



CITY AND COUNTY OF DENVER
DEPARTMENT OF SAFETY
FIRE • POLICE • SHERIFF
9-1-1 • COMMUNITY CORRECTIONS
CRIME PREVENTION & CONTROL • SAFE CITY

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**PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING THE OFFICER
INVOLVED SHOOTING RESULTING IN THE DEATH OF MARK SEPULVEDA
AND INVOLVING OFFICERS TIM SULLIVAN AND DEREK HANCOCK,
ON OCTOBER 18, 2011**

I. EXECUTIVE SUMMARY

The Incident

Around noon on Tuesday, October 18, 2011, Denver Police Department officers were dispatched to a robbery in progress with shots fired at a strip mall located at East 14th Avenue and Krameria Street. At the time, the strip mall was crowded and busy with people who were milling around conducting normal lunch time activities. Two Hispanic men had just robbed a cell phone store at gunpoint. One of the suspects fired a shot at one of the victims when the victim did not respond quickly enough to his command to get on the ground. The bullet missed the victim and hit a television instead. Another victim was hit on top of his head with a gun because he did not know the combination to the safe and was unable to open it. The other suspect then “kneaded him in the face.” Once the robbers were finally able to open the safe, they took the money and fled from the store. Before doing so, however, they made another victim in the store put his face to the ground and tied his hands behind his back with computer wire so that he could not call the police.

Several witnesses in the area heard screaming and gunshots, some believing that the cell phone store was being robbed. Others saw the two men, later identified as Mark Sepulveda and Justin Martinez, running out of the store into the parking lot and going in different directions. A number of witnesses, including the victims, called 9-1-1. Officer Tim Sullivan, driving a marked police car with lights and sirens activated, responded to the call of a robbery in progress with shots fired. He was the first officer to arrive at the scene. Officer Derek Hancock, who worked in the Vice Drug Control Bureau, arrived shortly after Officer Sullivan and was the second officer on the scene. He was in a plain clothes assignment and was wearing jeans and a sweatshirt and he was driving an unmarked vehicle when he heard the call come in.

Frightened citizens in disbelief witnessed the officers chasing Sepulveda and Martinez through the parking lot of the strip mall. During the chain of events, many of the witnesses, including both officers, saw Sepulveda run towards the liquor store to the east side of the shopping center where he encountered JC¹ who was driving a silver Volkswagen Passat. JC is one of the owners of the cell phone store and is in a wheelchair. JC tried to chase Sepulveda down in his car. When JC saw the officers, he started returning to the store. Sepulveda approached the car and yelled at JC to open the driver's door. In fear for his life, JC refused. Sepulveda fired a shot at the Volkswagen, striking the driver's side door of the vehicle and JC drove off unharmed.

Sepulveda then ran across the parking lot and hid behind a dark colored SUV in the southwest corner of the lot when he saw a marked police car drive into the area. VC, who works in the area of the incident, had just locked up her office and was approaching the 7-Eleven when she saw Sepulveda running and shooting his gun several times. As he approached her, VC was petrified, unable to move as Sepulveda brazenly fired his gun in her direction. Fortunately, the shots missed VC, but struck the door near where she stood.

Sepulveda then approached RO who was in his Jeep and pointed the gun at him, ordering him out of the Jeep. RO got out of the vehicle, but Sepulveda, with the gun in RO's face, ordered him to drive. RO got back into the Jeep; but before Sepulveda could get into the passenger seat, Officer Sullivan and Officer Hancock identified themselves as Denver Police and yelled at Sepulveda repeatedly to drop the gun. Sepulveda turned his attention toward Officer Sullivan and pointed the gun directly at him.

It reasonably appeared to Officer Sullivan, and Officer Hancock who was nearby at that point, that Sepulveda was extremely dangerous and was without regard for human life or property. Officer Sullivan knew that Sepulveda had acted violently toward innocent individuals and that his outrageously callous and violent behavior with a handgun was such that he had to be stopped or others would be placed in imminent danger. All of the efforts to stop Sepulveda with non-lethal methods by ordering him to the ground had failed. Sepulveda had repeatedly ignored commands to drop the gun.

As Sepulveda aimed the gun at Officer Sullivan, with their guns drawn, both officers yelled several times at Sepulveda to get down on the ground and to drop the gun. Each time, Sepulveda refused to comply and continued his advance. Both officers then fired their weapons simultaneously until Sepulveda went to the ground and was no longer a threat.

An ambulance arrived and Sepulveda was taken to Denver Health Medical Center where he was pronounced dead at 12:48 p.m. No other individuals were injured.

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 and are available for review by members of the public during regular office hours by contacting the Records Custodian in the Manager of Safety's Office at 720-913-6020.

The Criminal Investigation and Post-Mortem Examination

This case was jointly investigated by the DPD 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. Members of the Manager of Safety's Office were also present and observed interviews of witnesses.

Assistant Medical Examiners, Lindsey Harle, M.D. and John D. Carver, M.D., performed the autopsy of Sepulveda. Sepulveda's cause of death was determined to be multiple gunshot wounds. The autopsy also revealed blood ethanol.

The criminal investigation was completed and after the District Attorney ("DA") announced his decision that no charges would be filed against Officers Sullivan and Hancock. The DA concluded:

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 Officer Sullivan and Officer Hancock to fire the shots that caused Sepulveda's death. In fact, they only used deadly force when it was necessary 'to defend' against the imminent deadly threat posed by Sepulveda. They were clearly legally justified to shoot Sepulveda under Colorado law. Therefore, no criminal charges are fileable against the involved officers for their conduct in this incident.

Accordingly, based on the criminal investigation, the DA directed that no criminal charges be filed and the criminal review of this case was concluded.

The Administrative Review

Following the decision by the DA, this case was turned over to the DPD Internal Affairs Bureau ("IAB") for further investigation into the tactics and force procedures used by the officers. After IAB completed its broadened investigation, it presented the case to the Use of Force Review Board. The Board found that the officers acted in accordance with established policy. The Chief of Police and the OIM agreed with this conclusion and presented their conclusions to the Manager of Safety ("the Manager") for a final review and determination.

As a general matter, an administrative review by the Manager analyzing whether a death occurring in connection with a use of force was in violation of Department policies focuses on three areas:

- (1) the reasonableness of the tactics utilized by the officers immediately prior to and during the use of force;
- (2) the reasonableness of the officers' assessment of the threat posed by the person; and
- (3) the reasonableness of the use of force options selected by the involved officers.

The Manager finds and concludes that Officers Sullivan and Hancock used reasonable and non-lethal tactics to get Sepulveda disarmed and under control in order to prevent loss of life and/or serious bodily injury to others. The officers repeatedly yelled out to Sepulveda to get to the ground and to drop the gun, commands that he ignored as he advanced toward the officers, pointing the gun at them. The officers' assessment that Sepulveda was an imminent threat to them and to others who were in the vicinity was reasonable given his violent behavior and unwillingness to drop the gun as he continued to advance toward the officers. Sepulveda's behavior gave cause to Officers Sullivan and Hancock to believe they had no choice but to use the only appropriate and effective method available to them to end the imminent danger that Sepulveda posed. The force they used was not only reasonable, but essential, given the circumstances.

Based on a careful review of the facts, a comprehensive analysis of the policies and the law, and a consideration of the recommendations of the OIM and the Chief of Police, the Manager concludes that the officers did not violate DPD's Use of Force policy, any other Department rules, or any laws with regard to the use of force. Therefore, disciplinary sanctions will not be ordered.

II. FINDINGS OF FACT

The information considered in reaching these findings is contained in the DPD files related to this case. As stated in the footnote on the first page of this public statement, the files are available for review by members of the public during regular office hours by contacting the Records Custodian in the Manager of Safety's Office at 720-913-6020. The files and information that were relied upon by the Manager include recordings of and/or transcripts of interviews of civilian witnesses, interviews of the subject officers, and interviews of non-subject officers who witnessed the event. The Manager also reviewed and relied upon the following additional documents and materials: written statements of officers who responded after the event; written statements of paramedics and firefighters; a study of the crime scene, physical evidence recovered and all scientific testing conducted; and, other records and reports. Relevant portions of these interviews, statements and reports are referenced or quoted throughout this public statement. Summaries of witnesses' statements are attached in Appendix A.

The Strip Mall

This incident occurred in broad daylight at a strip mall located at East 14th Avenue and Krameria Street. The front of the businesses face to the south and are separated from East 14th Avenue by a large parking lot. Krameria Street is on the west side of the complex. Among other small businesses, the strip mall consists of a 7-Eleven, a liquor store, and a cellular telephone store, and is very busy in the middle of the day.

On Tuesday, October 18, 2011, many people were at the strip mall or were in the vicinity for various reasons. Of the many people who were at the shopping center, LB was working at Dependable Cleaners and EP was working at the Krameria Café. VC was also in the vicinity working at a nearby office in the area. Many others were coming and going during the afternoon, conducting their business as usual. CT and KN were having lunch outside on the patio at the Krameria Café. ER was going to the salon and

RO and VQ were at the 7-Eleven. JB was driving down Krameria and was stopped at a red light at the time of the incident and BD, who lives nearby, was cutting his grass. CE and DJ were just leaving a nearby King Soopers and MO was fueling her car nearby at a Safeway gas pump.

Earlier that morning SF, a cousin of Justin Martinez, called him for a ride and he picked her up from a bus stop around 10:45 a.m. or 11:00 a.m. in an older green car. When he picked her up, he was with his friend, "Marky," who she did not know prior to that day but had seen him one time before. Martinez informed SF that he was stopping at the liquor store when they got to the strip mall. She waited in the car.

The Cell Phone Store

AC and JH were working at the cell phone store, Hook-Up Tech. JH owns the store in partnership with AC's father, JC. Around 12:15 p.m., two Hispanic men came running into the store. AC said that the first man, later identified as Mark Sepulveda, was wearing a bandana over his face, had an eye patch over his left eye and was armed with a silver handgun. The other man, later identified as Justin Martinez, was behind Sepulveda and not wearing a mask.

The men came running through the door of the cell phone store yelling for everyone to get down on the ground. AC said that he "immediately hit the ground," and that he first thought it was a joke. He said that it took him a couple of seconds to realize, "You're getting robbed at gunpoint. You better get your face down on the ground and do what they say." However, it appeared to him that JH did not initially comprehend what was happening, saying, "What is this? . . . I don't know what's going on. . . . What is this?" As a result, JH did not get down right away and Sepulveda fired the gun at him and missed, hitting a television instead. AC recalled, "I thought they killed [JH]" and "at that point . . . I pretty much had my whole world like collapse on top of myself." Sepulveda yelled at AC and AC thought he recognized the gunman's voice as a man he knew as "Marky" who had been in the store 10-15 times and whose uncle was a friend to his father.

According to AC, when he and JC were on the ground, they were told to empty their pockets and they complied. The men then repeatedly asked JH for his gun. Neither AC nor JH had a gun and JH responded that no guns were kept in the store. They were then ordered to open the register. AC followed his orders and crawled to the register. Martinez followed AC to the register where he opened it and Martinez emptied it out. Both men then demanded that they open the safe. AC informed Sepulveda that he did not know the combination to the safe; and in response, Sepulveda violently hit him on the top of his head with the gun. At that time, according to AC, "The one without [a gun] kneed me in the face." AC said that Sepulveda stated, "I'll fuckin' smoke you if you don't open the safe." He then turned to JH, who stated that he could open it. Sepulveda told him, "Open the fuckin' safe." JH opened the safe and the robbers took the money that was inside.

During the robbery, a customer named KS entered the store. Another customer, KI, was about to enter. When KS walked into the store, one of the robbers said, "We're closed. We're closed. Get out!" She attempted to leave the store when Sepulveda told Martinez to make her get on the ground, saying, "We don't have any trouble with you. Just stay on the ground." Shortly after, the other customer, KI, attempted to come into the store and Sepulveda ran up to the door, pulled it shut, and said, "We're closed! Go get the fuck out of here!" KI left.

As soon as KI left, Sepulveda and Martinez returned to AC and JH demanding, "Where are the big bills at? Where are your guns at?" AC and JH explained, "We don't have anything else. Take whatever you want. Take our computers. Take the phones. They're worth money. Just take them. Please leave." They were then instructed to move to the back of the shop when Sepulveda said, "Hey, this white boy's going to call the cops, tie him up," referring to AC. Martinez then said, "Hey, the white guy's outside calling the cops in his car right now," referring to KI.

Unbeknownst to Sepulveda and Martinez, KI was not calling the police; he called JC, AC's father, who just happened to be pulling into the parking lot at that time.

Meanwhile, inside the store, Martinez and Sepulveda instructed AC to turn around and put his face on the floor. They grabbed a computer wire and tied his hands behind his back. After that, they ran out of the store.

Police Called

DB and SM are the owners of a store next to the cell phone store. They both heard screaming and a gunshot come from next door and they both believed that the store was being robbed. They ran out their back door to the dry cleaners while SM was calling 9-1-1. She told dispatch that she thought the cell phone store next door was being robbed.

In the meantime, AC was able to rip off the computer wires that bound his wrists. He went to the front of the door as he was calling the police to see where they had gone. JH had also called the police after asking AC if he was okay.

On the date of the incident, Officer Tim Sullivan was working his usual assignment as a patrol officer in District Three and was assigned Car 313. He was wearing a regulation Denver Police Department uniform and was driving a fully marked patrol car.

Among the many calls that day to Denver 9-1-1, at least two calls, from DB and SM, reported that there was a robbery in progress. Officer Sullivan was heading toward the 7-Eleven around 12:20 p.m., driving down 6th Avenue eastbound when the simulcast call came over the radio indicating that there was a robbery in progress with shots fired. The address given was right where Officer Sullivan was already heading. He was at 6th and Krameria at the time, approximately eight blocks north from where the incident was occurring, when the call came out. Initially, however, it was not clear to Officer Sullivan that it was the cell phone store that was being held up due to the many different dispatches. He responded to the scene with lights and sirens.

Officer Derek Hancock, who works in the Vice Drug Control Bureau, also heard the call on the radio of a robbery with shots fired at 6237 East 14th Avenue. As the many witnesses of the incident were frightened while calling 9-1-1, Officer Hancock also heard a lot of screaming over the radio. He was in a plain clothes assignment and was wearing jeans and a sweatshirt and he was driving an unmarked vehicle towards 6th Avenue when he heard the call come in. He noticed that there was a marked police car approximately five car lengths ahead of him on East 14th Avenue. He stated:

I looked up and I saw that I was right at the 6200 block and it was him [Officer Sullivan] turning northbound going lights and siren, so I decided I'm six blocks away from here, somebody's shooting somebody, I should probably head up that way at least to be at least a good witness or see if I can help.

Chase and Attempted Carjacking

Officer Sullivan pulled into the parking lot. Witnesses who saw him and who knew where the suspects were began pointing towards the area of the cell phone store. Officer Sullivan saw the people pointing and then saw the two suspects running out of the store, towards him. According to the officer, the two suspects saw him and turned around and ran in another direction. Officer Sullivan continued in his patrol car.

ET, the owner of a store in the strip mall, and who had also heard screaming and gunshots, saw the man that she had been talking to earlier in her store "running around the parking lot . . . trying to hide . . ." and "with a gun in his hand, shooting." She saw him shooting the firearm at least twice. She heard additional shots being fired but could no longer see Sepulveda and she too had called 9-1-1.

At the same time, SF, Martinez's cousin, was still in the vehicle waiting for Martinez and Sepulveda to return when she saw Sepulveda running towards the car with a red mask covering the lower half of his face. She also saw police officers chasing him so she ducked in the car. She then got in the front seat and since the keys were in the passenger seat, she drove off. She went north and then parked the car at Wal-Mart. SF was so frightened that she drove off, despite the fact that she does not know how to drive a stick shift.

In the meantime, Officer Hancock had turned the wrong way down East 14th Avenue and parked at the mouth of the parking lot. He observed two males running about mid-block. The first, Martinez, did not appear to have anything in his hands. He ran south through some nearby bushes. The second male, Sepulveda, appeared to have something covering his face and he could see that he had a firearm so the officer focused on him.

JC, one of the owners of the cell phone store who had just received a call from KI, had decided to follow Sepulveda when he saw both suspects running in different directions as he was pulling into the parking lot. Martinez was running towards the 7-Eleven store heading west and Sepulveda was running towards the liquor store to the east. Ignoring the immense danger of his actions, JC, who was in a wheelchair, remained in his

vehicle and tried to chase Sepulveda down in his car. By the time he was at the end of the parking lot, he saw more policemen so he started returning to the store. Sepulveda approached JC's moving vehicle and dropped his mask, allowing JC to recognize him, and told JC to "Stop!"

Attempting to car-jack JC's vehicle, Sepulveda yelled at JC to open the driver's door. JC said that he refused to stop because he was in fear for his life and thought Sepulveda would kill him so he quickly drove away. Obviously angry by JC's lack of cooperation, Sepulveda fired a shot at JC's Volkswagen, striking the driver's side door of the vehicle. This was confirmed by Officer Hancock who witnessed Sepulveda attempt to car-jack JC's silver Volkswagen, screaming at him, "Get out!" Officer Hancock saw Sepulveda take a shot at the car when JC would not open the door. He also observed JC drive off.

When JC returned to the store, he learned that his son had been a victim in the robbery. Extremely upset and in disbelief, JC stated:

He had a gun on him and I know I don't want to stop because he'd probably kill me so I just sped up and went around and he just shot at me. And the first thing I knew was, 'Oh, my God, he shot – that guy shot at me.'

At that time, VQ who was driving down East 14th Avenue and was going to stop at 7-Eleven also witnessed the chase and the arrival of the officers. As shots rang out, she saw a woman helping a man in a wheelchair get out of his silver car. She noticed a bullet hole in the driver's side door of the vehicle.

After JC drove off, Sepulveda ran across the parking lot and hid behind a dark colored SUV in the southwest corner of the lot when he saw a marked police car drive into the area. Officer Hancock saw Sepulveda come back around and squat down behind a black SUV when the marked police car driven by Officer Sullivan with lights and sirens was coming south on Krameria Street. It was at that time that Officer Hancock aired on the radio, "Watch the guy with the gun. He's coming up to the street. He's coming up to the street."

Officer Sullivan continued in his patrol car then stopped the vehicle and exited his vehicle with his gun drawn. He also saw the suspect stooped down in front of an SUV that was in the parking lot. He started yelling, "Down! Down! Down!" Officer Sullivan went around to see if the suspect was actually down on the ground while trying to keep an eye out for the other suspect. When he got around the car, he saw that the suspect was not there. According to Officer Sullivan, "I came back around at the end of this car to check to see if he was on that side doubling back on me, trying to keep an eye on him at the same time."

Officer Sullivan had not seen the suspect so he holstered his weapon and got back into his vehicle. He turned his attention back on another person who appeared to be trying to leave in a green automobile. He noted that that driver was "screeching and ripping the tranny and things like that, just trying to get it going. So I'm not sure if it was a getaway car or if it was another victim." At this point, Sepulveda turned and started

running directly towards Officer Sullivan with his gun raised. Officer Sullivan ducked on the seat of the car and drove the car forward attempting to run Sepulveda down. According to Officer Sullivan:

I ducked there on the seat floor of the car – or the patrol car, attempted to run him over to negate him shooting me because I felt fear of my life at that time and I don't know if I hit him or not, and as I was heading this direction, I steered toward him . . . to take any of his ability to shoot at me away. I don't know if I hit him or not . . .

* * *

And at that point, I'm driving the car so I slide into him like this, stomp on the gas, and try to look over the dash at him and steer, trying to hit him and run him over to negate the – negate him from shooting me.

Sepulveda crouched down as the police car drove by and then he ran over to the driver's side of RO's Jeep in the parking lot.

VC, who works in the area of the incident, was locking up her office when she saw Sepulveda running and shooting his gun. She heard approximately 4 to 5 shots. She could not see him shooting towards anyone but she had just seen him crouched down behind the driver's side of the SUV in the parking lot. According to VC, Sepulveda then stood up and began walking towards her. She was petrified as she stood "frozen" in place in the 7-Eleven doorway. Again, with a total disregard for human life, Sepulveda fired towards her, hitting the door she was standing near. She then heard another shot but did not see where it went. She said that Sepulveda then saw RO getting into his Jeep and pointed his gun at him.

KN was on the patio at the Krameria Café when she heard police sirens and then heard gunfire. She saw Sepulveda who had been crouched behind an SUV stand up and raise his arm and point. It appeared to her that he had a gun because she then heard a gunshot. Frightened and concerned for their safety, she and CT went back inside for cover and asked one of the employees to lock the door.

Sepulveda ran across the lot to the Jeep parked in front of the 7-Eleven store. He attempted to get the driver, RO, to exit the Jeep at gunpoint. According to RO:

I was at 7-Eleven . . . As I came out I heard gunshots. As I was walking to my Jeep, I saw a guy, maybe Hispanic, shooting toward 14th Avenue hiding behind a car. I tried to get into my car quickly. The same man ran up to me and put the gun to my face and said, 'Drive!'

RO got out of his vehicle and told Sepulveda to take it. RO said, "He shook the gun at my face and told me I would drive." RO got back into his Jeep.

At this point, Officer Sullivan had lost track of Sepulveda and Martinez so he secured his vehicle and started searching for them on foot. He then heard a gunshot. Quickly, he started moving back around towards the gunshot, using cars in the parking lot for cover. As he turned the corner, he saw many of the witnesses pointing towards a black

Jeep. He could see the suspect, who had just tried to shoot him, on the driver's side of RO's Jeep trying to get in, pushing and pulling at the door of the Jeep. Officer Sullivan began to go towards the Jeep. As he was doing that, he saw Officer Hancock coming at Sepulveda. Officer Sullivan stated, "The undercover officer was coming from this direction . . . I don't know how, when or why I identified him as a police officer but I did. Thank God I didn't shoot him . . ."

It was at this point that Officer Sullivan concluded that if Sepulveda succeeded in getting into the Jeep, RO would be at great risk, as would the rest of the community if Sepulveda escaped. Officer Sullivan determined that he had to take action to stop the Jeep to prevent harm to others. Sepulveda was unable to enter from the driver's side, so he moved to the passenger. He was screaming and yelling. Officer Hancock responded by advancing towards him, yelling at him, "Denver Police! Drop the gun! Denver Police! Drop the gun!"

Officer Sullivan was aware that there were a lot of people present. He was concerned that if a round should go through Sepulveda or miss him, that he would hit someone else or the driver in the Jeep. Officer Sullivan noted, "There were so many people around and the guy in the Jeep was just terrified." Both officers continued telling Sepulveda, "Don't move! Don't move! Don't move!"

Final Confrontation

Sepulveda ran around to the passenger side of the Jeep to get in. According to RO, when he got back into his Jeep, Sepulveda went around to the passenger side, near the front passenger side tire. At that point, a number of witnesses confirmed that both Officer Sullivan and Officer Hancock were approaching with guns drawn yelling repeatedly, "Down! Down! Down!" Sepulveda turned around and started bringing his gun up towards the officers. At the time, Officer Sullivan believed that Sepulveda had fired at least five rounds at them. It was then that both officers fired their weapons simultaneously until Sepulveda went to the ground and was no longer a threat. According to Officer Hancock:

He's turning towards Sullivan with the weapon up and we're giving him demands . . . I'm screaming at him, 'Drop the gun! Drop the gun! Drop the gun! Denver Police! Drop the gun!' and he's continuing to come so just for Sullivan's safety, my own safety, I fired my weapon . . . three to four, maybe six times . . .

RO said after Sepulveda ran to the passenger side, "gunshots are blazing." Frightened, he laid down inside the Jeep.

A number of people at or near the strip mall saw and/or heard what was happening. JC stated that he saw a plain clothes officer pointing a gun towards the 7-Eleven and engaging Sepulveda. He saw guns being fired and noted, "Everybody just stopped. We just stopped."

AC, who had just ripped off the computer wires from his wrists, was calling the police while standing at the front door of the cell phone store to see where the suspects had gone. He said that the next thing he knew, "I'm looking out and I see an un-uniformed officer fire, I think about seven shots into a direction I couldn't see. After I saw that, I hit the ground again and saw that my dad was out front and proceeded to call 9-1-1 from the floor."

JB was driving down Krameria Street and was stopped at the red light on East 14th Avenue when she heard someone yell. She looked over and saw a police officer holding his gun. She then saw the officer fire his weapon and then saw a man "drop." She said there was a black Jeep between her and the man who fell so she could not see everything, but she heard 3 to 4 gunshots.

Several people heard the officers repeatedly giving Sepulveda commands. JL who lives in the area of the incident heard someone yell, "Get on the ground! Get on the ground!" SS, who was driving down Krameria getting ready to turn into the parking lot, saw the man with the gun standing and she heard the officers say, "Get down!" and "Drop your weapon!" AC and JC noted that they also heard the plain-clothes officer yell, "Freeze!" before shooting.

CE who was at King Soopers witnessed the chase and attempted car-jacking of RO when he pulled out onto Krameria Street in his vehicle. He continued driving slowly watching when he saw two officers with their guns drawn, one in uniform and one in plain clothes. The suspect was on the ground and officers were yelling, "Don't move." Sepulveda was handcuffed by the police and shortly after that, an ambulance arrived.

Officer Sullivan discharged his magazine and re-loaded. He could not tell if Sepulveda still posed a threat, as he did not know where Martinez was or if he was coming back. He continued forward with Officer Hancock as his cover as he approached the Jeep. Sepulveda was still breathing and was placed in handcuffs. He stayed with Sepulveda until the ambulance arrived.

When asked why he fired his weapon, Officer Sullivan stated, "He was pointing the gun at me and I felt fear for my life and the lives of other people there. He had already tried to and I don't know if he shot at me the first time while he was pointing the gun at me while I was in my patrol car because I tried to duck out of the way, and I definitely heard shots and we got shots fired on the way to the call, so I knew he had intention to shoot, and I shot at him to defend myself and to stop him from hurting me or anybody else and I shot until he no longer presented a danger to me." He added, "I felt fear for my life and – and somebody threatening it."

When Officer Hancock was asked this same question, he stated that he thought Sepulveda was getting ready to fire at him or Officer Sullivan. He stated, "I mean he already committed a robbery. He's trying to car-jack people. I feel that this guy has no desire to drop his weapon and give up."

EMS arrived approximately five minutes later.

After the incident, and after the officers re-holstered their weapons, a witness approached Officer Hancock and told him that the other suspect, Martinez, was in a nearby parking lot. Officer Hancock called in the location of the other suspect on his radio and officers arrived and took Justin Martinez into custody.

Sepulveda and Martinez wreaked havoc that day in the cell phone store and in the parking lot of the strip mall. Their actions were intentional, extremely violent and dangerous. They demonstrated a total disregard for human life and property. Their actions unnecessarily placed many people in harm's way. The threat of danger that they posed to everyone in the area cannot be overstated. The many witnesses, people targeted and/or traumatized by the suspects, and so many others who were unaware of what was happening were at grave risk by the suspects' actions including their violent exchange of gunfire. Bullets were flying as many frightened and innocent people were working, shopping, or in the area of the strip mall that day.

The final confrontation happened in the parking lot directly in front of the 7-Eleven – the attempted car-jacking, the attempt to take a hostage, the exchange of gunfire, and the necessary take-down of one of the suspects. Many people were inside the store during the incident and when viewing the surveillance video, one can actually see a blind man leaving the store in a hail of gunfire.

III. MEDICAL RESPONSE

Paramedics from Denver Health Medical Center (DHMC) arrived approximately five minutes after the shooting. Mark Sepulveda was unconscious, unresponsive and without a pulse.

The paramedics provided written statements. Paramedics Jeff Benson and David Miller arrived on-scene and observed Sepulveda lying on the ground, slumped to his right with his hands secured in handcuffs. The handcuffs were removed and Sepulveda was rolled onto his back and placed on a stretcher. He was transferred to DHMC.

Firefighters Brian Rediker and Jennifer Rosely were on Engine 14 which was called for a confirmed gunshot wound. The firefighters arrived on scene and began CPR. They rode with the paramedics to DHMC.

IV. CRIME SCENE INVESTIGATION

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.

Officer Sullivan was armed with a model P220 Sig-Sauer .45 caliber semi-automatic pistol with an 8-round magazine capacity and an additional round in the chamber. Officer Sullivan's pistol was fully loaded with 9 rounds of DPD issued ammunition. Officer Sullivan also carried, as a back-up pistol, a MK9 Kahr 9mm semi-automatic pistol. Officer Sullivan did not draw or fire the secondary pistol during the incident.

Officer Sullivan told investigators that after Sepulveda went to the ground, he ejected his magazine and inserted a fresh magazine. As he did so, he "racked" the slide, ejecting the live round from the chamber and re-charging his firearm. Crime scene investigators recovered the ejected magazine at the scene and a live .45 caliber round near that location. This indicates that Officer Sullivan fired six (6) rounds.

Officer Hancock was armed with a Glock model 17, 9mm semi-automatic pistol with a 17 round magazine capacity and an additional round in the chamber. Officer Hancock's firearm was fully loaded with 18 rounds. The unloading sheet shows there were 12 rounds in the magazine and one in the chamber. This indicates Officer Hancock fired five (5) rounds.

Sepulveda was armed with a model P-89DC Ruger 9mm semi-automatic handgun. When it was recovered, it had one round of Winchester 9mm ammunition in the chamber and six (6) additional rounds in the magazine. This firearm magazine capacity is 15 rounds. It is not clear exactly how many rounds Sepulveda had in the pistol magazine. We have only witness accounts and evidence recovered at the scene to provide a possible number of rounds he fired.

Among other items recovered at the scene by DPD Crime Lab personnel were 13 spent shell casings. Of those, six (6) were .45 caliber shell casings which were fired from Officer Sullivan's firearm. Five (5) were 9mm shell casings identified as being fired from Officer Hancock's firearm. The remaining two 9mm shell casings were not fired from Officer Hancock's firearm. The DPD Crime Laboratory has not completed the comparison of these two unknown shell casings to the Sepulveda's 9mm Ruger, but they are consistent with that firearm. This evidence suggests that Sepulveda fired at least twice.

V. Post-Mortem Examination

An autopsy was performed on October 19, 2011 by Dr. Lindsey Harle and Dr. John Carver. In the autopsy report, the doctors noted "penetrating gunshot wound of the chest . . . perforating gunshot wound of the abdomen . . . perforating gunshot wound of the buttocks." The cause of death was determined to be a gunshot wound to the chest.

Basic post-mortem toxicology reports revealed that Sepulveda tested positive for blood ethanol.

VI. CRIMINAL HISTORY

A records check was conducted on Sepulveda after this incident. Sepulveda had a lengthy criminal record going back to his youth. Specifically, it was noted that Sepulveda had multiple commitments to the Colorado Department of Youth Corrections as a juvenile. As an adult, Sepulveda was sentenced three separate times to the Colorado Department of Corrections. His criminal conduct included arrests for First Degree Criminal Trespass-Vehicle, FTA, 3rd Degree Assault, Felony Menacing, Felony Assault, First Degree Criminal Trespass-Dwelling, 2nd Degree Burglary, Weapons charge, 2nd Degree Burglary-Dwelling, 2nd Degree Burglary-Dwelling, Theft, Felony Escape from Felony Conviction, Obstructing Police, False Information, FTA on Escape

charge, Flight-Escape Attempt, Vehicular Eluding, Possession of Weapon by Previous Offender, 2nd Degree Aggravated Motor Vehicle Theft, False Reporting, Possession of Burglary Tools, Vehicular Eluding, Leaving the Scene of an Accident, Fugitive-Parole Violation, 2nd Degree Burglary, Fugitive-Motor Vehicle Theft, and Felony Escape.

According to the Denver DA, at the time of the shooting, arrest warrants were active on both Sepulveda and Martinez for a murder that occurred on September 17, 2011, one month before this incident, at 1305 South Harlan Street, Lakewood, Colorado. Had he survived, Sepulveda would have been facing multiple felony charges for his crimes against citizen and police officer victims in this crime spree.

VII. THE CRIMINAL INVESTIGATION

As discussed above, the criminal case was jointly investigated by the DPD Homicide Unit and the DA's Office. The Office of the Independent Monitor (OIM) and members of the Internal Affairs Bureau observed the investigation and provided input. Members of the Manager of Safety's Office were also present and observed interviews of witnesses. The criminal investigation was completed and the DA issued his decision on November 11, 2011, as to whether or not criminal charges would be filed against the two officers who fired their weapons. Pursuant to the DA's decision letter, the DA declined to file charges against Officer Sullivan and Officer Hancock. The DA stated that based on a review of the totality of the facts developed in the investigation, he could not prove beyond a reasonable doubt that it was unreasonable for the officers to fire the shots that caused the death of Mark Sepulveda. He specifically noted that the officers only used deadly force when it was necessary "to defend" against the imminent deadly threat posed by Sepulveda.

The DA summarized the facts as follows:

Prior to police arrival, Sepulveda and his accomplice were committing an aggravated robbery, felony assault and menacing at the cellular telephone store. Sepulveda fired his handgun at one of the victims during that crime and a victim was struck with the handgun by Sepulveda and kned in the face by Martinez. Sepulveda then made the decision to attempt to escape apprehension while still in possession of the firearm. During his escape effort he felony menaced another innocent citizen with his firearm in an attempt car-jacking. He fired his weapon at this victim. He then felony menaced another innocent citizen with his firearm while attempting to car-jack his vehicle to aid his escape. When confronted by the two Denver officers, he chose to continue to refuse their lawful commands to drop his firearm and surrender peacefully. Instead, he intentionally chose to raise his firearm at Officer Sullivan. This decision resulted in Sepulveda being shot multiple times by Officers Sullivan and Hancock – ending the confrontation.

The DA reviewed Sepulveda's criminal history and as detailed above, he noted that Sepulveda's adult life had been a pattern of committing crimes and going in and out of the correctional system.

The DA concluded that Officer Sullivan and Officer Hancock only used deadly force to defend against the imminent deadly threat posed by Sepulveda. The DA noted that “they were clearly legally justified to shoot Sepulveda under Colorado law. Therefore, no criminal charges are fileable against the involved officers for their conduct in this incident.” The case then proceeded to administrative review.

VIII. THE ADMINISTRATIVE REVIEW

Following the decision by the DA, this case was turned over to the DPD IAB for further investigation into the tactics and force procedures used by the officers. After IAB completed its broadened investigation, it presented the case to the Use of Force Review Board. The Board determined that the officers acted in accordance with policy. Both the Chief of Police and the OIM agreed with this determination and so advised the Manager. This case was then brought to the Manager for a final determination as to whether the officers violated DPD’s Use of Force policy or any other DPD policy or law.

IX. ANALYSIS

As stated above, 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 officers immediately prior to and during the use of force;
- (2) the reasonableness of the officers’ assessment of the threat posed by the person; and
- (3) the reasonableness of the use of force options selected by the involved officers.

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 Mark Sepulveda 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. 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.

The Department policy 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.

The policy 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 command presence, warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment and other less than lethal force) 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; and
4. the use of movement to:
 - a. seek a better tactical position;
 - b. increase the distance between the officers and the threat; and
 - c. increase the time the officers have to react to the threat.

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 Mark Sepulveda 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 Mr. Sepulveda.

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

To determine whether the officers' tactics were reasonable, the Manager considers all of the actions taken by the officers to get Sepulveda to comply with their orders without having to use force or resort to lethal force. The Manager also reviews and considers the actions the officers took once they were engaged in force in attempting to de-escalate and/or cease force once the threat had diminished or no longer existed. Officers are trained to attempt to use non-physical force, including verbal and non-verbal communication, to help establish and maintain a controlled environment at any stage of a situation. However, the safety of the public and the officers must be the overriding concern. If non-physical force options do not work, the officers are taught that they may resort to force, including lethal force.

The officers made the appropriate tactical decision that Sepulveda needed to be stopped and, if possible, arrested. Sepulveda was not isolated in a secure location; he was in the middle of a strip mall around noon with many innocent bystanders around including restaurant patrons, shoppers, nearby residents, and employees of the mall. Additionally, there is a great deal of traffic on East 14th Avenue and Krameria Street, especially at this time of day. The officers were also aware that the suspect was armed with a real gun, that he had already been involved in a robbery, and that the robbery included shots fired. Officers were duty-bound to attempt to apprehend Sepulveda.

The officers used proper tactics in trying to detain and arrest Sepulveda. As noted above, tactical options which the Denver Police Department officers are encouraged to use to de-escalate potentially dangerous confrontations include command presence, warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment, and less than lethal force (such as Taser and pepper balls). The officers presented a command presence. Officer Sullivan was in a regulation uniform and driving a fully marked vehicle. The lights and sirens on his vehicle were activated. Officer Hancock who was in plain clothes clearly identified himself as a police officer. This "command presence" is generally used to project the appearance of being in control both of oneself and the situation in a manner that actually helps create control. The police uniform has traditionally been a major source of establishing a command presence because of the fact that it is immediately recognizable. Despite the fact that Officer Sullivan was in a marked car, wearing a regulation uniform, and despite verbal commands from both officers, and in the face of officers with guns drawn, Sepulveda refused to surrender.

The officers used proper tactics by giving verbal commands. Giving verbal commands to a suspect can be the easiest and most successful method of achieving compliance and defusing a potentially deadly conflict. It is important to note that both officers continued giving commands to Sepulveda up until the final confrontation when he pointed a weapon at the officers. During the incident, Officer Hancock yelled, "Denver Police! Drop the gun! Denver Police! Drop the gun!" Officer Sullivan yelled, "Get on the ground! Get on the ground!", "Get down and drop your weapon!" and "Don't move! Don't move!" Both AC and JC stated that they heard Officer Hancock yell, "Freeze!" prior to any shots being fired.

The officers also made tactical use of cover, concealment and barriers throughout the entire confrontation. As the officers attempted to locate the suspects, Officer Sullivan, at great peril to himself, exited his vehicle with his gun drawn. When he saw Sepulveda stooped down in front of the SUV that was in the parking lot, he gave the verbal command, "Down! Down! Down!" He went around to see if the suspect was actually down on the ground while trying to keep an eye out for the other subject. He carefully maneuvered around the vehicle for cover but the suspect was no longer there. He then repositioned himself back around at the end of the vehicle to see if the suspect was on that side doubling back on him, remaining fully aware that he had to keep an eye on him at the same time. The suspect was not there so Officer Sullivan got back into his vehicle.

When he could not locate Sepulveda and Martinez, Officer Sullivan got out of his car with his gun drawn and started looking for them on foot. He heard a gunshot, so he headed in the direction of the gunshot, using the cars in the parking lot for cover. By using a barrier and maintaining a distance, Officer Sullivan correctly assumed he would have more time to react if Sepulveda should advance towards him. He also thought this would allow more time to engage in efforts to persuade Sepulveda to give up without having to use deadly physical force.

When Officer Sullivan turned his attention to Sepulveda, who was trying to escape in the green vehicle, Sepulveda got out of the car and started running directly towards Officer Sullivan with his gun raised. In fear for his life, Officer Sullivan ducked down on the seat of the car. While looking over the dash and using the vehicle as a barrier between him and Sepulveda, he steered towards him, stepped on the gas and tried to run him down in order to stop the threat. Unfortunately, this approach did not work.

In this case, the officers could not use the tactics of retreating or disengaging. Officers are not legally required to retreat or disengage when confronted with a deadly weapon. Nonetheless, the Denver Police Department does train its officers to consider retreat or disengagement as tactical options. Retreat as a tactical option can provide officers with opportunities to de-escalate, get into better positions, communicate with the suspect or utilize other tactical options which will, ultimately, assist officers in controlling the situation. The officers were confronted by an armed man who, immediately upon seeing them, was noncompliant, aggressive and threatening towards them. As a result, retreat was not an option. For this same reason, disengagement was also not an option. Sepulveda proved to be dangerous and his actions posed a continual threat to the officers and to the community. It was necessary to stop him before he could harm others.

Other than what was already mentioned, no other less than lethal force was used in this incident. It must be emphasized that officers are not required to use less than lethal force when confronted by a dangerous suspect with a deadly weapon. Nonetheless, as stated earlier in this statement, the Denver Police Department does train its officers to use their knowledge and experience to determine if less than lethal force or deadly physical force is appropriate. In this case, the threat posed by the suspect was immediate and imminent. Officers were confronted by an aggressive, non-compliant and threatening man who was pointing a loaded gun at them and who had just committed armed robbery, assaulted a victim, attempted a car-jacking, and attempted to take a citizen as a hostage at gunpoint.

The entire time, and throughout this ordeal, Sepulveda was aggressive, threatening and unyielding. Unfortunately, he made it continually more difficult for the officers to use any other tactics in order to contain the situation. His aggression and demonstrated willingness to cause harm quickly decreased the tactical options available to the officers and increased the risk to their personal safety as well as to the safety of the community. When he made the decision to point a weapon at an officer, the officers had no other choice but to stop him. Tactically, at that moment, the officers were out of options. They had used command presence and verbal commands. They approached with weapons drawn. Officer Sullivan had even tried to hit Sepulveda with his car. When Sepulveda turned towards Officer Sullivan with his gun, any attempts to de-escalate the situation vanished. The officers made the reasonable choice to fire their weapons. The duty of the officers responding to this call was to ensure the safety of citizens and responding officers and, if possible, to apprehend Sepulveda. Mark Sepulveda, however, would not let that happen.

In assessing whether the tactics used by the officers involved in this shooting were reasonable, this Office has considered the totality of the circumstances, including the information available to the officers at the time, the specific actions of Sepulveda and the involved officers, up to and including the use of deadly force by Officers Sullivan and Hancock. When Sepulveda refused to obey police commands and instead chose to raise a gun at Officer Sullivan, 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. Given the totality of the circumstances, the Manager concludes that the tactics used by the officers in this event were reasonable and that the officers complied with their sworn duties and their training.

B. The Reasonableness of the Assessment of the Threat

This analysis requires the consideration of the justification for using force. In evaluating whether the officers assessment was reasonable, we must examine what they knew at the time they were assessing the threat before them.

In this case, as pointed out in the above section, at the time the officers initially came into contact with Sepulveda, they knew that he had been involved in an armed robbery at the cell phone store and that there were shots fired during the robbery. Officers were also aware of the fact that there was more than one suspect and that the robbery took

place at lunchtime, in a busy area, where there would potentially be a great number of people. Officers knew that they were dealing with violent and unpredictable individuals, not above committing armed robbery to get what they wanted.

It did not take Officer Sullivan long to learn that in addition to armed robbery, Sepulveda was willing to point a gun at an officer. Sepulveda ran directly towards Officer Sullivan with his gun raised. Officer Sullivan had to duck in his patrol car and attempt to run Sepulveda over to try to prevent him from shooting, stating, "I felt fear of my life at that time and I don't know if I hit him or not . . . I steered toward him . . . to take any of his ability to shoot at me away." It was around this time that Officer Hancock witnessed Sepulveda take a shot at JC in his car.

By the time of the final confrontation at the passenger side of the Jeep, officers knew Sepulveda was armed with a real gun; he had fired that gun in the cell phone store and at JC. They knew he was willing to point it at Officer Sullivan. They knew that he had attempted to flee on foot and was now in the process of car-jacking an innocent bystander and take him hostage. The officers were reasonable in concluding that Sepulveda posed a significant threat and was extremely dangerous.

When Sepulveda turned around at the Jeep with his gun pointed out toward the officers, the officers reasonably believed that Sepulveda was about to shoot at Officer Sullivan. At that moment, both officers fired simultaneously, both believing that Sepulveda was a deadly threat. The fact that both on-scene officers perceived a deadly threat and fired at the same time supports the conclusion that their beliefs were objectively reasonable. It is unclear if Sepulveda actually fired his weapon before he was shot by the officers. However, an officer need not wait until he is actually fired upon to use deadly force. The officers need only to base a decision to use deadly force on "apparent necessity" not "actual necessity." Thus, an officer is entitled to act on appearances drawn from reasonable conclusions based on the facts and surrounding circumstances.

The DA praised the officers for their tactics, stating:

They displayed good judgment and measured restraint in firing at precisely the instant it was clearly necessary. It is a positive testament to their character and training that when faced with this fast moving, tense, and deadly confrontation they were able to make the ultimate split-second decision to fire with precision and accuracy. This is clearly an encounter in which innocent citizens and these officers could have been seriously injured or killed.

Officers Sullivan and Hancock properly assessed the threat posed by Sepulveda when they decided to use deadly force based upon the reasonable conclusion that Sepulveda was about to shoot Officer Sullivan and was about to abduct an innocent by-stander. Various witnesses to all different parts of this entire incident support the conclusion that Sepulveda posed a deadly threat. Not a single witness to the event has provided any information which would in any way indicate that the officers' assessment of the threat was unreasonable or that the officers were hasty in their decision to use deadly force. In addition, there were a total of 13 gunshots fired – 6 shots by Officer Sullivan, 5 shots by Officer Hancock, and 2 shots by Sepulveda. Fortunately, despite the number of bullets fired, no one else was hurt.

A thorough review of this case leads the Manager to the determination that the decision reached by Officer Sullivan and Officer Hancock to use deadly force was reasonable. At the time each officer fired his weapon at Sepulveda, they reasonably believed that Officer Sullivan and the civilians in the area were in imminent danger of having deadly force used against them. The officers' assessments of the threat posed by Sepulveda were reasonable.

C. The Reasonableness of the Use of Force Option

To assess the reasonableness of the use of force option, the Manager must consider the justification for the amount of force utilized by officers once they decided that force was necessary. It also requires that the Manager consider whether the escalation of the level of force throughout the interaction, up to and including the use of lethal force, was reasonable. The assessment of the reasonableness of the officers' use of force requires an analysis of the laws and DPD's use of force policy. 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.

Officers did not use deadly force until Sepulveda was actively trying to take a man hostage in the parking lot of the 7-Eleven and then pointed a loaded gun at Officer Sullivan. All escalations of force were a direct response to the escalation of the situation by Sepulveda. The facts discussed above are significant in determining whether the degree of force which both officers used against Sepulveda was reasonable and justified. At the point when officers fired their weapons, the actions of Sepulveda had created a situation in which the officers reasonably believed that deadly physical force was imminent and that their lives were in danger. The officers were confronted with an aggressive and violent man who had already committed armed robbery and assault and who attempted a car-jacking and taking another citizen hostage. When Mark Sepulveda then raised his gun towards the officers, the officers were left with no other de-escalation options.

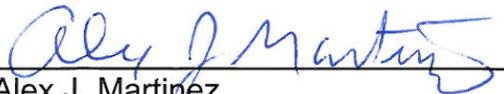
Officers Hancock and Sullivan were reasonable in firing their weapons at Sepulveda. Officers are trained that the greater the level of threat facing them or citizens, the greater the level of force that may be used by the officer. The statements the officers have provided speak volumes about the reasonableness of their actions. Officer Sullivan stated, "He was pointing the gun at me and I felt fear for my life and the lives of other people there. He had already tried to and I don't know if he shot at me the first time while he was pointing the gun at me while I was in my patrol car because I tried to duck out of the way, and I definitely heard shots and we got shots fired on the way to the call, so I knew he had intention to shoot, and I shot at him to defend myself and to stop him from hurting me or anybody else . . ." Officer Sullivan added, "I felt fear for my life and – and somebody threatening it." To this same question, Officer Hancock stated that he thought Sepulveda was getting ready to fire at him or Officer Sullivan. He added, "I mean he already committed a robbery. He's trying to car-jack people. I feel that this guy has no desire to drop his weapon and give up."

At the time Officers Hancock and Sullivan fired their weapons, they had reasonably arrived at the same conclusion, Mark Sepulveda was an imminent threat to the officers and civilians and deadly physical force was needed to stop that threat. The Manager concludes Officer Sullivan's and Officer Hancock's decision that they needed to use deadly force in response to the actions of Mark Sepulveda was objectively reasonable.

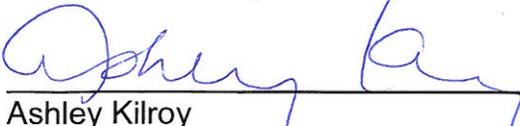
X. CONCLUSION

After a careful review and analysis of this case, the Manager of Safety concludes that the officers acted in accordance with the law, the Department's policies and their training.

In closing, the Manager 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 were reached independently by the Manager and are consistent with those of the District Attorney's Office, the Chief of Police and the Independent Monitor. These consistent conclusions result entirely from the reason that they are based on the facts. The Department always has concern when a police officer has to use deadly force in the line of duty. However, in many instances such as this case, the actions of the person against whom force was used have precipitated that use of force. Throughout this encounter, the actions taken and tactics used by both officers on scene were those which each officer reasonably believed were necessary to protect their own life as well as the life of their fellow officers and innocent by-standers. The officers acted appropriately and reasonably to stop the imminent threat posed by Mark Sepulveda. Officers Tim Sullivan and Derek Hancock acted reasonably under the circumstances with which they were confronted.


 Alex J. Martinez
 Manager of Safety

5/4/12
 Date


 Ashley Kilroy
 Deputy Manager of Safety

5-4-12
 Date

APPENDIX A**Civilian Witness Statements - Summaries**

Responding police officers contacted numerous witnesses who were in the area at the time of this incident. Set forth below are summaries of the statements of some of those witnesses.² Although not detailed below, there were other witnesses who were questioned as well. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

BD – BD was working cutting the grass in the area. He saw an officer chasing a man who was running with a gun in his hand. He ran towards a green car. BD saw someone else in the green car trying to start the car. The car was not going anywhere and he noted it sounded like it was probably a stick shift and the person driving did not know how to drive stick. The man with the gun got out and pointed the gun at the officer. The officer ducked. The officer then stopped and pointed his weapon and told him to “get on the ground!” The officer then went towards 7-Eleven. He heard one gunshot then two more and saw the man with the gun on the ground. The other car took off going towards Colfax. BD recorded a portion of the incident on his cell phone.

CE – CE was at King Soopers and pulled out onto Krameria. He saw an officer coming really fast in his patrol car. He pulled over to let the officer pass. As the officer was coming, he saw a man running crouched over. The man then hid behind an SUV in the parking lot. The officer drove past him. The man then started walking towards the 7-Eleven. At that point, CE noticed that he had a gun. He saw the Jeep door open and the man ran towards the Jeep. He could see there was some sort of altercation between the person in the Jeep and the man with the gun. He continued driving slowly, watching. The man was then at the front passenger side of the Jeep. He heard 6 - 8 gunshots. He saw two officers with their guns drawn, one uniformed and one plain clothes. The other man was on the ground and officers were yelling, “Don’t move!”

CT – CT was eating lunch at the Krameria Café and was sitting on the patio on the 14th Street side. She heard a very unusual siren and then saw a police car turn into the parking lot across from the café. She then saw someone walking from the parking lot towards the café. He appeared to be carrying something. She then heard a “pop” and saw his hand bounce and said, “That’s a gun.” The man with the gun appeared to duck behind an SUV. She and her friend went into the café and asked one of the employees to lock the door. Inside she could not see anything other than police vehicles pulling up 14th. She heard 4 - 5 gunshots.

DB – DB was at his store that day that he owns with SM, which is located in the strip mall on 14th and Krameria. He went outside briefly and when he returned to the store, he heard screaming and a gunshot next door. He and SM ran to the back door, thinking the cell phone store next door was getting robbed. They ran to the dry cleaners and told people in there to call 9-1-1 and report a robbery in progress. As he was outside, he could hear AC yell something like, “Don’t rob us.” He did not see any of the suspects.

² Witnesses who are quoted throughout this public statement may not be summarized in this section; however, their full identities are contained in the Denver Police Department files related to this case as noted in footnote #1 of this report.

DL – DL was in his store when he heard a noise that he thought at the time might be an accident but later determined was two gunshots. He went to the window to see what was going on, thinking there was an accident. He saw a man running towards the 7-Eleven with a gun in his hand. He then went to the back side of the store where his wife was located. He told her to stay in the back. He then heard another 5 – 6 gunshots. he looked back out the window and saw a man handcuffed on the ground. He also saw a gun under the front passenger side tire of the Jeep. The gun appeared to be the same gun that the man who was running towards 7-Eleven had been carrying.

EP – EP works at the Krameria Café and was working at the time of the incident. Nothing was out of the ordinary initially. A little later after getting to the restaurant, he heard “popping noises” and thought it was a malfunction with the music that was playing. EP noted that the “pops” were two different sounds. He then saw the customers who were outside on the patio “running, like bolting, to go inside.” One of the employees yelled, “Lock the doors right now!” EP then locked the back door, kitchen door and ran to lock the front door when he saw one of the owners of a nearby shop. He opened the door for the other shop owner when he saw an officer pull up. The officer got out of his car and started firing his weapon. He saw a man in a running position but not running and then the man appeared shot and fell. The man was on the passenger side of a black Jeep when he fell.

ER – ER was in the area around 12:00 p.m. to go to the salon in the strip mall. She was in the salon chair around 12:15 when she heard a strange siren from a police car. She was curious so she looked outside. She saw a police car enter the parking lot. A man came running by really fast, running from east to west. The man then crouched down behind a vehicle. She saw two policemen with guns drawn in the parking lot. One she was certain was an officer, the other she was not as sure. She then heard approximately three shots. She saw shell casings fall but nothing more. A few minutes later an ambulance arrived.

ET – ET saw two Hispanic men around 28-30 years old, walk into her store. She stated that the man “who got shot” had been in her store with a friend. He (Sepulveda) had a gauze patch on his left eye as if it had been injured. She spoke briefly with him about the injury and he left. Approximately ten minutes later she heard screaming and gunshots and saw the man that she had been talking to “running around the parking lot . . . and he was trying to hide . . .” and “with a gun in his hand, shooting.” She saw him running with the gun. She also saw him shooting approximately two times towards the left of her store in the parking lot. She heard additional shots after she saw Sepulveda shooting but did not see them. She called 9-1-1. An employee of the store told ET that “he is coming” and they need to run to the back of the store. When the gunshots stopped, she went out front and saw the same man on the ground next to a Jeep with a gun under the tire of the Jeep. A uniformed officer handcuffed the man and the paramedics arrived. She heard police sirens but did not see the actual shooting.

JB – JB was driving down Krameria and was stopped at the red light on 14th. She heard someone yell. She looked over and saw a police officer holding his gun. She saw the officer fire his weapon and a man “drop.” There was a black Jeep between her and the man who fell so she could not see what happened. She heard 3 - 4 gunshots.

JH – JH is the co-owner of Hook-Up Tech, the cell phone store, with JC. He arrived at the store around 11:30 a.m. on the day of the incident. Sometime around 12:15, he turned around and saw a man with a bandana over part of his face with a gun drawn and then a second man. Initially he was “in shock” and thought it was a joke and “pretty quickly” realized it was a robbery. The two men continually told him, “Don’t look at me!” He saw AC drop down to the floor but did not recall hearing any words being said at first, then he heard, “Get down” and “suddenly there was a gunshot.” He was then instructed to get up and empty his pockets and asked where his gun was. He informed the men that he did not have a gun. He saw the register was open but was unsure who opened it. He had been told to go to the back of the store and was then either instructed to open the safe or he may have volunteered to open it to get them out of the store. He complied. He heard “the one with the gun” instruct the other robber to tie up AC, which he did with a USB cable. At one point, he also heard a customer come in and heard one of the men say, “Everything is fine, we’re not interested in you” in an attempt to keep the customer calm. Someone shouted, “Let’s get out of here!” and they left the store. AC asked him if he was okay and JH called the police. About a minute later he saw JC’s car pull up and then heard a number of gunshots. JH was on the phone with 9-1-1 at the time. JH also noted that he recognized the gunman’s voice as a customer by the name of “Marky.”

JL – JL lives in the area of the incident. He heard a strange siren and brakes being applied. He heard someone yell, “Get on the ground! Get on the ground!” He walked over to the window when he saw a male running sort of hunched over from the liquor store behind a beer truck. He then saw an officer on foot get back in his car. He saw what he thought was a “getaway car,” a black sedan, pull around back. The man who was running came back and fired 4 - 7 shots at the vehicle and then ran towards the 7-Eleven. He then ducked but heard gunshots after that. He also heard other officers yelling, “Get on the ground!”

KN – KN was on the patio at the Krameria Café. She heard police sirens and then heard some other noise. Her friend, CT, said, “That’s gunfire.” She turned around and saw someone crouching behind an SUV. She saw him stand up and raise his arm and point. It appeared he had a weapon because she thought she heard a gunshot. They went inside the café for cover. A little later she saw a person on the ground on the other side of the Jeep, not moving. Paramedics were attending to him.

KS – KS had stopped by the cell phone store to have JC look at her phone. She went into the store and saw two men. One was behind the counter and the other was on the side where you come through the door. She saw the one behind the counter “with the mask” had a gun. She stated that initially she thought it was a joke and went to walk up to the counter when he said, “Step back, step back!” She said, “No problem.” She started to leave when the man in the mask, Sepulveda, told the other man, Martinez, to instruct her to sit down. She complied. Sepulveda told her, “Don’t look at me” and Martinez warned, “Just do what he says.” She heard one of them say to someone she could not see, “You better give me something or I’m going to do something to you.” She heard that person say that they did not have any money but they could take the computers or anything else. Another customer came in behind her. When he came in, Martinez ran to the door and told him that they were closed. That man got back in his truck. She heard one of them say that somebody called the police and they ran out the

door. KS got up and looked over the counter. She saw AC tied up. She told him to stay there since the police had arrived. She went outside and saw JC in his car. She told JC what happened. JC then left the parking lot and drove around the corner. When JC returned, she saw Sepulveda behind a black Jeep hiding from police. She saw that when JC drove by, Sepulveda "tried to take [JC's] car and shot at [JC's] car." She told the police that Sepulveda was running towards 7-Eleven. The police followed after him. She then heard 6 - 7 gunshots. She did not see the shooting.

PV – PV owns a shop at 14th and Krameria Street. At the time of the incident, he was in the parking lot for the shopping center. He was walking back towards his shop in the strip mall when he saw a police car coming down Krameria going north with its lights and sirens on. The officer drove into the 7-Eleven parking lot towards the liquor store in the mall and got out of his car. The officer had his gun drawn and was yelling, "Put the gun down!" He then heard a gunshot. Immediately after that, he saw a man running from the liquor store towards Krameria Street. The man ran across the street into the parking lot where PV had just been prior to entering his shop. He did not see that man again. He then saw a different man with a gun pointing his gun at a customer from 7-Eleven in a black Jeep. The man with the gun was saying to the person in the Jeep, "Get out of the Jeep, get out of the Jeep now!" PV ran into his shop and grabbed his keys from the register so he could lock his door. He then looked over and saw a man lying on the right hand side of the Jeep who appeared to have been shot. PV then locked himself in his shop. He saw police secure the parking lot.

RO – At the time of the incident he was at the 7-Eleven. He left the store to get into his black Jeep which was parked in front of 7-Eleven. He then heard a "pop, pop, pop" and looked and saw a man using a black SUV for cover shooting across 14th Avenue. As RO was getting into his Jeep, the man that was just shooting ran over to him and put his gun in RO's face and said something like, "Give me your Jeep!" RO got out and tried to give him the keys saying, "Take it." The man, determined to be Sepulveda, told him, "No, you're driving." RO got back in his Jeep and closed the door. While this was going on, Sepulveda moved around to the other door. According to RO, by the time Sepulveda got to the passenger side front tire, "gunshots are blazing." RO ducked down in the Jeep. He also saw Sepulveda fall.

He noted that he also saw Sepulveda fire at another gold or brown colored sedan being driven by a man around the time Sepulveda came running towards him initially.

SF – SF is the cousin of Justin Martinez. She called him for a ride that morning and he arrived to pick her up at the bus stop around 10:45 or 11:00 in an older green car. He picked her up with his friend, "Marky." She stated that she did not know Marky prior to this day and she had only seen him one time before. Martinez informed his cousin that he was stopping at the liquor store when they got to 14th and Krameria. She then saw Marky running towards the car with a red mask covering the lower half of his face. She also saw the Denver Police chasing him so she ducked in the car. She then got in the front seat and, since the keys were in the passenger seat, drove off. She went north and then parked at a Wal-Mart. SF noted that the car was a stick shift and she does not know how to drive a stick but she still drove off.

SM – SM owns a shop in the strip mall where the incident occurred. When she pulled up, she saw a Hispanic male with a white patch, like he had had surgery, on his eye and a red bandana across his face. When she was getting out of the car, he pulled the bandana down and he and another man were laughing. She went into her store and about ten minutes later she could hear through the walls someone was yelling and then she heard a gunshot. She and DB ran out the back door to the dry cleaners while she was calling 9-1-1. She told dispatch that she thought the cell phone store next door was being robbed. As she was in front of the dry cleaners, she saw the man without a mask running on the side of the Aqua Lounge and run into the alley. The police began to arrive. She heard shots and ran into the dry cleaners and got on the floor.

SS – SS was driving down Krameria getting ready to turn into the parking lot. She saw two men running. The one with a gun was ducking between the cars in the parking lot. She pulled into the parking lot and ducked down in her car. When she put her head back up, she then saw the man with the gun standing. She heard officers say something like, “Get down” or “Drop your weapon” and the officers shot the man. She saw one officer was in uniform and one was in plain clothes. She was also told by another witness that the other man who was running from the police was across the street in the Safeway parking lot.

VC – VC works in the area of the incident. She was locking up her office when she turned towards Krameria Street and saw a large Hispanic male running full speed from east to west into the north parking lot past the Aqua Lounge. As she was approaching the 7-Eleven, a man with a cap and patch over his eye was running from east to west in the parking lot shooting his gun. She heard approximately 4 - 5 shots. She could not see him shooting towards anyone. He then crouched down behind the driver’s side of an SUV in the parking lot. He then stood up and began walking towards her. She stood where she was at the 7-Eleven door “frozen” when he, determined to be Sepulveda, fired towards her, hitting the door she was standing near. She heard another shot but did not see where it went. Sepulveda then saw the “man in the Jeep” and pointed his gun at him. She could not hear what was being said. She saw Sepulveda walk around the other side of the Jeep and then she ran further into the store. She turned to talk to other people and when she turned back around, she saw Sepulveda on the ground and the police were handcuffing him. Shortly after that, an ambulance arrived.

VQ – VQ was driving down 14th and was going to stop at 7-Eleven. She saw a man running by the 7-Eleven with an eye patch. She heard police cars arrive. She turned into the parking lot. She saw more officers arrive. The man who had been running was on the passenger side of the Jeep. She saw more officers arrive, and shots rang out. At this time, she also saw a woman helping a man in a wheelchair get out of his silver car. She noticed a bullet hole in the driver’s side door of the silver vehicle.

Justin Martinez – the suspect arrested at the scene declined to make a statement.

Responding Officers

The information provided by Officers Sullivan and Hancock 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.

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.