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**PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING THE
OFFICER INVOLVED SHOOTING AT 6300 E. 39TH AVENUE, INVOLVING
OFFICER RANDALL KROUSE, RESULTING IN THE DEATH OF
KEVIN RYBERG ON JULY 31, 2012**

I. EXECUTIVE SUMMARY

The Incident

On Tuesday, July 31, 2012, at approximately 10:45 in the morning, officers were called to the Niagara House Motel located at 6701 East Colfax Avenue. Officers were responding to a call about a party with a gun who should have checked out of the motel. The manager had gone into the room where he found a man asleep on the bed with a handgun positioned next to him on the bed. He left the room and called the police.

Officer Timothy Luke, Officer Randall Krouse and several other officers responded to the motel. The officers who responded to the room were aware that there was likely a gun in the room. They knocked on the door and when no one answered, the manager supplied a key. Officers entered and observed a man lying on the bed and a gun at the corner of the bed. Officer Luke took the gun and put it on the side table away from the bed. Officers identified themselves, yelling, "Police! Police!"

At that point, the man, later identified as Kevin Ryberg, woke up and began fighting with the officers. The officers were eventually able to get him handcuffed and did a brief "pat search" looking for weapons. Ryberg refused to give officers his name and remained uncooperative.

Officers then did a more thorough pat down, this time finding crystal meth and baggies in his pockets. They also found his wallet and were able to determine his name. Officer Luke discovered that Ryberg had an outstanding felony warrant for assault.

Officer Luke had Ryberg in his vehicle and was preparing to transfer him to District 2. Officer Luke requested that Officer Krouse follow him to the station.

While driving to the District 2 station, Ryberg suddenly jumped through the slide window from the back seat cage of the car into the front seat. Officer Luke abruptly stopped the vehicle and tried to stop Ryberg. Ryberg attempted to grab Officer Luke's taser. Officer Luke and Ryberg were fighting to gain control of the taser. Ryberg was also hitting the officer. Officer Luke shot Ryberg with the taser but it did not stop the attack.

Ryberg then began reaching towards Officer Luke's duty weapon. Ryberg continued to hit the officer. Officer Krouse then approached the vehicle and broke out the driver's side and then passenger side windows. Ryberg was still reaching towards the weapon, struggling with Officer Luke.

Officer Krouse opened the passenger door when he heard Officer Luke yell, "Shoot him! Shoot him!" Officer Krouse pulled out his gun, repositioned himself to protect Officer Luke, and then shot his duty weapon twice, hitting Ryberg.

Kevin Ryberg was pronounced deceased at 12:10 p.m. by Dr. Molly Theissen at Denver Health Medical Center.

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.

Once the criminal investigation was completed, and after consideration and review of the autopsy report, the District Attorney ("DA") issued his decision regarding whether or not criminal charges would be filed. The DA determined that the facts of the case do not support a finding of any criminal use of force by any of the involved law enforcement officers. Thus, the DA declined to file charges against the officer. The DA's findings and statement regarding this case can be found at:

[http://www.da18.org/Portals/0/Uploads/PDFs/Krouse%20DPD%20\(2\).pdf](http://www.da18.org/Portals/0/Uploads/PDFs/Krouse%20DPD%20(2).pdf)

On August 1, 2012, Forensic Pathologist Dr. Garth Warren performed the autopsy of Ryberg. Dr. Warren documented an entry and exit gunshot wound to the left wrist and two gunshot wounds to the left chest. The wounds are consistent with one bullet perforating the wrist and re-entering the chest, with the other penetrating the chest. Blood tests were positive for THC and methamphetamine.

The Administrative Review

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

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 that Officer Krouse used appropriate tactics in confronting Kevin Ryberg. Officer Krouse acted reasonably in determining that Ryberg posed an imminent threat and should be forcibly stopped while he was actively attacking Officer Luke. Once Ryberg assaulted Officer Luke, attempted to take his duty weapon, and refused to back down or let go of the officer, Officer Krouse responded with reasonable and appropriate force. Officer Luke attempted to de-escalate the situation but Ryberg would not let that happen. The Manager finds that Officer Krouse used reasonable force options and acted pursuant to his training.

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 officer 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. Kevin Ryberg's death did not have to happen that day. However, the actions of Ryberg alone necessitated the use of deadly force used by Officer Krouse.

The purpose of this public statement is to provide a more detailed explanation of the basis of this decision. The information considered in reaching this decision is contained in the DPD files related to this case. 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. 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.

II. FINDINGS OF FACT

On Tuesday July 31, 2012, officers were called to the Niagara House Motel located at 6701 East Colfax Avenue after receiving a call about a party with a gun. At approximately 10:45 in the morning, officers received the call from the manager of the motel, CK,¹ stating that they had an occupant in room 127 who was supposed to have checked out by 10:30 a.m. CK went to the room to see if the person was planning on paying for an additional day or checking out. When CK entered the room, he found a man asleep on the bed with a handgun positioned next to him. CK left the room and called the police.

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.

Officer Timothy Luke was working a patrol car in District 2 that day when he received a call to respond to the motel. He was driving a fully marked vehicle and was wearing a regulation Denver Police Department uniform.

Officer Luke spoke to CK and was told that the man who had rented the room was supposed to checkout by 10:30 and it was almost 11:00. Officer Luke asked CK to pull the register to see who was registered to that room. Officer Luke discovered that the person registered to that room had a misdemeanor warrant.

Officer Randall Krouse was also working that day. He was in a regulation uniform and driving a fully marked patrol vehicle. He heard the call go out to respond to the Niagara House. He radioed to dispatch that he would cover the call.

Officer Luke, Sergeant John Sullivan, Officer Alvin Thompson and Officer Sheldon Doell responded to the room initially. The officers were aware that there was a report of a gun in the room. All were in Denver Police Department uniforms. They knocked on the door but no one answered. At that point, the manager supplied a key to open the door. When officers entered, they observed a man lying on the bed and a gun at the corner of the bed. Officer Luke grabbed the gun and put it on the side table away from the person that was lying on the bed, later determined to be Kevin Ryberg. Officers identified themselves yelling, "Police! Police!"

At that point, Ryberg woke up and began fighting with the officers. The officers continued struggling with him while identifying themselves as police, yelling, "Police! Police! Police!" Officer Luke noted during the struggle that Ryberg appeared very "strung out" on narcotics.

Eventually, Ryberg stopped struggling; the officers stood him up and handcuffed him. Officers also conducted a brief "pat search" to ensure that he did not have any weapons on him.

Officers quickly realized that the man they were dealing with was not the man registered to that motel room. Ryberg, however, refused to give officers his name and remained uncooperative.

During this time, Officer Krouse had responded to the scene and was covering the back of the building with Officer Darin Lindsey. He requested that dispatch "hold the air" because he was aware that the party inside was armed. He heard a "scuffle" on the air and then heard someone say, "You can release the air - the party is in custody." Officer Krouse went to the motel room at that time.

Officers in the room then patted Ryberg down more thoroughly. This time they found crystal meth and baggies in his pockets. They also found his wallet and were able to determine his name. Officer Luke placed Ryberg in his vehicle and then did a clearance check on his name. He discovered that Ryberg had an outstanding felony warrant for assault.

Officer Luke had Ryberg in his vehicle and was preparing to transfer him to the District 2 station. Officer Krouse could see Ryberg "fidgeting around a little bit" in the back of Officer Luke's car. He kept an eye on him while Officer Luke returned to the room

briefly. Officer Krouse noted that while Officer Luke was gone, the car was moving quite a bit, which caused him to be concerned that Ryberg might be trying to slip out of the handcuffs or was trying to move them to the front of his body.

Around this time, Ryberg also asked officers to loosen his handcuffs. Officer Luke had returned and he and Officer Krouse loosened the handcuffs and then double locked them behind Ryberg's back.

Officer Luke requested that Officer Krouse follow him to the District 2 station. Officer Krouse stated that he was concerned given Ryberg's earlier actions, so he wanted to follow his colleague to District 2.

As they were driving to District 2, Officer Luke was asking Ryberg how he arrived at the motel. Ryberg replied that he did not know how he ended up there. He also would not tell Officer Luke where he got the gun. He did, however, tell Officer Luke that his dad was a Jefferson County police officer. Officer Luke asked him how long he had been using crystal meth. Ryberg stated that he had "just started." Officer Ryberg tried to talk to him, telling Ryberg that he could always get off drugs and make other choices.²

Ryberg began asking Officer Luke questions about where they were going. Officer Luke explained that they were going to the District 2 station. Ryberg wanted more information like where was the station, and what was the exact address.

According to Officer Luke, all of a sudden Ryberg "shoots through the slide window" from the back seat. The window is part of a cage in the back seat of the vehicle with a slide window, with plexi-glass to secure the person being transported. The window was open while Officer Luke was speaking to Ryberg. Officer Luke stopped the vehicle and tried to stop Ryberg. Almost all of Ryberg's body came through the slide window.

Ryberg dove down, attempting to grab Officer Luke's taser which was in the center console of the vehicle between the seats. Officer Luke and Ryberg were fighting over the taser. Ryberg was facing Officer Luke who was holding the taser with two hands. Ryberg was hitting the officer. Officer Luke was eventually able to get the taser facing up and shoot it. Officer Luke shot Ryberg with the taser. While Ryberg was hit, Officer Luke was getting tased as well from the connection with Ryberg. Officer Luke noted that the taser "didn't faze [Ryberg] – it's like it didn't faze him at all."

While this was occurring, Officer Krouse was behind them and noticed Officer Luke's patrol car swerving and moving "at least two to three feet" from side to side. He initially thought that Officer Luke may have been joking around with a detective that was driving towards them. He then noticed that Ryberg was through the internal cage window in the car. At that point, Officer Krouse called "code 10" for cover.

The taser fell due to the close confines and Officer Luke's hand getting tased when he deployed the taser at Ryberg. Ryberg then began reaching towards Officer Luke's duty weapon, a Glock, semi-automatic, 9mm handgun. Ryberg continued to hit the officer, who was trying to keep Ryberg off of him while he was blocked in the driver's seat.

² Officer Luke and Officer Krouse are both CIT certified (Critical Incident Training).

The window on the driver's side then broke. Officer Luke assumed it was his covering officer, Randy Krouse. At this same time, Ryberg was still reaching towards the weapon and Officer Luke was still struggling, trying to get Ryberg off of him.

According to Officer Krouse, at this time, he ran his police car in front of Officer Luke's car to stop it from moving. He then got out of his vehicle and tried to open up the passenger door, but it was locked. He ran around to the back of the car and saw Officer Luke struggling with Ryberg. The driver side was also locked. At that point, Officer Krouse took out his "expandable" and smashed the driver's front window.

Officer Krouse then realized that "I can't get to the suspect. I can't help Tim there." With that, he unlocked the door and went back around to the passenger side and tried to open the door. It also was locked and did not open so Officer Krouse smashed that window and opened the door.

With the window on the passenger side broken, and a second officer on scene, Ryberg was still reaching for the gun. Officer Luke was trying to block access to the gun but was having a hard time reaching it with Ryberg on top of him. Ryberg came close to getting the weapon so Officer Luke began to yell, "Randy! Randy, he's – shoot him! Shoot him!" Officer Luke added that he called out for Officer Krouse to shoot "because he's – basically, I think he's – you know, he's going to kill me."

According to Officer Krouse, at this time he opened the passenger door, still with his baton in hand, when he heard Officer Luke yell, "Shoot him! Shoot him!" He noted that Officer Luke was in the front driver's seat with Ryberg "literally over the top of [him], and where his hands were, I don't know. I couldn't tell you where the suspect's hands were. I couldn't tell you where Tim's hands were. They were just entangled and, you know, they – they were fighting with each other, and what – you know, I was scared to death for Tim at this point in time...it scared me to death at what this guy was doing." He also noted that if Ryberg was trying to escape, he could have escaped through the back door or the back window, or the passenger side of the car, but instead, he attacked Officer Luke.

Officer Krouse pulled out his gun and then stopped before he shot him out of concern he was going to hit Officer Luke because "they were right – struggling with each other. So I kind of leaned more in and then shot him and I shot him twice."

Officer Krouse repositioned himself to protect Officer Luke and then shot his duty weapon twice, hitting Ryberg.

Officer Luke got out of the vehicle, got his weapon, and moved towards Ryberg who was now on the ground on the passenger side of the vehicle. He called out for an ambulance and back-up. Officer Krouse confirmed that an ambulance had been called.

Officer Luke did not know what happened to the handcuffs, there was one on, and one off when he saw Ryberg on the ground. Other officers arrived and began performing CPR on Ryberg.

Both officers indicated that they believed Ryberg had been using drugs recently and was still under the influence when officers entered his motel room. Officer Luke noted that, based upon his experience with people on drugs, “when someone’s on drugs or appears to have been using drugs, they’re extremely strong, they’re extremely irrational. I mean the strength is amazing... [Ryberg] from 1 to 10, being 10 the strongest and 1 being the weakest, he was 9 – he was strong.”³

Officer Luke sustained injuries to the right eye area, the right middle finger, abrasions to the left forearm area, cuts to his right knee, and abrasions to the back of his head. He also had glass in his eyes.

Paramedics arrived on scene with an ambulance. Members of the Denver Fire Department also arrived on scene and began medical treatment on Ryberg. Firefighter Jason Cloke noted that Ryberg had a handcuff on his right wrist only, with the other handcuff locked shut in place. Officer Darin Lindsey also made this observation, noting that the handcuffs were double locked and that although they appeared to be almost open, they were, in fact, locked. Ryberg was transported to Denver Health Medical Center for further medical treatment.

Kevin Ryberg was pronounced deceased at 12:10 p.m. by Dr. Theissen at Denver Health Medical Center.

III. CRIME SCENE INVESTIGATION

Personnel from the Denver Police Department 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 Krouse’s weapon was collected. It was determined that Officer Krouse was armed with a model 17 Glock semi-automatic pistol, fully loaded with department issued ammunition. The magazine holds 17 rounds and can be carried with an additional round in the chamber. Denver Crime Lab inspected the weapon, finding 15 rounds in the magazine and one in the chamber. This is consistent with Officer Krouse firing 2 rounds. Two spent 9 mm shell casings were recovered at the scene.

IV. CRIMINAL HISTORY

A records check was conducted on Ryberg after this incident. Ryberg had a history of violent actions going back to his youth. As a juvenile, Ryberg was arrested for harassment, assault, menacing, property damage, and violation of a restraining order. Significantly, Ryberg had a warrant issued June 28, 2012 for menacing (deadly weapon), 3rd degree assault, and false imprisonment/domestic violence. A caution was added to the warrant noting “menaced victim w/knife and crowbar, per victim, subj. threatened to kill himself and arresting officer.”

Had he survived, Ryberg likely would have been facing multiple felony charges for his attack on Officer Luke.

³ Postmortem peripheral blood and urine panels showed drug results of: methamphetamine – 1300 ng/mL; amphetamine – 120 ng/mL; and Delta9 carboxy THC – 31 ng/mL.

V. 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 officer immediately prior to and during the use of force;
- (2) the reasonableness of the officer's assessment of the threat posed by the person; and
- (3) the reasonableness of the use of force option 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 officer could not be found criminally liable unless there was proof beyond a reasonable doubt that, at the time he fired his weapon, it was unreasonable to believe that Kevin Ryberg 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 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.

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 Kevin Ryberg 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. Ryberg.

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 Officer Luke and Officer Krouse to get Ryberg to comply with orders without having to use force or resort to lethal force. The Manager also reviews and considers the actions any officer 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 officer in this case made the appropriate tactical decision that Ryberg needed to be stopped. Ryberg made the decision to attack Officer Luke in his vehicle, a location where the officer should have been safe. Ryberg did not simply attack Officer Luke, he made every effort to try to get control of the officer's weapons. Had Ryberg wanted to simply escape, he would have made efforts to open the passenger side doors. That was not Ryberg's intent.

Officer Krouse was behind Officer Luke, seeing this unfold. He was put in the position of attempting to defuse the volatile situation while trying to keep Officer Luke safe. Officer Krouse was simply responding to the enormous threat that brazenly attacked his fellow officer. By the time Officer Krouse took out his weapon, he already knew that:

- 1) Ryberg had made his way from the back seat of the patrol vehicle to the front seat,
- 2) Ryberg was not trying to leave the vehicle, and
- 3) Ryberg was reaching towards Officer Luke's weapon.

Officer Krouse was faced with an unquestionably dangerous man and had a duty to do what he could to stop the assault on Officer Luke and attempt to apprehend Ryberg.

Officer Krouse used proper tactics in trying to stop Ryberg. Officer Luke was being physically attacked by Ryberg. There was clearly a threat of imminent harm to Officer Krouse "or a third party" as stated in the statute. Ryberg was clearly well aware of the fact that Officer Luke was indeed a police officer, his presence was known, he was in a police car, and was handcuffed by officers. Rather than accept that he was being arrested and would be taken to District 2, Ryberg did what he warned RT (see Appendix A) he would do. He would kill himself or the arresting officer before he went back to jail. When he attacked Officer Luke, Officer Luke did yell and try to get Ryberg to stop. He physically fought Ryberg and tried to get him to stop by using the less lethal taser. This had no effect on Ryberg.

Officer Luke clearly used command presence, voice commands and other tactical options, in what was a very limited time and space, to stop Ryberg. At that point, the taser was clearly not working and, although unknown to Officer Krouse, the taser was also affecting Officer Luke. Officer Krouse was put in the position of stopping an attack on a fellow officer without knowing if Ryberg had managed to disarm Officer Luke or how injured Officer Luke may be.

Officer Krouse confronted Ryberg; he broke out two windows on the patrol car, which should have indicated to Ryberg that another officer was present. He heard Officer Luke yell, "Shoot him, shoot him!" and he still did not stop. He did not get off Officer Luke; he did not raise his hands or announce that he was going to cease his aggression. Ryberg made the decision to refuse to surrender and to continue his assault.

Ryberg never indicated that he did not understand the officer's commands and there were no lighting or visibility issues since this took place in the afternoon. Ryberg had been given the opportunity to surrender peacefully. He didn't simply refuse to surrender; he actively attacked an officer.

Tactically, at that moment, Officer Krouse was out of options. He and Officer Luke had used command presence and verbal commands; Officer Luke was actively fighting Ryberg. Officer Krouse made the reasonable choice to fire his weapon. The duty of an officer is to ensure the safety of citizens and responding officers, and, if possible, to apprehend the suspect. Ryberg, however, would not let that happen.

In assessing whether the tactics used by the officer involved in this shooting were reasonable, this Office has considered the totality of the circumstances, including the information available to the officer at the time, the specific actions of Ryberg and the involved officer, up to and including the use of deadly force by Officer Krouse. When Ryberg refused to obey police commands and instead chose to assault and attempt to disarm Officer Luke, Officer Krouse was confronted with his sworn duties to protect the public and police officers, and to enforce the law and apprehend suspects. The officer properly chose to take all necessary measures, including deadly physical force, to carry out those duties. Based on these reasons, the Manager concludes that appropriate tactics were used and that the officer involved in this event complied with his sworn duties and his training.

B. The Reasonableness of the Assessment of the Threat

In order for the Manager to evaluate whether Officer Krouse's assessment that he needed to use deadly physical force was reasonable, the Manager must examine what the officer knew at the time he was assessing the threat before him.

In this case, as pointed out in the above section, at the time Officer Krouse initially came into contact with Ryberg, he knew that Ryberg had moved himself from the back seat cage to the front seat of a marked patrol car to attack a uniformed officer, he knew that Ryberg had not attempted to leave the vehicle but was instead actively attacking Officer Luke, and he knew that despite breaking two windows on the patrol vehicle, Ryberg was not lessening his assault on Officer Luke.

Officer Krouse knew this suspect was willing to attack an armed officer. Officer Krouse knew that he was dealing with a violent and unpredictable person, not above attacking total strangers. He also knew that there was meth found on Ryberg and that he may be high on drugs at that moment. He had no reason to anticipate that Ryberg would somehow not be a threat to him, or anyone else in that neighborhood.

Ryberg did not simply attack Officer Luke, he was punching him, hitting him in the middle of the street, in the middle of the day, in front of witnesses. He was attempting to disarm the officer, initially trying to take his taser, then trying to take his duty weapon. Ryberg was even hit with the taser, and even that did not slow him down or get any compliance from him. Officer Luke was attempting to get his weapon but could not reach it without risking Ryberg getting a hold of it. By the time Officer Krouse arrived, Officer Luke was in a life or death struggle with a suspect who was high on

methamphetamine and non-responsive to taser use. It was reasonable for Officer Krouse to conclude that Ryberg posed a significant threat and was extremely dangerous. In fact, one would have to question the judgment of Officer Krouse if he had come to any other conclusion.

At the moment Officer Krouse fired, he reasonably believed Ryberg was a deadly threat. Although in this case Ryberg did not actually get Officer Luke's gun and fire at the officer, an officer need not wait until he is actually fired upon to use deadly force. The officer needs 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.

Officer Krouse decided to use deadly force based upon the reasonable conclusion that Ryberg was going to continue his assault and continue his attempt to gain control of Officer Luke's duty weapon. Various witnesses to this incident stated that Ryberg was actively assaulting the officer at the time Officer Krouse shot his weapon. Not a single witness to the event indicated that the officer was hasty in his decision to use deadly force.

A thorough review of this case leads the Manager to the determination that the conclusion reached by Officer Krouse was reasonable. At the time the officer fired his weapon at Ryberg, he reasonably believed that Officer Luke was in imminent danger of having deadly force used against him. The officer's assessment of the threat posed by Ryberg was 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.

Throughout the encounter with Ryberg, the amount of force deemed necessary was consistently driven by Ryberg. Officer Luke had a command presence from the start, announcing, "Police!" when entering the Niagara House Motel room. He was in uniform; he arrested Ryberg and placed him in a fully marked police vehicle. There is no question that Ryberg was aware of the officer's presence. Officer Krouse approached the vehicle and broke two windows, Officer Luke yelled, "Shoot him!" None of this deterred Ryberg, who left very little time and very little room for anything other than deadly force. Ryberg was actively assaulting a police officer who was trapped in his patrol vehicle while trying to disarm the officer at the same time.

Officer Krouse did not escalate force; Ryberg started, escalated and refused to cease his own aggressive assault. All escalations of force were a direct response to the situation created and continued by Ryberg. The facts discussed above are significant in determining whether the degree of force which Officer Krouse used against Ryberg was reasonable and justified. At the point when the officer fired his weapon, the actions of Ryberg had created a situation in which the officer reasonably believed that deadly physical force was imminent, and that the life of Officer Luke was in danger.

The officer was confronted with an aggressive and violent man who had already assaulted a police officer. Ryberg was not stopping and was trying to get a gun. Tasers did not have any impact on him. Officer Krouse was left with no other de-escalation options.

Officer Krouse was reasonable in firing his weapon at Ryberg. 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. In looking at the officer's statements, as well as those of witnesses, they are all consistent. Ryberg was nothing less than a deadly threat.

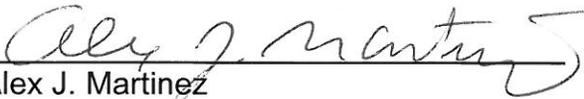
At the time Officer Krouse fired his weapon, he had reasonably arrived at the conclusion that Kevin Ryberg was an imminent threat to Officer Luke and deadly physical force was needed to stop that threat. The Manager concludes that Officer Krouse's decision that he needed to use deadly force in response to the actions of Kevin Ryberg was objectively reasonable.

VI. CONCLUSION

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

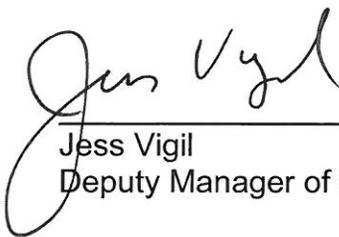
In closing, the Manager would like to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions that were reached by this Office are consistent with those of the District Attorney's Office, the Chief of Police and the OIM. These consistent conclusions result entirely from the

reason that they are controlled by the facts. The Department always has concern when a police officer has to use deadly force. 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 Officer Krouse on scene were those which he reasonably believed were necessary to protect his own life, as well as the life of innocent by-standers. The officer acted appropriately and reasonably to stop the imminent threat posed by Kevin Ryberg. Officer Randall Krouse acted reasonably under the circumstances with which he was confronted.



Alex J. Martinez
Manager of Safety

5-21-13
Date



Jess Vigil
Deputy Manager of Safety

5-21-13
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. Although not detailed below, there were other witnesses who were questioned. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

HH – HH works near the District 2 police station. He was driving to lunch when he saw two police cars. The front car began to slow down and then veered in his direction. He could not see the face of the driver and noticed that it appeared that there was someone horizontal in front of the driver with his back towards HH. He saw that there was a struggle towards the left side of the officer's belt. At that point, HH pulled over. He also saw that the passenger in the first vehicle appeared to be assaulting the driver. He saw the second police car stop and an officer get out. The officer went to the driver's side of the first vehicle. He could see the person in the vehicle appeared to be reaching for the gun of the officer. He began getting out of his car and called 9-1-1. He saw the officer now on the passenger side firing shots into the vehicle. He then pulled someone out of the vehicle. The first officer then got out of the first vehicle and came around the vehicle. It appeared that the first officer was using his radio at that time.

HM – HM was the former girlfriend of Ryberg. They had been dating approximately two months. They had met through Ryberg's brother. She had been involved in a domestic violence incident with Ryberg at the end of their relationship. She did not see him after that incident. She was aware that Ryberg "recreationally" used meth.

RS – RS was in Denver on a business trip. He was with CT when he saw two marked police cars on 39th Street. The driver from the second police vehicle got out of his car and ran to the first car driver's side. He was shouting, "Get out of the car!" He broke out the driver's side window of that vehicle and continued to yell, "Get out of the vehicle!" At that time, RS noticed that there was a struggle in the front seat of the first vehicle. He noted that the other person was in the front seat with the officer. The driver was unable to get out of the vehicle. The other officer then ran to the passenger side, still yelling, "Get out of the car!" He then broke out the passenger side window. As he bent down, RS lost visual contact but then he heard gunshots. The other officer was able to exit the vehicle. He appeared shaken up.

CT – CT works near the scene of the incident. On this day, he was assisting a customer with loading insulation into his truck. While outside, he saw two patrol cars "slam their brakes on." He saw one officer, the one from the back patrol car, get out of his car and smash out the window on the passenger window and driver's window. He went back to the passenger side of the vehicle and then heard "pop, pop." He heard the officer yelling, "Drop it, drop it!" or "Let it go!" He saw "a guy" and an officer "tussling" in the car.

KT – KT works at a wine wholesaler near the location of the incident. He saw one police cruiser going slowly westbound down the middle of the road. A second police car came and overtook the first. When it drove even with the first car, it stopped. The

officer from the second vehicle jumped out of his car, went to the driver's side of the first car, and smashed the window with his "billy-club." KT could not see inside the car. The officer then ran to the passenger side, smashed in the front passenger window, took out his weapon, leveled it, and then fired 2-3 shots. The officer who had fired the shots reached into the vehicle and pulled a man out from the front seat of the car. It appeared that someone inside of the car was pushing him out of the car. The man lay motionless on the ground. An officer emerged from the first car and came around the back of the car and drew his weapon. EMT's and the fire department responded to the scene.

RT – RT had been friends with Ryberg. Ryberg and RT moved in together. Ryberg was paranoid with RT and eventually began getting violent with RT. He would choke her and scream at her if she left his view. She stated that he had choked her to the point of her losing consciousness. He did not allow her to see her family or work, or allow her to use her phone. RT stated that Ryberg had pulled knives on her in the past, and had threatened her with an object that looked like a meat thermometer. Ryberg was using cocaine and marijuana. She knew he had a history with meth but did not see him use it. Ryberg had told her that he would not go back to jail, that he would kill a cop, RT, or himself, but he would not go back to jail. He told RT that he would stab her "in the jugular" or "gut [her] and hang [her]."

KW – KW was friends with Ryberg for a few weeks prior to this incident. She had briefly stayed at the Niagara with Ryberg. She told officers that Ryberg sold drugs to make money, "anything from weed to meth to coke, just whatever he can get the cheapest and profit the most..." She stated that Ryberg was also using those same drugs. She also noted that Ryberg had "a temper" and lack of sleep from drug use made it worse.

Responding Officers

The information provided by Officer Krouse and Officer Luke 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.

Sergeant John Sullivan arrived at the Niagara House Motel in response to a call of an occupant with a gun. They tried calling the room, but no one answered. The manager gave them a key and they went inside. The individual, later determined to be Ryberg, was initially startled but quickly calmed down. He was taken into custody. Sergeant Sullivan checked a backpack at the base of the bed and found a crack pipe and marijuana. He then heard a call over the radio for help on 39th Avenue. He responded code 10.

Detective Jesse Avendaño initially received a call from Officer Luke informing him that they were responding to the Niagara House Motel regarding an unresponsive man with a handgun. Officer Luke told him that they recovered several bags of suspected methamphetamine. He heard Officer Luke via radio say that he was responding to District 2 and another patrol vehicle was following him. Several minutes later he heard a simulcast for an officer calling for help in the 6400 block of East 38th. Detective Avendaño responded to the scene and came across Officer Luke with his weapon out. Officer Luke told him that the taser did not work and they had shot the suspect. He

noted that Ryberg had one handcuff on his right wrist and none on his left wrist. Ryberg initially had a faint pulse but soon afterwards, the pulse could no longer be established. Officers began CPR until an ambulance and the Denver Fire Department arrived.

Corporal Sheldon Doell responded to the Niagara House Motel on a report of an unwanted male sleeping in a room with a handgun. Officers decided to obtain a key from the manager to gain entry in the room. Officers entered and saw the weapon. The man, later identified as Ryberg, woke up and officers handcuffed him.

Officer Darin Lindsey responded to the dispatch call for a man with a gun. Upon arrival, he was to cover the back of the building. He later heard a call for Code 10 cover for 6300 East 38th, although the location was later changed to East 39th. He arrived on scene and took a trauma kit from one of the vehicles and gave the compression bandage to Detective Romero who applied it to Ryberg's upper left chest. He and Detective Romero took turns giving Ryberg CPR until an ambulance arrived and Ryberg was transported to DHMC. Officer Lindsey also removed Ryberg's handcuffs. He noted that the handcuffs were double locked and that although they appeared to be almost open, they were, in fact, locked.

Officer Alvin Thompson responded to the Niagara House Motel for a call on a party with a gun. At the motel, they ran the name of the party who rented the room and discovered that he had a small warrant. They entered the room and found a man sleeping with a gun next to him on the bed. Officer Luke removed the gun and cleared the party who rented the room. Inside the room were several small baggies and a homemade plastic pipe. He discovered the name of the man in the room was Kevin Ryberg. They also found two baggies of marijuana, two baggies of meth, two glass pipes and a 9mm handgun. He was collecting evidence when he heard Officer Krouse call for Code 10 cover.

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.