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OFFICE OF THE DISTRICT ATTORNEY
DENVER

December 16, 2003

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

RE: Investigation of the shooting death of Shaun Gilman, DOB 7/4/82, DPD # 543324, on April 18, 2003, at Lincoln Street and 12th Avenue, Denver, Colorado. The officers who discharged weapons were:

Sgt. Joe Rodarte, 90004
Sgt. James Smith, 86004
Sgt. Randy Steinke, 94024
Off. Kristy Garcia, 00022
Off. Jeff Motz, 93014
Off. Robert Pine, 93002
Off. Raymond Sheridan, 01044
Off. Robert Waidler, 00085

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Shaun Gilman have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against any of the officers who fired their weapons as listed above. 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 peace officers and the applicable Colorado law is attached to this letter. The complete file of the investigation will be open to the public at our office and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

At about 2:53 a.m. on Friday, April 18, 2003, Denver police were dispatched to the 7-11 store located at 13th Avenue and Pearl Street in Denver's Capitol Hill area. The information received by call takers and dispatched to the responding cars was that the clerk had been engaged in a confrontation by a male driving a black jeep during which time the clerk "saw a red beam coming at him from the veh[icle]." Uniformed Denver police officer Dwayne Roybal, 00101, was dispatched to the call and Office Raymond Sheridan, 01044, responded to provide cover. Officer Sheridan arrived first. While he was speaking with the clerk, Mr. Gye Hawkins, 7/10/80, Mr. Hawkins pointed out a man who had been with the suspect. As Officer Roybal arrived, Officer Sheridan advised him, by police radio, that he had located a person he believed to be the passenger of the Jeep, Mr. Sammy R. Valdez, 3/27/62. Officer Roybal met Officer Sheridan in the 1200 block of Pennsylvania Street and the two officers placed Mr. Valdez in custody. As they drove Mr. Valdez back to the 7-11, he told the officers that the driver of the Jeep had pointed an unknown object at the clerk. He then offered to direct the officers to the Jeep. Officer Roybal drove him south on Pennsylvania in an effort to locate the suspect vehicle. Officer Roybal had driven a short distance when Officer Sheridan, who had been following Officer Roybal, advised him, by radio, that he had passed the suspect vehicle. Officer Sheridan stopped near the Jeep, illuminated the vehicle with his spotlight and got out of his police car. He approached the Jeep at gunpoint and began ordering the sole occupant, whom he saw to be a white male, out of the car. As he did so, he saw the driver "put the car in reverse" and drive backwards at a high rate of speed toward Officer Roybal, who had turned around when he heard Officer Sheridan's broadcast and was now driving toward Sheridan and the suspect vehicle. The suspect, later identified as Shaun Gilman, drove into Roybal's police car, striking it at the right-front quarter panel, and then drove off. Officer Roybal stopped his car and got out to determine the extent of the damage; Officer Sheridan advised the dispatcher of the collision and the suspect's direction of travel. He then went to check on Officer Roybal and Mr. Valdez. Computer Aided Dispatch ("CAD") records reflect that these events occurred at about 3:08 a.m.

At 3:10 a.m., officers responding to the area located the suspect vehicle at the northeast corner of the intersection of 12th Avenue and Lincoln Street. Officer Ernest Quintana, 01052, driving eastbound on 12th Avenue from Cherokee Street, saw the Jeep crash as the driver tried to make the north turn onto Lincoln Street from westbound 12th Avenue. The Jeep "high-centered" on a fire hydrant and Officer Quintana and other arriving officers quickly determined that Gilman's attempts to dislodge his vehicle and drive off were fruitless. CAD reports show that at 3:12 a.m., Officer Quintana advised the dispatcher that he had a party at gunpoint. This was the beginning of a standoff that would last for the next twenty-three minutes as officers attempted to get Gilman to surrender peacefully.

Numerous officers arrived shortly after Gilman crashed. The streets leading to the intersection at 12th Avenue and Lincoln Street were blocked off and a perimeter was established. At the inner perimeter, officers were placed in an "L-ambush" position with cars set up to the south and east of Gilman's vehicle and officers using those cars and the pillars of the building on the north-east corner of the intersection for cover and concealment. Officers began repeated attempts to establish contact with Gilman, using police car "PA" systems. As these efforts were taking place and as the scene was secured, supervisors at the scene requested that the police dispatcher call out "Metro-SWAT" officers – trained in removing barricaded suspects – and attempt to locate a K-9 officer who might be able to

deploy a dog in an effort to subdue the suspect. An ambulance was also requested and directed to “stand-by” in the area.¹ These steps were being taken because the officers at the scene were confronted by a man who was acting in a manner that can be accurately described as “bizarre.” Gilman was holding a multi-colored cylinder, approximately one foot in diameter, out the driver’s-side window. He was pointing various items through that cylinder. At times he waved what appeared to officers to be a pistol-grip crossbow in the multi-colored cylinder; at other times, officers saw what several believed to be the barrel of the gun protruding through the cylinder. Gilman was also throwing things out of the window and, at times, covering other windows of his vehicle with what witness officers described as a pillow and blankets. When an officer attempting to communicate with him through the public address system asked him to drop his weapons and show his hands, Gilman would either extend his middle finger and, in the words of some of the officers “flip off the officers through the tube”² or “rev the engine of the vehicle” in what officers believed to be continuing attempts to dislodge the Jeep.

The stand-off ended abruptly at 3:35 a.m. Based on the information officers had received from Mr. Valdez and their own observations at the scene, they believed that Gilman was armed with both a crossbow and a firearm. Sergeant James Smith, 86044, and Officer Robert Pine, 93002, were in a position at the top or western-most end of the “L.” Sergeant Smith was armed with a handgun and Officer Pine with a rifle. Gilman, who had been waving his weapons without apparent direction, brought the crossbow and what Sergeant Smith believed to be the barrel of a firearm to bear on Sergeant Smith. He fired his handgun and simultaneously ordered Officer Pine to fire his rifle. Other officers fired at the command. Still others heard the first gunshot and, from their position, believed that Gilman had fired at one of the officers. Ultimately eight officers, armed variously with handguns, rifles and a shotgun, fired fifty rounds in a matter of just seconds. Gilman ceased moving inside his vehicle. Metro-SWAT officers, who arrived as or shortly after the shots were fired, made a tactical approach to the vehicle and determined that Gilman was non-responsive and that it was safe for paramedics to approach him and render aid. Gilman was rushed to Denver Health Medical Center where he was pronounced dead at 4:15 a.m.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Shaun Gilman by uniformed Denver Police Sergeants Joe Rodarte, 90004, James Smith, 86004 and Randy Steinke, 94024, and Officers Kristy Garcia, 00022, Jeff Motz, 93014, Robert Pine, 93002, Raymond Sheridan, 01044 and Robert Waidler, 00085. These officers had responded to a barricaded suspect situation in which Gilman, who was suspected of menacing a store clerk with a weapon mounted with a laser sight and, thereafter, ramming a police car while fleeing the scene, had crashed and immobilized his vehicle while attempting to evade apprehension by police. During a twenty-three minute stand-off, officers attempted to open a channel of negotiation with Gilman and marshal various less than lethal force options so that the stand-off could

¹ At 3:17 a.m. officers on the scene requested an Ambulance to respond “Code 10” to STAND BY AT 12TH & LINCOLN. At 3:18 a.m., CAD records show ‘K15 [A Denver Metro-Canine unit] EN ROUTE. AT 3:25 a.m., another CAD notation is made that “MET3 [A metro-swat commander] POSS BRIN[G]ING LESS THAN LETHAL/TO LOCATION//Suspect NOT RESPONDING TO VERBAL COMMANDS” At 3:31 another entry is made that “AURORA [police department] HAS K9 WORKING///GETTING WATCHING COMMANDER APPROVAL FOR RESPONSE” (About 15 seconds after that entry is an entry that the Denver metro-canine unit, KING-15, had a tire “BLOW OUT EN ROUTE TO CALL”)

² See, e.g. the written statement of Officer Robert Parson, 98014.

be resolved without serious injury or death to any of the participants. Gilman never complied with any of the repeated requests and commands of the officers at the scene. Ultimately he pointed a weapon and an item that officers perceived to be a handgun directly at some of the officers who then fired on Gilman. Other officers heard those shots, believed that Gilman had fired, and fired in response. Immediately after the shots were fired, the dispatcher was advised of the fact of the shooting and the paramedics who had been previously called to the scene were escorted to his location. These paramedics transported him to Denver Health Medical Center, less than 8 blocks away. Despite their efforts and those of the medical personnel at the hospital, Gilman died from his wounds.

The two officers who initially attempted to contact and stop Gilman, Officers Roybal and Sheridan, were both driving fully marked Denver police cars and were dressed in blue Denver police uniforms. After Gilman crashed his vehicle, numerous officers arrived at the location at 12th Avenue and Lincoln Street. Virtually all of the officers were driving marked patrol cars and many of them responded with their emergency over-head lights activated. The officers who took part in the stand-off were dressed in full blue Denver police uniforms.

Eight officers discharged weapons. Five of those officers fired their handguns. **Officer Garcia** was armed with a 9mm Glock, Model 19, semi-automatic pistol. This weapon has a 15 round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, it was fully loaded with Denver police issued ammunition. Officer Garcia fired four rounds. **Officer Sheridan** was armed with a 9mm Glock, Model 17, semi-automatic pistol. This weapon has an 18 round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, it was fully loaded with Denver police issue ammunition. Officer Sheridan fired fourteen rounds. **Sergeant Smith** was armed with a .45 caliber Glock, Model 21, semi-automatic pistol. This weapon has a 13 round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, it was fully loaded with Denver police issued ammunition. Sergeant Smith fired two rounds. **Sergeant Steinke** was also carrying a .45 caliber Glock, Model 21, semi-automatic pistol. This pistol also has a 13 round magazine capacity and may be carried with an additional round in the chamber. At the time of the incident, it was fully loaded with Denver police issued ammunition. Sergeant Steinke fired eight rounds. **Officer Waidler** was carrying a 9mm Smith & Wesson, Model 5946, semi-automatic pistol. This pistol had a fifteen round magazine capacity and may be carried with an additional round in the chamber. Officer Waidler fired two rounds.

Three officers fired long guns. Each of these officers was also carrying a handgun but none of the three removed his handgun from his holster at the time shots were fired. Two of these three, **Sergeant Rodarte** and **Officer Pine**, fired their Denver police approved .223 Colt AR 15 semi-automatic rifle (referred to in Denver police argot as an “urban rifle.”) The AR15 is kept either in a locking dashboard mount or in the trunk of a police car. The weapon has a 20 round magazine capacity, but officers are trained to load the magazine with 18 rounds. No round is loaded in the chamber until the weapon is deployed. Both Sergeant Rodarte and Officer Pine maintained their weapons in compliance with policy and training – each had 18 rounds of Denver police issued ammunition available in the loaded weapon. Sergeant Rodarte fired ten rounds; Officer Pine fired seven rounds. **Officer Motz** had armed himself with his Denver police approved Remington 12-gauge shotgun loaded with Denver police issued ammunition. This weapon has a magazine capacity of six

shells. Officer Motz had the weapon loaded with a “combination of” twelve gauge slugs and 00 buckshot. He fired the shotgun four times. Three of the shots were slugs; one was 00 buckshot.

On April 15, 2003, Dr. Amy Martin, a forensic pathologist with the Denver Coroner’s Office, conducted an autopsy on the body of Shaun Gilman. Dr. Martin documented numerous bullet and shotgun wounds, primarily to Gilman’s left chest, left side and left back. (It should be noted that the location of the wounds is consistent with Gilman being seated in his vehicle in the position described by most of the officers at the time shots were fired.) Sixteen gunshot wounds were documented; however, some of the projectiles may have entered, exited and re-entered the body.³ Dr. Martin described the medically remarkable wounds as follows: 1) a “perforating gunshot wound” to the “upper left side” of the back; 2) a “penetrating⁴ buckshot pellet wound of the posterior left shoulder with fracture of left clavicle”; 3) a “penetrating shotgun wound of left upper back” which resulted in rib fractures and the perforation of the left lung and heart; 4) a perforating gunshot wound to the left hand, which fractured bones in the hand; 5) a “penetrating gunshot wound” to the left hip; 6) a “penetrating buckshot pellet wound” to the left upper back; 7) a “penetrating gunshot wound” wherein the bullet entered the left side of the back and damaged the left lung; 8) a “penetrating gunshot wound of the left mid-back” where the bullet fractured a rib and then damaged the left lung, spleen, liver and jejunum (a part of the intestine); 9) a “penetrating gunshot wound” which entered the right upper back and fractured a rib and one of the thoracic vertebra; 10) a “penetrating gunshot wound of the right mid-back” wherein the bullet grazed a left rib and then damaged the left lung and the spleen; 11) a “penetrating superficial gunshot wound” in the right mid-back; and 12) a “penetrating buckshot pellet wound “ where the bullet entered the back of the neck and fractured part of one of the cervical vertebra. Toxicological analyses of blood and urine samples obtained from Gilman’s body were negative for the presence of ethanol, but positive for the presence of acetone⁵. Gilman’s urine screen was positive for the presence of THC, the psychotropic agent in marijuana. The cause of death was determined to be multiple gunshot wounds.

Dr. Martin recovered numerous bullets, fragments, shotgun pellets and one shotgun slug from Gilman’s body at autopsy. These items were placed in sixteen separate “morgue” envelopes. They were received by firearms examiners in the Denver police crime laboratory and compared with rounds test-fired from each of the weapons described above. Two of the bullet jackets recovered at autopsy were identified to the AR15 fired by Sergeant Rodarte. Dr. Martin recovered three 00 buckshotgun pellets and one slug “consistent with a 12 gauge rifled slug.” As Officer Motz was the only officer to fire a shotgun, these items can be identified to his weapon circumstantially. All of the remaining items of bullet evidence removed from Gilman’s body at autopsy were fragments which were weighed by the firearms examiners but, due to the size and lack of identifying characteristics, found to have “no further comparative value.”

³ For example, in discussing an entry and exit wound to Gilman’s left hand and an entry wound to his left hip, Dr. Martin stated: The left hand wound approximate the area where this [the wound under discussion] enters the left hip; it is unclear if these wound tracks are related.

⁴ A penetrating gunshot wound is a wound where the bullet enters and remains in the body; a perforating gunshot wound – sometimes referred to as a “through and through” wound - is a wound caused when the bullet enters and then exits the body.

⁵ Dr. Martin conducted additional analysis of the vitreous fluid and determined that Gilman was not suffering from a diabetic condition and that the acetone does not appear to be due to diabetic ketoacidosis. While the source is unknown, the acetone would not have contributed directly to Gilman’s death.

Investigators at the crime scene recovered 46 spent shell casings and two shotgun “waddings,” on the street. Also recovered was a spent .45 caliber bullet which was recovered from the “light bar of police unit 2021”⁶ A search warrant for Gilman’s vehicle was obtained and the vehicle was processed on April 18, 2003. During the course of this search, investigators recovered two shotgun waddings from the right front floor of the vehicle, one shotgun wadding from the left rear of the vehicle “on top of clothing”, a bullet from the “rear drive shaft hump inside vehicle”, a bullet from the left rear “door window post”, a “bullet on r/f [right front] seat (shotgun slug), “ a “bullet on r/f [right front] floor,” and bullet fragments on or in the steering wheel and near the emergency brake handle. During the course of the search, another bullet “fell from veh @ l/r [left rear] door.” In addition to the bullet evidence, investigators located and removed a crossbow “w/bolt r/f [right front] passenger floor.” Investigators also found and recovered a laser sight from the floor on the driver’s side, and a metal pipe from the rear of the vehicle. This pipe was found to be “a one inch diameter piece of galvanized pipe, fifty inches in length . . .” Investigators noted what appeared to be blood on the pipe.

Firearms examiners conducted analyses on all of the bullet evidence recovered at the scene or from Gilman’s vehicle. Two of the shell casings were identified to Sergeant Smith’s Glock semi-automatic pistol; seven shell casings were identified to Sergeant Steinke’s Glock semi-automatic pistol; two identified to Officer Waidler’s Smith & Wesson handgun; twelve casings were identified to Officer Sheridan’s handgun; and three to Officer Garcia’s handgun. Six shell casings were identified to Officer Pine’s Colt AR15 rifle; ten others were determined to “lack sufficient identifiable markings for positive identification.” However, they were all identified as having been ejected from Sergeant Rodarte’s Colt AR15 rifle. Four shotgun shell casings were recovered at the scene and identified to Officer Motz’s shotgun.

The bullet recovered from the light bar of the patrol car was “damaged and lacked sufficient identifiable markings for positive identification but was consistent with being fired from a Glock .45 caliber firearm.” The shotgun wadding items removed from Gilman’s vehicle were all consistent with shotgun ammunition issued by the Denver police department. The bullet recovered from the top of the drive shaft was a .45 caliber bullet that “lacked sufficient identifiable markings for positive identification but was consistent with being fired from a Glock .45 caliber firearm.” The bullet fragments from the steering wheel, the bullet fragment found by the emergency brake handle, and the bullets recovered from the left rear door window post, the right floor and the one that fell from the vehicle’s left rear door as the search was being conducted were determined to “have no further comparative value.” The shotgun slug found on the right front seat was “consistent with a 12gauge rifle slug,” and one pellet recovered at or near the steering wheel was “consistent with a 00 buck pellet.”

Investigators at the scene noted that Gilman’s vehicle, a green 1988 Jeep Cherokee (the “vehicle” or the “Jeep”), had crashed on the northwest corner of the intersection of East 12th Avenue and Lincoln Street. The vehicle was facing northwest, and was “high-centered on a fire hydrant.” Twelve police cars were positioned on three sides of the vehicle.⁷ At the time of the scene examination, the passenger’s-side door (through which Gilman had been extracted) was open; all other doors were

⁶ This suggests that, despite the efforts of supervisors to place officers so there would not be a risk of injury to officers by cross-fire, that possibility existed at the time shots were fired.

⁷ A photograph showing the Jeep in its position at the time of the incident is attached as Appendix 1. Attached as Appendix 2 is a diagram depicting the approximate position of the police cars near Gilman’s vehicle and the position of those officers who fired their weapons.

closed. The window on the passenger's-side door was shattered and the wing window to that door was shattered, but remained in place; the window on the driver's-side door was noted to be either "shattered or rolled down" and the "wing window was shattered, but in place." (During the subsequent search of the vehicle, investigators confirmed that the driver's side window had been, in fact, rolled down.) The rear-door window on the passenger side was intact, but the back luggage area window on the passenger side had been shattered and had fallen out. The rear window and driver's side back luggage area window had both been hit by a number of bullets – both windows were shattered but remained in place. The back-door window on the driver's side had been hit by several bullets: "The bottom portion of the window was in place; however, the top portion of the window had shattered and fallen." The front windshield had "numerous bullet defects" as did the driver's side of the Jeep.

On the sidewalk just to the west or driver's side of Gilman's vehicle, investigators located what appears to have been the face plate from Gilman's car stereo.⁸ Adjacent to the driver's door was a "multi-colored circular cloth object." It appeared to have been struck by at least two separate bullets.

Immediately following the shooting, officers at the scene, and investigators who responded, attempted to locate witnesses to the incident. As the area had been cordoned off during the stand-off, there were no citizen witnesses at 12th Avenue and Lincoln Street.⁹ Investigators obtained video-taped statements from the two individuals who had dealt with Gilman shortly before the shooting, the clerk at the 7-11, Mr. Gye Hawkins, 7/10/80, and a party who had been with Gilman when he was at the 7-11, Mr. Sammy Valdez, 3/27/62. Sgt. Rodarte had a civilian rider with him during the evening, Mr. Jeffrey John MacKell, 12/27/67. Mr. MacKell provided written and video-taped statements.

A number of officers responded to incident. Regardless of their level of involvement, each of these officers provided a written statement. Investigators reviewed those written statements and obtained video-taped statements from several of those officers whose vantage points allowed them to shed light on the incident. These officers were: Lieutenant Catherine Davis, 83001, Sergeant Michael O'Donnell, 92009, Technician Tom McKibben, 86042, and Officers Ranjan Ford, 01071, Ernest Quintana, 01052, Thomas Sanchez, 99041, and Kimberly Siefken, 00002. (Lieutenant Davis, the District 6 shift commander and a senior officer on scene, provided a comprehensive statement regarding the tactical issues considered and steps taken by the officers during the incident. This statement should be reviewed for a clear overview of the events leading up to the shooting.) Each of the officers who fired shots was identified at the scene and separated from one another. While these officers remained at the scene, Sergeant Stacy Goss, 95002, had each officer position him or herself at the location from where the officer fired his or her firearm. She then took digital photos in an effort to memorialize the various positions of the shooting officers. The involved officers were then separately transported to

⁸ Several of the officers told investigators that they saw Gilman throw an item that they believed was the magazine from a semi-automatic pistol from his window. The face plate may have been, in fact, the item thrown.

⁹ In the evening hours of April 18, 2003, an individual identified as Mr. Saša Ferenčak, 6/30/50, presented himself to investigators and told them that at about 3:30 a.m., he had been walking east on 12th Avenue, just past Broadway, when an officer stopped him and directed him around the perimeter. He stated that he saw the Jeep and at first thought there was an accident. He then saw officers crouched behind cars and realized that it was not an accident. He complied with the officer's order and walked to northeast corner of Broadway and 12th Avenue. Mr. Ferenčak stated that he heard an officer say, twice, "Please, drop your weapon." He stated that he was in the area of 12th Avenue and Broadway when he heard numerous gunshots. He immediately dropped to the ground and did not see the shooting. He then left the area and went to work. Mr. Ferenčak guessed that the "bad guy" fired first because he "heard one 'pop' and then a volley of shots." Investigators obtained a video-taped statement from Mr. Ferenčak.

Denver police headquarters in accordance with the officer-involved shooting protocol. Each officer gave a voluntary video-taped statement to investigators at police headquarters.

A review of the various eye-witness and participant statements considered in light of the forensic evidence described above compels the conclusion that there are no major factual issues or disputes surrounding the events that led up to the shooting. The one major factual anomaly arises from the belief of some officers that Gilman actually fired. As will be discussed below, that issue, and the minor discrepancies can be ascribed to the fact that there were a number of witnesses and participants with different vantage points.

The clerk at the 7-11 who was witness to and victim of Gilman's initial aberrant behavior, Mr. Gye Hawkins, 7/10/80, first called the police at 2:30 a.m.¹⁰ Mr. Hawkins later told investigators that he saw Gilman "hanging out with the crack heads," and jumping in and out of his truck. Mr. Hawkins stepped out of the 7-11 and told Gilman he had to leave the area of the store. Mr. Gilman "wanted to argue about it." Mr. Hawkins, instead, went to smoke a cigarette at his own truck, but when he turned around Gilman was "still yelling and I [saw] a red beam coming at me. Out of his truck - he got tinted windows, I didn't know what it was - I just went back into the store as fast as I could." Mr. Hawkins described the truck as an older model Jeep Cherokee. Mr. Hawkins told investigators that Gilman was with another man, "his passenger," whom Mr. Hawkins described as a "crack head" who he had seen often around the store. From the store, Mr. Hawkins saw the two men drive off southbound on Pearl Street. Mr. Hawkins stated after he made the call, he saw this same man, later identified as Sammy Valdez, 3/27/62, walking back toward the store. He called him over to the store and asked him where "his friend" had gone, telling Valdez, "he just pointed something at me; I know it was a red beam." According to Mr. Hawkins, Mr. Valdez told him that the item was "a toy." At this time, Officer Sheridan pulled up. Mr. Hawkins directed the Officer Sheridan's attention to Mr. Valdez and he took Mr. Valdez into custody.

Mr. Valdez told investigators that he was at the 7-11 when a man (Gilman) drove up and offered to sell some videos. According to Mr. Valdez, the 7-11 clerk came out and told them to leave and Mr. Valdez saw Gilman pull out a crossbow with a "red light" and shine it at the 7-11." Mr. Valdez left but returned to the 7-11 where he was picked up by police officers. Mr. Valdez cooperated with the officers, and told investigators that he advised the officers that Gilman was armed with a crossbow with some kind of red sensor, but that he did not believe the crossbow was loaded. He also told the officers that he knew where Gilman was. Once he was in Officer Sheridan's patrol car, he directed Officer Sheridan to Gilman's location and pointed the Jeep out. He then saw Gilman ram a police car and drive off. In his later conversation with investigators he stated that he believed Gilman was armed with a gun because when he left Gilman's vehicle, before he was picked up by the police, he heard what he believed to be three gunshots.

Officer Sheridan, the first officer to respond to Mr. Hawkins's call, arrived at the 7-11 at 2:56 a.m. When he arrived, he saw Mr. Hawkins and Mr. Valdez. Mr. Hawkins told Officer Sheridan that Mr. Valdez was "one of the guys in the car that just left around the corner." Mr. Valdez started to leave and Officer Sheridan chased and apprehended him. During that time Officer Roybal arrived at the

¹⁰ In fact, according to CAD records and Mr. Hawkins's statement, he actually called a private security company retained by 7-11 and that company called the police.

store. Officer Sheridan verified with Officer Roybal, by police radio, that the clerk would sign a complaint against Mr. Valdez and then took Mr. Valdez in custody and walked him back to the 7-11. Once at the 7-11, Mr. Valdez told Officer Sheridan that he had, in fact, been with the man in the Jeep. According to Officer Sheridan, Mr. Valdez advised him that

he was with the, uh, the Jeep Cherokee that had threatened the clerk with the laser light an' [he] told me that the guy had the laser light. Uh, didn't know if it was attached to a weapon or not, didn't have a clue. [Mr. Valdez] knew that the guy was in the, uh, between Tenth and Eleventh on Pennsylvania, somewhere in that area because he had took 'im there an' dropped 'im off, an' told 'im . . . the guy in the Jeep to stay there an' wait for 'im to come back.

Officers Sheridan and Roybal and Mr. Valdez are in accord that Mr. Valdez, riding in Officer Roybal's patrol car, directed the officers southbound on Pennsylvania in an effort to locate Gilman's Jeep Cherokee. The officers had obtained a listing on the license plate provided by Mr. Hawkins and, thus, had a description of the vehicle. Officer Roybal, in his written statement, provides a clear description of the next incident:

I placed [Mr.] Valdez into my car + got two GSS&C's [General Sessions complaint forms] signed (one for Valdez + one if we located 2nd suspect) + drove to the 1100 block of Pennsylvania. I drove past a Jeep Cherokee (gray) as Valdez told me it was further down the block. I stopped at the rear of a dark colored Jeep, but noticed that the license plate was different. About this time Ofc. Sheridan said that I had passed the susp. vehicle. I put the car in reverse + backed down the street into a driveway on the east side on Pennsylvania + as I was turning out to face N/B the suspect vehicle's tires started squeeling [sic] as the car came back towards me, slowed + then sped up and hit the front right quarter panel of my car (not disabling it). I put the car in park + got out to see the vehicle driving forward/back + then onto the east side sidewalk + northbound.

Officer Roybal passed Gilman's Jeep and Officer Sheridan, driving behind Officer Roybal, first noted a Jeep facing northbound on the east side of the street bearing the license plate number they were seeking. Officer Sheridan told investigators that he advised Officer Roybal that he thought Roybal had passed the suspect. Officer Sheridan trained his car spotlight on the Jeep and got out of his car. He saw a man sitting in the driver's seat of the Jeep and he drew his weapon. Officer Sheridan told investigators he

didn't know if he had a weapon on, with the laser sight being associated with those. I, I had it in my gun point an' I told me [him?] to let me see your hands an' he put his hands up. Well, t- . . .Six thirty-Four was comin' back down the street, Officer Roybal, was driving back down the street. And, um, as I was a- ... approaching the Jeep Cherokee an' I was givin' 'im c- ... commands to keep his hands up an' keep 'em where I could see 'em to wait for my cover officer to get here and get outta the vehicle to take him into custody. I, uh, he put his hands down an' I again yelled, put your hands back up. And he put the car in reverse, the Jeep in reverse an' he started to head towards me at a high rate o' speed where he squealed the tires when he hit the gas in reverse towards Officer Roybal's car. Um, I got on the radio an' I said

Six Thirty-Two, Thirty-Four get outta the way, he's gonna ram ya. An' the Jeep rammed the, uh, the police car.

The officers advised the dispatcher that they were in the 1100 block of Pennsylvania at 3:08 a.m. Officer Sheridan advised the dispatcher of the fact that Gilman had rammed Officer Roybal's car and he added that Gilman was last seen going westbound on 12th Avenue. Officer Sheridan went to check on Officer Roybal while numerous officers began responding to the area. At 3:10 a.m., Gilman's crashed vehicle was located by officers at the intersection of 12th Avenue and Lincoln Street. Officer Roybal drove to that location but, because Mr. Valdez was in the car with him, he relocated to the command post which had been established at 11th Avenue and Lincoln Street. He was at this location when he heard information that:

The susp. veh. driver had apparently displayed a gun. During the time Mr. Valdez stated to me unsolicited, "he [Gilman] was the one that pointed the crossbow at him [Mr. Hawkins?] with the laser + he had a gun that he shot 3-4 times as he drove away."

Officer Ernest Quintana, 01052, was at 12th Avenue and Cherokee Street when he heard the broadcast that Officer Roybal had been rammed. He began driving eastbound on 12th Avenue when he

saw a vehicle traveling westbound 12th Ave. from Sherman St. at a high rate of speed with the headlights off. The vehicle (attempted to) turned right onto Lincoln Street from E. 12th Ave., but was unable to make the turn and crashed into the traffic light pole on the N.W. corner of 12th And Lincoln St. I advised dispatch the car had crashed. I then got out of my car and ordered the driver of the Jeep Cherokee CO plate 127-IBK out of the vehicle. The driver refused to get out of his vehicle and kept trying to leave the scene but the vehicle would not move. I then saw the driver reach down to his right and bring up what appeared to be a crossbow. I immediately took cover behind the right side of my vehicle and advised the officers arriving on scene that I believed the suspect had a weapon.

At 3:11 a.m., Officer Quintana advised the dispatcher that he was holding a party at gunpoint. This was the beginning of the stand-off.

Within the next few minutes numerous officers responded. Some officers established an "outer perimeter," with the goal of directing traffic away from the intersection at 12th Avenue and Lincoln Street, and establishing a "command post." Other officers responded to the "inner perimeter" – the intersection itself. These officers would be responsible for assuring that Gilman did not leave the area. Cars were set up to block Lincoln Street and 12th Avenue. Two other cars were placed north of Gilman's vehicle on Lincoln Street to serve as "chase vehicles" in the unlikely event that Gilman was able to dislodge his Jeep and attempt to drive away. At least twenty-five officers were positioned on the inner perimeter at various times. Most of these officers had their weapons trained on Gilman's Jeep. The eight officers who discharged their weapons were among this number.

Although, as previously noted, there are some minor discrepancies due to the various vantage points of the officers on the inner perimeter, there is no real dispute about the events and Gilman's

actions prior to the shooting. Officer Kimberly Siefken, 00002, described her observations as she arrived at the location. She noted that Gilman's vehicle was still running and she saw Gilman

inside the vehicle digging under the seats and in the back seat. The suspect was completely and blatantly ignoring Officers order to show his hands. He was highly agitated, screaming and banging on the windows. He kept revving the engine in an attempt to flee the scene, but he was unable to get the vehicle to move from its location. Several times when he was ordered to raise his hands, he responded by flipping Officers off. He began waving a black colored handgun around inside the Jeep with his right hand, he struck the windows with the handgun several times.¹¹ The suspect began to barricade himself in a manner as to obstruct the view of the Officers on the scene, i.e. he was placing blankets and jackets over the windows to cover them. He had some kind of a multi-colored 'tube' sticking out the driver's-side window that resembled a dryer vent, only larger. He was pointing the tube out of his window and at least 3 times I saw the barrel of an unknown weapon come out of the tube and point directly at myself and the other officers.¹²

As the stand-off continued, supervisors arrived and began the tactical positioning of officers. During the same time, they either made or directed others to make efforts to obtain either tactical non-lethal weapons or resources so that they might resolve the situation without death or serious injury to any party. Sergeant Michael O'Donnell monitored the initial radio calls and then responded to the scene. Upon his arrival he "observed several police vehicles parked in a modified 'L-Ambush.' Sergeant [James] Smith was on scene and positioning officers on the Southern and Eastern sides of the 'L-ambush.'" Sergeant O'Donnell began deploying officers, too, noting that during this time, Gilman "repeatedly revved the engine as officers commanded him to drop his gun via the P.A."

Investigators reviewed the various statements and those photos taken by Sergeant Goss and established that the shooting officers were deployed as follows:¹³ Officer Pine was to the southwest of Gilman's vehicle and just to his right was Sergeant Smith. Their vantage point was the driver's-side window. Officers Garcia, Sheridan and Steinke were positioned to the south of Gilman's Jeep – their point of aim was the side and back of the Jeep. Officer Motz was to the southeast, positioned almost directly behind the Jeep. Slightly to his right and somewhat farther back was Sergeant Rodarte. Officer Waidler standing behind one of the building pillars on the northeast corner of the intersection. His point of aim was the passenger side of the Jeep.

¹¹ Although several officers reported seeing a handgun, no such weapon was ever recovered. We do note, however, that the crossbow was a "pistol-grip" type crossbow. Whether the officers were, in fact, seeing this or whether the "power of suggestion" played a part in their observations is a matter for conjecture.

¹² Many of the other officers on the inner perimeter described Gilman's actions in similar fashion: "Again Ofc's at scene attempted to make verbal contact with suspect with orders/instructions. Suspect refused started to barricade himself in his veh. i.e., pillows/blankets up against interior windows." See, written statement of Officer Benny Aloia, 88016. "Again, I observed the multi-colored tube sticking out of the driver's side front window. I heard over the air that the suspect was armed with a gun and a crossbow. I then observed a long circular object moving about inside of the tube, dark in color. This appeared to possibly be the barrel of a shotgun. The suspect continued putting other objects inside of this tube and pushing item through the tube and onto the ground." See, written statement of Officer Robert Parsons, 98014.

¹³ These deployments are displayed graphically in Appendix B.

Sergeant Smith confirmed with investigators that, upon his arrival, he had begun positioning officers. In his video-taped statement, he told investigators that he noted three officers had long guns: Officer Pine, whom he knew to have an AR-15, and Officers John Medford and Jeff Motz. He placed them tactically and confirmed their “AOR” (area of responsibility). He specifically recalled telling Officer Pine to “keep your eye on that window.” As he was positioning officers to assure that they were not in the subject’s line of fire or in a cross-fire situation, he “called for a K-9 officer over the radio.” CAD records reflect that a K-9 car was en-route at 3:18 a.m.¹⁴ Sergeant Smith told investigators that Officer Garcia was issuing commands over the PA system, describing the commands as “the standard orders of, you know, show us your hands, uh, turn off the vehicle, put your hands out the window, throw your weapons out of the car, that sort of thing.” Sergeant Smith noted that the subject wasn’t responding to the commands and weighed various options by which the situation might be resolved. He told investigators that he considered attempting to break out Gilman’s car window with a rock or a rubber bullet in order “get his attention.” He also tried to locate some “shotgun [tear] gas rounds some, some type of less than lethal, uh, options” which he thought he had in an equipment bag. The bag was brought to him and it did not contain the hoped for tools or weapons.¹⁵ (Lieutenant Davis told investigators that while these options were considered, it was ultimately decided that, due to concerns that Gilman had a handgun, no approach would be attempted at least until such time as Metro-SWAT officers arrived.)

For more than 20 minutes officers made repeated efforts to establish some communication with Gilman. During this time period he continued to act as described previously. However, while he was waving the crossbow and brandishing the metal pipe that several officers believed to be the barrel of a shotgun,¹⁶ he never pointed weapons or objects in a manner perceived as a direct threat by any of the officers. Indeed, at one point, when Gilman was hitting his car window with a metal object, Sergeant Smith took action to assure that shots were not fired by any officer misperceiving the sound as being that of a gunshot. Sergeant Smith said Gilman began

beatin’ on that window and one of the officers actually mistook that for s-, for maybe a small caliber handgun an’ started yellin’ shots fired. An’ the whole crowd kinda ducked down, all the officers an’, um, I said, no, no he’s, he’s beatin’ on the window.

¹⁴ It was this K-9 car that had a tire blowout which prevented the officer from responding with the dog. The CAD records report this fact at 3:31 a.m. About 10 seconds before this, a CAD notation reflects that efforts were being made to arrange for a K-9 unit to respond from the Aurora Police Department.

¹⁵ In his video-taped statement, Sgt. Steinke told investigators that he was at the District 6 substation when he heard radio traffic regarding the incident. Before he departed for 12th Ave. and Lincoln St., he spoke with Sgt. O’Donnell by police radio and Sgt. O’Donnell told him “before you come grab [Sgt.] Jamie Smith’s war bag from the motorcycle garage.” Another statement corroborating these efforts was provided by Officer Motz. He told investigations that during the standoff, Sgts. Goss and O’Donnell were

trying to coordinate getting Canine and Swat there, um, the situation kinda drew on for a few minutes. While they were debating that they were able to get some gas grenades an’ we were thinking that if we could break out one of the windows we might be able ta, ta play [deploy] a gas grenades to flush him outta the vehicle.

Um, again, the plan was still forming, Me-, Canine had related that they, they had a blow out on, en route, so then they made a call out for any agency that had a Canine Officer that would be handy to come out for us.

¹⁶ One officer, Officer Motz, did realize that it was not a shotgun barrel. He told investigators that, at first, he thought the item was the barrel of a shotgun; however, at one point he saw Gilman push it “further through [the cloth tube] an’ because of the light, the street lighting, I could see it clearly and realized that it was basically just a pipe.”

However, at 3:35 a.m., the circumstances changed. The officers who had the best view of the driver's side window, Sergeant Smith and Officer Pine, saw Gilman point his weapon at them. Officer Pine told investigators that, when Sergeant Smith was deploying personnel, he spoke to Officer Pine about his responsibility with the AR-15. "One of the first things he [Sergeant Smith] told me was, since I had a long gun there that my AOR was the driver's side. If he [Gilman] stuck stuff to the window to take the shot and, um, in the mean time I could hear him [Gilman] at that point my whole focus was at that driver's door, it didn't leave that . . ." When Officer Pine saw Gilman stop "flailin" the weapon around and point it directly in his direction he fired his weapon. At the same time, he heard Sgt. Smith say "take the shot." Officer Pine told investigators that he fired at the point "when [Gilman] wasn't flailin' around an' was actually pointin' at us, um I thought he'd decided it was over, it was time to take care of business."

Sergeant Smith told investigators that he, too, saw Gilman point his weapons directly at his position. He stated that he saw Gilman take

that barrel an' it, it points directly at us and at the same time the crossbow, which I had seen when he was tryin' to bash the front window out, that levels on us at well (sic), at, at the same time. * * * And that barrel leveled at, basically directly at me an' [Officer] Pine, as well as the crossbow. An' that's when I directed [Officer Pine] to shoot an' I shot at the same time. I fired two rounds into what I thought would be his chest area, 'cause he was hunkered down.

Sergeant Smith and Officer Pine fired their weapons as they believed they were about to be fired upon. The evidence suggests that they were the first officers to fire. Officer Garcia told investigators that she fired because she believed, not that she was targeted, but that Gilman was aiming at Sergeant Smith and Officer Pine. She stated that she saw the barrel come out of the window of the car and she heard an officer order Gilman to drop his weapons and show his hands. Instead, she saw the weapon point directly at other officers and she fired. Garcia stated that she fired because

that weapon came down an' pointed directly at where those officers had been on the ground, and in a threatening manner that an officer was gonna get shot. . . . He didn't have it pointed at me. He didn't have it pointed at my partner. He was pointing that weapon at officers who were to the west o' me. She added that "*he pointed that weapon out of the window many, many, many times, but he never . . . prior to us shooting him, he hadn't pointed it directly at any of us.*" [Emphasis added.] Garcia added that the shots were fired in a brief, continuous barrage.

Officer Sheridan was positioned with Officer Garcia. However, he told investigators that he fired because he believed that the officers were actually under fire. He stated that he heard an officer say, over the air that Gilman appeared to be "trying to get a p- . . . better position an' he's turning toward you guys. He's turning toward the south." Officer Sheridan stated that then he saw a "gun in the suspect's hand, the silhouette of it through the tinted window." He then heard a gunshot that he believed came from the vehicle¹⁷ He stated that when he heard the shot he began firing, telling investigators that he believed the officers were under fire because, from his perspective, the sound of the gunshot "came from the direction of his vehicle, which there were no other officers in that direction an' straight in front o' me at that vehicle. They were all off to the sides."

¹⁷ There is no evidence that Gilman, in fact, possessed or fired a firearm.

Sergeant Steinke did believe that Gilman was about to fire on him. He told investigators that from his position between Officers Sheridan and Garcia he saw Gilman throw something out of the car window shortly before shots were fired. Although he could not determine what the item was, when it hit the ground it made a metallic sound and his first thought was that it might have been a gun. However, he then heard another officer say that Gilman had thrown a pistol magazine out of the car. Sergeant Steinke then saw Gilman point an object in his direction. He told investigators

Well, with all the information I had an', an', uh, I just figured well, he's pointin' his gun at us now, you know. He threw somethin' out, but he's still pointing somethin' at us. An' I couldn't tell what he threw out an' I wasn't gonna assume that, you know, he threw the gun out. So I figured well, he must be pointin' the gun at us.

QUESTION: Okay. Then what occurred?

Sgt. Steinke: Uh, when I saw that, I kinda, you know, I was, I was drawn [drawing?] down on 'im anyway, but when I saw that I kinda dropped an' looked an' he kept pointin' it towards us. An' so I started, uh, I was gonna discharge my weapon right at what I saw pointin' at us.

At this time and with this mindset, Sergeant Steinke fired his weapon. Almost simultaneously he heard a shot from his left where other officers were positioned. He never heard a shot come from within the vehicle and never heard anyone command officers to fire. He ceased firing when he no longer saw the object pointing at him. He also yelled, "cease fire!" adding that that he "probably yelled it maybe three or four times." Sergeant Steinke estimated that the barrage lasted between five and ten seconds. Asked by an investigator to "think back" and relive the moment while looking at a clock he stated that the time elapsed was "closer to five" seconds.

At the time shots were fired, Officer Motz was positioned behind the Jeep with his shotgun trained on the rear window. He fired when he saw what he believed was evidence that Gilman was firing on officers. He told investigators that Gilman was moving about in the Jeep, but it appeared that things might be

de-escalating when suddenly there were about two or three shots that came out of the suspect vehicle in the direction of the vehicles an' the officers in this area. Um, because of the angle that I was at I couldn't tell which window it came out of because basically my view looked right dele-, directly along side that side of the vehicle. So, uh, all I could [see] was broken glass shooting out from inside the vehicle in this direction. Um the initial shot was, was low an' muffled an' then after the initial shot there were two quick, two more quick pops pretty much almost instantaneously there were reports from directly to my right, which was Sergeant Rodarte an' then to my left. An' then I fired two quick shots into the rear of the vehicle where I could see the head of the, uh, suspect. And then one more shot of double ought (sp/sic) buck from my shotgun into the back of the vehicle.

Sergeant Rodarte was also positioned to the rear of the Jeep. He told investigators that he was looking at or through the back window. He told investigators that he fired because he, too, thought that Gilman had fired on officers:

I heard, I heard a, a gunshot from inside the vehicle. It sounded muffled. And simultaneously I saw glass break out from the back o' the vehicle. Appeared to be a gunshot. At that point, I was in fear for my life an' fired an' thought I, I'm directly behind this guy, if he fires directly backward first officer in of, uh, danger[']s me (sic).

Sergeant Rodarte estimated that "about six seconds" elapsed between the time the first and last shots were fired.

Officer Waidler was positioned to the rear of the passenger's side of the Jeep. He is one of the officers who believed that Gilman was firing on him and other officers. Shortly before the shooting, Officer Waidler saw the subject holding what he believed to be a handgun and he saw him moving about in the front seat area and, at least at one point, going into the glove box. Officer Waidler told investigators that "It appeared like he was loading the weapon." During this time period, Officer Waidler saw Gilman look in his direction and believed that Gilman saw him as "approximately ten times [he] musta pointed his weapon at me." Officer Waidler also told investigators that Gilman started to hit the passenger-side window of his vehicle with the object that he believed was a gun. He believed that Gilman was trying to break out that window.

Officer Waidler saw Gilman raise another object which he described as looking "flexible, pliable, um made of like a foam, foamish (sp/sic) material." He then saw Gilman "spin around facing the rear. The rear o' his vehicle which would be puttin' all these other officer's [sic] in jeopardy." Officer Waidler believed that Gilman was trying to get a "target picture" on those officers positioned behind his car.

Officer Waidler told investigators that Gilman's erratic movements continued for some time, with Gilman

spinnin' around, him, him thrashin' about flangin' [flinging?] his arms pointin' the gun, knockin' on the window, until, until the shots fired. At, at that point, again, before, before shots were fired, he's pointin' his weapon at me one more time, I move back for [cover]. At the same instant when I move back for [cover], I hear two shots, I came out an' I, an' I, uh, fired my weapon twice.

Officer Waidler stated that he fired because he "believed he sh-, that [Gilman] fired his weapon at me." He heard what he believed to be "two shots, mu-, like a muffled sound." He told investigators, "I believe they're coming from inside the vehicle, shooting at me."

Officer Waidler was the final officer to discharge his weapon. The CAD report reflects "SHOTS FIRED" at 3:35 a.m. When the shooting stopped, the Jeep's motor started revving at an extremely high rate. The vehicle then began to smoke and, for a short while, was smoking so heavily that the vehicle was partially obscured. At 3:36 a.m. and, again, at 3:37 a.m. officers requested Denver Fire to deal with the potential car fire. However, the Jeep engine either seized or just stalled. By 3:43 a.m., Metro-SWAT officers determined that it was safe to approach the Jeep. They did so, extracted Gilman, and turned him over to waiting Denver Health Medical Center paramedics who rushed him to the hospital.

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 Gilman 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.

Therefore, the question presented in this case is whether, at the instant the officers fired the shots that caused Gilman’s death, each reasonably believed, either that Gilman was about to direct deadly physical force toward one of them or a third person, or that Gilman had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or, finally, that Gilman was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for knowingly or intentionally causing the death or bodily injury of another, the state must prove beyond a reasonable doubt that the person doing the shooting either did not really believe in the existence of the

requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

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 their weapons committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against any officer in the shooting death of Shaun Gilman. In this conclusion, I will repeat a number of statements that I have made in other decision letters that also apply in this case.

Denver officers, for twenty-three minutes, attempted to resolve this confrontation in a peaceful manner. In addition to other efforts, they called for a K-9 car and Metro-SWAT to respond to assist. During the twenty-three minutes, Shaun Gilman gave no indication of any intent to comply with the lawful commands of the officers. To the contrary, his conduct was non-compliant, aggressive, and bizarre. From the initial encounter at the 7-11 throughout the entire incident until the last shot was fired, Gilman never once exhibited a desire to cooperate with the officers' efforts to apprehend him without incident. Instead, there was continuous criminal and behavioral misconduct that increased the threat he posed to the officers and the public. Based on his prior menacing conduct, the intentional ramming of an occupied police car, and his efforts to evade capture, combined with the information that he was possibly armed with a crossbow and a firearm, it was clearly reasonable for his actions to be perceived by the officers as life threatening during the "final frames" of this encounter. His conduct caused an undesired conclusion to the confrontation.

During the final confrontation of this lengthy string of events, officers first used a "show of force" by the presence of a number of officers, by the use of strong verbal commands, and by drawing their weapons. Responding with a "show of force" is a tactical effort to gain compliance and avoid having to actually "use" the force. In the overwhelming majority of confrontations this results in surrender by the suspect. While officers made repeated efforts to gain compliance for 23 minutes, Gilman steadfastly refused to comply and surrender, even when confronted with this ongoing "show of force." Because of the information they possessed that Gilman was armed with a crossbow and a firearm, the officers could not approach the vehicle. The officers struck an appropriate balance between the need to control Gilman's movement and protect citizens and themselves from the potentially deadly threat Gilman posed, and efforts to be patient and buy time to bring additional resources to broaden their response options.

Because there were numerous shots fired by the officers, I will comment, as I have done before, on some of the factors that may have an impact on the number of shots fired. The vehicle provides some degree of cover and the potential to deflect shots. For example, in this case, even though at relatively close range, less than 30% of the shots fired by the eight officers struck Gilman. In a vehicle, the suspect is in a seated position, which may mask the impact of the shots on the suspect, thereby delaying the officers' perception of when the threat is neutralized. A person who is standing or running may go down quickly when struck by a bullet. It may be more difficult to assess the impact of the shots

on a person who is seated in a vehicle. And, in this case, Gilman was using objects to cover various windows in the vehicle, which creates further difficulty.

The mere fact that eight officers fired, standing alone, increases the total number of shots. And, the semi-automatic weapons used by these officers are capable of discharging multiple shots per second. All of these factors and others may contribute to more shots being fired in a case such as this than under other circumstances. As a practical matter, the only individuals who know for certain whether each of the 50 shots fired in this case was necessary are the officers who fired them.

The number of shots fired in this case or any other case must be evaluated on a case-by-case basis. Where officers are justified at the inception to use deadly physical force, the pivotal issue necessarily becomes whether they stopped firing when they should have. In this case, officers in position to do so immediately called for a cease fire when they perceived the threat was neutralized. All officers stopped firing. The criminal law is generally not precise enough an instrument, except under the most clear-cut circumstances, to sever one shot or some shots out from among many, and establish beyond a reasonable doubt that that shot or those shots were unnecessary or unreasonable. In this case, there is no indication that any specific shot was or shots were unnecessary or unreasonable.

As I have also stated in other letters, cases such as this, where numerous shots are fired, focus the attention of all officers on the importance of ensuring that they use only the degree of force that is reasonable, necessary, and appropriate under the circumstances to protect the public and themselves. In the thousands of contacts between citizens and officers in Denver each year, the officers themselves are in the best position to control the proper use of force. While criminal prosecution, administrative discipline, and civil penalties may have some impact on controlling police conduct, as a practical matter, the individual and collective professionalism of the officers is the key. The officers themselves are clearly in the best position to know the degree of force that is necessary in a given situation and when to stop. To the extent they minimize the use of force while still accomplishing their lawful purpose, the reputation of the Department and the trust and confidence the public has in the Department will rise.

Equally as important in minimizing the use of force in our community is the conduct of every citizen. To provide the best quality of life in our community, the police need our help and cooperation. Officers receive a great deal of training in areas associated with the use of force. Citizens can also benefit from training in this area. In the overwhelming majority of cases where force is used, the officer is responding to the non-compliant and threatening conduct of the citizen. Citizens have a responsibility not to conduct themselves in a manner that places officers in the position of having to use force.

It is tragic that Shaun Gilman by his conduct caused the officers to take his life. It is also unfortunate that his parents, family, and friends, who knew him as a different person in better times, have had this tragedy visited upon their lives. Unfortunately, these officers encountered Shaun Gilman at a time when he was exposing citizens and the officers to great danger. The specific reason for that behavior may never be known. He had every opportunity to simply comply and surrender. This is clearly what the officers intended and tried to accomplish. It is fortunate that none of the citizens or police officers were seriously injured during the string of criminal acts and threatening conduct

committed by Shaun Gilman that ultimately led to his death. All of the officers and their families and friends have also been affected by this event. We expect a lot from our police officers, but we do not expect them to be seriously injured or die doing their job. Here, the officers were patient and made significant efforts to conclude this encounter peacefully. Tragically, for reasons known only to Shaun Gilman, during the entire episode he never once showed any sign of compliance or a desire for a peaceful conclusion. To the contrary, he seemed intent on forcing this result.

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

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