revealed that Mr. Barela tested positive for methamphetamine and amphetamine.

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. The justification of using physical force in self-defense is described in C.R.S. § 18-1-704.

As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... 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.

Deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and 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. § 18-1-704(2)(a).

The justification for a peace officer’s use of physical force while attempting to make an arrest is described 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

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 of threatened use of a deadly weapon; or...
 - (III) otherwise indicates ... 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 would find, beyond a reasonable doubt, that Corporal Mattos acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that this officer *had* lawful justification to fire at Mr. Barela in self-defense and in defense of others.

Corporal Mattos observed that Mr. Barela was armed with a handgun, which appeared to be functional in light of Mr. Barela's firing it only moments earlier. Furthermore, Corporal Mattos was correct to approach the scene where Mr. Barela had been threatening to shoot at civilians and officers. Several times, he ordered Mr. Barela to put down his gun, which Mr. Barela refused to do. During this time, there were civilians nearby. This took place in the early morning hours on a major Denver thoroughfare when many people were walking, bicycling or driving to work. There were also several officers nearby, and in Corporal Mattos's opinion, they had very little cover for the threat that they faced. After Mr. Barela charged his weapon, he pointed it directly at both Corporal Mattos and Officer Sanchez-Patriquin. At this time, Corporal Mattos reasonably feared for his safety and that of his fellow officer. He was therefore justified in discharging his weapon, as he acted in self-defense and in defense of others.

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, Corporal Mattos was forced to make a split-second judgment, and his decision to shoot Mr. Barela in self-defense and in defense of others was justified under Colorado law.

Sincerely,



Beth McCann
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Aaron Sanchez, District 6; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Bruce Gibbs; Corporal Scott Mattos; John Davis, Attorney for Corporal Scott Mattos; Kristin Bronson, City Attorney; and Nicholas E. Mitchell, Office of the Independent Monitor.