



August 28, 2013

Sheriff Douglas Darr
Adams County Sheriff's Office
332 North 19th Avenue
Brighton, Colorado 80601

Re: The investigation of the officer involved shooting of Joseph Manuel Flores III, DOB 05/06/87, occurring on May 17, 2013.

Dear Sheriff Darr:

The investigation and legal analysis of the officer involved shooting of Joseph Manuel Flores III occurring on May 17, 2013 is concluded. The Seventeenth Judicial District Critical Incident Team investigated this incident and Adams County Sheriff's Detective Mark Michieli presented the investigation on July 19, 2013 to the Office of the District Attorney for the Seventeenth Judicial District for review. The factual findings were presented to our office in the form of audio and video recorded interviews, photographs, diagrams, reports, and other documentation. The Office of the District Attorney concludes that the investigation was thorough and complete. Based on the evidence presented and the applicable Colorado law, no criminal charges will be filed against the officer involved in this incident.

STATEMENT OF INVESTIGATION

The Search Warrant and Joe Manuel Flores III's Criminal Background

On May 15, 2013, Magistrate Holbrook authorized an "Immediate Entry No Knock Search Warrant" to be executed at 8510 Corona Street in Thornton, Colorado. This location was identified as Joe Manuel Flores III's primary residence. An "Immediate Entry No Knock Search Warrant" is authorized when the information provided establishes that a traditional "knock and announce" method of entry would result in threat of danger to law enforcement officers or destruction of evidence. The basis for this warrant was predicated upon information provided to the Metro Gang Task Force by a reliable confidential informant (CI). The information revealed that Joe Manuel Flores III, the occupant of 8510 Corona Street, was on bond, is an active member of the Galiant Knights Insane (GKI) street gang (a violent, Denver based criminal enterprise involved in

homicides, robbery, weapons, narcotic trafficking and other gang related criminal activity), that he purchases half of a kilogram of powder cocaine weekly to resell as crack cocaine, and is in possession of firearms as well as large sums of cash. The CI also stated that Joe Manuel Flores III has no current active employment and is very paranoid that law enforcement will raid his house. The CI explained Joe Manuel Flores III keeps his narcotics stored in a bucket in the bathroom of his residence with a gallon of water nearby so the narcotics can be destroyed if law enforcement conducts a raid. The CI also stated Joe Manuel Flores III keeps a pistol in a cabinet that is located on the right side of the hallway at the entry of the residence and another pistol in his bedroom.

Law enforcement confirmed Joe Manuel Flores III to be on a \$250,000 bond, pending sentencing for a felony conviction in Denver District Court, case number 12CR3445, that occurred on July 25, 2012. In that case, Joe Manuel Flores III participated in a gang motivated drive-by shooting. Joe Manuel Flores III later admitted to having and removing weapons as well as controlled substances from his residence shortly after this incident. The CI stated that Joe Manuel Flores III had verbalized on more than one occasion that he is considering running. The CI took this to mean Joe Manuel Flores III was intending on leaving the state to avoid the sentencing hearing and impending incarceration in the Denver case.

Additionally, law enforcement confirmed Joe Manuel Flores III's criminal history and police contacts to include a recent contact in Gove County, Kansas on July 12, 2012. During that contact, Joe Manuel Flores III was in possession of a 9mm Smith and Wesson Semi-Automatic handgun as well as \$26,000 in US currency. He also admitted to DEA agents that the money and weapon belonged to him and that he was en-route to purchase a kilogram of powder cocaine in Tulsa, Oklahoma.

The Incident

On May 17, 2013 at 5:35am, members of the Adams County Sheriff's Office SWAT Team were briefed on the execution of the search warrant at 8510 Corona Street. The SWAT members were provided with a floor plan of the residence, and advised that Joe Manuel Flores III, was known to have drugs and weapons inside. SWAT members were advised that he kept drugs in a bucket next to the toilet in the bathroom so if law enforcement contacts him he can flush the drugs down the toilet. The SWAT team members were also advised that Joe Manuel Flores III kept a handgun inside of a dresser in his bedroom and a handgun in a cabinet in the foyer of his residence.

SWAT Team members arrived at the location at 7:19 a.m. Prior to entry, a flash bang (a percussion device) was deployed as a common tactical measure to assist safe entry into the residence. SWAT Team members made entry in a

“stack formation,” meaning they entered the residence single file. Adams County Sheriff’s Deputy Jeff Stovall was the first to enter the residence followed by Sergeant Michael McKinney. Upon entry, Deputy Stovall and other team members announced their presence. Deputy Stovall observed a male, believed to be Joe Manuel Flores III, come out of the north bedroom and run to the bathroom while holding something in his hands. Deputy Stovall followed Joe Manuel Flores III into the bathroom and observed him attempt to flush something down the toilet. Deputy Stovall grabbed Joe Manuel Flores III and took him to the ground in the bathroom. Joe Manuel Flores III tucked both his hands underneath himself. Both Sergeant McKinney and Deputy Stovall were giving verbal commands to Joe Manuel Flores III and tried to get him to place his hands behind his back but Joe Manuel Flores III continued to resist. Deputy Stovall physically attempted to pull Joe Manuel Flores’ hands out from underneath him. During this struggle, Deputy Stovall’s Colt M4 Commando M16 rifle discharged striking Joe Manuel Flores III in the right upper thigh. Joe Manuel Flores III continued to ignore commands. Eventually, Deputy Stovall and Sergeant McKinney were able to place Joe Manuel Flores III in handcuffs. Joe Manuel Flores III was transported to Denver Health Medical Center where he received treatment for tissue trauma caused by shrapnel. He was released the same day.

The Investigation

A search of the residence resulted in the recovery of three plastic bags in the bathroom near the toilet, each containing a white powdery substance. One bag weighed 231.4 grams, a second bag weighted 86.9 grams and the third bag weighed 59.0 grams. The white powdery substance tested presumptive positive for cocaine. Joe Manuel Flores III’s Colorado driver’s license was located next to the three bags. Officers found a Springfield XD9 9mm handgun in a cabinet in the kitchen. The gun’s magazine was loaded to capacity with 9 live rounds of hollow point ammunition. Additionally, \$2,300 in cash was recovered from a top dresser drawer in the bedroom. Joe Manuel Flores III was subsequently charged with multiple felony offenses, including possession with intent to manufacture or distribute a controlled substance, child abuse, violation of bail bonds, tampering with physical evidence and possession of a weapon by a previous offender.

Deputy Stovall has been employed with the Adams County Sheriff’s Office for fourteen years and a member of the SWAT team for over ten years, serving both as a general tactical member and team medic. During the execution of the May 17, 2013 search warrant, Deputy Stovall was outfitted with SWAT gear to include his slung Colt M4 Commando M16 rifle. His rifle was on full automatic but in a “very low ready” position at the time he went hands on with Joe Manuel Flores III in the bathroom.

At some point during the struggle between Deputy Stovall and Joe Manuel Flores III, the rifle discharged a three-round burst in rapid succession, superficially wounding Joe Manuel Flores III in the right thigh with one of the shots. The other two shots were located in the bathroom floor. There is no evidence that Deputy Stovall had his finger on the trigger during the incident. Given the location of the tactical gear in relation to the position of Deputy Stovall's rifle, it is evident that an object other than Deputy Stovall's finger pulled the trigger during the struggle with Joe Manuel Flores III.

A certified armorer examined Deputy Stovall's Colt M16/AR15 rifle and determined that it was in good condition with no mechanical problems. Test firing of the weapon revealed a trigger pull of 7.7 pounds which is within the Colt trigger pull standard of 5.5 to 8.5 pounds. The weapon was test fired five times to determine the speed at which a three-round burst would be discharged at one pull of the trigger. The results demonstrated one trigger pull expelled a three-round burst of ammunition at times of .64 seconds, .74 seconds, .57 seconds, .54 seconds, and .48 seconds.

WITNESS INTERVIEWS

Broomfield Police Department Detective Dale Hammell and Detective Brent Mullen interviewed Deputy Jeff Stovall at the Adams County Sheriff's Office Substation. Deputy Stovall explained he and the other SWAT members were called in on May 17, 2013 to execute the No Knock Search Warrant. A briefing took place at 5:30 that morning. The briefing included the purpose and location of the warrant, team assignments, individual assignments and an overview of who the suspect was to include his picture and a diagram of the residence. Specifically, the team was informed the suspect would be in possession of a large amount of cocaine and would be armed. The team was also briefed on the suspect's past issues with drugs and guns. They were informed he keeps a gun in a table or a cabinet right next to the front door and one next to him in his bedroom dresser. They were also informed he keeps drugs in a bucket next to the toilet so he can flush the drugs if law enforcement arrives.

Deputy Stovall stated that after the briefing, the SWAT Team staged in a strip mall at 88th and Washington. The team was waiting for the suspect's wife to take the kids to school so they would be out of the house. Once they left the residence, the team loaded up on the armored car. Deputy Stovall was on the driver's side of the armored car with other team members. Once they arrived at the residence, other members set up in the back yard. Once they were in position, Deputy Stovall and the others dismounted and headed towards the door. A flash bang was thrown and the team made entry into the residence. Deputy Stovall was the first member to enter. At the time of entry, loud announcements were made such as "Police.....search warrant. Police...search warrant."

The plan called for Deputy Stovall to scan for other occupants and if it turned up negative to then proceed back to the suspect's bedroom. When he entered he saw a person who fit the description of the suspect. That person ran from a bedroom into the bathroom with something in his hands. Deputy Stovall assumed the suspect was running into the bathroom with drugs. After giving loud verbal commands such as "Stop, police, don't move," Deputy Stovall followed the suspect into the bathroom. He saw the suspect had knelt down on the floor and was throwing something into the toilet. Deputy Stovall said he was still giving the suspect commands. Deputy Stovall could not see the suspect's hands and wanted the suspect away from where he was and away from what he was doing. Deputy Stovall then grabbed the suspect, pulled him away from the toilet and down onto the floor.

The suspect landed on the floor face down and held his arms under his chest. Deputy Stovall gave the suspect commands to give up his arms and to put his arms behind his back but the suspect refused. Deputy Stovall tried to pull the suspect's hands out and gave the suspect strikes to the upper arm, shoulder and back area to get him to comply. Sergeant McKinney was right outside the bathroom and was also trying to get the suspect's arms out from under him. At some point Deputy Stovall heard his rifle fire three or four rounds. He checked his weapon and saw that it was on full automatic. He flipped it to safe mode. He and Sergeant McKinney continued to try to get the suspect's arms out from underneath him. Deputy Stovall indicated his normal practice was to activate his safety switch of his M16 rifle, if time permits, before going "hands on" with a suspect.

After the weapon discharged, the suspect did not react as if he was injured so Deputy Stovall did not know the suspect was hit. Deputy Stovall still did not know if anything was in the suspect's hands and he was still fighting to keep his hands concealed underneath him. Deputy Stovall and Sergeant McKinney eventually got the suspect's hands wrestled out from underneath him and handcuffed him. Deputy Stovall then noticed blood and started checking the suspect for injuries.

When Deputy Stovall entered the bathroom after the suspect, he had his M4 Colt rifle slung over his shoulder by the strap and was carrying it in a "very low ready position," he described as the barrel pointed down and to the right. Deputy Stovall indicated both of his hands were on the suspect trying to get the suspect under control when the weapon fired in this very low ready position.

Thornton Police Department Detective Brent Mullen and Broomfield Police Department Detective Dale Hammell conducted an interview of Sergeant Mike McKinney. Sergeant McKinney is a Sergeant with the Court Security Unit for the Adams County Sheriff's Office. He has been with Adams County for thirteen

years and a member of the SWAT team for about six years, currently serving as Assistant Team Leader.

Sergeant McKinney discussed the briefing the team had prior to the execution of the No Knock Search Warrant. He explained the team was informed they would be serving an immediate entry warrant regarding an armed subject that had been dealing drugs. They were informed there were possibly two guns in the house, one in the bedroom and one in the front entry way. The team was told the subject was out on bond for a drive by shooting in Denver. He was awaiting sentencing and that he may flee. They were also told that his plan was to flush drugs if police ever raided his home. Sergeant McKinney explained that no knock search warrants are very rare so this was a pretty serious situation.

Sergeant McKinney explained team one's responsibility was to make entry to the main level, secure the main level, and then team two was to make entry into the basement. Sergeant McKinney explained the SWAT team members' weapons are on safe or semi-automatic until the threshold of the residence is crossed, then they switch over to full automatic. Sergeant McKinney's specific job was to deploy a flash bang under the window prior to entry. He was directly behind Deputy Stovall. When the door was breached, Deputy Stovall entered, followed by Sergeant McKinney. As soon as they entered, they gave several loud announcements yelling "Police, Search warrant." They immediately saw the suspect run from the left to the right towards the bathroom. Deputy Stovall and Sergeant McKinney chased him into the bathroom. Sergeant McKinney didn't witness how, but later observed that Deputy Stovall got the suspect onto the ground. When the suspect went to the ground his arms were beneath him.

Sergeant McKinney was standing near the suspect's head and Deputy Stovall was near the suspect's feet. They were both trying to get the suspect's hands out from underneath his chest. They were also giving commands such as "show us your hands." Sergeant McKinney was kicking at the suspect's shoulders to get him to comply because they didn't know if the suspect had a gun. When the suspect wouldn't comply, Sergeant McKinney went hands on to try to pull the suspect's hands out from under him. Sergeant McKinney then heard a three round burst and he figured it came from Deputy Stovall's rifle. Sergeant McKinney looked at Deputy Stovall and saw his rifle was slung on his right side and his finger was not on the trigger. Deputy Stovall then pushed the rifle back further away.

Sergeant McKinney assumed the shots went into the floor. Sergeant McKinney and Deputy Stovall went back to trying to get the suspect's hands, but were unsuccessful. After another officer showed up to help they were eventually able to free up the suspect's left hand and get him handcuffed. Initially, Sergeant McKinney did not know the suspect had been shot until Deputy Stovall said "he's been hit" and started looking for injuries.

Broomfield Police Department Detective Dale Hammell and Detective Brent Mullen interviewed Detective Daniel Monares. Detective Monares stated he is employed with the Adams County Sheriff's Office and has been a member of the SWAT team for three years. Detective Monares explained the team was briefed that the suspect residing at the location where the No Knock Search Warrant was to be executed is a GKI gang member, is dealing drugs and is armed. They were also informed the suspect would try to flush his drugs if police raided his home. Detective Monares' understanding was that it was a high risk situation.

Detective Monares' role with the SWAT team is general entry. In this case, his assignment was to go immediately to the backyard and cover the bathroom window. Another deputy broke the window and Detective Monares put his weapon through the opening. He then saw a male come running into the bathroom. The male suspect appeared to be holding something down by his waist. The suspect immediately got down on his knees by the toilet. Detective Monares could not see what the suspect was doing because the shower door was blocking his view. Detective Monares yelled at him "don't move, don't move." According to Detective Monares, the suspect did not seem to care. Seconds later, Detective Monares saw Deputy Stovall come into the bathroom with his rifle in the low ready position. Deputy Stovall let his rifle hang while he pulled the suspect away from the toilet. Deputy Stovall spun the suspect around to the ground and was saying "let me see your hands, stop resisting." At that point, Detective Monares could only see the suspect's legs. Detective Monares said it appeared as if the suspect was not complying. A few seconds later, Detective Monares heard three shots. Detective Monares could not see any weapons when he heard the shots.

Westminster Police Department Detective Joseph Hastings interviewed Joe Manuel Flores (father of Joe Manuel Flores III). Joe Flores admitted to being at the residence at the time of the SWAT entry. Joe Flores told Detective Hastings that he arrived at that address around 3:30 that morning after he had been out drinking. At the time of the entry, Joe Flores was asleep in the basement and heard a 'Boom.' He then heard "all kinds a ruckus" and one gunshot from the first floor. He then ran upstairs and was confronted with SWAT team members. According to Joe Flores, the only people in the house at the time of the entry were his son, his two year old granddaughter and himself.

Westminster Police Department Detective Joseph Hastings and Denver District Attorney Investigator Robert Fuller interviewed Joe Manuel Flores III. Joe Manuel Flores III told the detectives he was sleeping in his bedroom when the SWAT team arrived. He said he heard a broken window. He then got up, grabbed the cocaine from his top dresser drawer, went to the bathroom and tried to flush it because he knew it was the cops entering. As he was trying to flush

the cocaine, Joe Manuel Flores III remembers being grabbed and the officer got him to the ground. The cops were saying "get down, put your hands behind your back." Joe Manuel Flores III said he was trying to put his hands behind his back. He said he was getting hit with fists and being kicked. Joe Manuel Flores III does not know when he was shot. He did not know he was shot until it started burning and the officer said he had shot Joe Manuel Flores III. He then waited there until the ambulance arrived. Joe Manuel Flores III said he did not have any weapons on him but that he took his dad's gun from him the night before and put it in his room.

LEGAL ANALYSIS

Criminal liability is established when it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statutes, and that the offense was committed without any statutorily recognized justification or excuse. The elements of a crime not only require a voluntary act but also a mental state such as "knowingly" or "with criminal negligence." There is no evidence to support a conclusion that Deputy Stovall knowingly caused the injury to the suspect, Joe Manuel Flores III, by pulling the trigger of his weapon. As such, our analysis focuses on whether Deputy Stovall's actions were committed with criminal negligence.

According to the statute defining the mental state, "a person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustified risk that a result will occur or that a circumstance exists."

Here, based upon the investigation conducted, Deputy Stovall was performing the duties he was assigned as part of the execution of the Immediate Entry No Knock Search Warrant. The purpose of the warrant was to locate guns and drugs from an individual considered armed and dangerous. Pursuant to SWAT protocol, his assault rifle was set to full automatic during the entry of the residence because the suspect was considered to be armed and dangerous. Deputy Stovall's duties included being the first member to enter the residence and locate the potential suspect.

Deputy Stovall identified the suspect and tried to apprehend him using the least degree of force necessary to apprehend him—using verbal commands before physical force. The suspect ignored the commands, fled from the officers' view, and continued to resist the officers' effort to safely bring him into custody. There were many obstacles to the effective arrest of the suspect, including the confined area of the bathroom, the number of officers present, the tactical SWAT gear, and the suspect's continued resistance. Because of the suspect's decision to ignore commands and run from the officers, it was impracticable for Deputy

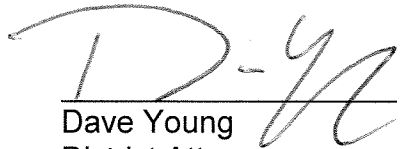
Stovall to secure his weapon to the safe position not knowing whether the suspect was armed with a weapon. The evidence is clear that this all happened in a matter of seconds and he did not have time to activate the safety on his rifle before going "hands on" with Mr. Flores III. There is no evidence that Deputy Stovall pointed his weapon at the suspect or had his finger near the trigger. Deputy Stovall's actions described as "hands on" appeared to have been centered on the safe apprehension of the suspect without the use of his firearm.

Given the circumstances of the struggle and number of obstacles present, it is evident that the weapon fired accidentally and not as a result of Deputy Stovall's conscious decision or failure to perceive a risk. Therefore, Deputy Stovall's actions resulting in injury to the Joe Manuel Flores III do not amount to criminal negligence and there will be no criminal charges filed.

CONCLUSION

Based upon the investigation conducted by the Critical Incident Team of the Seventeenth Judicial District and an evaluation of the applicable law, the injury to Joe Manuel Flores III resulted from the accidental discharge of Deputy Stovall's firearm. Because there was no evidence that Deputy Stovall made a conscious decision or failed to perceive a risk that resulted in the injury, there will be no filing of criminal charges filed against him as it relates to the May 17, 2013 shooting of Joe Manuel Flores III. Please do not hesitate to contact me directly if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "D-Young", written over a horizontal line.

Dave Young
District Attorney
17th Judicial District