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December 26, 2007

Public Statement of the Manager of Safety Regarding an Officer-Involved Shooting by Officers Noel Ikeda, Marco Martinez, and Dominick Salinas on March 17, 2004 at 217B Knox Court which Resulted in the Death of Eli Jiron*

I. SYNOPSIS¹

At about 3:30 p.m. on Wednesday, March 17, 2004, Denver Police District Four Neighborhood Police Officers ("NPO"), working on information provided by a Denver Police fugitive detail detective, made an "attempt pick-up" on a wanted party identified as Eli Jeremy Jiron ("Jiron"). The officers were attempting to effect service of two outstanding warrants for Eli Jiron; one for Felony Sexual Assault and one for Parole Violation. The address to which the officers had been directed was 217B Knox Court, the second story apartment of a building on the west side of Knox Court. Several uniformed NPOs, assisted by uniformed officers assigned to the Gang Bureau, drove to the area. Four Gang Unit officers

* This public statement is prepared pursuant to a policy enacted by the Manager of Safety in January 2004. Its purpose is to supplement the long established practice of the Denver District Attorney's Office of issuing public letters detailing the results of that office's criminal investigation into all officer-involved shooting incidents. The District Attorney's investigation focuses on whether or not the shooting was in compliance with the criminal laws of the State of Colorado. In contrast, the intent of the Manager of Safety's statement is to provide a public statement regarding the administrative review of officer-involved shootings by the Denver Police Department. That administrative review focuses on whether or not the shooting was in compliance with applicable Departmental policies and procedures and, if not, whether an involved officer should be disciplined.

¹ In March of 2004, prior to a change in its protocols, the District Attorney's "shoot" letters contained a detailed and exhaustive recitation of all relevant facts developed in its investigation. The Manager of Safety's Office has reviewed the District Attorney's letter issued in this case on July 17, 2004, as well as all reports and statements on which it was based. The Manager of Safety's Office found the letter to be a thorough and accurate rendition of the facts upon which the Manager based his independent decision in the administrative case. Therefore, the relevant facts contained in this public statement are derived from the District Attorney's letter with supplemental facts and analysis added as necessary. The more detailed facts contained in the District Attorney letter may be reviewed at their website, DenverDA.org.

took "cover" positions in the alley west of the building and five NPOs moved to the outside stairway that led to the only door to the apartment. These officers positioned themselves as follows: Officers James Mullins, and Nick Grove, stood at the base of the stairway, Officer Marco Martinez, stood part way up the staircase (where he was able to watch a window which overlooked the stairs), and Officers Dominick Salinas, and Noel Ikeda, approached and knocked on the door at the top of the stairs. Officer Ikeda knocked once and there was no response. He tried the door knob but the door appeared locked. He knocked again and within seconds the door swung open and Jiron stood in the open doorway. Jiron turned and ran east down a short hallway, veered to his left and disappeared. Officers Ikeda and Salinas followed cautiously. Officer Ikeda came to the end of the short hallway and quickly "pied" the area to his left. He saw no one and, accordingly, made a wide approach to the left. When he did so, he saw Jiron standing in the southwest corner of the kitchen area, armed with a kitchen knife. Officer Salinas followed Officer Ikeda into the living room area and both officers immediately began ordering Jiron to drop his weapon.

Officer Martinez followed the other two officers into the apartment. He started to check the back bedroom area to the west, but heard Officers Salinas and Ikeda issuing commands and he rushed back to the living room/kitchen area. Officer Grove came up the stairs, entered the apartment and also entered the living room area. Four officers were now standing in the small living room area, facing Jiron. All of the officers began commanding Jiron to drop his knife, but then Officer Salinas, who had received Crisis Intervention Training ("CIT"), took the lead and attempted to de-escalate the situation by use of his training. As he did so, Officer Grove quickly went back outside and, from the landing at the door to the apartment, called to the officers standing on ground level, inquiring whether any of them had a TASER. The "TASER" is a less than lethal, pistol-shaped weapon which fires two charged wires. When an individual is struck by the probes, an electrical charge temporarily immobilizes the individual. Gang Unit Officer Jamie Akens, threw a TASER up to Officer Grove and Officer Grove re-entered the apartment. When he rounded the corner from the hallway into the living room/kitchen area, Officer Grove yelled "TASER! TASER! TASER!" He attempted to deploy the TASER but it did not discharge. He stepped to his left, turned slightly away from Jiron, and checked the TASER. He realized that the safety was engaged. He disengaged it and started to come back on target. Jiron had appeared to turn or shy away when Officer Grove first attempted to deploy the TASER. When Officer Grove turned away to check the TASER, Jiron began to turn back around and move toward him, with his knife held in a threatening position. When Jiron made this sudden and aggressive movement, Officers Salinas, Martinez and Ikeda fired their weapons. At the same time the three officers fired, Officer Grove deployed the TASER. Both TASER probes missed Jiron. This was a dynamic encounter with Jiron's body moving and turning as the shots were fired. The officers were fanned out in front of Jiron and their shots came from varying angles. Jiron was struck several times and the bullet wounds are indicative of the positions of the officers and Jiron's movements. Jiron fell to the floor and the officers immediately requested an ambulance and advised the police dispatcher that they had been involved in a shooting. This call was made

at 3:33 p.m. Denver Health Medical Center paramedics responded quickly and entered the home at 3:36 p.m. The paramedics were unable to resuscitate Jiron and he was pronounced dead at the scene.

II. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The criminal investigation was completed and the District Attorney's detailed decision letter was released on July 17, 2004. In the language of the statutory requirements, the District Attorney declined to file charges against any of the three officers, concluding:

The officers were attempting to make the lawful felony arrest of Jiron for Sexual Assault and Parole Violation warrants. They had information that he was dangerous, had run from officers in the past, and that he would fight officers. There is no question Jiron knew they were police officers. They were dressed in full Denver Police uniforms and repeatedly indicated they were police officers. Rather than surrendering to the lawful arrest, Jiron made the conscious decision to flee and then aggressively confront the officers. He quickly fled to the kitchen, armed himself with a knife, and faced the officers. These actions by Jiron evinced an overt hostility toward them and was an indication of his potential intent to use the weapon against the officers. He refused to comply with the repeated commands to drop the knife. The confrontation was in a very constricted area of the interior of the residence. In spite of this and the inherent risk of being in this close proximity to a noncompliant armed and dangerous suspect, the officers did not fire, but rather made repeated attempts to de-escalate the confrontation. The actions of the officers reflected a clear intent on their part to attempt to avoid having to use deadly force. The officers communicated with the suspect and with one another. Officer Salinas, who is CIT trained and certified, directed the other officers to allow him to be the single source of communication with Jiron. The officers used not only verbal CIT techniques in an effort to calm the suspect and gain compliance, but also attempted to use a less lethal force option. None of the officers in the residence had a TASER. Officer Grove retrieved one from an officer outside the residence. Throughout the efforts by the officers to de-escalate, Jiron made no indication of any intention to comply. He had an ongoing opportunity to surrender peacefully. Instead, his actions were consistent with the information they had concerning his prior conduct. In spite of the inherent potential danger it presented to them in this deadly-force encounter, the officers attempted to use a TASER. With Jiron still refusing to drop the weapon and surrender, Officer Grove attempted to deploy the TASER he had obtained

from a fellow officer. It failed to deploy. As Officer Grove turned away to assess the TASER's failure to deploy, Jiron, instead of dropping the knife, turned quickly and aggressively toward the officers with the knife still in hand. The three officers fired simultaneously in response to this sudden, hostile, and threatening action from close range by Jiron. The Taser is a less-lethal force option designed and deployed for use in non-deadly force encounters. When a party is armed with a firearm or edged weapon, the confrontation is immediately a potential deadly-force threat. There have been confrontations where the Taser has been successfully used against assailants with edged weapons, but the Taser is not specifically designed and intended for that type of encounter. While it is fortunate that on occasion under the right set of circumstances a Taser can be deployed to end an encounter without serious injury or death to anyone, there should be no expectation that a Taser will be used in confrontations with assailants armed with firearms or edged weapons. This is clearly stated in the Denver Police Department Operations Manual at "105.02 Less Lethal Force and Control Options." Under the facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for the officers to perceive that Jiron was an imminent deadly threat to them or the other officers present at the instant they fired. Therefore, no criminal charges are fileable against Officers Ikeda, Martinez or Salinas for their conduct in the death of Jiron.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. The Use of Force Review Board subsequently determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Board are advisory in nature and are not binding on Chief Whitman. After reviewing the investigation and considering the recommendation of the Use of Force Review Board, Chief Whitman concluded that there were no violations of Department rules or policies in this incident. The case was subsequently forwarded to the Office of the Manager of Safety.²

This Office, thereafter, reviewed the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including the officer statements, witness statements, diagrams, photographs and physical evidence reports. Additionally,

² This officer-involved shooting occurred prior to the establishment of the Office of the Independent Monitor (OIM). As was the practice at the time of this incident, the Manager of Safety performed many of the duties now being carried out by the OIM. The Manager of Safety viewed the crime scene, observed the interviews of the involved officers and of the witnesses and reviewed in detail the investigation conducted by the Denver Police Department and the District Attorney's Office as it was proceeding. At the time of the Use of Force Board review and the review conducted by the Chief of Police, the Manager of Safety was thoroughly briefed as to the findings and recommendations.

this Office studied the policies in effect on the date of the shooting and was aware of relevant training materials and academy training practices. Consideration was given to the decision of the Denver District Attorney and the Chief of Police, as well as the recommendations and conclusions of the Use of Force Review Board. At that time, the Manager of Safety concluded that this shooting incident was not in violation of any Departmental policies or procedures and communicated those findings to the Chief of Police.³

III. STATEMENT OF PERTINENT FACTS

This investigation involved the shooting death of Eli Jeremy Jiron ("Jiron") by uniformed Denver Police Officers Noel Ikeda, Marco Martinez, and Dominick Salinas, who were attempting to arrest Jiron for outstanding warrants. Those warrants had been verified by Avis Laurita, a Denver Detective assigned to the Fugitive Location and Apprehension Group (FLAG), a multi-jurisdictional task force. Det. Laurita then enlisted the assistance of other officers to make the arrest. One warrant was for Parole Violation, the other was for Felony Sexual Assault. The information provided to the officers by Detective Laurita was that Jiron was to be considered "dangerous," that he had run from officers in the past, and that he would fight officers. Detective Laurita had been advised by a citizen informant that Jiron would be at 217B Knox Court, the home of his girlfriend. Detective Laurita directed the uniformed officers to the apartment and they made contact with Jiron. Jiron armed himself with a knife and four officers engaged in a brief confrontation during which time they ordered him to drop his weapon. One CIT trained officer attempted to "talk him down" and another officer obtained a TASER and tried to use less than lethal force to end the situation. The incident unfolded in a constricted area of the apartment. When Jiron suddenly moved toward the officers, all four of them fired their weapons at Jiron: three handguns and a TASER. Immediately after the officers fired their weapons, the dispatcher was advised of the shooting and that an ambulance was requested. This call was made at 3:33 p.m. Denver paramedics responded and Jiron was pronounced dead at the scene.

All of the officers who entered the house were dressed in full blue Denver Police Department uniforms. Officers Ikeda and Salinas were both armed with Glock model 17, 9mm semi-automatic pistols. This weapon has a magazine capacity of seventeen rounds and may be carried with an additional round in the chamber. Each officer carried his pistol fully loaded with Denver Police Department issued ammunition. Officer Ikeda fired his pistol five times. Officer Salinas fired his pistol four times. Officer Martinez was armed with a Sig Sauer, model P220, .45 caliber semiautomatic pistol. This weapon has a seven round magazine capacity and may be carried with an additional round in the chamber. Officer Martinez's weapon was fully loaded with Denver Police Department issued ammunition.

³ Despite the timely review of this incident by the Manager of Safety's Office, this public statement was not completed at that time due to the allocation of available resources to other priorities within the Manager of Safety's Office.

Officer Martinez fired his weapon twice. Following the incident and in compliance with the protocols established for officer-involved shootings, the officers' weapons were given to Denver Police Crime Lab personnel for appropriate testing.

On March 18, 2004, Dr. Amy Martin, a forensic pathologist with the Denver Medical Examiner's Office, performed an autopsy on Jiron's body. The cause of death was determined to be multiple gunshot wounds. Dr. Martin noted evidence of eight gunshot wounds, but determined that some of the wounds might have been caused by the same bullet. Additional description of these wounds is contained in the District Attorney's letter as previously cited.

The District Attorney's decision letter, with which this Office concurs, noted as follows:

The fact that Jiron received wounds in his face and the front of his body and to his left back and buttock suggests that he was turning at the time shots were being fired. Additionally, the fanned-out position of the officers suggests that when he was facing or approaching Officer Grove, Officer Ikeda would have been viewing the left side of Jiron's body. The statements of Officers Ikeda and Salinas establish this fact. Officer Ikeda stated that Jiron was turning away from Officer Grove when Officer Grove attempted to deploy the TASER and then turned back when the TASER did not deploy.

Officer Ikeda told investigators that as Jiron made his move toward the officers:

IKEDA: . . . we, we fired on him and he kept going but then, then he started turning, you know, and . . . but he was still alive. And then, then once, once he . . . we saw him actually going down . . . that's when we stopped.

In his statement, Officer Salinas corroborates Officer Ikeda's description. During the course of his video-taped statement, Officer Salinas stated:

Um, Mister Jiron spun around a couple of times. Um, still had the knife in his hand. Uh, he then fell to the ground. Firing stopped . . .

Toxicological analyses of blood and urine samples obtained from Jiron's body were negative for the presence of blood alcohol. Urine screens were positive for THC (the active psychotropic agent in Marijuana) and for trace amounts of the cocaine metabolite, benzoylcegonine.

The location of this shooting, 217 Knox Court, is a small two-story building on the west side of the street. Apartment B is the upstairs unit. A set of stairs on the south side of the building leads to the landing and front door. The door, which opens inward, opens into a corridor which runs east-west. To the west, the corridor leads to two back bedrooms, one on the northwest side of the apartment,

the other to the southwest. To the east, the corridor runs along the south side of the apartment. It opens into the living area and forms the south wall of the kitchen area. The living room – kitchen area is essentially one area. On the west wall of the kitchen area are cabinets above a sink, a dishwasher and counter space. A refrigerator is at the west wall at the north end. On the south wall of the kitchen area are additional cabinets, which sit above a range, and additional counter space. Investigators documenting the apartment recovered multiple shell casings, bullets and bullet fragments in the kitchen area. Also recovered was a TASER in the living room, with the two probes and wires extended into the kitchen area. The entire area was photographed and the items of evidence measured and recovered.

Jiron was pronounced dead at the scene and his body was not removed until investigators had completed the initial documentation of the scene. He was found lying on his right side in the southwest corner of the kitchen area. A kitchen-type knife was recovered next to Jiron's body. Investigators later measured the knife and determined that it had an overall length of 11 inches and a 6 inch blade. Immediately after the scene was secured, officers and investigators conducted a neighborhood survey and identified several individuals who heard shots fired. Written statements were obtained from these citizens. The two Denver paramedics who attended to Jiron were interviewed regarding their observations at the scene. Both indicated they observed a knife next to Jiron when they examined him. Each provided a written statement. Fabian Rodriguez-Torrez, a friend of Jiron's, was located by investigators. Mr. Rodriguez-Torrez told investigators that Jiron had spoken with him about the incident for which the sexual assault warrant had been issued, denying the allegation but stating that he was aware that a warrant had been issued.

Several officers were present outside the apartment at the time of the shooting. Written statements were obtained from these officers as well as those who responded after the incident to secure the scene and assist in the investigation.

Following the shooting, and in accordance with protocol, all of the involved officers present in the living room were separated from each other and the other witnesses. Each was separately transported downtown by an uninvolved supervisor and each was given an opportunity to speak to their attorney. Each officer voluntarily provided a video-taped statement to investigators. During the course of those video-taped statements, the officers used photographs and diagrams to point out relevant locations and better explain their observations and actions.

The investigation disclosed that on February 26, 2004, Detective Avis Laurita was contacted by Denver Police Detective Barbara Wimmer, 96004, who was assigned to the Crimes Against Persons Unit. Detective Wimmer advised Detective Laurita that she had obtained a warrant for the arrest of Eli Jiron. Detective Laurita checked the police computers and learned that there was another outstanding warrant for Jiron, this one for Parole Violation. Detective Laurita noted that this "warrant had a caution indicator for violent tendencies."

Over the next several days, Detective Laurita made repeated efforts to locate and apprehend Jiron, including contacting members of his family and friends and engaging in surveillance of his last known addresses. Ultimately, on March 17, 2004, Detective Laurita received a telephone call from an informant who told her that Jiron might be going to a restaurant known as Chubby's at First and Federal Boulevard. Based on this information, Detective Laurita contacted Officers Salinas and Ikeda and requested that they attempt to arrest Jiron. At that time, she provided the officers with the information she was aware of regarding Jiron. Shortly thereafter, Detective Laurita received another call from her informant, who told her that Jiron was located in an apartment in the area of Second and Knox Court. Detective Laurita had previously learned that Jiron had been staying with a girlfriend who had a possible address of 217 Knox Court. She immediately contacted the arrest team and directed them to 217 Knox Court.

Officer Salinas was partnered with Officer Ikeda. When they received the call from Detective Laurita, they verified by computer that Jiron had outstanding warrants for Felony Sex Assault and Parole Violation. Officer Salinas told investigators that there were several "indicators" provided with the warrant information, including the fact that Jiron was a "listed Northsider gang member" and that the Gang Unit was to be notified, and the further fact that Jiron had "violent tendencies." Based on this information, the officers notified Gang Unit officers, some of whom indicated that they were familiar with Jiron and would be able to identify him.

Officers Salinas and Ikeda opted to enlist other officers in the attempt to arrest Jiron. They contacted Officers Martinez, Mullins, and Grove, and Denver Police Gang Officers Akens and Christine Chavez. Officer Chavez then confirmed Eli Jiron's warrants by computer. She also told investigators that she recalled Detective Laurita advising officers that Jiron "had violent tendencies and that he will run." Officer Chavez advised Gang Unit Sergeant Les Perry, who responded to the area. She also contacted Denver Gang Officers Randy Yoder, and Danny Perez, who also responded to the area.

Also assisting with the attempt to locate Jiron was Jefferson County District Attorney Investigator Michael R. Russell who worked in the FLAG unit with Det. Laurita. Investigator Russell, in plain clothes, responded to the area in an unmarked car. Shortly after he arrived, he saw a Hispanic female, matching the description of an "associate" of Jiron, leave the upstairs apartment. This observation "seemed to confirm that [Jiron] was present at the location," and the officers determined a plan by which Gang Unit officers would cover the rear and District 4 Impact (NPO) officers would attempt to contact Jiron at the upstairs apartment.

Investigator Russell took a position at the northeast corner of the apartment building; Gang Unit Officers Yoder and Perez took a position in the alley, west of the building, where they could watch the "rear and windows" of the apartment. Gang Unit Officers Akens and Chavez were also at the rear of the building monitoring the southwest corner. Sergeant Perry remained in his patrol car,

parked on Second Avenue near the Knox/King alley, in order to serve as a "chase car" and monitor the radio.

Officers Salinas and Ikeda took a position at the door to the apartment at the top of the stairs. Officers Mullins and Grove positioned themselves at the base of the stairs and Officer Martinez moved partway up the staircase. With all officers in position, Officer Ikeda opened the screen door and, holding it open with his foot, began knocking at the front door to the apartment. Officer Salinas told investigators that both he and Officer Ikeda had drawn their handguns and they "knocked probably three or four separate times, probably three or four reps [raps?] apiece." There was no answer to the knocks and Officer Salinas stated that:

. . . we figure he's probably not going to answer. So we're just going to withdraw. At that point, the door swings wide open. I don't know . . .
. . . I didn't s-. I didn't hear the knob turn, I just . . . the door swings open.

Officer Ikeda told investigators that when the door swung open, Jiron was standing in front of him. Jiron saw the officers and turned and ran into what Officer Ikeda would soon learn was the living room. As Officer Ikeda described events:

Um, the next thing you know the door swings open, and the, I see the suspect and he sees me. He immediately runs back, um, to the living room and, I, I don't want to hesitate to put my head through the, uh, the hallway because it's a fatal funnel. But, uh, um, as I slowly, uh, with my gun drawn, um go through the hallway and [Officer Salinas] is telling me, you know, " Go. Go." So I go and as soon as I see the living room, um, I see a corner where d-..there is a corner. And so I basically tactically eying [pieing?] the living room and also making sure that he's not hiding behind the, uh, the corner over here. So I swing wide, just wide around, and notice that the, the suspect there is just behind and in a corner of the kitchen with a knife. . . . I and I said "Denver Police! Drop the knife or I'll shoot! Denver Police! Drop the knife or I'll shoot, uh, drop the knife or I'll shoot!" I think I said it about four or five times.

Officer Ikeda had moved to a position in the living room area near the north wall and just in front of an entertainment center. He would later estimate that he was six to eight feet away from Jiron. From his position, he clearly saw the knife in Jiron's hand. He described it as an eight inch knife with a curved blade. Officer Salinas, who had followed close on his heels, took a position to his left and near the corner of the hallway and kitchen. Officer Martinez had followed Officers Ikeda and Salinas into the apartment. He started to clear the west end of the apartment, but when he heard Officers Ikeda and Salinas "announce that they

were the police and for somebody to drop the knife," he immediately reversed direction, entered the living room area, and took a position between, and somewhat to the east of, Officers Salinas and Ikeda. The three officers were now all ordering Jiron to drop his knife. In Officer Martinez's words:

Okay. Um, and at that time I had my weapon drawn as well and I . . . since I heard [Officers Ikeda and Salinas] yell police re- . . . and I yelled the same thing. I said police! Drop the knife! Police . . . drop, police . . . drop the knife! [Jiron] was standing there with the knife in his hand; well it was the right hand. He was standing there with the knife in his hand pointing it toward the officers. But he was just basically standing towards the cabinets there.

Officer Martinez told investigators that when he saw the suspect he:

. . . immediately noticed he didn't have a shirt on, um, and looked for d-... looked at his face. I identified him to the previous [Denver Police] bulletin and noticed that he had a distinctive tattoo on his neck that Officer Salinas had earlier informed me about. (Each of the officers concluded that the party they were confronting matched Jiron's description.)

Officer Salinas who, as noted previously, had been CIT certified, began to use his training in an attempt to de-escalate the confrontation. He told investigators that after he and the other officers had told Jiron "approximately ten to fifteen times" to drop the knife, "At one point, I even held up my hand and advised the other officers to stop talking so that I could try and, and make some kind of rapport with this guy." An investigator asked him why he took such action and he responded that he was CIT trained and that

What I did is, I, I spoke to, to the party. I said "Eli, you don't want to do this, you need to put the weapon down." I said, "you [sic], we don't want to hurt you; you don't want to get hurt; please put the weapon down; this is not the way to do this." Uh, at that point, at one point (unintelligible) I was talking to him, he appeared . . . he shifted his weight and it looked like he was going to attempt to rush us. He didn't. We held our fire. We actually called for a TASER. Somebody behind me called out for a TASER. Officer Grove came into my view. Officer Grove, actually . . . if I may. He came into the residence. . . if I was right here, he was just slightly to my front.

As previously noted, when Officers Ikeda, Salinas, and Martinez entered the apartment, Officers Mullins and Grove climbed the stairs. They, too, entered the apartment. Officer Mullins went to his left to clear the west end of the apartment and Officer Grove entered the hallway. Both officers then heard the other officers ordering someone to drop a weapon. Officer Grove proceeded toward

the living room area and saw "two" officers with their guns drawn. He told investigators that

. . . [the officers in the living area] were telling . . . saying, "drop the knife! Drop the knife!" I went back out the door, and Officer Mullins was somewhere right in here somewhere . . . And I went to the top of the stairs and I yelled down to Officer [Jamie] Akens, "do you have a TASER?" He said, "yes." I said, "throw it up to me." So he threw up a, a TASER to me here. And I went back inside the apartment. I s-. . . yelled TASER! TASER! TASER! I came around the corner here and I observed our suspect.

Four officers were now standing in a ragged line, confronting Jiron who was standing in the southwest corner of the kitchen armed with the knife. With the other three officers training their handguns on Jiron, Officer Grove attempted to deploy the TASER. It did not discharge. Officer Grove stepped to his left so as to get some cover from the wall separating the kitchen from the corridor and checked the malfunction. He saw that the safety was on so he disengaged it, stepped back and came back up on target. When he did so, he saw that Jiron had "already advanced on me to there. And he still had his knife in his hand."

INVESTIGATOR: At that time did you announce Taser, Taser or anything?

GROVE: Uh, the second time I didn't but there was, a you know, a three to five second, uh, total lapse from the time that I tried to pull the trigger the first time and from the time I came back around the corner again. So I didn't announce Taser, Taser again. I really didn't have time.

INVESTIGATOR: Okay. And, and, again, would approximate the distant you . . . the distance between you and the suspect at that time when you . . .

GROVE: The second time?

INVESTIGATOR: The second time, yeah.

GROVE: It was about three to five feet.

Officer Grove saw Jiron approaching him and, from his perspective, it appeared that Jiron was looking directly at him. He, again, pulled the trigger of the TASER. This time it did deploy, however, the probes missed Jiron. Almost simultaneously the other three officers fired their handguns. An investigator asked Officer Grove whether he fired first or heard gunshots first:

Um, close (unintelligible) within a second of everything. Um, when the shots started being fired I went like this [demonstrating] and I dove back behind the wall here. And that's probably why my Taser went into this wall over here, at this angle here, because of me hearing the shots and then I was starting to move, and I pulled the trigger at the same time. So it was probably all this in the same second or so.

Officer Ikeda told investigators it appeared to him that when Officer Grove attempted to fire the TASER, Jiron turned as if to avoid being hit. However, when the TASER failed to discharge, Jiron began "to come after Officer Grove." Officer Ikeda added, "[a]s soon as I saw [Officer Grove] turn around and he was exposing his back and the suspect's coming around with the knife, uh, that's when we fired."

Officer Martinez described the critical moment and the facts that led him to fire as follows:

. . . Um, the suspect, it seemed like he moved up a little bit and Officer Grove, uh, pointed the Taser at the, at the individual. I, I wasn't, I was watching Officer Grove through my peripheral vision at the time, but I was trying to focus my attention on the suspect so that way when Officer Grove hit him with the Taser if he dropped, we could immediately run in and take action. He was (unintelligible) less lethal force. We could just s-. . . take him out, get the knife, and handcuff him immediately. But, um, there was, there was a sl-. . . there was a slight delay and I yelled out to Nick [Grove] to taze him, taze him. And, uh, something happened where I kind of, I was still focusing on the suspect but I looked over at [Officer Grove] and he was having trouble with the Taser. It was malfunctioning. I couldn't tell exactly what was wrong at that time. Well at that time the suspect realizes that there was something wrong . . . in my mind . . . that there was something wrong with the Taser as well. He immediately lunges with the knife up towards these two officers and myself and Officer Ikeda.

Officer Salinas also saw Officer Grove attempt to fire the TASER and then step away and check it. He told investigators that "it appeared there was a problem with the taser." He stated that the TASER:

. . . seemed to be malfunctioning. I ordered him [Officer Grove] to clear it. I could see . . . the party flinched when he saw it coming and then came back down in, in almost a fight stance. Um, I, I, yelled for . . . Officer Grove was closer than I and I was the closest one to him, uh, six feet. Well, ten feet maybe. I have Officer Grove clear for his safety. At that point, Mr. Jiron

lunged at us. Uh, you know, a fighting stance, had the knife out and I was in fear for my, my life.

Officer Salinas told investigators that he waited for Officer Grove to clear (move out of the way) and he then fired. In response to later questions by investigators, Officer Salinas stated that he actually placed his free hand or arm on Officer Grove's shoulder in order to make sure that he was not in the line of fire." He's [Officer Grove] in a position that's a vulnerable pos- . . . vulnerable position. And now our safety's starting to be compromised because I can't take any action because he's still in, he's still in my, my line of fire should I have to take that course of action." When Officer Grove moved, Officer Salinas immediately fired his handgun. He estimated that when he fired, Jiron had closed to a distance of about six feet.

From the time that Officer Grove first attempted to deploy the TASER to the time the three officers fired their pistols took just seconds. In Officer Martinez's words, it was ". . . maybe five seconds." Jiron fell to the floor but was still showing signs of life. The officers advised the police dispatcher that they had been involved in a shooting and requested an ambulance, but did not immediately approach Jiron as they did not know where the knife was and whether he was still a threat. The gang officers then stepped in to await the ambulance, thus allowing the involved officers to step away from the immediate area.

IV. ANALYSIS OF ISSUES

A. Applicable Evidentiary Standards

It is important that the public understand that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard that is utilized in an administrative review. The criminal review process required a determination of whether there existed proof "beyond a reasonable doubt" that Officers Ikeda, Martinez and Salinas had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of deadly physical force under the circumstances presented. In this particular case, that meant that those officers could not be found criminally liable unless there was proof beyond a reasonable doubt that it was unreasonable for them to believe, at the moment each pulled the trigger on their weapon, that Eli Jiron was directing or was about to direct deadly physical force against them. In other words, the officers could only be charged criminally if there was proof beyond a reasonable doubt that they either did not really believe that Mr. Jiron was intent on using the knife in his hand to cause harm to them or their fellow officers; or, if the officers really did hold such a belief, that belief was unreasonable under the circumstances presented.

In contrast, the administrative review process utilized in deciding whether Officers Ikeda, Martinez and/or Salinas should be disciplined as a result of the shooting incident involved a determination of whether there existed a "preponderance of evidence" to show that the officers violated the Department's Use of Force Policy that was in effect on the date of the shooting. That Policy expressly incorporates the provisions of C.R.S. § 18-1-707 setting forth the circumstances under which a police officer is justified in using deadly physical force, which is the same statute relied upon by the District Attorney. Therefore, the task was to determine whether the evidence made it more or less likely that, at the time the shots were fired, an objectively reasonable police officer under identical circumstances would have reasonably perceived that Eli Jiron was directing, or about to direct, deadly physical force against one or more of the officers such that the use of deadly physical force in defense was justified.

B. Use of Force Policy in Effect in March 2004

In speaking generally to the level of force that an officer is entitled to use, the Department's Use of Force Policy provides that the level of force applied must reflect the "totality of circumstances surrounding the immediate situation," and requires only that the level of force selected be within the range of "objectively reasonable" options. The officer is expected to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment.

The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions, and provides that, in those circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The Policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

The use of deadly physical force is permitted under the Policy only under certain enumerated circumstances, including, as previously stated, when an officer reasonably believes that such force is necessary in order to defend himself or a third person from what the officer reasonably believes to be the use or imminent use of deadly physical force. Another specific circumstance under which an officer is entitled to use deadly physical force is to effect the arrest of a person whom the officer reasonably believes is attempting to escape by the use of a deadly weapon.

It is important to point out that, although the Department's Use of Force Policy recognizes the value of "less lethal" options in certain circumstances, those options are not intended to substitute for the use of deadly force when such force is reasonable and necessary. The Police Department neither requires nor expects its officers to attempt to use or to exhaust less lethal options in situations requiring the use of deadly force. It is also important to note that neither the Use

of Force Policy nor state law require a police officer to retreat altogether from an attack rather than resort to physical force.

C. Training Received by Officers Ikeda, Martinez and Salinas

Needless to say, the extent to which an officer is entitled to use force, including deadly force, in carrying out his duties is a topic that receives significant attention in training at the Academy, in post-Academy training courses, and in the mandatory quarterly firearms qualifications that each officer must undergo every three (3) months.

Training on the use of deadly force is accomplished through a combination of classroom lectures, target shooting and decisional shooting. It begins in the Academy, but is a topic that is addressed throughout an officer's career. There are several principles associated with the use of deadly force that are taught and then repeatedly emphasized so that they will become a learned response by the officers in stressful situations. Among these principles are the following:

1. Officers should give clear verbal commands to the suspect prior to shooting.
2. Officers should not fire their weapon until they have properly assessed the threat and determined that deadly force is justified.
3. Officers should fire multiple shots to center mass, and continue firing until the threat no longer exists.⁴

Denver's police officers receive specific training both in the Academy and in select post-Academy courses on defending themselves against a knife, or "edged weapon," attack. The first point of emphasis in this training is that knives kill, and that too many officers underestimate the danger that even a relatively small knife poses. Another point of emphasis is how quickly a subject armed with a knife can close the distance between himself and an officer before the officer can react and shoot. Officers are taught what is known as the "21 foot rule," which teaches that a subject armed with an edged weapon can close a distance of 21 feet and stab an officer in less time than it takes for the officer to draw and shoot his firearm in self-defense. For this reason, the officers are taught to draw their weapon as soon as a knife is seen or suspected, to make use of cover and put distance between themselves and the subject armed with a knife whenever possible.

⁴ This principle reinforces that when deadly force is justified, the officer should fire until the threat no longer exists. Shooting at center mass (the torso area) instead of the head or limbs gives the officer a larger margin of error and reduces the risk that a missed or ricocheted bullet will strike a fellow officer or an innocent bystander. Shooting multiple times until the threat no longer exists is a matter of officer safety in that a single bullet rarely stops a suspect instantly or prevents him from continuing to try to harm the officer.

Decisional shooting training is provided both as part of the Training Academy curriculum and in post-Academy continuing education courses, and is sometimes also referred to as "shoot/don't shoot" training. This training utilizes both state-of-the-art computerized simulators and live fire scenarios on a pistol range that simulate real-life situations. Many times the officers will be given certain factual information in advance of a scenario, which information he then must evaluate in the context of deciding whether to shoot as the scenario plays out. In all of these simulations, the deadly force principles listed above are emphasized again and again and the officer is evaluated on his ability to make appropriate decisions about using deadly force by applying those principles. At the conclusion, the officer de-briefs with instructors to discuss and evaluate whether his decisions to use (or not use) deadly force were justified. Officers are advised repeatedly throughout their Academy training that it is impossible for the instructors to train them on every situation that might arise during their careers and that the instruction they are given consists of fundamental principles and rules that they will be expected to apply under virtually any circumstance they may face by using their common sense, experience, education and other training.

Decisional shooting training principles are reinforced throughout an officer's career and during every officer's mandatory quarterly shooting qualifications, which take place on the shooting range using moving targets, or silhouettes.

Other relevant training that Denver's police officers receive includes the use of less lethal weapons, including the Taser. The officers are instructed how to operate both the M-26 model and the newer X-26 model. Some of the principles for operation that are taught include that the officers should loudly announce "Taser, Taser, Taser" immediately prior to firing, in order to alert their fellow officers that the Taser is being deployed and not a gun; and that the optimum distance for use of the Taser is 10 to 15 feet from the subject. In addition, they are taught that the "perfect scenario" for use of the Taser is when the officer armed with the Taser is being covered by three other officers: two who can serve as the arrest team to take the incapacitated suspect into custody, and one who can use deadly force to protect the Taser officer and the arrest team if the Taser does not work and the suspect moves toward them in a threatening manner.

Approximately 700 of Denver's police officers to date have undergone Crisis Intervention Training, or "CIT" training, which is specialized training on handling calls involving subjects who may have mental health issues or developmental disabilities. Those officers undergo 40 hours of training on how to prevent and/or de-escalate potentially volatile crisis situations, particularly by use of communication techniques intended to assist that officer in making a connection with the subject in a calm and non-threatening manner.

While not all officers undergo CIT training, they do receive training in the Academy about how to communicate effectively with persons who are mentally ill, emotionally disturbed or distraught. These methods include having only one officer speaking with the person, communicating with the person slowly and in a

calm manner, and offering reassurance that the officers only want to provide the person with help, and are not there to cause harm.

D. Whether Officers Ikeda, Martinez and/or Salina Ford Violated the Use of Force Policy

As a general matter, analyzing whether an officer-involved shooting was justified focuses on three areas:

1. the reasonableness of the tactics utilized by the officer immediately prior to the shooting;
2. the reasonableness of the officer's assessment of the threat; and
3. the reasonableness of the use of force option selected by the involved officer.

1. Were the Tactics Utilized by the Officers Reasonable?

After a careful review of the tactics utilized by the officers initially to arrest Mr. Jiron and the tactics used once Mr. Jiron armed himself with a knife, this Office concluded that those tactics were reasonable and appropriate.

Officers Ikeda, Martinez and Salinas were part of a coordinated effort to arrest Eli Jiron, someone who was a suspected gang member with two outstanding felony warrants, including one for rape; and someone who the officers had reason to believe would try to resist being taken into custody. For those reasons, no less than nine uniformed officers were assembled to try to make the arrest at 217B Knox Court, an apartment belonging to Mr. Jiron's girlfriend where new information indicated Mr. Jiron was located.

The officers involved in effecting the arrest met first and made a tactical plan that properly included securing the premises by positioning officers at every possible escape route and in locations with a view into the windows of the apartment. Two officers, Ikeda and Salinas, were designated to approach the door, so that when Officer Ikeda knocked on the door, Officer Salinas would be providing him with cover. Officer Martinez was also positioned at the door from his location partway up the staircase leading to the door to provide cover for the two officers, and Officers Groves and Mullins provided additional cover from the base of the stairway. These were appropriate tactics to prevent Mr. Jiron from possibly escaping and to ensure the officers' safety.

As to the tactical decision to enter the apartment after Mr. Jiron opened the door and then turned and ran east down the hallway, this Office found that this decision was reasonable. Mr. Jiron had two outstanding felony warrants for his arrest. The fact that Jiron ran from the officers provided them with exigent circumstances to enter the premises to take him into custody. Once inside the apartment, the officers were almost immediately confronted with a deadly force situation when they turned a corner into the living room/kitchen area and found Mr. Jiron standing in the closed-in kitchen area, facing them with a knife in his right hand and nowhere to run. At that point, Mr. Jiron was approximately 6 to 8 feet away from the officers and their lives were in immediate danger. The officers gave verbal commands to Mr. Jiron repeatedly to drop the knife, which he ignored. Officer Salinas, who had undergone CIT training, attempted to communicate with Mr. Jiron in a calm and friendly manner, imploring him to give up peacefully, to no avail.

In the meantime, Officer Grove retrieved a Taser from one of the officers posted outside. He then joined the other three officers at the corner of the living room/kitchen area. There was no cover – literally. There was nothing between the three officers and Mr. Jiron, who continued to wield the knife in a threatening manner. Although the Use of Force Policy does not require officers to attempt to use less lethal weapons in a deadly force situation such as this, nonetheless, Officer Grove attempted to fire the Taser at Mr. Jiron. When the Taser did not deploy and Officer Grove turned away for only a few seconds to disengage the safety, Mr. Jiron took that opportunity to lunge toward Officer Grove and the other officers with the knife. Officers Ikeda, Martinez and Salinas had no choice but to fire their weapons at Mr. Jiron at that time in order to protect Officer Grove and themselves.

Another tactical question which one might ask is whether the officers should have disengaged and contacted the Metro/SWAT Unit rather than enter the apartment once Mr. Jiron turned and ran from the opened door, or thereafter when they turned a corner and encountered Mr. Jiron in the living room/kitchen area wielding a knife. Denver Police officers are specifically trained on considering a number of factors/criteria in determining the need to “contain” an area and call for the assistance of SWAT (Special Weapons and Tactical Response Team). One of these criteria, that there must be a reasonable belief or actual knowledge that a suspect is armed, had not been met when the officers decided to follow Mr. Jiron into the apartment, because at that time he had not displayed a weapon and they had no reason to believe that he was armed. Likewise, another criteria, that the suspect has concealed himself and refuses to submit to arrest, was not met at the moment the officers encountered Mr. Jiron standing in the kitchen area with the knife. Mr. Jiron was obviously not concealing himself, but rather, confronting the officers with a deadly weapon. The officers’ actions at that point to attempt to take Mr. Jiron into custody, and then to use deadly force when he lunged at the officers with the knife, were reasonable and appropriate from a tactical standpoint.

2. Were the Officers' Perceptions of an Imminent Threat Reasonable?

This Office concluded that, under the circumstances presented to them on March 17, 2004, Officers Ikeda, Martinez and Salinas did perceive that Eli Jiron posed an imminent threat of death or serious bodily harm to Officer Grove and to themselves and that their perceptions were clearly reasonable.

When they entered the apartment, the officers knew that Eli Jiron had two outstanding felony warrants for his arrest, knew that he had a history of resisting arrest and of running from officers to avoid arrest, and knew that he was considered to be a dangerous individual with gang affiliations. When the officers thereafter encountered Eli Jiron in the cramped quarters of the kitchen/living room area of the apartment, he was trapped, with no means of exiting the apartment except through the officers. He refused to surrender calmly and instead confronted the officers in an aggressive manner while armed with a knife, which by law, is considered to be a "deadly weapon."⁵ The officers, who were in full uniform, had repeatedly ordered Mr. Jiron to drop the weapon, to no avail. When Officer Grove briefly turned away from Eli Jiron to disengage the safety on the Taser, Mr. Jiron lunged at that officer with a knife from a distance of less than six (6) feet, which also placed him in close proximity to the other three officers. Without question, at that moment, Officers Ikeda, Martinez and Salinas reasonably perceived that Eli Jiron posed an imminent threat to Officer Grove and themselves.

3. Were the Officers' Decisions to Use Deadly Force in Reaction to the Perceived Threat Reasonable?

Having concluded that Officers Ikeda, Martinez and Salinas reasonably perceived a threat of the use or imminent use of deadly physical force when Eli Jiron lunged at Officer Grove with a knife, the remaining issue to be determined was whether those officers reasonably perceived that deadly force was necessary in order to defend Officer Grove and themselves from that threat. It was the conclusion of this Office that they did.

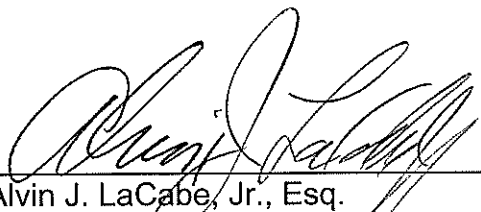
As we have noted previously, even though these police officers had no obligation under the Use of Force Policy to attempt to resolve this deadly force situation with a less lethal weapon, they did so anyway, at great risk to themselves. When it became apparent that Mr. Jiron was not going to obey the officers' verbal commands to drop the knife, Officer Salinas utilized his CIT training to try to make a connection with Mr. Jiron and convince him that the officers did not want to hurt him and that surrendering was the best option for all concerned. In spite of their efforts to end the confrontation peacefully, Eli Jiron made a deliberate and sudden move toward the officers in an apparent attempt to stab Officer Grove while his back was turned. This action left Officers Ikeda, Martinez and Salinas no choice except to fire their weapons in order to defend Officer Grove's life, as well as their own.

⁵ See C.R.S. § 18-1-901(2)(e)(II) (2004), defining the term "deadly weapon" to include a knife.


CONCLUSION

In closing, this Office wants to ensure the public that this shooting was carefully reviewed and analyzed at the time of the incident and the conclusions reached herein were not the result of simply deferring to the conclusions of the District Attorney's Office or the command staff of the Denver Police Department. As this Office has stated previously, its decisions in these critical incidents remain dependent upon the facts and the policies involved. It is always regrettable when a police officer has to take a person's life in the line of duty, both for the family and friends of the person killed and for the officer. However, it is a fact that in most of those instances, the actions of the person killed have left the officer no choice but to use deadly force. This case was such an instance.

Officers Ikeda, Martinez, Salinas and Grove were undertaking a routine but dangerous duty of their chosen profession in attempting to arrest a person who was known to have a history of violence, a gang affiliation, and two outstanding felony warrants for his arrest, including one for sexual assault. They made every effort to carry out their duty in the safest manner possible. Even after Eli Jiron essentially empowered those officers to use deadly physical force by threatening them with a knife, the officers tried to de-escalate the situation with verbal communications and then risked their lives trying to utilize a less lethal weapon that would have only incapacitated Mr. Jiron briefly enough to take him into custody without resistance. It is only when Mr. Jiron lunged at the officers with a knife that they finally resorted to using deadly force. That response was not only reasonable and appropriate, but necessary in order to defend their lives and the life of Officer Grove.


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12/24/07
Date


Mary A. Malatesta, Esq.
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12/26/07
Date