

Dave Young
District Attorney



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

May 11, 2014

Chief Les Acker
Federal Heights Police Department
2380 W 90th Avenue
Federal Heights, CO 80221

Re: Investigation of the officer-involved shooting of Pierree Davis, DOB 3/31/92

Dear Chief Acker:

The Office of the Seventeenth Judicial District Attorney has completed the review of the investigation regarding the officer-involved shooting of Pierree Davis on January 26, 2014. The Seventeenth Judicial District Critical Incident Team conducted the investigation into this matter. The factual findings were presented on April 22, 2014 to the District Attorney of the Seventeenth Judicial District. The Critical Incident Team presented law enforcement reports, audio and video recorded interviews, photographs, surveillance videos, and diagrams of the crime scene. The Office of the District Attorney concludes that the investigation was thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officer or other involved parties. The standard of proof for a criminal case is whether there is sufficient evidence to prove any potential criminal violations beyond a reasonable doubt. This review does not otherwise evaluate the appropriateness of the actions of the involved officer, whether police department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to you or your internal affairs investigation.

As further set forth herein, based upon the evidence presented and applicable law, no criminal charges will be filed against the law enforcement officer involved in this incident.

OVERVIEW OF THE INCIDENT

On January 26, 2014 at approximately 8:35 p.m., the Federal Heights Police Department received a 911 call reporting that an aggravated robbery had just occurred at the Family Dollar Store located at 2010 W 92nd Ave. The suspect involved in this robbery was described as a black male armed with a gun, wearing black clothing and a ski mask. The 911 caller indicated that the suspect robbed the store and left the store heading to the east.

This report was aired to the three Federal Heights Police Officers on duty that night. All three officers, Rick Lahr, Jimmy Graham, and Josh Linn, responded to the store. Officer Graham arrived first and contacted the victims and witnesses inside the store. Officer Linn, who was accompanied by a trainee, initially remained in his vehicle and checked the immediate neighborhood looking for the suspect. After he did so, Officer Linn returned to the Family Dollar Store at 2010 W 92nd Ave. to assist Officer Graham.

Officer Lahr initially checked an adjacent neighborhood and then began checking similar businesses in the area for the robbery suspect. It should be noted that there are three Family Dollar Stores in Federal Heights. After checking several other businesses, Officer Lahr drove southbound on Pecos Street to check the Family Dollar Store at 8495 Pecos Street, which is located on the south west corner of the intersection of Pecos Street and 85th Avenue.

As Officer Lahr approached this Family Dollar Store in his vehicle, he was able to see inside the store, which was brightly lit inside. He observed a person matching the description of the initial robbery suspect inside this store. The person, later identified as Pierree Davis, was wearing a black leather jacket and it looked like he had on a hoodie or a ski mask. Officer Lahr stated in a subsequent interview that Mr. Davis was just inside the front door and moved in an "aggressive" manner and "rushed" toward the counter where the cash register was located. Officer Lahr then pulled in the parking lot and parked on the south side of the store. He armed himself with the AR-15 rifle assigned to his patrol vehicle and moved to a position at the front of the store just south of the front doors. Shortly thereafter, Mr. Davis came out of the store front doors and began walking quickly northwards away from Officer Lahr's position.

Officer Lahr yelled, "Police, Don't move." Mr. Davis turned to his right and looked at Officer Lahr. Officer Lahr observed that Mr. Davis was wearing a black ski mask (the type with individual eye holes and a hole for the mouth). Mr. Davis also had a handgun in his right hand. After making eye contact with Officer Lahr, Mr. Davis began to run northwards, angling toward the corner of the building. Officer Lahr raised his rifle and fired several rounds at Mr. Davis before he rounded the corner. After several seconds, Mr. Davis came back around the corner with his hands in the air. Officer Lahr ordered him to get on his knees. Once he was on his knees, Officer Lahr ordered him into a prone position, i.e. to lie down on his stomach with his arms and legs extended. Officer Lahr could not see the gun at this point and did not know where the gun was.

While Mr. Davis was prone, he was looking directly at Officer Lahr. Officer Lahr ordered him to "move your head away from me." Mr. Davis began to move his hands in toward

his body. Officer Lahr ordered him to stop, to not put his hands in toward his body or he would shoot him. Mr. Davis continued to move his arms inward and Officer Lahr fired his rifle striking him in his right side.

At this point, Officers Graham and Lin arrived. Mr. Davis was handcuffed and transported by ambulance to Denver Health Medical Center, where he passed away as a result of his gunshot wounds.

WITNESS INTERVIEWS

The various members of the Seventeenth Judicial District Critical Incident Team were called out to investigate the facts surrounding the law enforcement officer's use of force. The Critical Incident Team is comprised of experienced law enforcement officers from agencies within the Seventeenth Judicial District. This team was created so that officers outside of the involved agency could be called upon to investigate critical incidents such as an officer's use of deadly force. The Critical Incident Team assembled within hours of the shooting, operating out of the Westminster Police Department. Among the witnesses interviewed on January 26, 2014 and early morning hours of January 27, 2014 were Tracy Rivera, Stephan Lovato, Officer Linn, and Officer Graham. An attempt was made to interview Officer Lahr that evening; however, Officer Lahr's attorney advised the Critical Incident Team that Officer Lahr would not be giving a statement that night. Officer Lahr was interviewed three days later.

Tracy Rivera: Ms. Rivera was interviewed by Detective Joe Hastings and Det. Kent Hampshire from the Westminster Police Department. Ms. Rivera was the assistant manager for the Family Dollar Store at 8495 Pecos Street on January 26, 2014 at the time of the aggravated robbery. She indicated that she was cleaning up and preparing to close the store when she received a call from the store manager informing her of the robbery at the other Family Dollar Store [the store at 2010 W 92nd Avenue]. The manager directed her to feed all of their large bills into the locked drop box, then lock their doors and close for business for the day. Ms. Rivera put the money from her register into the drop box, but waited to empty the other register until the cashier, Stephan Lovato, finished helping a final customer still in the store. She then fed the large bills from his register into the drop box.

Just as Ms. Rivera was closing down his register, the robber entered the store. She described him as a "tall, young, black gentleman with a ski mask." She said the man was wearing gloves and he had a gun, described as a small, black revolver, in his hand. The robber put the gun in her face and demanded all of the money. Ms. Rivera attempted to open Stephan Lovato's register, but couldn't get it to open. The robber kept telling her, "Hurry up, bitch! Give me the money, give me the money!" At that point, Mr. Lovato came around and entered his cashier number, which opened the register.

The robber then pointed out the drop box and indicated that he knew there was cash inside. Ms. Rivera explained to the detectives that the key to the drop box is in the safe, which has a ten minute delay before it opens. She attempted to explain this to the robber, but the robber

saw the keys that Ms. Rivera had around her neck and tore them off of her. The robber threw the keys at her and told her, "Bitch, open that, open that, I know that fucking money is in there, open it." Ms. Rivera took the keys and tried to stick them in the lock, trying to demonstrate that none of them were the key to the lock box, stating, "It's not working, these aren't the keys, it's not working."

Ms. Rivera stated the robber looked at Stephan Lovato and calmly said, "Watch what I do to this bitch. I'm gonna shoot her. I'm gonna kill her right in front of you." Ms. Rivera stated that she was very frightened. Ms. Rivera told the robber that if he was going to shoot her, there was nothing else she could do. The robber then grabbed Ms. Rivera's purse, which was nearby. He said, "Well, bitch, if you're not gonna give me your money, I'm gonna take this." The robber took her purse and the one dollar bills from the registers and left through the front doors.

"Seconds, not even seconds later, and maybe one second" after the robber walked out of the front door, Ms. Rivera heard an officer yelling "Freeze, freeze." Ms. Rivera said she was not able to see much outside; however, after the suspect left the store, she saw a "black shadow" of a person go by the doors. In context, she believed the shadow had to have been an officer moving after the robber. The shadow went from her right to her left, which would mean the person was travelling northward. Ms. Rivera indicated that after the shadow went by, she heard gunshots, "boom, boom, boom, boom." She initially stated she believed she heard three or four gunshots. Further into the interview, she tentatively stated that the sequence was somewhat different. She stated she heard "boom, boom, boom," then it stopped for a second, then "boom, boom." Three shots, pause, two shots. She reiterated that she heard "freeze" twice, and she said there was a pause or interval between the shouts and the first shot. She estimated the time between the shouts of "freeze" and the first shot as "maybe ... maybe three seconds."

Stephan Lovato: Mr. Lovato was also interviewed by Detective Joe Hastings and Det. Kent Hampshire. Mr. Lovato was working as a cashier at the Family Dollar Store at 8495 Pecos Street at the time of the aggravated robbery. Mr. Lovato's rendition of the events inside of the Family Dollar Store from the point of the robber's arrival through the robber's departure through the front doors is largely consistent with Ms. Rivera's.

Mr. Lovato saw the robber enter and initially did not pay much attention to him until the robber announced that they were being robbed. His description of the suspect matches Ms. Rivera's. The robber pointed the gun at Tracy Rivera and demanded the money. Ms. Rivera could not open the register and he went around to open the register for her. During this, the robber continued to point the gun at Ms. Rivera and verbally threaten Ms. Rivera. Mr. Lovato described the gun as a little revolver, "like a little 32 snub nose." He said the gun was black with "like a gray tint."

The robber pointed out the drop box and stated, "All right, open the safe, bitch." Ms. Rivera stated that she didn't have the keys, at which point the robber stated, "I see those fucking keys around your neck." The man then grabbed her neck and ripped them off of her, stating, "All right, fucking open it." Ms. Rivera tried to explain that they weren't the right keys and Mr. Lovato also tried to tell him. The man continued to yell at her, telling her to open the drop box.

He told her, "You have three seconds, bitch, or I'm going to shoot you." He said the robber looked at him and said, "Hey, bro, I give her two seconds. If not, I'm going to shoot her." Mr. Lovato stated that the robber grabbed the keys and attempted to unlock it himself. He then stated, "Oh well, all right, then I'm taking all of her shit." The robber grabbed Ms. Rivera's purse, phone, and other items and walked out the front doors.

Mr. Lovato stated that it seemed like the police officer knew the robber was in the store because, "as soon as he came out, the cop had his assault rifle and he was already right there next to the door." Mr. Lovato described the robber as exiting the doors and walking to the left, which would be northward. Mr. Lovato then saw the officer. The officer appeared "like not even like five seconds after." The officer was walking in the direction the robber went, pointing the rifle at the robber, telling him, "stop, stop, stop." Mr. Lovato stated he also heard, "Freeze, don't move." He believes the command "freeze" was given twice. He heard three or four gunshots. After the initial three to four shots, Mr. Lovato believed he heard one or two additional shots from the side of the building. Mr. Lovato believed another officer arrived about ten seconds after the shots. That officer also went off to the left towards the north.

Further into the interview, Mr. Lovato modified his statement, stating that all of the commands he heard (stop, don't move, freeze) happened after he heard the initial three to four gunshots. After he heard the commands, he heard one final shot, not one or two shots as he initially indicated.

Officer Jimmy Graham: Detective Manuel Trujillo of the Adams County Sheriff's Office and Investigator Joe Hernandez of the Office of the District Attorney, 17th Judicial District, interviewed Officer Jimmy Graham of the Federal Heights Police Department.

Officer Graham was dispatched to the Family Dollar Store at 2010 W 92nd Avenue regarding the first aggravated robbery. He went into the store to contact the victims/witnesses, and the other two officers went to check the surrounding areas. He contacted a cashier, who told him that she had been confronted by a black male wearing a black mask and a black jacket. The male robber had a silver revolver. While Officer Graham began to get details of the incident, he heard Officer Lahr air that he had the robbery suspect at "Family Dollar South," which is the common way that the Federal Heights Police Officers refer to the Family Dollar Store at 8495 Pecos Street.

Officer Graham, since he was one of three officers on patrol, determined that he needed to respond to the Family Dollar Store at 8495 Pecos Street. Officer Graham requested that the Westminster Police Department be contacted to send officers to assist at the 2010 W 92nd Avenue store so that he could respond immediately to the 8495 Pecos Street Family Dollar Store. Officer Graham instructed the cashier to lock the door to the store and not let anyone in or out, and to await additional police officers.

Officer Graham activated his emergency equipment and drove toward the second Family Dollar Store. Just prior to arriving at the second Family Dollar Store, Officer Graham heard Officer Lahr broadcast that shots had been fired and that a suspect was down. Officer Graham

called for medical assistance to be directed to the scene. He pulled into the Family Dollar Store at 8495 Pecos Street and parked behind Officer Lahr's patrol vehicle.

Officer Graham observed Officer Lahr, Officer Linn, and Mr. Davis. Mr. Davis was prone on the pavement of the parking lot nearby the northeast corner of the store. He had on a black ski mask and a black jacket. Officer Lahr was holding a rifle, and Officer Linn had his handgun drawn. Both officers were covering Mr. Davis. Officer Lahr placed handcuffs on Mr. Davis and did a pat search for weapons. Officer Graham asked Mr. Davis where the gun was. Officer Graham couldn't quote exactly what Mr. Davis said, but Mr. Davis indicated that he threw the gun and that it was "over there."

Additional officers from other agencies arrived to assist. A handgun was located and Officer Graham estimated that it was ten yards to the west of where Mr. Davis had been on the ground. Mr. Davis was transported by ambulance to Denver Health Medical Center.

Officer Josh Linn: Detective Manuel Trujillo and Investigator Joe Hernandez also interviewed Officer Josh Linn of the Federal Heights Police Department.

Officer Linn was alerted to the aggravated robbery at the Family Dollar Store at 2010 W 92nd Avenue. The suspect was a black male wearing a mask and armed with a handgun. Officer Graham arrived at the store first and went in to contact the reporting party and any witnesses. Initially, Officer Linn and his trainee checked the surrounding area and businesses. Officer Linn and the trainee later returned to the store. While back at the store, he heard Officer Lahr air that he had the suspect at the "Family Dollar South." Officer Linn and the trainee immediately left for the Family Dollar Store at 8495 Pecos Street. When they were about half way to the store, it was aired for them to "step it up" or hurry to Lahr's location. Shortly after that, Lahr aired shots fired and something like "suspect down," "person down," or "man down." They arrived at the second Family Dollar Store and Officer Linn did not immediately know where Officer Lahr was located. He then saw him at the northeast corner of the business. Officer Lahr had a rifle in his hands and he had a male prone out on the ground. Officer Linn moved behind Lahr and he had his gun out also holding the prone male at gunpoint.

Officer Linn indicated that, "the guy was not really following commands. His arms were curled, or his hands were kind of balled up. I couldn't see if he had anything in his right hand; I couldn't see really his right hand very well. It wasn't tucked all the way underneath his body, but it was close enough ... that I couldn't see his palms to make sure it was empty." Officer Linn later stated that when he first showed up, Officer Lahr was screaming at the male, "Show me your hands, show me your hands, show me your hands."

When Officer Graham arrived, he walked up and grabbed hold of the male suspect. Officer Linn approached and put handcuffs on him. Officer Linn did a pat down for weapons. Officers Graham and Linn asked him where he put the gun. The male said he threw it. When asked where he threw it, the male indicated "behind me."

They checked Mr. Davis and the area beneath him to make sure he no longer had a gun, then Officer Linn began attending to Mr. Davis' injuries. While Officer Linn was doing that, an Adams County Sheriff's Deputy located the handgun just to the west of where Mr. Davis was at. Officer Linn saw what appeared to be a silver revolver lying nearby. Officer Linn noted that there was money lying next to and under Mr. Davis. A purse, later identified as Ms. Rivera's, was also lying nearby.

The ambulance and crew arrived, and the medical personnel put Mr. Davis onto a backboard, loaded Mr. Davis into the ambulance and rushed him to Denver Health Medical Center. Officer Linn and his trainee followed the ambulance to the hospital.

Witnesses/Victims at the Family Dollar Store at 2010 W 92nd Avenue:

Westminster Police Officers responded to the first Family Dollar Store and contacted the January Ryals. January Ryals stated that she was walking down an aisle to the front of the store when she was confronted by a man wearing a ski mask and holding a handgun. She described the gun as a revolver. She believed the male was an African-American because she could see the skin color of the man through the mouth hole. The man was wearing gloves. The man told her to give him all of the money. She gave the man the money from the register. The man also wanted the money from the lock box under the counter. Ms. Ryals showed him that they didn't have a lock box anymore and they had discontinued using the lock box. A car pulled into the lot and the man said, "Just give me the money." She gave the robber the money and he ran out of the door. While the robber ran out of the store, two customers (from the car) entered. She did not see which direction the man ran after exiting the store.

Officer Rick Lahr: Detective Michael Robbins of the Adams County Sheriff's Office and Detective Brent Mullen of the Thornton Police Department interviewed Officer Rick Lahr of the Federal Heights Police Department on January 29, 2014. This interview was conducted three days after the officer involved shooting based on Officer Lahr's attorney request. Since Officer Lahr was the police officer directly involved in the shooting it would have been preferable to get a statement from him the night of the shooting; however, there is a national trend that seems to encourage officers involved in shootings to wait until a few days after the event until a statement is given.

Officer Lahr stated that during the evening of January 26, 2014, he received a call of a robbery in progress at the "Family Dollar Central," which was located at 92nd Avenue and Tejon Street. Officer Lahr, Officer Linn, and Officer Graham all responded to the store. He heard over his radio that a black male with a black leather jacket, a black ski mask, and a black handgun robbed the store.

Officer Graham arrived at the Family Dollar Store first and took "the inside of the business," meaning that he would contact the witnesses. Officer Linn and Officer Lahr began checking the neighborhood and adjacent neighborhoods for the suspect. Officer Lahr stated that in his experience such robberies usually are not isolated. He began checking other businesses and took it upon himself to check the Family Dollar Store at 85th Avenue and Pecos Street.

As he was driving southbound on Pecos Street, he saw a person matching the description of the suspect in the Family Dollar Store wearing a leather jacket and a dark hoodie or ski mask. Officer Lahr stated that the store is well lighted and it was easy to see the interior area of the store. He initially saw this person at the front door and saw this person make a very aggressive move toward the counter where the cash register is located. He also characterized the person's movement as a "rush towards the register." Officer Lahr believed that this person was the robber of the other Family Dollar Store. Officer Lahr radioed to the other two officers, who were now both at the Family Dollar Store at 2010 W. 92nd Avenue, that he had spotted the robbery suspect in the Family Dollar Store at 8495 Pecos Street.

Officer Lahr turned his vehicle right into the southern entrance of the Family Dollar parking lot. He parked his vehicle on the south side of the store in a driveway that goes around to the back of the store. Officer Lahr got out and grabbed an AR-15 from inside of the patrol vehicle. Officer Lahr stated that he did not check the magazine, but the AR-15 magazine was supposed to be loaded with twenty eight rounds. He did confirm that a bullet was not in the chamber at that time.

Officer Lahr moved toward the front doors and he positioned himself just south of the doors near an ice machine. The windows at the front of the store are blocked with posters, so the suspect would not be able to see him in that location. As he moved into that position, he "charged" the rifle, i.e. he moved a live round from the magazine into the firing chamber making the gun ready to be fired. Officer Lahr stated that he was awaiting cover officers. He indicated that he did not want to enter the store and start an armed confrontation in the store and wanted the suspect to be able to come out of the doors. He also stated he did not want the suspect to be able to go back into the store creating a hostage situation.

As Officer Lahr was moving up and waiting, he saw two cars enter the parking lot. One car parked in a spot far from the doors and Officer Lahr yelled at the occupants of that car to get out of there. The first car then turned around and headed west, disappearing around the northeast corner of the store. The second car pulled right in front of the store and Officer Lahr stated that he waved that car off. The second car backed out and went south and out of the parking lot.

Officer Lahr stated that it felt like a long time before the robber, later identified as Mr. Pierree Davis, came out of the store, but he later felt that he didn't wait more than a minute or a minute and a half. Mr. Davis stepped out of the door and walked quickly to the north, away from Officer Lahr's location. Officer Lahr does not believe that Mr. Davis saw him because he was walking quickly, not running, to the north. Officer Lahr moved forward to put himself between Mr. Davis and the front doors waiting until Mr. Davis got halfway to the corner of the building. Officer Lahr said loudly, "Police, don't move!" Mr. Davis turned to his right and looked back at Officer Lahr. Officer Lahr saw that Mr. Davis had on a black ski mask – a full mask with individual eye holes and a mouth hole. He also observed a handgun in his right hand. Officer Lahr ordered, "Police, drop the gun."

Mr. Davis did not drop the gun and started to run towards the north. Officer Lahr related that after seeing the man was armed, he did not want him to get around the corner of the store. Officer Lahr reiterated that he believed Mr. Davis was the person who had just robbed the Family Dollar Store on 92nd Avenue and stated that he believed Mr. Davis had just robbed this store with a deadly weapon. Officer Lahr stated he had two concerns if Mr. Davis were able to run around the corner. He said his first concern was for the safety of others. Officer Lahr said a car had just driven in that direction and he didn't know if those people were still behind the store and could get carjacked. Officer Lahr was also concerned for the residents in the apartments immediately west and north of the store. Officer Lahr stated his second concern was for himself. He expressed concern that if Mr. Davis went around the corner, Mr. Davis could get a tactical advantage on him.

Officer Lahr stated that he believed he fired five to six rounds at Mr. Davis. He believed he hit Mr. Davis because as Mr. Davis approached the corner of the building, he saw him "kind of go down" before going behind the wall. Officer Lahr stated that his aim was "right on his back" when he fired his rifle. Officer Lahr stopped firing when he lost sight of Mr. Davis as he went around the corner of the store.

Officer Lahr estimated that he lost sight of Mr. Davis for three to four seconds. As Officer Lahr was coming up on the northeast corner of the building, Mr. Davis suddenly reappeared, walking back from behind the corner with his hands up. Officer Lahr ordered Mr. Davis to get on his knees. When Mr. Davis got on his knees, Officer Lahr ordered him to lay prone on the ground. Mr. Davis got into the prone position on the ground with his arms extended. Officer Lahr indicated that he still had the AR-15 pointed at Mr. Davis and his intention was to hold Mr. Davis there until other officers arrived on the scene for cover. Officer Lahr stated that, "All of a sudden, he's looking at me." Officer Lahr stated that concerned him, "I just didn't want him to see my position."

Officer Lahr gave Mr. Davis a series of orders, telling him to move his head over or "Move your head away from me." Officer Lahr states that instead of looking away from him, Mr. Davis began to draw his arms inward. In the video of his statement, Officer Lahr demonstrates arm motions like Mr. Davis was moving his arms inward to move them under his chest or stomach. Officer Lahr stated, "I don't know if he's reaching for a weapon. I lost sight of him momentarily. I don't know if he put the weapon in his waist band that he's trying to lure me in. He's looking right at me. If he were to look away, it probably'd [sic] been a little bit of a different scenario. But he's looking right at me, and I don't know if he's trying to get to a gun to shoot me." Officer Lahr states at one point that he "told him over and over and over, don't do it, or I will shoot you." At another point in the interview, he says he told Mr. Davis, "Stop, do not put your hands into your body or I will shoot you."

Officer Lahr stated that Mr. Davis continued to move his arms and when his hands were close to going underneath his body, Officer Lahr fired one round into Mr. Davis' right side. Office Lahr estimates that he was standing approximately seven yards away from Mr. Davis when this shot was fired.

Officer Lahr stated that about five to seven seconds after that shot was fired, Officer Linn arrived to assist him. Officer Graham came up as well and positioned himself over Mr. Davis placing handcuffs on him. By that point, Officers from other agencies began arriving and Officer Lahr left the scene shortly thereafter.

CRIME SCENE, SURVEILLANCE VIDEO, AND AUTOPSY RESULTS

Crime Scene:

Crime Scene Investigator Dennis Davenport of the Commerce City Police Department and Detective Von Bailey of the Adams County Sheriff's Office processed the scene of the shooting.

The firearm used by Off. Lahr, an AR-15, was collected from Officer Lahr shortly after the shooting. The rifle had a magazine with a listed capacity of thirty rounds. There were nineteen live .223 caliber rounds in the rifle's magazine and a live .223 caliber round in the firing chamber. Thus a total of twenty live rounds were still in the rifle after the shooting.

Commander Villano of the Federal Heights Police Department stated that the AR-15's in the department's patrol vehicles are shared firearms - they are assigned to a vehicle, not to an individual officer. The practice of the department is that the rifles are supposed to be kept with twenty eight live rounds in the magazine and no round in the chamber. As previously noted, Officer Lahr did not load the magazine, nor did he count the number of rounds in the magazine prior to the shooting. (He did check - as a safety precaution - whether there was a round in the chamber prior to taking a position outside the store.) Under these circumstances, it is less than certain exactly how many rounds were in the gun prior to the shooting.

During the search of the scene, seven spent .223 caliber shell casings were found and collected. Six of the casings were spread out on the asphalt parking lot within several yards of the front doors. Detective Von Bailey noted in his report that two of the six casings were on the sidewalk near the front doors when he first saw them, but the wind blew them off the sidewalk onto the asphalt. One casing was found in the landscaping gravel northeast of the northeast corner of the store. CSI Davenport notes in his report that a thorough search was conducted, but they could not locate an eighth shell casing.¹

North of the northeast corner of the building were a black ski mask, black gloves and a brown purse. The purse was identified as Ms. Rivera's and it was returned to her after its contents were photographed. Approximately forty one dollar bills were recovered from the parking lot where Mr. Davis was removed from. The bills were blowing around in the parking lot.

¹ Seven or eight shots were fired. It is likely that the magazine only had 27 rounds, but it is impossible to eliminate the possibility that a shell casing was missed in the search of the scene.

A .38 caliber revolver was also recovered in the parking lot north of the store near a dumpster at the northwest corner of the building. This would have been just west of where Mr. Davis was removed from the scene. The revolver was later examined and was found to be loaded with four live rounds and one spent round of .38 caliber ammunition. Detective Bailey noted that the revolver was "matte black w/ brown grips"; however, a review of photos of the gun at the scene and after it was taken into evidence reveal that it can appear to be shiny or silver, depending on the lighting.

Detective Bailey and other officers returned to the scene on January 27, 2014 to conduct additional investigation in the daylight, specifically to locate any bullet holes, bullet strikes and any bullets or bullet fragments. Detective Bailey identified:

An apparent bullet entry and exit holes in a pole for a street sign north of the Family Dollar Store and on the south side of 85th Ave.

A defect consistent with a bullet ricochet on a street sign on the north side of 85th Avenue.

An apparent bullet strike to a tree branch north of the Family Dollar Store on the north side of 85th Avenue. He observed fresh damage to the bark, and he was able to recover a bullet fragment from inside the branch.

An apparent bullet hole in the exterior wall of 1605 W. 85th Ave. Apt. #101. This apartment is also north of the Family Dollar Store. After obtain permission from the resident, Detective Bailey found a corresponding exit hole in the interior wall. He located a bullet fragment.

Surveillance Video:

Members of the Critical Incident Team obtained copies of the internal video surveillance from both Family Dollar Stores. Neither store had external video surveillance. In a canvass of nearby businesses, they learned that a self-storage business across Pecos Street, Cube Smart, had a video camera that covered the southern edge of the Family Dollar Store where the shooting occurred.

There were three cameras inside the Family Dollar Store at 8495 Pecos Street. One camera captured the scene inside a back room, which showed nothing of interest in evaluating this matter. Another camera covers the front of the store, including the front doors, during the robbery. Yet another camera captured the front cashier station. At approximately 20:46:10, Mr. Davis can be seen entering the store in both camera views with a handgun in his hands. He exits the store at approximately 20:49:31 and goes to the left (northbound). While Mr. Davis is in the store, you can clearly observe a dark or black handgun in his right hand. Due to the quality of the video, the bright internal lighting, and the darkness outside, it is difficult to see anything outside the front doors; however, a few things can be observed. At approximately 20:49:33, a figure that appears to be a uniformed peace officer comes into view moving from right to left

(going northbound). This person is armed with a rifle. A white car is also seen in front of the store.² The first covering patrol car can be seen pulling into the parking lot at approximately 20:50:05.

The camera at Cube Smart shows the arrival of Officer Lahr's patrol SUV and the arrival of the two covering FHPD officers. The time between when Officer Lahr's vehicle stops and the second patrol vehicle stops is approximately one minute and forty five seconds.

The video from the Family Dollar Store at 2010 W 92nd Avenue largely corroborates the events described by January Ryals. Mr. Davis is again seen holding a black or dark colored handgun. It should be noted that the black hood on Mr. Davis's jacket is not pulled up in the first aggravated robbery, though the black hood can be seen in the video. Mr. Davis has a black and white spotted cloth pulled over his head and ski mask in the video. C.S.I. Davenport identified this as the material lining Mr. Davis' leather jacket.

Autopsy:

Dr. Michael Arnall, a board certified forensic pathologist, performed a forensic autopsy on the body of Mr. Pierre Davis on January 28, 2014. Dr. Arnall noted four gunshot wounds. Dr. Arnall documented them as gunshot wounds A, B, C, and D. He noted that he could not determine in what order the four gunshot wounds occurred. The letters were solely for the sake of identification.

"Gunshot wound A" entered the left, bottom side of Mr. Davis's buttocks. This bullet exited Mr. Davis' buttocks and entered his inner right thigh. The bullet perforated his left femoral artery. Dr. Arnall characterized the wound pathway as back-to-front, left-to-right, and downward. A lead bullet fragment and two copper bullet fragments were recovered from within Mr. Davis' right thigh.

"Gunshot wound B" entered the right side of Mr. Davis' abdomen. This gunshot wound perforated the liver. A bullet was recovered from this wound on the left side of the abdomen. Dr. Arnall characterized this wound pathway as back-to-front, with minimal up or down deviation, and sharply right-to-left.

Dr. Arnall describes "gunshot wound C" and "gunshot wound D" in the same paragraph, since they are in close proximity. Both are on the right side of the back. A horizontal "graze abrasion" was noted on the back side of Mr. Davis' upper right arm. This graze abrasion is directly adjacent to the entrance of gunshot wound D, which is consistent with the bullet grazing that portion of Mr. Davis arm before entering Mr. Davis' torso. The wound pathways perforate the upper and lower lobes of the right lung. Bullets were recovered in the lung and in the right

² At about 20:49:26 (seconds before Mr. Davis leaves the store) a car's headlights are visible moving from left to right in the parking lot. As the car pulls into a space almost immediately in front of the doors, it is possible to recognize it as a smaller, white car. The car pauses, pulls back out, then drives southbound and out of the parking lot at approximately 20:49:52. The Critical Incident Team had no leads to locate the occupant or occupants of this vehicle.

chest. Dr. Arnall characterized the wound pathways as right-to-left, back-to-front, with minimal up or down deviation. Toxicology results revealed high levels of THC and THC metabolites in Mr. Davis' body fluids. Dr. Arnall determined that the cause of death for Mr. Davis was "multiple gunshot wounds to the leg, abdomen, and chest."

SUSPECT INFORMATION

Mr. Pierree Davis' criminal history includes: (1) an arrest in Guthrie, Oklahoma on September 29, 2012 for misdemeanor breaking and entering, and (2) that he was arrested on March 8, 2013 on a warrant for failure to appear on a traffic offense in Aurora, Colorado.

LEGAL ANALYSIS

As was previously noted, the review by the District Attorney for the Seventeenth Judicial District is limited to determining whether criminal charges should be filed against the involved officer or other involved parties. The decision to file criminal charges involves an assessment of all known facts and circumstances and an evaluation of whether there is a reasonable likelihood of conviction under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or excuse beyond a reasonable doubt.

The use of lethal force by a law enforcement officer necessarily invokes an analysis under § 18-1-707(2), C.R.S. (2013), the law applicable to the use of deadly physical force by a peace officer. In pertinent part, the language of the statute reads as follows:

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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 an 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; or

(III) 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.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

“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).

There is no dispute that when Officer Lahr discharged his firearm, his action caused the death of Mr. Davis. The legal question presented to the Office of the District Attorney is whether, at the time Officer Lahr fired his weapon, the Office of the District Attorney can prove beyond a reasonable doubt that his actions were not justified or excused under § 18-1-707(2), C.R.S. In analyzing this question, we examined Officer Lahr’s actions in two stages: the shots fired while Mr. Davis was in front of the store and the shot that was fired while Mr. Davis was on the ground.

The shots fired while Mr. Davis was in front of the store:

At the time that Officer Lahr fired his first six shots at Mr. Davis, Officer Lahr had the following information. An aggravated robbery had been committed at the Pecos Street Family Dollar Store. The perpetrator of that crime was a black male wearing a dark or black jacket and a black ski mask. That perpetrator was armed with a handgun and he was still at large. Shortly after that crime, Officer Lahr drove by another Family Dollar Store where he observed a person in that store wearing a black leather jacket, a black hoodie and a black ski mask. He saw the person approach the cashier counter in an “aggressive” manner. When the person exited the store, Officer Lahr was able to confirm that he was wearing a black ski mask and Officer Lahr saw that the person had a revolver in his right hand.

§ 18-1-707(2), C.R.S. provides that a law enforcement officer is permitted to use deadly physical force to effect an arrest under several circumstances. Two in particular must be

considered. The first arrest related justification is when the officer reasonably believes that deadly physical force is necessary to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon. The second is when the suspect otherwise indicates that he is likely to endanger human life or to inflict serious bodily injury on another unless he is apprehended without delay.

Based upon the information known to Officer Lahr, he could reasonably conclude that Mr. Davis had committed two felonies – an aggravated robbery at the first Family Dollar Store at 2010 W 92nd Avenue and an aggravated robbery at the second Family Dollar Store at 8495 Pecos Street. The similar description of the suspect, the close proximity of the two stores and the time frame make this a reasonable conclusion. Officer Lahr could also reasonably conclude that Mr. Davis was armed with a deadly weapon during both crimes. The victim at the first store told the police that the suspect was armed with a revolver and Officer Lahr directly observed a revolver in Mr. Davis' hand immediately after he exited the second store. Mr. Davis committed a felony of aggravated robbery twice that night. He used and threatened the use of the revolver in both stores.

Officer Lahr could have also reasonably concluded that Mr. Davis had indicated that he was likely to endanger human life or to inflict serious bodily injury on another unless he was apprehended without delay. Mr. Davis had already committed two aggravated robberies with a deadly weapon. Mr. Davis had demonstrated his willingness to endanger other people by taking his firearm into the stores and creating a highly volatile dangerous situation. Mr. Davis still had his handgun out and attempted to flee. There was every reason to believe that Mr. Davis would use the handgun on Officer Lahr, another police officer, a citizen in the area, or a resident of one of the nearby apartments.

Officer Lahr attempted to arrest Mr. Davis without firing the AR-15. He yelled at Mr. Davis, "Police," "Don't move," "Freeze," "Drop the gun," or some similar command. Mr. Davis did not comply with those shouted commands and decided to run. Rather than risk Mr. Davis escape, Officer Lahr utilized his firearm. Under these facts, it is unlikely that the Office of the District Attorney would be able to disprove that Officer Lahr's actions were justified or excused by § 18-1-707(2), C.R.S.

The shot that was fired while Mr. Davis was on the ground:

At the time that Officer Lahr fired his final shot at Mr. Davis, additional events had occurred. Officer Lahr believed he had actually shot Mr. Davis before Mr. Davis ran around the corner. Moments later, Mr. Davis came back around the corner with his hands up in the air. Officer Lahr ordered Mr. Davis to his knees and Mr. Davis complied. Officer Lahr ordered Mr. Davis to lay prone on the parking lot with his arms extended and Mr. Davis complied.

Officer Lahr stated that after Mr. Davis was prone on the ground, Mr. Davis was looking directly at him. Officer Lahr stated that he would be safer if Mr. Davis was not looking at him, i.e. if Mr. Davis was unaware exactly where Officer Lahr was positioned, Officer Lahr would have a tactical advantage. Officer Lahr indicated that he repeatedly ordered Mr. Davis to "move

his head over” or “move his head away from me.” It is clear in context that Officer Lahr’s intent was to have Mr. Davis look in a different direction, to turn his head so that he was not looking at Officer Lahr. Mr. Davis, who had been otherwise compliant since being shot, did not turn his eyes away from Officer Lahr. Instead, he began to move his arms beneath him. Officer Lahr did not know what Mr. Davis had done with the revolver and Officer Lahr stated that he was concerned that Mr. Davis was reaching for his gun.

Officer Lahr indicates that he gave several commands to Mr. Davis at this point. At one point, Officer Lahr indicates that he “told him over and over and over, ‘Don’t do it, I will shoot you.’” At another point, he indicates he told Mr. Davis, “Stop, do not put your hands into your body or I will shoot you.”

At the time the final shot is fired, Mr. Davis is no longer a fleeing felon. The question of excuse or justification is narrowed to self-defense. Did Officer Lahr reasonably believe that it was necessary to fire the final shot to defend himself from what he reasonably believed to be the use or imminent use of deadly physical force? Or more appropriately for the purpose of this review, can self-defense be disproved beyond a reasonable doubt?


When the issue of self-defense is evaluated, the action must be based upon the facts as known by Officer Lahr. Moreover, Officer Lahr is the only witness to these events and there is nothing that directly contradicts his description of how this incident unfolded. Mr. Davis, who had already engaged in dangerous, violent conduct, may still have been armed in Officer’s Lahr’s mind. It is unlikely that a jury would believe beyond a reasonable doubt that he did not act to protect himself from the use or imminent use of deadly physical force.

CONCLUSION

Applying the facts of this incident to C.R.S. §18-1-707, there is insufficient evidence for the likelihood of a conviction on any criminal charges beyond a reasonable doubt against Officer Lahr for his use of deadly physical force upon Pierree Davis on January 26, 2014.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney’s Office that no criminal charges will be filed against Officer Lahr. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,



Dave Young
District Attorney