



DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District
201 W. Colfax Avenue, Dept. 801, Denver, CO 80202

Bus. Phone: 720-913-9000
Fax: 720-913-9035

August 20, 2014

Sheriff Elias Diggins
Denver Sheriff Department
P.O. Box 1108
Denver, CO 80201

**RE: The investigation of the use of force by Deputy Sheriff
Thomas Ford against inmate Kyle B. Askins on July 13, 2014**

Sheriff Diggins:

I write to inform you of my filing decision regarding the investigation into the recent use of force by Deputy Sheriff Thomas Ford. Because this use of force incident and other events involving Denver Sheriff Deputies have garnered much attention recently, I want to convey my decision directly to you. If you have any questions about this, please feel free to call me.

Although the use of force by Deputy Sheriff Thomas Ford striking inmate Kyle Askins in the face was recorded on video on July 13, 2014, there are important facts that do not appear on the video which must be evaluated in order to make a fully informed decision regarding filing criminal charges. The Denver Police Department has thoroughly investigated this incident and my office has thoroughly reviewed the investigation. After examining all of the facts, I find that filing criminal charges against Deputy Sheriff Ford would not be appropriate.

Colorado law authorizes deputy sheriffs to use reasonable and appropriate force to maintain order and discipline in a jail setting, as well as when necessary to act in self-defense. [See C.R.S. 18-1-703(1)(b); 18-1-704(1)]. I believe that a jury of Denver citizens, if presented with the facts revealed by this investigation, would find that the force employed by Deputy Sheriff Ford against inmate Askins was justified, and therefore not unlawful, under these statutes.

This investigation revealed that the inmate was making vile comments, racial slurs, and threatening taunts toward the deputy sheriffs, particularly to Deputy Ford. Among the words said by Askins that Deputy Ford recalled were: *"Fuck you. You pussy. You porch monkey. You black bastard. I'll fuck you up. I'll kick your ass."* Deputy Sheriff William Lewis recalled Askins saying: *"You fucking niggers. Why is this taking so long? Fuck you. Fuck you. You're just a pussy. Bitch, I will kick your ass."*

Both deputies indicated the comments from Askins persisted over a lengthy period of time. Deputy Lewis said he was trying to tune out most of what Askins was saying, especially when Lewis was busy dealing with another inmate. Deputy Ford said he repeatedly told Askins to

“Knock it off” and expected that Askins would simply “tire out” and quit with the obscene comments. After Askins persisted with these comments, however, Ford told Askins to “Knock it off, or you’re going to go to a cell.” Askins continued to make comments.

Rory “Chip” Edwards, Registered Nurse, corroborated that the inmate was loud, belligerent and drunk. He was making “horrible” statements directed to the deputies and was saying things that “made me cringe”; “things about ‘*fucking your daughter or raping your daughter*’, or something like that”; and saying he would kick the deputy’s ass.

These types of comments are not just disturbing. They could also provoke other inmates within earshot and thus become disruptive in the jail. Moreover, witness accounts suggest that inmate Askins was committing the crime of “harassment” against both deputies by making these comments. C.R.S. 18-9-111 provides:

(1) A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she: (h) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

It would have been reasonable, then, for Deputy Ford to move Askins from the bench where he was sitting and to place him in a cell. Ford indicated this was his intention when he decided to approach Askins. However, as seen on the video, when Deputy Ford walked toward him, Askins stood up to confront Deputy Ford. Ford said this surprised him. He said that because Askins had made threats just moments earlier, coupled with standing up and his tense posture, Deputy Ford viewed him as threatening. Ford said he believed when Askins stood up he was “ready” to fight. While the video may be interpreted differently by others not standing in Ford’s shoes at the time, at a minimum the video shows that Askins did not remain seated as he was instructed, nor was he offering to begin complying with Ford’s directions.

Deputy Ford is not required by Colorado law to wait to be struck first by an inmate before he is legally justified to use reasonable and appropriate physical force if he reasonably believes use of force against him is imminent. Deputy Ford described the moment before the strike:

“So I went over there. I approached him. My sole intention was to place him in a cell. I still had the water bottle in my hand. I still had the print pads in my hand. I had no intention of getting into a physical altercation with this guy. So, but when he -- he popped up off the bench. I didn’t tell him to get up. I didn’t give him an order. He popped up off the bench in an aggressive manner. His body was tense, and his face, and then, based off of his previous threats about what he was going to do to me, I felt threatened and I defended myself, and I defended myself with a -- with a strike to the face. ... a strike that we are taught in the Academy to defend ourselves against threats.”

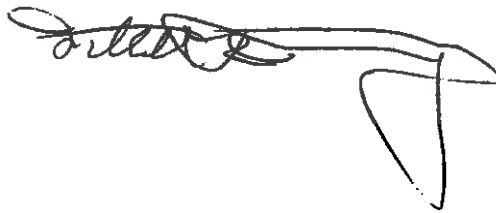
Deputy Ford struck Askins one time in the face. The injury to Askins’ lip from that strike was very slight and temporary. (Other marks later seen on Askins consisted of a shoulder abrasion

and a chest bruise. However, these do not appear to have been caused by Deputy Ford. Askins thought his injuries came from having fallen down on the 16th Street Mall before he was taken to jail. He claims to have no memory of this event in the jail. Ford said he struck Askins only once and the video does not show any additional strikes to Askins).

Although the video is subject to different interpretations, it largely corroborates Deputy Ford's description of the events. The witnesses also corroborate Deputy Ford. I believe a jury would find that Deputy Ford's use of force was legally justified by Colorado statutes at the moment he struck Askins in the face. Given the very slight injury this caused, I believe a jury would find the degree of force was reasonable and appropriate. At the very least, we could not prove beyond a reasonable doubt that the force was not justified, as the law requires, if we were to file criminal charges.

For these reasons, my office will not file criminal charges against Deputy Ford.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mitchell R. Morrissey', with a large, stylized flourish extending to the right.

Mitchell R. Morrissey
Denver District Attorney

cc by email: Sean Olsen, Attorney for Deputy Sheriff Ford; Sgt. James Mair, DPD IAB; Commander Ron Thomas, DPD IAB; Stephanie O'Malley, Executive Director; Nicholas E. Mitchell, Office of the Denver Independent Monitor