



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE

Date: May 17, 2010

Nature: Officer Involved Shooting

Contact: Kathleen Walsh, Director of Community Partnerships  
cel 720-810-4139

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The District Attorney's Office has completed its review of the facts and circumstances surrounding Colorado Springs police officer Jamie Royal's discharge of his firearm. It is the District Attorney's role to determine if criminal charges are warranted.

On Feb. 3<sup>rd</sup>, 2010 at 1:55 P.M, the Colorado Springs Police Department received a 911 call reporting a suspected burglary in progress at an unoccupied single family residence located at 3370 Beechwood. The reporting party indicated that they had observed two unknown white males coming in and out of their neighbor's garage and that an unfamiliar red pickup truck was parked in front of the residence. It was indicated that one male party was wearing a ski mask. Police officers Jamie Royal and Jerry Owens, two veteran officers each with over 20 years experience, were dispatched to that location.

As officers approached the residence, the garage door of the reportedly unoccupied home was open and a red pickup truck was parked in front. As Officer Royal and Owens approached the garage, a man suddenly appeared in the doorway leading from the garage to the home. The man raised his arms in what appeared to both Officer Royal and Officer Owens to be a shooting stance. Officer Royal and Officer Owens both thought they observed something in the individual's hand. Both officers raised their firearms to protect themselves.

Officer Royal fired one shot at this individual who fell to the ground. The police officers immediately called for medical assistance. However, the shot was fired into the garage wall and no one sustained any injuries. A second individual was also located in the home and later interviewed without incident. No weapons were found. It was later determined that these two individuals had been given permission to work in the home by the home owner.

In Colorado, a peace officer is justified in using deadly physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

The District Attorney's Office routinely reviews all incidents involving a discharged weapon by an officer. The law dictates that an officer may act upon what he reasonably believes is occurring at the time he fires his weapon. Based upon the law and facts of this case, criminal charges are not warranted.

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**MEMO**  
**4<sup>TH</sup> JUDICIAL DISTRICT ATTORNEY'S OFFICE**

**TO:** D.A. Dan May  
Chief DDA Diana May

**FROM:** Senior DDA Laurel E. Huston

**CC:** Chief Investigator Larry Martin

**DATE:** April 26, 2010

**RE:** Officer Involved Shooting – Officer Jamie Royal  
(February 3, 2010 @ 3370 Beechwood Court)

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**FACTUAL SUMMARY**

On February 3, 2010, at 1:55 p.m. 911 received a call from Sylvia Weber. Ms. Weber lives at 3345 Beechwood. She called to report suspicious activity at 3370 Beechwood, the home of her neighbor across the street. She believed the house should be unoccupied, but noted that two white males in a red 4X4 truck were present at the residence. She stated that the men had been going in and out of the garage and the garage door had opened and closed repeatedly. She was able to provide a license plate number for truck and a description of the two males. She described one of the men as wearing a dark colored ski hat.<sup>1</sup> Ms. Weber told the operator that neither the men nor their truck looked familiar to her.

Initially, Officer Jerry Owens and Officer Robert Peltz were dispatched to a possible burglary in progress at 3370 Beechwood. Officer Rob Flaugh was also dispatched as back up. Moments after the initial call out, Officer Jamie Royal contacted dispatch and volunteered to go on the call with Officer Owens. Officers Owens and Royal had just completed a separate call and were together at

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<sup>1</sup> A review of the 911 recording reveals that Ms. Weber told the operator that one of the men was wearing a ski hat. The call screens associated with this call indicate that one of the men was wearing a ski mask. It appears that the officers would have only had information about a ski mask, not a ski hat.

the time. As officers were in route to the Beechwood address, the call screen continued to be updated with additional information.

Officer Owens and Officer Royal arrived on scene in separate cars. They parked down the street from 3370 and were able to observe a red truck parked in front of the residence. They also observed the garage door was open and a door leading into the house from the garage was also open.



The two officers silently approached the house together with their weapons drawn and in a ready position. Officer Royal approached closer to the house and Officer Owens took a wider approach. Officer Owens looked in the garage and told Officer Royal that he didn't see anyone. Officer Royal then walked to the side of the garage and into the open area of the driveway. At that point both officers saw a man appear at the entrance of the door leading into the house from the garage.

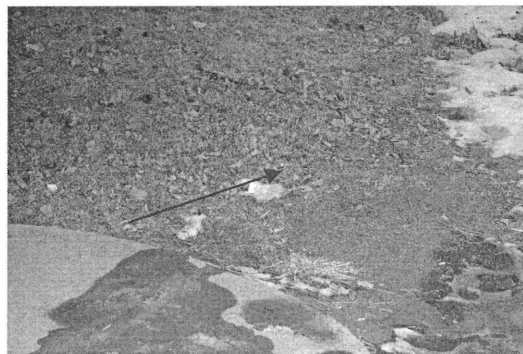
The lighting conditions of the garage were poor and the man's body was backlit from lighting inside the home. The man appeared to be dressed in black and his hands were in front of his body. The man then raised his arms in what appeared to be a shooting stance with his hands coming together. Both officers thought the man had something in his hands. Officer Royal fired a single shot towards the man. Officer Owens raised his firearm but did not shoot. The man in the doorway immediately dropped face down to the ground. Both officers believed he had been hit. While this was occurring another man appeared behind the first in the doorway. Officer Royal ordered the second man to get down on the ground and he complied.

Officer Owens immediately radioed dispatch that shots had been fired and medical assistance was needed. As this occurred, Officer Royal approached the first man, handcuffed him and inquired whether he had been shot. The man was cooperative and told them he was not injured. Officer Owens then notified dispatch that medical assistance was not needed and that it was Officer Royal who had fired shots. Officer Peltz then arrived on scene and assisted in handcuffing the second man. By this time other officers were in route and began arriving.

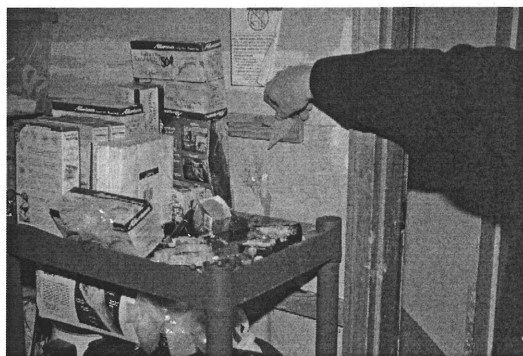
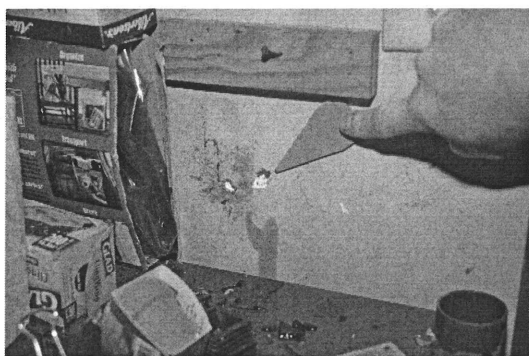
The two men told officers they were friends of the homeowner. The men explained they were at the home to change the locks and work on the garage door. The first man was identified as Kevin Rogers. The second man was identified as Corey Simons. Neither man suffered any injury from the incident.

Mr. Simons gave Officer Allison Detwiler his cell phone with the homeowner's name and number. The homeowner was identified as Pamela Riggen. Officer Detwiler used Mr. Simons phone to call Ms. Riggen. Ms. Riggen confirmed that two men were at her home to change the locks. She was able to identify Mr. Simons by his full name and Mr. Rogers by his first name. She agreed to return home to speak to the police and identify the men in person. At this point officers removed the handcuffs from both Mr. Simons and Mr. Rogers. Pamela Riggen returned home shortly and confirmed that the men at her house had permission to be there.

Officers recovered a spent 9 mm shell casing in the grass approximately three to four feet from the driveway (approximately 10 feet from the side of the garage).



A projectile impact was found on the back wall of the garage, approximately one foot from the doorway leading into the residence.



Because this incident resulted in an officer involved shooting, the Violent Crimes Unit was given responsibility to investigate. The 4<sup>th</sup> Judicial District Attorney's Critical Incident Team also responded immediately to the scene to monitor the investigation. Senior Deputy District Attorney Laurel Huston was assigned to review the case and to determine whether criminal charges should be filed against Officer Jamie Royal.

That investigation and legal analysis of the above referenced shooting has been completed, and on behalf of the 4<sup>th</sup> Judicial District Attorney's Office, I conclude that no criminal charges shall be filed as a result of this incident.

#### **MATERIALS REVIEWED**

Many officers responded to the scene and prepared written reports of their involvement in this incident and investigation. The Colorado Springs Police Department Violent Crimes Unit along with Investigators from the 4<sup>th</sup> Judicial District Attorney's Office also interviewed numerous witnesses. They also collected physical evidence and completed photo documentation of the scene. All of these items were forwarded to the District Attorney's Office with the file. Senior Deputy District Attorney Huston reviewed all reports, recorded interviews, photos, diagrams, call screens, the recorded 911 call and any other information available as part of the case review.

## **WITNESS STATEMENTS**

Witness statements were taken from numerous people including Officer Jamie Royal, Officer Jerry Owens, Kevin Rogers, Corey Simons, Pam Riggen, Sylvia Weber, nearby neighbors, and law enforcement officers who responded to the scene. This report is not intended to be a comprehensive digest of all witness statements or evidence recovered, but rather a summary of facts and evidence pertinent to the ultimate conclusion. Summaries below highlight additional information not already included in the factual summary and/or consistencies and variances between witness statements.

### **STATEMENT OF OFFICER JAMIE ROYAL**

Officer Royal gave several brief statements to other officers while on scene at 3370 Beechwood just after the shooting. He then completed a full interview with Detective Wayne Bichel at the Police Operations Center (POC). The interview began at approximately 3:49 p.m. and was monitored by DDA Investigator Randy Stevenson. Detective Bichel recorded the interview and also completed a report. The interview lasted just under an hour.

All of Officer Royal's statements, including his interview at the POC, were consistent with factual summary provided in this report. He also provided the following details as part of his statement:

- Both Officer Owens and Officer Royal responded to 3370 Beechwood with lights and sirens activated until they were close to the address. Both officers felt the situation required an emergency response because of the likelihood that a home burglary was in progress.
- When Officers Royal and Owens arrived at the address, the information provided by the reporting party and transmitted to them via dispatch and the call screen was consistent with what they found. In particular, a red truck was parked in front of the residence and the garage door was open. This gave further support to believe that a burglary was actually in progress.
- As the two officers approached the house they were approximately ten feet apart. They did not speak to each other. They approached quietly because they did not want to alert burglars to their presence. Officer Royal explained that he wanted the element of surprise in dealing with possible intruders. No other neighbors were outside at this time.
- As he approached, Officer Royal was in a ready position with his gun out in front of him pointed downward in a two handed hold.

- The residence sits on the west side of the street. Officer Royal was at the northeast corner of the residence. Officer Owens was to his left (east) and slightly south.
- Officer Royal did not conduct a “quick peek” of the garage before rounding the corner of the garage. He was expecting to either see or hear someone as they approached if someone was in the garage itself. He was thinking the intruders were likely inside the house because the garage door was open and the truck was parked on the street.
- As Officer Royal rounded the northeast corner of the residence he saw a person standing in the doorway leading into the house from the interior of the garage. Officer Royal was “a little surprised” by the immediate appearance of someone in the garage.
- Officer Royal was probably two to three feet from the end of the garage when he saw the individual. The officer was exposed and away from cover.
- The person’s body was backlit. He could not see their face or identify them clearly. The person was facing him. He appeared to be about six feet tall with a good sized build. The size of the person lead Officer Royal to believe it was a man rather than a woman.
- Officer Royal yelled, “Police!” He believes he also said, “Let me see your hands!”
- He said it all happened very quickly, in what he estimated to be one quarter of a second. Instantaneously after he yelled, the person was coming up into a shooting stance with their hands coming up in front of them. He thought he saw something in his hands at the same time but he was unsure which hand because the hands were coming up together. The events transpired so quickly Officer Royal did not have an opportunity to think about it. He did not see the individual move forward or backward. He only saw movement of his hands and arms.
- Because he thought he saw something in the individual's hands, he fired instantly. Officer Royal said he felt like somebody was going to shoot him. When asked if he was in fear for his life, he responded, “I was.” He also described the event as traumatic and said he was pretty shook up afterwards.
- The individual in the doorway immediately dropped to the ground when the shot was fired. He appeared to have turned to the right and then dropped facing south. Officer Royal thought he had shot him. He describes himself as pretty shook up and rattled because he believed he had shot the man in the doorway. At that point he thought he had killed the individual.
- Officer Royal said he likely would have fired a second shot if the individual had not dropped to the ground so quickly.

- Officer Royal doesn't remember the individual saying anything until after he approached him.
- As Officer Royal approached the first individual on the ground, he saw a second individual standing inside the house. He ordered this person to get on the ground also. He had his gun pointed toward the second individual. Officer Owens was directly behind him.
- When the first individual dropped to the ground he fell inside the house. The second individual was behind the first, also in the house. Both men were lying face down.
- He estimated the depth of the garage and distance between himself and the other individual to be approximately twenty-five feet. The doorway between the house and the garage is on the west wall of the garage.
- Officer Royal emphasized more than once that the lighting in the garage was very poor at the time of the shooting. No lights were on inside the garage. Through the doorway leading into the house there was a lot of light coming from a window inside the residence which provided the backlighting to the individual. There were no windows in the garage itself.
- Officer Royal reported that he had been working his regular shift (6 to 4) when this incident occurred. He had not been ill or injured. He had slept well the night before. He has not had an alcoholic drink in about twenty years. He has been a police officer for over thirty-one years. He has gone to many (in the triple digits) in-progress calls and also received training in this area.
- It is his practice to announce "police" when he is about to enter a home, not as a he approaches the yard or the garage when dealing with in-progress calls such as this one.
- When questioned, Officer Royal stated his point of aim when he shot was center of mass, but he didn't have a chance to aim; that it was instinctive shooting.

#### **STATEMENT OF OFFICER JERRY OWENS**

Officer Owens gave several brief statements to other officers while on scene at 3370 Beechwood just after the shooting. He then completed a full interview with Detective Pam Konz at the Police Operations Center (POC). The interview began at approximately 3:24 p.m. and ended at 4:34 p.m. Detective Konz recorded the interview and also completed a report.



All of Officer Owens' statements, including his interview at the POC, were consistent with factual summary provided in this report. He also provided the following details as part of his statement:

- Both Officer Owens and Officer Royal drew their weapons as they approached the residence. Officer Owens did not give any verbal commands as they approached, but was not sure if Officer Royal did so.
- Officer Owens had a wider perspective on the garage than Officer Royal who was closer to residence. Officer Owens looked into the garage and told Officer Royal he did not see anyone. At this point Officer Royal walked to the side of the garage and started coming up into the driveway.
- Officer Owens observed that both the garage door and a door leading into the residence were open. He does not recall whether he told Officer Royal about the open door leading into the residence. He said it was dark inside the garage but you could see the backlighting from inside the home.
- Then a man dressed in black came out of the house and into the garage from a doorway connecting the two areas. The just appeared suddenly in the doorway. He appeared to wearing a hat and had lighter skin. The man's hands were down in front of his body.
- Before either officer could speak, the man began to raise his hands. It looked like he had something in his hands. He also had his hands together as he raised them. Officer Owens was about to yell. He is not sure if he yelled "police!" or "freeze!" He is not certain whether or not he gave any specific verbal command to the individual. The man appeared to be looking directly at Officer Owens and did not take any steps into the garage.
- Officer Owens raised his firearm and then heard Officer Royal fire a shot. The man in the doorway dropped "like a rock." Officer Owens thought the man had been shot.
- When asked how long the encounter took, Officer Owens estimated it took only seconds, perhaps ten seconds at the most. He estimated the time between seeing the individual and hearing the shot fired to be between one to two seconds
- Officer Owens indicated that if Officer Royal had not discharged his gun, he (Officer Owens) likely would have.

## APPLICABLE LAW

In reviewing this officer involved shooting to determine whether any parties involved should be charged with a criminal offense, the following statutes have been considered:

### 1. Prohibited Use of Weapons

Colorado Revised Statute 18-12-106 (Prohibited Use of Weapons) provides in part:

(1) A person commits a class two misdemeanor if:

(b) Recklessly or with criminal negligence he discharges a firearm

2. Under C.R.S. 18-1-501(3), a person acts with **criminal negligence** when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or a circumstance exists.

3. Under C.R.S. 18-1-501(8), a person acts **recklessly** when he consciously disregards a substantial and unjustifiable risk that a result will occur or a circumstance exists.

### 4. Use of physical force in making an arrest or in preventing an escape

Colorado Revised Statute 18-1-707 provides in part:

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2)(b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

## CONCLUSION

1. With regard to the facts under review, nothing in evidence suggests Officer Jamie Royal acted in conscious disregard of a substantial and unjustifiable risk when he discharged his firearm. Accordingly, there is no evidence that the officer acted recklessly under 18-12-106(b).
2. The only possible argument for filing of charges against Officer Royal under 18-12-106(b) would be under a theory that he acted with criminal negligence. However, even if one concludes that Officer Royal's actions in discharging his weapon constituted a gross deviation from the

standard of care a reasonable person would exercise, he would still have a legal self defense claim.

3. Officers are allowed to use reasonable force to protect themselves from bodily harm. *See People ex rel. Little v. Hutchinson*, 9 F.2d 275 (8<sup>th</sup> Cir. 1925). What amounts to reasonable force depends upon the facts of each individual situation and is ordinarily a question for the jury to decide. *Id.*; *People v. Fuller*, 756 P.2d 390 (Colo. App. 1987), *aff'd* in part and *rev'd* in part on other grounds, 781 P.2d 647 (Colo. 1989).

4. Because we find no possible criminal charge that would not be subject to a self defense claim, no criminal charges against Officer Jamie Royal are appropriate.



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District Attorney

## OFFICE OF THE DISTRICT ATTORNEY

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Daniel C. Zook  
Assistant District Attorney

The District Attorney's Office has concluded its' investigation of the officer involved shooting that occurred on June 4, 2010 and issues the following report:

Any time a law enforcement officer fires his weapon and a person is injured or killed, the Office of the District Attorney conducts an independent investigation. The Office of the District Attorney then reviews the incident and determines if any criminal laws were violated by the law enforcement officer shooting his/her weapon. The independent investigation consists of interviewing witnesses, to include the law enforcement officers who fired their weapons. Investigators from the District Attorney's Office conducted the interviews in this case. Physical evidence is carefully examined. Forensic evidence is reviewed.

C.R.S. 18-1-707(2) allows for a peace officer to use deadly force if he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of a deadly physical force or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

On May 25, 2010, Deputies of the Boulder Sheriff's Office attempted to stop a car for a traffic violation. A high speed chase ensued. The driver eventually abandoned the car and got away on foot. The Boulder Sheriff's Office investigation determined the driver of the car was Gregory Taylor Burns (DOB 01/16/83) and that he had an outstanding arrest warrant for a Parole Violation issued by the Colorado Department of Corrections. Investigators with the Boulder Sheriff's Office, acting undercover, arranged to buy 1 ounce of cocaine from Gregory Burns. Mr. Burns wished to make this sale in Colorado Springs. The Boulder Sheriff's Office then sought the assistance of the Colorado Springs Police Department and the Metro Vice, Narcotics and Intelligence (VNI) Unit. The sale was arranged to occur on June 4, 2010 in Colorado Springs.

Gregory Burns changed the specific location of the drug sale minutes before the transaction was to occur, to a shopping center in the 3500 block of North Carefree Circle. The VNI Detectives and Boulder Sheriff's Office Detectives made arrangements to meet him there. The Detectives also arranged to have the SWAT Team present to aid in his arrest for the outstanding warrant.

Mr. Burns arrived at the shopping center and circled the parking lot in the car he was driving. He appeared to pay particular attention to the area where the SWAT Team was concealed. Mr. Burns then drove to the area where the team was positioned, exited his vehicle and more closely examined the area where the SWAT team was positioned. The head of the SWAT Team, Sgt. Ron Sheppard, decided to arrest Mr. Burns. The SWAT team moved from their position and yelled "Police, don't move." Mr. Burns ran. The Police chased him and yelled commands several times such as, "Police stop, get on the ground." Mr. Burns did not obey any of the commands and led the police across North Carefree Circle into an apartment complex. Two officers chased

him on the East side of building 3504 heading north. When he got to the end of the building, he turned and ran around the building going in a westward direction. Sgt. Shepard ran along the West side of the building to cut him off. Sgt. Shepard saw Mr. Burns going up the stairs at 3504 N. Carefree. Sgt. Sheppard stated he ran across the grass and followed the suspect up the stairs. When the suspect got to the landing, he went down the hallway and began kicking the door to his left. Sgt. Shepard yelled "Police! Get on the ground!" The suspect continued kicking the door. Sgt. Shepard yelled commands to the suspect multiple times but, the suspect did not respond. The suspect then dropped his head forward in a defeated motion and turned and pointed a gun at Sgt. Shepard. Sgt. Shepard drew his gun and fired 4 shots at Mr. Burns. Three shots struck Mr. Burns and he fell to the ground. Police then recovered a loaded and chambered Browning 9mm handgun from Mr. Burns and medical help was called to the scene immediately. Mr. Burns was transported to Penrose Hospital where he was pronounced dead upon arrival.

An autopsy was conducted on June 5, 2010 by Dr. Robert Bux. The cause of death was determined to be a bullet wound that perforated the aorta.

Of the four shots fired: Two bullets were recovered during the autopsy. A third shot was a through and through wound in his arm that ended up in the wall of the apartment behind Mr. Burns. A fourth shot was recovered in the wall of the apartment behind him.

Two baggies of a white powdery substance, (which presumptively tested positive for cocaine) and a stolen I.D. were found in Mr. Burns's pockets.

Applying the facts to the applicable law, the District Attorney's Office concludes that no criminal laws were violated and pursuant to Colorado Laws regarding self defense, the officers' use of force was reasonable and justified.