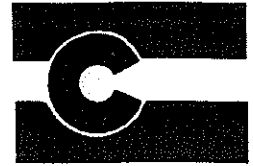




**ROBERT S. GRANT**  
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September 9, 2004

Chief Gerald Whitman  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204

Re: Officer Involved Shooting – May 30, 2004

Dear Chief Whitman:

The District Attorney's Office of the Seventeenth Judicial District has reviewed the events of May 30, 2004 regarding the death of Roman Rael and involving Denver Police Officers Paul Jimenez and Rudolph Suniga. This office was appointed as Special Prosecutor to conduct this review due to the potential for the appearance of a conflict of interest with the Denver District Attorney's Office because a relative of one of the involved officers works there. Our review was based upon the reports, documents, photographs, videos, and diagrams provided to us by the Denver Police Department.

On Sunday, May 30, 2004 at approximately 5:15 a.m., Officers of the Denver Police Department were dispatched to a shooting at 549 South Stuart Street. This was the home of Gloria Santiago. Upon arrival, the officers discovered the body of Lorenzo Joseph Jaramillo. Mr. Jaramillo had a clearly visible gunshot wound to the head. Ms. Santiago eventually related that she was having a "get together" at her home. The deceased and Roman Rael had been present at the end of the gathering. Mr. Rael had recently been released from jail, and Mr. Rael was questioning Ms. Santiago about her relationship with Mr. Jaramillo. Mr. Jaramillo stated that he had been kissing Ms. Santiago while Mr. Rael was in jail. Mr. Rael pulled a handgun out of his waistband. Ms. Santiago ran from the home, fearing that Mr. Rael was going to kill her. As she ran away, Ms. Santiago heard three to four gunshots. Mr. Rael fled the scene in Ms. Santiago's black, 1987 Toyota pick up, license plate 864-FKS.

By 5:15 p.m., the Denver Police had obtained a warrant for the arrest of Mr. Rael for Murder in the First Degree. Denver officers had already been advised to be on the lookout for Mr. Rael for Murder in the First Degree, and a description of the truck and license plate had been aired.

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At approximately 6:53 p.m., Officer Kevin Osborne observed a black Toyota pickup bearing license plate 864-FKS in the 4200 block of West Dartmouth Avenue. Officer Osborne saw a single male in the truck. Officer Osborne recognized it as the wanted pickup, was aware that the driver could be Mr. Rael, and was aware that Mr. Rael was wanted for First Degree Murder. Officer Osborne called for assistance. Officer Osborne followed the Toyota pickup westbound on Dartmouth Avenue, northbound on Raleigh Street, and eastbound on Yale Avenue. Officer Zamora, who was westbound on Yale Avenue, attempted to block Yale Avenue. Mr. Rael veered left around him and accelerated. Officers Osborne and Zamora activated their overhead lights and sirens. Mr. Rael continued eastbound at 50 to 60 mph, disregarding the traffic signals on Yale. Mr. Rael turned northbound on Federal Boulevard. Mr. Rael accelerated to approximately 80 mph, weaving in and out of traffic.

While northbound on Federal Boulevard, Mr. Rael passed a Denver Patrol car that was stopped and facing southbound on Federal. Officer Osborne believed he observed Mr. Rael fire two shots at the patrol car. Officer Jake Stevenson, the officer in that patrol car, had stopped his patrol car in the 1500 block of Federal Boulevard, intending to allow the pickup and pursuing officers to pass. Officer Stevenson then intended to turn around and join the pursuit. As the pickup passed him, Officer Stevenson saw the driver point a black semi-automatic handgun at him and fire one shot. Officer Stevenson was able to see a muzzle flash and saw the gun recoil. Officer Stevenson aired that the driver of the pickup had fired at him. Officer Zamora observed Mr. Rael fire at least one shot out of the left window of the pickup, break out the glass in the back of the cab, and fire at Officer Zamora. Officer Zamora aired that the driver of the pickup had fired at him. Mr. Rael turned westbound on Kentucky Avenue. Later, two spent shell casings were recovered in a search of the pursuit route: one in the 1300 block of South Federal Boulevard, and the other in the 1500 block of South Federal Boulevard. These casings were of the same color and caliber as those fired by Mr. Rael, and they were dissimilar to the ammunition used by the involved officers.

Officer Rudy Suniga and Officer Paul Jimenez, who were in the same patrol car, had heard the chase being aired. They proceeded to Florida Avenue and Federal Boulevard. They stopped in the intersection of Florida Avenue and Federal Boulevard. Officer Suniga left his lights and siren on, intending to control cross traffic and prevent a collision. By this point shots had been fired by the suspect, and, per Officer Suniga, "it was getting dangerous for everyone." Officer Suniga saw the pickup come over a hill, and he saw one patrol car, Officer Zamora's, behind him. The pickup passed them, and Officer Suniga pulled in behind Officer Zamora. This made their patrol car the second car in the pursuit. Officer Jimenez observed Mr. Rael pointing his gun out the broken back window of the pickup during the pursuit.

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Several citizens observed Mr. Rael shooting at police during the pursuit. Chastine Gutierrez observed the driver of the pick up firing at peace officers as he drove down Kentucky. Jose Hurtado, who was driving southbound on Federal at about Louisiana Avenue, observed the pickup coming at him, heard gunshots, and saw a police car behind the pickup swerve to avoid being hit by gunfire.

In the 3300 block of West Kentucky Avenue, Officer Michael Zamora used the P.I.T. maneuver to stop the Toyota pickup. This caused the pickup to lose control, spin 360 degrees, and stall. The pickup came to rest facing westbound along the south side of the 3400 block of West Kentucky Avenue. The left rear tire was up on the sidewalk, and the other three tires were on the street. Officer Zamora also lost control of his patrol car, which went north into a small parking area and struck some cars. Officer Suniga stopped his patrol car to the east and slightly to north of the pickup.

When Officer Zamora moved to execute the P.I.T. maneuver, Officer Suniga observed Mr. Rael looking left and right and raising his handgun. Officer Suniga believed that Mr. Rael was trying to see exactly where Officer Zamora was.

Officer Jimenez jumped out of the patrol car. Mr. Rael appeared to be crouched down, and Officer Jimenez was able to observe Mr. Rael's head and a small portion of his body. Officer Jimenez was able to see Mr. Rael had the gun in his hand. Mr. Rael had the gun raised high enough that it was visible through the window, but Officer Jimenez was unable to discern exactly where Mr. Rael was pointing it. Officer Jimenez pointed his firearm at Mr. Rael and fired two to three times. At that point, Officer Jimenez's gun jammed. Officer Jimenez dropped to one knee behind the door of the patrol car. Officer Jimenez had difficulty clearing the jam. Officer Jimenez managed to eject the partially empty magazine and put in a second magazine. However, Officer Jimenez elected to holster his handgun and use the shotgun from the patrol car. Officer Jimenez was not confident that the handgun would work. Officer Jimenez states he was afraid for his life, the life of his partner, and the lives of the officers and civilians in the area. Officer Jimenez concluded that the shotgun was the better weapon under these circumstances. Thus armed, Officer Jimenez ran to his right (north) and took cover behind a truck. He could see the upper portion of Mr. Rael and could see him moving. Officer Jimenez fired four shots from the shotgun, emptying the shotgun. Officer Jimenez moved behind a nearby car, then fired several more rounds from his handgun. At that point, Officer

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Jimenez saw no further movement in the pickup. Officer Jimenez called for everyone to cease firing. He aired that they would need an ambulance. Officer Jimenez, Sgt. Martinelli, and other officers approached the pickup. Mr. Rael was slumped over with his handgun resting on his abdomen. Officer Jimenez fired a total of seven rounds from his handgun and four rounds from the shotgun.

When the pickup came to rest after the P.I.T. maneuver, Officer Suniga could see the head and shoulders of Mr. Rael. Officer Suniga saw Mr. Rael raise his handgun and point it to the right (north), which is where Officer Zamora's patrol car had come to rest. Later, a bullet hole was discovered in the rear, driver's side door of Officer Zamora's patrol car. The bullet recovered from inside the door was tested by the Denver Police Department's Crime Laboratory and determined to have been fired by Mr. Rael's .45 caliber handgun. This bullet and the apparent angle at which it entered the door indicates that Mr. Rael fired at and hit Officer Zamora's patrol car after the pickup was forced to a halt.

While Mr. Rael was raising his gun, Officer Suniga jumped out of his car and drew his firearm, a 9 mm Glock. Officer Suniga fired at Mr. Rael while he was pointing his gun at Officer Zamora. Officer Suniga continued to fire at Mr. Rael until he did not see Mr. Rael's handgun anymore. Officer Suniga remained by his patrol car until other officers approached the pickup and confirmed that there was no longer any threat to the police or the general public. Officer Suniga fired five rounds from his handgun.

Various members of the public saw the events on Kentucky Avenue. Mr. Robert Maes heard gunshots coming from the black pickup. Mr. Rudy Padilla was sitting outside in the 3400 block of West Kentucky Avenue when he saw police cars chasing a black pickup. Mr. Padilla saw the pickup hit the curb and stall. Mr. Padilla said he saw the driver of the truck fire shots at the police cars, then he saw the police return fire. Ms. Connie Romero stated she was watching TV when she heard gunshots. She looked outside and saw the pickup stalled, partially up on the curb. Ms. Romero saw the driver moving in the vehicle. Ms. Romero saw the driver fire at the police and the police take cover. She heard the police return fire. Ms. Romero said the driver was facing forward and his head slumped slowly to the door. The police were yelling at him to get out of the vehicle and show his hands, but he did not comply.

Three of the shell casings, which were collected at the scene on Kentucky Avenue, were tested by the Denver Police Department's Crime Laboratory and determined to have been fired by Mr. Rael's .45 caliber handgun. Two of these were

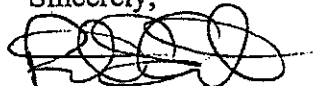
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recovered on the street outside of the pickup, and one from inside the cab of the pickup. This corroborates that Mr. Rael was firing at the police officers after he was brought to a stop on Kentucky Avenue.

Pursuant to C.R.S. §18-1-704, a person may use deadly physical force to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force when (a) the person reasonably believes a lesser degree of force is inadequate and (b) the person has reasonable grounds to believe and does believe that he or another is in imminent danger of being killed or of receiving great bodily injury. The evidence supports the conclusion that Officer Jimenez and Officer Suniga were faced with an unlawful application of deadly physical force. Officer Jimenez and Officer Suniga reasonably and accurately concluded that they, other officers, and citizens of the City and County of Denver were in immediate danger of being killed or seriously injured by Mr. Rael. Under these circumstances, any lesser degree of force would have been inadequate to stop Mr. Rael.

Based upon the information provided to us and upon our review of the applicable case law and statutes, we conclude that the actions of the officer's was justified and that neither officer engaged in any criminal conduct. If you have any questions, please feel free to contact me.

Sincerely,



Robert S. Grant  
District Attorney

RSG/sl

cc: Detective Michael Martinez  
Officer Paul Jimenez  
Officer Rudolph Suniga