



November 4, 2020

Chief Vanessa Wilson
Aurora Police Department
15001 E. Alameda Parkway
Aurora CO 80012

Chief Paul Pazen
Denver Police Administration Building
1331 Cherokee Street
Denver, CO 80204

Re: The investigation of the officer-involved shooting of David Guillen, occurring on June 22, 2020, in Aurora, Colorado

Dear Chief Vanessa Wilson and Chief Paul Pazen,

The investigation and legal analysis of the officer-involved shooting of David Guillen, occurring on June 22, 2020 in Aurora, involving Detective Brent Curtis, Officer Dana Gerlach, Officer Javier Reyes, Officer Carlos Jacobo, Detective Randy Wagner and Officer James Queisner is complete.

The Aurora Police Department in conjunction with the Denver Police Department conducted the investigation into this matter. Aurora Police Detective Todd Fredericksen presented the factual findings of the investigation to my office on August 27, 2020. Detective Fredericksen presented law enforcement reports, audio and video recorded interviews, photographs, officer's body worn camera footage, and diagrams of the scene. The Office of the District Attorney concludes that the investigation was thorough and complete.

This review is strictly limited to determining whether criminal charges are warranted against the involved officers based on the investigation. 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 unanimous jury. In addition, the prosecution must also prove beyond a reasonable doubt that the officer's use of force was not justified under Colorado law.

This review expressly 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 agencies are sufficient. That evaluation is left to each individual agency.

As further set forth herein, based on the evidence presented and applicable law, there is no reasonable likelihood of success of proving that the involved officers committed any crime beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against Detective Brent Curtis, Officer Dana Gerlach, Officer Javier Reyes, Officer Carlos Jacobo, Detective Randy Wagner and Officer James Queisner.

STATEMENT of FACTS¹

On June 22, 2020, David Guillen and his girlfriend, I.C.,² went to Chamber Place Liquors located at 4856 Chambers Road in Denver. I.C. entered the liquor store and contacted the owner, G.K., using a ruse that she had dropped her ring under G.K.'s vehicle that was parked in front of the liquor store. G.K. went outside to move his vehicle to allow I.C. to locate her ring. When G.K. moved his vehicle in the parking lot, David Guillen entered the vehicle through the front passenger door armed with a .22 revolver handgun; wearing a facemask, baseball hat and gloves. Mr. Guillen demanded that G.K. drive out of the area stating, "Go if you want to live." G.K. begged Mr. Guillen not to kill him. Mr. Guillen stated to G.K., "If you want to live you are going to drive." I.C. then entered her silver vehicle and Mr. Guillen ordered G.K. to follow her; going North on Chambers, East on 56th Avenue and South on Tower Road. An employee of Chamber Place Liquors called 911 to report a kidnapping. Denver police officers were then dispatched to the area to search for G.K.'s vehicle.

Denver Police Officer Dana Gerlach located the G.K.'s vehicle and deployed a Starchase dart (GPS tracking dart) onto the vehicle. In the area of Green Valley Ranch, G.K. heard something strike their vehicle. G.K. then noticed two or three police cars behind them. I.C. turned her vehicle into the Green Valley Ranch neighborhood and fled. Mr. Guillen ordered G.K. to elude the police, "You better not fucking stop anywhere. I don't care if its red lights or not. If you stop, you die." Officer Gerlach observed the vehicle cross several lanes of traffic and drive through several red lights at a high rate of speed. G.K. repeatedly asked Mr. Guillen to let him go, telling him he could take his vehicle. Mr. Guillen jammed his handgun into G.K.'s right side while he was driving. G.K. continued to follow Mr. Guillen directions and then ended up stopping in the area of 35th and Abilene St. (a warehouse district in Aurora), as they both observed several police cars in the area. Mr. Guillen told G.K. to empty his pockets. G.K. emptied his pockets and placed his car keys and cash on the center console. Mr. Guillen then turned around looking over his shoulder, towards 35th Place, and G.K. took this opportunity to run away on foot.

As G.K. ran away to safety, Mr. Guillen started to chase him on foot yelling at him, "Stop! Stop! Come here!" Officer Gerlach observed G.K. fleeing the area and Mr. Guillen with a handgun. Officer Gerlach began to follow Mr. Guillen who was now walking throughout the warehouse area. Officer Gerlach gave repeated commands to "put the gun down" and observed Mr. Guillen pointing his handgun at citizens in the area.

¹ The Statement of Facts are culled from the overall investigation and is presented here largely in chronological order.

² Initials are used to maintain the privacy of citizen-witnesses.



Image from Officer Gerlach Body Worn Camera (BWC) of Mr. Guillen pointing his gun at workers in the area.

Denver Detective Brent Curtis, Officer Javier Reyes, Officer Carlos Jacobo, and Detective Randy Wagner arrived and also began giving commands to Mr. Guillen to drop his weapon as they followed Mr. Guillen on foot through the area. At one point, Mr. Guillen was on his phone looking at Officer Jacobo and raised his handgun in his direction. Consistent with the officer's body worn camera (BWC) footage during this incident, Officer Jacobo ordered Mr. Guillen to drop his gun at least thirteen times, Officer Gerlach ordered Mr. Guillen to drop his gun at least twenty-seven times and Officer Reyes ordered Mr. Guillen to drop his gun at least five times.

Aurora Police Officer James Quesner arrived to assist in his marked police vehicle and observed several Denver Police Officers following Mr. Guillen on foot. Officer Quesner observed Mr. Guillen with a handgun, so Officer Quesner retrieved his AR-15 rifle and pointed it at Mr. Guillen, who then lowered his gun to his side. Officer Quesner then utilized his vehicle's PA system making repeated announcements to Mr. Guillen to "stop or he'd shoot." As Officer Quesner followed behind Mr. Guillen in his police vehicle, he continued to walk eastbound ignoring all the officers multiple commands. Officers followed Mr. Guillen on foot for approximately seven minutes and a half of a mile, while he continued to threaten officers and citizens in the area with his handgun.

Mr. Guillen then approached a semi-truck driven by J.S. on the driver's side and asked him to move his truck in front of the officers. Mr. Guillen then walked in front of J.S.'s truck and pointed his handgun directly at J.S. who was terrified and feared for his life.



Image from J.S.'s truck dash cam of Mr. Guillen pointing his gun at J.S.

All the law enforcement officers in the area expressed that they had concerns at this time that Mr. Guillen would shoot citizens and the officers. Officer Gerlach and Officer Queisner said in their interviews that they were concerned that Mr. Guillen would make his way back to Chambers Road, which is a highly trafficked and populated area. Officer Queisner observed Mr. Guillen continue to walk east with his handgun still out and decided to drive his patrol vehicle into Mr. Guillen in an effort to separate Mr. Guillen from his handgun.

Officer Quesiner drove his patrol vehicle at Mr. Guillen and struck him one time at a very slow speed. When the patrol vehicle hit Mr. Guillen, Mr. Guillen fired one round from his handgun.³ After the impact, Mr. Guillen folded down to the ground and his handgun fell out of his hand. Detective Curtis, Officer Gerlach, Officer Reyes, Officer Jacobo and Detective Wagner were approaching on foot trying to stop Mr. Guillen after the Aurora Police vehicle bumped him. However, the threat level continued to escalate as Mr. Guillen appeared injured after the impact, but was not surrendering and was looking for his handgun. A witness, C.E., believed the suspect to be a danger and he felt scared for his employees in the area. Mr. Guillen's handgun was still in close proximity to him, as Officer Queisner continued to give verbal commands when he saw Mr. Guillen moving towards his handgun on the ground.

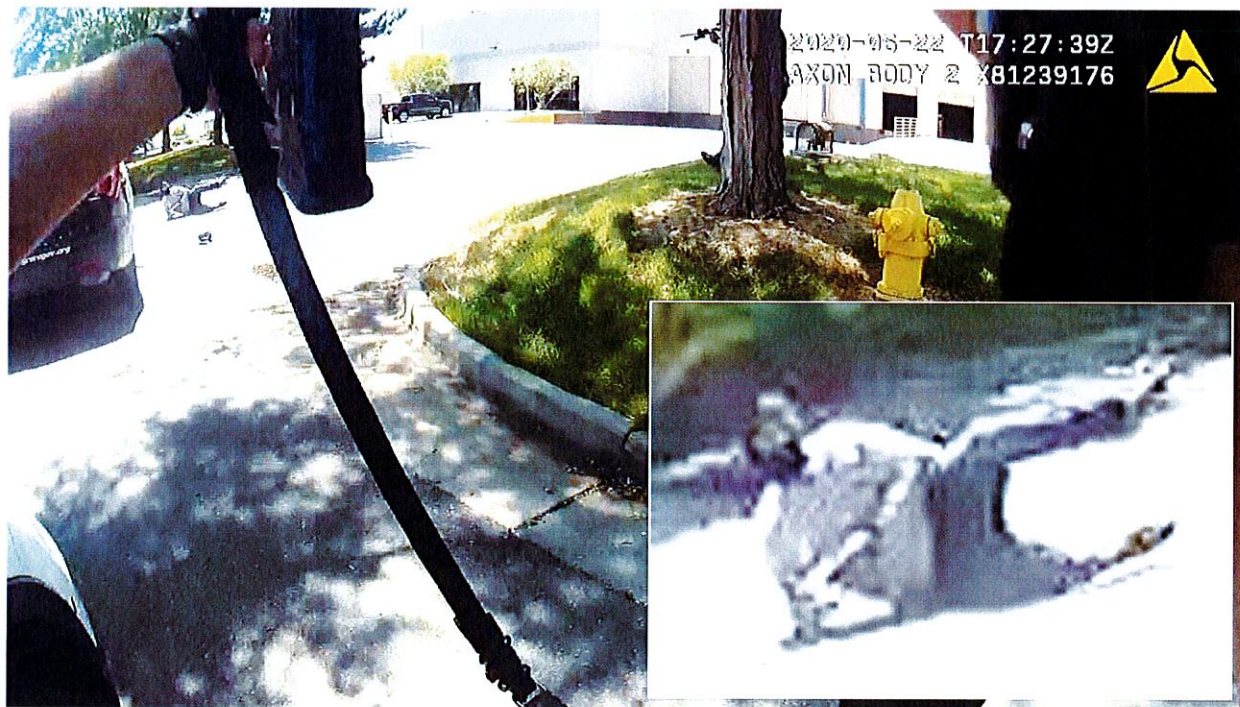
Officers continued to yell commands at this time to Mr. Guillen who failed to comply. Mr. Guillen picked up his handgun, raised it, and pointed it directly at Officer Reyes. Officer Reyes stated in his interview, "I fired my gun to protect the other officers there. I didn't want to see them get shot." All the officers during their interviews clearly stated that they feared for their lives and the lives of the other officers and began to fire their weapons at Mr. Guillen. As the gunfire began, Mr. Guillen propped himself up on his elbow as he rotated towards the officers. Mr. Guillen appeared to be pointing his handgun directly at Officer Jacobo at this point.

³ It is unknown if the shot was fired intentionally or involuntarily when he was impacted by the Aurora Police vehicle.

C.E. believed the officers did everything they could prior to shooting Mr. Guillen and believed they were “justified” in their actions.



Officer Jacobo's BWC, Mr. Guillen picks up his gun and quickly raises it towards the officers. Investigators later enhanced the image on the bottom right.



Officer Jacobo's BWC, Mr. Guillen props himself on his elbow as he is pointing his gun at officers. Investigators later enhanced the BWC image as depicted in the bottom right.

Six officers fired their service weapons at Mr. Guillen. Detective Brent Curtis fired seven rounds. Officer Dana Gerlach fired two rounds. Officer Javier Reyes fired eleven rounds. Officer Carlos Jacobo fired two rounds. Detective Randy Wagner fired six rounds. Officer James Quiesner fired five rounds. All officers stated they stopped firing once Mr. Guillen was no longer a threat. Other officers arrived and began to provide medical aid to Mr. Guillen who died at the scene. A Rohm .22 LR revolver handgun was located next to Mr. Guillen with five live rounds and one fired casing in the revolver.

On June 24, 2020, forensic pathologist Dr. Cina performed the forensic autopsy. Dr. Cina noted multiple gunshot wounds, identifying at least twenty-three distinct wounds, with no evidence of close range firing. Various organs were struck and eight bones were fractured to include the left femur and right radius and ulna. Dr. Cina noted the leg fracture was not caused by the vehicle impact, though his left hip showed some evidence of impact. A toxicology report showed Mr. Guillen to have a blood alcohol level of .043 and was positive for methamphetamine level of 790 ng/m. Dr. Cina determined the cause of death to be multiple gunshot wounds.

LEGAL ANALYSIS

In this case, there is no dispute that Detective Curtis, Officer Gerlach, Officer Reyes, Officer Jacobo, Detective Wagner and Officer Quiesner shot at Mr. Guillen causing his death. The issue of which involved officer actually caused the death is complicated, as six law enforcement officers fired their weapons resulting in the death of Mr. Guillen. The forensic evidence cannot conclusively distinguish which firearm caused the fatal shots. Therefore, for the purposes of this review, it is presumed that any one of the shooting officers actually caused the death of Mr. Guillen.

All of the involved officers were engaged in their duties as peace officers to investigate a suspect who reportedly just kidnapped a citizen and pointed his handgun at other citizens. Therefore, the legal question presented to the Office of the District Attorney is whether the prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law at the time the officers fired their weapons.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (2020), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads 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 effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or immanent use of physical force while effectuating 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 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.” §18-1-901(3)(d), C.R.S. (2020).

Under the circumstances of this case, all six officers were attempting to effect a stop and arrest of Mr. Guillen for his actions of committing several felonies. Criminal liability is established only if it is proved beyond a reasonable doubt to a jury that all of the elements of an

offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes.

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officers. 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 to a jury. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt.

Accordingly, the issue here is whether there is enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt that Detective Curtis, Officer Gerlach, Officer Reyes, Officer Jacobo, Detective Wagner and Officer Queisner acted without lawful justification. Here, the issues in this case are whether the use of deadly physical force by the officers were justified and whether the force used was reasonable. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989). Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to defend himself and the other officers and stop the threat that David Guillen presented.

The United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. Graham v. Connor, 490 U.S. 386, 396-97 (1989).

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat the officer faces. Illinois v. Lafayette, 462 U.S. 640 (1983); Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994). The 9th Circuit Court of Appeals has stated:

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police

decisions made under stress and subject to the exigencies of the moment. Scott v. Henrich, supra, 39 F.3d at 915.

CONCLUSION

Under the particular facts of this case, the actions of Detective Curtis, Officer Gerlach, Officer Reyes, Officer Jacobo, Detective Wagner and Officer Queisner were legally justified under Colorado law and United States Supreme Court precedent.

Pursuant to C.R.S. §18-1-707(2)(a), and (2)(b), all the officers were justified in using deadly physical force. First and foremost, under 18-1-707(2)(a), BWC footage corroborates the officers' reports that Mr. Guillen refused commands and menaced citizens and officers with a gun. The evidence supports the objectively reasonable conclusion that all the officers were in "imminent danger of being killed or of receiving great bodily injury."

Additionally, Colorado law, §18-1-707(2)(b), further allows the use of deadly physical force if Mr. Guillen was "committing or reasonably appears about to commit...kidnapping... aggravated robbery...or assault." The evidence is very clear that Mr. Guillen initially committed kidnapping and aggravated robbery of G.K., and when contacted by the officers committed a series of first degree assaults against all of the officers. This also allows for the justification of using deadly physical force in response to Mr. Guillen's actions.

In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing affirmative defenses. Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Detective Curtis, Officer Dana Gerlach, Officer Javier Reyes, Officer Carlos Jacobo, Detective Randy Wagner and Officer James Queisner for discharging their weapons in the fatal shooting of David Guillen on June 22, 2020.

Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Young'.

Dave Young
District Attorney