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Public Statement of Manager of Safety Regarding Disciplinary Action Taken Against Officer James Turney Arising from Events that Occurred on July 4 and 5, 2003

Issued April 15, 2004

I. INTRODUCTION

As the Manager of Safety, I am charged by the citizens of Denver, pursuant to the Denver Charter, with overseeing the Department of Safety, which includes the Denver Police Department. I provide the first line of civilian review of discipline outside of the Denver Police Department process. I have determined that it is important for the Department of Safety to share with the public why or why not disciplinary action is taken with regards to certain types of incidents, including incidents involving police shootings that result in death. One of my goals in sharing this information is to ensure that the citizens of Denver have the utmost confidence in our Police Department and our police officers who put their lives on the line every day.

There has been a lot of public and media attention stemming from events that occurred on July 4 and 5, 2003, involving Police Officer James Turney. These events have stimulated varying opinions and intense debate, both within the Police Department and in the community. While I am aware of the varying opinions, I am legally and ethically bound to reach a decision based only on the facts and circumstances of a case, the current law and rules that apply, and the judicious use of the authority bestowed upon me as Manager of Safety. That is how I reached my decision, which was served on Officer Turney today, to suspend him without pay from his position as a Police Officer for a period of ten months, based on my determination that he violated several departmental rules on July 4 and 5, 2003.

I hope this statement will provide all of those who are interested in this matter with an understanding of my decision. Please understand, however, that what I am sharing is only an outline of how I made this difficult decision, and is not an exhaustive discussion of all of the complex facts and issues involved in my decision or related to the events of

July 4 and 5, 2003. There are certain legal constraints on my ability to share information, including Denver Charter § 9.4.18 which prohibits me from disclosing Officer Turney's statements made to the Internal Affairs Bureau, also known as "IAB."

Finally, it is very important to keep in mind that my decision may or may not be the final decision in this matter. Officer Turney has a constitutional right to appeal my decision to the Denver Civil Service Commission. If he appeals my decision, a hearing will be conducted by an independent hearing officer appointed by the Commission. Thereafter, Officer Turney or the Manager of Safety may appeal the hearing officer's decision to the Civil Service Commission or the state courts of Colorado.

II. FACTUAL BACKGROUND

On July 4, 2003, Officer Turney, while on duty, in his patrol car, called his former mother-in-law in Page County, Iowa on his personal cellular telephone and made a threatening statement. His former mother-in-law subsequently contacted her local police department, as well as the Denver Police Department to make a complaint about the call she had received from Officer Turney.

Officer Turney ultimately received a deferred prosecution in Iowa, and a "No Contact Order" was issued on November 24, 2003 by an Iowa court, barring him from any contact with his former mother-in-law for a period of five years. The order states, in relevant part, that:

[T]he court finds there is probable cause to believe that a violation of Iowa Code section 708.7 has occurred and the presence of or contact with the defendant [James Turney] poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family.

Iowa Code section 708.7 defines the crime of harassment. Colorado Revised Statute section 18-9-111 proscribes similar misconduct.

It was also determined that Officer Turney spent approximately 147 minutes on his personal cellular telephone, including the threatening call to his former mother-in-law, during the time that he was working his shift on July 4, 2003.

On July 5, 2003, Officer Turney was one of the first police officers to respond to a call at the home of now deceased Paul Childs. Mr. Childs' sister had called 911 to report that her fifteen-year-old brother, Mr. Childs, was threatening their mother with a knife. Officer Turney and several other officers responded to the home. Officer Turney was the first to approach the house and make contact with the mother.

Officer Turney and three other officers took up positions on or near the front porch to the house. After Mr. Childs' mother unlocked the exterior front door to the house, Officer Turney and the other officers ordered the occupants to immediately exit the house. All of

the occupants, except Mr. Childs, exited the house through the front doorway and congregated on the front lawn, behind Officer Turney and the other officers.

Mr. Childs was still inside the house, behind the interior front door, and holding the knife. Officer Turney was holding open the security door and Mr. Childs was ordered to drop the knife and to come out of the house. After being ordered to do so, Mr. Childs emerged from behind the door still holding the knife in front of his body with the tip pointed upward, at which time he was approximately six to seven feet from Officer Turney. Mr. Childs slowly advanced in the direction of the officers, at which point, Officer Turney fired his weapon four times, fatally wounding Mr. Childs.

III. PROCEDURAL BACKGROUND

I have received questions and criticism regarding the seemingly protracted nature of the administrative disciplinary process. I agree that we need to look at whether we can make the administrative disciplinary process more streamlined. But I also think it is important to briefly explain the administrative disciplinary process and how it relates to the criminal reviews that occurred by the Denver District Attorney and the Page County Prosecutor, because there is some delay that is unavoidable and necessary in order to provide a fair and meaningful process.

A. The criminal and administrative review of the Childs case

Although the Childs case came second in time, I will start with that because it is the case that has led me to make this public statement. Immediately after the shooting on July 5, 2003, Officer Turney, the other officers, and the family members and other civilians who witnessed the events at the Childs home were sequestered and interviewed by members of the Denver Police Department's Homicide Unit, in conjunction with the Denver District Attorney's Office. Subsequently, the District Attorney, by letter dated October 16, 2003, explained in significant detail the investigation and the basis for his ultimate conclusion not to file any criminal charges against Officer Turney. I refer you to that letter for a comprehensive understanding of the District Attorney's review, but I will point out that the District Attorney's review was limited to whether he could prove "beyond a reasonable doubt that it was unreasonable for Officer Turney to perceive that [Mr.] Childs was an imminent deadly threat to [Officer Turney] or the other officers at the instant [Officer Turney] fired." The District Attorney determined that he could not prove "criminal conduct beyond a reasonable doubt."

After the District Attorney completed his review, the Police Department's Firearms Discharge Review Board ("FDRB") began the administrative review of the case. The Firearms Discharge Review Board is a five-member body composed of command officers within the Police Department. The FDRB is charged with reviewing "firearm discharges by active members of the [Police] Department." The FDRB is "investigative in nature and responsible for making recommendations on administrative justification, administrative case filings, Department policy modifications, training and commendations."

After reviewing the case, the FDRB made a disciplinary recommendation on January 20, 2004 (which is advisory only and is not binding on the Chief of Police or the Manager of Safety). Thereafter, IAB notified Officer Turney that he would be provided with an opportunity to review the administrative case against him. After Officer Turney had an opportunity to review the relevant case documents (including documents from the Homicide Unit, the District Attorney and IAB), a Disciplinary Review Board, or “DRB,” was impaneled. The DRB panel was composed of a chairperson, two command members, two citizen members and two peer members. The DRB heard the case and ultimately made a disciplinary recommendation on March 1, 2004 (again, the DRB’s recommendation is advisory only and is not binding on the Chief of Police or the Manager of Safety).

The case was then forwarded to the Chief of Police. It is important to understand that Officer Turney, like the majority of City employees, is entitled to certain constitutional protections in his job. Pursuant to the Denver Charter, once a police officer is hired and passes the probationary period, he or she has a property interest in his or her job that cannot be taken away without procedural due process.

That process required that the Chief of Police provide Officer Turney with notice of the charges against him and an opportunity to be heard. Officer Turney was given this opportunity on April 1, 2004, when he and his attorney met with the Chief of Police. Thereafter, the Chief of Police recommended that Officer Turney be disciplined for violation of a department rule which requires that officers carry out the functions of the Police Department by directing and coordinating their efforts “in such a manner as will establish and maintain the highest standard of efficiency and safety.”

The Chief of Police then forwarded his recommendation to me, and pursuant to Charter § 9.4.14, I had fifteen (15) days to consider the matter and approve, modify or reject the discipline recommended by the Chief of Police.

B. The criminal and administrative reviews of the threat to the former mother-in-law case

While the Childs case was making its way through the process to me, the complaint by Officer Turney’s former mother-in-law was also under investigation. This complaint went directly to IAB for investigation, which also included a review by the Denver District Attorney’s Office. On October 22, 2003, the District Attorney’s Office decided not to file any criminal charges against Officer Turney as a result of the threat he made to his former mother-in-law.

The Page County Prosecutor also reviewed the complaint by Officer Turney’s former mother-in-law. As explained above, this matter resulted in a deferred prosecution and a “No Contact Order” being issued to Officer Turney on November 24, 2003 by an Iowa court, barring him from any contact with his former mother-in-law for a period of five years.

The case was then reviewed by Officer Turney's District Commander, the Division Chief of Patrol and ultimately the DRB panel, as described above. The DRB panel made a disciplinary recommendation on March 1, 2004. The case was then forwarded to the Chief of Police. The Chief of Police again, in compliance with the Charter and the U.S. Constitution, provided Officer Turney with notice of the charges against him and an opportunity to be heard. Officer Turney was given this opportunity on April 1, 2004, when he and his attorney met with the Chief of Police. Thereafter, the Chief of Police recommended that Officer Turney be disciplined for violation of certain Police Department rules.

The Chief of Police then forwarded his recommendation to me, and pursuant to Charter § 9.4.14, I had fifteen (15) days to consider the matter and approve, modify or reject the discipline recommended by the Chief of Police.

IV. SUMMARY OF MANAGER OF SAFETY'S DECISION

Denver Charter § 2.6.2 provides that the "Manager of Safety shall be the officer in full charge of [the Department of Safety], subject to the supervision and control of the Mayor." The conduct of the members of the Police Department is governed by, among other things, the Police Department's Rules and Regulations. Pursuant to Denver Charter § 9.4.13, police officers may be subject to reprimand, fine, suspension, demotion or dismissal for a violation of the Rules and Regulations.

In reviewing the disciplinary recommendations made by the Chief of Police in the cases before me involving Officer Turney, I had to consider two questions:

First, what was Officer Turney's conduct and did such conduct in either or both cases violate one or more of the Police Department's Rules and Regulations?

And, second, if Officer Turney violated one or more of the Police Department's Rules and Regulations, what level of discipline should be imposed?

In order to answer these two questions, I engaged in an exhaustive review of information related to both cases in an effort to understand what occurred on both July 4 and 5, 2003. Among other things, I discussed the cases with the investigators involved as well as officers and commanders who made disciplinary recommendations throughout the administrative process to understand their basis for their findings and recommendations. I discussed tactics and firearms training with Police Academy and other training personnel. I visited the location of the shooting and was allowed full access to it. Based upon my thorough review, I have independently determined that Officer Turney violated several Police Department Rules and Regulations on both July 4 and 5, 2003. I further determined that a ten-month suspension was the appropriate level of discipline to impose. Let me briefly explain.

A. Officer Turney violated several of the Police Department's Rules and Regulations

i. The Childs case

I agree with the Chief of Police and have determined that some of Officer Turney's actions, as the first officer responding to the Childs home, were in violation of the Police Department Rule and Regulation requiring that officers carry out the functions of the Police Department by directing and coordinating their efforts "in such a manner as will establish and maintain the highest standard of efficiency and safety." The "efficiency and safety" rule requires, among other things, that a police officer utilize good judgment and tactics in making decisions in his or her police work, from the most mundane situation to the most serious, as was presented here. It also requires that a police officer strive to protect the safety of himself, other officers, and the public.

I find that Officer Turney violated this rule. Patrol officers are trained and quickly experience that domestic situations are some of the most volatile and potentially hazardous parts of their duties. These calls could involve alcohol, drugs and emotionally disturbed individuals. They often involve decisions about the use of force. How officers respond to these calls is critical. Citizens should expect that the response is one that considers both the safety of the officers and the citizens. The tactics used by officers and the judgments made by them are vital to overall safety and the decision to use force. Often information received from a caller by the 911 center, which is then dispatched to an officer, is incomplete and imprecise and so an officer must thereafter quickly make an on-the-scene assessment. Controlling the situation and gathering facts to determine how to proceed further is likewise vital.

My review of this case reveals, in my opinion, that Officer Turney made a number of tactical and judgment errors after everyone, with the exception of Mr. Childs, had exited the house. Officers are taught containment tactics, as well as the need to put obstacles between the threat of harm and themselves. They are also taught to increase the distance between the suspects and themselves and the time it would take the suspect to reach the officer to harm him.

In this case, officers, including Officer Turney, were aware that Mr. Childs was behind the door armed with a knife. In that position, he was no longer a threat to anybody. The officers had no information that Mr. Childs was a danger to himself. There were four officers present at the scene, two armed with tasers and one was a crisis intervention officer specifically trained to deal with persons with mental disorders. The barrier between Mr. Childs and everyone else was formidable. It could have been increased substantially without exposing the officers to harm by simply closing the security door. By containing the threat, officers would have had the time, distance and barriers necessary to interact with the family and gain more information to determine how to proceed. By immediately forcing a confrontation with Mr. Childs, Officer Turney exposed himself and others to an immediate risk of harm, placing Mr. Childs only six to seven feet away from Officer Turney, and creating a likely deadly force situation. By virtue of these tactical and judgment errors, I find that Officer Turney violated the "efficiency and safety" rule.

Even after confronting Mr. Childs, in my opinion, Officer Turney's tactics and judgment were questionable in failing to properly consider options that would have lessened the likelihood of the use of deadly force without unduly risking harm to himself or others. However, after considering the Police Department's current use of force policy, I have concluded that Officer Turney's actions at the time he actually fired his weapon did not violate that policy. The current use of force policy is governed by the same laws that are considered by the District Attorney's Office. Even with the standard of proof being only a preponderance of the evidence, I cannot conclude that another officer standing in Officer Turney's shoes could not have reasonably concluded that the threat posed by Mr. Childs was imminent and that deadly force was necessary. Therefore, I cannot discipline Officer Turney for violation of the current use of force policy.¹

It is important to point out that we are in the process of revising the Police Department's current use of force policy. The Mayor has impaneled a diverse group of individuals to review the policy and make recommendations for revision, which review is expected to be completed in a few weeks.²

ii. The threat to the former mother-in-law case

With respect to Officer Turney's threat against his former mother-in-law and his other inappropriate use of his personal cellular telephone while on duty, I agree with the Chief of Police that Officer Turney violated the Police Department Rules and Regulations which require that police officers "not engage in conduct prejudicial to the good order and police discipline of the department or conduct unbecoming an officer," that police officers "be held strictly accountable for the good order of the post or beat to which they have been assigned for duty" and that they "give their whole attention to their duties at all times." I further agree with the Chief of Police that Officer Turney violated the Police Department Rule and Regulation which prohibits a police officer from violating any criminal laws, including the Colorado law prohibiting harassment.

I find that Officer Turney violated these rules by making an inappropriate threat to his mother-in-law, while on duty, in uniform and sitting in his patrol car. There are strong indicators that his former mother-in-law is credible, and Officer Turney's threat to her had

¹So as to be clear, this is not to say that many Denver Police Officers would not have dealt with the situation differently. While not obligated to do so under the law, other officers perhaps would have backed away or used some other form of force. On a frequent basis, Denver Police Officers exercise great restraint and risk harm to themselves to refrain from using deadly force in situations where they might have otherwise been justified.

²Because I have been asked numerous times about the other fatal shooting in which Officer Turney was involved, I feel I would be remiss if I did not briefly mention it here. I found no connection between the shooting of Mr. Childs on July 5, 2003, and the shooting of Gregory Smith on January 30, 2002. The Denver District Attorney did not find any basis to prosecute either officer involved in that matter, and the shooting was found to be justified. I have reviewed the Smith case and agree with this conclusion.

a negative impact on her and her family. As a result of the threat, an Iowa court issued a “No Contact Order” to Officer Turney for a period of five years.

In addition, I find that Officer Turney violated these rules by spending approximately 147 minutes on his personal cellular telephone during his work shift. At least two of the personal calls were made while on a traffic stop, one of which extended into time during which he was allegedly conducting extra patrol at a location. In addition, while some lengthy calls were being made, no activity was reported on his log sheet.

B. Officer Turney’s violations warrant a ten-month suspension

Having determined that Officer Turney violated several Police Department Rules and Regulations by virtue of his conduct on July 4 and 5, 2003, the next decision I had to make was what penalty to impose on him. In determining an appropriate penalty, I considered numerous factors, including but not limited to: the Manager of Safety’s need to maintain administrative control of the Police Department; the facts underlying the rule violations; the severity of the rule violations; Officer Turney’s response to the alleged rule violations; Officer Turney’s employment history; the impact of his rule violations; and discipline received by other police officers in “similar circumstances.”

After considering these and other factors, I concluded, based on the totality of the circumstances, that Officer Turney should be suspended without pay for ten months from his position as a Denver Police Officer as a result of his misconduct on July 4 and 5, 2003. A police officer is given awesome power and discretion and is expected to judiciously exercise such power and discretion. Yet Officer Turney exhibited poor judgment on both July 4 and 5, 2003. This poor judgment had profound and far-reaching consequences for which he must be severely disciplined.

Although I found no evidence of any causal link between the threat to his former mother-in-law on July 4 and the shooting on July 5, his behavior on July 4 has caused, at the very least, a perception that his behavior on July 5 was influenced by the prior day’s behavior. Although I acknowledge that personal matters, including those which can flow from divorce, can sometimes cause people to engage in inappropriate behavior, police officers are expected to understand that because of their positions of trust and power within the community, their actions, including those related to their personal lives, are subject to a high level of scrutiny. For this reason, the Police Department’s Code of Ethics states, “I will keep my private life unsullied as an example to all” and I will “develop self-restraint and be constantly mindful of the welfare of others.”

From a disciplinary standpoint, Officer Turney’s behavior on July 4 and 5, 2003 has had a harmful effect on the Police Department and the City and County of Denver; his behavior has contributed to the undermining of public confidence in the regular, daily work of our police officers. Therefore, I have imposed a lengthy suspension of ten months on Officer Turney.

V. CONCLUSION

In closing, I would like to say three things. First and foremost, I believe that the decision I have reached in these two cases is fair, appropriate and consistent with my Charter-mandated duties and responsibilities as the Manager of Safety for the City and County of Denver.

Second, as a former police officer myself and as Manager of Safety, I support the men and women of the Denver Police Department. I believe the seriousness with which I approached this decision, and the decision itself, reflect my commitment to the Police Department. I know some will disagree. There are some who believe that it is nearly always wrong to “second guess” or discipline someone for judgment exercised in a life-threatening situation. I simply disagree. Our public demands, and we must demand of ourselves, accountability for our decisions and our actions, no matter how difficult the circumstances under which those decisions are made. The decision I announce today is based on two cases, one officer and that officer’s judgment.

Lastly, I know that for many people, the pain and loss caused by the events of July 4 and 5, 2003, will never go away. I wish I could change or make-up for the past, but I cannot. All we can do is look to the future.

Issued By:

Alvin J. LaCabe, Jr.
Manager of Safety