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# State of Colorado

OFFICE OF THE DISTRICT ATTORNEY  
DENVER

August 15, 2003

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

RE: Investigation of the shooting death of Christopher W. Jones, DOB 5/26/67, DPD #443275, by Officers Scott Hartvigson, 90013, and Jode Sprague, 95052, on March 14, 2003, at 2311 West 33rd Avenue, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Christopher W. Jones have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against the 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 evening hours of Friday, March 14, 2003, Denver police were dispatched to a single-family residence at 2311 West 33rd Avenue. The individual who called the police, Mr. Paul Touma, 3/5/68, advised the dispatcher that his friend, Christopher Jones, who lived at the residence, was suicidal and was "losing it." Officers arrived at the location and met Mr. Touma. Mr. Touma told officers that he was a long-time friend of Jones and that he had been provided a key to the house by Jones and his wife, Diane Jones. Mr. Touma told officers that Christopher Jones was inside the house and officers saw movement or shadows, confirming that belief. Some officers took a position at the back door to assure that Jones would be unable to leave from the back. Officers at the front door then began attempting to make contact with Jones through the locked front door. After several minutes without success, officers obtained the front-door key from Mr. Touma and opened the front door.

Corporal Jode Sprague, 95052, and officers Donald Hardy, 99064, Scott Hartvigson, 90013, Scott Kunugi, 96033, and Adam Lucero, 99047, entered the house with Corporal Sprague and Officer Hartvigson leading the entry team, service pistols drawn. As they opened the door, the officers began yelling “Denver Police!” The officers proceeded through the house, checking each room for Jones. In so doing, they noted that the house was in disarray.

The officers then located a locked bathroom door. Officer Hartvigson announced “Denver Police! Come out!” and tried the door. Corporal Sprague was also stating, in an “authoritative” voice, “Denver Police! Chris, you need to come out and show us your hands!” Corporal Sprague and Officer Hartvigson had taken positions on each side of the bathroom door and, when there was no response; Officer Hartvigson decided to kick in the door. He returned his handgun to his holster and kicked the door twice; it swung open. Officer Hartvigson then saw Jones coming toward him at very close range from inside the bathroom, wielding a large kitchen or butcher-type knife. Officer Hartvigson began retreating toward a southwest bedroom and as he did so he drew his pistol.<sup>1</sup> Corporal Sprague had not re-holstered his gun and as Jones rapidly closed the distance on Officer Hartvigson, Corporal Sprague began firing his service pistol at Jones. Officer Hartvigson also began firing and Jones fell to the bedroom floor. Denver paramedics responded but, upon their arrival, determined that Jones had died at the scene.

#### STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Christopher Jones by uniformed Denver Police Officers Jode Sprague and Scott Hartvigson. Officers had been called to a single-family residence on a report of a suicidal party who was violent and was “throwing things at the complainant.”<sup>2</sup> This call was made by Paul Touma at 9:50 p.m. A number of Denver police officers responded to the scene and, ultimately, made entrance to the home. While searching the house, officers located a locked bathroom in which Jones had secreted himself. Officers kicked the bathroom door and Jones, who had armed himself with a large kitchen knife, began to attack Officer Hartvigson. Corporal Sprague and Officer Hartvigson fired at Jones in response to the knife attack by Jones. Immediately after the officers fired their weapons, the dispatcher was advised of the fact of the officer-involved shooting and an ambulance was requested—Code 10. This call was made at 10:07 p.m. Denver paramedics responded and Jones was pronounced dead at the scene.

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<sup>1</sup> A very small hallway (approximately eight feet) has a bedroom at each end. The bathroom door is immediately adjacent to the door of the southwest bedroom to which Officer Hartvigson retreated. Corporal Sprague was positioned nearer to the door to the other bedroom.

<sup>2</sup> The computer aided dispatch [“CAD”] records reflect that Paul Touma's first 911 call was received at 9:48 p.m. Touma told the call-taker that he was calling from a cell phone and that he was at his friend's house at 2311 W. 33<sup>rd</sup> Avenue and his friend was “losing it/possibly having mental episode.” The CAD reports indicate that Touma was having cell phone battery problems and had to call back several times. At 9:50 p.m., Touma called back, advising the call-taker that his friend was possibly suicidal, violent and that someone will possibly get hurt. (The actual entry reads: COMP CALLING BACK. FRIEND POSS SUIC.. BY OD..UNK PILLS. SAYS HE IS VIOLENT & SOMEONE WILL POSS GET HURT //UNK IF THE PARTY IS SUIDICAL//SYAS PARTY ON DRUGS & DK [DRUNK].. Touma's phone lost the signal. Fifteen seconds later, Touma called back and told the call-taker that the suspect was a white male named Chris Jones and that he was violent and was “throwing things” at Touma. The next entry, about 30 seconds later, established that Touma had left the location and was sitting in his vehicle, a blue SUV, in the back of the house “BLOCKING FRIENDS VEH IN SO HE WONT ATTEMPT TO LEAVE.” The next entry establishes Touma told the call-taker that Jones had “NO WEAPONS...OTHER THAN KITCHEN KNIVES.”

All of the officers who entered the house were dressed in full blue Denver Police Department uniforms. Corporal Sprague was armed with a Glock model 21, .45 caliber semi-automatic pistol. This weapon has a magazine capacity of thirteen rounds and may be carried with an additional round in the chamber. Officer Hartvigson was armed with a Sig Sauer model P226, 9mm semi-automatic pistol. This weapon has a fifteen round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, both officers' weapons were fully loaded with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, the officers' weapons were given to Denver police crime lab personnel for appropriate testing.

Investigators found six spent .45 caliber shell casings and 9 mm shell casings in the house in the area around the bathroom.<sup>3</sup> Each of the .45 caliber shell casings was identified to Corporal Sprague's pistol; each of the 9mm shell casings were identified to Officer Hartvigson's pistol. Eight of the bullets recovered from Jones' body at autopsy were identified to Officer Hartvigson's pistol. Two of the bullets removed from Jones' body at autopsy were "consistent with [Corporal Sprague's pistol but] are too damaged to be positively identified." At the scene, investigators located five bullets and one bullet fragment. Four of the bullets found at the scene were "consistent with [Sprague's pistol]. However, they are too damaged to be positively identified." One of the spent projectiles was "consistent with the Sig-Sauer 9mm. However, it is too damaged to be positively identified."

Jones was pronounced dead at the scene and his body was not removed until investigators had completed the initial documentation of the scene. Jones was found lying on his left side inside the bedroom in the southwest corner of the house. A kitchen type knife handle was observed, but Jones' body was lying on top of the blade. This knife was recovered and placed in property.<sup>4</sup>

On March 15, 2003, at 10:10 a.m., Dr. Thomas Henry, forensic pathologist and Chief Medical Examiner with the Denver Medical Examiner's office, performed an autopsy on Jones's body. The cause of death was determined to be multiple gunshot wounds. Dr. Thomas noted evidence of thirteen gunshot wounds. One bullet struck Jones in the mid-forehead. Six wounds were documented to the chest, one to the right-upper chest, one to the mid-upper chest, one to the "midline of the anterior [front] chest," one "enter[ed] below the right nipple," one to the right-lower chest and one to the left chest. An eighth wound was noted to the abdominal area, "3.5 cm to the left of the midline." A ninth wound was documented to the right flank. Each of the bullets causing these wounds was recovered at autopsy. Dr. Henry also noted four "through and through" wounds: one to the back of the upper-right arm; one to the back of the right forearm, one to the side and back "posterolateral" right hip; and one to the side of the right leg "just above the knee." A bullet which Dr. Henry associated with the exit wound of the injury to the right hip was found next to the exit wound when Jones' clothing was removed at the beginning of the procedure. Toxicological analyses of blood, vitreous and urine samples obtained from Jones' body were positive for the presence of ethanol and THC (the active ingredient in marijuana). The blood alcohol level was determined to be .165%; the vitreous ethanol

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<sup>3</sup> A scene diagram and key, depicting the placement of the various items documented by investigators at the scene is attached as Appendix 1.

<sup>4</sup> A photograph of the knife is attached as Appendix 2.

level was determined to be .190%.<sup>5</sup> (These distinctions reflect the manner in which alcohol is metabolized.)

Investigators learned that before he called the police, Paul Touma had been contacted by Jones' wife, Diane, who was worried about his state of mind. Neither Mr. Touma nor Mrs. Jones, 7/8/66, were witnesses to the actual shooting, but because both had detailed background information about Jones, investigators asked them to respond to Denver police headquarters and provide video-taped statements. Both witnesses agreed to do so.

Numerous officers were present outside of the house at the time of the shooting and written statements were obtained from each of those officers. Investigators determined that, among the officers who were inside the house at the time of the shooting, Officers Hardy and Lucero were eyewitnesses to the shooting. Both provided written and video-taped statements detailing their observations. Officer Kunugi was in another room and heard but did not observe the shooting. He provided a written statement to investigators.

Following the shooting, and in accordance with protocol, Corporal Sprague and Officer Hartvigson were separated from one another and the other witnesses. The officers were taken by uninvolved supervisors to Denver police headquarters where they later gave voluntary video-taped statements to investigators.

The shooting incident was the culmination of events that, insofar as concerned law enforcement, began on February 28, 2003. At about 9:08 a.m. on that date, Diana Jones called the Denver police dispatch center. The CAD report reflects that the caller wished for the police to do a "welfare check" at the Jones' home at 2311 West 33<sup>rd</sup> Avenue. The information was that

COMP AND HUSBAND HAD A FIGHT THIS MORNING. HE THREW HER OUT OF THE HOUSE. SHE STATES IS NOT DK OR HIGH. HIS NAME IS CHRISTOPHER JONES WM 35YO. SHE THINKS HE IS SUICIDAL. UNK METHOD. NO GUN IN HOUSE. HE HAS THREATENED TO HANG HIMSELF TODAY. SHE IS OUT OF DENVER AND WILL CALL BK FOR A DISPO.

(The normal CAD printout is an "all capital" letter format. "COMP," "DK," and "YO" are shorthand terms for "complainant," "drunk" and "years old" respectively.)

At 6:55 p.m. on February 28, 2003, Denver police CAD records reflect that call-takers received a call on a "suicidal person" at 2311 West 33<sup>rd</sup> Avenue. The CAD report reads:

2<sup>ND</sup> HAND INFO – STATES VESTA VARGAS CALLED IN FROM [LONG DISTANCE TELEPHONE NUMBER] SAID SHE SPOKE TO HER SON CHRIS JONES WHO LIVES AT ABV. LOC. ABOUT 10 MIN AGO AND SAID HE WAS

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<sup>5</sup> These levels indicate that Jones was under the influence of alcohol under Colorado law.

GOING TO KILL HMELF – NO METHOD MENTIONED – PER VESTA HE IS UPSET BECAUSE HIS EX WILL NOT TALK TO HIM – PARTY HAS BEEN DRINKING.

At about 10:00 p.m. on February 28, 2003, Denver police dispatchers received another call. This call was a “BOLO”<sup>6</sup> aired on all channels for officer safety. The information provided the following:

ARVADA OFFICERS ARE APPLYING FOR DOMESTIC VIOLENCE – HARASSMENT – IF SUSP IS CONTACTED CHECK WELFARE AND NOTIFY OFFICER LEWIS (ARVADA) . . . SUSP LEFT MESSAGE FOR HIS WIFE THAT HE MIGHT GO ON A MURDEROUS RAMPAGE OR COMMIT SUICIDE – NO KNOWN WEAPONS – DRIVING A GREY 2002 BUICK REGAL LIC 369GUE POSS HOMICIAL-SUICIDAL PARTY --- CHISTOPHER WADE JONES DOB 052667– WM 508-155-BRN – BRN \*\*\*\*\*PTY LIVES AT 2311 W 33<sup>RD</sup> AVE \*\*\*\*\*

Officer Hardy was one of the Denver officers who responded to 2311 West 33<sup>rd</sup> Avenue on February 28, 2003. He heard the dispatcher air the call on March 14, 2003, and recalled the address. He decided to cover the call and, as he noted in his written statement, “when the call came out on 3-14-03, [he] aired the information that Arvada PD had BOLO’d to the officers responding for officer safety.”

When she met with investigators on March 15, 2003, Diana Jones provided information that shed light on the series of broadcasts documented above. She told the investigators that she and Jones had been married for seven years, adding that in the last several months their relationship had become “very shaky,” and that she had been staying with her parents for some of that time. She confirmed that she had entered into a “brief affair” with another man and that Jones learned about that relationship early in the year. She stated that she had ended the liaison around Valentine’s day, but that one of the reasons she did so was that she became afraid for the man’s safety, “because [Jones] made threats . . . that he would kill him.”

Mrs. Jones stated that on March 14, 2003, she had been at her place of employment between the hours of 11:30 a.m. and 9:30 p.m. and that she had spoken with Jones during the day but that the phone conversations had not been cause for alarm. However, at some time between 6:00 p.m. and 7:00 p.m., the nature of the calls changed and Jones

just started going off. Calling me a whore. Telling me that he couldn’t get through to the store. That he believed that I wasn’t in the store, that I was out with this person he and I had this brief affair with. And I told him he was wrong and I told him that I would have to call him back because I was trying to work. And then he just, he must have called 20 times, and just yelling and screaming at me; accusing me of the same

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<sup>6</sup> Be on the lookout.

thing over and over again that we've been fighting about since the 28<sup>th</sup> of February. And, um, then, he made a threat to me, he made a threat to my parents, and he made a threat to the person I'd had the affair with. And, more than anything, I'm worried about him hurting himself because he has threatened to hurt himself.<sup>7</sup>

Jones' words and manner so concerned Mrs. Jones that she telephoned their mutual friend, Paul Touma, and asked him to go over to the Jones home to check on Jones. Mrs. Jones stated that at about 9:30 p.m., she received another telephone call from Jones. She was still at work when he called her. She described him as being "just, still, just very upset. I could tell that Paul was there and I told [Jones] that I wasn't coming home, that I didn't feel safe coming home the way he was acting and I was going to go to my mom's house."

Mr. Touma also provided a great deal of background information. Mr. Touma told investigators that he had been aware that the couple had been having marital problems for several months and that, although they had been attempting to reconcile, "about two months ago, [Jones] became suspicious that Diane was having an affair." Touma was aware that Jones had confronted Mrs. Jones with his suspicions and that she had admitted having a liaison but averred that it was over. According to Mr. Touma, Mrs. Jones' protestations notwithstanding, Jones became suspicious about and paranoid of her activities. He caught her in what he believed were several lies and began to feel that "he could not trust anything she said."

When investigators spoke with Mr. Touma, he confirmed that he had received a call from Diane Jones at about 9:30 in the evening of March 14, 2003. According to Mr. Touma, Mrs. Jones

said that things had taken a turn for the worse and that she had spoken to him on the phone while she was at work and he was verbally abusive, she said, and then once that conversation had ended he took the phone off the hook and wouldn't answer the phone. She asked if I would go check on him. And then I have, from previously like watching their cats and keeping an eye on their house when they've been out of town, in the past, I have a set of keys to their home. I rang the doorbell three times and he wouldn't answer and I walked around back to see that his car was there, you know, he is in there but he's not answering, so I was worried, so I used my keys and opened up the door. At that point, he was on the phone with Diane. I definitely, myself, heard verbal abuse, foul language, that he was cursing her out over the phone. And he hung up the phone and he was like "what the hell are you doing here?" And, I said, "I came here to check up on you. I came to see how you were doing." I noticed that he had a fifth of Seagram's in his hand. I could tell he was obviously intoxicated. He started talking to me about, and to me which is absolutely paranoid, 'that I'm on Diane's side, I don't care about him and that I'm out to get him just like everybody else.' "

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<sup>7</sup> When asked to describe the specific threats, Mrs. Jones stated "he said he was gonna kill us . . . 'I'm gonna kill you, I'm gonna kill your mom, I'm gonna kill your dad, I'm gonna kill [the third party involved in the affair], he threatened [that party's] daughter."

Mr. Touma recounted that Jones became increasingly upset. He threw the telephone against a wall and also smashed the bottle of alcohol. When he did this, Mr. Touma left the home and placed the 911 call described in footnote one, above. He stated that he called “not because I was fearful for my safety, but I called because, one, I was fearful for what he might do to himself and, two, that he needs, that I believe he needs some psychological help and that, that hopefully if the authorities intervened he would get the, some mental health treatment.” Mr. Touma estimated that he had been at Jones’ home about ten minutes before he decided to call the police. After he called the police, Mr. Touma waited outside. When the first officer arrived, Mr. Touma met him in front of the house and advised the officer that Jones was still in the house. He also told the officer, “if you can’t get in, I’ve got keys right here.”

Arriving officers made sure that all of the exits to the house were secure and, after noting movement inside the home, decided to enter the home and attempt to de-escalate the situation and calm Jones down. Corporal Sprague and Officer Hartvigson tried the front door. It was locked and Corporal Sprague walked over to Mr. Touma, got the house key from him and returned to the front door. He unlocked the door and, as Officer Hartvigson described it, “we pushed the door open, at that point both of us announced, you know, ‘Denver Police, come on out!’ And, uh, Sprague knew the guy’s name . . . he was callin’ out, ‘Chris!’” The two officers entered the house, closely followed by Officers Hardy, Kuniugi and Lucero. The officers began checking the various rooms of the house, guns drawn, and, as they did so, they continued to announce themselves. Ultimately, after checking or “clearing” the other rooms in the home, the officers arrived at a locked door to what they believed to be the bathroom. In his written statement, Officer Lucero described the following moments:

This is when we came to the locked bathroom door. I know either ofc [sic] Sprague or ofc [sic] yelled something like, Chris, open the door, it’s the police. I was positioned at the northwest bedroom entry facing south looking directly at ofc Hartvigson who was at the southwest bedroom entryway closest to the bathroom door. Ofc[sic] Sprague was just to my left about 2 feet to the south of me at the hallway entryway. Ofc. Hartvigson then kicked the bathroom door a few times to get it open. I was looking at ofc. Hartvigson’s face when the door opened. Hartvigson’s eyes became real wide and he started moving back. That’s when I saw a knife blade come out of the bathroom doorway about head level.

Both Officers Hartvigson and Sprague corroborate the statements of others regarding the information they had received upon arriving at the house and the manner in which they made entry into the house. Officer Hartvigson told investigators that, once the door was opened, he went in first, with Corporal Sprague following him “and we both were announcing<sup>8</sup> . . .” Officer Hartvigson told investigators that the officers searched the house, ultimately arriving at the door to the bathroom.

The evidence reflects that when they arrived at the bathroom, Officer Hartvigson took a position to the south of the bathroom door; Corporal Sprague stood north of the bathroom door. Officer Hartvigson tried the door and felt the doorknob move but the door didn’t open. Officer

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<sup>8</sup> Announcing their presence as Denver police officers.

Hartvigson told investigators that he stood at the bathroom door and ordered anyone inside to come out, noting that he and Corporal Sprague issued such commands for “30 seconds to a minute.” When there was no response, Officer Hartvigson advised Corporal Sprague that he was going to “kick” the door. He then returned his gun to his holster in preparation for this action. He told investigators “I kick it once and it doesn’t go, so I kicked it a second time.” This time the door opened and, according to Officer Hartvigson, almost immediately Jones rushed him, wielding a knife. He described the confrontation in this way:

. . .an [the door] flops open real quickly so, it’s, the, as it’s hitting whatever is behind it, he’s already comin’ out of the bathtub. And he’s got, what looked to me to be about a 10 inch butcher knife or kitchen-type knife . . . And as soon, like I said, as soon as that door, he’s coming at me. Well, this hallway is only, I don’t know, about yea [sic] wide, three foot, three and a half foot wide. And I have no place to go . . .

Officer Hartvigson retreated and moved to his side, aware that he had to move out of Corporal Sprague’s field of fire and away from the blade of Jones’s knife. As he rapidly backed up, he pulled his service pistol from his holster and began to fire. He estimated that Jones was three feet away from him when he began firing.

Corporal Sprague’s description of the initial entrance into the residence is consistent with those given by other officers and witnesses. He stated:

I either turned the knob or Officer Hartvigson turned the knob and pushed, pushed open the [front] door. As soon as we did that, I’m not sure about, I know both Scott [Hartvigson] and I drew our weapons. As I step into the door, I said, or I yelled, “Denver Police, Chris! Show us your hands.” We did not know where, where he was or who all was inside the residence.

Corporal Sprague recalled that, when they arrived at the bathroom door, Officer Hartvigson tried the door and found it locked. At that point, the officers again announced their presence. Corporal Sprague stated:

We knew we’re gonna [sic] have to force this door open. I believe at that point [Officer Hartvigson] holstered his gun, so I tried to move out just a little bit more over this way, trying to cover [Officer Hartvigson.] And [Officer Hartvigson], with his right leg kinda [sic] pied out here, kicked the door and the door just bowed and then didn’t open. So [Officer Hartvigson] kicked it a second time and as soon as the door flew open -- I’m looking at the, the open doorway, and [Officer Hartvigson] is standing next to it – as soon as that door opened [Officer Hartvigson’s] eyes went [unintelligible] and he, I mean he just started back peddling. And, at the same time, as soon as the, the first thing that, that I saw come out the door was a large knife, and I, I believe it was in, uh, this guy’s left hand,



From his position, Corporal Sprague estimated that he was about three feet away from Jones when Jones came out of the bathroom. He saw Jones rushing Officer Hartvigson and feared that Jones “was gonna kill Scott [Hartvigson].” Corporal Sprague had not returned his pistol to his holster when Officer Hartvigson kicked the door. As Jones closed distance on Officer Hartvigson, Corporal Sprague fired his weapon several times in rapid succession. He saw Jones fall and he ceased firing. The evidence suggests that the two officers fired almost simultaneously.

When Jones fell to the floor, Corporal Sprague and Officer Hartvigson approached him cautiously. Officer Hartvigson noted that Jones’ knife was partially beneath one of his legs. Pursuant to DPD procedure, Corporal Sprague began to place handcuffs on Jones, but he quickly realized that Jones was not responsive and he stopped after placing the handcuffs on one wrist. Both of the officers were aware that an ambulance had been requested and the Dispatcher had been advised of the officer-involved shooting. Each left the area where the shooting had occurred to await the arrival of supervisors.

### 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 by a peace officer is justified. As the evidence establishes that Christopher Jones was shot by the officers, the determination of 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 Christopher Jones, they reasonably believed that Jones 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

When the officers responded to the 9-1-1 call for assistance, they had significant information about Jones and his conduct, as described in this letter. That included, among other things,

information that he might be a danger to others and to himself. They were aware that he had been repeatedly verbally abusive to his wife on the telephone that evening and was acting irrationally. The officers were aware that Jones was likely intoxicated. They also knew that he had, minutes before, engaged in aggressive, destructive conduct in Mr. Touma's presence when Mr. Touma tried to speak to him. This included throwing items against the wall and other destructive acts within his residence. This conduct caused Mr. Touma to call 9-1-1. Mr. Touma was concerned for Jones' safety and felt that he needed mental-health treatment.

After speaking with Mr. Touma and making verbal efforts to locate and engage Jones, the officers made the decision to enter the home using a key they obtained from Mr. Touma. They indicated their intent was to attempt to de-escalate the situation and calm Jones down. Unbeknownst to them, Jones had armed himself with a knife, secreted himself in the bathroom, and locked the door. As the officers searched for Jones and repeatedly attempted to get him to respond, Jones remained hidden and silent. The search soon reached the hallway that led to the bedrooms and bathroom.

As the officers continued their efforts to get Jones to respond to their statements, Officer Hartvigson determined that the bathroom door was locked. Based on all the facts known to the officers at the time, they had good reason to believe that Jones was in the bathroom, but they had no way to know what condition he was in, whether he was armed, or what level of threat he posed. Nevertheless, the decision was made at that time to kick the door. Whether that was the best tactical option under the specific facts of this case is a legitimate question to be assessed and answered by those responsible for other levels of review of officer-involved shootings. Among other considerations, when confrontations such as this are evolving, officers should keep in mind the gravity of the underlying criminal activity that forms the basis for contacting the party in the first instance; the desired outcome they are attempting to achieve; how quickly action must be taken; and whether disengagement and further planning is practicable. Along with the statutory authority for police officers to use deadly physical force under appropriate circumstances comes the associated responsibility to insure the decisions they make are sound and consistent with their objective. The scope and limit of our authority is only to determine whether criminal charges are fileable against the officers, not to assess the wisdom or correctness of the string of strategic and tactical decisions made along the way that placed them in the life-or-death "final frame."<sup>9</sup>

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<sup>9</sup> As I have stated repeatedly and have written in our "Officer-Involved Shooting" enclosure, "The Denver Police Department's Firearms Discharge Review Board's after-incident, objective analysis of the tactical and strategic string of decisions made by the officer that lead to the necessity to make the split-second decision to shoot is an important review process. It is clearly not always possible to do so because of the conduct of the suspect, but to the extent through appropriate tactical and strategic decisions officers can de-escalate, rather than intensify these encounters, the need for split-second decisions will be reduced. Once the split-second decision time frame is reached, the risk of a shooting is high. The Denver Police Department's administrative review of officer-involved shootings improves police training and performance, helps protect citizens and officers, and builds public confidence in the department."

"Denver police officers handle well over a million calls for service each year and, unfortunately, in responding to these calls they face hundreds of life-threatening encounters in the process. In the overwhelming majority of these situations, they successfully resolve the matter without injury to anyone. Clearly, not all potentially-violent confrontations with citizens can be de-escalated, but officers do have the ability to impact the direction and outcome of many of the situations they handle, based on the critical decisions they make leading up to the deadly-force decision. It should be a part of the review of every officer-involved shooting, not just to look for what may have been done differently, but also to see what occurred that was appropriate, with the ultimate goal of getting better at what they do."

Officer Hartvigson, covered by Corporal Sprague, holstered his firearm before attempting to kick open the door. Officer Hartvigson and Corporal Sprague did not know, at that instant, that this would be the beginning of the “final frames” of this encounter. This would, in fact, lead to a “split-second decision” to shoot. It is the conduct within these “final frames” that forms the basis for our decision in this matter.<sup>10</sup>

Officer Hartvigson’s first kick was unsuccessful, but the door flew open with the force of the second kick. The decision to kick the door at that time triggered Jones’ response. Instantaneously, Jones attacked Officer Hartvigson with the knife raised and held in an aggressive position. Officer Hartvigson, by holstering his firearm, was now unprepared to defend himself against this knife attack. As he retreated into the southwest-bedroom, Officer Hartvigson drew his firearm. In these same “final frames,” Corporal Sprague saw the knife at head level and then Jones rapidly emerge from the bathroom in aggressive pursuit of Officer Hartvigson. Both officers began to fire at Jones. Multiple shots were fired by each officer in rapid succession. Jones was struck multiple times and the attack ended.

In cases involving knives (edged weapons), a threat with a knife against an officer can very quickly turn to an attack. A threat generally turns to an attack by the offender closing distance on the officer. This can happen in the blink of an eye. Or, as here, there may be no prior threat, no warning, just an instantaneous attack. The distance that separates the suspect from the officer becomes critical in the officer’s assessment of the level of danger and the available response options. Under the specific facts of this case, Jones’ actions forced an immediate survival response from the officers. Officer Hartvigson had holstered his firearm prior to kicking in the bathroom door. Corporal Sprague had his weapon drawn to cover Officer Hartvigson and was able to fire quickly after perceiving the attack. Officer Hartvigson drew his weapon and fired as he retreated into the bedroom. Both officers stopped firing when Jones went down. These “final frames” of the confrontation occurred very quickly—in a matter of seconds. Officers do not shoot to kill, although as here, that may be the result. If justified to shoot, the officers shoot for center-body mass. This gives the officer the best chance to hit the suspect and stop the attack quickly.

Whether Christopher Jones actually intended to stab Officer Hartvigson, or was just setting up a “suicide by cop” response, or had some other purpose in mind, will never be known with certainty. It was, however, clearly reasonable for his actions to be perceived by the officers as life threatening during the “final frames” of this encounter. The speed and intensity of the attack quickly reduced the officers’ options to one—shoot to survive. It is unfortunate that the circumstances of Jones’ life led him to this life-threatening conduct. Unfortunately, after the door was kicked, Jones’ actions forced a deadly response by the officers and an unwanted result. The loss of life here is tragic to be sure. It is fortunate that no harm came to Mrs. Jones, Mr. Touma, or the involved officers.

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<sup>10</sup> The great majority of officer-involved shootings in Denver, and throughout the country, ultimately result from what is commonly called the “split-second decision to shoot.” It is often the culmination of a string of decisions by the officer and the citizen that ultimately creates the need for a “split-second decision to shoot.”

Mr. Touma's efforts to assist his friend in time of need are indeed laudable. His conduct was in every respect that of a concerned and compassionate neighbor and friend. He was purely motivated by a desire to help the Jones' in this troubled time. I commend him for his efforts to attempt do so. It is unfortunate that decisions and circumstances beyond his control did not lead to his desired result—to get help for his friend.

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 the involved officers committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against the officers in the shooting death of Christopher Jones.

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.  
Denver District Attorney

cc: Corporal Jode Sprague  
Officer Scott Hartvigson  
Andy Carafelli, Esq.  
John W. Hickenlooper, Mayor  
All City Council Members  
Alvin J. LaCabe, Jr., 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  
Jon Priest, Lieutenant, Homicide  
Steve Shott, Detective, Homicide  
Joe Delmonico, Detective, Homicide  
Marco Vasquez, Commander  
Chuck Lepley, First Assistant District Attorney  
Lamar Sims, Chief Deputy District Attorney  
Henry R. Reeve, General Counsel, Deputy District Attorney  
Justice William Erickson, Chair, The Erickson Commission