



October 7, 2016

Chief Nick Metz
Aurora Police Department
15001 East Alameda Parkway
Aurora, CO 80012

Re: The investigation of the officer-involved shooting of Dillon Safford, dob 9/12/1992,
occurring on May 1, 2016

Dear Chief Metz;

The investigation and legal analysis of the officer involved shooting of Dillon Safford is complete. The Aurora Police Department and Denver Police Department conducted a joint investigation into this matter, led by Detective Jamie Krieger of the Aurora Police Department. The factual findings of the investigation were presented to my office on June 15, 2016. The presentation included police reports, written statements and recordings of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the individual law enforcement agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving Officer Alfred Eways committed any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against Officer Eways in this incident.

Overview of the Incident

At 7:36 a.m. on May 1, 2016, Aurora Police Officers were dispatched to a report of a male armed with a weapon at the McDonald's Restaurant located at 14251 East Colfax Avenue. Witnesses described the man as having been in the restaurant for more than two hours, acting strange and displaying a medium-sized handgun. The man concealed the handgun and went into the restroom, at which point one of the managers called 911.

Upon arriving at the location, Officers Alfred Eways, Ryan Sweeney, and David Lee discussed the situation with the restaurant manager. The manager advised that the man was still inside the men's restroom. After waiting several minutes outside the restroom door, the officers decided to enter the restroom to confront the man. Officer Eways drew his weapon and entered first, followed by Officer Sweeney, who deployed his Taser.

As the officers quickly opened the door and turned inside the narrow entry, they immediately encountered the man approximately ten feet away. The man raised the gun to his hip and refused to comply with orders to drop the weapon. Officer Eways perceived the man to make a gesture with the gun and fired his weapon one time at the man, striking him in both arms.

The man, identified as Dillon Safford, dob 9/12/1992, was taken by ambulance to University Hospital where he was treated for his injuries. He was subsequently arrested and charged with felony menacing.

Witness Statements

Investigators from the Aurora Police Department and Denver Police Department conducted interviews of the necessary witnesses within hours of the shooting.

Officer Alfred Eways Officer Eways is a patrol officer employed by the Aurora Police Department. He was interviewed hours after the incident by Aurora Police Detectives Warren Miller and Jamie Krieger in the presence of his lawyer.

On the morning of the incident, Officer Eways was on duty and was wearing the standard issue Aurora Police Department navy uniform that includes patches displaying "Aurora Police Department" and a metal badge above the left pocket area. He wore a duty belt with a .40 caliber Glock model 22 semiautomatic handgun holstered to his right hip. He also had a TASER holstered on his left side. Officer Eways was equipped with a body worn camera, but did not activate it prior to this incident. As such, there is no video recorded from his camera.

Officer Eways responded as the primary officer to a dispatch call at the McDonald's on East Colfax Avenue. The reporting party was an employee who received information from a customer that there was a white male with a hooded sweatshirt and no shoes armed with a handgun inside the restaurant. The man was last seen in the men's restroom. Officer Eways arrived on the scene at approximately the same time as Officer Ryan Sweeney and Officer David Lee.

Officer Eways entered the restaurant through the east door. While Officer Sweeney contacted the manager, Officer Eways walked through the dining area looking for the white male described in the dispatch call. Finding no one matching the description, Officer Eways focused his attention toward the men's restroom. The manager advised that the customer who reported the suspect was no longer on scene. While standing outside the men's restroom door, Officer Eways heard the automatic hand dryer activate a couple of times from inside. No one entered or exited while he stood there.

The three officers stood outside the men's restroom and decided to make a tactical entry into the restroom to avoid a confrontation with an armed man in the crowded restaurant area. Officer Eways was first to enter, followed by Officer Sweeney. Officer Eways opened the door with his left

hand far enough to see a man standing at the wall mounted hand dryer a few feet from the door. Officer Eways immediately identified the man as the suspect described by dispatch. He opened the door and moved completely inside the restroom to allow Officer Sweeney inside the doorway. Officer Lee did not enter, as there was no room for him to come inside.

Officer Eways observed the suspect's left hand raised to his chest and his right hand inside his pants. He saw the suspect pull a semi-automatic handgun out of his pants and raise it to his hip in a "firing position." He described the handgun as appearing like "one of the guns we would carry." Officer Eways had his handgun drawn and pointed at the suspect while ordering the suspect to show his hands.

Officer Eways stated that the suspect maintained a "combat stance," and was continuously talking about his gun. He compared the suspect's positioning to that of a trained officer preparing to shoot. The suspect did not lower his weapon or take a less threatening position. Officer Eways recalled the suspect making a "move" that caused Officer Eways to think the suspect was going to shoot at him and Officer Sweeney. The suspect's sudden movement caused Officer Eways to fire his weapon one time at the suspect. At the time he fired his weapon, he estimated that he was a distance of ten feet from the suspect.

The suspect fell to the ground after the shot, but held onto the gun despite repeated commands to put the gun down. Even after the suspect dropped the gun, it remained within his reach and Officer Eways was concerned that the suspect may raise it again. Officer Eways held the suspect at gunpoint and ordered him to move away from the gun. The suspect continued to ignore the commands and stated, "Don't shoot me again," at which point Officer Eways recalled lowering his gun to encourage the suspect to obey. During this time he discovered another person was in the closed restroom stall. Officer Eways ordered him to stay inside and held the suspect at gunpoint until other officers were able to get the suspect into custody. Based on the suspect's statements and his observations, he assumed the suspect was shot in the hand. He estimated less than one minute transpired between the time he opened the restroom door and the time he fired his weapon.

Officer Ryan Sweeney Officer Sweeney is a patrol officer with the Aurora Police Department. Aurora Police Detective Warren Miller and Denver Police Detective Marty Smith interviewed him hours after the incident with his attorney present. Officer Sweeney was on duty the morning of the incident, and was wearing the standard Aurora Police Department navy uniform. He also wore a tactical vest displaying an embroidered Aurora Police badge and nameplate that reads "POLICE." He was equipped with a body worn camera affixed to his chest area that was activated and recorded the incident. He was not permitted to view the video prior to his interview.

Officer Sweeney responded to the McDonald's on a call for service regarding a male with a handgun in the restroom. Upon arriving at the location, Officer Sweeney waited for Officer Eways and Officer Lee to arrive before entering the restaurant. The officers entered from the east side. Once inside, Officer Sweeney contacted the manager who stated that the suspect was in the restaurant for approximately two hours, and currently is in the men's restroom, where he had been for awhile.

The three officers stood outside the door for approximately one minute waiting to see if the suspect would exit so they could avoid making contact inside the narrow confines of the restroom. Officer Sweeney heard the hand dryer activated inside the restroom. The officers finally decided to

enter when they heard water running. At the time of entry, Officer Eways held his firearm at the "low ready" position, meaning held slightly lower than gunpoint. Officer Sweeney deployed his Taser and held it down along his right side.

Officer Eways entered the restroom first, followed by Officer Sweeney, who was only able to get a portion of his body inside the door. The man was standing less than ten feet away from the officers. Officer Sweeney heard Officer Eways giving commands such as, "Take your hands out of your pocket," and "Stop doing that."

Officer Sweeney observed the suspect with his right hand in his pocket. There appeared to be a bulge in the pocket as if the suspect were grabbing something. As Officer Sweeney raised his Taser, he lost sight of the suspect's hand. A moment later, Officer Sweeney noticed the suspect holding a gun in his right hand, pointing it at the officers. He described the gun as appearing similar to a Beretta semi-automatic handgun and recalled looking "down the barrel" thinking he was about to be shot. The suspect was saying something, but all he could hear was Officer Eways giving commands. Officer Sweeney blindly fired his Taser in the general direction of the suspect about the same time as he heard a shot fired. He backed out of the restroom, dropped the Taser, and deployed his firearm. Officer Sweeney estimated less than ten feet separation between the man and officers at the time of the shooting.

Officer Sweeney reentered the restroom and found the suspect lying on the floor. He saw blood so he knew the suspect was shot. He also saw the suspect's handgun was on the floor near his head. Subsequently, Officer Sweeney learned that there was an individual in the closed stall near the gun. Officer Sweeney ordered him not to move and held the suspect at gunpoint until cover officers arrived. He handcuffed the suspect and searched him, finding a wallet and a glass pipe commonly used to smoke methamphetamine.

Officer David Lee Officer Lee is a patrol officer with the Aurora Police Department. On the date of the incident, Officer Lee was on duty and wearing the standard Aurora Police Department uniform. He was equipped with a body worn camera affixed to his chest area that was activated and recorded the incident. Officer Lee responded to the McDonald's Restaurant and acted as a cover officer outside the men's restroom door. He did not enter the restroom or have any direct contact with Dillon Safford.

Officer Lee reported that he arrived at the McDonald's about the same time and Officer Sweeney and Officer Eways. The three officers entered the restaurant from the east door and did not see an individual matching the suspect's description. The officers then stood outside the men's restroom waiting for the suspect to exit. Officer Eways and Officer Sweeney decided to go inside. Officer Eways entered the restroom first and immediately came into contact with a white male. Officer Lee overheard Officer Eways give several loud verbal commands to the man to show his hands. After a couple of seconds, Officer Lee heard a gunshot and Taser fire. He saw the officers "slightly" retreat, but not exit the restroom.

Officer Lee heard both Officer Eways and Sweeney continue to give loud verbal commands and could hear the male speaking, but could not understand what he was saying. Officer Lee assumed the male was not complying based on the nature of the repeated commands. He overheard Officer Sweeney report shots fired and call for rescue.

Officer Lee entered the restroom and observed a male on the floor bleeding from his hands. He also observed a black handgun on the floor within the man's reach. The officers ordered the man to move away from the gun. A short time later, they realized that a person was inside the stall of the restroom. Officers ordered him to remain until further instruction. The man on the floor was ultimately taken into custody and taken outside the restroom where he could be treated by rescue personnel.

Carlos Carrillo Mr. Carrillo was a customer at McDonald's on the morning of the incident. He was interviewed by Aurora Police Detective Mark Yacano, as translated by Cynthia Juarez, a manager of McDonald's. Mr. Carrillo arrived at the McDonald's at 6:40 a.m. and described a white male he saw walking around the restaurant armed with a black handgun. Mr. Carrillo stated that while he was standing close to the male at the front counter, he saw the male pull the handgun out of his right pants pocket. The male did not point it at anyone. Mr. Carrillo was scared, so he notified an employee later identified as Maribel Vargas.

Guillermo Ortiz Mr. Ortiz is a McDonald's employee who was working on the morning of the incident. Aurora Police Detective Alton Reed interviewed Mr. Ortiz. Mr. Ortiz stated that he arrived for his shift at approximately 7:00 a.m. His manager, Maribel Vargas, told him to ask a male inside the restaurant to leave because the male was acting strange and bothering customers. Ms. Vargas walked Mr. Ortiz over to the male and left. Mr. Ortiz described the male as acting strange and having a bad attitude.

Mr. Ortiz asked the man to leave and the man stated that he just got there. Mr. Ortiz again asked the man to leave, at which point the man put his right hand into his sweatshirt and pulled out the butt of a handgun. Mr. Ortiz described the gun as silver. The man asked Mr. Ortiz if he was going to call the police. Mr. Ortiz stated he was scared. He escorted the man out the south door of the restaurant and thought the man left the premises. Minutes later, Mr. Ortiz saw the police arrive and heard commotion in the men's restroom. He later saw the same man he escorted being loaded on the ambulance gurney.

James Powell Mr. Powell was a customer at McDonald's on the morning of the incident. He was interviewed by Denver Police Detective Marty Smith. Mr. Powell stated that he frequents this McDonald's to meet friends. After talking to his friends for some time, he went outside to smoke a cigarette. While outside, he observed a white male pacing back and forth, talking to himself. The male approached him and was talking about spaceships and outer space. He perceived the male to be psychotic and under the influence of narcotics.

Back inside the restaurant, Mr. Powell saw McDonald's employees approach the same white male. The male then went into the men's restroom until the police arrived. Mr. Powell heard the police order several times, "Show me your hands," and then heard one gunshot. According to Mr. Powell, The white male carried out by medical personnel was the same person he saw outside.

Phillip Avalos Immediately after the shooting, Mr. Avalos was identified as a customer in one of the restroom stalls. He was transported to Aurora Police Department where he voluntarily agreed to give an interview. However, upon his arrival at the police department, he became severely ill and was transported to University Hospital. Detective Alton Reed attempted to interview Mr. Avalos at the hospital. The interview was stopped due to Mr. Avalos's medical condition. From portions of the interview, Detective Alton understood that Mr. Avalos did not see the encounter, but

only heard parts of it from behind the closed stall door.

Other Witnesses Additional lay witnesses were identified and interviewed. However, these witnesses were either employees or customers who were not in a position to observe the incident. As such, they did not add anything of significance to the investigation.

Crime Scene Investigation

Crime Scene Investigator Mike Brewer gathered evidence and processed the scene. The scene consisted of the men's restroom and counter area of the McDonald's Restaurant located at 14251 East Colfax Avenue. There were two exterior doors to the building, one on the east side and the other near the southwest corner. From the east doors, the front counter was situated to the west, the dining area to the south, and the kitchen area to the north. The restrooms were located just north of the east doors down a short hallway. The entrance to the men's restroom was on the west side of the wall, the women's on the east side.

There were apparent bloodstains and swipe marks along the floor of the hallway between the men's restroom door and the area near the front counter where Mr. Safford was treated by emergency medical providers. Various personal effects and medical debris were located in the area near the counter. A Taser was on the floor of the hallway approximately three feet southeast of the men's restroom door. The Taser appeared to have been fired but did not connect with anything, as the probes were attached to the wires and the wires were attached to the cartridge.

The inside of the men's restroom extends to the north. The sink basin is built into the east wall. North of the sink are two urinals affixed to the east wall. A wall-mounted hand dryer is affixed to the west wall, opposite the sinks. One toilet stall with a door exists at the far north end of the restroom. A number of items were located on the floor of the restroom. A .40 caliber fired bullet cartridge was found beneath the sink. There was a plastic grocery bag, cell phone, screwdriver, and a deodorant can on the floor near the urinals. Among various items within the grocery bag were eight BBs and two CO2 cartridges. A black handgun was initially observed on the floor below the stall doorway. Closer examination of the weapon revealed it as an Airsoft BB gun.

Officer Eways's duty weapon is a Glock model 22 .40 caliber handgun. The magazine has a maximum fifteen-round capacity. Officer Eways keeps one round loaded in the chamber, allowing for a total of sixteen rounds in the weapon. He also carries two fully-loaded spare magazines on his belt. Following the incident, a weapon inspection revealed one bullet in the chamber of the gun and fourteen rounds in the magazine. The spare magazines were fully-loaded.

Investigator Brewer located one shell casing consistent with a .40 caliber inside the restroom. This round appeared similar to the ammunition observed in Officer Eways's weapon and magazines. Consequently, the investigation is consistent with one round being fired from Officer Eways's gun.

Timeline

A review of the Aurora Police Department dispatch records from May 1, 2016 reveals the sequence of events as reported through the dispatch center. At **7:36 a.m.**, the manager of McDonald's Restaurant located at 14251 East Colfax, Cynthia Juarez, called 911. Ms. Juarez reported a white male with a handgun in his pants. She described the man to be wearing a black

hooded sweatshirt and no shoes. She stated that he was currently in the men's restroom.

Aurora Police Officers Alfred Eways, Ryan Sweeney, and David Lee arrived at the location and contacted Ms. Juarez at **7:40 a.m.** The officers canvassed the dining room and did not identify anyone matching the male described. Ms. Juarez advised that she did not see the male leave the restroom.

At **7:47 a.m.**, Officer Sweeney reported "We've got shots fired." Several seconds later, Officer Eways reported "Shots fired, suspect down." Shortly thereafter, Officer Sweeney stated, "We need rescue hot, all officers are ok, we have a suspect shot."

Officers contacted the male party, identified him, and begin addressing his medical needs at **7:48 a.m.** Emergency medical providers arrived at the patient at **7:49 a.m.** and he arrived at the hospital at **8:09 a.m.**

Suspect Information

Dillon Safford was transported by ambulance from the scene to University Hospital where he was treated for his injuries. The bullet perforated Mr. Safford's left forearm and penetrated his right wrist.

On May 1, 2016, Detective Alton Reed contacted Dillon Safford at University Hospital and requested an interview. Mr. Safford appeared angry and refused to provide any statement concerning the incident. Mr. Safford was medically released to police custody one day following his hospital admission. He was uncooperative during the discharge from the hospital and requested an attorney to represent him. Due to Mr. Safford's unwillingness to cooperate, law enforcement did not obtain a release of medical records. As a result of this case, Dillon Safford was charged with three counts of felony menacing. That case is currently pending in Adams County District Court, case number 16CR1459.

Mr. Safford has a criminal history consisting of both felony and misdemeanor convictions stemming from a number of arrests for theft, assault, and drug-related charges. During several of these police contacts, Mr. Safford was alleged to be in possession of an airsoft pellet gun. On April 25, 2016, Mr. Safford was sentenced to one year probation for conspiracy to commit menacing, a class 6 felony. A complaint to revoke his probation is pending.

Body-Worn Cameras

A few months prior to this incident, the Aurora Police Department issued body-worn cameras to patrol officers. These cameras are affixed to the breast area. While a large number of video recordings were made part of the investigation of this case, the footage is of minimal assistance to the analysis. The majority of the recordings are of officers who responded after the incident and assisted with the investigation.

Though there were three officers who initially responded to the McDonald's, only Officers Eways and Sweeney were inside the men's restroom. Officer Lee maintained a cover position in the hallway outside the restroom. As such, his camera captures the events from the opposite direction of the action.

Officer Eways did not activate his camera. Officer Sweeney was immediately behind Officer Eways as they entered the restroom. Therefore, Officer Sweeney's camera records the event from the vantage point inside the men's restroom, but the view is obstructed by Officer Eways's back and does not depict much of the scene.

Legal Analysis

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officer. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial 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 defense beyond a reasonable doubt. In this instance, in order to file a criminal charge, the District Attorney's Office must prove beyond a reasonable doubt that the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Eways fired his weapon at Dillon Safford. Likewise, there is no dispute that the injuries to Dillon Safford consisted of serious bodily injury as a consequence of a gunshot wound. At the time of the shooting, Officer Eways was actively engaged in the effort to contact a suspicious suspect. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Officer Eways fired his weapon, can the prosecution prove beyond a reasonable doubt that the officer's actions were not justified under Colorado law?

The use of force by Officer Eways under this circumstance necessarily invokes an analysis under Colorado's use of force statutes. In particular, §18-1-704, C.R.S. (2015), the law applicable to the use of physical force in defense of a person, reads as follows:

(1) ... [A] person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

Additionally, the statute specifically applicable to use of force by a peace officer, §18-1-707, C.R.S. (2015), provides that:

(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.

"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." §18-1-901(3)(d), C.R.S. (2015). Since Officer Eways's use of force in this instance did not, in fact, cause death, the appropriate

standard to apply is §18-1-704. It should be noted, however, that an argument could be made that the provisions of §18-1-707(2) should also apply even though the deadly physical force did not produce death. In either event, the legal analysis is similar.

Here, the officers were dispatched to a report of a suspicious man hanging around a crowded public restaurant for more than two hours possessing and displaying a handgun. The officers' purpose was to contact the man to ensure there was no threat of danger to the public. The officers decided to contact the man inside the restroom rather than wait for him to leave. Due to the nature of the call, Officer Eways had his handgun drawn as he made entry.

As Officer Eways entered the men's restroom, he immediately contacted the suspect within an extremely short distance inside the confines of the men's restroom. Officer Eways ordered the man to make his hands visible. The suspect pulled out a handgun and pointed it at the officers. Officer Eways perceived the threat of a real handgun and saw the suspect move as if he was going to shoot at the officers. Officer Eways fired his weapon in response to the suspect's actions. Officer Sweeney similarly perceived the threat of a real handgun pointed at officers and believed that the man was about to shoot at them. Therefore, there is substantial evidence to support Officer Eways's reasonable belief that Mr. Safford was about to use unlawful physical force upon him.

Additionally, the amount of force used was reasonable. Mr. Safford appeared to be armed with a handgun and pointed at the officers. Officer Eways stated that he fired his weapon because the suspect appeared to be armed with a deadly weapon and made a move as if he were about to shoot. Officer Eways fired one time, dropping the suspect and eliminating the threat. As such, there is no basis for which to conclude a lesser degree of force was necessary. Mr. Safford's actions and behavior dictated Officer Eways's response of firing his weapon.

Given all the facts and circumstances, the prosecution cannot prove that Officer Eways's action of pulling the trigger intending to shoot Mr. Safford was not justified as applied to §18-1-704 and §18-1-707.

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Eways for discharging his weapon in the shooting incident involving Dillon Safford on May 1, 2016. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young
District Attorney