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OFFICE OF THE DISTRICT ATTORNEY
DENVER

April 29, 2003

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Luis Ramon Almeida-Ponce, dob 11/09/78, in which Corporal Randy Murr, 95106, Officer Joseph Trujillo, 00042, and Officer William Carr, 95058, fired their weapons on March 7, 2003, in the parking lot at 5115 Federal Boulevard, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Luis Ramon Almeida-Ponce have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against any of the three officers who fired their weapons in this incident. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed and redressed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this shooting by a peace officer and the applicable Colorado law is attached to this letter. The complete file of the investigation is open to the public at our office, and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

In the early morning hours of March 7, 2003, five Denver Police officers went to the Tequila LeClub, located at 5115 Federal Boulevard, to attempt to arrest a suspect wanted in Texas for an aggravated kidnapping. They had information that the suspect was on the dance floor at that location. After locating the individual they believed to be the suspect, he was taken to Denver Police headquarters to confirm his identity by fingerprint comparison.

Corporal Randy Murr, Officer Joseph Trujillo, and Officer William Carr, three of the officers involved in this felony pickup, were in their separate police cars filling out their log sheets concerning this police action when a woman pulled up and reported that a party flourishing a firearm was present in the parking lot in the vicinity of the Tequila LeClub. The officers immediately responded to the location the woman described. They saw two individuals struggling with one another. The two appeared to be grasping at an object in the area of one of the parties right waistband. As they quickly approached these individuals, one of the parties moved or pushed away from the other, at the same time stating to the officers that the other party had a gun. The individual with a gun was later identified as Luis Ramon Almeida-Ponce ("Almeida-Ponce). The officers were approaching Almeida-Ponce from three directions. The three officers moved to positions in front and to the front sides of Almeida-Ponce. The three officers saw Almeida-Ponce reaching into the right-front side of his waistband. He then quickly began to pull a black semi-automatic pistol from his waistband. In spite of loud and repeated commands by the three officers to stop this action, Almeida-Ponce continued to quickly draw the pistol with his right hand. The three officers fired at him almost simultaneously. The shots were fired in rapid succession. The officers stopped firing when he fell to the ground. The Denver Police dispatcher was immediately notified to send an ambulance--Code 10--and that there had been an officer-involved shooting. Almeida-Ponce was pronounced dead by Doctor Hill at 1:25 a.m.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Luis Ramon Almeida-Ponce ("Almeida-Ponce") in which Denver Police Corporal Randy Murr, Officer Joseph Trujillo and Officer William Carr fired their service pistols. The shooting occurred on March 7, 2003, at approximately 1:15 a.m., in the parking lot at 5115 Federal Boulevard. Immediately after the shooting and in compliance with the protocol for officer-involved shootings, each of the three involved officers was taken separately by a supervisor to Denver Police headquarters. The three officers remained separated and later each gave a voluntary video-taped statement to investigators.

Officer Joseph Trujillo told investigators that he was filling out his log sheet related to the attempt pick up of a party wanted for an aggravated kidnapping that occurred in Texas. While doing so, an unknown female drove up to his police car and reported that there was a party by a white pickup truck flourishing a handgun in the parking lot near the Tequila LeClub. She indicated he put the handgun in his waistband. She described the party as a Hispanic male, 5 foot 8 inches tall, wearing blue jeans, a white shirt, and white cowboy hat. Officer Trujillo stated that Corporal Randy Murr, Officer William Carr, and he, each in separate marked Denver Police vehicles, responded to the nearby location described by the citizen. They approached the location from three separate directions. Officer Trujillo saw what he believed to be two parties scuffling behind a white pickup truck. He trained his spotlight on the two parties. It appeared that one party was behind the other, reaching around his right side to the area of his waistband. The two parties appeared to be struggling over something in that area. As he got out of his police car and moved in the direction of the two parties, Officer Trujillo saw the party in the rear quickly move away from the other party. He heard someone

shout, "He's got a gun!" Officer Trujillo moved to within approximately ten feet of the suspect, while loudly stating, "Let me see your hands." Officer Trujillo said he was off to the front-left side of the suspect. The suspect's hands were reaching into the area of the right side of his waistband. The suspect, instead of coming out with empty hands, quickly began to pull a handgun out of his waistband. Officer Trujillo said he "thought he was going to shoot me or one of my fellow officers." As the suspect continued to pull the gun out, Officer Trujillo fired multiple shots at him. Officer Trujillo said he thought he fired five or six shots but was not certain. He said it could have been more. He said the suspect fell to the ground. He saw the handgun on the ground near his body. He said that Corporal Murr and Officer Carr provided cover, while he made a "tactical reload" of his service pistol. Other officers arrived very quickly and, in compliance with policy, handcuffed the suspect. He said the officers immediately called for an ambulance--code 10--and reported the officer-involved shooting.

Officer William Carr's voluntary video-taped statement to investigators was consistent in pertinent parts with the statements of Officer Trujillo and Corporal Murr. Officer Carr added that when he approached the two individuals in the parking lot, one of them indicated that the other party (Almeida-Ponce) had a gun. This party stated this more than once, then pushed away from the suspect and fled. Officer Carr said he heard Officer Trujillo say that the party had the gun in his waistband. As the officers shouted commands to show his hands and to get down, the party turned toward Officer Carr. Officer Carr saw the gun in his waistband. The party did not comply with the commands. Instead, he grabbed the gun with his right hand and pulled it from his waistband. Officer Carr said he fired as he stepped back around the corner of the van. The party was at the other corner of the van. The party fell to the ground and the gun fell nearby.

Corporal Randy Murr's voluntary video-taped statement to investigators was consistent in pertinent parts with the other officers. He added that as he approached the scene, he heard someone yell, "Gun!" He then saw one of the parties run westbound from the scene. He saw that the other party (Almeida-Ponce) had a gun in his waistband. Corporal Murr said that as the suspect pulled his weapon, Corporal Murr ordered him to drop the gun, and then began to fire at him. He saw the party fall and saw the gun on the ground. Corporal Murr said that he was five to fifteen feet from Almeida-Ponce when the shots were fired. He indicated that Officer Carr was to his left and Officer Trujillo was to his right. Corporal Murr then radioed that there had been an officer-involved shooting and an ambulance was needed—Code 10.

In his video-taped statement to investigators, Pedro Bojorquez said he was at the Time Out Billiards near the scene of the shooting. In pertinent part, he told investigators that when he went outside to smoke, he saw police cars drive into the parking lot. He said he could not see the incident very well because there were police cars between him and the location of the incident. He heard someone say, "He got a gun!" He then heard officers yelling, "Drop it! Drop it!" He said there were

two or three officers outside their cars. The officers yelled the commands four or five times. He was approximately forty feet away and could see the officers pointing their guns. He heard a lot of gunshot that were very fast. He then saw a man fall to the ground. Mr. Bojorquez also went to the ground when the shooting began. He said that he was not in a position to see whether the man had a gun.

In his video-taped statement, Juan Cruz said he had parked in the parking lot and was just opening the door to enter the Tequila LeClub when he saw officers walking with their guns drawn. He heard the officers yell, "Put the gun down!" He then heard what sounded like a machinegun or firecrackers. He was at the front door of the Tequila LeClub at this time. He could not see who the police officers were pointing their guns at in the parking lot. He did not see the actual shooting.

In her video-taped statement to investigators, Christa Gonzalez said she was driving into the parking lot near the vicinity of the shooting. She had stopped in a position where one of the police cars was partially blocking her view of the confrontation. She told investigators she saw a Hispanic male near a white van. She indicated that the following actions occurred pretty quickly in a continuous motion. She heard officers order the man to put his hands up. She said the man did not respond to the officers' command. He appeared to hesitate, then began to walk forward. She said the man's hands were down and she could not see them. He was turned at an angle to her view and her view of his right-front side was obstructed by the police car. She could not see below his lower chest area—she could not see his waistband. She then immediately heard, "Drop the weapon." She said she heard a shot and the man's arms and hands went up in the air almost instantly. She perceived this motion to be as if to surrender. Ms. Gonzales said "it all happened real fast." She said she did not know whether the first shot came from the man or the officers. The other shots followed the first shot in rapid succession. She said that the initial shot followed by the other shots "happened in one continuous motion." The man grabbed his stomach area, bent over, and fell to the ground. She said the closest officer at the time the shots were fired was close enough to touch the man. She told investigators that she really couldn't see if he had a gun or not because of her vantage point and his arms were down. She said that the officers would have been in danger if the man did, in fact, have a firearm.

Doctor James Wahe of the Denver Office of the Medical Examiner responded to the scene and examined Almeida-Ponce. When he was rolled over, a 9mm bullet matching those found in his weapon was found under him.

Almeida-Ponce was armed with a Walther P-1, 9mm semi-automatic pistol. This weapon has a magazine capacity of 8 rounds and may be carried with an additional round in the chamber. When

recovered at the scene of the shooting the weapon had 6 rounds in the magazine and one in the chamber. The weapon was determined to be properly functioning. It will fire single and double action and will chamber the next cartridge from the magazine.

All three of the officers who fired their weapons in this incident were armed with identical weapons. Each was armed with a Glock, Model 21, .45 caliber semi-automatic pistol. This weapon has a magazine capacity of 13 rounds and may be carried with an additional round in the chamber. Each officer was carrying the weapon in this fully-loaded condition at the time of the shooting. Each officer's weapon was loaded with department ammunition.

Investigators submitted to the Denver Police Crime Laboratory Bureau for analysis twenty-seven Speer .45 caliber cartridge cases and 8 bullets/fragments which were recovered at the scene. Also submitted for analysis were 14 coroner's envelopes with bullets/fragments from the body of Almeida-Ponce. Nine of the cartridge cases were identified to Corporal Murr's weapon. Twelve of the cartridge cases were identified to Officer Trujillo's weapon. Six of the cartridge cases were identified to the weapon of Officer Carr. This is consistent with a total of 27 shots being fired by the three officers.

The bullets received from the Coroner's Office taken from the body of Almeida-Ponce are all consistent with having been fired from Glock .45 caliber firearms. However, these bullets/fragments could not be identified or eliminated as having been fired from any specific firearm. All of the bullets recovered from the scene and the Coroner's Office are consistent with having been fired from the three officers' weapons but are not identifiable to a specific officer's weapon.

Doctor James W. Wahe of the Denver Office of the Medical Examiner performed the autopsy on the body of Almeida-Ponce at 10:00 a.m. on March 7, 2003. He determined the cause of death to be multiple-gunshot wounds. In his autopsy report he stated that "there could be as few as seventeen wounds or as many as twenty separate wounds." This is because more than one wound may have resulted from a single shot. Toxicology testing revealed a blood-alcohol level of 0.156%. In Colorado, a person is presumed to be driving under the influence of alcohol if the blood-alcohol level is 0.100%.

We know that Corporal Murr fired nine shots, Officer Trujillo fired twelve shots and Officer Carr fired six shots. We also know that, at a minimum, Almeida-Ponce was struck seventeen times. Based on these numbers, we know that at least two of Officer Trujillo's shots struck Almeida-Ponce. As to Corporal Murr and Officer Carr, it is possible that none of the shots, fired by one of them, struck

Almeida-Ponce. Shots from at least Officer Trujillo and one of the other officers had to have struck Almeida-Ponce. It is probable that some of the shots fired by each officer struck Almeida-Ponce. However, it is impossible to determine which of the officers caused which of the wounds suffered by Almeida-Ponce.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being and causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. As the evidence establishes that Almeida-Ponce was shot by the officers, the determination whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly physical force in Colorado. In pertinent part, the statute reads as follows:

- (2) A peace officer is **justified** in using deadly physical force upon another person ... 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 the arrest or to prevent the escape from custody of a person whom he reasonably believes:
 - 1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - 2. Is attempting to escape by the use of a deadly weapon.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term “Deadly weapon” as follows:

(2)(e) **“Deadly Weapon”** means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

- (1) A person commits the crime of assault in the first degree if:
 - (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the “Assault in the first degree” statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

“The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable.”

Therefore, the question presented in this case is whether, at the instant the officers fired the shots that killed Almeida-Ponce, they reasonably believed that Almeida-Ponce was directing or was about to direct deadly physical force against one of them or another person or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing the death of another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

In response to specific information from a concerned citizen that a party armed with a firearm was present in the parking lot in the vicinity of the Tequila LeClub, officers immediately responded to identify and confront the described party. The officers observed two individuals engaged in what appeared to be a struggle at the location identified by the reporting citizen. As they quickly approached these individuals, one party moved or pushed away from the other, at the same time stating to the officers that the other party had a gun. The three officers saw the party with the gun reaching into the right-front side of his waistband, then quickly begin to pull a black semi-automatic pistol on the officers. In spite of loud and repeated commands to the party by the three officers to stop this action, the party continued to quickly draw the pistol with his right hand. This action, in direct rejection of the commands, caused the three officers to fire their service pistols at the party. The officers fired based on their perceptions of the threat from their three separate vantage points. The

officers perceived an imminent deadly threat by Almeida-Ponce's actions. The shots were fired in a rapid, continuous sequence. The officers stopped firing when the party fell to the ground. The weapon dropped near him on the ground.

Officers have a right to act on reasonable appearances to protect themselves and other citizens. Under circumstances such as those presented here, officers must make a split-second decision whether to fire. This decision is generally forced upon them by the non-compliant conduct of the offender. It is not a decision they invite, but one they are forced to make. It is a decision that often does not provide the luxury of a bright-line determination. If the barrel of a loaded firearm is permitted to become trained upon the officer or another, it is too late to react and avoid serious injury or death. Where a firearm is involved, a threat can instantaneously turn into an attack by the mere movement of the weapon, particularly when that action is in concert with other non-compliant behavior and aggressive actions. Almeida-Ponce is the only person who could know with certainty what his intentions were at the instant he pulled the weapon. The officers are not mind-readers. They must react to the quickly evolving circumstances which confront them. They do not have the luxury of pushing a pause button. Under the facts of this case, it was not unreasonable for these officers to perceive that Almeida-Ponce was an imminent deadly threat to them.

It is unfortunate that Almeida-Ponce chose to act as he did. His actions throughout this confrontation were non-compliant, aggressive and consistent with an intention to harm the officers. It is fortunate that no officer or citizen was injured in this life-threatening confrontation. Based on the totality of the facts developed in this investigation, as summarized in this letter, there is no reasonable likelihood of proving beyond a reasonable doubt that any of the officers who fired at Almeida-Ponce committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against any of the three officers who fired their weapons in this incident.

As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,



Bill Ritter, Jr.
District Attorney

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cc:

Corporal Randy Murr
Officer Joseph Trujillo
Officer William Carr
Marc Colin, Attorney at Law
Wellington Webb, Mayor

All City Council Members

Phil Hernandez, Executive Director, Agency for Human Rights and
Community Relations

Tracy Howard, Manager of Safety

Dave Abrams, Deputy Chief

Mary Beth Klee, Deputy Chief

Dan O'Hayre, Division Chief

Armedia Gordon, Division Chief

Steve Cooper, Division Chief

Juan Maldonado, Division Chief

Tim Leary, Captain, Crimes Against Persons Bureau

Jon Priest, Lieutenant, Homicide

Mike Fetrow, Sergeant, Homicide

Shane Webster, Homicide Detective

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