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PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING AN OFFICER INVOLVED SHOOTING BY OFFICERS DANIEL MOREHEAD AND MICHAEL WALSH RESULTING IN THE DEATH OF ARTURO ENRIQUEZ ON JUNE 28, 2010

I. OVERVIEW

On June 28, 2010, PS¹, a wheel-chair bound young man who is paralyzed from the waist down, left his apartment in the 3100 block of West Louisiana Avenue to get cigarettes. PS carried with him a black air gun which is a replica of a Glock semi-automatic. PS used the weapon to fend off potential assailants because, as he put it, the gun "looks real."

After purchasing his cigarettes and returning home, PS saw two men standing outside the gated entrance to his apartment building. Those men turned out to be Arturo Enriquez and GM, his companion. As PS went into the building, both men followed him. They got onto the elevator with him and got off on the same floor as PS. Worried that something bad was going to happen, PS went to his apartment door, put the key in but was pushed by Enriquez who tried to enter. PS refused to allow Enriquez entry. Enriquez said that he was going to his sister's and walked to another apartment door. When PS began unlocking his door, Enriquez rushed back toward him. PS pulled the gun, but Enriquez grabbed him and began punching him in the face. PS bit Enriquez on the hand and Enriquez threw PS out of the wheelchair, knocking the gun out of PS's hands. Enriquez kicked PS as he lay on the ground and said, "Fuck you. I'm going to get your bitch ass." Enriquez then picked up the gun and walked out, followed by GM.

Shortly after Enriquez's assault and robbery of PS, SL, who lives on West Louisiana with her husband and children, was at home working on her computer. Around 12:30 to 1:00 in the morning, she heard voices outside of her window, and decided to see what was going on. She looked out of her window and saw two men. One of the men was holding a gun in his right hand; the other was sitting on the ground. Then, she saw the man with the gun point it at the other man. She was shocked and very scared because her children were sleeping by the window. SL ran to her husband, who had already gone to bed, and told him that there was a man outside holding a gun, and she called 9-1-1.

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¹ For the purposes of this public statement, civilian witnesses are identified by initials only. The full identities of these witnesses are contained in the Denver Police Department files related to this case.

Dispatch called over the police radio that there was a report of a man with a gun at 3190 West Louisiana Avenue. Two officers were dispatched to the call. Officer Morehead was close to the area, so he covered the call as well. Officer Morehead arrived at location, parked his car and observed that there was no one on the street. He saw that another officer, Officer Meier, had arrived and the two of them got out of their vehicles and walked around the building, but did not see anyone. Officer Walsh arrived shortly thereafter. The officers spoke to SL and she said that she did not hear a car leave the area. Other officers arrived and they searched the area a bit more, but did not find anything.

Believing the two men SL saw were likely on foot, Officer Morehead got back in his vehicle and drove down what he thought would be a path they might take. He then saw two men sitting drinking beer, one of whom matched the description given by SL. He radioed out to the other patrol vehicles that he had located the two suspects and put a spotlight on the two men. Because of the nature of the call, and because it was late at night, Officer Morehead had his weapon out. Officer Morehead stepped out of his vehicle and began to approach the two men, later identified as Arturo Enriquez and his associate, GM.

Enriquez stood up, took several long drinks of his beer and tossed the beer aside. Officer Morehead instructed him to "sit down." He ordered Enriquez several times stating, "You need to sit down, keep your hands in view." Enriquez did not comply. At this point Officer Walsh arrived in his vehicle.

As Officer Morehead continued telling Enriquez to show him his hands, Enriquez reached for something in his pocket and pulled out a screwdriver. Officer Morehead told Enriquez to show his hands and to stop reaching into his pocket. Officer Walsh exited his vehicle and approached the scene. Officer Morehead closed the distance between him and the suspects and decided to kick Enriquez to get him off of his feet and into a prone position. He kicked Enriquez near his hip, causing Enriquez to stumble and fall backwards, first on his rear-end and then onto his back. Officer Morehead said again, "Show me your hands."

By this time, Officer Walsh had taken out his firearm and was standing near Officer Morehead, facing the suspects. Enriquez was not looking at the officers as he sat up on his left elbow and reached with his right hand towards his side. According to both of the officers, Enriquez then produced a handgun; both officers confirmed that they could clearly see a black gun. Officer Morehead yelled, "Drop your weapon." Officer Walsh said he thinks he also issued commands, but he can not remember what he said.

Enriquez moved the gun with his right hand toward the front of his body and covered the top of the gun with his left hand. He then pointed it at Officer Morehead's feet and raised the gun upward, pointing at Officer Morehead's body. At that moment, both officers thought that Enriquez was going to shoot Officer Morehead, and almost simultaneously the officers fired at Enriquez.

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Enriquez fell backwards. Officer Walsh radioed that there was an officer involved shooting, the suspect was down and an ambulance was needed. The ambulance arrived within just a few minutes, and Enriquez was taken to Denver Health Medical Center where he was pronounced deceased at 1:35 a.m. by Dr. Liao.

After carefully reviewing the entirety of this investigation and all surrounding circumstances, and after considering all applicable law, as well as Denver Police Department policy and training, the Manager of Safety's Office has concluded that the officers involved in this incident used appropriate tactics in confronting Enriquez. The officers reasonably attempted to de-escalate the situation and attempted to gain compliance from Enriquez without having to use deadly force. This Office has also concluded that Officers Morehead and Walsh were reasonable in believing that deadly force was necessary to defend themselves against the apparent threat of deadly force by Enriquez. Accordingly, no disciplinary action against any of the involved officers is warranted.

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

II. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Office of the Independent Monitor (OIM) was on hand to observe the investigation and provide input, as were members of the Internal Affairs Bureau. Interviews were observed by the OIM, as required by Ordinance and permitted by the protocol of the District Attorney's Office. The criminal investigation was completed and the District Attorney's decision letter was released on July 8, 2010. In the language of the statutory requirements, the District Attorney declined to file charges against Officers Morehead and Walsh, concluding:

The intent of Officers Morehead and Walsh was to locate and contact the person described by the citizen witness as being armed with a handgun. The officers were successful in locating Enriquez. Prior to being contacted by the officers, Enriquez had already assaulted P.S., stolen the handgun from him, and brandished the handgun in the neighborhood. Enriquez's conduct throughout the contact with Officers Morehead and Walsh was non-compliant, aggressive and assaultive. He ignored all of their lawful commands and advanced on Officer Morehead while pulling a screwdriver from his pocket. The officers did not fire at that time and Enriquez tossed away the screwdriver. Enriquez's decision to then draw and point the handgun at the two armed police officers, caused the officers to justifiably shoot him.

The fact that the handgun turned out to be a *Crosman 77—semi-automatic CO2 air pistol*, and not the more powerful "firearm" it resembled, is of no significance in finding the officers' conduct to be justifiable. It

would be impossible for anyone to determine under the specific facts of this case that the handgun Enriquez was wielding was a less powerful weapon than the officers perceived. All other witnesses in this incident believed this was the actual "firearm" it resembled, including the individual who was with Enriquez at the time of the shooting.

It is also important to note that the weapon is still capable of causing serious bodily injury to the officers or others, even though it is less powerful than the "firearm" it resembles. The weapon is not just a toy replica of a semi-automatic handgun.

There is no justification to attack a police officer who is performing his lawful duty. Officers have a right to defend themselves from a perceived imminent attack. Armed assailants should expect to be shot if they draw a handgun on an armed police officer under the circumstances of this case. Had Enriquez simply complied with the officers' lawful commands, the confrontation would have ended peacefully at that time.

Based on a review of the totality of facts developed in this investigation, we could not prove beyond a reasonable doubt that it was unreasonable for Officers Morehead and Walsh to fire the shots that caused Enriquez's death. Therefore, no criminal charges are fileable against either officer for his conduct in this incident. This is a justifiable homicide under the facts of this case and Colorado law.

Once the District Attorney's Office determined that no criminal laws were violated during this incident, the case was turned over to the Denver Police Department for its consideration of whether any Departmental policies were violated. This process consisted of a detailed review of the case by the Internal Affairs Bureau, the Use of Force Review Board, and the Chief of Police, Gerald Whitman. This administrative process was monitored by the Office of the Independent Monitor. The above information was provided to Chief Whitman, as was input from the Independent Monitor. Chief Whitman determined that no Department policies had been violated and the case was then forwarded to this Office.

This Office conducted its own comprehensive analysis of this case. That analysis and review began with members of this Office responding to the scene in the early morning hours after the shooting and observing all of the officer and civilian interviews at the time of the incident. Since that time, this Office has reviewed the entirety of the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including 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 also given to the findings of the Denver District Attorney, as well as to the input, recommendations and conclusions of the Independent Monitor, the Chief of Police, and the Use of Force Review Board.

III. DETAILED FACTUAL BACKGROUND

The following is a detailed recitation of the facts of this case. These facts were drawn from the following: video interviews of Officers Morehead, Walsh and Jason Meier (an officer who arrived on the scene shortly after shots were fired); video interviews of civilian witnesses SL, PS, LT and GM; statements of officers who responded after the event; statements of firefighters and a paramedic who responded after the event; interviews and/or statements of other civilian witnesses; a study of the crime scene, physical evidence recovered and all scientific testing conducted; and a review of other records and reports including the autopsy of Enriquez. Relevant portions of these interviews and reports are referenced or quoted throughout this public statement.

Criminal History

Mr. Enriquez's background provides an indication of how he has interacted with law enforcement in his adult life. As noted by the District Attorney:

Enriquez's criminal history lists 15 aliases, 4 dates of birth, and 2 social security numbers. He was born in Mexico City, Mexico. Enriquez has numerous arrests dating back to 1993. His arrests include: Assault, Disturbing the peace, Disobeying a lawful order, Destruction of private property, Disturbing the peace, Assault, Shoplifting, Disturbing the peace, Fugitive hold for Arapahoe County, Driving Under Revocation, Destruction of private property, Disturbing the peace, Interference with Police Authority, Driving under restraint, Fugitive hold for Adams County on Forgery, Shoplifting, First degree criminal trespass of vehicle, False information, First degree criminal trespass of vehicle, Motor vehicle theft, Robbery, Fugitive hold for Adams County on First degree criminal trespass of vehicle & False information, Motor vehicle theft, Parole violation—released to Washington County. Various aliases were used by Enriquez in these arrests.

This background, while unknown to officers at the time of the fatal confrontation with Enriquez, does provide insight into his actions on June 28, 2010.

The Events of June 28, 2010

The events leading up to SL's 9-1-1 call started the day before, on Sunday, June 27, 2010. According to Enriquez's associate, GM, Enriquez was "pretty toasted" when GM saw him around noon that day. GM did not see Enriquez again until later that evening when he ran into him at an apartment building located at 3130 West Louisiana Avenue.

At the apartment building, Enriquez and GM encountered PS, a wheelchair-bound man who is paralyzed from the waist down. According to PS, he left his apartment and went outside around 12:30 in the morning of June 28, 2010, to get cigarettes. A short time later he returned to his apartment building where he saw two men, later determined to be Enriquez and GM, standing outside of the gated entrance to the building. One of the men asked PS for a knife, stating that he needed it to fix his friend's belt. PS informed

the man that he did not have a knife, and then began to enter his apartment building. Enriquez and GM followed PS into the building, got into the elevator with PS and followed him to the fourth floor where PS's apartment was located. PS said he thought something bad was going to happen.

PS got off the elevator and approached his apartment. Unbeknownst to Enriquez, PS had a black "air gun" or "BB gun" with him hidden under his leg which looked like a very powerful firearm. According to PS, the handgun "looks like a Glock" semi-automatic with a slide on the top, and a clip. PS carries the handgun because he has been "jumped" about six times at the apartments. PS said that the gun looks very real and it has worked in scaring off attackers a couple of times.

As he put the key in his door and began to unlock it, Enriquez came up behind PS and tried to push the door to PS's apartment open. PS removed the key and told him, "Uh-uh, I don't know you; you ain't coming in my house." Enriquez then informed PS that he was going to his sister's house, at which point he walked down the hall and knocked on another apartment door. The resident of that apartment would not let Enriquez inside.

PS again tried to unlock his own door, when suddenly Enriquez "rushed down the hallway" towards PS. PS took his handgun out and tried to fire it at Enriquez, but the safety was on so it did not shoot. Enriquez kept coming at PS despite the very real looking gun. PS said, "It was too late, he already grabbed me, started punching me in the face." PS tried to hit Enriquez with the gun while Enriquez punched PS repeatedly in the face. Finally, PS was able to bite Enriquez on the hand. Enriquez threw PS out of his wheelchair and the gun fell to the ground. According to PS, as he lay on the ground, Enriquez kicked him and said, "Fuck you. I'm going to get your bitch ass." GM then walked up to PS and laughed and said, "That's what you get, cripple." Enriquez picked the gun up from the floor and walked away with it, going back downstairs. PS called an ambulance for his injuries.

It is important to note that during this encounter, PS noticed that Enriquez was carrying a screwdriver in the waist band of his pants. PS said, "I think he had like four of them."

Enriquez and GM walked west on West Louisiana Avenue and stopped in the parking lot of SL's apartment building at 3190 West Louisiana Avenue. According to SL, she was working on her computer shortly before 1:00 a.m. when she heard voices outside of the window. She looked out the window and saw two men. One of the men, later identified as Enriquez, was holding a gun in his right hand; the other man, later identified as GM, was sitting on the ground. SL could see the gun clearly and identified the gun as black and stated that the gun was "regular, like the cops carry around." She noticed that the two men had a 12-pack of Bud light beer. She saw Enriquez tell GM to "get up," but GM did not want to get up. SL watched as Enriquez pulled the slide on the gun three times, and began pulling GM up while he pointed the gun at him.

SL ran to her husband and told him that there was a man outside holding a gun and she called 9-1-1. SL was shocked and scared. Her children were right there, sleeping by the window. She and her husband tried not to make any noise as they waited for the police to arrive.

Officer Morehead is currently assigned to detail 3 in the patrol division of District 4. On the night of this incident he was wearing a regulation Denver Police Department uniform and was driving a fully marked Crown Victoria vehicle, equipped with a light bar, and Denver Police Department insignia on each front side door. Officer Walsh was also assigned to District 3 that evening. He was also wearing a regulation Denver Police Department uniform and driving a fully marked police vehicle.

Shortly before 1:00 a.m., dispatch sent out a call that there was a man with a gun at 3190 West Louisiana Avenue. Dispatch provided a description of two men. Officer Day, car 484, and Officer Meier, car 482, were dispatched to the scene. Officer Morehead was only a few blocks away so he responded to the call. Officer Walsh was also in the area so he responded as well. Officer Morehead and Officer Meier were the first to arrive at the scene at 12:51 a.m. Officer Morehead parked his car, looked around and observed that there was no one on the street. Officer Morehead and Officer Meier got out of their vehicles and walked around the building. Officer Walsh arrived shortly thereafter, at 12:54 a.m. Officer Walsh searched around some other apartments in the area and did not see anyone matching the description provided by SL. Other officers were also on the scene searching the area.

SL saw the officers outside and went out and spoke to them. She told them that one man had a gun and the other was on the ground. She informed them that the person carrying the gun was wearing a white t-shirt that was torn. SL said that she did not hear a car.

Because SL had told the officers that she did not hear any cars, Officer Morehead believed the two men SL saw were likely on foot. Officer Morehead got back in his vehicle and drove down what he thought would be a path they might take. He then saw two men sitting drinking beer, both of whom matched the description given by SL.

Officer Morehead pulled his vehicle up near the two men with his headlights on them. He radioed out to the other patrol vehicles that he had located the two suspects and he put a spotlight on the men. Officer Morehead stepped out of his vehicle, went around the door and began to approach the two men, later identified as Enriquez and GM. Enriquez stood up, took several long drinks off of his beer and tossed the beer aside. Officer Morehead immediately instructed Enriquez to "sit down." Because of the nature of the call, Officer Morehead had his weapon out. He ordered Enriquez several more times stating, "You need to sit down, keep your hands in view." Enriquez did not comply.

At that point, Officer Walsh arrived in his vehicle. Officer Walsh could see that one person was seated on the ground, and he could see that Officer Morehead was issuing commands. He could not hear what Officer Morehead was saying because Officer Walsh was still in his car, but he could tell Officer Morehead was issuing commands because he was pointing.

Officer Morehead continued telling Enriquez to show him his hands. Without complying, Enriquez reached for something in his pocket and pulled out a screwdriver.

According to Officer Morehead:

I ordered him several times, "You need to sit down. Keep your hands in view and sit down." He ignored these orders as I gave them. I started to close the distance between us as I had noticed another police officer was rounding the corner as well and stopping and he was getting out of his vehicle. So as I approach, I notice there's a handle of what I assume it was a screwdriver sticking out of one pocket — And he reaches for this screwdriver. I tell him, "Show me your hands and sit down. Don't — don't be pulling things out of your pocket." He pulls the screwdriver out and tosses it aside, very careless just like he doesn't have a care in the world.

Officer Morehead further noted:

By the way he's moving, I'm pretty sure I can assume [Enriquez] was drunk, he was very unsteady on his feet, just the way he moved...swaying a bit...he's obviously not following my orders.

At that point, Officer Walsh had exited his vehicle. For tactical and safety reasons, Officer Morehead kicked Enriquez to get him off of his feet and into a more prone position. He kicked Enriquez near his hip. This worked; Enriquez stumbled and fell backwards to the ground, first on his rear-end and then onto his back. Officer Morehead told him again to "show me your hands."

On viewing this situation, Officer Walsh stated:

And I – when I saw Officer Morehead issuing commands, I – I was in my car so I couldn't hear what he was saying but I could tell because he was pointing. I exit my vehicle. As I exit my vehicle, I see Officer Morehead deliver a – a front kick to the – to the suspect which knocked him onto his butt. He went straight down to his butt.

Officer Walsh took out his firearm and ran up to Officer Morehead. Enriquez was not looking at the officers. Enriquez sat up on one elbow and then reached towards his side. According to Officer Morehead, Enriquez:

Casually pushes his shirt aside, and produces a pistol, I can see clearly it's a gun, it's a black gun.

Both Officers Morehead and Walsh described the handgun as an automatic pistol. Enriquez pulled out the gun and moved the gun with his right hand toward the front of his body. Enriquez covered the top of the gun with his left hand while moving the gun upward from a position where it was pointing towards Officer Morehead's feet, up towards the officer's body. At that point, according to Officer Morehead:

He moves it in this – it - it could be my perception, but it seemed like a slow casual arc around pointing in my direction at my feet. And to his left hand on the top, the impression I had was that's the motion you want to

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make if you're gonna rack - rack the pistol . . . He's pointing his weapon at me. It's pretty soon gonna be leveled at me. I felt I had no choice, but, in protection of myself, I needed to – to fire, so I started shooting

Officer Walsh stated:

At that point, I see the suspect reach right - for his back pocket and take a gun out and just bring it straight up at us. My - my first thought was "oh shit, gun" and I thought he was gonna shoot us, and that's when I started shooting. So I kept shooting until I felt that he was no longer a threat. He had fallen down to his left side and he wasn't moving anymore.

* *

And that's when I just started shooting to keep him from killing us. I totally thought he was going to shoot us.

* *

And everything probably within ten seconds from me arriving to the shots being fired, it – it just happened so fast.

Officer Morehead stated that he shot rapidly, and thought he shot approximately six (6) times. Officer Morehead also stated that at the time he fired his weapon, he was approximately three (3) feet from Enriquez. Officer Walsh stated that he was approximately eight (8) feet from Enriquez at the time he fired his weapon.

Enriquez fell backwards and the officers stopped shooting. They saw the handgun lying on the ground next to Enriquez. Officer Morehead was aware that Officer Walsh had also fired. Officer Morehead heard someone radio out "shots fired". Officer Walsh had radioed that there was an officer involved shooting and an ambulance was needed. The officers tactically re-loaded their weapons and kept the suspects covered until other officers arrived on the scene.

SL, at home in her apartment, heard gunshots. She told her husband "I think they got him."

The ambulance arrived and Enriquez was taken to Denver Health Medical Center where he was pronounced deceased at 1:35 a.m. by Dr. Liao.

Civilian Witness Statements - Summaries

Responding police officers contacted numerous citizens in the area on the night of this incident conducting a neighborhood survey in an attempt to locate any other witnesses. Set forth below are summaries of the statements of some of those witnesses. Although not detailed below, there was one other witness, AL, who saw officers turning the corner at West Louisiana Avenue and Hooker Street and who heard shots around 1:15 a.m. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

The statements of PS and SL are summarized in the detailed recitation of the facts stated above.

LT – LT lives on West Alabama Place, across the street from where the incident took place. He stated that on the night of the incident, he was home getting ready to go to sleep. He opened up the bedroom window to get some air and he saw two men, later determined to be Enriquez and GM, walking eastbound in front of his house at approximately 12:20 or 12:25 a.m. Enriquez was in front, and GM was walking behind him. LT stated that the lighting was good and he did not have a problem seeing what was happening. He stated his view was not obstructed.

According to LT, the police pulled up on the two men. LT said that one of the officers jumped out of his vehicle and said, "Stop. We need to talk to you." LT could not hear exactly what was being said by officers or Enriquez, but Enriquez and GM stopped. LT then saw Enriquez reach towards his right side of waist. According to LT, the officer yelled, "Stop, put your hands up!" LT said the officer said this two times. Enriquez did not comply. LT stated that Enriquez "reached for something" and then Enriquez had a "black object" in his hands. LT said he could see the object clearly and he thought it was a gun by the way Enriquez gripped the object and held it, with his hands clenched on the handle. In addition, LT thought the object was a gun because a lot of people in his neighborhood carry guns. LT said that officers yelled again two more times to Enriquez to put his hands up "and he refused to put his hands up".

LT said officers took out their weapons and fired. According to LT:

I felt, it was - the police, at that time - they did what they were supposed to, they drew their pistols and shot - because I felt they were in danger" (Emphasis added).

* * *

I felt it was right for them [the officers] because of the fact that they were in danger.

LT stated that he saw the first shot taken by the officers and then took cover. While taking cover he heard four more shots for a total of five shots. When he looked out his window again, Enriquez was laying on the ground. Other officers began to arrive. LT went outside with his daughter and saw Enriquez on the ground with the weapon on the ground about two feet away from him. LT said he could see perfectly the silhouette of a gun. LT stated that it looked like a "45 automatic or a 9 mm." He said, "I know weapons because I was in the military."

GM – GM is a homeless man who was camping in the area at the time of this event. On the night of the incident he stated that he had consumed a pint of whiskey and "a couple of 40 ounces of Cobra". He also stated that he had just picked up a 12-pack of Bud light before the shooting took place. He made a statement to Denver Police officers regarding the events of the evening; however, due to his impaired state, his version of events is difficult to follow and at times he contradicts himself.

GM said that Enriquez had had more to drink than GM. GM said he saw Enriquez between 11:00 and noon the day before the incident and Enriquez was "already pretty toasted." GM saw Enriquez later that evening at an apartment building on West Louisiana Avenue. GM stated that GM was with his friend, FF, who lives there. He stated that he ran into Enriquez at the apartment building after he left FF. GM said that Enriquez got into an argument with a "guy in a wheelchair." GM stated that he left while they were arguing. He said that Enriquez came out of the apartments and told GM that he had gotten in a fight with the man in the wheelchair. In the interview, GM initially stated that Enriquez told him about a fight that he had with a wheelchair-bound man, but that he did not see the fight. Later in the interview, GM insists that he did see the fight between Enriquez and "the guy in the wheelchair."

GM said that Enriquez told him that he believed that the "guy in the wheelchair" had called the police. GM said that he asked Enriquez why he would beat up a man in a wheelchair. GM said that Enriquez wanted to go back and "get the guy in the wheelchair." He said that Enriquez wanted to go back and "shoot him." GM said that he thought Enriquez kind of went off the deep end that night. GM said that Enriquez should not have beaten up a guy in a wheelchair.

According to GM, Enriquez showed him a gun and told him that he took it from the guy in the wheelchair. GM stated that the gun was a black Glock, 9 mm. GM said that he knows guns because he was in the military. GM stated that Enriquez had the gun out and was holding it in his right hand as they were walking down the street. GM said that Enriquez did not have it out when the police arrived. When asked to describe the gun, GM stated:

GM: It was a Glock.

Q: Are you sure?

GM: Yeah.

Q: How do you know it was a Glock?

GM: I've shot all kinds of Glocks.

Q: Really?

GM: Uh-huh [affirmative]. It was a Glock.

Q: What caliber? GM: 9 millimeter.

Q: Are you sure about that?

GM: Yeah.

GM stated that they were sitting at Alabama Street and Hazel when they decided to have a drink. According to GM, "The cops pulled up on us and just glocked him." GM said, "They murdered my homey." He stated, "They shot him, they didn't shoot me, they shot him." GM said that the officers did not say anything when they approached, and the two officers each shot 4 rounds.

GM said that he knew they were police officers as they approached. He also stated that the officers pulled up in a "police car." He said he knew they were police officers because "I know every cop in District 4."

According to GM, Enriquez had the gun in the front of his pants when the police arrived.

GM's Statement v. Statements of other Witnesses

There is a clear conflict between the story GM told, to the effect that the officers fired at Enriquez for no reason, and the observations of other witnesses and officers. GM's story that Enriquez never brandished a gun at officers and that the officers did not give any verbal commands prior to firing their weapons is clearly at odds with all of the other statements. However, other key facts in GMS's statement are consistent with other witnesses. The majority of GM's statement confirms PS's account of events that Enriquez took a very real looking weapon from PS. GM also states that Enriquez held the handgun in his right hand while he was walking down the street. Once the police contacted the two men, all accounts support that Enriquez had the gun, which everyone interviewed thought was real, and GM was unarmed. All accounts support that two officers arrived on scene, both of whom fired multiple rounds.

The key difference in events is whether Enriquez pulled the gun out and pointed it towards officers prior to the officers shooting, and whether the officers gave any warning prior to shooting. According to GM, Enriquez had the gun in the front of his pants, but he did not have it out when the officers contacted them. However, both men were seated side by side as they drank their beer. When Officer Morehead pulled up, Enriquez stood up. GM was still sitting. It is possible, and even likely, that from GM's position, he could not see where the gun was or what Enriquez was doing with his hands when officers approached.

Moreover, it is certainly possible that GM was not clear on the events of the evening, especially in light of the amount of alcohol he admittedly consumed that evening. This possibility is supported by the fact that his statement changed throughout his interview with the police. He confused the sequence of events, and confused what he had and had not seen leading up to Enriquez acquiring the gun.

In addition, LT, an independent witness with no personal stake in this investigation, heard the officers repeatedly tell Enriquez to "stop" and "put your hands up." LT saw the gun and he saw Enriquez point it at the officers. In addition, both of the officers' accounts of events are consistent. Both officers confirmed that Enriquez was ordered to show his hands prior to any shooting. Both officers stated that they saw Enriquez prop up on his left elbow, remove the weapon from under his shirt with his right hand and point it at the officers.

Taking into consideration the impaired state of GM, as well as the contradictions he makes throughout his statement, and looking at the statements of LT and the officers, this Office has concluded that it is more likely than not that the accounts of LT and Officers Morehead and Walsh are the more accurate descriptions of the encounter.

Responding Officers

In addition to the officers referred to above, numerous other members of the Denver Police Department, including command staff, officers, detectives and lab personnel responded to this incident. Among those who responded and provided statements were Officers Kurt Barnes, William Cash, Sean Cronin, Scott Day, Jeffrey DiManna, Kevin Ford, Frank Gallegos, Andrew Gathje, Jacob Herrera, Jacob Huffine, Phillip Jackson, Annmarie Lopez, Mark Lung, Jacek Polanowski, Crystal Raymond, Carl Sessions, Andrew Stadler, Brian White; Technician Marc Smith; and Sergeants Philip Hinkle and Brad Qualley.

Officer Jason Meier – Officer Meier is a patrol officer, currently assigned to District 4. On the night of the incident he was wearing a regulation DPD uniform and was driving a fully marked police vehicle. He was called to 3190 West Louisiana Avenue on a call regarding a woman who saw a man with a gun outside of her apartment. He and Officer Morehead arrived first and cleared the area and spoke to the witness, SL, who had made the call. SL had informed the officers that she did not hear a car so Officer Meier deduced that the suspects were likely on foot. He and Officer Day were searching a parking lot while Officers Morehead and Walsh went to Alabama Street. He then heard Morehead call out that he was contacting two parties. Officer Meier went back to his vehicle. When he got to the intersection at Hooker Street he saw muzzle flashes. Shortly after that he heard a call for shots fired. Officer Meier arrived on-scene. took GM off scene and placed him in a patrol car. Paramedics arrived approximately 3 - 5 minutes after he saw the muzzle flashes. The area was dark, however, with the lights from the patrol vehicles, the lighting was good and identifying objects was not an issue.

All law enforcement statements and reports can be found in the case file.

In addition, Homicide Bureau and other detectives along with crime laboratory personnel responded to the location of the shooting. These personnel were responsible for documenting the crime scene, photographing, collecting and preserving any physical evidence for further testing, and locating and interviewing witnesses. Denver Police Department personnel also attended and documented the post-mortem examination of the body conducted by the coroner's office.

Medical Response

As stated above, Officer Walsh called out on the radio that shots had been fired, that the suspect was down and he needed an ambulance. According to Officer Walsh, the ambulance and paramedics were on scene shortly after the incident.

Firefighters John Chism, Nicholas Clayton, Jason Valdez and David Foster arrived on scene with Fire Captain Robert Murphy and Paramedic Brian Fredrickson. When Enriquez became pulseless, they administered CPR. Enriquez was then placed in an ambulance and transported to Denver Health Medical Center. While en route, the medical team continued CPR and did not stop until they arrived at the hospital.

Medical personnel at Denver Health Medical Center were unable to save his life. Arturo Enriquez was pronounced deceased at 1:35 a.m. by Dr. Liao.

IV. CRIME SCENE INVESTIGATION and POST-MORTEM EXAMINATION

Personnel from the Denver Police Department Crime Laboratory and Homicide Unit responded to the scene and collected evidence. The scene was taped off, videotaped and photographed. Measurements were taken and a neighborhood survey was conducted by detectives and officers assigned to those tasks. Detectives searched the crime scene and located twelve (12) shell casings from Officer Morehead and Officer Walsh's weapons.

Officer Morehead was carrying a Glock 37, .45 caliber weapons. The weapon holds 10 rounds in the magazine plus one in the chamber for a total of 11 rounds. The crime lab took possession of the weapon. Because of the tactical re-load done by Officer Morehead on-scene, the magazine in the weapon was fully loaded with 10 rounds plus one in the chamber. Officer Morehead had dropped the first magazine on-scene. The magazine was recovered with four (4) live rounds remaining and six (6) missing.

Officer Walsh was carrying a Glock 21, .45 caliber weapon. The weapon holds 13 rounds in the magazine plus one in the chamber for a total of 14 rounds. After this incident the crime lab took possession of this weapon. Because of the tactical re-load done by Officer Walsh on-scene, the magazine in the weapon was fully loaded with 13 rounds plus one in the chamber. The crime lab determined that there were still seven (7) live rounds in the first magazine, with six (6) apparently fired.

The twelve (12) shell casings found at the scene were tested and matched the six (6) that were missing from Officer Morehead's magazine and the six (6) that were missing from Officer Walsh's magazine. Thus, all shell casings were recovered and established that the only rounds fired came from the two officers' weapons.

At the time of this incident Enriquez was armed with a black, Crosman 77-semiautomatic CO2 air pistol.

Officers also recovered \$24.01 in cash from Enriquez as well as two screwdrivers and various clothing.

Post-Mortem Examination

An autopsy was performed on June 28, 2010 by Dr. John Carver. Signs of medical intervention were noted.

The autopsy revealed nine (9) penetrating gunshot wounds to the chest, face, abdomen, thorax, groin, thighs and buttocks; four perforating gunshot wounds to the thighs, knee and wrist; and, one graze wound to the hand.

Basic post-mortem blood and urine toxicology tests revealed that Enriquez tested positive for ethanol (with a level of 282mg/dl), cocaine metabolites and cannabinoids indicating the use of alcohol, cocaine and marijuana.

The cause of death was determined to be multiple gunshot wounds.

V. ANALYSIS

As a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas:

- 1.) the reasonableness of the tactics utilized by the officer immediately prior to the shooting;
- 2.) the reasonableness of the officer's assessment of the threat; and
- 3.) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that an officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Officers Morehead and Walsh 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 to believe that Enriquez presented a threat of serious bodily injury or death to himself or to a third person.

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

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

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

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

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

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

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

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

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

A. Reasonableness of the Officers' Tactics

The analysis of the officers' tactics requires consideration of the skills and training available to the involved officers, as well as an assessment of the officers' actions before and during the use of deadly force. In this case, officers responded to West Louisiana Avenue on the report of a man with a gun. When Officer Morehead arrived on scene, he spoke with SL to get information about who had the weapon. He got a description of the two men and learned that they were likely on foot when they left the area. Officer Morehead and the other officers determined it was best to look around areas where the men might head on foot.

Upon seeing Enriquez and GM, Officer Morehead noted that they fit the description of the men provided by SL. Officer Morehead called out on the radio that he was approaching two men fitting the description of the suspects. His vehicle's headlights illuminated the suspects and he turned the spotlight on them. The lights illuminated what is generally a dark area. Officer Morehead held his illuminated flashlight in his left hand and his weapon in his right hand. He was not pointing his weapon at the suspects, but had it drawn to the ready position. He stepped out of his fully marked Denver Police Department vehicle and ran around the door. Officer Morehead was dressed in his Denver Police Department uniform and was easily recognizable as a Denver Police Officer. He approached with caution because he was aware of the nature of the call, meaning he was approaching what he believed was a suspect who was likely armed, and because it was late at night.

Officer Morehead's decision to approach the suspects was tactically appropriate. When he pulled up, the suspects were sitting and he illuminated them. They did not make any furtive movements as he pulled up. Officer Morehead knew cover was coming in soon and he needed to secure the suspects, knowing that one might have a gun. Not approaching could allow an armed and potentially dangerous suspect to escape into the dark neighborhood and pose a danger to citizens and other responding officers who were in the area.

Officer Morehead also used appropriate tactics in the manner in which he approached the two suspects. He called for backup and increased the lighting so he could discern the suspects' movements. The lighting, his uniform, and his vehicle made him easily recognizable as a Denver Police Officer. His gun was at the ready and he ran around his vehicle door, approaching the suspects with caution without pointing his weapon at them. These were all sound tactics, given the totality of the circumstances.

Upon getting out of his vehicle, Officer Morehead saw Enriquez stand up while continuing to drink his beer. Officer Morehead gave Enriquez verbal commands for him to sit down stating:

I ordered him several times, "You need to sit down. Keep your hands in view and sit down." He ignored these orders as I gave them.

Enriquez refused to comply with Officer Morehead's commands. Rather than comply, Enriquez reached into his pocket and pulled out a screwdriver. Still, trying to de-

escalate the situation, Officer Morehead did not fire his weapon. Instead, Officer Morehead gave him more commands telling him, "Show me your hands and sit down. Don't – don't be pulling things out of your pocket." The use of such clear, simple verbal commands is an appropriate tactic which often works to resolve potentially dangerous situations in a peaceful manner. The command "show me your hands" is particularly appropriate because if the suspect is compliant, the officer can determine whether there is a weapon in the suspect's hands and thus better evaluate the threat presented.

At this point, Officer Morehead had given verbal commands and tried to get Enriquez to simply comply. Seeing that these tactics were not working, Officer Morehead determined that he needed to get Enriquez off his feet, stating:

Okay, he's obviously not following my orders. I think for my safety, I need him in a more prone position, a position he can't move around a whole lot. So I take a quick step and I give him a kick. This is not a kick to damage or hurt him but rather to knock him off balance. He's standing right next to the curb. And it had its intended effect. He stumbles. He falls backwards first on his butt and then onto his back.

Using a leg thrust or a kick to get a suspect down is a tactic that is taught as a possible use of force/control option to use in diffusing a potential volatile situation and was certainly appropriate in this situation. However, even after this tactical kick by Officer Morehead, Enriquez still did not comply with the officer. The only thing Enriquez needed to do to keep the situation from escalating any further was simply stay where he was on the ground, and show Officer Morehead his hands. Enriquez did not comply. The citizen witness, LT, confirmed that Officer Morehead was ordering commands for Enriquez to keep his hands where officers could see them, and Enriquez did not comply. By this point, Officer Walsh had arrived on scene and could see Enriquez's clear failure to comply with Officer Morehead.

While Officer Morehead was trying to tactically diffuse what clearly had become a volatile situation, Enriquez took the next step in escalation; he produced what looked to be a real handgun. Still, Officer Morehead did not shoot, nor did Officer Walsh. Instead, Officer Morehead said that he did what he had learned in training and said, "Drop your weapon." Enriquez did not drop the gun, but pointed it at the officers on scene. According to Officer Morehead:

And he reaches again very casually, pushes his shirt aside, and he produces a pistol. I can see clearly it's a gun. It's a black gun, okay, and he moves it in this – it – it could be my perception, but it seemed like a slow, casual arc around pointing in my direction at my feet. And to his left hand on the top, the impression I had was that's the motion you would make if you're going to rack – rack the pistol. And at that point, the arc is continuing and he's pointing his weapon at me. It's pretty soon going to be leveled at me. I felt I had no choice, but in protection of myself, I needed to – to fire, so I started shooting.

This account of the events leading up to the shooting is supported directly by the statement given by Officer Walsh who confirmed:

At that point, I see the suspect reach from his back pocket and bring a gun out and just bring it straight up at us. And my – my first thought was, "Oh, shit, gun!" And I thought he was going to shoot us and I – that's when I started shooting.

The duty of the officers responding to this call was to ensure the safety of the public and themselves and, if possible, to take Mr. Enriquez into custody without harming him. Enriquez, however, would not let that happen. Officer Morehead's attempts to deescalate the situation through commands and a show of force had failed. By all appearances, Enriquez was not only armed with a deadly weapon, but was intent upon using it rather than submit to police authority. With only a few feet between Officer Morehead and a man who acted as though he had a real weapon and was about to shoot him, with no available cover or concealment and with no option to change positions, Officer Morehead and Officer Walsh turned to the only option which Enriquez's behavior had left them – they fired their weapons. Enriquez had eliminated all other tactical options.

Although their guns had been drawn since they first got on scene, Officers Morehead and Walsh did not fire until they saw Enriquez raise the handgun and direct it towards Officer Morehead. In the face of this perceived deadly threat to his life, Officer Morehead fired six (6) shots from his weapon at Enriquez. Officer Walsh responded to the perceived threat of deadly force against a third person, Officer Morehead, and perhaps against himself, by firing his weapon at Enriquez six (6) times. Officers Morehead and Walsh ceased firing immediately upon seeing the threat neutralized when Enriquez fell to the ground.

The tactics leading to the decision to fire at Mr. Enriquez were sound and necessary to ensure that the community was not endangered by this suspect who appeared armed, who had been brandishing a handgun in public, and who was willing to point a weapon at officers. When Enriquez refused to even acknowledge, let alone obey, police commands to drop the weapon and instead chose to raise what appeared to be a semi-automatic handgun at Officers Morehead and Walsh, the officers was confronted by their sworn duties to protect the public and police officers, and to enforce the law and apprehend suspects. The officers properly chose to take all necessary measures, including deadly physical force, to carry out those duties.

As the civilian witness LT stated,

The police, at that time, they did what they were supposed to – which was – they drew their pistols and shot because I thought they were in danger.

* * *

It was right for them because of the fact that they were in danger.

Consistent with their earlier conduct, both Officers Morehead and Walsh continued to employ appropriate tactics after the shooting, including tactically re-loading their weapons; continuing to cover the suspect until other officers arrived on the scene; not touching or moving Enriquez's apparent weapon; and, once there was adequate cover on the scene, re-holstering their weapons.

This Office concludes that throughout the course of the interaction with Enriquez, Officers Morehead and Walsh used appropriate tactics. Based on the totality of the circumstances, the continued non-compliance and escalation shown by Enriquez, and in light of the apparent immediacy and deadliness of the threat which Enriquez posed, no other reasonable tactic was available that might have allowed Officers Morehead and Walsh to reduce the likelihood of a deadly force encounter 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 whether the officers' assessment of the threat was reasonable. Thus, we must examine what the officers knew at the time they were assessing the threat before them. At the time Officer Morehead initially came into contact with Enriquez and GM, he knew that the two men matched the description of the two men who SL had said were outside her apartment and that one of them was reportedly carrying a gun.

Upon arrival, Officer Morehead could see that both GM and Enriquez were drinking. He had barely begun his approach of the two men when Enriquez stood up and began to confront the officer. At that point, Officer Morehead was reasonably cautious, assessing the threat and understanding that he was confronting a person who was likely armed and confrontational, given that he would get up and approach an officer rather than stay in a seated position where he would appear to be less of a threat to the officer.

As Officer Morehead approached Enriquez, he was telling him, "Sit down." Enriquez ignored Officer Morehead and according to Officer Morehead, "He took a couple of long pulls from his beer . . . and then tossed it aside." A reasonable person assessing Enriquez at the time could easily conclude that he was demonstrating a deliberate disrespect for authority and unwillingness to cooperate with law enforcement.

Officer Morehead continued to command Enriquez to sit down. Enriquez never indicated that he did not understand Officer Morehead's commands. Enriquez continued to refuse to comply or to make any effort to de-escalate the quickly evolving situation. He became even more defiant, reaching into his pocket to pull out a screwdriver. Officer Morehead ordered Enriquez to stop. Officer Morehead stated:

And he reaches for this screwdriver. I tell him, "Show me your hands and sit down. Don't – don't be pulling things out of your pocket." He pulls the screwdriver out and tosses it aside, very careless just like he doesn't have a care in the world. I noticed also – something I found significant – he wasn't looking at me at all.

Enriquez conveyed an unconcerned attitude and an indifference that was incongruous with the situation. Enriquez appeared unpredictable and hostile. In assessing the threat that Enriquez might pose, Officer Morehead noted that Enriquez would not make eye contact with him, ignored his commands and was resistant and non-compliant. Officer Morehead also concluded that Enriquez might be intoxicated from the way he moved. Given all of the above and Enriquez's persistent non-compliance, it was reasonable for Officer Morehead to assume that Enriquez could be willing to engage in dangerous behavior.

Officer Morehead saw that Enriquez was not complying, employed the tactical kick and knocked Enriquez to the ground. But Enriquez continued on with his unpredictable, non-compliant and deliberate behavior. Officer Walsh arrived and ran up towards Officer Morehead. Officer Walsh stated:

At that point, I see the suspect reach from his back pocket and bring a gun out and just bring it straight up at us. And my – my first thought was, "Oh, shit, gun!" And I thought he was going to shoot us...

This is supported by Officer Morehead who said:

And he reaches again very casually, pushes his shirt aside, and he produces a pistol. I can see clearly it's a gun. It's a black gun, okay, and he moves it in this – it – it could be my perception but it seemed like a slow, casual arc around pointing in my direction at my feet. And to his left hand on the top, the impression I had was that's the motion you would make if you're going to rack – rack the pistol. And at that point, the arc is continuing and he's pointing his weapon at me. It's pretty soon going to be leveled at me.

In assessing the risk, Officer Morehead noted Enriquez did not simply show the weapon. Rather, he moved it from foot level up to a shooting position and moved his left hand, apparently to either rack the slide or obtain a two-handed grip. With these movements, Enriquez was now in position where he was on target, and Officer Morehead was the target. Both Officers Morehead and Walsh were reasonable in their assessment that Enriquez was about to pull the trigger.

The fact that the weapon was later determined to be an air gun or a BB gun, and not the more powerful firearm it resembled, is irrelevant to the determination that the officers reasonably believed Enriquez to be a serious threat. The officers were right to act upon appearances, even though at times appearances can be deceptive. Everyone who saw the weapon that night believed it to be a semi-automatic pistol.

The officers had only a split second to assess the immediate risk and make a decision regarding Enriquez's intention and the threat he presented. Every action which Enriquez took up to that point led Officers Morehead and Walsh to reasonably conclude that Enriquez was intent on causing Officer Morehead, or both of them, death or serious bodily injury. At that moment, it was not only Officers Morehead and Walsh who deemed Enriquez a threat. LT also stated "I felt, it was - the police, at that time - they did what they were supposed to, they drew their pistols and shot - because I felt they were in danger."

The fact that both Officer Morehead and Officer Walsh fired simultaneously, or almost simultaneously, supports the determination that the apparent deadliness of the threat posed by Enriquez was objectively obvious and that their assessment of the threat was reasonable. They came to the same conclusion at the same time – that Enriquez was about to shoot Officer Morehead.

Although unknown to the officers during the confrontation, it is clear that Enriquez's extensive criminal history and actions preceding the confrontation evidence a history of past behavior consistent with the aggressiveness he showed on that night. The officers did not know it at the time, but Enriquez had just run directly at a gun pointed at him by PS. Enriquez had beaten PS, thrown him out of his wheelchair, kicked him and stolen his handgun. Officers also did not know that Enriquez wanted to return to PS's apartment and "shoot him." Officers further did not know that Enriquez had alcohol, marijuana and cocaine in his system. Nonetheless, the officers appropriately concluded that Arturo Enriquez presented a deadly threat to them and to the public.

A thorough review of this case shows that the assessments of Officers Morehead and Walsh of the threat that Enriquez posed that night were, indeed, reasonable. It was the behavior of Arturo Enriquez which mandated that the only reasonable conclusion which Officers Morehead and Walsh could have reached was the one they did reach - that at the time they used deadly force against Enriquez, they were in imminent danger of having deadly physical force used against them

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the amount of force utilized by Officer Morehead and Officer Walsh when they resorted to deadly physical force in firing their weapons at Enriquez. As stated earlier, the language of C.R.S. § 18-1-707, which defines the circumstances under which a police officer may use deadly force, is incorporated into the Denver Police Department's Use of Force policy. The section reads, in pertinent part:

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

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

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

The facts discussed above are significant in determining whether the degree of force which Officer Morehead and Officer Walsh used against Enriquez was reasonable and Enriquez's perplexing noncompliance and aggressive escalation of the confrontation along with his apparent disrespect for authority created a clear public safety risk that necessitated the use of deadly force. When Officer Morehead and Officer Walsh approached Enriquez, all of the information that they had pointed to someone who was armed with a real gun and they had no way of knowing whether he would try to do them harm. Officer Morehead tried to talk to Enriquez. Officer Morehead gave verbal commands and he knocked Enriquez to the ground to get him in a position where Officer Morehead would be better able to control and de-escalate the situation. Officer Morehead tried to get Enriquez to stay on the ground and drop the weapon. Officer Morehead held his fire when he first saw the gun and instructed SL to "drop the weapon" before taking any action. Had Enriquez made any effort to comply with Officer Morehead, there could have been a peaceful ending to this interaction. Unfortunately, that was not the path Enriquez decided to take. Instead, according to LT, the civilian who saw the confrontation, and both officers, Enriquez escalated the situation. As stated by Officer Morehead:

And at that point, the arc is continuing and he's pointing his weapon at me. It's pretty soon going to be leveled at me. I felt I had no choice, but in protection of myself, I needed to – to fire so I started shooting.

The belief that the use of deadly physical force was necessary was supported by Officer Walsh who stated:

At that point, I see the suspect reach from his back pocket and bring a gun out and just bring it straight up at us. And my – my first thought was, "Oh, shit, gun!" And I thought he was going to shoot us and I – that's when I started shooting. So I kept shooting until I felt that he was no longer a threat, he had fallen down to his left side, and he wasn't moving anymore.

This was supported even further by LT, who stated:

I felt, it was - the police, at that time - they did what they were supposed to, they drew their pistols and shot - because I felt they were in danger.

These facts and the circumstances surrounding this event lead to the conclusion that the belief of Officer Morehead and Officer Walsh that they were in imminent danger from deadly physical force was objectively reasonable. Additionally, these facts and the circumstances surrounding this event lead to the conclusion that the beliefs of Officer Morehead and Officer Walsh that they needed to use deadly force in response was also objectively reasonable.

D. Summary of Findings

It is the finding of this Office that the actions of Officer Morehead and Officer Walsh in firing their weapons on June 28, 2010 were reasonable and necessary to defend against the active and imminent threat posed by Enriquez. The actions of the officers were direct and appropriate responses to what each officer reasonably believed to be the imminent use of deadly physical force against Officer Morehead, and possibly Officer Walsh. Given these circumstances, this Office concludes that both Officer Morehead's and Officer Walsh's actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VI. ADDITIONAL ISSUES

A. Simulated or "perceived" weapons

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

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

All of these factors, as well as a multitude of others, can - and often will - affect the determination of whether an officer's use of force was reasonable under the circumstances.

In this case, as previously discussed, every witness who saw the gun being held by Enriquez believed that the gun was real. SL initially called the police to report a man with a gun outside her apartment. When LT spoke to investigators he stated that

Enriquez had a gun. When discussing the gun with investigators, GM, who saw the gun much more closely than SL or LT, stated:

Q: Okay, describe the gun for me.

GM: It was a Glock.

Q: Are you sure?

GM: Yeah.

Q: How do you know it was a Glock?

GM: I've shot all kinds of Glocks.

Q: Really?

GM: Uh-huh [affirmative]. It was a Glock.

Q: What caliber?

GM: 9 millimeter.

Q: Are you sure about that?

GM: Yeah.

When Officer Morehead was asked about the gun, he stated:

Q: Okay. He moves that and – and then swings out with what you've described as a firearm.

DM: Correct.

Q: Okay, and could you tell the type of firearm?

DM: I couldn't – an automatic pistol – that – that's about as close as I got. I couldn't identify the model or make or anything like that.

Q: Okay, caliber?

DM: I - I couldn't, no.

JP: But a semi-auto pistol?

DM: Correct.

Officer Walsh had the same beliefs about the gun, telling investigators:

Q: Okay, when you see the individual reach around, come up with this – this firearm, could you tell what kind of firearm it was?

MW: No, just a black handgun.

Q: Okay. Could you tell if it was a revolver versus a semi-auto?

MW: I - I believe it was a semi-auto ... Just because I'm – I'm so used to seeing them.

Q: Okay, and so you weren't able to tell make or model or –

MW: No...

Q: Okay. Did you ever go out and look at the gun later?

MW: I looked at it just briefly. I think it's a P22 – I think so.

- Q: Just describe as best you can what it looked like when it was when you saw it in his hand. Describe what you saw let me put it that way.
- MW: Okay, when he came out with it, it was a distinct handgun. It looked like a semi-auto.

Moreover, Enriquez did not simply have the handgun in his hand. He deliberately gripped it, acted as if he was going to rack the slide, and held it in a way to indicate that gun was real. He then brought the gun up and moved from pointing near Officer Morehead's feet, up towards his chest. In short, Enriquez did everything in his power to make an already real looking gun appear to be a deadly weapon. There was nothing in Enriquez's actions that indicated that at any point he wanted the officers to see that the handgun was anything other than the actual more powerful firearm it resembled. Based on these facts, this Office believes that Officer Morehead and Officer Walsh were reasonable in interpreting the actions of Enriquez to mean that he was in possession of a real weapon and intended to use it against one, if not both, of the officers.

Even if, for the sake of argument, one could say that perhaps Enriquez thought that the air gun looked fake, and that the officers should have known it was not real, clearly he was aware the officers believed it to be real when Officer Morehead instructed him to "drop the weapon." There is simply no reason for anyone to brandish gun, real or not, at police officers.

B. Location of GM at Time of Shooting

At the time of the shooting, GM was seated on the curb, a couple of feet to the left of Enriquez. Throughout the entire confrontation, GM was compliant with the officers and remained seated. He never moved. As Officer Walsh said, "He was just sitting there stone cold, just not even moving." When the officers shot, they were aware of their surroundings and knew GM was seated where he was, and was still and not moving. They directed all of their fire towards Enriquez and away from GM and GM was not injured. The officers acted reasonably and appropriately in shooting even though GM was in close vicinity. They engaged in sound tactics since they were facing deadly force and had to fire their weapons, but did so with an awareness of GM's location and compliant behavior. The officers aimed at Enriquez's center mass, directing their fire away from GM.

VII. CONCLUSION

In closing, it is important for this Office to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions that were reached by this Office are consistent with those of the District Attorney's Office, the Chief of Police and the Independent Monitor. These consistent conclusions result entirely from the reason that they are dictated by the facts. It is always a concern to the Department when a police officer has to use deadly force in the line of duty. However, in many instances, as in this case, the actions of the person against whom force was used precipitated that use of force.

These officers were undertaking a legitimate police action when they responded to a call of a man with a gun. When they approached Enriquez, he ignored repeated commands to "sit down" and "put your hands up." Then he pulled out an apparent deadly weapon and pointed it at Officer Morehead. The actions taken by Officers Morehead and Walsh were those which they reasonably believed were necessary to protect their own lives. They had no way of knowing that the weapon was a less powerful air pistol. Nothing in Enriquez's behavior suggested anything other than that he had a weapon and was intent on using that weapon against at least Officer Morehead, and possibly Officer Walsh. Both Officer Morehead and Officer Walsh acted appropriately and reasonably to stop the imminent threat posed by Enriquez.

Enriquez's refusal to obey the officers' direct commands is consistent with his criminal history and establishes an unwillingness to submit to police authority. His conduct that evening leading up to the encounter with the officers suggests, as his associate GM confirmed, that Enriquez he went off the deep end that night. At every stage of his encounter with uniformed police officers, Enriquez not only ignored the officers' orders but also escalated the confrontation. The officers employed sound tactics and Officer Morehead used every reasonable means available to him to de-escalate the confrontation. However, Enriquez's ultimate decision to direct an apparent deadly weapon at the officers created a life-threatening, deadly force situation which forced the officers to respond as they did.

Whether Enriquez's choices were driven that night by drugs and alcohol, a desire not to be imprisoned, or simply an avowed refusal to submit to authority will never be known. Regardless, it is clear that on June 28, 2010, Officer Daniel Morehead and Officer Michael Walsh Ford acted reasonably under the circumstances with which they were confronted.

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Mary A Malatesta Manager of Safety

Ashley Kilroy

Deputy Manager of Safety

Date

12/28/10

Date