



CITY AND COUNTY OF DENVER

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Public Statement of the Manager of Safety Regarding an Officer Involved Shooting by Technician Timothy Campbell Resulting in the Death of Jason Tyrone Gomez on December 19, 2007

I. SYNOPSIS

Just before 2:10 a.m. on December 19, 2007, Police Technician Timothy Campbell was in a marked Denver Police car on routine patrol in Denver's District Four. As he was driving northbound on South Irving Street towards West Walsh Place, a Saturn four-door sedan passed by him. Because Saturns are commonly stolen cars in his District, Technician Campbell decided to check the license plate of the car to see if it was stolen. Technician Campbell made a U-turn in his marked patrol car so he could get behind the car and make sure that he had the correct license plate number. As he turned his patrol car, Campbell saw the Saturn make a quick turn from South Irving Street onto eastbound West Ohio Avenue. The officer followed onto West Ohio Avenue so that he could get the license plate number. But when Technician Campbell turned eastbound onto West Ohio Avenue, the car was no longer on the street.

When he looked to his right, Technician Campbell saw the car sitting in the driveway of the residence at 3290 West Ohio Avenue, which he had just passed. Immediately, Campbell stopped the patrol car. When he did, the driver's door of the Saturn opened and a man jumped out. The man slipped and fell on some ice, but jumped up and ran through the yard of the house. Technician Campbell ran after the man. As he pursued the driver, Campbell keyed his lapel radio and notified police dispatch of his location and that he was in a foot chase. The officer chased the suspect through yards and over fences in the block east of South Irving Street, between West Ohio Avenue and West Ada Place. During the chase the man fell on the ice a second time. When he reached Ada Place, the Saturn's driver turned eastbound. Campbell yelled for the suspect to stop but the man did not comply. Technician Campbell was able to catch up when the suspect slipped and fell on the ice for a third time.

When he got up from his third fall, the suspect was face-to-face with the uniformed patrol officer. Instead of surrendering, the man threatened Technician Campbell by stating, "I'm gonna kill you, I'm gonna kill you." As he made these threats, the suspect reached into his left front pants pocket with his left hand. He took something out of his pocket. Technician Campbell could only see that the object had a shiny tip. As the officer described it, the suspect, who had already threatened to kill him, began jerking

back and forth in an aggressive manner. More concerning, the suspect hid the item he had removed from his pocket from Technician Campbell, keeping it in his left hand behind his back.

Knowing how rapidly a gun can kill, it was at this point that Technician Campbell drew his own weapon, a Glock .45 caliber, model 21, semi-automatic service pistol and yelled, "Drop the weapon!" Even then, despite that fact that a uniformed police officer was holding a gun on him, this suspect still kept his left hand hidden behind his back. He began to yell the name of a gang at the officer, saying, "GKI, GKI, GKI."¹ The suspect still held the shiny object he had taken from his pocket and kept it hidden from the officer. The man again threatened to kill the officer, but this time the suspect began to move his left arm with the object in it towards Technician Campbell. Campbell fired two shots at the suspect. Technician Campbell fired, "Because I was in fear of my life. I thought he [the suspect] had a gun and he was going to shoot me with it."

After being shot, this suspect still did not back down. Instead, the man yelled at Technician Campbell, "Is that all you got?" The suspect moved closer towards Campbell again and raised his hand with the object in it a little higher. Technician Campbell fired four more shots. The man finally fell down on his back and stopped moving. It was only then that the suspect's hand completely opened. At that point, for the first time, Technician Campbell saw that the object in the suspect's hand was not a small caliber handgun but was, instead, a white lighter with a shiny silver tip.

The investigation later identified the suspect who drove the vehicle and threatened Technician Campbell as Jason Tyrone Gomez. Gomez was transported to Denver Health Medical Center where, at 2:35 a.m., he was pronounced dead by Dr. Richard Byyny.

An investigation into this incident was conducted by the Denver District Attorney's Office and the Denver Police Department. Denver District Attorney, Mitchell Morrissey, concluded at the end of his investigation that under applicable Colorado law, "no criminal charges are fileable against Technician Timothy Campbell." Denver Chief of Police, Gerald Whitman, also reviewed the investigation file and determined that no disciplinary action was warranted.

This Office has carefully considered the entirety of this case as well as the determinations made by District Attorney Morrissey and the Chief of Police and has considered input from the Independent Monitor. After careful and independent review, this Office has also determined that no disciplinary action should be taken against Technician Timothy Campbell. We have concluded that Technician Campbell reasonably believed that the actions of Jason Gomez posed an imminent threat of death or serious bodily injury to him and that the use of deadly force against Jason Gomez was reasonable and in accordance with the Denver Police Department's Use of Force Policy.

The purpose of this public statement is to provide a more detailed explanation of the basis of this decision.

¹ GKI references the initials of a gang known to police officers as Gallant Knights Insane.

II. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Office of the Independent Monitor (OIM) was on hand to observe the investigation and provide input, as were members of the Internal Affairs Bureau. Interviews were observed by the OIM as required by Ordinance and permitted by the protocol of the District Attorney's Office. The criminal investigation was completed and the District Attorney's decision letter was released on January 24, 2008. In the language of the statutory requirements, the District Attorney declined to file charges against Technician Campbell, concluding:

It is the non-compliant, bizarre, aggressive, threatening actions of Gomez and the final threatening movements that forced Technician Campbell to react by shooting him. Even after being shot, Gomez continued his aggressive life-threatening conduct. For reasons known only to Gomez, he consciously forced Technician Campbell to shoot him.

The fact that Gomez made his verbal and physical threats to kill Technician Campbell while possessing a lighter, rather than a firearm or edged weapon, is of no consequence under the facts of this case. It was clearly reasonable for Technician Campbell to believe that Gomez was armed with a firearm and about to shoot him. Under the circumstances of this case a split-second hesitation by Technician Campbell could have resulted in his death had Gomez, in fact, come from behind his back with a firearm or edged weapon in his hand rather than the silver-top lighter. An officer has a right to protect his life by acting on his reasonable perception of the threat confronting him. Once a firearm is pointed at an officer there is no time to successfully stop the deadly attack, even if the officer is pointing his weapon at the assailant at the time. At this close range a similar threat exists with an edged weapon. Therefore, the officer must attempt to initiate his protective action before the attack cannot be repelled.

Under the specific facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for Technician Campbell to fire the shots that caused Gomez's death. Therefore, no criminal charges are fileable against him for his conduct in this incident.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. On February 26, 2008, the Use of Force Review Board determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Review Board are advisory in nature, and are not binding on Chief Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Independent Monitor, Chief Whitman concluded that there were no violations of Department rules or policies in this incident.

The Monitor concurred with that finding, as noted in his 2007 Annual Report.² The case was subsequently forwarded to the Office of the Manager of Safety.

This Office responded to the scene at the time of this incident, observed interviews of officer and civilian witnesses, and subsequently reviewed the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including the officer statements, witness statements, diagrams, photographs and physical evidence reports. Additionally, this Office studied the policies in effect on the date of the shooting and is aware of relevant training materials and academy training practices. Consideration was given to the decision of the Denver District Attorney and the Chief of Police, as well as the recommendations and conclusions of the Use of Force Review Board and the Independent Monitor.

III. DETAILED FACTUAL BACKGROUND

This Public Statement involves the shooting death of Jason Tyrone Gomez, date of birth 12/08/1974, by Denver Police Department Technician Timothy Campbell. The incident began when uniformed officer Campbell noticed a suspicious vehicle traveling southbound on Irving Street.

Technician Campbell was conducting routine patrol in his marked Denver Police Department patrol car on December 19, 2007. As he did so, he observed a four-door green Saturn turning from eastbound West Walsh Place onto southbound South Irving Street. Technician Campbell explained that he intended to enter the license plate number into his mobile computer. Because Saturns are a commonly stolen vehicle in this area and because he wasn't certain that he had recorded the plate number correctly, Technician Campbell made a U-turn to get a better view of the car and its license plate. As Technician Campbell turned around on Irving Street, the Saturn quickly turned east onto West Ohio Avenue.

Once he was on West Ohio Avenue, Technician Campbell momentarily lost sight of the Saturn, but noticed it again as he drove past the driveway of 3290 West Ohio Avenue. The Saturn was parked in that driveway. As soon as Technician Campbell hit the brakes and stopped his patrol car, someone inside the Saturn jumped out of the drivers' side and took off running. This man, who was the driver of the vehicle, was later determined to be Jason Gomez.

Technician Campbell used his lapel radio to call a foot chase into the police dispatchers as he pursued the suspect. Gomez first ran southbound through yards and over fences in the block between West Ohio Avenue and West Ada Place. Once he reached West Ada Place, Gomez turned eastbound. Technician Campbell yelled for Gomez to stop running but Gomez did not comply. Gomez slipped and fell three times during the foot pursuit – first, when he first jumped out of the Saturn, next as he went over a fence

² Pursuant to ordinance, the Office of the Independent Monitor publishes an Annual Report to the public in which he addresses matters on which he exercises oversight, including all officer involved shootings. To link to the 2007 OIM Annual Report referenced above, go to www.denvergov.org/oim/ and click on the Reports tab. The information is found on page 6-10 in Chapter 6 of the 2007 Annual Report.

when he was running towards West Ada Place, and finally when he reached West Ada Place and began running east. Each of his falls were, according to Technician Campbell, "... like a slip, like something just went out from underneath him and it was a quick fall ... I mean he didn't take a long time getting up like he was hurt or anything. He just jumped up real quick." When Gomez fell for the third time, Technician Campbell was able to make up the lead that Gomez had gained by running before the officer had even gotten out of his patrol car. It was only on West Ada Place that Technician Campbell finally caught up with Gomez.

Gomez jumped back up after his third and final fall. As Technician Campbell explained:

At that point, he got up and faced me and said, "I'm going to kill you! I'm going to kill you!" As he said it the second time, he reached into his pocket, his left-hand pocket with his left hand and pulled out an item with a shiny tip on it and put it behind his back real quick.

Technician Campbell described the aggressive behavior in which Gomez engaged as "bobbing kind of like a fighting cock...he was prancing around...jerking back and forth... like a fighting cock putting on a show...bobbing his head...being aggressive."

During the chase and at the initial confrontation with Gomez, Technician Campbell had not drawn his weapon. Instead, Campbell commanded the suspect to stop. However, when Technician Campbell saw Gomez pull a shiny tipped object out of his pocket, he believed that Gomez had a gun and so he immediately drew his own gun, a Glock .45 caliber, model 21, semi-automatic pistol. Campbell commanded Gomez to "Drop the weapon." Gomez refused to comply. Instead Gomez continued to make threats to kill Technician Campbell. The distance between the two was no more than three steps and Gomez was moving closer to the officer.

Witnesses in the area heard screamed threats, including, "I'm going to kill you, motherfucker, I'm going to kill you," "Come on motherfucker" and "you want some, motherfucker, you want some?" Gomez continued to move towards the officer and acted as though he had a weapon which he was trying to hide from the officer. Despite the commands from Technician Campbell, Gomez continued his aggressive actions and threats. Faced with a noncompliant, aggressive suspect who had refused all commands, ran from a traffic stop, threatened to kill him and who seemed to be bringing a weapon to bear on him from just a few feet away, Technician Campbell fired two shots. As Technician Campbell described it:

At that point, I believe he had taken out a weapon and I yelled at him, "Drop the weapon!" and he replied to me, "GKI! GKI!" which he said three times and he said again, "I'm going to kill you!" And at – as he was saying it, he brought down the weapon– or brought down the item which I believe to be a small caliber gun at the time – And it put me in fear of my life so I fired two rounds.

Despite being shot twice, Gomez did not surrender or comply with Technician Campbell's orders. Instead Gomez yelled, "Is that all you got?" and moved closer to the officer; at the same time Gomez raised his left hand even higher and continued to simulate having a gun in his hand. In response to this action Technician Campbell fired four more rounds at Gomez, who fell to the ground. It was when Gomez fell to the ground and his hands opened that Technician Campbell was first able to see that what was in Gomez's left hand was not a small caliber firearm, but a lighter. In Technician Campbell's words, this is what happened after he fired his first two shots:

At that point, he said, "Is that all you got?" and he made a couple of steps towards me, and as he was doing that, he raised up the item again. So I fired four – four to five rounds at which time he fell to his back and he – he fell down with his arms up and his hand over a little bit and I – at that time, I noticed what he was holding was a lighter.

Technician Campbell immediately radioed the Denver Police Department dispatch to report that shots had been fired and an ambulance was needed in the 3200 block of West Ada Place. Radio tapes and other records indicate that Technician Campbell's initial call on the shooting was at approximately 02:10:46, or shortly after 2:10 in the morning. Among the first to respond were Officers Michael Valenti and John Sampson, as well as Corporal Michael Cordova. All of those officers wrote reports and in their reports they identified a cigarette lighter next to the suspect's hand. Officer Valenti and Corporal Cordova both identified the lighter as being next to the suspect's left hand. Officer Sampson, who knelt down facing Gomez, believed the white and chrome lighter to be by the suspect's right hand.

Pursuant to protocol, Technician Campbell was separated from other officers and civilian witnesses at the scene and was transported separately to police headquarters by a supervisor. There he was sequestered, with restricted visitation, until his videotape interview. A log was kept of all contacts with Technician Campbell.

Only basic information regarding the direction of fire was solicited at the scene in order to assist in the recovery of evidence. Sergeant Gerry Gibson, a sixteen year veteran, responded to the scene with Sergeant Keith Cruz. Gibson recorded his contacts with Technician Campbell in his report:

I confirmed that [Technician Campbell] was involved and that he was not injured. I also directed dispatch to make the notifications for an officer involved shooting. Upon arriving to the scene, I directed officers to ensure that the roadway was clear for the responding ambulance. I then contacted Technician Campbell and got the basic incident information from him. Tech Campbell spontaneously said "he yelled I'm GKI and I'm going to kill you and then the suspect reached into his waist band." I told Tech Campbell to stop explaining the full incident and explained I only needed the basic information related to the direction he fired the shots and the number of suspects that were involved. I then secured Tech Campbell into my unit to transport him to headquarters.

Technician Campbell also discussed his own spontaneous statements in his videotaped interview, explaining, "The – I think – I believe it was the second or third officer that showed up – when they showed up, I said, "I can't believe it was a lighter." However, no officer spoke with Technician Campbell about the incident nor was any information from civilian witnesses provided to him. Thus, at the time of his voluntary, videotaped interview, Technician Campbell had neither seen nor heard any statements by civilian or officer witnesses.

In explaining what it was about the way that Gomez behaved that led him to fire his weapon, Technician Campbell said in his interview:

Well, like fighting cocks and they bob. You know, like they have to put on a show and kind of bob their head and are being aggressive. Yeah, I mean the – the totality of everything – I mean it scared me. I mean I thought he wanted to kill me – everything – the GKI, the way he acted, the – what he brought out from behind his back. I – I mean it was – I was scared. I mean it was – everything he did.

During the course of his videotaped interview, Technician Campbell repeatedly demonstrated how Gomez pulled the item out of his pocket and hid it behind his back, then brought it forward as though he were bringing a small caliber weapon up to fire. The officer stated on several occasions that he thought that Gomez had a gun and was going to kill him, saying that he fired "[b]ecause I was in fear of my life. I thought he had a gun and he was going to shoot me with it." The sense of danger was increased by Gomez yelling a gang name because, as Technician Campbell recounted:

It meant to me that he's claiming that he's a gang member – he's with the GKI which I believe that stands for Gallant Knights Insane or something. That – it just – I mean it – it made me think that that much more that it was a weapon because a lot of gang members are all around with guns and dope and everything else. So I mean it – it definitely – it startled me, I guess – I – is the best word I could use.

Technician Campbell stated that Gomez was prancing around and jerking back and forth as he was yelling the gang name and yelling his threat to kill the officer. While doing this, Gomez took a couple of steps towards Campbell and brought the hidden object up in his left hand. He described their proximity and how it happened, saying:

Yeah, it's close ... maybe three [steps apart]. At that point, when he pulled out what I believed to be a small caliber gun, I fired two rounds – or what I believed was two rounds – one or two. Right after that, he says, "Is that all you got?" And he took a half step towards me, raises it a little higher ... , and then [four more shots].

Campbell explained that Gomez did not fall down after the first two shots and it didn't seem as though he even staggered. After describing a three to five second gap between the two series of shots, Technician Campbell explained that he stopped firing

Because I perceived the threat to be over. He was on his back and he was no longer moving, and he had fallen down and the lighter was laying in his open hand.

His surprise in seeing that Gomez threatened him with a lighter, even after he was shot, is evident in Technician Campbell's comment, noted above, to another officer that he couldn't "believe it was a lighter."

Medical Response

Denver Fire Department Engine 23, which was stationed nearby at 850 South Federal, was on scene almost immediately. The four person team immediately assessed the suspect and began cardiopulmonary resuscitation (CPR) and ventilation. They were followed quickly by the arrival of paramedics. Jason Gomez was loaded in the ambulance and en route to Denver Health Medical Center within four minutes of Technician Campbell's call of "shots fired." Denver Fire Department personnel rode with the ambulance to continue, uninterrupted, the life saving measures they had started. Despite their efforts, Gomez was pronounced dead at 2:35 a.m. by Dr. Richard Byyny at the Denver Health Medical Center.

IV. CRIME SCENE INVESTIGATION AND TESTING

An autopsy was performed at Denver Health Medical Center on December 19, 2007, by Dr. James Wahe. Dr. Wahe determined that Jason Gomez was struck by all six shots fired by Technician Campbell and had seven gunshot wounds. Five of those bullets did not exit his body; these are referred to as penetrating wounds. Those bullets, or fragments of them, were recovered at autopsy. The wounds resulting from these five bullets include: a penetrating wound of the posterior right shoulder, near the top of the shoulder, passing from right to left and downward and causing injuries to 7th rib, the upper lobe of the right lung and spinal cord; a penetrating wound in the anterior right upper chest, passing left to right and downward and causing injuries to the right lower lobe of the right lung; a penetrating wound of the right lower anterior chest, passing right to left and downward and causing injuries to the liver and the spinal cord; a penetrating wound to the left side of the epigastrium of the abdomen, passing right to left and downward and causing injuries to duodenum and jejunum; and, a penetrating wound to the anteromedial right thigh, passing right to left and downward and causing injuries to the musculature of the anterior right thigh. The sixth bullet resulted in a perforating wound, or through and through wound, and had an entry on the anterolateral left knee on the inferior and lateral surface. It passed left to right and slightly downward, and exited the body on the posteromedial left knee. This perforating wound, for which a bullet was not able to be recovered, caused perforation of the knee joint and fracture of the lateral external tuberosity of the tibia. Additionally, Gomez had numerous abrasions of his hands, knees and head. Dr. Wahe determined that Gomez died as a result of multiple gunshot wounds.

Toxicology testing revealed the presence of cocaine metabolites, cannabinoids and alcohol in Gomez's system at the time of his death.

Technician Campbell described firing six shots from his Glock .45 caliber, model 21, semi-automatic service pistol. In his interview he explained that the weapon has a magazine capacity of 13 rounds. The weapon was being carried with the magazine fully loaded and an additional round chambered—a total of 14 rounds in the weapon. After the shooting and pursuant to protocol, the weapon was taken by Denver Police Department Crime Lab personnel. Eight live rounds were recovered from the weapon. Six spent .45 caliber shell casings were recovered at the scene. On January 30, 2008, Technician Charles Reno of the Denver Police Department Crime Lab submitted his report which identified the six shell casings recovered at the scene as having been fired from Technician Campbell's firearm.

The autopsy report supports the information which Technician Campbell provided in his videotaped statement. The multiple abrasions found on the knees, hands, and head of Jason Gomez are consistent with the three falls which Technician Campbell observed.

Technician Campbell described aiming his weapon at the center mass of the suspect, consistent with his training.³ He also described how Gomez was bobbing and moving, how Gomez moved his left hand into his left pocket and then, with something in his left hand, hid that hand behind his back, how Gomez then brought the left arm forward with the hidden object in it as he leaned forward and, significantly, how Gomez continued with his constant and aggressive movements even after Campbell fired his first two shots. These movements would have resulted in Gomez being in motion and turning his body as Technician Campbell fired. Additionally, the impact of the initial shots and the changes in position as Gomez began to fall to the ground would also affect the placement of Technician Campbell's shots.

Four of Technician Campbell's bullets struck Gomez in the center mass and upper torso. Two of those bullets entered on almost the exact same plane - near the top of the right shoulder - one entering from the front and one entering from the back. Two others struck in the mid-chest and the abdomen. Two bullets struck Gomez in the lower extremities - one in the right thigh and one in the left knee. As noted above, the varying positions of these wounds support Technician Campbell's description of a suspect who was in motion throughout the course of this shooting - bobbing, hiding his hand behind his back, aggressively leaning forward and stepping towards the officer - even as the officer fired his weapon.

The toxicology report established that Jason Gomez had used cocaine, marijuana and alcohol prior to his confrontation with Technician Campbell. It provides a backdrop for Jason Gomez's otherwise inexplicable behavior in threatening to kill a police officer who had not even drawn his gun, in using a lighter to simulate a deadly weapon and in continuing to escalate even after he has been shot twice.

Personnel from the Denver Police Department Crime Laboratory responded to the scene and collected evidence. The scene was taped off, videotaped and photographed. Measurements were taken and a neighborhood survey was conducted by detectives

³ Shooting at center mass (the torso area) instead of the head or limbs gives the officer a larger margin or error and reduces the risk that a missed or ricocheted bullet will strike a fellow officer or innocent bystander.

and officers assigned to those tasks. At the scene, the route of the pursuit was determined from the location of the Saturn and Technician Campbell's patrol car, the footprints in the snow, the location of the items of evidence along the route, the location of the suspect and from Technician Campbell's description. The location of the shooting was determined and evidentiary items were marked, videotaped, photographed and collected. Near the location where Gomez slipped for the third time, officers located a blue Bic lighter with a silver rim, a key chain with a single key and a piece of candy. At the location of the shooting, which was approximately 97 feet further east and 24 feet further south on West Ada Place, another Bic lighter was found. This second lighter which Technician Campbell saw in Jason Gomez's right hand was white and silver in color. Additionally, a second key chain with several keys and six shell casings were recovered at this approximate location. These six shell casings confirmed Technician Campbell's assessment that he had fired two shots, followed by another "four or five" shots when Gomez continued to aggressively confront him.

In addition to the items recovered from the street, a consent to search the green Saturn was provided by the registered owner, LT.⁴ That search resulted in the recovery of two crack pipes used to smoke crack cocaine. An open can of beer was also recovered from the car. At Denver Health Medical Center, officers took possession of the sweatpants that Gomez was wearing. In the sweatpants they recovered a plastic pouch containing white powder residue.

Criminal History

On December 19, 2007, when uniformed officer Technician Campbell made his attempt to check the license plate of the car which Jason Gomez was driving, Campbell did not know that Gomez was wanted on a warrant issued on May 22, 2007 by the Department of Corrections Fugitive Operations. The warrant was for a parole violation with an underlying crime of burglary. The record relating to the warrant indicates: "Caution; violent tendencies; escape risk."

As noted by the District Attorney in his letter regarding this case:

Gomez began his adult criminal career in 1993 and has been arrested for a variety of criminal conduct, including: Vehicle theft-Fugitive other jurisdiction; felony assault; resisting officer; felony assault (5 year sentence to Department of Corrections—1997); parole violation; vehicle theft; felony assault; obstructing police; interference with police authority; burglary of a dwelling; felony trespassing; burglary/theft; disturbing the peace/harassing communications; escape from felony conviction; resisting/interference/false reporting; felony trespass to dwelling (3 year sentence to Department of Corrections--2001); obstructing police/false information; flight/escape from pending felony (1 year sentence to Department of Corrections—2004); felony conditional release violation—2006.

⁴ For the purposes of this public statement, civilian witnesses are identified by initials only. The full identities of these witnesses are contained in the Denver Police Department files related to this case.

Civilian Witness Statements - Summaries

Responding police officers contacted numerous citizens in the area on the night of this incident. Set forth below are summaries of the statements of some of those witnesses. Although not recounted below, there were other witnesses who heard shots or noises relating to this shooting. Among those witnesses were JR, AG, RG, RG2, JH, NH and KK, who each heard gunshots. Others, including JG, JH and NH, heard noises or sounds of yelling or arguing. Some of those contacted such as MHI, did not hear or see anything relating to this incident. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

LT

LT was a longtime friend of Jason Gomez. She is the owner of the green Saturn that Gomez was driving on December 19, 2007. LT stated that she and Gomez were together on December 18, 2007 and on that date she loaned Gomez her vehicle and cell phone so that he could pick up his sister, CP, from work. LT stated that CP had called her and asked her if she would loan Gomez the vehicle for that reason. When Gomez took longer than expected to return, LT stated that she called him and asked where he was. LT stated that Gomez informed her that he was with his sister. LT stated that she did not believe he was telling the truth.

At a later interview LT was shown photographs of items recovered from the scene of the December 19, 2007 incident. While looking at the pictures, LT identified her keys as well as a blue lighter she had seen in the possession of Gomez. She was unable to identify other items from the photos.

LT also stated in a December 26, 2007 telephone call to detectives that she had spoken with the cousin of Jason Gomez, EG. According to LT, EG informed her that he had been with Gomez prior to the incident on December 19, 2007 and while they were together at the time, the two of them had been smoking crack-cocaine.

Additionally, LT stated that Gomez's actions on December 19, 2007 were consistent with the way he stated he would deal with the police if he were ever contacted. According to LT, Gomez told her that if he was driving when he believed a police officer noticed him, he would pull into the driveway of a home and pretend that he lived there.

DD

DD lived at 3225 West Ada Place at the time of this incident. DD states that he was sleeping in his bedroom when he heard a verbal confrontation and someone scream "come on motherfucker!" He then states that he heard approximately five gunshots. He looked out his window and observed a person lying in the street, face-up, with his head to the southeast and legs to the northwest. He stated that he observed someone in dark clothes with his arm stretched out. This person was standing approximately eight feet away to the west of and facing the person lying on the street. He was unsure if either party who was standing was a police officer.

CP

CP was the sister of Jason Gomez. At the time of this incident CP did not have an address for her brother and believed that he was living "on the streets." She had concerns about her brother and knew that he was "wanted" for what she thought was a parole violation. Because of his problems with the law, CP would not allow Jason Gomez to live with her and her family. CP stated that she had made arrangements with her brother on December 18, 2007 to have him pick her up from work, but he did not show up. CP stated that because her brother didn't pick her up, she got a ride home from a co-worker. When she got home and called her brother, he told her that he was out with friends.

JP

JP was the brother-in-law of Jason Gomez. He stated that on December 18, 2007 Gomez had called his home between 10:00 and 11:00 p.m. and asked if he could come over. JP asked him not to come over since they were in bed and the children were sleeping. Gomez did not go to JP's home that night.

JCP

JCP lived at 3173 West Ada Place on the night of this incident. JCP is a high school student who stated that at the time of the incident he was sleeping and was awakened by the sound of a person screaming. JCP heard someone yelling, in an aggressive voice, "Do you want some motherfucker? Do you want some?" Immediately after that statement he heard three gunshots. He then heard a "police voice" calling for backup and stating "shots fired." He tried to look out his window but was unable to see anything. JCP stated that the voice that said "do you want some..." and the voice that was calling for back up were not the same voice.

MA

MA lived at 3248 West Ada Place on the night of this incident. The statement of this witness, MA, requires specific mention. MA's bedroom window in his apartment on West Ada Place looked out on the location of the shooting. When initially contacted, MA described a bald man [Technician Campbell] standing over "another guy" who was kneeling in front of him [Gomez]. In his first statement, which was a single written paragraph, MA said that [Technician Campbell] was screaming, "I'm going to fucking kill you!" and that when [Gomez] got up to run [Technician Campbell] pulled out a gun, began chasing [Gomez] and fired five to seven shots at Gomez. The initial description of events given by MA was inconsistent with the other evidence. That description was also of great concern to the Denver Police Department and this Office in that it suggested that Technician Campbell intentionally murdered Jason Gomez by shooting him in the back as Gomez tried to run away. As a result of this concern, MA was asked to provide a voluntary videotaped interview, which he did. This interview was transcribed and is included in the case file. MA's own words during his voluntary interview completely dispelled the impression left by his initial, short, written statement. It clarified what MA actually saw and how that differed from what MA had initially

assumed. In fact, MA's voluntary statement provided further corroboration of Technician Campbell's explanation of the events and of the justifiable nature of this shooting. A summary of the salient facts from MA's interview are set forth below.

The Threat

After explaining that his bedroom window faces where the shooting occurred, MA explained that he had just gone to bed when he heard "a lot of shouting, like every other word was 'fuck you,' this, that and the other." He describes hearing only one person yelling, although he couldn't be sure if the other party's voice could have been heard if he was talking. The yelling was, in MA's words, "loud and aggressive." He couldn't distinguish what all was being said initially but "the most I can tell you is just like, 'I'm going to fucking kill you!'"

MA stated that it was fairly dark, bright enough to see what was going on, but not so bright that he could see the faces of the two men. As he explained it, he "definitely" would not be able to identify either party if he saw them again. MA also stated that he was looking at the right side of the officer and the left side of Gomez, so he could not see either person's face and could not see who was talking.

When discussing the yelled threats further, MA initially stated that he believed that the bald man [Technician Campbell] made the statement. MA explained that this was because MA saw the other man [Gomez] crouched over and so he assumed that Gomez was "intimidated." MA then acknowledged that the fact that someone is crouched in front of another person doesn't necessarily mean he is intimidated. He ultimately said that he could not be sure which of the two people said "I'm going to fucking kill you!"

Whether Gomez Was Kneeling

MA looked out his window and saw two people about 10 or 15 feet away. One man he described as "a bald man in like dark clothes, like almost all black." This is consistent with the description of Technician Campbell. MA stated that, when he first saw [Technician Campbell] he was standing in front of this other guy "who looked like he was in like a red sweatshirt or something – I'm not sure – but he was like kneeling down or like bent down a little bit in front of this guy."

As noted above, MA also addressed whether Gomez was crouched down when discussing the yelled threats. Regarding whether Gomez was actually kneeling or simply crouched down, ultimately MA admitted that he didn't "know for sure if he was on his knees but he was crouched down a little bit further than just that."

MA's description of Gomez kneeling, crouching or bending down is consistent with Technician Campbell's description of Jason Gomez's behavior of jumping up from falling and then leaning, bobbing and moving as he aggressively approached Campbell and simulated having a weapon.

MA Never Saw Gomez's Hands

From the outset, and consistently throughout his interview, MA was very clear that he was never able to see where Gomez had his hands or whether Gomez had something in his hands.

MA Did Not See Gomez or What Gomez Was Doing When He Was Shot

Early in his interview, MA described what "looked like" Gomez turning his back and walking or jogging down the street. He first said that Technician Campbell took out his gun, walked towards Gomez and shot the gun once. However, when questioned further about the location and positions of the two when the single shot was fired, MA replied "I'm not sure. The other guy – the guy who was crouching down was like out of my viewpoint at that point." As he explained it, Gomez was out of his view, behind a tree and MA could not see and did not know what Gomez was doing. Additionally, on further questioning, MA could only say that he "really can't remember. I mean he [Gomez] got up and he moved." MA retracted his earlier statement that Gomez ran and reiterated that he could not see the hands of Jason Gomez.

MA stated that because [Gomez] was out of view, he was not sure which direction [Gomez] was facing when he shot nor did he have any way of knowing where on the body [Gomez] was shot. He reiterated that he could not see [Gomez] when the shot was fired. He also said that he did not know whether [Gomez] had a gun. As MA explained it:

Okay, so there's like a tree right here and then it looked like he was like on the ground. ... Yeah, but I mean like there's like trees and like shit like all over, like at another house, so it was a little obstructed, but –

When asked, "Do you have any idea whether the other guy had a gun or not?" MA replied, "No, he might have – I have no clue." Later in the interview MA reiterated: "There was stuff obstructing my view. I mean I couldn't say to you right now 110 percent that this is the final picture. ... I mean I can't tell you that – in all honesty I really can't."

At that point, MA said, he ran to another room to get his roommate and while he was there they heard five to six more shots. As he explained, "when I like moved my head over a little bit when I got back in the room, he was like on the ground, so – [y]eah, and the other guy, the bald guy, looked like he was just like standing over him just like looking at him."

MA Confirms That Technician Campbell Did Not Draw His Gun Until After Threats Were Made

MA described the distance between the two when he first sees them as about six – seven feet. At this point, MA states that [Technician Campbell] does not have his gun out and it is not pointed at Gomez. As MA explained it, the two faced each other "And that's when he – like one of them started shouting, 'I'm going to fucking kill you!' And

then the gun was drawn." It is of note that this corroborates Technician Campbell's statement that when he first confronted Gomez, he did not have his weapon drawn and that he did not draw it until Gomez threatened to kill him and pulled the shiny tipped object out of his pocket.

Police and Medical Response

MA was asked to provide an estimate of the total amount of time it took for these events to unfold. He estimated that it was "within like a five-minute period, like all of this" to have happened. His time estimate began at the time when he first heard the yelling through the time that other police officers and medical personnel responded. MA noted that one car showed up and then "literally, like nine to 15 seconds later two more cops were there and then an ambulance." He described the response as coming "Very quickly. I mean it didn't even take like two minutes for them to get here after the fact."

In sum, when given the opportunity to think through the events of the night, review photographs, outline the positions of the parties and set aside his assumptions, MA's videotaped interview differed significantly from his initial written statement and was consistent with other evidence and statements.

Officer Witness Statements - Summaries

Numerous members of the Denver Police Department, including command staff, officers, detectives and lab personnel responded to this incident. Among those were Lieutenants Jon Priest and Steve Wilson; Sergeants Matthew Murray, Gerry Gibson and Keith Cruz; Detectives Dave Brase, Thom Chinda; Michael Kellogg, Tyrone Campbell, Daniel Wiley, Aaron Lopez, Larry Moore, Jerry Baruch, Ronald Gabel, John Saulton, Robert Fry, Gregg Staab, Frank Harrington, Tim Kelley, and Bryan Gordon; Corporal Michael Cordova; Officers Robert Anderson, Jason Duran, Benny Aloia, Carlos Aragon, John Ashcroft, Dominick Salinas, Tim Scudder, Michael Valenti, Alan Fleming, Michael Gunter, Marc Smith, Michael Zamora, John Sampson and John Johnson, among others. Some of the pertinent reports and statements of the responding personnel are summarized below.

Detective Dave Brase

On December 19, 2007 at approximately 2:10 a.m., Detective Brase heard Technician Campbell radio that he was in a foot chase. Soon after, Campbell radioed again stating that the suspect was shot and he requested an ambulance and cover officers. Detective Brase left for the scene but diverted to Denver Health Medical Center to meet the ambulance.

Detective Brase was notified by Technician Michael Valenti that at 2:35 a.m., Dr. Richard Bynny of the Denver Health Medical Center had pronounced the suspect deceased.

Detectives Thom Chinda and Michael Kellogg

On December 19, 2007 Detectives Chinda and Kellogg assisted on-scene in locating the suspect vehicle sitting in the driveway of 3290 West Ohio Avenue. Inside the vehicle they observed two crack pipes; one in the center console, one in the driver's seat. Detective Chinda, with Detective Kellogg, also checked the condition of Technician Campbell's patrol car and noted that the mobile computer in Technician Campbell's patrol car showed an entry for a green Saturn at 0208 hours. This is consistent with Technician Campbell's statement that he thought he had entered the green Saturn into his mobile computer to check for "wants" or notifications of a stolen vehicle. It also assists in corroborating both the actual duration of the event and Technician Campbell's assessment that he believed the entire incident took around a minute - from the time he identified the car and saw the suspect get out of the car, until the time he confronted the suspect. With the 0208 entry for the green Saturn on his computer as an indication of his initial sighting of the Saturn and the radio time of his call of shots fired at 02:10:46 at the conclusion of the entire incident, his estimate of a minute duration for the actual contact with the suspect appears to be accurate.

Detectives Kellogg and Chinda also located the owner of the suspect vehicle identified as LT. LT advised Detectives Chinda and Kellogg that Jason Gomez had taken the vehicle at 5:00 p.m. the night before and had not returned. LT agreed to be transported to DPD headquarters to be interviewed. Her interview statement is detailed above.

Officer Michael Valenti

On December 19, 2007-around 2:10 a.m. Officer Valenti responded to the 3200 block off West Ada Place to cover Technician Campbell who was calling for help on a shooting. Upon arrival he observed the suspect, later identified as Jason Gomez, on his back in the street. Denver Fire personnel and Denver Health Medical Center paramedics were also on the scene. As described above, he noted that there was a cigarette lighter on the ground next to Mr. Gomez's left hand.

Officer Valenti followed the ambulance to Denver Health Medical Center and collected Mr. Gomez's clothing. While searching Mr. Gomez's clothing, he located "a plastic pouch about the size of a credit card. Inside the pouch there was a white powder-like residue."

Officer John Sampson

On December 19, 2007, Officer Sampson responded to the 3200 block of West Ada Place to assist Technician Campbell who had called for cover on an officer involved shooting. Upon arrival he saw the suspect, Jason Gomez, on the ground. Technician Campbell was still holding Gomez at gunpoint as he awaited cover. Officer Sampson knelt down facing Gomez as he was lying on the street and saw that Gomez was holding something shiny in his hand. As explained above, Officer Sampson believed the shiny object was in Gomez's right hand. Technician Campbell stated to Officer Sampson that he believed it was a gun. Upon further inspection, Officer Sampson noticed that it was a white and chrome cigarette lighter.

Four officers (Technician Campbell, Officers Valenti and Sampson, and Corporal Cordova) actually observed the lighter that Technician Campbell identified near Jason Gomez's body. Of those four officers, it should be noted that only Officer Sampson knelt down and faced Gomez when he looked at the object in his hand. Officer Sampson was also the only one of those four officers who indicated that the lighter was in the right hand of Jason Gomez.

Officer Michael Cordova

On December 19, 2007, Officer Cordova went to the 3200 block of West Ada Place in response to Technician Campbell's call for cover on an officer involved shooting. Upon arrival he saw that Technician Campbell was still holding Gomez at gunpoint. Gomez was lying on his back in the street and was holding an unknown object in his left hand.

Officer Cordova also stated that he rode in the ambulance with Gomez to Denver Health Medical Center. He stated that Gomez was unconscious and did not make any statements. Officer Cordova took custody of Gomez's clothing and placed it into the Property Bureau.

Sergeant Gerry Gibson

Sergeant Gibson's statement is set forth above and explains how he took control of the scene, directed road clearances for medical personnel, sequestered Technician Campbell at the scene and at headquarters after transporting him there, and initiated the officer involved shooting notifications.

V. ANALYSIS

As a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas: (1) the reasonableness of the tactics utilized by the officer immediately prior to the shooting; (2) the reasonableness of the officer's assessment of the threat; and (3) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that an officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Technician Campbell could not be found criminally liable unless there was proof beyond a reasonable doubt that, at the time he fired his weapon, it was unreasonable for him to believe that Jason Gomez presented a threat of serious bodily injury or death to himself or to a third person.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that the involved officer violated the Department's Use of Force Policy or any other rules and regulations that were in effect on the date of the shooting.

The Policy encompasses the criminal statute applied by the District Attorney's Office as it relates to the reasonableness of an officer's actions at the moment deadly force is used, but also encompasses other aspects of tactics and training regarding an officer's actions prior to the actual use of force. The Policy indicates that an officer should recognize that the officer's conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. It acknowledges that an officer may escalate or de-escalate the use of force as the situation progresses or circumstances change and may use tactical options (such as warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment and others) as a preferable response to a deadly force confrontation, if reasonable under the circumstances.

The Policy also specifically indicates that an officer is to rely upon his or her training in making the decision as to the level of force to be used. With regard to potential deadly force situations, Denver Police officers are trained in classroom lectures, video based scenarios, and practical exercises to employ certain tactical principles wherever possible or practical. The purpose of these principles is to better ensure the safety of officers and the safety of the public. These include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication among the involved officers, as well as with the potential threat; and
4. the use of movement to:
 - a. seek a better tactical position;
 - b. increase the distance between the officers and the threat; and
 - c. increase the time the officers have to react to the threat.

As it relates to the sections of the Policy referencing the criminal statute, the Policy expressly incorporates C.R.S. § 18-1-707 which sets forth the legal framework under which a police officer is justified in using deadly physical force. The applicable language states, in part:

"A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force."

In applying that section of the policy, the task in this administrative review is to determine whether the evidence and circumstances of this case make it more likely than not that a police officer would not have been reasonable in believing that Jason Gomez presented a threat of the imminent use of deadly physical force against that officer or a third person.

In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when confronting Jason Gomez.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officer as well as any reasonable inferences arising from that information; the observations of the officer; the lighting that is present and the visibility at the scene; the distances between the officer and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of other offenses believed to have been committed; the manner in which force was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of this officer against what would be expected of an objectively reasonable police officer under similar circumstances.

A. The Reasonableness of the Officer's Tactics

This analysis requires considerations of the officer's actions before and during the shooting. Technician Campbell is a seven-year veteran and Field Training Officer for the Denver Police Department. As such, he is required to stay current with the tactical and operational training needed by patrol officers. Further, he is tasked with training new patrol officers in these tactical and operational lessons.

In this case, Technician Campbell was in uniform, on routine patrol in a marked police car. Noticing a car that was a commonly stolen model in his District, Campbell made a U-turn so that he could get a better look at the license plate to check if it was stolen. It was shortly after 2:00 in the morning, in cold, clear weather with snow and ice on the ground. Visibility was good and there was, as would be expected, no traffic in the residential neighborhood where the officer saw the car.

The Foot Chase

When he made the U-turn, the green Saturn immediately sped up and took evasive action. Technician Campbell followed and quickly noticed the Saturn parked in the driveway of 3290 West Ohio Avenue. As he braked to stop the car, Technician Campbell saw a man jump from the driver's door of the Saturn, slip and fall, then jump up and run. At this point, Technician Campbell made a tactical decision to pursue Gomez on foot. He explained his reasoning in his interview, saying that, based upon his experience as a police officer and as a police officer in that neighborhood, he believed "that the car was either stolen or that he was wanted and – [d]idn't want to be contacted by me." The decision to follow a fleeing suspect who acts suspiciously in response to a routine act by a police officer, in this case, making a U-turn for a better look at a vehicle, can be a reasonable one. Officers are charged with protecting citizens and their property. When experience and training demonstrates repeatedly that evasive behavior and flight are often associated with misconduct, an officer's best option for fulfilling his duty to the public may be to follow and detain that person who is fleeing.

Taking this sort of initiative often results in the apprehension of dangerous and wanted criminals. In making the decision to pursue a suspect, an officer should assess all relevant factors. In this case, Technician Campbell chose to pursue a fleeing Gomez in a quiet neighborhood with no other persons on the street, with good visibility and in light of no evidentiary indication that a serious crime or deadly weapon would be involved. Technician Campbell maintained eye contact on Gomez throughout the entire chase which was barely a block long. The officer chose not to draw his weapon during the chase. Technician Campbell did not shout commands initially because Gomez had a large lead on him. However, when Gomez fell, Technician Campbell felt that he had gained enough distance that Gomez would hear his command. At that point, Campbell loudly ordered Gomez to stop running but Gomez did not comply. When Gomez fell the third time, Technician Campbell was able to confront him face to face. As confirmed by MA, Technician Campbell did not draw his weapon when he initially confronted Gomez. All of these tactical decisions were appropriate and reasonable in light of the situation with which Technician Campbell was initially confronted and given the information which was available to him when Gomez began his flight.

The First Two Shots

When Technician Campbell caught up with Gomez and stood face to face from six to ten feet away, the situation changed dramatically. It was at that point when Gomez began threatening to kill the officer. Gomez then acted as though he was taking a weapon from his pocket and bringing it up towards Technician Campbell. Gomez moved forward towards the officer with the supposed weapon hidden in his hand. Technician Campbell immediately attempted to de-escalate and commanded Gomez to "Drop the weapon!" At the same time, Campbell drew his own handgun and aimed it at Gomez in a show of force. Even then Campbell did not fire. Instead, he waited until Gomez began yelling his gang name multiple times and again threatened to kill the officer. Gomez moved even closer towards Technician Campbell and he raised his hand with the hidden object higher and closer to a level where a discharge would hit the officer. Gomez engaged in aggressive and very threatening verbal and physical behavior. At that point it was clear that Technician Campbell's attempts to de-escalate through commands and communication and through a show of force had failed. With only a few steps between him and a man who acted as though he had a small caliber weapon and was about to shoot him, with no available cover or concealment, with no option to change positions, Technician Campbell turned to the only option which Gomez's behavior had left him – he fired his weapon twice, then held his fire.

As detailed above, rather than complying with Technician Campbell's orders, Jason Gomez chose to escalate the situation by threatening to kill the officer, simulating having a weapon, yelling gang names and moving aggressively towards the officer. All these behaviors not only heightened Technician Campbell's concern, but also narrowed the tactical options that were available to him. Technician Campbell was confronted with a sudden and unanticipated situation when, rather than complying with the officer's de-escalation tactics and order, Gomez raised this confrontation to a deadly level by unexpectedly acting as though he had a gun and was about to fire upon the officer he threatened to kill. The tactical choices throughout this portion of Technician Campbell's encounter with Jason Gomez were reasonable choices in light of the circumstances.

The Last Four Shots

The two shots that Technician Campbell fired did not stop Jason Gomez. Instead, as recounted above, Gomez yelled, "Is that all you got?" at Technician Campbell who had held his fire after the first two shots. Gomez took "a couple of steps" towards Campbell, bringing him even closer to the officer. As he moved forward, Gomez raised up the item in his hand again. In a continuation of the escalating aggressive, noncompliant and frightening behavior that he had engaged in since the beginning of this incident, Gomez ensured that Technician Campbell was, once again, left with no tactical options but to fire his weapon. As aptly stated by the District Attorney in his letter regarding this case, "Even after being shot, Gomez continued his aggressive life-threatening conduct. For reasons known only to Gomez, he consciously forced Technician Campbell to shoot him." Technician Campbell fired four more shots and stopped firing when the threat ceased which was when he saw Gomez on the ground with his hand open, showing the lighter.

Technician Campbell's tactical choices at this juncture were also reasonable and appropriate given these circumstances and the behavior of Jason Gomez.

Throughout this incident Technician Campbell demonstrated sound tactical thinking by approaching the suspect and issuing verbal commands in an attempt to resolve the situation in a peaceful manner. However, Gomez refused to comply with these commands. Instead Gomez escalated the confrontation by screaming threats to kill Technician Campbell. He accompanied those verbal threats with physically aggressive and threatening behavior, including acting as though he had a small caliber weapon in his hand and as though he was bringing it up to fire at Technician Campbell. Campbell tried every available tactical option to de-escalate the situation, however, Gomez continued to escalate. This confrontation lasted just a few seconds during which Technician Campbell had to determine the intent of Jason Gomez. The evidence on which he necessarily depended to make the determination was found in the aggressive and escalating words and actions of Jason Gomez. Technician Campbell assessed the situation and fired his weapon.

Pursuant to his tactical training, Technician Campbell aimed his fire at center mass. In this situation, the initial fire was directed at the front of the suspect; however, Gomez was in constant motion. Throughout the confrontation, Campbell described Gomez as prancing around, bobbing and jerking, leaning both towards Campbell as he raised the simulated weapon and turning away from him as he hid his hand behind his back. The majority of the bullets struck Gomez in the torso. As set forth in the discussion of the autopsy findings above, Gomez's movements and behavior resulted in entry wounds in several different areas on his body. Nonetheless, Technician Campbell made the tactically appropriate decision to direct his fire at the center mass of the suspect he confronted.

In light of the immediacy and lethality of the threat which Gomez appeared to pose, and which Gomez obviously intended to present, this Office concludes that appropriate tactics were used. Based upon the totality of the circumstances, no other reasonable tactic was available that might have allowed Technician Campbell to avoid or reduce the

likelihood of a deadly force encounter and still safely carry out his sworn duties as a police officer.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. In evaluating whether the officer's assessment was reasonable, we must examine what he knew at the time he was assessing the threat before him. In this case, as pointed out in the above section, there were two separate points at which it was necessary for Technician Campbell to assess the threat he faced. The first point was when Jason Gomez stood face to face with Technician Campbell, threatened to kill him and acted as though he had a weapon that he was going to fire. The second point was when, after being shot twice, Jason Gomez yelled "Is that all you got?" and moved closer to the officer while continuing to simulate having a weapon that he was intent on firing at Campbell. The assessment of the threat at both points must, necessarily, include all the information which was available to Technician Campbell about Jason Gomez.

This confrontation was clearly precipitated by Jason Gomez's actions. This conclusion is confirmed by the interviews of the civilian eye and ear witnesses to the shooting, including JCP, MA and DD, as well as the statements of people who knew Gomez. Gomez's criminal history, the outstanding warrant for his arrest and the caution outlining his violent tendencies and that he was considered an escape risk, evidence a history of past behavior consistent with the aggressiveness he showed on December 19, 2007. The videotaped statement of Technician Campbell and the evidence that corroborated his statement likewise support this determination. All of the available evidence and information demonstrate conclusively that Jason Gomez was the sole escalating force in this incident.

The First Decision Point

When confronted by Technician Campbell who had not yet drawn his weapon, Gomez pulled something from his pocket which he used like a small caliber hand gun and which he kept hidden. Gomez screamed at Technician Campbell that he was going to kill him. Gomez was physically very aggressive, crouching, bobbing and jerking around, moving his hand with the hidden object behind his back then leaning forward with it. Even in the face of this escalating threat, Campbell did not fire his weapon but instead gave Gomez a command to "drop the weapon." Not only did Gomez ignore the command but he also began to repeatedly scream the name of the GKI gang at the officer and again threatened to kill Campbell. Gomez then moved towards the officer and raised his hand with the apparent weapon towards Technician Campbell, putting Campbell in fear of being shot.

It is evident that when Technician Campbell fired his weapon, he reasonably believed that Gomez was not only armed, but also that he was intending to use the weapon against Technician Campbell. In the face of Gomez's explicit threats to kill him and the behavior with which Gomez accompanied those threats, Technician Campbell believed that Gomez "was going to shoot me." In the opinion of this Office, the perception of

Technician Campbell that he was in imminent danger of having deadly physical force used against him at this point in the encounter was objectively reasonable.

The Second Decision Point

Jason Gomez did not stagger or fall down when he was struck with the first volley of two shots. Technician Campbell, who held his fire after firing two rounds, was confronted again with a noncompliant, escalating and aggressive suspect who was also wounded. Rather than give up after being shot twice, Jason Gomez reacted by screaming at Technician Campbell, "Is that all you got?" Gomez then made another move forward with the hand that Campbell believed held a small caliber handgun. Jason Gomez chose not to surrender and did not drop the object in his hand. Instead, Gomez continued to escalate the threat by moving closer to the officer and acting as though he was about to bring a weapon to bear on Technician Campbell. By his actions, Jason Gomez eliminated any opportunity for Technician Campbell to de-escalate the situation. He had again become an imminent threat of deadly physical force against Technician Campbell.

Given the evidence that Gomez was apparently only angered by the shots that hit him and that he was closing in and bringing his hidden weapon to bear, Technician Campbell responded appropriately with a second volley of deadly force. Campbell fired four more shots and ceased firing as soon as the threat was neutralized. In the opinion of this Office, the perceptions of Technician Campbell that he was again in imminent danger of having deadly physical force used against him by Jason Gomez was objectively reasonable.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the amount of force utilized by Technician Campbell at both points when he resorted to deadly physical force in firing his weapon at Jason Gomez. As stated earlier, the language of C.R.S. § 18-1-707, which defines the circumstances under which a police officer may use deadly force, is incorporated into the Denver Police Department's Use of Force policy. The pertinent section reads, "*A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.*"

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions, which was certainly the case in this incident. In such circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that

choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on an "apparent necessity," not an "actual necessity." Similarly, an officer is not required or expected to wait until he is fired upon, or has a weapon pointed directly at him, in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The facts discussed in the preceding section (B.) are equally dispositive in determining whether the degree of force which Technician Campbell used against Jason Gomez was reasonable and justified. At both points when Technician Campbell fired his weapon, the actions of Gomez had created situations in which Technician Campbell reasonably believed that deadly physical force was imminent and that his life was in danger. Technician Campbell explained the specific threats which Gomez made to kill him, and how Gomez continued to move closer to him and raise the weapon higher, not just once, but also a second time after he had been shot. The simulation by Gomez that he had a weapon and was intending to use it was continuous, despite an order to drop the weapon, and occurred both before and after he was initially shot. Jason Gomez did everything in his power to ensure that Technician Campbell believed that he was going to be shot and probably killed. At both points, Technician Campbell fired his weapon because the only reasonable conclusion from the overwhelming evidence with which he was confronted was that Jason Gomez had a weapon and was intent on killing him.

These facts and the circumstances surrounding this event lead to the conclusion that the belief of Technician Campbell that he was in imminent danger from deadly physical force was objectively reasonable. Additionally, these facts and the circumstances surrounding this event lead to the conclusion that the belief of Technician Campbell that he needed to use deadly force in response was also objectively reasonable. These conclusions apply to both points at which Technician Campbell fired his weapon. No lesser degree of force could have been or should have been reasonably expected of this officer.

D. Summary of Findings

It is the finding of this Office that the actions of Technician Campbell in firing both volleys on December 19, 2007 were reasonable and necessary to defend against the active and imminent threat posed by Jason Gomez. The officer's actions were direct and appropriate responses to what he reasonably believed to be the imminent use of deadly physical force against him. Additionally, this Office concludes that the tactical decisions made by Technician Campbell in the course of his encounter with Jason Gomez were appropriate and reasonable. Given these circumstances, this Office concludes that

Technician Campbell's actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VI. ADDITIONAL ISSUES

A. Simulated or "perceived" weapons

As noted above, officers are entitled to act upon appearances in assessing the imminent danger they are confronting when they must make a decision regarding the use of deadly force. The reasonableness of those perceptions and decisions must be determined on a case-by-case basis, taking into consideration the totality of the circumstances.

Numerous factors can be considered in reaching a determination about the reasonableness of an officer's use of force in response to a suspect's use of a simulated weapon. Some of these factors may include, without limitation, the information that the officer knew or should have known prior to utilizing force; any reasonable inferences that should have been drawn from that information; the observations of the officer; the logistics of the scene; the timing of the incident; physical factors such as the lighting in the area; the distance between the officer and the person with the alleged weapon; the physical appearance of the alleged weapon and the manner in which the person handles it; the immediacy of the threat and the time available for reaction by the officer; and the movement and activity of the person with the alleged weapon.

All of these factors, as well as a multitude of others, can - and often will - affect the determination of whether an officer's use of force was reasonable under the circumstances. In this case, as previously discussed, Gomez did not simply hold a lighter in his hand. He deliberately removed it from his pocket and then hid it behind his back, making it appear to be something other than a lighter. When commanded to "drop the weapon" he yelled out "GKI, GKI, GKI" and threatened to kill Technician Campbell. Every move by Gomez was intended to make Technician Campbell believe that he had a weapon in his hand. Based on these facts, this Office believes that Technician Campbell was reasonable in interpreting the actions of Jason Gomez to mean that he was in possession of a weapon and that Gomez intended to use that weapon against him.

B. Anonymous Letter to Governor William Ritter

An anonymous letter, postmarked January 2, 2008, which related to this incident, was sent to the office of Governor William Ritter. The letter was forwarded and received in this Office on April 14, 2008. The author of the letter did not identify himself or herself, which would have permitted further inquiry and investigation. At times the letter is unintelligible; however, the claims that are made are inconsistent with the evidence and with the statements which were made by civilian and law enforcement witnesses. Among the claims made are allegations that Technician Campbell murdered Jason Gomez so that he could have "vacation time off with pay for the Holidays;" that the author "heard a lot of cars squealing going at very high speeds through the ally [sic]

between Ohio and Adda [sic];" that "one of the patrols [sic] was even air-bound when it came out of the ally [sic] on Hazel Ct.;" that "the man was shot from behind I' am [sic] guessing in the legs because he puched [sic] his body around to face the officer;" and, that the author "saw the body doing back and forth for what seem [sic] minutes untill [sic] he fall [sic] back to the ground on his bented [sic] knees." The author also stated, "The man was charged with burglary, vandalism, he was wanted for violation of parole were [sic] as this officer should be wanted for murder."

It should also be noted that a neighborhood survey was conducted at the time of this incident. The residences which had views of the foot chase or the shooting were contacted and officers recorded the comments or lack of response at each building. Despite the claim made by the anonymous author that this shooting took place "out side my doors," the statement is inconsistent with every statement from those neighborhood witnesses who answered their doors and who were contacted the night of the incident.

We invite the author of the letter to bring forward any evidence which would support the claims made in his letter. That person may do so by contacting Lieutenant Jon Priest of the Homicide Unit, the Independent Monitor or this Office. A copy of the letter will be added to the case file.

VII. CONCLUSION

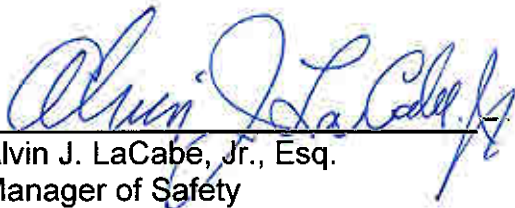
In closing, this Office wants to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's Office, the Chief of Police and the Independent Monitor. These consistent conclusions result from no other reason than that they are dictated by the facts. It is always a concern to the Department when a police officer has to use deadly force in the line of duty. However, in many instances, as in this case, the actions of the person against whom force was used have precipitated that use of force.

Technician Campbell was undertaking a legitimate police action when Jason Gomez confronted him with an apparent deadly weapon. The actions taken by Technician Campbell were those which he reasonably believed were necessary to protect his own life. Only Jason Gomez knew that he was simulating having a weapon. Nothing in his behavior suggested anything other than that he had a weapon and was intent on using that weapon against Technician Campbell. Despite the fact that he was actually unarmed, Gomez continued to threaten and move towards Technician Campbell. Gomez continued his threatening behavior even after Campbell had shot at him twice. Technician Campbell acted appropriately and reasonably to stop the apparent imminent threat posed by Jason Gomez.

The background and criminal history of Gomez demonstrated that he was unwilling to submit to police authority. Associates advised that Gomez had used cocaine on the evening of this encounter. The autopsy report confirmed this and also established that Gomez had ingested marijuana and alcohol before confronting Technician Campbell. Items in the borrowed car, including two crack pipes and a can of beer, provided

additional evidence of Gomez's use of drugs and alcohol prior to the incident. Gomez refused to comply with police commands to "stop running" and "drop his weapon." At every stage of his encounter with a uniformed police officer, Gomez not only ignored the officer's orders but also escalated the confrontation. The officer employed sound tactics and used every reasonable means available to him to de-escalate the confrontation. However, Gomez's ultimate decision to direct an apparent deadly weapon at Technician Campbell, while threatening to kill that officer, created a life-threatening, deadly force situation which forced the officer to respond as he did.

There can be no doubt that this was an incident which should never have risen to a level requiring deadly force. However, at every step along the way, Jason Gomez made choices which escalated the confrontation and, ultimately, mandated the deadly force response. Whether Jason Gomez's choices were driven by drugs and alcohol, by a decision that he would not be captured and go back to prison or by some other reason, will never be known. Regardless, it is clear that on December 19, 2007, Technician Campbell acted reasonably under the circumstances with which he was confronted.


Alvin J. LaCabe, Jr., Esq.
Manager of Safety


Date


Mary A. Malatesta, Esq.
Deputy Manager of Safety


Date