



CITY AND COUNTY OF DENVER

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PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING AN OFFICER INVOLVED SHOOTING AT 4950 MORRISON ROAD, INVOLVING OFFICER RYAN TAYLOR, OFFICER DUSTIN DUFF, OFFICER RICK GUZMAN AND OFFICER SEAN CRONIN, RESULTING IN THE DEATH OF ALFRED RAYMOND VIGIL ON AUGUST 1, 2010

I. OVERVIEW

At 2:56 in the afternoon on August 1, 2010, a Denver 9-1-1 call taker received a call from Alfred Vigil stating that he wanted to report a killing that had not yet happened. He told the call taker that he had been upset for 20 years and he was going to kill himself. He also stated that he had been drinking, he wanted them to send officers, and he wanted the police to shoot him.

As a result, a 9-1-1 dispatcher radioed Officer Ryan Taylor and Officer Rick Guzman and advised them that there was someone around 4900 Morrison Road calling from a cell phone named Alfred who had a weapon and who planned to commit "suicide by cop." Officer Dustin Duff and Officer Sean Cronin were in the area and they also responded to the call. En route to the scene, one of the officers asked the dispatcher what kind of gun the man was holding and she advised that she was trying to get that information. Later, she dispatched that the gun may be a BB gun, as opposed to a more powerful "firearm", however, Dispatch was never able to confirm for the officers if the gun was a BB gun or a firearm. BB guns or pellet guns as they are also known can look identical to firearms and are capable of causing serious bodily injury. They are not simply toy guns.

Officer Taylor arrived on the scene first at approximately 3:02 p.m., and saw Vigil standing outside in front of his apartment building holding a gun by his side. Before he got out of his car, Officer Taylor gave Dispatch a description of Vigil. He also requested that dispatch "hold the air" so that he could have immediate access to the airways if necessary. Officer Taylor approached and took cover and immediately began trying to de-escalate the situation. He said, "Denver Police. Drop the gun. Drop the gun." Vigil refused to drop the gun. Instead, he moved the gun up and began pointing it towards his right temple. Officer Duff arrived next, took cover and joined Officer Taylor in giving Vigil verbal commands including, "Drop the gun" and "Drop the weapon." They also said such things as, "We can get you some help," "We don't have to do this," and "There's another way."

When Officer Guzman arrived on scene next, he saw Officers Taylor and Duff with their weapons drawn, taking cover behind vehicles. He saw Vigil holding the gun, pointing it at his own head. Shortly thereafter, Officer Cronin arrived and saw Officer Guzman in a

crouched position with his hands out in front of him and moving to take cover. Officer Cronin looked up and saw Vigil with the gun in his hand pointed at his own head as Officer Cronin took cover. Both Officers Guzman and Cronin joined in the attempt to verbally de-escalate the situation. A number of citizens were in the area and heard and/or saw the incident. They all confirmed that the officers were pleading with Vigil to put the gun down and telling him they could get him some help.

Vigil was pacing back and forth, ignoring the officers, talking on the cell phone and crying. He kept the gun pointed at his own head. Dispatch had not been able to confirm whether the weapon Vigil held was a BB gun Officer Cronin radioed dispatch and requested a 40mm non-lethal weapon. The 40mm is a type of weapon used to fire non-lethal ammunition which can stun and disorient an individual without causing serious bodily injury.

Vigil then stopped pacing and started walking towards the officers. The officers said, "Stop" and "Stay where you are." Vigil asked the officers, "Why don't you just shoot me?" The officers responded, "We don't want to do that" and "Please drop the gun."

Vigil stepped back a little and dropped the gun to his side. At that point Officer Duff got a better look at the weapon and he thought it was a .22. Officer Duff told Officer Guzman that he thought the weapon was a .22 and he said, "Be careful."

At one point, Vigil pointed the gun briefly at the officers and then brought it back down. No one shot. The officers continued to tell him, "You need to drop the weapon," "You need to drop the weapon," and "We don't have to do this." Next Vigil brought the gun up half way and it pointed towards the apartments; then he started to bring it around in a sweeping motion towards the officers. All four officers fired their weapons almost simultaneously. A citizen witness saw Vigil walking towards the officers and saw Vigil wave the gun in the direction of the officers. The citizen stated, "I knew the cops were going to have to do what they had to do . . ."

Approximately twelve (12) minutes after officers arrived on the scene, Officer Cronin advised dispatch, "Officers were involved in a shooting. Send an ambulance, Code 10." The officers said those twelve (12) minutes had "felt like an eternity." Vigil was on the ground and the gun had fallen from his hand. The officers approached him, handcuffed him pursuant to policy and searched him, finding a buck knife. Officer Guzman said that Vigil was having difficulty breathing so he tried to place him in a more comfortable position.

Vigil was brought by ambulance to Denver Health Medical Center and was pronounced deceased at 3:40 p.m. by Dr. Aaron Eberhart.

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, this Office concluded that the officers involved in this incident used appropriate tactics in confronting Alfred Vigil. Officers reasonably attempted to de-escalate the situation and gain compliance from Mr. Vigil to avoid having to resort to deadly force. This Office has also concluded that Officers Taylor, Duff, Guzman and Cronin acted reasonably in their beliefs that deadly force was

necessary to defend themselves individually, as well as other officers or civilians in the area, against the threat of deadly force by Alfred Vigil. 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

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 Statement was released on August 26, 2010. In the language of the statutory requirements, the District Attorney declined to file charges against Officers Ryan Taylor, Dustin Duff, Rick Guzman and Sean Cronin, concluding:

An individual armed with a handgun threatening suicide in an *outdoor* setting presents a clear and present danger to the responding officers and any citizens within gunshot range. The officers have a public safety responsibility to contain the individual. They cannot permit him to enter structures or open areas where citizens may become victims. This limits their response options. As in this case, the officers can attempt to dissuade the individual from his suicidal intent through conversation, but they have no control over his ultimate decisions and actions.

When the individual is unarmed or armed with a weapon other than a firearm, the officers can create protective separation from the individual while still safely containing and conversing with him. This is not possible when firearms are involved. The officers cannot distance themselves far enough from harm's way while still maintaining contact, control and safety. In these circumstances, the individual's actions can turn from an armed threat to a deadly attack in the blink-of-an-eye. The individual does not have to close distance to harm the officers or others—the firearm projectile does that instantly. In these encounters, the individual knows what he is going to do—the officers do not know. The individual's handgun can move from off target to dead-on target faster than an officer can process the movement, determine the required response and take the defensive action. They cannot wait for the barrel to be pointed directly at them—it is too late at that point. Officers are forced to make life and death decisions in these often fast moving, intense, armed confrontations, with their life hanging in the balance. When an individual has stated a specific intent to commit "suicide by cop," as is the case here, he can force that result. Even the best efforts of these officers to dissuade him could not overcome his will to die. It is an unfortunate reality that individuals place law enforcement officers in this position.

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 the officers to fire the shots that caused Vigil's death. The fact that the handgun turned out to be a Slavia, Model ZVP, pellet gun, and not a more powerful "firearm" it appeared to be, is of no significance in finding the officers' conduct to be justifiable. Therefore, no criminal charges are fileable against any of the involved officers for their conduct in this incident. They were clearly legally justified under 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 which also referred the case to the Tactics 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 the input of the Independent Monitor. After reviewing all of the information, Chief Whitman ultimately determined that no Department policies had been violated.

Upon the completion of the Police Department's case review and receipt of the files, this Office completed its comprehensive analysis of this case. That analysis and review began with responding to the scene and observing all 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 the subject officers Ryan Taylor, Dustin Duff, Rick Guzman and Sean Cronin; video interviews of six (6) citizens who witnessed the event; statements and interviews of other citizens who witnessed the event; statements of officers who responded after the event; a review of the 911 calls from Vigil and dispatch transmissions; 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 Alfred Vigil. Relevant portions of these interviews and reports are referenced or quoted throughout this public statement.

The Events of August 1, 2010

Alfred Vigil lived in apartment number 2 of a one-story single row of apartments at 4950 Morrison Road. The apartments do not face Morrison Road, but are perpendicular to Morrison Road and run through the block to West Tennessee Avenue. Along the front of the apartments is a grassy lawn area which abuts a paved driveway running north and south, allowing access to both Morrison Road and West Tennessee Avenue. Running along the entire length of the other side of the driveway is a row of diagonal parking spaces. An eight (8) foot wooden fence separates the parking spaces from the neighboring commercial property, The Kitchen Network. The Kitchen Network is a 3,000 square foot shared use community kitchen, surrounded by private kitchen suites which are used by several food producers, caterers, personal chefs, bakers and other culinary entrepreneurs.

On Sunday afternoon, August 1, 2010, various vendors were returning from Farmers' Markets and unloading their vehicles at the Kitchen Network. Other people were working inside the Kitchen Network and others were coming and going throughout the afternoon. Some of the residents of the apartments were at home that afternoon: one was taking a nap; one was sitting outside; and another had her grandchildren over for a visit. Mr. Vigil had spent some time sitting outside that day with his neighbor, AC¹, smoking cigarettes. AC said that Vigil appeared intoxicated. Around 2:30 p.m., Vigil asked AC if he could use AC's telephone to call his son. As Vigil was calling his son, his son pulled up in a car. Vigil walked over to the car and after some time, his son drove off. According to AC, he didn't see Mr. Vigil again until later.

At 2:56 in the afternoon, a Denver 9-1-1 call taker received a call from Vigil stating that he wanted to report a killing that had not yet happened. Through a series of comments over a period of time, he told the call taker that he had been upset for 20 years and was going to kill himself. He stated that he had been drinking and he wanted them to send officers. He also stated that he wanted the police to shoot him and that he had a weapon. Vigil initially stated that he had "weapons", but would not give a description of the weapons saying "they [police officers] will find out when they get there" As the conversation progressed, he also stated that he had a "BB pistol", which looked like a Ruger.

The dispatcher radioed Officers Ryan Taylor and Rick Guzman with this information, telling them that there was someone in the area named Alfred who had weapons, "unknown what kind." Then, through intermittent transmissions while the officers were en route, the dispatcher advised the officers that the weapon was possibly a "BB pistol".² She also informed the officers that he said he planned to commit "suicide by cop." Officers Dustin Duff and Sean Cronin were in the area so they responded as well. An officer asked what kind of gun the man had and the dispatcher responded that he had been asked that several times.

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.

² Although BB guns are not considered a "firearm" as described by Colorado law, they are capable of being a "deadly weapon" under Colorado law because they can cause serious bodily injury or death. Weapons of this kind are not harmless toy guns.

Officer Taylor was working his usual assignment as a patrol officer in District 4 that day. He was wearing a regulation uniform and was driving a marked Denver Police Department patrol car. According to Officer Taylor, he received a call from dispatch to go to the 4900 block of Morrison Road, but because Vigil called from a cellular phone, dispatch did not have the specific address. En route, dispatch updated him with a specific address. Dispatch was providing additional information over the radio and also by computer transmission to the computer in his vehicle. Officer Taylor explained that he does not usually look at the computer while he is actually driving; however, he did see some of the transmissions. Officer Taylor said that Dispatch advised that Vigil had a gun and that it was possibly a BB gun, but dispatch was not sure. Officer Taylor saw a transmission that Vigil was “a suicidal party” and that “he wanted a suicide by cop.”

Officer Taylor explained what “suicide by cop” means.

Generally, it means that the – the individual doesn't want to kill themselves. They want to force the police officer to – to kill him, and that usually raises your – your level of concern for the parties around – the parties around you, other officers. It just kind of heightens your awareness to take different tactics for that.

Officer Dustin Duff was also working patrol that afternoon in District 4. He too was wearing a regulation Denver Police Department uniform and was driving a fully marked police vehicle. According to Officer Duff, he heard the call over the radio about a “suicidal party.” As Officer Duff drove to the location, he listened to radio transmissions from dispatch. The dispatcher noted that the party was armed with what may be a “BB gun” and the party was also threatening “suicide by cop.”

Officer Duff is a trained Crisis Intervention Team (“C.I.T.”) officer. C.I.T. trained officers go through a 40-hour class which emphasizes recognizing mental illness and employing techniques to de-escalate someone in crisis. The course also directly addresses handling “suicide by cop” situations. The officers are trained to gather as much information as possible to understand the situation with which they are confronted and to try to defuse that situation in a safe manner. As Officer Duff put it, “I was trained to try to talk them out of making bad decisions or trying to talk them down instead of having to use any kind of force”

Officer Rick Guzman was working patrol in District 4 and was wearing a regulation Denver Police Department uniform and driving a marked patrol car. According to Officer Guzman, he received a call from dispatch requesting a “welfare check on a despondent individual that was possibly suicidal.” As he was en route, he received updates from dispatch. He heard that the caller appeared to be intoxicated and that he said he had a weapon. Officer Guzman said that dispatch never did air what type of gun it was.

According to Officer Guzman:

And I remember asking, “Can you tell me what that weapon?” Or, “Do we know what that weapon is?” And she said, “No, but I’m trying to get further.”

* * *

While I'm still en route, I remember her saying that this individual said that he was going to die suicide by cop but still I had no knowledge of a specific weapon.

Officer Guzman is also C.I.T. trained to recognize persons in mental or emotional distress and in using methods to de-escalate potentially violent or dangerous situations.

Officer Sean Cronin was working in District 4 wearing a regulation Denver Police Department uniform and driving a fully marked patrol car. According to Officer Cronin, around 3:00 in the afternoon he heard the call dispatched to the two other officers involving a suicidal party with a gun in the 4900 block of Morrison Road. He heard over the radio that the caller was "threatening suicide by cops." Dispatch said that the caller "stated that he had a gun, possibly a BB gun."

Officer Taylor arrived on scene first at approximately 3:02 p.m. and saw Vigil holding the cell phone in his left hand while talking on it and the gun in his right hand, holding it down at his side. The gun appeared to him to be a firearm. Officer Taylor gave dispatch a description of Vigil which was transmitted over the air and he requested that dispatch "please hold the air." The other officers heard the description and the request to "hold the air." Officer Guzman said that "hold the air" means not to transmit over the radio because "a very pressing incident is occurring" and "it's a life or death situation."

Officer Taylor got out of his car with his gun drawn and pointing at Vigil. Officer Taylor quickly moved to take cover behind one of the citizens' cars which were randomly parked in the parking area across from the apartments. The vehicle behind which he took cover was parked almost directly in front of Vigil's apartment. Officer Taylor said, "Denver Police. Drop the gun. Drop the gun." Vigil did not drop the gun; instead, he moved the gun up and began pointing it towards his right temple.

Officer Duff arrived next. He got out of his car quickly, took out his gun and took cover behind a second citizen's car near the one behind which Officer Taylor had taken cover. Officer Duff saw Vigil talking on the phone and crying. Officer Duff stated, "He had a black and brown handgun in his right hand, still unknown if it was a BB gun or – or another type of firearm."

Officer Taylor and Officer Duff began giving Vigil verbal commands to drop the gun. According to Officer Duff,

At this point, the subject turned and looked at us and didn't make any verbal contact with us but he – he was looking directly at us. At that point, I told him – we were giving him commands to "Drop the weapon. Just drop the gun." And he hung up the phone, and as he hung up the phone, he put the gun up to his – his face . . .

* * *

He wasn't talking to us. I gave – every – every second I was giving another command. "We don't have to do this." You know, "There's another way. We don't have to do this." You know, "Drop the weapon. We don't have to do this." And he wasn't responding.

A number of people at the Kitchen Network saw and/or heard what was happening. JE had just returned from the Farmers' Market at City Park and was unloading his car. JE saw Vigil and thought he looked intoxicated. JE said,

He wasn't walking like a sober person walks. And he was kind of waving back and forth and walking around in circles and stuff and it looked like something was bothering him for sure. Because he . . . had . . . a dismal look on his face and he was walking around in circles and he was intoxicated, it looked like, you know. Something was on his mind . . . He looked kind of sad. He looked like he was a little depressed about something.

JE said he heard the officers identify themselves as police officers. He said, "I heard officers, 'Put down your weapon. Put the gun down, sir.'" JE stated that he heard the officers say, "You don't want to do this." JE could not see the officers because the fence blocked his view. But he knew they were officers because they identified themselves as officers and because of their commanding tone.

Then, JE saw Vigil put the gun to his head. JE described the gun.

It was a long black barrel. At first I thought it was a .22 but it looked to be a – like a revolver of some sort. It was – he meant business definitely. It looked like a Dirty Harry style gun, you know.

AM was in the Kitchen Network washing dishes. JE came in and told her that the police were trying to get a man to put his gun down. AM went outside to look and she saw officers asking Vigil to put the gun down. AM said that the officers were talking in a very calm, mellow voice and they made the request several times.

PH had returned from the Belmar Farmers' Market and was unloading her car at the Kitchen Network. She saw Vigil with something black in his hand. She heard the officers identifying themselves as officers and asking him to put the gun down. She said they asked him to put the gun down repeatedly. She stated, "They never stopped saying it." WT was also unloading his car at the Kitchen Network. He saw Vigil and heard the officers asking Vigil to put the gun down. According to WT, the officers said, "We're here to help you. You don't have to do this." Another citizen, GK, was working in the Kitchen Network. She went outside to see what was going on. She saw Vigil with the gun pointing under his chin and at his face. She heard the officers saying repetitively, "Sir, please put the gun down."

Around this time, Officer Duff asked Vigil in English if he spoke English, Vigil responded in English, "Yes I do."

Officer Guzman arrived on scene to find Officers Taylor and Duff with their weapons drawn, taking cover behind vehicles. He saw Vigil holding a gun, pointing it at his own head. Officer Guzman said, "It was a pistol and it looked like a real gun to me." Officer Guzman said that Vigil was pacing the whole time, wandering near the open door of his apartment and back to a chair.

According to Officer Guzman:

During this time, this individual, like I said, he's got the gun to his head and we're repeatedly asking him and telling him, "Drop the gun," you know, "We can get you some help. Please drop" – I – I know I specifically said, "Please drop the gun," you know, "We don't want it to go this way." How long it went on, I don't know, but we kept on asking him to drop the gun.

Officer Guzman said that Officer Taylor, Officer Duff and he were all "pleading with him to – to – to put the weapon down."

Officer Cronin arrived on scene next and he saw Officer Guzman in a crouched position with his hands out in front of him and moving to take cover. Officer Cronin then looked up and saw Vigil with the gun in his hand pointed at his own head. Officer Cronin moved behind the back end of the police vehicle for protection. Officer Cronin saw the gun and said it looked like a handgun but he couldn't tell if it was a firearm. Officer Cronin saw Vigil pacing back and forth, still with the gun pointed at his own head.

According to Officer Cronin:

. . . When I got a chance, I got on the air. I advised dispatch that the party had a gun to his head. I requested a 40mm³ if one was available . . . there was a car in an accident at Federal that said they had one but they couldn't leave, and if somebody else could get it and bring it up there or request for somebody else that had one to come up. I advised them that I'm certified to use it if somebody could bring it up to me. I advised that party to go Code 10.

In listening to the dispatch recording, Officer Cronin can clearly be heard stating that the party has a gun to his own head and that Officer Cronin is requesting a 40mm less lethal weapon and stating that if someone can bring it, "I can use it." Another female officer can be heard on the dispatch recording say, "I'll go get it." The 40mm launcher is a specialized less lethal weapon which requires training and certification by any officer who uses them. The Denver Police Department has a limited number of 40 mm weapons which are strategically located throughout the City. Accordingly, not all officers who are certified in their use are assigned to have the weapon in their possession.

³ The 40mm launcher is a less lethal weapon that fires a sponge-like foam projectile approximately 2.25 inches long and 1.5 inches in diameter. It is intended to cause pain and discomfort, but not life threatening injuries.

All of the officers and a number of witnesses saw what looked like a glass of beer on a small table near Vigil's apartment. According to Officer Taylor, as they continued to give Vigil commands to drop the gun, Vigil went over to the table and took a long drink of what appeared to be beer. Then, Vigil started coming forward off the grass and towards the officers. Vigil's neighbor, AC, said he saw Vigil walk "right towards the officers." According to AC, the officers said, "Put the weapon down. We'll help you out." WT said that V "began to approach the cops, closer, closer and closer." According to Officer Taylor:

And then he started coming forward off the grass, and a couple of times he did that. We told him to, "Stop. Stay there. Drop the gun. Don't come any closer. Drop the gun." He kind of backed off a little bit, maybe one or by a couple of steps, and then kind of stood there for a little while, and then came forward again. He still had the gun to his temple.

Officer Guzman described what happened next in this way:

He changed positions and actually advanced a little closer to us and we're telling him to stop. And at one point – and I don't – I don't – I don't know what his primary language is but I – I know specifically in English, he says, "Why don't you just shoot me?" And we said, "We don't want to do that. Please drop the gun," again repeatedly asking him to drop the gun.

Officer Duff and Officer Taylor describe this exchange similarly. Officer Duff said that Vigil started challenging Office Taylor. Officer Duff could not hear exactly what Vigil was saying, but it was something about dying. According to Officer Taylor:

At some point during that, he – he – he drops the gun down to his side and it's . . . He's – I could kind of tell his – his attitude was changing because he started saying to me, "If I – if – if I point this at you, you're going to shoot me." I tell him, "Just drop the gun. Drop the gun. We can help you. We can get you help," something like that.

Officer Cronin heard a car door shut behind him. He turned to see if someone had arrived with the less lethal 40mm, and to make sure no other suspects were coming up behind them. When he turned back around, Vigil raised his gun at the other officers. JE said that he saw Vigil take the gun from his own head and wave it in the officers' direction. JE said that Vigil "walked so close to the cops that I couldn't see him anymore" because the fence was blocking his view. PH said that she saw Vigil move into the driveway area and the gun was no longer at his head, but pointed somewhere else.

JE said he then saw Vigil wave the gun in the direction of the police. JE said he started hurrying unloading his car and stated:

I put it in high gear. I'm like this is going to be bad. I need to get out of here, you know. . . . And I mean from what I saw, when he took the gun away from his head and started walking towards the police, at that point, I

knew the cops were going to have to do what they had to do and that's when I was trying to get out of there as soon as I could.

Officer Duff stated that during this time, he got a better look at the weapon. According to Officer Duff:

I spoke to Officer Guzman and I told him that I did not believe it was a BB gun because of the girth of the barrel that he was holding down; I said "I think it's a .22 . . . just be careful, I think it's a .22."

Then, Vigil then turned the gun and pointed it at the officers very briefly, but no one fired. Vigil put the gun down near his side again and then brought it back up, staring at the officers. The officers continued telling him to "Drop the weapon" and "We don't have to do this."

According to Officer Duff, he was approximately 25 feet away from Vigil when:

He dropped the gun back down as it flipped around in his hand he still had it in his hand and he brought it back up half mast...as he stared at us. I gave him more commands "You need to drop the weapon, you need to drop the weapon, we don't have to do this." As he started to swing this way, I was the first one in the line of sight from all of our vantage point and just before he pointed the weapon at me, I fired my weapon approximately 4 times.

Officer Guzman stated:

And then he drops his hand and at the barrel, goes away from us, and we're still, "Drop the gun. Please drop the gun." And then I remember him coming up like this, like in a – in a sweeping motion. At that point, the gun is coming towards me and Duff. I thought he's going to shoot Duff – he's going to shoot me. I'm in fear for my life, Duff's life, and we – we shot him.

According to Officer Taylor:

And then maybe 30 seconds later, he drops it back down to his side and he seems to kind of just – he changes the gun angle from down here to his temple to kind of pointing it up like that. And then he points it at his head . . . but then he drops it down to his side kind of again, and then he – he starts bringing it forward and starts pointing it in our direction, and I shoot him.

At that same time, Cronin, who was approximately 20 yards away from Vigil, also fired his weapon because he feared for the other officers' safety.

Just before the shooting, PH went back inside the Kitchen Network because she was scared and she had decided to "stay there until it was over." She stated:

I just think the officers did their jobs . . . And I would be thankful to have them protect me.

All of the officers stopped shooting when Vigil went to the ground and the gun fell out of his hand. Officer Guzman said that he stopped shooting because:

I saw him go down, and at that point, it was obvious he was wounded. To me, the threat was neutralized at that point as far as him causing any harm to us or the general public.

At 3:14 in the afternoon, approximately twelve (12) minutes after officers first arrived on the scene, Officer Cronin advised dispatch that "Officers were involved in a shooting. Send an ambulance, Code 10." This can also be heard clearly on the dispatch recordings.

The officers approached Vigil with caution. Officer Guzman made sure the gun was not around so that Vigil could not harm anyone. Officer Guzman searched Vigil and found a buck knife on Vigil's belt, unsnapped it, and threw it aside. Officer Guzman handcuffed Vigil and rolled him over because Vigil was having trouble breathing. Officer Guzman tried to place Vigil in a more comfortable position.

When Taylor was asked the reason he began firing, he stated:

Because he was pointing the gun in our direction before it got to our – to our position – and we fired.

When questioned why he stopped firing, Taylor stated:

Because the threat was gone and he was on the ground, no gun in the hand – and he didn't appear to be moving.

When asked the same question, Officer Cronin stated:

When he fell, the arm came across his body. I no longer saw the weapon pointing at the other officers, and the other officers were moving toward him, they were not still firing but that they felt secure enough in their safety that they didn't do it when his – the gun was pointed in their direction, I felt secure enough to stop.

As noted, the incident took place outdoors at approximately 3:00 in the afternoon; visibility was not an issue. Neither the officers involved nor the citizen witnesses described any difficulty in identifying people or objects.

Vigil was transported by ambulance to Denver Health Medical Center and was pronounced deceased at 3:40 p.m. by Dr. Aaron Eberhart.

Citizen Witness Statements - Summaries

Responding police officers contacted numerous witnesses who were in the area at the time of this incident and a number of them have been referred to above. Set forth below are summaries of the statements of some of those witnesses. Although not detailed below, there were other witnesses who were questioned, including AC2, SC, EC, JC, OC, MF, MF2, SK, CLF, SP, MV, and KV. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

JE – On this day, JE was working at City Park selling food. He returned to the Kitchen Network after his shift to unload his truck from the day's work. The Kitchen Network is located on Morrison Road near where the incident with Vigil occurred. JE was unloading the truck with WT and AM when he saw a man who was “stumbling . . . visibly drunk.” He then heard, but did not see, what he believed to be police officers. He stated that he knew they were police officers because they identified themselves as Denver Police and then told Vigil “Drop your weapon sir, drop the gun.” At that point, JE saw Vigil holding “a small caliber gun” with a “long black barrel.” He thought it could be a .22 at first, and then thought it could be a revolver. He stated it was “your run-of-the-mill Smith and Wesson looking long barrel.” JE went on to state, “He meant business; definitely, it looked like a Dirty Harry style gun.” Vigil was holding the gun to his own head. JE still could not see the officers but after a few minutes, he saw Vigil take the gun down from his head and “wave it in the direction that I heard the voices” and saw Vigil walking in that direction. At that point, the officers and Vigil were all out of JE's sight. A few moments later JE heard six (6) to eight (8) shots. JE stated that when he saw Vigil take the gun from his head and start walking towards police, that's when he “knew the cops were going to do what they had to do.” He went on to state, “me, my personal feeling, is that the officers had to do what they had to do, the man was beyond reasonable – beyond reasoning.”

WT – On the day of the incident WT was returning to the area with two of his co-workers, JE and AM. He was about 30 feet away from Vigil at the time. The three of them were unloading a work truck when he heard, “Put down the gun, put down the gun.” He states that they were watching the situation unfold and saw “the guy” was walking around with the gun to his head “for the longest [time] he didn't even move it” while he was talking on a phone in the other hand. The officers kept telling him [Vigil], “Put down the gun, we're here to help you; you don't have to do this.” WT saw officers standing behind the cars in the area, using them for cover, with their weapons drawn. WT went back to unloading his truck. When he turned back around, he saw Vigil getting closer to the officers. Vigil then took the gun away from his head and held it down and then he got closer to the officers. WT turned around to grab something else off his truck and he heard four (4) to five (5) shots fired. He did not see the shooting.

WT informed investigators that he had previously been in the military and was familiar with firearms. WT stated that he was not sure what kind of gun it was but it looked like a “pistol” because it had a “skinny long barrel” and it was “a strange looking pistol.” He stated, “At one point, I thought, damn, it just might be a .22.” He said, “It was a weird looking weapon, it had to be old.” WT said he thought it could have been an air gun or it could have been a revolver. “It just looked so different to me.” He also stated that Vigil

may have been intoxicated based on the beer or whiskey that was on the table nearby. WT stated to investigators, "I believe the cops did the best job they could have, in my opinion." He went on to state, "It was a real simple situation; they tried to help the guy. They tried to talk him out of it. Maybe he was scared to kill himself, maybe he wanted it, but he obviously approached the cops with intent. I didn't see anything wrong, in my eyes."

AM – AM was working at City Park on the day of the incident. She had returned to the commissary around 3:00 and began unloading equipment. A co-worker came into the commissary and told her that officers were talking to "some guy" across the fence telling him to put his gun down. She was curious about what was going on and decided to go outside. She could not see officers from where she was standing but she could see Vigil. She stated that she did not have her glasses on and she could not see his right hand, therefore, she did not see the gun. She stated that her co-worker, JE, told her that it was a "revolver." She heard one officer say, "Sir, please put your gun down" three or four times. AM said that the officer who made the request was talking in a calm, mellow voice. She went back inside, and shortly thereafter heard six (6) to eight (8) gunshots. She did not hear Vigil say anything to officers

PH – PH was working that day at the Belmar Farmers' Market and returned to the Kitchen Network on Morrison Road after work to unload her vehicle. When she pulled up, she saw a man [later determined to be Vigil] holding something black in his hand and thought he was talking on the phone. She went inside the kitchen and when she came back out, she heard officers identifying themselves as officers and telling Vigil to put down his weapon. She heard officers tell Vigil this two (2) to five (5) times. She took another load of items inside and when she came back out, she saw that Vigil had moved closer towards the officers and the gun, which she did not realize was a gun at the time, was no longer pointed at his head but "was pointed somewhere else." The officers continued to tell him to put his weapon down and drop his weapon. PH decided to go back inside at that point. She was in the kitchen when she heard between four (4) and six (6) shots that "were in rapid succession." She noticed that there was a tray near where Vigil was standing that appeared to have beer on it, indicating, she believed, that Vigil might be intoxicated. PH also stated that throughout the incident, officers were instructing Vigil to "Drop the gun." She stated, "They never stopped saying it." In closing, PH said, "I just think the officers did their jobs and I would be thankful to have them protect me."

GK – GK stated that someone came into the commissary and told her that there was a guy outside with a "gun to his mouth." She went outside and there were officers telling him [Vigil], "Sir please put the gun down, please put the gun down." She saw Vigil with the gun near his mouth. She could not see the police. She went back inside, then returned outside and saw that Vigil had moved further up the sidewalk and dropped his arms down towards his side. She stated that the police were still telling him, "Please put the gun down." She went back inside and while inside she heard five (5) to six (6) gunshots.

AC – AC lives in the 4900 block of Morrison Road. On the date of the incident he was sitting outside smoking. Vigil had asked him if he could use his phone to call his son. As Vigil was trying to call his son, his son pulled up in a car. He did not stay long and pulled away after Vigil talked to him, AC could not hear what they talked about. He stated that Vigil had a glass of beer with him and it appeared that he had been drinking. Shortly thereafter, he realized he could no longer see Vigil. He then heard officers but he could not see them because they were behind cars. He heard them tell Vigil to drop the weapon. He heard officers say, “Drop the weapon” several times. At one point Vigil moved and he could see him holding a gun towards his side.

AC stated that at some point Vigil had shown him a “pellet gun.” It is unclear from his statement when that had occurred, or if he had been shown the gun on the date of this incident.

All of the witnesses stated that the lighting was good and that visibility would not have been a problem in seeing what was happening.

Responding Officers

The information provided by Officers Taylor, Duff, Guzman and Cronin is set forth in detail throughout this Public Statement. In addition to the above officers, 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 Steve Bishop, Jon Crowe, Christopher Evans, Kevin Ford, Frank Gallegos, Michael Gunter, Charles Jones, Ryan Phillips, Chad Sinnema, Clifford Stump, Brandi Thomas, Ian Wallace; and Sergeants David Schmidt and Rudolph Suniga.

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. Homicide and Crime Lab personnel are also responsible for processing the body of the deceased and documenting the post-mortem examination of the body conducted by the coroner’s office.

Medical Response

In addition to responding paramedics, members of the Denver Fire Department responded to the scene. Responding firefighters included Justin Bunting, Richard Dodson, Steve Montoya, and Sarah Stewart. Firefighters administered CPR and assisted in placing Vigil in an ambulance for transport to Denver Health Medical Center

Medical personnel at Denver Health Medical Center were unable to save his life. Alfred Vigil was pronounced deceased at 3:40 p.m. by Dr. Aaron Eberhart.

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 the officers' weapons.

According to the letter issued by the District Attorney as well as the case file:

Officer Taylor was armed with a .45 caliber Glock, Model 21, semi-automatic pistol. The weapon was being carried with 13 rounds in the magazine and one additional round in the chamber—a total of 14 rounds. Denver Police Department Crime Laboratory personnel processed the weapon and magazines after the shooting and there were a total of 11 rounds in the weapon. This is consistent with Officer Taylor firing 3 rounds. The weapon was loaded with departmental issue .45 caliber Speer cartridges.

Officer Duff was armed with a 9mm Glock, Model 17, semi-automatic pistol. The weapon was being carried with 17 rounds in the magazine and one additional round in the chamber—a total of 18 rounds. Denver Police Department Crime Laboratory personnel processed the weapon and magazines after the shooting and there were a total of 13 rounds in the weapon. This is consistent with Officer Duff firing 5 rounds. The weapon was loaded with departmental issue 9mm Speer cartridges.

Officer Guzman was armed with a 9mm Springfield, Model XP9, semi-automatic pistol. The weapon was being carried with 15 rounds in the magazine and one additional round in the chamber—a total of 16 rounds. Denver Police Department Crime Laboratory personnel processed the weapon and magazines after the shooting and there were a total of 13 rounds in the weapon. This is consistent with Officer Guzman firing 3 rounds. The weapon was loaded with departmental issue 9mm Speer cartridges.

Officer Cronin was armed with a 9mm Glock, Model 17, semi-automatic pistol. The weapon was being carried with 17 rounds in the magazine and one additional round in the chamber—a total of 18 rounds. Denver Police Department Crime Laboratory personnel processed the weapon and magazines after the shooting and there were a total of 17 rounds in the weapon. This is consistent with Officer Cronin firing a single round. The weapon was loaded with departmental issue 9mm Speer cartridges.

The twelve (12) shell casings found at the scene were tested and matched the 12 that were missing from the officers' guns. Thus, all shell casings were recovered and the recovered shell casings establish that the only rounds fired came from the four (4) officers' weapons.

Vigil was armed with a Slavia, Model ZVP, pellet gun. It is a replica of a firearm. The weapon fires pellet projectiles. Although the weapon is not a "firearm," as defined by Colorado law, it is capable of being a "deadly weapon" under Colorado law because in the manner in which it is used or intended to be used, it is capable of producing serious bodily injury or death. If the pellet projectile strikes a vulnerable area of the body, such

as the eye, it is capable of causing serious bodily injury or death. Weapons of this kind are not harmless. Additionally, weapons of this type which are intended to replicate authentic firearms are visually almost indistinguishable from real firearms.

Officers also recovered one buck knife that had been found on Vigil as well as pellets and personal items.

Shell casings from the officers' gun were recovered as were bullet fragments that had struck the brick wall of the apartments, a wood door frame, a window, a vehicle and a bicycle.

No other items of evidentiary value were recovered.

Post-Mortem Examination

An autopsy was performed on August 2, 2010 by Amy Martin, M.D. and Joseph K. White, D.O. Signs of medical intervention were noted.

The autopsy revealed two (2) penetrating gunshot wounds to the chest; one (1) perforating gunshot wound of the right upper arm; one (1) perforating gunshot wound to the abdomen; and, one (1) perforating gunshot wound to the right hip.

Basic post-mortem blood and urine toxicology tests revealed that Vigil tested positive for ethanol with a level of 194 mg/dl indicating acute ethanol intoxication.

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

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

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

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

A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary 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 Alfred Vigil 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 Vigil.

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

This analysis 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 4950 Morrison Road on the report of a man with a weapon who was had specifically called to report his own death which had not yet occurred and who was threatening "suicide by cop."

Significantly, three (3) of the four (4) officers who responded to the scene were C.I.T. trained. As noted above, Officers Duff, Guzman and Cronin went through the 40-hour C.I.T. class in which they learned to recognize mental illness and to employ tactics to de-escalate someone in crisis. Throughout the entire incident, all four of the officers used appropriate C.I.T. tactics and additional tactics as taught by the Denver Police Department. The officers also applied their first hand knowledge of the situation as it developed, as well as their experience and common sense.

Officers Taylor, Duff, Guzman and Cronin employed these tactics from the very beginning of the situation. First, they all listened closely to dispatch on their way to the scene and watched the computer screen in their vehicles to the extent they could while they were driving to this critical incident in order to gather as much information as possible. As soon as Officer Taylor arrived on scene, he gave a description of Vigil to dispatch so that arriving officers would be able to quickly identify him. He then asked that dispatch "hold the air"⁴ so that he could have immediate access to communication if necessary. That statement also alerted the other officers as to the seriousness of the call.

⁴ By saying "hold the air," Officer Taylor ensured better communication for all involved in the incident. This statement tells dispatch not to allow anyone who was not involved in the current incident not to broadcast over that particular channel so anyone working the incident would not miss any communication related to the incident. In such situations, dispatch then advises other officers to switch to a different channel.

Once on scene, Officer Taylor approached Vigil in accordance with C.I.T. training regarding "suicide by cop" and was joined in this approach by Officer Duff, who was also C.I.T. trained, when Officer Duff arrived. As taught, they did not confront Vigil face-to-face. Instead, they each took cover behind vehicles in the parking lot making use of cover and concealment to gain a tactical advantage. They did not pressure Vigil by moving too close to him. Instead, they maintained an appropriate distance behind the vehicles which they used as barriers, while still being able to control the situation. At no point did Vigil appear to connect with any one officer, so the officers all attempted to make a connection with him. In addition to the verbal commands given, the officers continuously watched Vigil, but even with eye contact he did not appear to connect with any individual officer. The officers were in uniform, driving marked patrol cars. They verbally identified themselves as "Denver Police." As trained, they issued the commands in a direct tone and gave clear, simple and specific instructions as to what needed to occur. They told Vigil to put down the weapon; to stop; to talk to the officers. As JE noted, he could tell they were police officers by the tone of their voices and the "sound of authority." Officer Duff said that Vigil was not "verbally connecting" with any specific officer. With no individual connection made, all four officers continued to try to connect with Vigil, de-escalate the situation and convince him to put the gun down.

According C.I.T. training materials prepared by Dr. John Nicoletti, the science of communication and the use of de-escalation skills in situations like this is difficult and much more complex than most people realize. The communication involves both sending and receiving and officers need to be aware of the recipients' responsiveness to their tactics and be willing to change directions as necessary. The officers were attuned to Vigil and his responses. Responding to Vigil's distraught state, the officers used crisis intervention tactics. They told him that they were there to help him; that it didn't have to go this way. As AM described, the officers used calm, mellow tones. Vigil did not respond but continued to pace back and forth.

Seeking another tactical advantage, Officer Cronin requested that a less lethal 40mm launcher be brought to the scene in an attempt to safely defuse the situation. The launcher fires a sponge-like foam projectile that is approximately 2¼ inches long and 1½ inches in diameter. It is used with the intent to cause discomfort and non-penetrating blunt trauma sufficient to disorient or incapacitate an individual. Unfortunately the incident lasted only twelve minutes and the less lethal weapon did not arrive before Vigil directly threatened the officers with his weapon.

As was ultimately confirmed by all citizen and officer witnesses, Vigil chose to escalate the confrontation. Refusing to put the gun down, despite nonstop commands to do so, he instead moved closer to the officers, gun in hand. Each one of the four officers then heard Vigil challenge them, saying words to the effect of, "Why don't you just shoot me?" The officers continued to try to calm Vigil down, telling him, "We don't want to do that. Please drop the gun." Despite these pleas, Vigil not only refused to drop his gun, he escalated the situation... At that point he was openly challenging the officers, walking closer and closer to the officers with gun in hand. He pointed at them briefly and they still did not shoot, instead they attempted to de-escalate. The officers gave Vigil time to "run down," pursuant to their training and they continued to ask for compliance.

While officers were trying to tactically defuse what clearly had become a volatile situation, Vigil took the next step in escalation; he began to point the weapon at Officer Duff. The only thing Vigil needed to do to keep the situation from escalating any further was to simply stay where he was and put the gun down. Any chance to de-escalate the situation vanished the moment that Vigil decided to point what appeared to be a real gun at the officers while moving closer towards them. Vigil appeared determined to carry out the threat he had initially made to Dispatch - that he intended to commit "suicide by cop." As Vigil brought the gun up in a sweeping motion towards Officer Duff, all officers fired their guns.

The officers did everything they could to control this situation. Alfred Vigil was not isolated in a secure place, he was standing outside his apartment; he was wandering in his yard with a gun in his hand. He was distraught and apparently intoxicated. He had told dispatch that he wanted to commit suicide by cop. On that Sunday afternoon, the officers could not have simply refrained from confronting Vigil. They had to approach him. They had to take control of the situation. Vigil was distraught and waving a gun around with a number of people nearby. C.I.T. training teaches that in situations like this, officers can't allow the individual to mobilize while still in crisis and can't allow the individual to move to an unsecured area. In addition, the front door to Vigil's apartment was open. The officers could not permit Vigil to go inside where there could possibly be other people and result in a hostage or barricade situation. As noted by District Attorney Mitch Morrissey in his letter regarding this incident:

An individual armed with a handgun threatening suicide in an *outdoor* setting presents a clear and present danger to the responding officers and any citizens within gunshot range. The officers have a public safety responsibility to contain the individual. They cannot permit him to enter structures or open areas where citizens may become victims. This limits their response options. As in this case, the officers can attempt to dissuade the individual from his suicidal intent through conversation, but they have no control over his ultimate decisions and actions.

Witnesses from neighboring businesses, as well as Mr. Vigil's neighbors could hear the police telling Vigil to "drop the gun." Many of these witnesses saw Vigil holding the weapon, moving closer to the officers and pointing it at the officers. When Vigil refused to obey police commands to drop the weapon and instead chose to raise what appeared to be a revolver at Officer Duff and the other officers, the officers were 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.

The tactics leading to the decision to fire at Vigil were sound and necessary to ensure that the community was not endangered by an armed man who was threatening "suicide by cop" and was willing to point a weapon at officers. The duty of the officers responding to this call was to ensure the safety of citizens and responding officers and, if possible, in light of his behavior, to get help for Mr. Vigil. Alfred Vigil, however, would not let that happen. By his own actions, Mr. Vigil eliminated any opportunity for the involved officers to de-escalate the situation or to make use of any other tactic that would lessen the likelihood or necessity for deadly force when he pointed the gun at the officers.

In looking at the entirety of this incident, from the initial report of a suicidal party with a gun through the point of officers firing their weapons, the officers acted reasonably and appropriately. In assessing whether the tactics used by the officers involved in this shooting were reasonable, this Office has considered the totality of the circumstances. This includes the information available to the officers at the time and the specific actions of Officers Taylor, Duff, Guzman and Cronin, including the use of cover and concealment; the use of barriers; the use of communication with Vigil as well as among each other; the use of C.I.T. tactics; the attempt to obtain a less lethal 40mm launcher; and, the attempt to simply give Vigil time to emotionally “run down.” The tactical decisions made based on the information that Mr. Vigil was armed, non-compliant, wanting to commit “suicide by cop,” and was willing to point what appeared to be a deadly weapon at police officers, were clearly appropriate. Taking all of the above into consideration, it is clear that Alfred Vigil’s actions appeared, to reasonable officers, to create a very real threat of death or serious bodily injury. Based on these reasons, this Office concludes that appropriate tactics were used and that the officers involved in this unfortunate event complied with their sworn duties and their training.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of whether the officers’ assessment of the risk was reasonable in light of the circumstances. In evaluating whether the officers’ assessment was reasonable, we must examine what they knew at the time they were assessing the threat before them. In this case, as pointed out in the above section, at the time the officers initially came into contact with Vigil, they knew that he was armed with some kind of weapon that may or may not be a BB gun or a more powerful firearm, they knew that he was suicidal, and they knew that he planned to commit “suicide by cop.”

Officers arrived on scene to find a despondent man with a gun held up to his own head who wanted to commit “suicide by cop.” According to Taylor:

Generally, it means that the – the individual doesn't want to kill themselves. They want to force the police officer to – to kill him, and that usually raises your – your level of concern for the parties around – the parties around you, other officers. It just kind of heightens your awareness to take different tactics for that.

Officers went in knowing that Vigil may do something to push officers into having to react with deadly physical force. Then at the scene, Vigil specifically asked, “Why don't you just shoot me?” However, the officers’ assessment of the seriousness of the threat was not just based on Vigil’s words, but also his behavior. He was acting erratically and pacing and crying. He appeared to many witnesses to be intoxicated. The C.I.T. training teaches that substance induced reactions are unpredictable and can be very dangerous. Oftentimes, an individual planning “suicide by cop” will refuse to negotiate with officers. He usually will not demand his escape or freedom. The C.I.T. course teaches that many times the individual will verbally demand that he be killed by the police.

Not only did the officers know of Vigil's statements to dispatch, they also witnessed his erratic conduct and saw that he was holding a gun. Dispatch had been unable to confirm with Vigil that the weapon he was carrying was a pellet gun, nor had they ruled out the possibility that Vigil could have tried to deceive the dispatcher by claiming to have a pellet gun. The weapon which Vigil held had the appearance of an authentic firearm. Nothing in Vigil's actions suggested to the officers that the weapon he held was incapable of deadly force. Officer Duff, who was able to see the weapon, thought it was a firearm and told Officer Guzman, "I think it's a .22 . . . just be careful, I think it's a .22." The fact that the weapon was later determined to be a pellet gun, and not the more powerful firearm it resembled, is irrelevant to the determination that the officers reasonably believed Vigil to be a serious threat. The officers acted reasonably and appropriately in acting upon appearances.

The first time Vigil moved towards the officers and briefly pointed the gun at them, they did not fire. They took cover, they talked to Vigil, and they tried to keep a barrier between Vigil and themselves. Despite the unwillingness to engage by the office, or perhaps because of it, Vigil escalated the situation even further. He moved forward again and brought the weapon around in a sweeping arc bringing the weapon up to where it would be on target at the officer. Officer Duff would clearly be in the line of fire if Vigil completed the arc. Officer Guzman would also have been in the line of fire. Given Vigil's behavior, his continued refusal to comply with commands or respond in any way to the officers' multiple attempts to engage him and de-escalate the situation, it is clear that Alfred Vigil was determined to force the officers into action and that to do so he was willing to fire his weapon at them. The officers were reasonable in their assessment that Mr. Vigil was about to pull the trigger.

The officers had only a split second to assess the immediate risk and make a decision regarding Vigil's intention and the threat he posed. Every action Vigil took up to that point led the officers to reasonably conclude that Vigil was intent on putting the officers into a position where they would become the instrument of his death. When they did not shoot him and instead continued to try to de-escalate the situation, he pointed his weapon at them. In light of Mr. Vigil's statements that he had been "upset for 20 years" and wanted to commit "suicide by cop," coupled with his noncompliant and escalating behaviors, it was reasonable for the officers to assume that Mr. Vigil would kill if that was what was needed to accomplish his goal.

At the moment Vigil's gun began to target in on Officer Duff, all four officers felt Vigil was a threat and all four officers shot almost simultaneously. The fact that all four officers fired at the same time also supports the conclusion that the deadliness of the threat posed by Alfred Vigil was objectively apparent and that their assessment of the threat was reasonable.

In addition, every one of the citizen witnesses expressed a belief that the officers had no choice but to use deadly force. To a person they were supportive of the officers' actions. No one who witnessed the incident stated that the officers' assessment that Vigil posed a deadly threat was wrong or even open to debate. Witnesses and officers all agreed that at the time the officers resorted to deadly force, Vigil was approaching officers with the gun pointed at them. They all agreed that the officers tried repeatedly to get Vigil to drop the gun. Witnesses, both officer and citizens, stated that the officers

did what they could to try and de-escalate the situation. JE, who saw most of the incident and heard officers talking to Vigil, stated, “Me, my personal feeling, is that the officers had to do what they had to do, the man was beyond reasonable – beyond reasoning.” PH made a similar statement saying, “I just think the officers did their jobs and I would be thankful to have them protect me.” As WT said, “It was a real simple situation; they tried to help the guy. They tried to talk him out of it. Maybe he was scared to kill himself, maybe he wanted it, but he obviously approached the cops with intent. I didn’t see anything wrong, in my eyes.”

A thorough review of this case leads this Office to the determination that there can be no other reasonable conclusion than that reached by Officers Taylor, Duff, Guzman and Cronin – that at the time each officer used deadly force against Alfred Vigil, they were in imminent danger of having deadly force used against them by Vigil.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the amount of force utilized by Officers Duff, Cronin, Guzman and Taylor at the point where they resorted to deadly physical force in firing their weapons at Vigil. 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 all four officers used against Alfred Vigil was reasonable and justified. At the point when officers fired their weapons, the actions of Vigil had created a situation in which the officers reasonably believed that the use of deadly force by Vigil was imminent and that their lives were in danger. At that moment, the decision to use deadly physical force against Vigil was indeed a reasonable and necessary one.

Officers Taylor, Duff, Guzman and Cronin were crouching behind cars at distances from Vigil varying between 25 and 60 feet. The 40 mm had not arrived. Vigil did not have to move any closer to the officers to harm them; he had a gun and the projectile would close that distance instantly. At the final moment in this fatal confrontation, Vigil moved the gun up in a sweeping motion directly towards the officers. The officers could not wait for the barrel to be pointed directly at them – it would have been too late at that point. The officers were obligated by their duty as police officers to make a life and death decision in this fast moving, intense, armed confrontation.

Officer Duff said, "I knew he was going to shoot me if he got around to me." Officer Duff explained, "I was the first in line of sight from all our vantage points and just before he pointed the weapon at me, I fired my weapons approximately four (4) times."

As Officer Guzman stated:

So he advanced closer to us. But that – the motion is – the gun is here – And it's a sweeping motion and... I discharge my firearm because I fear that -- you know, that Duff is going to get shot or I'm going to get shot. I'm in fear for my life. And I'm in fear for my fellow officer's life.

Officer Taylor stated, "He was pointing the gun in our direction before it got to our – to our position – and we fired." Officer Cronin said, "I feared for the other officers' safety."

Alfred Vigil started this entire incident stating to dispatchers that he wanted the police to shoot him. His behavior throughout this encounter was meant to put the officers in that very position. Vigil appeared to know this, which is evident by his statements to officers of "Why don't you just shoot me?" and "If I point this at you, you're going to shoot me."

Officers did everything that they could to refrain from using deadly force but they simply did not have any other reasonable choice. They had used their C.I.T negotiating tactics. They had used cover, concealment and barriers to try to buy some time to talk Vigil into putting the gun down. They could not approach Vigil and try to physically restrain him since he was holding a gun and eventually pointed it at them. Commendably, Officer Cronin had attempted to access a 40 mm launcher, but even if it had been more readily available, the 40 mm would have been a reasonable use of force option only before Vigil had begun the sweeping motion which placed the officers in reasonable fear of being shot.

Many witnesses to the incident thought that Vigil left the officers with no choice. JE put it simply, "The cops definitely had to do it." He stated that a "peaceful ending" was "out of the cops' hands."

At the time Officers Taylor, Duff, Guzman and Cronin fired their weapons, they all had arrived at the same conclusion: Alfred Vigil was an imminent threat to the officers and to citizens. Mr. Vigil's behavior and the weapon that he brandished presented the appearance of an imminent deadly threat, and deadly physical force was needed to stop that threat. These facts and the circumstances surrounding this event lead to the conclusion that the belief of all four officers, that they were in imminent danger from deadly physical force, was objectively reasonable. Additionally, the facts and the circumstances surrounding this event lead to the conclusion that the beliefs of the officers 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 Officers Taylor, Duff, Guzman and Cronin in firing their weapons on August 1, 2010, were reasonable and necessary to defend against the active and the apparent imminent deadly threat posed by Alfred Vigil. 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 by Vigil. Given these circumstances, this Office concludes that all four officers' actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VI. Additional Issues

A. Replica handguns

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, the witnesses who saw the gun, including officers and civilians, believed that it was a real firearm. When asked what type of weapon Vigil was holding, Officer Guzman replied, "Yeah, it was a pistol and it looked like a real gun to me." When Officer Cronin was asked what type of firearm Vigil was holding, he stated, "It was a handgun, but other than that, I could not tell." Officer Duff stated, "I spoke to Officer Guzman and I told him that I did not believe it was a BB gun because of the girth of the barrel that he was holding down; I said "I think it's a .22...just be careful, I think it's a .22." When asked if it appeared to be anything other than a firearm, Officer Taylor responded, "No, it appeared to be a firearm." Vigil indicated to dispatch that the gun might be a BB gun, but refused to confirm with the dispatcher if that was the case. With one exception, those who saw the weapon believed that it was real. The one witness who thought that the weapon could possibly have been a pellet gun also thought it could have been a .22 caliber firearm or a revolver.

Officer Taylor stated that even though Vigil had talked to dispatch, the fact that the gun was not real was not confirmed by Vigil. Taylor stated:

Dispatch advised that he wasn't – well, he wasn't letting on to what kind of – type of gun it was, that it *possibly* could be a BB gun, but they weren't – they weren't sure.

Additionally, as stated by the District Attorney:

Although the weapon is not a "firearm", as defined by Colorado law, it is capable of being a "deadly weapon" under Colorado law because in the manner in which it is used or intended to be used it is capable of producing serious bodily injury or death. If the pellet projectile strikes a vulnerable area of the body, such as the eyes, it is capable of causing serious bodily injury or death. Weapons of this kind are not harmless *toy* guns.

Alfred Vigil did not simply have the weapon nearby. He held it to his head indicating he would shoot himself; he pointed it at officers saying, "If I point this at you, you're going to shoot me." He raised what officers believed to be a real gun at the officers. He pointed it towards them after officers had tried repeatedly to get him to comply. Everything about Vigil's actions, from his comments to dispatch, to his comments to officers, to his pointing the gun at officers, indicated that Vigil wanted the officers to react with deadly force, and he was going to put them in the position where they had no other options.

Based on these facts, this Office believes that all four officers were reasonable in interpreting the actions of Alfred Vigil to mean that he was in possession of a real weapon and intended to use it against one if not all of the officers.

B. Round Accountability Beyond the Intended Target

As noted previously, the rounds fired by Officers Taylor, Duff, Guzman, and Cronin were meticulously collected and analyzed and it was determined that the officers fired a total of twelve (12) rounds and all shell casings were found and accounted for. Vigil's autopsy revealed that he was struck by five (5) rounds, as best as can be determined. The seven (7) shell casings from the other rounds were located at the scene. Bullet strikes and fragments were found on or near the brick wall of the apartments, a wood door frame, a window, a vehicle and a bicycle.

A principle the officers learned in their firearms training is that they must always be aware of their target and beyond. Officers Taylor, Duff, Guzman and Cronin could see that there were no individuals behind Vigil or in his immediate vicinity. However, there were a number of individuals directly behind the officers at the Kitchen Network. The decision of these officers to stop what appeared to be a deadly threat to the community and themselves was, on balance, a difficult but reasonable choice. This is true even though some of their bullets ultimately traveled past Vigil, the intended target, and hit the apartment building wall and other objects. The officers were responding appropriately under the Use of Force Policy and applicable law to what they believed to be a deadly threat. They were confronted by a fluid, fast moving situation. Vigil was apparently unstable, was crying, pacing and waving a gun in their direction. There was no one behind Vigil, but there were individuals behind the officers who could be in the line of any fire from Vigil's weapon. The chances of one of them being hit by one of Vigil's stray rounds was far greater than the chances of one of the officers hitting an individual in the vicinity of Vigil, since there were none.

When a suspect intends for police officers to believe that he is armed and willing to shoot at them, there is an immediate threat to public safety that the officers must stop. There is a need to balance the necessity of stopping a demonstrated threat to public safety with the concerns about the potential of bullets traveling beyond their intended target. However, officers must make a reasonable assessment of the situation and scene and must not act recklessly when they shoot. C.R.S. Section 18-1-707, which is also incorporated into the Denver Police Department Operations manual, states in part:

Nothing in . . . this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain [in] custody.

The specific facts in this case lead to the conclusion that the officers were not in violation of this section of the Policy. They did not intentionally, recklessly or negligently disregard the principle of their firearms training that they must always be aware of their target and beyond. This is a principle that must be applied in the context of the circumstances in which the officers found themselves and must be balanced against the threat posed. Given the facts and circumstances of this case, it is the belief of this Office that the officers acted reasonably and in accordance with their training.

C. The Availability and Use of Less Lethal Weapons

It is important to clarify when less lethal weapons are available for officers' use and how officers are trained with regard to whether they should be used in certain circumstances. The Denver Police Department has a number of less lethal weapons systems available to patrol officers. Among them are Tasers, pepperball guns, less lethal shotguns and 40 mm launchers. These systems are not carried by all officers at all times but are placed strategically throughout the Department so that they can be available as needed. Officers are trained as to the general effectiveness or ineffectiveness of each system in particular situations and the factors which must be taken into consideration in determining when their use might be appropriate. Two such factors are the type of deadly weapon, if any, being wielded by a suspect and the threat to officer and public safety posed by the suspect. Officers are trained that where the weapon being wielded by a suspect is a possible firearm, the threat to the officers and the public is extremely high and swift action is necessary to effectively contain or eliminate any such threat. Tactics and less lethal weapons options available to officers are far fewer and sometimes non-existent in cases involving firearms, as opposed to other types of weapons.

Another factor of great importance which must be taken into consideration is the distance between the suspect and the officer confronting him/her and how that distance might affect the level of threat to the officer or the public, the choice of the appropriate level of force (lethal or less lethal) and the type of less lethal weapon to use, if such use is reasonable and appropriate.

In this case, the initial information gathered by Denver 9-1-1 indicated that Vigil was armed with a "gun" of some sort, had been drinking, threatened to kill himself and wanted officers to shoot him. When officers were dispatched to the scene, their first responsibility was to quickly respond, assess the situation and determine how it could best be handled. Officers found Vigil outside his apartment, the neighbors and other citizens in close proximity, and armed with what appeared to be a firearm. This obviously posed a great threat to both the officers and the public and limited the tactical options and weapons options available to them.

Officers took cover at distances of approximately 25 – 60 feet away from Vigil and attempted to persuade him to drop the weapon. Officers are trained that because of the risk that firearms pose to officers and anyone else in the area, the use of any less lethal weapon is generally not appropriate where the suspect is threatening to use the firearm and is acting in a manner consistent with that threat. Additionally, even where the suspect is armed with a firearm but the particular circumstances might allow for the possible use of a less lethal option, consideration must be given to the distance between the confronting officer and the suspect and the risks involved in attempting to use less lethal force. For example, officers are trained that the effective use of a Taser is a distance of no greater than approximately 18 feet.

Commendably, Officer Cronin's assessment of the situation was that a 40 mm launcher might possibly be used as long as Vigil did not directly threaten the officers or anyone

else with the firearm. Officer Cronin had been trained and certified in the use of the 40 mm and knew it had an effective range as great as 50 yards and beyond and could possibly be safely deployed from cover at that distance. Officer Cronin made every effort to have the launcher delivered to the scene, but within twelve minute from the officers' arrival, Vigil had escalated his actions to cause a deadly force encounter - in refusing to drop the weapon, asking the officers if they would shoot him if he pointed the weapon at them and then swinging the weapon in the officers' direction Vigil's actions negated any attempts by Officer Cronin to resolve the incident with less than deadly physical force.

It is also of great importance to note that Department policy specifically guides officers in the possible use of less lethal weapons in deadly force situations. As Department policy 105.2 states:

The primary duty of police officers is to protect the public, themselves and other officers. Less lethal force and control options may assist officers in performing these duties, but are not intended to substitute for the use of deadly force when it is reasonable and necessary. There is neither a requirement nor an expectation that officers attempt to use or exhaust less lethal options in situations requiring the use of deadly force.

VII. CONCLUSION

In closing, this Office would like 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 yet independent conclusions result entirely from the reason that they are controlled by the facts.

This Office is well aware of the frustration some citizens may feel when it is perceived that the very officers who are called to help a citizen in crisis become the officers who use deadly force against that citizen. Everyone, citizens and officers alike, would agree that such results are indeed tragic. Yet, in many instances, as in this case, such a result is dictated solely by the actions of the person against whom force was used.

It is also noteworthy that in the past seven and a half years, the Denver Police Department has greatly increased the number of officers who are trained in C.I.T. methods of de-escalating citizens in personal crisis. The Department has also increased the number of officers who have access to and are trained in the use of less lethal weapons. Tactical training has also emphasized methods that are intended to reduce the likelihood of the need for deadly force. Indeed, there have been a great number of situations where subjects have been armed with weapons that have been successfully resolved without the use of deadly force. Unfortunately, the unique circumstances of each particular incident will often influence the final outcome.

In this case, Officers Taylor, Duff, Guzman and Cronin were undertaking a legitimate police action when they responded to a call of a man with a gun planning on committing

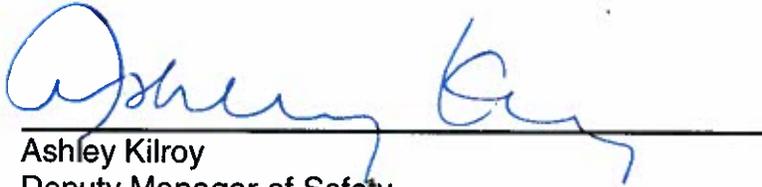
“suicide by cop.” It is unclear what happened to put Vigil in that mental state. With the knowledge of Vigil’s statements, officers tried to de-escalate the situation, they tried to get a 40mm non-lethal launcher on scene, and they tried to talk to Vigil and get him to get help. Vigil made it clear that he intended to commit “suicide by cop” – he did not give the officers the benefit of delay that could have increased their tactical options. Instead, at every juncture leading up to the fatal confrontation, Vigil ensured that the officers who were trying to help him had no reasonable choice other than to react to his threat of imminent deadly force as they did. Throughout this encounter, the actions taken and tactics used by all four officers were those which each officer reasonably believed were necessary to protect their own life, as well as the lives of their fellow officers and the citizens in the area who had entrusted the officers with their safety. The officers acted appropriately and reasonably to stop the imminent deadly threat posed by Alfred Vigil. Based on all available information, it is clear that on August 1, 2010, Officers Ryan Taylor, Dustin Duff, Rick Guzman and Sean Cronin acted reasonably under the circumstances with which they were confronted.



Mary A. Malatesta
Manager of Safety



Date



Ashley Kilroy
Deputy Manager of Safety



Date