



DenverDA

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October 28, 2008

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

RE: Investigation of the wounding of Dwight Dean Collins, dob 07/22/84, by Sergeant Bryan O'Neill, #99025, October 17, 2008, in the 1900 Block of Blake Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the wounding of Dwight Dean Collins have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Sergeant Bryan O'Neill ("Sergeant O'Neill"). My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed 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 officer-involved shooting and the applicable Colorado law is attached to this letter.

STATEMENT OF FACTS

On October 17, 2008, at 2:03 a.m., Denver officers reported an officer-involved shooting in the 1900 block of Blake Street. Denver Police Department officers increase patrol in the lower-downtown area ("LoDo") to control the crowds leaving the numerous night clubs in the area. Increased saturation of officers is intended to prevent violence and property destruction and to intervene quickly if such acts occur. Large numbers of people flow into the streets and parking lots at this time and according to officers—problems are not uncommon.

Prior to 2:00 a.m., Sergeant O'Neill had assisted other officers in breaking up fights in the area of the 1900 block of Blake Street. He returned to his marked Ford Expedition police vehicle which was parked in front of Club Beta on the right side of Blake Street, which is a one-way street. He was seated in the driver's seat watching the out crowds from the night clubs. The lane to his left was the only through traffic lane because the other lane was blocked by a Denver Police vehicle occupied by an officer

and an arrestee.¹ When the traffic light at 19th and Blake Street turned green the traffic in the through lane proceeded. Sergeant O'Neill noticed the black-front hood of a vehicle to his immediate left. The vehicle was stopped and was impeding the vehicles behind it. Sergeant O'Neill was intending to merge into this traffic lane. As he looked back to the left he observed the driver of the black 2006 Dodge Magnum station wagon (Michigan license plates), later identified as Dwight Collins, raise a handgun up as he turned to his left with the handgun held high across his chest pointed out the window in the direction of the occupied Denver Police vehicle. There were also civilians walking down the sidewalk on the other side of the police vehicle. Sergeant O'Neill also observed a party in the front passenger seat looking to the left in the direction Collins was looking. Believing Collins was about to shoot, Sergeant O'Neill immediately drew his service pistol and fired two shots at Collins through the vehicle's front windshield in rapid succession.² Collins drove forward approximately four-vehicle lengths into the lane to his left before stopping near the intersection of 19th and Blake Street. Sergeant O'Neill pulled out to pursue Collins and stopped behind his vehicle.³



Sergeant O'Neill directed his spotlight on Collins' vehicle. Other Denver officers covered in quickly. Collins and his passenger, Mykhael Lattimore, were removed from the vehicle without further incident. Collins was transported by ambulance to Denver Health Medical Center where he was treated for a single-gunshot wound to his right cheek. The bullet went through his cheek and exited his mouth without causing damage to his teeth or any other area. The bullet lodged in the driver's side door post of his vehicle. Collins, after treatment, was released to the custody of the Denver Sheriff and was placed in jail.

Because criminal charges are pending against Dwight Dean Collins, we have provided the basic facts of this officer-involved shooting in summary form, rather than more detailed statements of the officers and witnesses. However, it is appropriate to indicate that the statement of facts in this letter is consistent with the statements given to investigators by both Sergeant O'Neill and Dwight Collins. The physical evidence also supports their statements. Collins told investigators he retrieved the firearm from behind the passenger seat; aimed it out his window at "a Mexican guy" walking down the sidewalk, because "him and I locked eyes ... you know how somebody stares you down;"

1 See attached photographs showing position of the involved vehicles.

2 See attached photographs showing two bullet holes through the front windshield of Collins' vehicle.

3 See attached photographs and diagrams.

when the guy “put his hands toward his waistband is when I (Collins) reached under the seat for my gun;” “the gun was in my right hand across my chest pointing out the window;” and Collins was then shot in the cheek as he started to turn back to his right intending to place the firearm back under the seat, which he did after being shot.⁴ He told investigators the “Mexican guy never pulled anything out” and he (Collins) never fired his weapon. During his statement, Collins apologized to everyone involved, saying “in my stupidity it was a way to defuse the situation ... but it just made it worse.”

Sergeant Bryan O’Neill fired his .45 caliber, Glock, model 21, semi-automatic pistol. His weapon has a magazine capacity of 13 rounds. At the time of the shooting he was vehiclery his weapon with the magazine fully loaded and an additional round in the chamber. When the weapon was unloaded by Denver Police Department Crime Laboratory personnel after the shooting there were eleven (11) live rounds in the magazine and one (1) live round in the chamber. Two (2) .45 caliber shell casings were recovered on the street near Sergeant O’Neill’s police vehicle. Sergeant O’Neill fired two (2) shots in this incident.

Collins’ vehicle was searched pursuant to a search warrant. Collins’ 9mm Stallard Arms semi-automatic pistol was recovered beneath the back of the passenger seat, where Collins told investigators he placed it after the shooting.⁵ The firearm had blood on it. The firearm had six (6) live rounds in the magazine and no round chambered. A 9mm shell casing was recovered on the floor near the firearm.⁶ A spent bullet was recovered on the back seat. A spent bullet was recovered in the driver’s side door post.

The following felony charges are pending against Collins: (1) 18-3-206 Menacing; (2) 18-12-106(1)(a) Prohibited Use of a Weapon; and (3) 18-12-105 (1)(a),(b) Vehiclerying a Concealed Weapon.

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 injury or death is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. As the evidence establishes that Collins was shot by Sergeant O’Neill, the determination of whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances

⁴ He placed the firearm where it was later recovered by crime lab personnel. See attached photograph of firearm.

⁵ See attached photographs.

⁶ See attached photographs.

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; or**
 - 3. **Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.**

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.**

Officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 p.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P.274, (Colo. 1910).

The test for justifiable self defense or defense of others requires that, given the totality of the circumstances, a person reasonably believed that he or another person was being subjected to the use or imminent use of unlawful physical force or deadly physical force and that he used a degree of force that he reasonably believed to be necessary to protect himself or another person.

Therefore, the question presented in this case is whether, at the instant Sergeant O'Neill fired the shots that wounded Collins, **he reasonably believed that Collins was directing or was about to direct deadly physical force against another person.** In order to establish criminal responsibility for an officer knowingly or intentionally causing death or injury to another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

Our police officers and law-abiding citizens should not be subjected to the risk of injury or death when working in or enjoying an evening in LoDo. As I stated in my letter from the June 22, 2008 officer-involved shooting in LoDo, just a block from the scene of this shooting, "In our city, it is unacceptable for our police officers and citizens to be endangered by these life-threatening acts of violence by criminals and we are thankful our officers respond professionally and courageously in time of need to protect our city and our citizens. Denver's message to criminals is: Don't come to our city with firearms and bad intentions." Unfortunately, Denver police officers and citizens continue to be placed in harm's way by individuals unlawfully bringing firearms to LoDo. It makes little difference to those subjected to the threat whether stupidity and/or a specific criminal intent to do harm is the misguided cause. There is no justification to bring a firearm to an evening in LoDo. If you are a criminal and/or suffering from stupidity—*just leave home without it.*

Based on the statements to investigators by both Sergeant O'Neill and Dwight Collins, it is clear that the criminal actions of Collins in aiming a firearm at others, left Sergeant O'Neill no option but to fire to eliminate the perceived imminent deadly threat posed by Collins' unlawful conduct. Under the specific facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for Sergeant O'Neill to fire the shots that caused Collins' injury. In fact, Sergeant O'Neill's actions were reasonable, necessary, and appropriate in these circumstances. Therefore, no criminal charges are fileable against Sergeant O'Neill for his conduct in this incident.

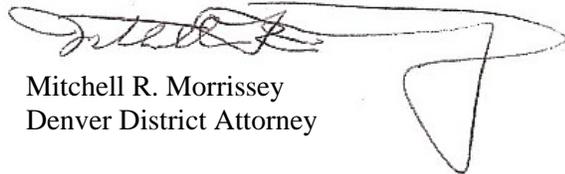
The attached document entitled Officer-Involved Shooting Protocol 2008 is incorporated by this reference. The following pertinent statement is in that document: "In most officer-involved shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police

Department administrative investigation to move forward more quickly.” In accordance with the protocol, the administrative and tactical aspects of the event will be addressed by the Manager of Safety and Chief of Police in their review and administrative decision letter.

We will open our Officer-Involved Shooting file in this case for in-person review at our office at the conclusion of the prosecution of Collins for his conduct in this case.

The Denver Police Department is the custodian of records related to this case. 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,



Mitchell R. Morrissey
Denver District Attorney

cc: Sergeant Bryan O’Neill; Doug Jewell, Attorney at Law; David Bruno, Attorney at Law; John W. Hickenlooper, Mayor; All City Council Members; Alvin J. LaCabe, Jr., Manager of Safety; Mel Thompson, Deputy Manager of Safety; Mary Malatesta, Deputy Manager of Safety; David Fine, Denver City Attorney; John Lamb, Deputy Chief; Michael Battista, Deputy Chief; Tracie Keesee, Division Chief; Dave Fisher, Division Chief; David Quinones, Division Chief; Mary Beth Klee, Division Chief; Gregory LaBerge, Crime Lab Commander; Joe Montoya, Captain; Jon Priest, Lieutenant, Homicide; Kathleen Bancroft, Lieutenant; Sergeant James Kukuris, Homicide; John Coppedge, Sergeant, Homicide; Detective Randal Denison, Homicide; Detective Troy Bisgard, Homicide; John Burbach, Commander, Civil Liability Bureau; Chuck Lepley, First Assistant District Attorney; Lamar Sims, 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; Richard Rosenthal, Office of the Independent Monitor.



This photo is to scale.
Actual size of firearm.

The Stallard Arms 9mm semi-automatic pistol wielded by Dwight Dean Collins and later recovered beneath the back of the passenger seat, where Collins told investigators he placed it after the shooting.

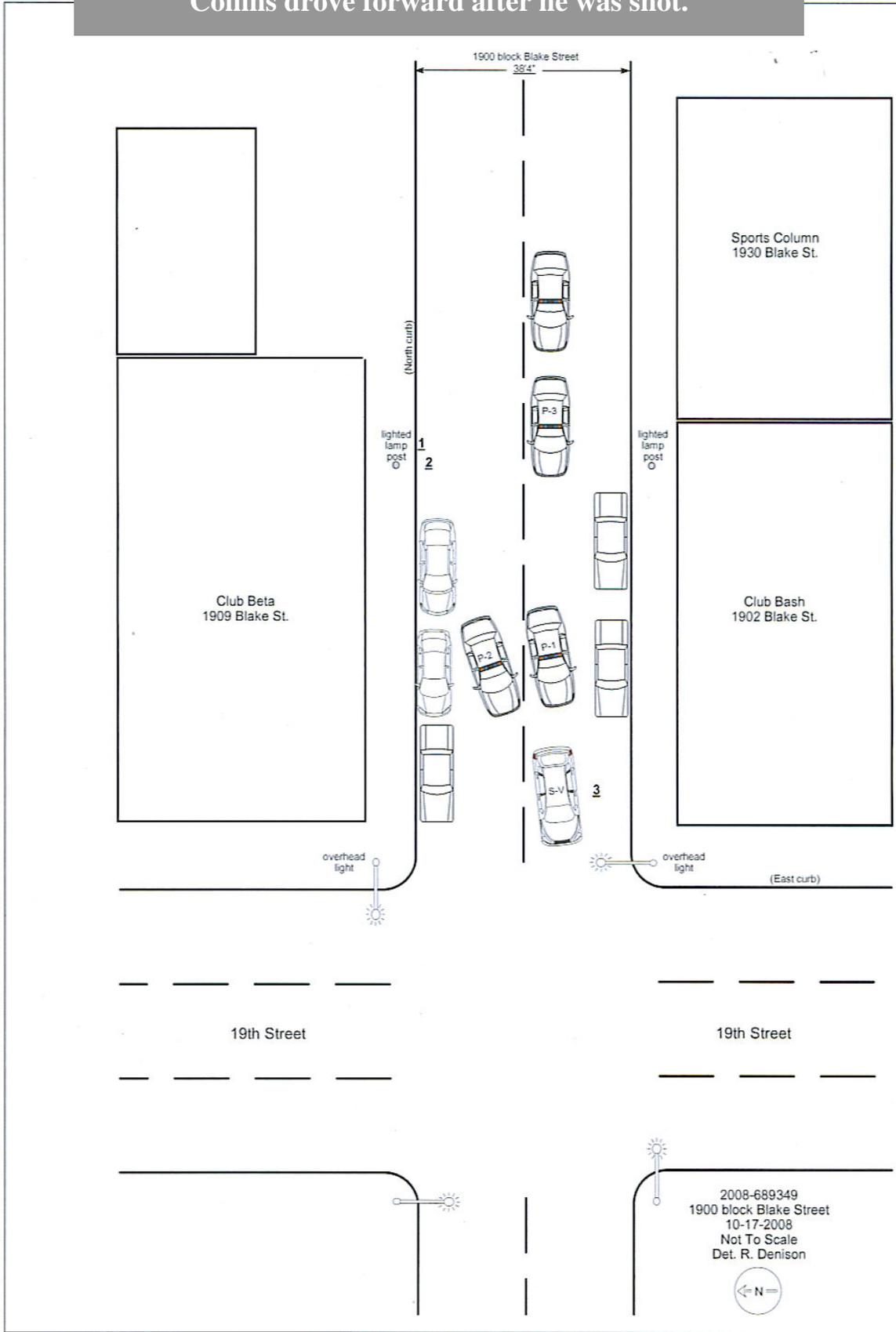


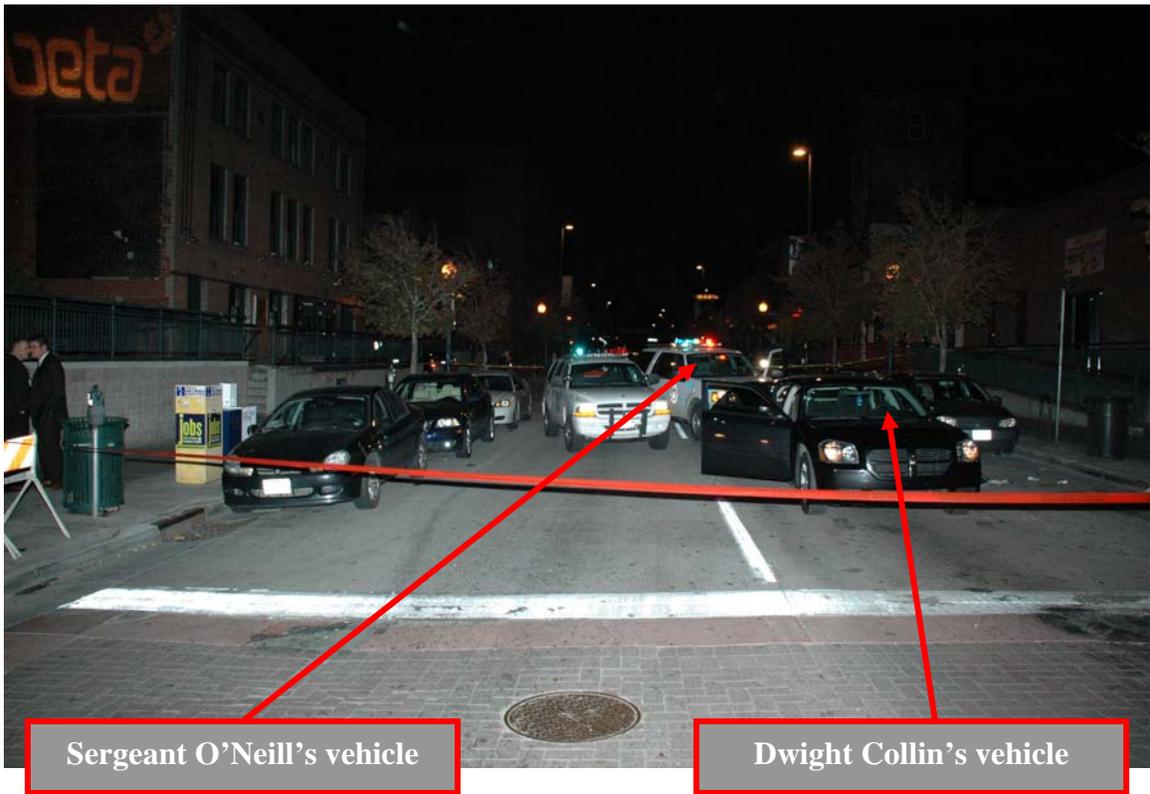
Dwight Collins' Stallard Arms
9mm semi-automatic pistol

9mm shell casing



Position of vehicles at the end of the incident after Collins drove forward after he was shot.

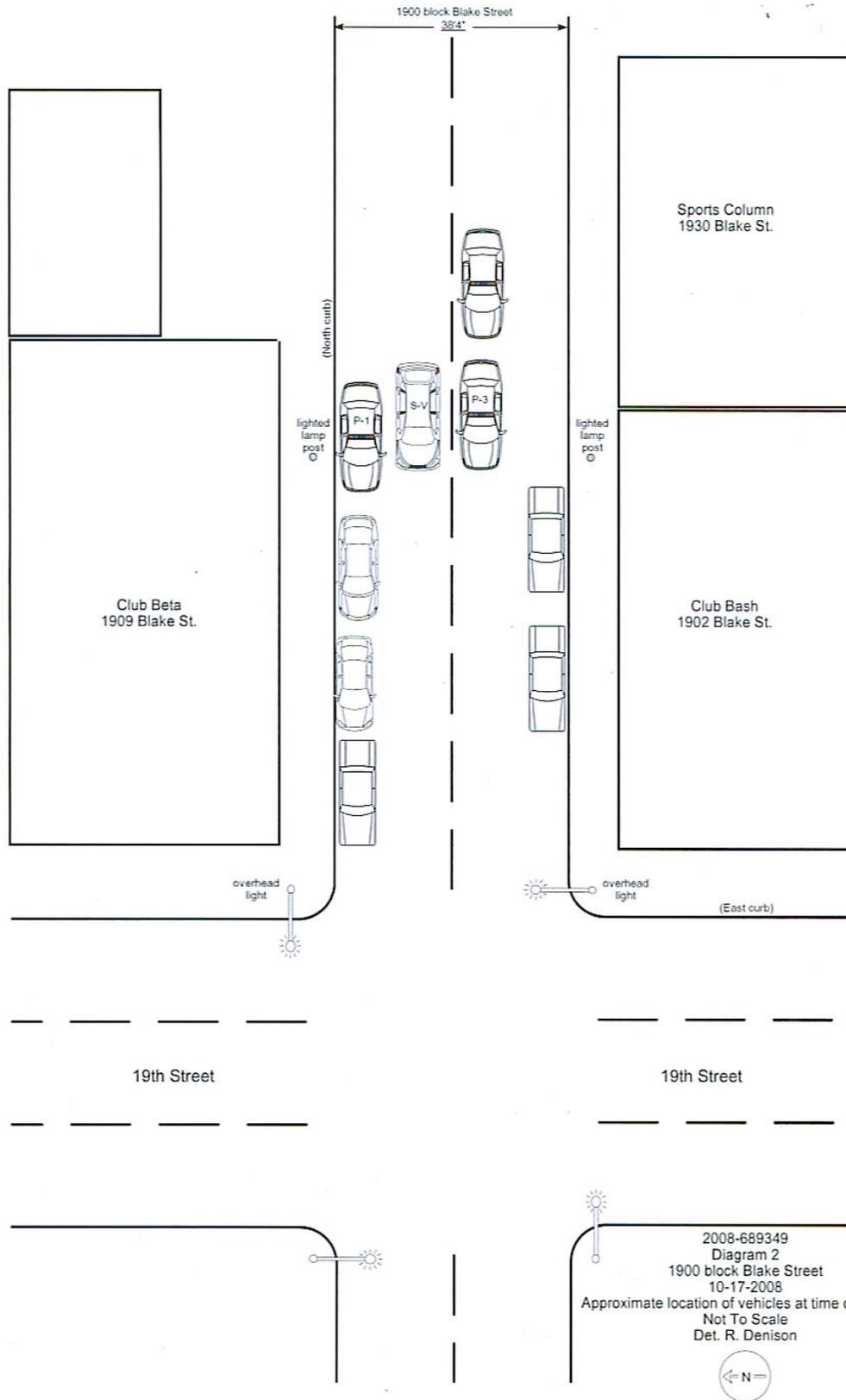




This is the location of the vehicles of Sergeant O'Neill and Dwight Collins after Collins drove forward after he was shot. Sergeant O'Neill was parked where indicated by the triangle at the time he fired the two shots.



Position of vehicles at time of shooting incident.



Dwight Collin's vehicle

Sergeant O'Neill's vehicle



The vehicles of Sergeant O'Neill and Dwight Collins were returned to the position they were in when the shooting occurred. The other vehicles had not been moved since the shooting.





The vehicles of Sergeant O'Neill and Dwight Collins were returned to the position they were in when the shooting occurred. The other vehicles had not been moved since the shooting.



Sergeant Bryan O'Neill fired two (2) shots through the front windshield of Collins' vehicle striking Collins once in the right cheek.

