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DENVER

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

February 19, 2004

RE: Investigation of the shooting death of Brant Clayton Murphy,
12/09/64, DPD#467798, by Officer Jay Estrada, #00100, on October
11, 2003, at the Ramada Inn, 2601 Zuni St., Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Brant Clayton Murphy have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officer Jay Estrada. 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 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.

STATEMENT OF FACTS AND INVESTIGATION

On October 11, 2003, at 7:55 p.m., Christine Murphy called the Denver Police 9-1-1 Operator and stated she was in a hotel at the corner of Zuni Street and Speer Boulevard, "...hiding in the men's [rest]room...because my husband tried to kill me...this evening at our home in...Pine..." Murphy stated she was hiding in the men's room "...because he'll look for me in the lady's room." Ms. Murphy told the 9-1-1 Operator that her husband, who is "...currently out on bond for assault," has "...been holdin' me at gunpoint..." during which "he hit me in the head several times with guns..." and that he has a "...very small...gun...with him right now..." Ms. Murphy stated "I can't go home with him. He will kill me." When the 9-1-1 operator told Ms. Murphy that officers would be dispatched, Ms. Murphy replied "He is extremely dangerous." Ms. Murphy told the 9-1-1 operator that the small gun is "...in his pocket," that "he's gonna lose it as soon as he finds out I'm gone," that he has a "very bad" police record, and that she was "...worried he's gonna come in here an' look for me..." Ms. Murphy stated, "He strangled me with an extension cord...hogtied me. I've got marks." Christine Murphy's 9-1-1 call ended after responding Denver Police Officer Jay Estrada entered the men's restroom at the Ramada Inn, located at 2601 Zuni Street, and announced "Police Officer," to which Ms. Murphy replied to the 9-1-1 operator "Oh thank God. There's a police officer here."

Responding Officer Jay Estrada, dressed in full Denver Police uniform, escorted Christine Murphy out of the men's restroom and into the lobby area of the Ramada.¹ In her hand-written statement, (completed the same night as the shooting, after immediately being segregated from other witnesses), Christine Murphy described what happened next:

We (the officer and I) walked out of the bathroom into the lobby when Brant [Murphy's husband] and Billy [their mutual friend] are walking back in. Brant had a smile on his face. I pointed at Brant and said "that's him." Brant turned and ran up the stairs. I ran into the bar and hid. I heard gunfire...Brant's fantasy is to go out in a blaise (sic) of glory and take... police out with him...he wanted to go out like Rambo."

Officer Jay Estrada, in a video-taped statement given at Denver Police headquarters, after being sequestered from other witnesses in accordance with the officer-involved shooting protocol, described the initial meeting with Brant Murphy as follows:

...just as we reached the bottom o' this stairway two men came walkin' down the stairway. Um, the victim that was on my left, she immediately just stopped an' just stared at this gentleman. An' I looked up at 'im an' he was smiling at 'er. An' she started to back off. An' I asked her, I said is this him? An' she said yes. An' I moved her to my right and I reached out to grab his right arm an' ordered him to place his arms behind his back. And, uh, he, just as soon as I touched his arm he said somethin' to the effect of yeah, right, to my command. He then pulls his arm away from me an' ran up the stairs.

A total of nine independent witnesses saw all or part of this lobby meeting between Officer Estrada and Brant Murphy, and described it in hand-written statements. These witnesses were also sequestered from one another after the shooting. Their statements are as follows:

Ramada bar patron Shane Anderson, from Denver, Colorado: "I saw officers struggle with a man in the lobby then I heard 4 gunshots in a row without break...I heard gunshots out the club door. What I heard and saw I was in the bar and looking out the door."

Ramada guest Nick Braun, from Grand Junction, Colorado: "...the first officer I saw came inside...The officer then made a sweep of the lobby. When he got to the bottom of the stairs two gentlemen were walking down. The officer then radioed that he found the suspects. He began to run after one of the men who ran upstairs after spotting the officer. About 5 seconds later I heard 5 gunshots."

Ramada employee Raechelle Campbell: "An officer came through the lobby ask if there was a woman acting cryze (sic). We had not seen anyone but I guess she was in the bathroom. ...2 gental man (sic) came in the side door...The officer told him (male in lobby) to put his hands behind his back...he took off running...I believe he had his hands in his pants. They went up the stairs we heard 4-6 gunshots"

¹ See Appendix 1.

Ramada guest Gabriel Estrada, from Las Cruces, New Mexico: “I was standing outside waiting for a cab looking inside when I saw an officer at the bottom of stairwell talking with a white male...The officer attempted to grab the white male by the wrist & the white male turned & broke loose & ran up the stairwell. The officer pursued the white male & approximately 3-5 seconds later I heard 4 gunshots.”

Ramada guest Caz Martinez, from Las Cruces, New Mexico: “I was standing outside the hotel lobby facing East when the incident occurred. I saw one police officer enter the hotel lobby...I noticed the officer in the lobby approach 3 individuals near the stairwell of the lobby. He reached out to a male individual who then started to run up the stairwell. The officer followed the individual and a few seconds later I heard 4-5 gunshots.”

Ramada guest Ray Oka, from Grand Junction, Colorado: “Sitting in the lobby...3 individuals appeared in the lobby (2 male, 1 female) One of the individuals...appeared scared/angry and yelled curse words while running up the stairwell to the 2nd floor. The male officer chased him, as the (sic) rounded the corner, out of my visibility, 4-5 shots were fired...his [the male who ran] right hand was jammed in his pocket as he ran....”

Ramada guest Marcel Raad, from Brussels, Belgium: “...I was sitting in the lobby of the Ramada Hotel at Zuni Street waiting to get a room, when a police officer walked in the front door...walked by me...after about 30 sec. he walked back with a lady...they stopped at the stairway and looked towards two men that were walking down...The woman then pointed No. Two out and said “that’s him.” The officer walked towards him and asked him to put his arm on his back while taking the arm. No. Two proceeded to run back up. The officer radioed that No. Two was running up and then ran behind him. No. One and the woman stayed downstairs. 10 to 15 sec later I heard (sic) 5 to 6 gunshots.”

Ramada employee Jana Reed-Chase: “...I was helping at the front desk when an officer came into the lobby area and asked if we knew of a woman who was upset that had called. We said no he proceeded up by restrooms. A few moments later he came back with a women (sic) who seemed to be upset. More officers came in—at that point two gentleman (sic) came down the stairs. The officer tried to detain the gentleman...and the gentleman broke away and ran up the stairs moments later I heard gunshots...when the officer tried to detain the gentleman he asked the gentleman to please stop...I do not believe that physical contact was made but the officer was close to the gentleman when he turned around and ran.”

Ramada bar patron Damian Vise, from Longmont, Colorado: “Saw officer grab man it seemed to trying (sic) to calm him down. Man ran upstairs. Officer chasing him, then 4 gunshots. During the first struggle, I was at the south end of the Lounge. Thinking that I could help officer in the event the man would try to run outside, I moved to the north end of the bar by the door thats (sic) when I heard the gunshots.”

The remaining witness to what happened in the Hotel lobby was William “Billy” Castro, Jr., who was Brant Murphy’s companion when Officer Estrada approached Murphy. Castro stated in his written statement that “I didn’t see or hear nothing. I was drunk and I heard more than 1 shot. ...I don’t remember anything I was drunk, I was drunk before I got there.”

After Brant Murphy ran up the stairs to the second floor of the Ramada,² Officer Estrada described in his voluntary video-taped statement what happened next:

Um, I immediately got on the radio an' mentioned that the suspect had just ran up the stairs from me, up to the second level of the motel...I pursued the ve- or the suspect up, up the stairs on foot. I lost sight of him temporarily as I was getting up to the top of the stairs. I then saw him running into, um, a, a room across the hallway...it looked like s- maybe somethin' used for a banquet... An' from where I saw him from the top o' the stairway, as I was still comin' up, he was runnin' towards, it was either a set o' double doors or a single door, I'm not really sure. An' thinking that he was gonna go through those doors I immediately started to take his path. Instead o' goin' straight through there I was gonna take his path. An' just as I started to move to my right the suspect didn't appear to even break stride he just did a turn, um, against the wall to his right an' started runnin' a- along the other wall. At that time he started reaching into, uh, it was either his waistband or his pocket. He also has a little fanny pack on. Um, an' I'm not sure what he reached into or where he grabbed this object from, but as soon as he got his hand free I notice this small black object in his hand. I then drew my gun and ordered him to stop. Uh, he did not stop, an' he was still runnin' straight at me. I continue, I, I was still continuing to move to my right an' just as the suspect came out of that room it appeared as though, to me, he was either gonna maybe shoot back down the stairs or he was gonna go back down the other ha- d- down the direction of the hallway goin' the other way. Instead he came around a partition, an' he was comin' straight at me. I then was able to look down. I saw his left hand. As he was running I saw a small black semi-atic- semi-automatic handgun in his hand, in his left hand. I ordered him to drop the gun, an' he continues to run at me. An' he got within five to ten feet of me at which time th- as he was running you could see the gun moving, but as he came within the five to ten feet the gun, I s- then saw his arm come up in a motion like this out in front of him. And as the gun was comin' up I'm, I was afraid that he was gonna shoot me. I, I was afraid he was gonna hurt, kill me with that gun. So I then fired twice. Um, he did not stop. Um, he continued to still run at me. I then fired two to three more shots. At that time he fell straight down. I stopped firing because the threat was gone. The gun fell to his left. I then got on the radio and immediately aired that I was in, uh, there was an off- officer involved shooting, just send me cover officers. And it seemed like immediately, uh, I believe it was Officer Larson showed up, placed the suspect in handcuffs.

Denver Police Officer Curtis Larson described the following in his hand-written statement completed the night of the shooting:

Myself and Officer Prestel were dispatched to a Hotel located at I-25 and Zuni St...Upon our arrival Officer Jay Estrada advised he had found the female in the men's room. He then stated he had a party running upstairs in the Hotel. I ran up the outside stairs of the Hotel on the south side of the building in an attempt to stop the suspect from fleeing outside the west exit. When I reached the top of the stairs and started for the west exit, I heard 4 shots fired from inside the building. When I reached the door Officer Estrada came over the air and announced

² See Appendix 2.

an officer involved shooting. I looked through the glass door and saw Officer Estrada with his gun drawn facing east in the Hotel hallway. In front of Officer Estrada about four feet in front of him the suspect was laying on his right side. I ran to assist Officer Estrada and he yelled 'gun' and pointed to the suspect's handgun about two feet from the suspect nex (sic) to the wall. The suspect was lying on his right hand and I quickly cuffed the suspect.

Denver Police Officer Mary Prestel described the following in her hand-written statement completed the night of the shooting:

As I looked for the suspect in the parking lot of the Ramada, [Officer Estrada] called out that the suspect was running up the stairs. I then responded to the main lobby, running along side Ofc. Clark. We ordered everyone down in the lobby and someone screamed he ran upstairs. I then proceeded up the stairs, at which time I heard a popping sound, a possible gunshot. As I got to the top of the stairs and turned the corner, I observed a male laying on his stomach and his head fell to the ground...There was smoke in the air and I observed a small black handgun near the fallen male.

Denver Police Officer Daniel Clark described the following in his hand-written statement completed the night of the shooting:

I then went to Ramada Inn at 2601 Zuni St. I parked in the east lot near the front entrance and started to search the lot for the male suspect. As I was going west from the lot, Ofc. Estrada called out that he had the female in the men's bathroom located inside the main hotel complex. Ofc. Estrada then aired that he had the suspect in the second floor alley, so I ran in the main entrance door faced on the south side. As I was running up the first set of stairs towards the main desk I heard 3 shots possibly a fourth from the upper hallway to the west of my location. At that time Ofc. Estrada aired that he had an officer involved shooting. I noticed Ofc. Prestel on my left as unknown parties in the main lobby were going to the ground. Myself and Ofc. Prestel ran up a winding stair case. I announced to the officer we were coming up the stairs. Myself and Prestel came to the top cleared both the east and west of the second floor hallway. I saw Ofc. Estrada with an unknown white male...at gunpoint, Ofc.Larson to the south of Estrada's location, starting to take control of the suspect's arm. I (sic) suspect's head was moving. The suspect was face down head pointing to Estrada. I noticed a small caliber handgun with black grips south of the suspect's body.

After the shooting, Brant Murphy was transported by paramedics from the Ramada to Denver Health Medical Center. After medical intervention, including a thoracotomy, Murphy was pronounced dead. According to the autopsy report prepared by Dr. Amy Martin, Denver Coroner's Office, Brant Murphy, who was 5'10" and 224 pounds, died of 4 gunshot wounds to the front torso. Murphy's blood-alcohol level was 0.184%, his blood-cocaine level was 117 ng/ml, and his urine was positive for cocaine metabolite.

According to the firearms examination conducted by Denver Police Detectives Ed Frushour and Frank Kerber, all shell casings found at the scene of the shooting [a total of four] are consistent with having been fired from Officer Estrada's Beretta, Model 92FS, 9mm semi-automatic pistol. All four of the bullets

recovered from Brant Murphy's body by the Coroner's Office were identified by microscopic examination as having been fired from Officer Estrada's 9mm semi-automatic pistol.

The small handgun found near Brant Murphy at the scene was identified as a black, .22 caliber, 2¼ inch barrel, semi-automatic, loaded with six CCI .22HP Stinger cartridges. Two of the cartridges received with the firearm were used for testing purposes, and the tests showed the gun is in good mechanical condition, will fire, and will chamber the next cartridge from the magazine.

Further investigation by Denver Police homicide detectives Joel Humphrey and Shane Webster disclosed the following regarding information about Brant Murphy that Christine Murphy supplied to the Denver Police in her 9-1-1 call:

- At the time of his death, Brant Murphy was out on bond in Jefferson County Case 03 CR 2032. The charged crimes included Felony First Degree Assault, causing "serious bodily injury" with a "deadly weapon," and Felony Menacing with a "deadly weapon." The crime was alleged to have occurred on July 11, 2003.
- In addition to the above offenses, Brant Murphy's arrest record from 1993 until his death included arrests for: Distribution of dangerous drugs, Possession of dangerous drugs, Distribution of marijuana to a person under 15 years, Possession of a weapon by a previous offender, Obstructing Justice, Witness tampering, Witness intimidation, Retaliating against a witness, DUI, Reckless Driving, Vehicular Eluding, Cruelty toward a child, Child Abuse, Felony Criminal Impersonation, Failure to appear on drug charges, Criminal Mischief from \$500 to \$15,000, and Assault.
- In the early morning hours the same night as the shooting, police secured the Murphy home in Pine, Colorado, and searched it pursuant to a search warrant. In the master bedroom, Detectives found a clump of hair consistent in color to Christine Murphy at the foot of a circular stairway. Next to the clump of hair was a small pool of blood. In the middle of the bedroom was a locket and part of a broken necklace chain. A short distance away was the remainder of the chain. A bullet hole was found in the bedroom floor in the same general area as the locket. A few feet away was an approximate 6' electrical extension cord. A spent .22 caliber shell casing and a live .22 caliber bullet were found on the floor at the foot of the bed. Another bullet hole was found in the east wall of the bedroom. Three fully loaded assault rifles were found beneath the bed. There were live bullets chambered in each of these rifles. There were also three handguns beneath the bed: a .38 caliber semi-automatic pistol, a .22 caliber semi-automatic pistol, and a .44 magnum semi-automatic pistol. A box of ammunition and numerous loaded magazines were found with these firearms.
- Christine Murphy had ligature marks on her neck, and marks on her wrists and ankles, consistent with being "hogtied" with an extension cord. She was treated at the hospital for a laceration to her head that was consistent with being struck with a gun.³

³ See Appendix 3.

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 Murphy was shot by Officer Estrada, the determination whether his 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 Officer Estrada fired the shots that caused Murphy’s death, he reasonably believed, either that Murphy had directed or was about to direct deadly physical force toward him or a third person, that he had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or, finally, that he 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

“Oh thank God. There’s a police officer here.” After being severely beaten and threatened with death by her husband, Brant Murphy, the words Christine Murphy stated to the 9-1-1 operator expressed the relief she felt when Officer Jay Estrada arrived to protect her. Based on radio transmissions, Officer Estrada was aware that Brant Murphy was a very dangerous individual who was likely armed with a handgun. When Officer Estrada confronted Murphy in the Ramada lobby, he attempted to make a lawful arrest. Instead of complying, Murphy fled up the stairs to the second floor. Officer Estrada immediately gave chase. He did not draw his firearm at this time. On the second floor, he saw Murphy reach into his pocket and remove a dark object. When Murphy suddenly turned on Officer Estrada and advanced toward him, Officer Estrada saw that Murphy had a handgun in his hand. It is reasonable to conclude that aggressive non-compliance, while armed with a handgun and advancing on an officer, is an imminent deadly attack. The use of deadly force to defend is clearly reasonable and appropriate under these circumstances. Officer Estrada quickly drew his service pistol. As Murphy continued to close distance on Officer Estrada and began to raise the firearm, Officer Estrada fired four shots—in two rapid two-shot sequences. Officer Estrada stopped firing when Murphy fell to the hallway floor and dropped his handgun.

Officer Estrada responded to Christine Murphy’s urgent call for help. Upon arrival at the Ramada, he quickly located her in the men’s restroom. He took action to notify his fellow officers that he had located the victim and was seeking to identify the suspect. When he encountered the suspect, he attempted to end the encounter peacefully by lawfully placing him under arrest. When the suspect was totally non-compliant and fled, he did what we expect our officers to do—he pursued him. When the suspect suddenly and aggressively turned on him with a handgun, Officer Estrada drew his service pistol and justifiably shot him. Thankfully he was able to do so before Murphy could shoot him or anyone else.

Based on the facts of this case, as described in detail in this letter, I conclude that under applicable Colorado law no criminal charges are fileable against Officer Jay Estrada in the death of Brant Murphy. In fact, based upon Murphy’s felonious assault to his wife, his prior statements, his prior history of violence and his extreme level of intoxication, it is fortunate that this encounter ended in the manner it did. Officer Estrada, and his fellow officers who responded with him to this scene on this night, handled this entire situation in a manner consistent with their training and commitment to “serve and protect.”

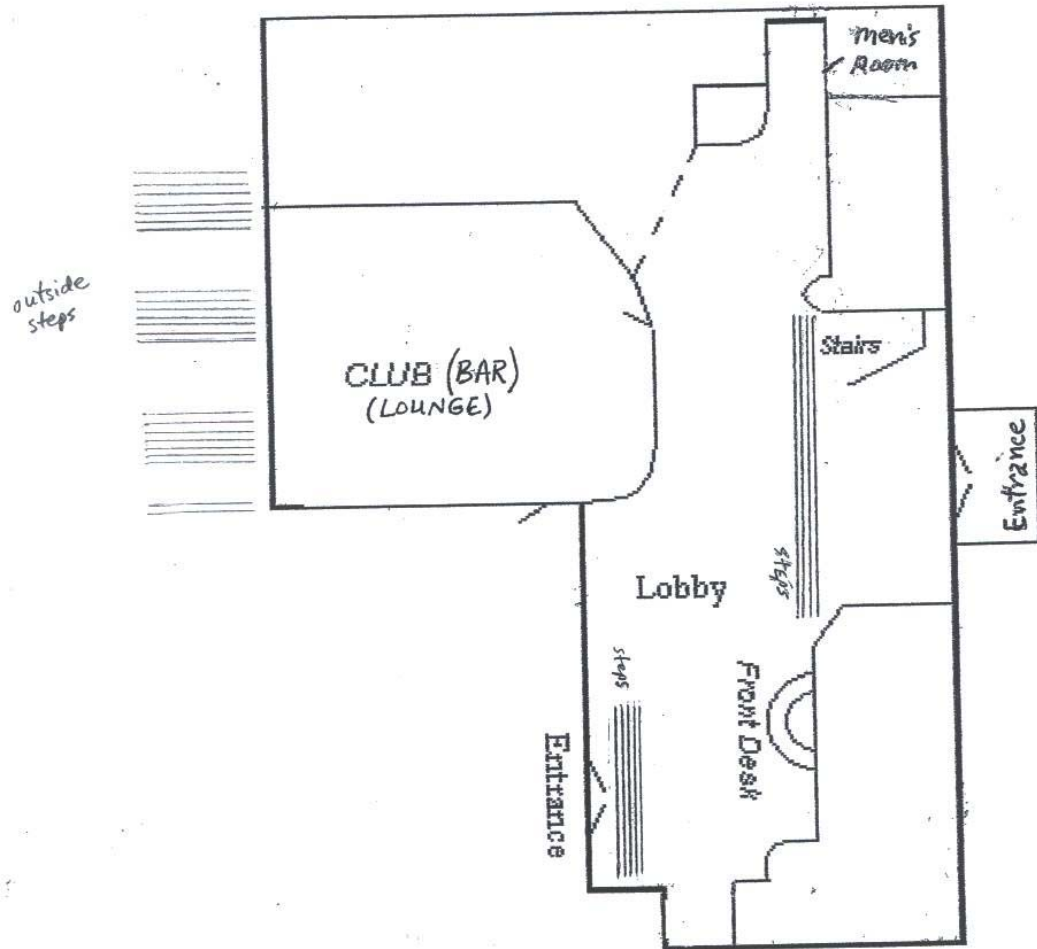
As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,

Bill Ritter, Jr.
District Attorney

cc: Officer Jay Estrada
David Bruno, Attorney at Law
John W. Hickenlooper, Mayor
All City Council Members
Alvin J. LaCabe, Jr., Manager of Safety
Marco Vasquez, Deputy Chief
Michael Battista, Deputy Chief
Dan O'Hayre, Division Chief
Dave Fisher, Division Chief
Steve Cooper, Division Chief
Mary Beth Klee, Division Chief
Dave Abrams, Captain, Crimes Against Persons Bureau
Jon Priest, Lieutenant, Homicide
Joel Humphrey, Homicide Detective
Shane Webster, Homicide Detective
John Lamb, Commander, Civil Liability
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
George Poland, Chief Deputy District Attorney
Doug Jackson, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission

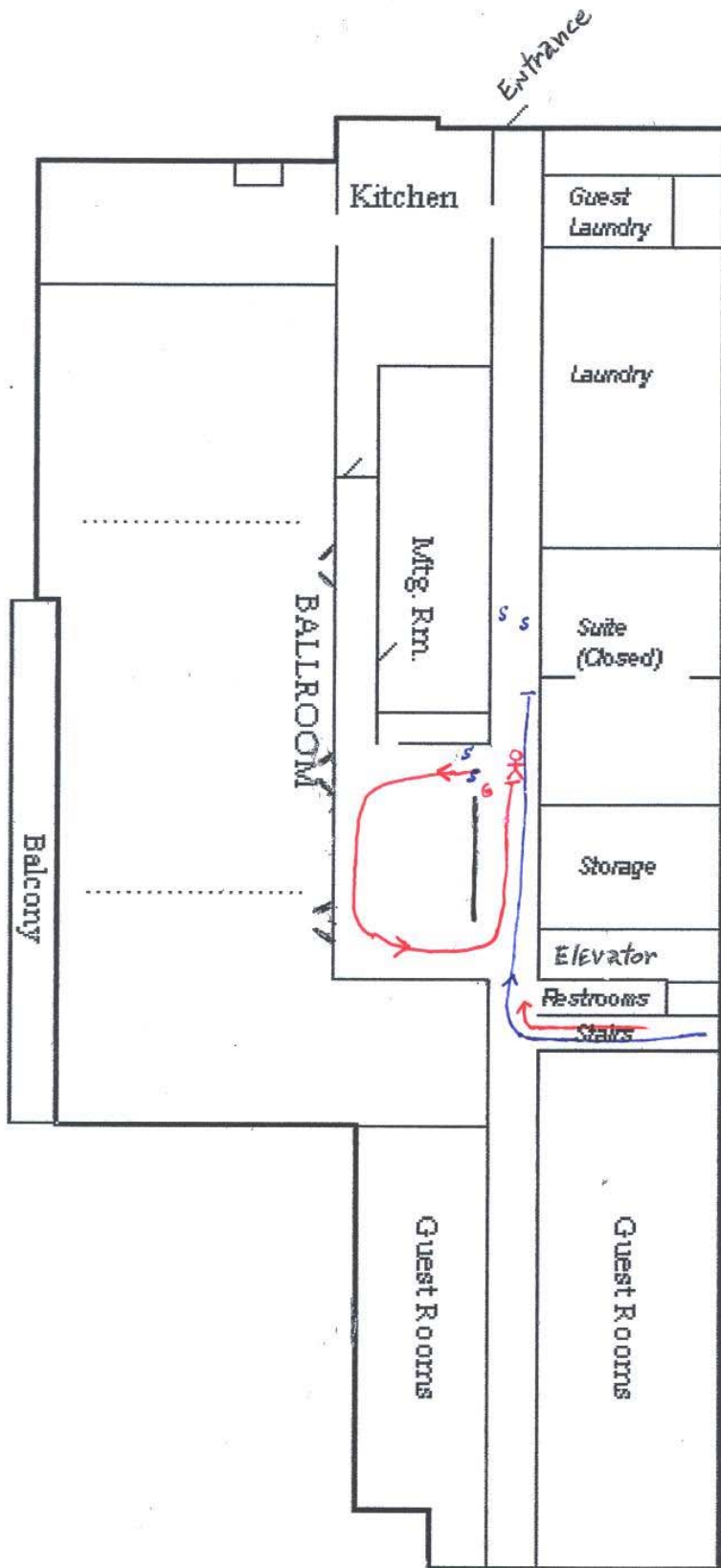
Appendix 1



not to scale

ATTACHMENT "A"

Appendix 2



G = .22 cal. gun
S = shell casings

■ path taken by Brent Muu
as seen by Ofc. Estrada
■ path taken by Ofc. Estrada

ATTACHMENT "B"

not to scale

Appendix 3

