

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

March 6, 2013

Chief James S. May, Jr.
Northglenn Police Department
11701 Community Center Drive
Northglenn, CO 80233

Re: Officer involved incident of October 19, 2012

Dear Chief May,

The investigation and legal analysis of the officer involved shooting of Allen McEwen which occurred on October 19, 2012, is completed. The Adams County Critical Incident Team conducted the investigation on this matter and presented reports, photos and other documents to the office of the Seventeenth Judicial District Attorney. Our review of these materials found the investigation to be thorough and complete. Based on the evidence presented and the applicable Colorado law, no criminal charges will be filed against any officer involved in this incident.

INCIDENT OVERVIEW

On October 18, 2012 at approximately 9:30 p.m., officers from the Northglenn Police Department were dispatched to 945 E. 108th Avenue in Northglenn on a potential suicide call. Allen McEwen, a former Denver police officer, called 911 and said he had a gun, was placing it inside his mouth and wanted to kill himself. The Northglenn Police Department was familiar with this individual from a prior similar incident in January of 2011 in which they had received a call from Mr. McEwen stating that he wanted to commit suicide. At that time, members of the Northglenn Police Department responded to Mr. McEwen's residence and were able to resolve the situation without further incident. Mr. McEwen is a retired Denver Police Officer and had been an instructor in firearms for cadets attending the police academy.

Sgt. Peter Rice, Officer Jackie Spresser, Officer Dan Danielson, Officer Laura Sanchez, Officer Jordan Gillette, Officer Matt Hindman, Officer Michael Digiovanni, Officer Ben Platts, Officer Scott Thomas, Officer Robert Smith, Officer Tim Kuenning and Officer Joseph Gutierrez all responded to the location on October 18, 2012. Officers

heard a gunshot as they arrived on scene and a neighbor, Theresa Bail, told police through dispatch, that McEwen had fired several shots earlier in the evening.

Officer Digiovanni had some familiarity with Mr. McEwen because he had done the initial negotiation back in January of 2011 when he convinced Mr. McEwen to come out of the house without his gun. Officer Digiovanni again made phone contact with Mr. McEwen on October 18, 2012 and negotiated with him for approximately two and a half hours, trying to persuade him to come out of the house without his gun. During this negotiation, Mr. McEwen stated to Officer Digiovanni that he wanted officers to shoot him.

At approximately 12:15 a.m., on October 19, 2012, Mr. McEwen stuck his hand out of the front door of his residence and fired his gun three times striking Sgt. Rice's marked police SUV, a tree and the ground all of which were in close vicinity to where police officers were positioned. A few seconds later, Mr. McEwen came out of the front door of his house with a gun in his hand. Despite several officers ordering him to drop his weapon he continued to advance toward officers and pulled his gun up from his side. At this point, Officer Sanchez shot one time with her semi-automatic rifle and Officer Danielson stated that he shot three or four times at Mr. McEwen. Mr. McEwen dropped to the ground and was later handcuffed by officers. He was transported to Denver Health Medical Center where it was discovered that he had four gunshot wounds. His wounds were located on his right side above his clavicle, the right thigh, right flank and the scapula area. He survived those injuries.

CRIME SCENE INVESTIGATION

CSI Doug Young proceeded to the scene and collected the following items:

A .40 caliber Glock, model 2 semi-auto, the weapon McEwen fired as he came out of his residence, was recovered on the ground in the area where he was shot. It had a live round in the chamber and another seven rounds in the magazine. The magazine had a capacity of twelve rounds, indicating that he shot five times: twice when he was in the patio area of the backyard of the residence and three times when he shot at the police officers.

CSI Young found numerous casings including:

Two .45 caliber Speer shell casings in the front yard of the residence of 924 E. 108th Avenue, the location where Officers Danielson and Sanchez were positioned. These casings were from bullets fired from Officer Danielson's gun.

One .223 caliber Winchester shell casing was found in approximately the same location. That shot came from the semi-automatic rifle fired by Officer Sanchez.

Another .45 caliber shell casing was found in the front yard of 924 E. 108th Avenue.

A bullet was retrieved from a tree in the front yard of 925 E. 108th Avenue.

A .40 caliber shell casing was found in the driveway of 945 E. 108th Avenue (the McEwen residence), which was from Mr. McEwen's gun.

Three .40 caliber shell casings were found inside the front door of 945 E. 108th Avenue.

Two .40 caliber casings were found on the back patio area of the yard of 945 E. 108th Avenue.

A bullet was recovered from the front porch area of the residence.

Some fragments of a bullet jacket were found in the front flower garden area of Mr. McEwen's house.

During a search of the inside of Mr. McEwen's house, a fully-loaded .40 caliber Glock magazine was found inside the master bedroom.

A .45 caliber bullet was recovered from Mr. McEwen's body.

LEGAL ANALYSIS

In order to file a criminal charge our office requires that there be a high likelihood of success at trial in meeting our burden of beyond a reasonable doubt as to each element of that criminal offense.

Several statutes are relevant to this investigation and a filing determination. Initially, Colorado Revised Statute §18-1-707 defines the circumstances under which a peace officer can use deadly physical force in Colorado. The relevant parts of the statute are as follows:

- (1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
 - (a) **to defend himself or a third person** from what he **reasonably believes** to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

- (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:

- I. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
- II. Is attempting to escape by the use of a deadly weapon.

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” See C.R.S. § 18-1-901(3)(d).

“Deadly weapon” is defined and includes a handgun.

FINDINGS

In this case, Northglenn police officers were justified in their use of physical force and deadly physical force in the apprehension of Mr. McEwen. Mr. McEwen previously had been contacted by the Northglenn Police Department for a very similar type of incident, which ended peacefully. In the current incident, during several hours of negotiation, Mr. McEwen was repeatedly told to come out of the residence without his gun and he refused. Mr. McEwen is a retired Denver police officer who was well aware of the consequences of coming out of the house with a weapon, pointing a weapon at police officers and shooting at police officers. He fired three shots at officers, endangering the lives of a number of Northglenn Police officers. He was shot when he refused to comply with further orders to drop his weapon and continued to advance toward officers.

CONCLUSION

The independent Critical Incident Team thoroughly investigated this incident. The District Attorney’s Office reviewed the investigation and applied the relevant law to the evidence. Pursuant to the Colorado law and the state statutes cited above, Officers Dan Danielson and Laura Sanchez of the Northglenn Police Department were justified in using deadly force on October 19, 2012. Since the officers’ actions were justified under Colorado law, no criminal charges will be filed.

Please contact me if you have any questions or require additional information.

Sincerely,



Dave Young
District Attorney
17th Judicial District