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## **Public Statement of the Manager of Safety Regarding an Officer-Involved Shooting by Technician Ryan Grothe and Technician James Sewald on June 25, 2006 at 4600 Stapleton Drive South Which Resulted in the Death of Michael Ford**

### **I. SYNOPSIS**

On June 25, 2006, at 3:03 in the afternoon, Michael Julius Ford, a two-year employee of Safeway, entered the warehouse where he worked at 4600 Stapleton Drive South in Denver. He was armed with a six-inch .357 six-shot revolver and spare ammunition. Ford went to the Load Pickup Station Room where employees gather at the start of their shift to receive their assignments for the day. Once in that room Ford hugged a fellow employee, then without a word, he began firing his weapon.

Ford first shot MM,<sup>1</sup> who fell where he was shot. As the people in the room realized what was occurring, they began to run from the scene. Ford pursued the group, continuing to fire. He shot JM, and then LR and OM. None of the wounds suffered by MM, JM, LR, or OM proved to be fatal. Much of this initial attack was caught on Safeway's internal video surveillance system. The system shows Ford going off camera at 3:13 pm.

Ford's subsequent movements were through areas of the warehouse that have no video cameras. Ford left the warehouse momentarily to retrieve something from his car. That something proved to be a container of lighter fluid that he used to start fires in the Safeway warehouse. While Ford was setting those fires, several of his co-workers tried to put them out. With his gun in hand, Ford chased after his co-workers who were trying to stop the fires and fired several shots at them as they fled.

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<sup>1</sup> For the purpose of this public statement, civilian witnesses are identified by initials only. However, the full identities of these witnesses are contained in the Denver Police Department investigative files related to this case.

It is unclear exactly when Ford fatally shot his fifth victim, Mauricio DeHaro. However, it is likely to have been between the first shootings and the setting of the fires. This conclusion is based upon the route Ford took through the warehouse and the location of Mr. DeHaro's body along that route.

The first 911 call came in at 3:11 in the afternoon. It was a call of "shots fired" at the Safeway warehouse. The first of what would, eventually, be over one hundred fifty responding officers arrived five minutes later. Less than ten minutes after that, at approximately 3:24 p.m., the first of two teams of patrol officers entered the warehouse in search of the "active shooter." The second team of patrol officers followed and at approximately 4:00 p.m. the first team from Metro/SWAT entered the warehouse. Approximately twenty-five minutes later, SWAT officers were ambushed by Michael Ford.

The three-man Metro/SWAT team consisted of Technicians Derick Dominguez, Ryan Grothe and James Sewald. Their first entry was at Door Fifty-Seven, where they met up with another team. They were given updated information and directed to Door Ninety-Three towards the west end of the warehouse. Once there, they were to locate and rescue two victims that were known to be trapped in the area. These victims had seen the suspect running up the stairs to a second floor lunch that was near that entry door. The three Technicians were also tasked with locating and apprehending the suspect, if at all possible.

When Metro/SWAT officers entered Door Ninety-Three, they found a tactical nightmare. Fires were burning on the main floor of the warehouse, which was very open with large aisles. There was very little cover for the officers. To their left was an open metal stairwell which went up to a second floor break room. Michael Ford had not only set a number of fires in the aisles of the warehouse, he had set fires in the break room as well.

The officers made use of the minimal cover of the stairwell to go up and check out the upstairs break room. They went up the stairs, but the fires which Michael Ford set created dense, thick and acrid smoke which prevented the SWAT officers from entering the break room.

Forced back by the heavy smoke, Technician Derick Dominguez led the way down the stairs. As he reached the floor level, he saw a glimpse of a black male. Immediately, he felt the impact of a bullet in his hip. With his femur shattered, Technician Dominguez instantaneously dropped to the ground. The stairwell was the only available cover. In an attempt to get his seriously wounded partner to a position of safety, Technician James Sewald dragged Dominguez behind the stairwell.<sup>2</sup> Under fire, with their wounded partner behind them and an open metal stairwell as their only cover, Technicians Sewald and Grothe returned fire. Their

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<sup>2</sup> The illusory nature of the belief that the stairwell offered any real cover for these officers was discovered after the incident when investigators discovered that the shot which hit Technician Dominguez had actually gone through the metal stairwell behind which the three officers took refuge.

first volley of shots brought Michael Ford to the ground but did not stop him. The officers gave Ford commands to stay down. Ford ignored those commands. Instead, he pushed himself up, stretched out his arm and attempted to move toward where his .357 revolver had fallen, only a few feet away. Technicians Grothe and Sewald fired on Ford again, mortally wounding him. The two officers fired a total of seventeen rounds in their two volleys, seven of which struck Michael Ford.

An investigation into this incident was conducted by the Denver District Attorney's Office and the Denver Police Department, with the oversight and participation of the Office of the Independent Monitor.<sup>3</sup> Based on the facts and circumstances of the case, the District Attorney reached a legal conclusion that no charges were warranted against either Technician Grothe or Technician Sewald for shooting their weapons at Michael Ford. The Chief of Police also reviewed the investigation file and determined that no disciplinary action was warranted. The Independent Monitor, who provided suggestions, input, and consultation throughout the investigation concurred with the determination of the Chief of Police.

After careful consideration, this Office also concluded that no disciplinary action would be taken against any of the officers involved in this shooting. This decision was based on the independent determination of this Office, which is consistent with the determination of the Police Department and the Independent Monitor, that these officers reasonably believed that Michael Ford's actions posed an imminent threat of death or serious bodily injury to Technicians Dominguez, Grothe, and Sewald and other employees still within the Safeway warehouse. Additionally, Technicians Grothe and Sewald reasonably believed both that Ford had just committed numerous felonies involving the use or threatened use of a deadly weapon, including murder, and further, that by shooting at them and then reaching toward his fallen weapon, he was attempting to escape by use of the deadly weapon. All of these determinations justify, independently and collectively, the responses of Technicians Grothe and Sewald in using deadly force. Under these circumstances, this Office has determined that the use of deadly force against Michael Ford on June 25, 2006 was reasonable under 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.

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<sup>3</sup> The mission of the Office of the Independent Monitor (OIM) is to monitor the Denver Police Department and other Denver law enforcement agencies and to provide fair and objective oversight of the uniformed personnel. OIM has been fully integrated into the Denver Police Department's officer-involved shooting procedures. OIM responds to the scene of such shootings, observes and participates in both the criminal and administrative investigations, has access to and reviews complete files and makes recommendations to fact finders and decision makers throughout the case, including making recommendations to the Manager of Safety and the Chief of Police.

## 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 Monitor's Office was on hand to observe the investigation, 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 June 29, 2006. In the language of the statutory requirements, the District Attorney declined to file charges against any of the officers, concluding:

"Based on the totality of the facts developed in this investigation, the shots fired by the two officers were not criminal conduct under C.R.S. 18-1-707. Justification for the shooting of Ford is found under both the 'to defend' and 'to effect arrest or prevent escape' sections of the statute. We could not prove beyond a reasonable doubt that it was unreasonable for the two officers to perceive that Ford's conduct posed an imminent threat to them when they fired the shots. Additionally, under the specific facts of this case, they are justified in using deadly physical force to protect themselves or to effect the arrest or prevent the escape of a person who has committed a crime involving the use or threatened use of a deadly weapon or is attempting to escape by means of a deadly weapon. Ford's conduct in this case is covered by all three grounds of justification. Therefore, no criminal charges are fileable and provable against the officers in the shooting death of Ford."

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 9, 2007, 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. In his annual report, the Monitor noted his concurrence with the finding that the shooting was in policy. The Monitor also made note of the District Attorney's commendation of the "heroic actions" of the three officers and all of those involved in this incident. 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**

There are some cases in which a full understanding of a deadly interaction between police officers and a suspect can only be reached through exploring the behavior of that suspect prior to the final confrontation. This is such a case. It was what happened in the warehouse in the minutes *before* Michael Ford was shot that set the stage for the final confrontation between him and Denver Police.

#### **The First Shootings by Michael Ford**

Much of what occurred was captured on Safeway's internal security camera system. The cameras were running in several areas, from the time Michael Ford arrived, through the shooting and wounding of JM, LR and OM, and for several minutes thereafter. Although every area of the very large warehouse is not covered by surveillance cameras, much can be gleaned from the tapes that are available. Following is a summary of the content of the video recordings. Military time is used, as that is what is stamped on the video. It should be noted that the shootings of Ford's first victim, MM, who survived, and his last, Mauricio DeHaro, who died, were not captured on video.

15:03:57 – Michael Ford enters the Safeway warehouse through the Rear Produce Door located on the south side of the building. He is wearing a maroon coat, blue denim pants, and black high top shoes the entire time he is within view of the cameras. He walks northbound out of camera view.

15:04:32 – Ford is observed entering the bathroom located on the side of the break room that is closest to the South Produce Door.

15:05:41 – Ford exits the bathroom and turns to his right out of camera view.

15:06:01 – Ford enters the Battery Room from the break room.

15:06:50 – Ford enters the Egg Room from the Battery Room. He walks northbound in the Egg Room out of camera view.

15:07:53 – Ford enters the Load Pickup Station Room from the door on the west side of the room. This room is located in the main warehouse. He immediately hugs another Safeway employee, then walks southbound through the room and out of camera view. Ford then returns northbound into camera view, then south again out of camera view.

15:08:56 – The people inside the Load Pickup Station Room suddenly turn and face to the south. They then turn and begin running to the north.<sup>4</sup>

15:09:01 – Ford reappears in camera view. He is moving to the north. He comes upon JM whom he shoots and who falls face first to the ground. Ford then shoots toward the people running northbound through the door located on the east side of the north wall of the Load Pickup Station Room. Though it is not apparent on the video, both LR and OM stated that they were shot while running out of the Load Pickup Station Room. Ford runs northbound through the room, and JM crawls to his left (west) where he hides behind a small, motorized vehicle called a “mule.”

15:09:38 – Ford exits the north door of the Load Pickup Station Room and turns to the east. He then runs out of camera view.

15:10:57 – Ford returns to camera view on the exterior dock and moves from east to west. He then moves out of camera view.

15:11:57 – Ford reappears, exits the Egg Room and goes into the Battery Room.

15:12:08 – Ford attempts to enter the break room from the Battery Room. He is unsuccessful (this door requires an employee badge which Ford apparently did not have with him). He moves to his left and out of camera view.

15:12:17 – Ford moves southbound and exits the building through the Rear Produce Door. This is the same door that he entered initially and it exits into the south parking lot.

15:13:33 – Ford reenters the building through the Rear Produce Door, carrying a white rectangular object in his right hand.<sup>5</sup>

15:13:42 – Ford enters the Battery Room through the south rollup door.

15:13:45 – Ford mounts and starts a small, motorized vehicle called a “mule.” He begins driving the mule northbound toward the Battery Room.

15:13:55 – Ford enters the Battery Room, and is not seen on video again. The entire western portion of the warehouse does not have operating cameras.

15:15:57 – A fellow employee finds JM, then briefly leaves.

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<sup>4</sup> A subsequent search of that location disclosed that there was blood spatter on the floor of the Load Station Pickup Room, just outside of and south of camera view, consistent with an individual having been shot in the head. This is believed to be where the first shooting victim, MM, was shot.

<sup>5</sup> The rectangular object was later determined to be a small plastic bottle of lighter fluid that Ford used to set a fire in the warehouse.

15:18:01 – The fellow employee returns with a second individual and they attempt to aid JM.

15:29:44 – Uniformed police officers enter the warehouse through the north door of the Load Pickup Station Room.

16:06:10 – Uniformed officers, appearing to be SWAT officers in tactical gear, move from east to west across the exterior loading dock. They leave camera view when they are approximately in front of the Egg Room. This is the end of the pertinent video record.

According to Safeway Security Investigator, Jeffrey Adkins, the final confrontation between Michael Ford and Technicians Dominguez, Grothe, and Sewald was not in an area covered by surveillance cameras and, therefore, it was not captured on video.

### **Summaries of Civilian Witness Statements**

A significant portion of the actions of Michael Ford prior to his encounter with police was captured on video. However, many of his actions occurred out of view of the cameras. Nonetheless, numerous people in the warehouse saw or heard parts of this incident. Many of these witnesses provided videotaped statements and others gave written statements to the investigating detectives. Following is a synopsis of some of their statements.

MW was the Safeway produce supervisor on the day of the shooting. He stated that he is one of Michael Ford's supervisors, and that he had observed Ford pointing a gun at people near the shipping office. "I heard two very loud bangs. I then heard 2 or 3 more..." MW said in his statement, continuing, "I saw Mike Ford with the gun, he was drawing down on someone or something out on the main shipping dock." He further stated that he called 911 for help; Denver Police dispatch records show this was the first 911 call, placed at 15:11:52, or just before 3:12 pm.<sup>6</sup>

JA was a Safeway employee on the day of the shooting. He stated that he saw his friend MM crash into a pillar, and then saw Michael Ford holding a gun. He stated that he saw Ford start shooting at people outside the office and JA ran away. He described Ford as wearing a red sweater.

JCCA was a Safeway employee who was in an office in the warehouse on the day of the shooting. He stated that he heard a sound and went "...by the window and saw Mike Ford with a pistol and that he hit MM in the head and he fell to the ground." JCCA described Ford as wearing a red sweatshirt. JCCA took cover

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<sup>6</sup> It is unknown if the time stamp on the Safeway internal video is accurate with respect to the computer generated time stamp on the 911 call. It is likely not, which would explain the discrepancy between the time MW called 911 and the time Ford is first seen on video shooting JM and the others.

and did not see any more shooting but he stated he did hear several more gunshots.

DC was a Safeway supervisor on the day of the shooting. He stated that he observed an African-American male whom he did not recognize, wearing a red pullover shirt, come into the grocery warehouse and begin spraying lighter fluid onto items in aisle #4. He and another employee approached the man with a fire extinguisher just as he set fire to the boxes he had doused with lighter fluid. DC stated that he saw the man start four separate fires. DC stated "I proceed to start putting out the flame when this person told me 'I wouldn't do that if I was you' he then went into his pullover and pulled out a gun!!" DC went on to describe the weapon as "a six shooter with a brown handle and silver barrel." DC related that he returned to the shipping office and called police, and that the dispatcher asked him to stay on the phone and "...to stay where we were at until the SWAT team arrived." DC stated that as he waited he began to hear gunfire, "...around 10 to 15 then a pause then another 4 to 5 shots" as he wrote in his statement. He also stated that the "...shots sound like they were coming from the end of the lunchroom...bottom of the stairs."

LW was the other employee who was with DC on the day of the shooting. His statement is consistent with DC's except that he additionally observed the second floor lunchroom on fire and the unknown male coming down the stairs from that area. "There is a guy starting fires. I walked over to see the damage and noticed I knew the guy. I went to school with him and his brother," LW wrote in his statement. He went on to state "An employee runs over and extinguishes the fires. Michael takes off after him and fires two shots. Then he turned and shot at me." And though it is not noted in his statement, LW stated to DC (who was hiding with him in the office and who was on the phone with a Denver Police dispatcher) that the male had changed his clothes and that he was now wearing a green and white striped shirt. LW observed this as the suspect was coming down the stairs from the lunchroom fire.<sup>7</sup>

JD was a Safeway employee who was working in the area of the grocery warehouse on the day of the shooting. He stated that he and several other employees saw an African American male wearing a red "hoodie" sweatshirt "...halfway down aisle 4 setting a fire." He stated that he also saw his supervisor, DC, run away from the area of the fire holding a fire extinguisher and being chased by the unknown male. JD stated that one of the employees put out the fire with another fire extinguisher and the unknown male chased after them with a gun, firing two shots at them.

LC was also a Safeway employee on the day of the shooting. He stated that he observed his supervisor, DC, running from aisle #4 to the office. He stated that he "...noticed a big black guy standing above flames holding charcoal fluid adding it to the flames" in the grocery warehouse. He further stated that

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<sup>7</sup> This information was relayed to the dispatcher at approximately 16:14, and was dispatched to officers at 16:14:39 and again at 16:15:43, according to Denver Police dispatch records.

“somebody got a fire extinguisher and attempted to put the fire out and...heard (him) say ‘don’t you do that...’” LC stated that he was calling police when “I heard two shots. After the shot I heard a wail come from someone like they may have been hit.”

### **The Fatal Confrontation with Police**

In laymen’s terms, an “active shooter” designation refers to a situation in which there is a suspect or suspects with weapons, shooting at people in a building or area and the shooter has not yet been arrested. As discussed more below, the concept of the “active shooter” became widely accepted in the law enforcement community after the murders that took place at Columbine High School. Columbine changed the standard for how law enforcement responded to an aggressive, armed subject intent upon and actually killing as many people as possible. The new standard mandates that the first responding officers form into entry teams and enter the location. Once in the building, these teams are to move toward the suspect, if his location is known, or towards the sound of gunfire, if it can be heard. They are to focus on stopping the suspect and rescuing victims.

This call came in as an “active shooter” incident. As set forth above, when officers receive a call on an active shooter, there is no question but that the event inherently means that citizens have been shot at, wounded or killed. The suspect is still at large and the essence of the designation is that innocent civilians are still very much at risk. This particular situation carried extra levels of complexity because of the enormity of the Safeway warehouse; the layout of the warehouse, which, in many places, was very open and offered little, if any, tactical cover for the responding officers; the size of the work force which was present in the building; and the fires which Michael Ford had set throughout the warehouse. Those fires were beginning to intensify as the officers were going into the warehouse and the smoke and haze from those fires was starting to affect both visibility and the safety of the officers.

Ultimately, over one hundred fifty Denver Police officers responded to the call reporting shots being fired in the Safeway warehouse on Stapleton Drive. The first two entry teams, made up of patrol officers, were in the warehouse within minutes of the first 911 call. The third entry team was made up of three Metro/SWAT officers, Technicians Derick Dominguez, Ryan Grothe, and James Sewald. Because the reporting from employees inside the enormous warehouse tracked the actions of the suspect, the Metro/SWAT team was able to make their entry closer to the location of the shooter. As noted above, when returning down an open metal staircase that led to a second floor break room in which multiple fires had been set, the suspect ambushed this Metro/SWAT team. Shooting through the open metal staircase, Ford shot Technician Dominguez, shattering his femur and dropping that officer instantly to the ground. Technicians Grothe and Sewald returned fire, mortally wounding the suspect who was later definitively identified as Michael Ford. There were no other people present other

than Ford and the three officers, and the shooting occurred in an area of the warehouse that was not covered by video cameras. As such, what is known of the final confrontation comes from the videotaped statements of the three Metro/SWAT officers. Pursuant to established protocol, Technicians Grothe and Sewald were sequestered after the shooting and provided video-recorded statements that same day. On June 28, 2006, three days after the incident, Technician Dominguez also provided a videotaped statement from his hospital bed, following his emergency treatment and surgery on his hip. Following is a synopsis of the statements of Technicians Dominguez, Grothe and Sewald.

### **Summaries of Officers' Statements**

#### **Ryan Grothe**

Technician Grothe has been a member of the Denver Police Department Metro/SWAT unit since August 2000. On June 25, 2006, he was called to the Safeway warehouse on a report of an "active shooter." While driving to the location, he monitored the radio and learned that the suspect was an African American male wearing a maroon sweatshirt who was armed with a .357 revolver. Once on scene, Grothe geared up to make entry and was teamed with Metro/SWAT Technicians Derick Dominguez and James Sewald. Technician Grothe related that all three were wearing their black BDU (Battle Dress Uniform) uniforms emblazoned with Denver Police badges and the word "POLICE."

The team of three entered the warehouse via Door Fifty-Seven. Once inside the warehouse, Technician Grothe soon met with District Two Sergeant Steve Gonzales. Sergeant Gonzales had formed an entry team and had already been inside the warehouse rescuing victims and searching for the suspect. Technician Grothe received an updated description of the suspect from Sergeant Gonzales, who explained that the suspect was now wearing a blue and green striped shirt.

Technician Grothe and his team received instructions to move from their location at Door Fifty-Seven to Door Ninety-Three, at the east end of the warehouse. New reports had come in from people inside the warehouse that there were two victims trapped in that area. The team was also told that the suspect ran up the stairs to a cafeteria or a lunchroom area. The intelligence information and the information which this three man Metro/SWAT team learned was explained by Grothe this way:

"We have multiple victims; we still have victims in the location;" "the shooter was last seen going westbound in the building" and "he had a .357. ..."

[Lieutenant tells us] but you guys need to get down to door ninety-three. Because we have two victims that are still in there that can't get out and the, uh, suspect ran up the stairs to a cafeteria or a lunchroom area. ... And again we verified what, what are we doing here, you know, give us the Intel again. Uh, same thing, couple of

victims in there can't get out and they saw the suspect go up the stairs. ... I think at that time too he said, uh, two more guys [SWAT] are coming down.

As the team approached the stairs to the lunchroom, Technician Grothe observed several fires burning in the warehouse and thick smoke emanating from the upstairs lunchroom. Although the team climbed the stairs in order to make entry into the lunchroom, they were forced back by the thick smoke. Technician Grothe described the team's entry into Door Ninety-Three:

When we came in, there's just a big old fire in the pallets down this wall that was really starting to burn pretty good. There was other fires around the area. ... And we were going to go up and check these stairwells. So we go up and it's just thick with smoke. We, we can't. There's no way we can even get in at all to check for victims, suspects or anything.

As the three officers descended the stairs, Technician Grothe led the way. As he reached the bottom of the stairs, he began to hear gunshots. Technician Grothe looked in the direction of the shots and saw a "guy that matched the suspect's description."<sup>8</sup> In his video interview, Technician Grothe demonstrates how the suspect was holding his hands up in front of his body as if holding a weapon. Grothe described this position as if the suspect is communicating "like I've got something ... well, I'm shooting at you guys, here it is." The officer goes on to say that, as he's looking at the suspect, "I'm still hearing the shots." Technician Grothe saw the suspect moving from left to right, then back again. He immediately engaged the suspect and returned fire with his Colt AR-15 .223 caliber semi-automatic rifle. Almost simultaneously, Technician Grothe heard Technician Dominguez yell that he was shot, as he explained it:

"Come back down the stairs ... um, shots started to come at us ... I start addressing the ... and at the same time Derick's yelling, 'I'm hit.'"

Technician Grothe returned fire and continued to fire until the suspect went down. As the officer watched, the suspect got up on his knees and moved toward his .357 revolver, which was within a few feet of his outstretched right arm. When the suspect moved toward the weapon, Technician Grothe fired again. It was only then that the suspect went down again and did not move. Technician Grothe explained his position at the time he fired back at the suspect, saying:

[The suspect] was moving out far enough that this point of cover [the stairs] was no good for me, his angle on us, so I just had to

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<sup>8</sup> It should be noted that in postmortem photos taken at the scene, Michael Ford is wearing a shirt with green, white, and black stripes, with a blue shirt visible underneath.

start engaging him. My only cover was pretty much myself, body armor and my rifle. ... [Technician Dominguez] went down right here [at the bottom of the stairs].

Once the suspect finally went down, Technician Grothe broadcast over the radio that the suspect and an officer were down. Technician Dominguez could not walk so Technician Grothe dragged him to an exit. There, other Metro/SWAT officers assisted Technician Dominguez and took him to a waiting ambulance.

Technician Grothe then returned to assist Technician Sewald, who was guarding the downed suspect while Grothe assisted in the evacuation of Dominguez. The two were joined by a Metro/SWAT sergeant. The newly reconstituted team of three approached the downed suspect. Technician Grothe took the suspect into custody and placed him into handcuffs. He stayed with the suspect until paramedics arrived, checked on the suspect and evacuated him. Technician Grothe was then re-deployed with other Metro/SWAT officers to continue searching for additional suspects or victims. No additional suspects were located but several victims were located and rescued. When discussing handcuffing the suspect after the shooting, Technician Grothe explained some of his concerns at the time he confronted the gunman:

And in fact, you know when ... not only were there two victims when he was engaging us and we were engaging him, there was other officers just right on the other side of that door. And we knew officers were working east to west ... and we were coming over just to be in this area to locate him so that we didn't, you know, we didn't want him going back that way with unaccounted for victims and other officers.

In recounting the day in his videotaped interview, Technician Grothe described the "active shooter" scenario and the information which he and his team had when they confronted the suspect, who they later learned was Michael Ford. He explained how the suspect was "already showing his intentions" before the Metro/SWAT team confronted him, saying:

Well, right when we were dispatched, it's an active shooter. When I get into the ware- ... I mean you're hearing people are getting pulled out. When I get into the warehouse, the first time in Door Fifty-Seven, you got blood on the ground and you got, uh, what looked to be three fifty-seven rounds that were ... I don't know if they were spent or just extra rounds that he brought in, so we knew that the Intel was good. Get up to other SWAT officers, there standing over what looks to be someone that is probably deceased, but is another victim. So this guy's already made his intentions [clear] that he's there to, to kill and hurt people.

As Technician Grothe so aptly explained, the suspect provided live and direct confirmation of his deadly intentions when he actually fired upon the Metro/SWAT team and seriously injured Derick Dominguez.

### **James Sewald**

Technician James Sewald has been a member of Metro/SWAT since January 1996. He also received a call to respond to the Safeway warehouse on a report of a situation with two victims down and the suspect at large. Once on scene, Sewald geared up and reported to his supervisor to await instructions. Technician Sewald was wearing his black BDU uniform emblazoned with the word "POLICE" and with the Denver Police Department badge. Along with Technicians Derick Dominguez and Ryan Grothe, Technician Sewald was assigned to make entry at Door Ninety-Three. The team's orders were to locate and rescue two victims, and, if possible, to apprehend the suspect. The description of the suspect provided was that he was an African American male wearing a green and white striped shirt, armed with a .357 caliber revolver.

The team entered the warehouse at Door Ninety-Three. Technician Sewald saw fires burning in the warehouse. Fires were burning not only in the open area of the warehouse, but also in a second floor room. The team attempted to make entry into this second floor room as part of their search. However, once they reached the top of the stairs, the smoke was too thick to allow safe entry into the room. As they came back down the stairs, Technician Sewald heard a gunshot and, almost at the same time, heard Technician Dominguez exclaim that he had been hit. Technician Sewald described the scene like this:

[We] come around the corner and could see a fire, actually a couple of fires in the aisles. We saw stairs to our left [and wanted] to see if we could find anybody up there, so we made our way up. ... the smoke was pretty bad ... [we] figured we'd best get back down or somebody would be carrying us out because the smoke was pretty bad. ... As we're going back ... and we hear a round go off ... Derick yells out ... he's hit.

The shot came from the right so Technician Sewald did a visual scan in the direction of the shot. He was at the bottom of the open metal staircase on the ground floor. The smoke from the fires, which were intensifying, created a haze in the open area. Sewald could not see anyone in the haze so he grabbed the injured Derick Dominguez, who could not walk at all, and dragged him over behind the stairwell.

After getting his injured partner as far out of the line of fire as possible, Technician Sewald looked around the staircase. He saw a man who matched both the physical description of the suspect, an African American male, and the clothing description of what he was wearing - a green and black shirt and dark pants. Technician Sewald brought his weapon, a Heckler and Koch (H&K) 93 .223 caliber semi-automatic rifle, to bear on the suspect. As he watched,

Technician Sewald saw the suspect moving from left to right and, upon seeing Sewald, back to the left again. To Sewald it appeared as if the suspect was attempting to flank the officers and was trying to close the 20-25 foot gap between them. When Technician Sewald first saw the suspect from behind the staircase, he could only see the man's empty left hand, not his right hand. With his wounded partner on the ground by him, Technician Sewald fired back at the suspect approximately four times. Technician Grothe also returned the suspect's fire with his weapon.

When the suspect fell down, his back was turned toward the officers and his arms were underneath him. Once the suspect was down, Sewald briefly turned his attention back to his wounded partner. He explained:

as we were trying to plan to get Derick out ... the suspect pushes himself back up. I even yelled, "Don't Move."

Despite this command, the suspect continued to try to rise. It was at this point that Technician Sewald could see that there was a gun near the suspect. As Sewald explained:

I could see the gun at that time. I couldn't tell how far it was but I could see it because I was moving forward.

When the suspect, who had his back towards the officers, defied Technician Sewald's orders not to move and instead pushed himself up and moved towards his gun, both Sewald and Grothe fired again. The suspect went back down and did not attempt to move again. Seconds later, when they took the suspect into custody, Technician Sewald got a better look at the gun, which was just a few feet away from the suspect's right hand.

Technician Grothe immediately called for paramedics for both Technician Dominguez and the injured suspect. At that point, the officers also requested the Fire Department because "the flames were really rolling."

At Sewald's direction, Technician Grothe evacuated Derick Dominguez while Sewald guarded the downed suspect. Grothe returned with additional Metro/SWAT officers and they took the suspect into custody then allowed paramedics to provide emergency treatment and evacuate the suspect.

Technician Sewald estimated that the entire incident, from the time they were fired upon until the suspect was in custody, lasted no more than 20 seconds.

### **Derick Dominguez**

Technician Derick Dominguez has been a member of Metro/SWAT since 2001. Technician Dominguez provided Police Department detectives with an interview three days after the incident while he was still in the hospital. That interview, which took place on June 28, 2006, was video and audio taped. Although he

had contact with family members and other police officers, he did not discuss with them the details of the incident. Rather, the focus of the conversations he had was on his injury. The bullet which hit Technician Dominguez in the hip, in his words:

shattered the femur, upper femur, where the – kind of like the way it was explained it to me the ball or joint that goes in your pelvis – is they had to put a brace to here with screws all the way through it to hold it in place. They actually took screws that are going to hold the ball into the – the pelvic area.

On June 25, 2006, Technician Dominguez received a call from his Sergeant saying that he needed to respond to an active shooter situation. Like his partners, he was dressed in his BDU uniform which had the word "POLICE" and the Denver Police Department badge on it. When he got to the Safeway warehouse, he spoke to his Lieutenant to "let him know that we had three guys that were ready to go to do whatever we needed to get done." The other two members of the team were Technicians Grothe and Sewald.

Initially, the team was ordered to go to Door Fifty-Six or Fifty-Seven, but they were redirected to Door Ninety-Three. The suspect had last been seen there and the team was told that there were possibly some victims that were trapped in there. Technician Dominguez explained: "they wanted us to get down there start searching for a suspect and victims to make sure that everything is going to be okay." New information was coming in also that there may be fires burning in the warehouse. Despite the new information and the fact that two more people were en route to join the team, the three Technicians made their entry. Derick Dominguez explained this, saying "but with, you know, today's day and age, it's not – you can't just sit back and let people get hurt, so – even with the three of us," they went in.

Inside the warehouse, they found an open area with fires burning in the aisles. No victims could be seen in this open area. There was a stairwell along the wall to the left of their entry point which provided the only available cover. For tactical reasons, the three-man team headed up these stairs to the second floor break room. However, the smoke from the fires was too thick for the team to enter that room. As they came back down the stairs, Technician Dominguez was scanning the area looking for the people who were still in the warehouse and a fire extinguisher. He was also looking for the suspect. Technician Dominguez describes the next few seconds, saying:

I turned to the right, I looked at the fire that was going, and there was actually a fire extinguisher kind of across. And as I came back to look left, in the corner of my eye, just somebody like appeared, and it was real quick – saw somebody just like there, and then the next you know, he was firing shots at me, and I took a hit in the leg and – And there, kind of fell down or went down and kind of got behind the – the stairway using that for cover. And then sat there.

The two parties, James Sewald and Ryan Grothe, who I was working with that day – a three-man team – came up, and one of them was left and one of them was right, and they confronted the suspect after they figured out what was going on, and essentially ended the threat, took care of the threat.

I was still down there. I mean I was, you know, in some serious pain. And just one of – it was still the – the three of us so, you know, we had a suspect that was down but not completely down. I mean we hadn't got up and checked everything and we hadn't searched anything else, so we – our – our theory is you never just assume there's only one – you just – So we – somebody – James Sewald said he'd stay with the suspect kind of covering from the stairs. Ryan Grothe, he grabbed me and drug me out of the warehouse basically the way I came – came in. Back the way we came and got to right where the parking lot again where I initially came in, back to that parking lot. They kind of set me there, kind of a safe zone. One of the sergeants was there and kind of covered me until the – they called an ambulance up and the ambulance came up, and from there, took me downtown and started working on me in the ambulance.

Technician Dominguez estimated the time of the entire incident, from the time of the shot that hit him until the suspect was in custody, to have lasted for 15 or 20 seconds.

#### **IV. CRIME SCENE INVESTIGATION AND TESTING**

At the scene, paramedics responded to provide emergency treatment to Michael Ford. Technician Grothe explained that when the paramedics came up to examine the suspect:

They asked if they could roll him over. I said do what you have to do to make sure, you know, that he's all right or whatever you need to do.

After they provided emergency treatment at the scene, medical personnel evacuated Mr. Ford by ambulance and transported him to Denver Health Medical Center (DHMC). There he was pronounced dead by Dr. Colwell at 5:16 in the afternoon. An autopsy was performed at DHMC on June 26, 2006, by Dr. Amy Martin. The toxicology report established that Ford's blood tested negative for opiates, cocaine metabolites, benzodiazepines, barbiturates, amphetamines, phencyclidine, cannabinoids, and alcohol. Michael Ford had seven gunshot wounds. Five of those wounds came from bullets which did not exit his body, and those bullets or fragments of them were recovered at autopsy. These five wounds included: a penetrating wound of the left knee; a penetrating wound of the left upper back which brought with it a contusion of the spinal cord and a

probable injury of the right vertebral artery; a penetrating wound of the right back which brought with it a wound of the right kidney, adrenal gland, and liver, wounds to the right lung and right diaphragm, and a right hemothorax; a penetrating wound to the left midback which brought with it a fracture of left ribs 7 and 8, a wound of the left lung, and wounds to the aorta, left subclavian artery and innominate vein; and a penetrating wound to the left lower back which brought with it a wound to the heart, left kidney, and entered the left upper arm fractured the left humerus, exited the arm and re-entered the left lateral chest. The seventh wound was a perforating wound to the left lateral back which exited the left axilla. Dr. Martin determined that Ford died as a result of these seven gunshot wounds.

The crime scene investigation was conducted by the Denver Police Department Crime Lab. Crime Lab personnel videotaped the crime scene, took still photographs of the scene and specific items of evidence and collected numerous articles of physical evidence. Among the items of physical evidence collected which were associated with Ford was the weapon lying near him. Crime lab personnel also searched for and recovered numerous .357 caliber casings and live rounds, as well as all 17 shell casings from the rounds fired by Technicians Grothe and Sewald.

On July 28, 2006, Detectives from the Firearms Section of the Denver Police Department Crime Lab Unit prepared a comparison report on the handgun recovered near where Michael Ford fell. It is a Ruger Security Six .357 caliber six-shot revolver. After testing, it was determined that the rounds that were suitable for testing were all fired from this weapon. These included the three bullets recovered from the body of Mauricio DeHaro which conclusively established that Michael Ford shot and killed Mauricio DeHaro.

## **V. ANALYSIS OF ISSUES**

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 officers 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 Technicians Grothe and Sewald could not be found

criminally liable unless there was proof beyond a reasonable doubt that, at the time they fired their weapons, it was unreasonable for them to believe that Michael Ford presented a threat of serious bodily injury or death to themselves or to a third person. That third person who was believed to be endangered could be either a fellow police officer or members of the public. Alternatively, there must have been proof to determine, beyond a reasonable doubt, that at the time they fired their weapons, Technicians Grothe and Sewald were unreasonable in their beliefs that deadly physical force was necessary to effect Ford's arrest or prevent his escape, as well as their beliefs that Ford had committed a felony or felonies with his gun or was attempting to escape by use of his gun.

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 officers 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 officers should recognize that their 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 officers 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 officers are to rely upon their 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;
4. the use of movement to:
  - a. seek a better tactical position;
  - b. increase the distance between the officers and the threat;
  - 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:*

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or*
- b. To effect an arrest, or to prevent the escape from custody of a person whom he reasonably believes:*
  - 1.) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or*
  - 2.) Is attempting to escape by the use of a deadly weapon.*

In applying that section of the policy, the task in 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 believing that Michael Ford presented a threat of the imminent use of deadly physical force to that officer or a third person, including another police officer or a member of the public. Alternatively, the evidence presented is also assessed to determine if it is more likely than not that a police officer attempting to arrest Ford or prevent him from escaping would not have been reasonable in believing that Ford had committed or attempted to commit a felony with the use or threatened use of a deadly weapon or that he was trying to escape by the use of a deadly weapon.

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 attempting to arrest Michael Ford.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officers, as well as any reasonable inferences arising from that information; the observations of the officers; the lighting that is present and the visibility at the scene; the distances between the officers 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 these officers against what would be expected of an objectively reasonable police officer under similar circumstances.

### **A. The Reasonableness of the Officers' Tactics**

This analysis requires considerations of the officers' actions before and during the shooting. These three officers are members of the Denver Police Department's tactical unit, Metro/SWAT. As such, they have significantly more, and higher levels of, tactical and weapons training than officers assigned to regular patrol duties. They constantly prepare for situations such as the one presented to them in the Safeway warehouse and their movements and team tactics are consistent with their training.

Mention must be made again of the change embraced by the law enforcement profession over the last decade. As noted above, before the attack on Columbine High School by two heavily armed students in 1999, there was a very different model for responding to what came to be called an "active shooter" situation. Before Columbine, the emphasis was on slow and deliberate actions and movements to minimize the potential for the situation to evolve into a running gun battle. Training pre-Columbine emphasized that the first officers to respond to this type of incident should secure the perimeter and call for tactical teams to make entry. After Columbine, law enforcement embraced the approach described earlier in which the first responding officers would immediately form into entry teams and enter the scene, actively moving toward the sound of gunfire in order to stop the suspect and rescue victims.

District Two Sergeant Steve Gonzales was one of the first responding officers and he formed just such a team and entered the Safeway warehouse. Soon after, another patrol officer, Officer Robert Fitzgibbons, was directed by the Incident Commander, District Two Lieutenant Pete Conner, to form a second team which also entered the warehouse. These two teams worked from east to west rescuing victims, getting medical help for victims and securing areas of the enormous building as they searched for the subject.

The third entry team, which consisted of the three Metro/SWAT Technicians involved in this shooting, also responded pursuant to the active shooter protocol. Technicians Grothe, Sewald and Dominguez were directed to their entry point into the huge warehouse based upon intelligence received from employees and officers in the building. At the time of their entry into the building, they were acting on information that there were two victims trapped in the area of their entry. They were also informed that the suspect had last been seen running up to a second floor lunchroom. With their own eyes, the three officers had seen blood spatter and a victim who was probably dead. The team knew that there were other officers working their way towards their entry point and that there could be additional victims in the area. Multiple fires were burning in the warehouse; both in the main aisles near their entry point, as well as in the lunchroom they intended to search for the suspect. These fires were intensifying. There was heavy smoke and haze in the air, particularly near the stairwell that they needed to use to access the lunchroom.

Upon their entry into the warehouse, the officers were confronted with a large open area which offered very little cover. The only tactical cover available to them was the metal staircase which they needed to climb. They moved immediately to the staircase when they got into the warehouse. All three of the officers used appropriate tactical measures for an active shooter situation. They proceeded with their weapons at the ready and covered each other as they moved toward the staircase. They went up the stairs in single file and retreated back down the same way. Technician Sewald described the descent as being done by "side-stepping" in order to visually scan the open area of the warehouse. All three officers were in easily identifiable police uniforms. Despite this, as they descended the stairs, Michael Ford ambushed them, shooting through the metal stairs with his .357 revolver and dropping Technician Dominguez with a bullet that shattered his femur.

Once they were fired upon, Technicians Grothe and Sewald appropriately returned fire, while attempting to make tactical use of the little cover that was available to them. They also moved their injured partner as much out of harm's way as possible and maintained positions in front of him, all the while ensuring that they did not interfere with each other's line of fire. Technicians Grothe and Sewald fired only until the suspect went down, then held their fire.

When they saw the suspect attempt to get up, Technician Sewald gave him a loud, clear order, saying "don't move." Rather than complying with the officer's order, Michael Ford continued to try to rise and moved towards his fallen weapon. It was only at that point that Technicians Grothe and Sewald again fired upon Ford. Once again, both officers ceased their fire as soon as Ford went down again.

Pursuant to their tactical training, Technicians Grothe and Sewald aimed their fire at center mass. In this situation, the initial fire was directed at the front of the suspect as the officers fired upon him. As Ford defied orders and lifted himself up to move towards his weapon, his back was turned towards the officers. Thus, the center mass presented when Ford reached for his loaded .357 revolver, causing the officers to open fire for the second time, was Ford's back.

These officers were confronted with an active shooter who had evidenced his deadly intent by shooting five victims, one of whom died, before they ever laid eyes on him. Ford had started numerous fires in the warehouse and had shot at people who tried to put the fires out. The officers used all available tactical options, including making use of what little available cover there was. Their tactical options evaporated completely when Michael Ford ambushed them from twenty to twenty-five feet away and shot Derick Dominguez. Even then, Technicians Grothe and Sewald returned fire only until Ford went down and the threat appeared to be stopped. The efforts they made to check on their wounded partner were governed by the tactical need to maintain visual contact with the downed suspect. When Ford tried to move toward his gun, despite having overwhelming proof of Ford's deadly intent, Technician Sewald nonetheless gave him verbal commands not to move. Had Ford followed Technician Sewald's

directive, it would have ended the incident. However, Ford continued to move toward his fallen weapon, escalating the threat he presented and limiting the tactical options that were left to Technicians Grothe and Sewald. At that point, the two officers had no choice but to exercise the only tactical option that they had left – they opened fire on the suspect and stopped firing immediately upon seeing him go down the second time. A total of seventeen shots were fired in the two volleys, all of which were exclusively directed at Michael Ford. Seven of those seventeen shots actually struck Ford. The officers ceased firing immediately upon seeing the threat neutralized when Ford fell to the ground the second time and stopped moving.

These officers were twice confronted with an actual, immediate and lethally dangerous threat to their lives. At the time that they first returned fire, Ford was not only armed with a deadly weapon, but had directly demonstrated his willingness to use it against them, rather than submit to police authority. Ford was within twenty or twenty-five feet of the officers, in a smoke filled area, with fires intensifying around them. At this point, the officers were essentially without cover. This confrontation took place in a huge warehouse where Ford had already shot at numerous employees and had wounded four coworkers and killed a fifth. At least two victims were believed to be trapped in the vicinity of the encounter with Ford and the Metro/SWAT team knew that other police officers were moving through the warehouse in their direction. At the second point at which they fired, the Technicians had Ford at gunpoint and kept visual surveillance on him while they devised a plan to evacuate their injured partner. When they saw Michael Ford push himself up and begin to move toward his gun, Technician Sewald gave a verbal command ordering him not to move. It wasn't until Ford defied that order and continued to move toward the weapon he had just been shooting, and which had fallen within a few feet of him, that the officers fired again. In the twenty seconds it took for this deadly confrontation to be over, Technicians Grothe and Sewald appropriately focused on neutralizing a danger not only to their lives and that of Derick Dominguez, but also to the public. It is noteworthy that, after the shooting was over, three additional employees were rescued from the area and a group of officers from the other entry teams were positioned directly behind a door next to the stairwell by which the three Technicians sought cover.

When Michael Ford at first ambushed and then refused to even acknowledge, let alone obey a police command not to move, Technicians Grothe and Sewald were twice confronted by their sworn duties to protect the public and police officers, and to enforce the law and apprehend suspects. These officers properly chose to take all necessary measures, including deadly physical force, to prevent this armed and dangerous criminal from further harming others, to effect his arrest and to prevent his escape. Once the wounded Michael Ford moved within reaching distance of his loaded .357 caliber revolver, he eliminated any opportunity for Technicians Grothe and Sewald to de-escalate the situation or to employ any other tactic that would lessen the likelihood or necessity for deadly force. In light of the immediacy and lethality of the threat which Ford posed at both points at which Technicians Grothe and Sewald fired upon him, 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 Technicians Grothe and Sewald to avoid or reduce the likelihood of a deadly force encounter with Michael Ford and still safely carry out their sworn duties as police officers.

#### **B. The Reasonableness of the Assessment of the Threat**

This analysis requires consideration of the justification for using force. In evaluating whether the officers' assessment was reasonable, we must examine what they knew at the time they were assessing the threat before them. In this case, as pointed out in the above section, there were two separate points at which it was necessary for the officers to assess the threat they faced. The first point was when Michael Ford stood behind the staircase and shot Technician Derick Dominguez. The second point was when Michael Ford pushed himself up from the ground and, although wounded, moved towards his fallen .357 revolver. The assessment of the threat at both points must, necessarily, include all the information which was provided to the three Metro/SWAT officers before they had any direct contact with Michael Ford.

#### **Information Known to Technicians Grothe and Sewald Before the Ambush**

An "active shooter" designation means that there is a suspect with a gun, who is shooting people and who has not yet been stopped. The call for Metro/SWAT officers to respond to the Safeway warehouse on June 25, 2006, came in as an "active shooter" call. Upon responding to the scene, Technicians Grothe and Sewald were informed that an African American male wearing a green and white or green and blue striped shirt was armed with a .357 caliber revolver and was moving through the warehouse. They were told that this suspect had shot several people in the warehouse. They actually observed blood spatter from one victim and saw another victim, who appeared to be dead. They were also aware that the suspect had set numerous fires in the warehouse. Included in the information they received was the fact that there were two other teams of officers already inside and that these teams were moving from the east to the west side of the warehouse. The Metro/SWAT team was directed to enter Door Ninety-Three, which was close to the western end of the warehouse. The three officers were specifically told that the gunman had been seen in this area running up stairs to a second floor lunchroom area. Significantly, they were directed to not only apprehend the gunman, but also to rescue two known victims who were trapped in that same area. As set forth above, Technician Grothe succinctly summarized what was known about the threat presented by Michael Ford even before he ambushed the three SWAT officers and seriously injured Derick Dominguez. To reiterate Technician Grothe's assessment of Ford's intent:

Well, right when we were dispatched, it's an active shooter. When I get into the ware- ... I mean you're hearing people are getting pulled out. When I get into the warehouse, the first time in door fifty-seven, you got blood on the ground and you got, uh, what looked to be Three Fifty-Seven rounds that were ... I don't know if they were spent or just extra rounds that he brought in, so we knew that the Intel was good. Get up to other SWAT officers, there standing over what looks to be someone that is probably deceased, but is another victim. So this guy's already made his intentions [clear] that he's there to, to kill and hurt people.

### **The First Decision Point – The Ambush and Shooting of Technician Dominguez**

Technicians Grothe and Sewald first became directly aware of the imminent deadly threat that Michael Ford presented to them and Technician Dominguez when they heard him fire his gun. Ford's gunshot hit and seriously injured Technician Dominguez. Scanning the smoke filled area in the direction from which the gunfire came, both Grothe and Sewald saw Michael Ford. Ford exactly matched the physical and clothing descriptions of the man who had already shot five employees, killing one. There was no other person in the open area from which the shots at them came. Instead of moving away, Michael Ford came toward the officers. Ford took evasive action by changing direction when he saw Technician Sewald look directly at him. Technician Sewald explained that it appeared Ford was trying to flank the officers. The three officers, one of whom was seriously injured and unable to walk, had very little cover. As explained by Technician Grothe, his position was so exposed that his only cover was "pretty much myself, body armor and my rifle." Technician Sewald described how little cover the stairwell provided and how the legs of the injured officer, Derick Dominguez, were hanging out in front of the stairwell.

When they looked in the direction from where they had heard a gunshot, they saw an African American male wearing the described clothing, with no one else in their field of view. Technicians Grothe and Sewald quickly and correctly determined that he was the shooter and they turned their own weapons to address this threat. In the opinion of this Office, the perceptions of Technicians Grothe and Sewald that they were again in imminent danger of having deadly physical force used against them by Michael Ford at this point was objectively reasonable. Likewise, it is also the opinion of this Office that the perceptions of Technicians Grothe and Sewald that Technician Dominguez was in imminent danger of having deadly physical force against him by Michael Ford at this point was also objectively reasonable. Finally, it is overwhelmingly evident that, at this point, the perceptions of the two Technicians that Michael Ford had committed or was about to commit a felony or felonies with a gun or that he was using a gun to effect his escape, and that deadly physical force was necessary to effect Ford's arrest or to prevent his escape were both accurate, and, objectively reasonable.

### **The Second Decision Point – Michael Ford's Defiance of Orders and Movement Toward His Weapon**

After Michael Ford went down from the first volley of shots, Technicians Grothe and Sewald were confronted with two urgent duties. The first and highest obligation was to ensure that Michael Ford was not able to resume his deadly activity. Secondly, they needed to get medical aid for their seriously injured partner and Ford. Technicians Grothe and Sewald found themselves with a badly wounded partner who was unable to walk. They were in a smoke filled area with actively burning fires, with hardly any cover or barrier between themselves and the obviously injured Ford. The officers held their fire and started putting together "a plan" to evacuate Derick Dominguez. Simultaneously, they kept watch on Michael Ford and, when he began to move, gave him an order, telling him, "don't move." However, Michael Ford chose to disregard that order and instead, further escalated the threat by moving toward his near-by gun. Once again, the decision of whether to use force and the level of force needed was made for these officers by Michael Ford. By his actions, Michael Ford eliminated any opportunity for these officers to de-escalate the situation. He again became an imminent threat of deadly physical force against the three officers. Michael Ford's actions also demonstrated conclusively that not only had he already committed numerous felonies, but that he was intent on continuing to commit further felonies with his gun. Equally certain from his ambush of the officers, his defiance of police commands and his attempt to reach his loaded .357 revolver, was the fact that, rather than submit to lawful police authority, Michael Ford was using his gun to prevent his arrest and effect his escape.

Given the evidence that Ford was continuing with his deadly intent and trying to reach his gun, Technicians Grothe and Sewald responded appropriately with a second volley of deadly force, firing their weapons and ceasing fire as soon as the threat was neutralized. In the opinion of this Office, the perceptions of Technicians Grothe and Sewald that they were again in imminent danger of having deadly physical force used against them by Michael Ford was objectively reasonable. Likewise, it is also the opinion of this Office that the perceptions of Technicians Grothe and Sewald that Technician Dominguez was in imminent danger of having deadly physical force against him by Michael Ford for a second time was also objectively reasonable. The evidence is equally conclusive that Michael Ford, who had already committed numerous felonies with a gun, was intent upon committing other felonies with a gun or otherwise using his gun as a means of avoiding arrest or escaping. The perceptions of the two Technicians that deadly physical force was necessary at this second decision point to effect the arrest and prevent the escape of Michael Ford were also accurate and objectively reasonable.

### C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the level of force utilized by Technicians Grothe and Sewald at both points when they resorted to deadly physical force in firing their weapons at Michael Ford. As explained above, both state statutes and DPD policy have delineated the very limited situations in which police officers are justified in using deadly force. Such force is justified when an officer reasonably believes that the suspect or threat is using or will imminently use deadly physical force on the officer himself or a third person. Deadly physical force is also justified if an officer is trying to arrest a person who he reasonably believes committed or attempted to commit a felony by using or threatening to use a deadly weapon or who is attempting to escape by using a deadly weapon. In the language of C.R.S. § 18-1-707, and the Denver Police Department's Use of Force policy, set forth above, *"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; to effect an arrest, or to prevent the escape from custody of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon."*

The law and Department policy require a reasonable belief that deadly force against the officer or another is imminent and it requires a reasonable belief that deadly force is necessary in response. The previous section explained the reasoning this Office used in deciding the first part, the reasonable belief that deadly force was imminent. In fact, when the officers fired their first volley of shots, deadly force was not only imminent, it had just been used against Technician Dominguez. Technicians Grothe and Sewald also described Michael Ford's movements and hand positioning as having contributed to that belief. As such, it was absolutely reasonable for the officers to employ deadly force in response to actual deadly force having been employed – and about to be employed again – by a suspect. At the point at which the two Technicians fired their second volley, Michael Ford, who was wounded but able to move, defied a direct order that commanded him not to move. Instead of obeying that order, he pushed himself up and moved toward his loaded weapon which lay within a few feet of him. At this point it was reasonable for Technicians Grothe and Sewald to employ deadly force against this man who had killed one person, wounded others, ambushed the officers, wounded Derick Dominguez and defied their order by trying to move toward his gun. In addition, Technicians Grothe and Sewald had received information by numerous verbal reports from injured citizens and fellow officers in the Safeway warehouse and made personal observations of the felonious actions that Michael Ford had committed with his gun. They also saw, first hand, that Ford used his handgun to ambush the officers and continued to reach for it in an attempt to further injure them, prevent his arrest or effect his escape. All of this information led Technicians Grothe and Sewald to the reasonable belief that Michael Ford had committed numerous felonies (First Degree Murder, Attempted First Degree Murder, Attempted First Degree Murder of a Peace Officer, First

and Second Degree Assault and Felony Menacing)<sup>9</sup> involving the use or threatened use of a deadly weapon and that Ford was also on the verge of committing additional felonies and was using that weapon to help him escape or prevent his arrest.

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under

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<sup>9</sup> The crimes mentioned above are defined as follows: Murder in the First Degree, C.R.S. § 18-3-102: (1) A person commits the crime of murder in the first degree if: (a) After deliberation and with the intent to cause the death of a person other than himself, he causes the death of that person or of another person; or (b) Acting either alone or with one or more persons, he or she commits or attempts to commit arson, ..., and, in the course of or in furtherance of the crime that he or she is committing or attempting to commit, or of immediate flight therefrom, the death of a person, other than one of the participants, is caused by anyone; ...d) Under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally, he knowingly engages in conduct which creates a grave risk of death to a person, or persons, other than himself, and thereby causes the death of another; ... (3) Murder in the first degree is a class 1 felony.; First Degree Murder of a Peace Officer C.R.S. § 18-3-107(1) A person who commits murder in the first degree, as defined in section 18-3-102, and the victim is a peace officer or firefighter engaged in the performance of his or her duties, commits the felony crime of first degree murder of a peace officer or firefighter. ... (5) The general assembly recognizes that protection of peace officers and firefighters from crime is a major concern of our state because society depends on peace officers and firefighters for protection against crime and other dangers and because peace officers and firefighters are disproportionately damaged by crime because their duty to protect society often places them in dangerous circumstances. Society as a whole benefits from affording special protection to peace officers and firefighters because such protection deters crimes against them and allows them to better serve and protect our state. The general assembly therefore finds that the penalties for first degree murder of a peace officer or firefighter should be more severe than the penalty for first degree murder of other members of society; Assault in the first degree C.R.S. § 18-3-202. (1) A person commits the crime of assault in the first degree if: (a) With intent to cause serious bodily injury to another person, he causes serious bodily injury to any person by means of a deadly weapon; or (b) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of his body, he causes such an injury to any person; or (c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death to another person, and thereby causes serious bodily injury to any person; or ... (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties; or (2)(b) If assault in the first degree is committed without the circumstances provided in paragraph (a) (sudden heat of passion) of this subsection (2), it is a class 3 felony.; Assault in the second degree, C.R.S. § 18-3-203(1)(b): A person commits the crime of assault in the second degree if, with intent to cause bodily injury to another person, he or she causes such injury to any person by means of a deadly weapon. Second Degree Assault under this section is a Class 4 Felony. Felony Menacing C.R.S. § 18-3-206(1)(a): A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a Class 5 Felony if committed by use of a deadly weapon; Criminal Attempt C.R.S. § 18-2-101. (1) A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused. ... (3.5) Criminal attempt to commit any crime for which a court is required to sentence a defendant for a crime of violence in accordance with section 18-1.3-406 is itself a crime of violence for the purposes of that section. (4) Criminal attempt to commit a class 1 felony is a class 2 felony; criminal attempt to commit a class 2 felony is a class 3 felony; criminal attempt to commit a class 3 felony is a class 4 felony; criminal attempt to commit a class 4 felony is a class 5 felony; criminal attempt to commit a class 5 or 6 felony is a class 6 felony.

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. In those circumstances, such as in this case, 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.

In this case, the three Metro/SWAT officers were responding to an "active shooter" event. They had received information and seen direct evidence that the suspect had murdered one victim, shot others, started numerous fires and was at large in the western part of the enormous warehouse where at least two additional victims were trapped. The officers were in uniforms which had clear police markings on them. Before they ever saw Michael Ford, he carried out a surprise attack on them, shooting and severely injuring Derick Dominguez. When they laid eyes on him and returned fire, he clearly matched both the physical and clothing descriptions of the shooter. The facts discussed in the preceding sections (A and B) are equally dispositive in determining whether the degree of force used against Michael Ford was reasonable and justified at both points at which the officers fired. The actions of Michael Ford in ambushing the officers created a situation in which Technicians Grothe and Sewald reasonably believed that deadly physical force was imminent, and that their lives, as well as the lives of others, were in danger. Technician Sewald explained that he specifically saw Ford look at them and close in on them after he shot Technician Dominguez. At that point, Technicians Grothe and Sewald fired a volley of shots at Ford. When he went down and the deadly threat appeared to have passed, the officers immediately held their fire. However, the threat that Michael Ford presented was not over. When he pushed himself up, defied Technician Sewald's order and moved toward his fallen weapon, he again created a situation in which Technicians Grothe and Sewald reasonably believed that deadly physical force was imminent and that their lives, as well as the lives of others,

were in danger. They also reasonably believed that this active shooter was intent upon continuing with his murderous rampage and that Ford was reaching toward his weapon to use it to prevent his arrest and secure his escape, even if he had to commit additional felonies with that weapon to do so. These facts, and the circumstances surrounding this event, lead to the conclusion that the beliefs of Technicians Grothe and Sewald that they were in imminent danger from deadly physical force was objectively reasonable at both points at which they fired their weapons. Similarly, the facts and circumstance detailed here and available in the file of this investigation demonstrate conclusively that the beliefs of the two Technicians that Derick Dominguez was also in imminent danger from deadly physical force was objectively reasonable. Finally, the facts and circumstances revealed by this investigation confirm the reasonableness of the perceptions of Technicians Grothe and Sewald that, rather than submit to police authority, Michael Ford was intent on using his weapon to prevent his arrest, make his escape and continue his felonious crimes through the use of his gun.

Technicians Grothe and Sewald resorted to deadly physical force in firing their weapons at Michael Ford. As explained above, both state statutes and DPD policy have delineated the very limited situations in which police officers are justified in using deadly force. It is the conclusion of this Office that the officers' decisions to use deadly force in response to Michael Ford's actions both after he ambushed them and wounded Derick Dominguez, and after he disobeyed their order and moved towards his nearby weapon, were both objectively reasonable and necessary.

#### **D. Summary of Findings**

It is the finding of this Office that the actions of Technicians Ryan Grothe and James Sewald in firing both volleys on June 25, 2006, were reasonable and necessary to defend against the active and imminent threat posed by Michael Ford. The officers' actions were a direct and appropriate response to what they reasonably believed to have been the use of deadly physical force against Technician Dominguez, and the active and imminent use of deadly force against them. Further, the officers' acts of using deadly force were appropriate and reasonable in light of Michael Ford's commission of numerous felony offenses involving the use or threatened use of a deadly weapon and his apparent attempt to use his deadly weapon to continue his felonious actions, prevent his arrest and effect his escape. Given these circumstances, this Office concludes that both officers' actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

## **VI. ADDITIONAL ISSUES**

As described earlier, Technicians Grothe and Sewald fired a total of seventeen rounds at Michael Ford. He was struck by seven of those rounds, of which five struck him in the back. Officers are trained to shoot at the "center mass" of the threat's body, an area most likely to incapacitate the threat. The critical consideration is whether the suspect presents a reasonable, credible threat. Officers are trained to fire until the threat is either incapacitated or, for some other reason, no longer exists. That is precisely what happened in this case.

The first volley was fired in response to Michael Ford's having shot Technician Dominguez and indicating by his movements and hand positioning (as if he was holding a gun on target toward the officers). This volley knocked him down, and Technician Sewald stated that the position of Michael Ford's body when he fell presented Ford's back to the officers. The threat Michael Ford presented was renewed when Ford pushed himself up and, with his back toward them and his arm outstretched, he attempted to retrieve his dropped weapon, despite Technician Sewald's verbal commands ordering him not to move. The officers then fired a second volley of shots and the threat was resolved. It is neither necessary, reasonable nor prudent for an officer to wait until a suspect turns around and points a weapon directly at him/her or wait until the suspect actually fires in order to justify the use of deadly force. The circumstances of this incident and all facts known to the officers at the time made it abundantly clear that Michael Ford presented a grave and imminent threat if he had been allowed to reach his fallen revolver.

It also does not appear that any of the shots were the result of what is commonly referred to as "contagious" or "infectious" fire – a phenomenon where an inordinate number of rounds are fired by a number of officers and the decision to fire is unreasonably influenced by the fact that other officers are firing. In this case, each officer was able to individually articulate what he saw and heard and his reasons for the decision to use deadly force and for the need to fire until it was clear that the threat no longer existed.

Based upon all of the above considerations and all of the facts and circumstances of this case, this Office believes that the involved officers acted reasonably and in accordance with their training and were not otherwise reckless or negligent in the manner in which they handled this encounter.

## **VII. CONCLUSION**

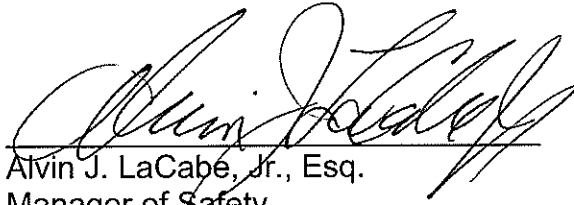
In closing, this Office wants to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's Office, the Independent Monitor and the Chief of Police. These consistent conclusions result from no other reason than 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 this case, the actions of these officers were absolutely necessary to stop an active shooter who had killed and who was clearly intent upon continuing to shoot and kill as many people as possible. Upon being ambushed by Michael Ford and having one of their team members seriously injured, Technicians Grothe and Sewald acted appropriately to stop the imminent deadly threat that he presented to officers and citizens in the Safeway warehouse, as well as to prevent Ford from using his weapon to commit further crimes, prevent his arrest or escape.

## **VIII. COMMENT**

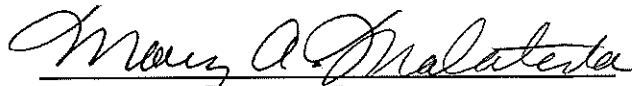
It is not the normal practice of this Office to comment on a critical incident beyond providing a detailed explanation of its findings and conclusions. Although time has passed, it is important to acknowledge the special horror which an active shooter event visits upon citizens, officers, first responders and the larger community. Such an event mandates recognition of both the losses suffered and the courage shown by those involved.

We must first commend Technicians Grothe, Sewald and Dominguez. Their actions were truly heroic and, without question, they saved lives at great risk to themselves – a risk that became a reality for Technician Dominguez. We also wish to extend our special thanks and praise to the other two teams of officers who bravely went into this crime scene to search for the shooter and to rescue victims. They were quickly joined by firefighters and paramedics who treated the injured and ensured the safety of the officers and civilians who were still inside. The police dispatchers were calm and focused and conveyed life-saving information to the officers who risked their lives to enter the warehouse to rescue victims and stop Michael Ford. At the scene that day were more than one hundred fifty other Denver Police Department officers, as well as firefighters and paramedics and victim support personnel – all of these public servants made incredible efforts to aid both civilians and officers. This community is fortunate to have them. The hospital staff also provided greatly appreciated care and comfort to all of the injured. In sum, these officers, emergency medical providers, firefighters, dispatch and hospital personnel responded in accordance with their training and with the highest level of courage and professionalism. While we hope that this type of incident will never be repeated, we take some comfort in the skill and bravery that our first responders demonstrated on this tragic day. We cannot thank them enough.

We regrettably acknowledge the great likelihood that the four wounded Safeway employees, as well as many other employees who witnessed Michael Ford's homicidal acts remain affected by this tragedy. To them, and to the entire Safeway family, we give our assurance that we continue to hope for their ongoing recovery. Finally, we do not doubt that the grief which has been visited upon the family of Mauricio DeHaro persists to this day. We continue to send them our deepest condolences.

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

12/28/07  
Date

  
Mary A. Malatesta, Esq.  
Deputy Manager of Safety

12/28/07  
Date