



October 28, 2020

Cliff Brown
Interim Chief of Police
Thornton Police Department
9551 Civic Center Dr.
Thornton, Co 80229

Re: The investigation of the officer-involved shooting of Thomas Marquez, DOB 07-14-72, occurring on May 26, 2020, in Thornton, Colorado.

Dear Acting Chief Brown:

The investigation and legal analysis of the officer-involved shooting of Thomas Marquez occurring on May 26, 2020, by Thornton Police Officers Stephen Stroud and John DeHaan is complete.

The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted this investigation. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. On August 5, 2020, Westminster Police Department Detective Zeb Smeester presented the CIIT factual findings of the investigation to my office. The CIIT presented police reports, videos, audio interviews, and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation was thorough and complete.

This review is strictly limited to determining whether criminal charges are warranted against the involved officers based on the CIIT investigation. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a unanimous jury. Here, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified under Colorado law.

This review expressly does not evaluate the appropriateness of the actions of the involved officer, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency are sufficient. That evaluation is left to each individual agency.

As further set forth herein, based on the evidence presented and applicable law, there is no reasonable likelihood of success of proving that the involved officers committed any crime beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against Officers Stephen Stroud and John DeHaan.

STATEMENT of FACTS¹

On May 26, 2020, at about 9:15 P.M., H.B.² and her fiancé L.C. were walking on the Highline Trail near Lafayette St. and East Lake Ave.³ While walking they heard what sounded like a gunshot. About five minutes later, they encountered Thomas Marquez on the trail and said that Mr. Marquez was “barely able to walk.” They also saw Mr. Marquez holding a handgun, which he unsuccessfully attempted to conceal from H.B. and L.C. H.B. and L.C. called 911 and reported this encounter. Thornton Police responded to the area but were unable to locate Mr. Marquez. H.B. subsequently identified a photograph of Thomas Marquez as the man with the gun on the trail.

A little after 11:00 P.M., Thornton Police Officer Stephen Stroud working on-duty and in his police uniform and in a marked patrol vehicle, was in the vacant parking lot at the Thornton Infrastructure Maintenance Center (IMC). He parked his police vehicle in the far northeast corner of the IMC at 12450 Washington St. Shortly after Officer Stroud parked, he saw a male later identified as Thomas Marquez walking toward him. Mr. Marquez contacted Officer Stroud and Officer Stroud observed that Mr. Marquez had slurred speech, his behavior was unusual, and Mr. Marquez was unable to effectively communicate with him. Officer Stroud described this encounter, as “everything was very bizarre.” It is unknown how or why Mr. Marquez was at the IMC late at night on May 27, 2020.

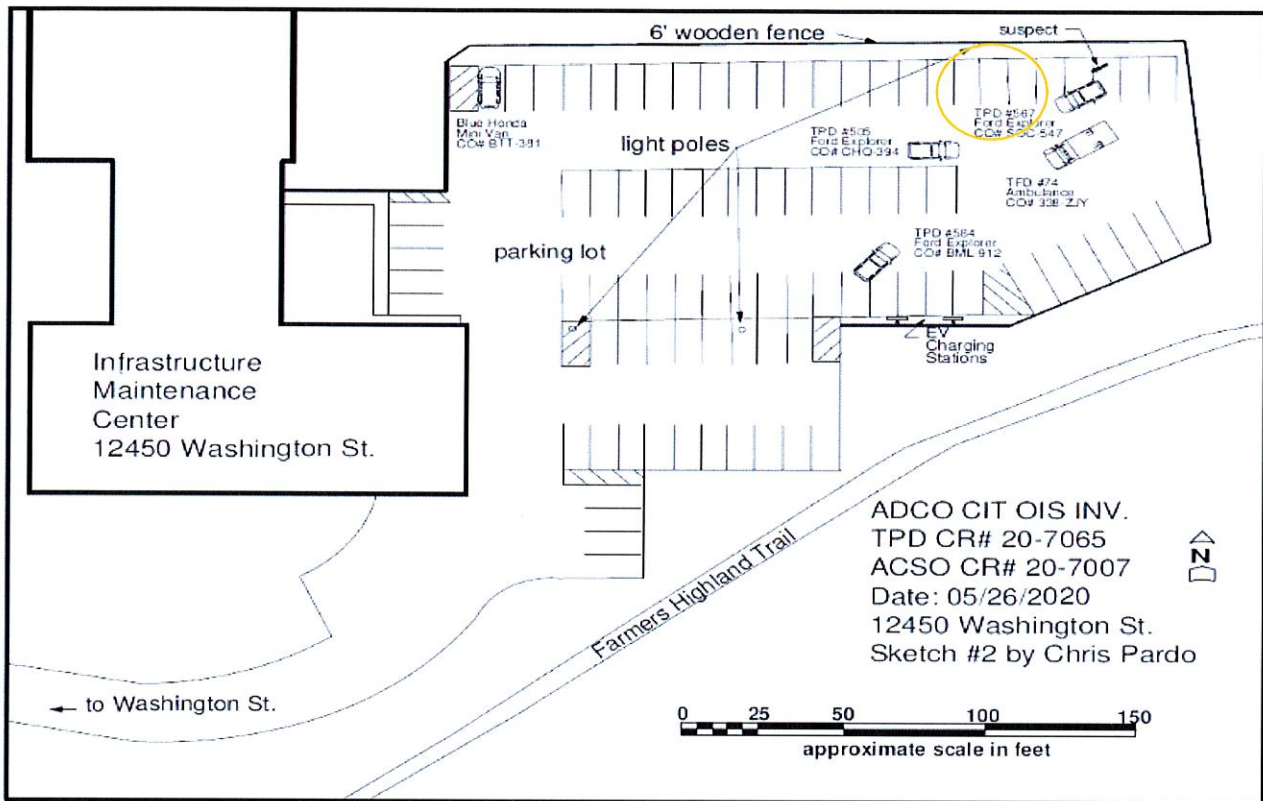
At 11:15 P.M., Officer Stroud reported to Thornton police dispatch that he had encountered a person in the parking lot of the IMC. Consistent with Officer Stroud’s Body Worn Camera (BWC) footage, for the next several minutes, Officer Stroud reported that he repeatedly tried to discern the reason Mr. Marquez had approached him. During this encounter, Officer Stroud saw “what [he] believed to be the grip of a handgun” in Mr. Marquez’s right pocket. Officer Stroud gave Mr. Marquez clear and distinct commands to keep his hands away from his pockets. Mr. Marquez did not heed to Officer Stroud’s commands and continued his bizarre behavior. At approximately 11:18 P.M., Officer Stroud called for assistance, informing dispatch that the man was “incoherent and possibly armed” and asked for immediate assistance. On Officer Stroud’s BWC, you can hear Mr. Marquez deny he was intoxicated in response to the Officer Stroud’s radio call for assistance.

Thomas Marquez eventually followed some of Officer Stroud’s commands when he went to the nearby wood fence and placed his left hand on the fence. However, Mr. Marquez is seen on the BWC keeping his right hand near his right front pocket, where Officer Stroud had seen his handgun. Officer Stroud repeatedly told Mr. Marquez that if he followed commands, Officer Stroud would help Mr. Marquez. Moreover, Officer Stroud told Mr. Marquez more than twenty times to put up his hands and/or to keep his hands away from his pocket. Mr. Marquez did not follow these commands.

¹ The Statement of Facts are culled from the overall investigation and is presented here largely in chronological order.

² Initials are used to protect the identity of witnesses

³ This location is approximately 3,000 feet away from where the fatal shooting occurred about 2 hours later.



Completed crime scene diagram. Officer Stroud's vehicle is in upper right corner.

Approximately four minutes after Officer Stroud first encountered Thomas Marquez, Thornton Police Officer John DeHann, with lights and sirens activated in his marked police vehicle, responded to the radio call for help.⁴ Officer Stroud and Officer DeHann held Mr. Marquez at gunpoint and continued to give multiple clear and loud commands. Thomas Marquez continued to not comply. Officer DeHann moved to the northeast in effort to get a better view of Mr. Marquez's right hand and the area he had his handgun.

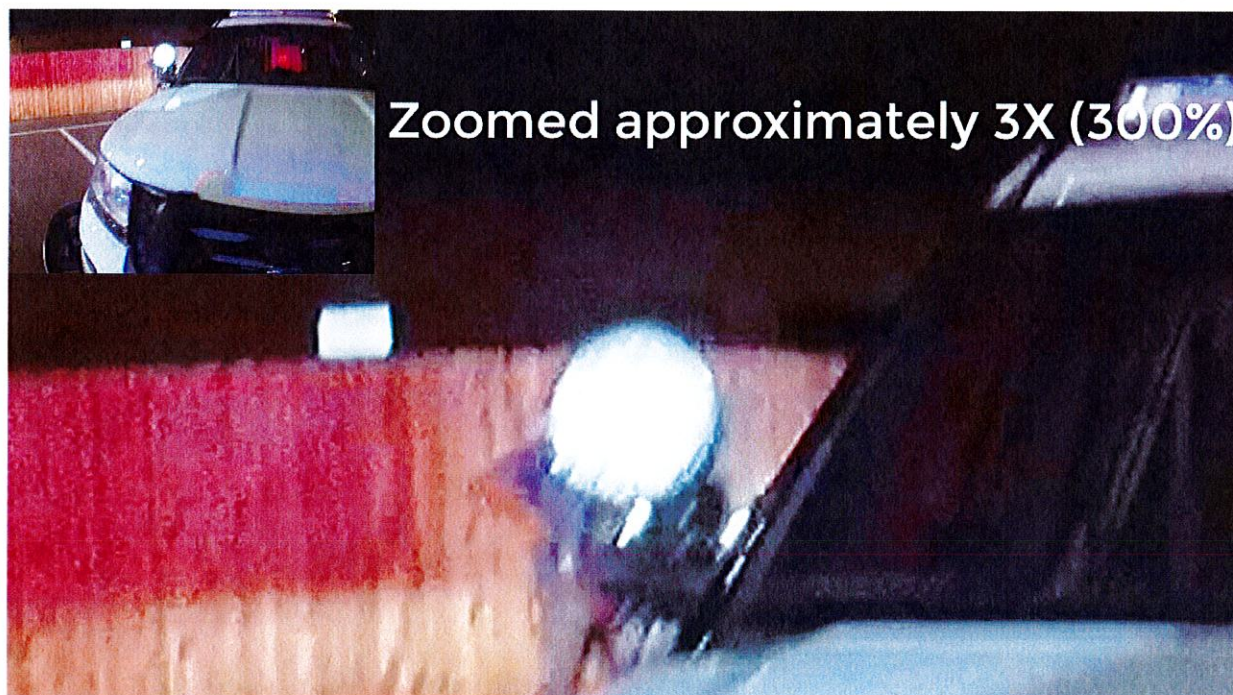
In Officer Stroud's BWC footage, you can see Mr. Marquez standing facing the wood fence and his body was turned, or bladed, with his right side furthest and concealed from the Officers. Thomas Marquez refused to raise his right hand or move it away from his right pocket that concealed his handgun. Four minutes and nine seconds after Officer Stroud activated his BWC, Thomas Marquez is seen and heard making a "guttural yell," drawing his handgun from his right pocket, wheeling around to confront the officers, and pointing his handgun towards the officers.

When Thomas Marquez wheeled around with his gun drawn, Officer Stroud later⁵ reported that he saw a muzzle flash from Mr. Marquez's gun and that he concluded Mr. Marquez

⁴ Officer DeHann had been issued his BWC a week before the shooting. He did not activate his BWC until after the shooting occurred.

⁵ Officer Stroud was interviewed on video on May 27, 2020. He did not review his BWC before his interview.

had shot at Officer DeHann.⁶ Officer Stroud later reported that at that moment he feared that either he or Officer DeHann would be shot. Officer DeHann later⁷ reported because he did not have adequate cover, or protection, from any shots fired by Mr. Marquez, he feared he would be shot.



Investigators later enhanced Officer Stroud's BWC. The upper right corner is the enhancement. Photo shows Mr. Marquez after he drew his handgun and wheeled around to confront the officers.

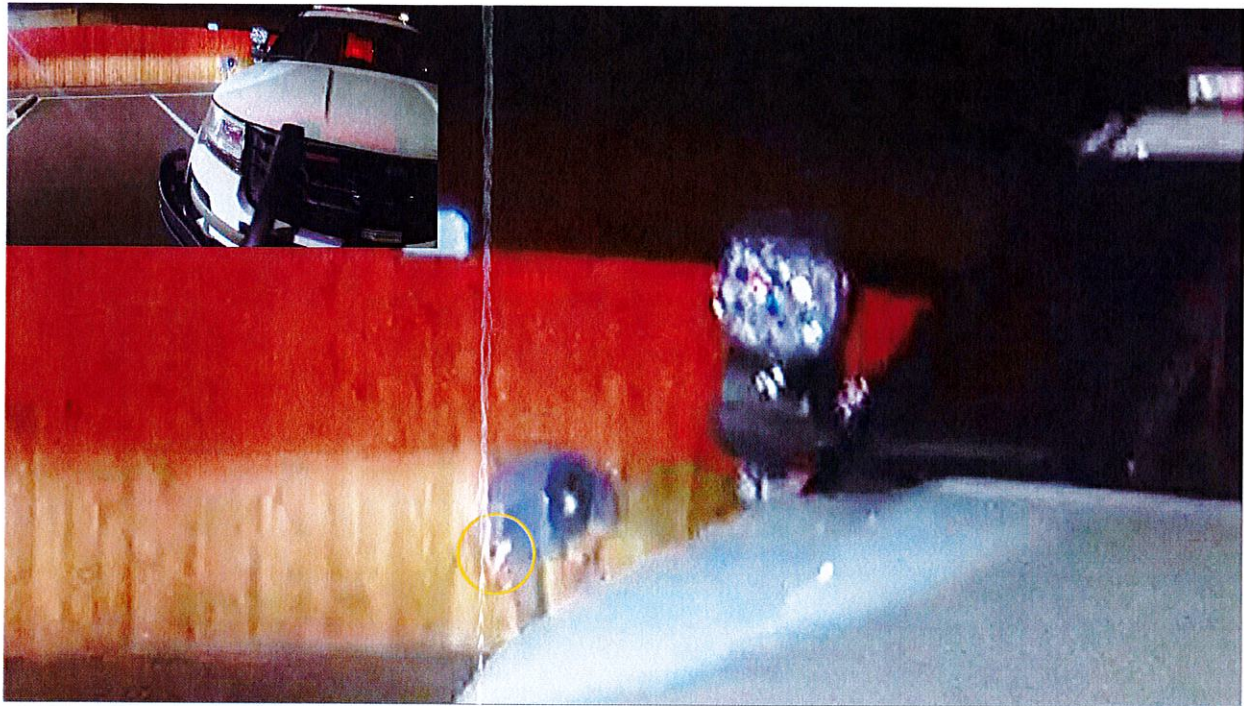
Officer DeHann then fired his 9-millimeter handgun at Mr. Marquez. Officer Stroud then fired his 40-caliber handgun at Mr. Marquez. Thomas Marquez then fell to the ground. Although on the ground, Thomas Marquez retained his gun in his right hand. Moreover, Officer Stroud reported that while on the ground Mr. Marquez again fired at Officer DeHann. Officer DeHann also reported that although on the ground, Thomas Marquez instantly raised his gun and aimed at Officer DeHann and Officer DeHann "was in [the] direct line of fire."

Both officers continued shooting at Mr. Marquez. Officer Stroud fired three shots and Officer DeHann fired nine shots. Both officers held Mr. Marquez at gunpoint until additional officers arrived and Mr. Marquez's gun was taken from him. Thomas Marquez died at the crime scene. Officers removed from Thomas Marquez a silver Ruger semi-automatic .22-caliber long

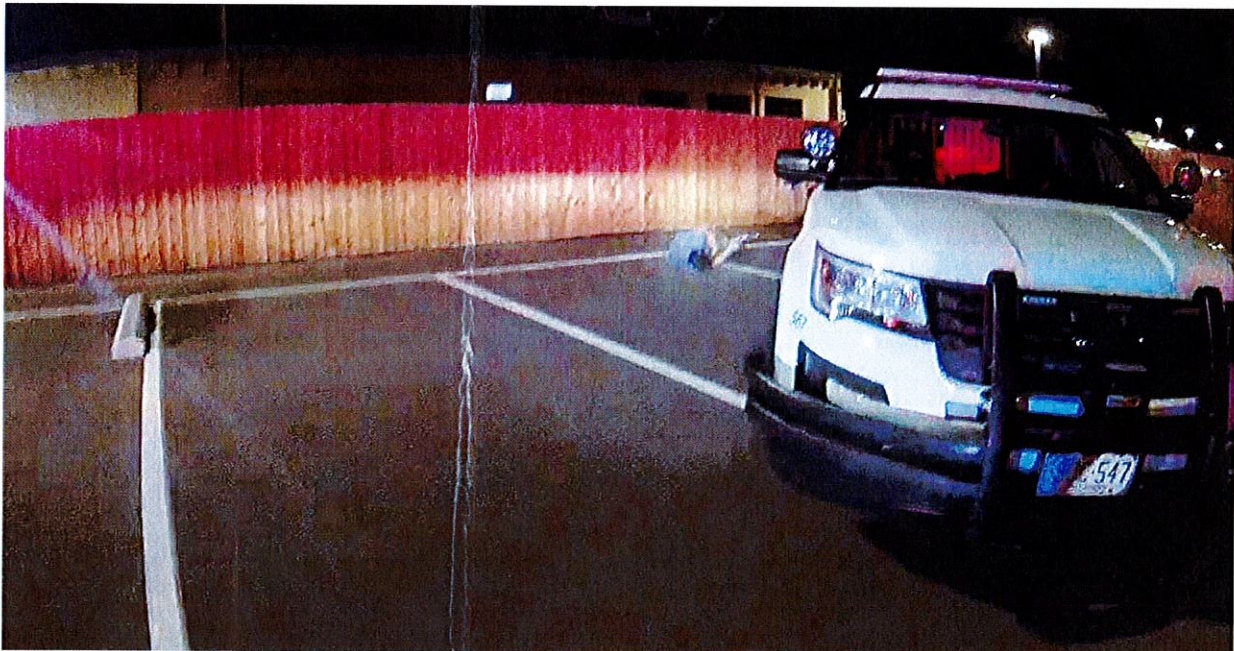
⁶ Subsequent crime scene investigation could not definitively identify the direction or location of the shot(s) fired by Mr. Marquez. However, one spent .22 caliber shell casing was recovered near Mr. Marquez.

⁷ Officer DeHann was interviewed on video on May 27, 2020. Although Officer DeHann did not activate his BWC until after the shooting, he did not review his BWC before his interview.

barrel handgun. The handgun had one live bullet in the firing position and eight live bullets in the magazine. A matching discharged .22 shell casing was also found near Mr. Marquez.



*Thomas Marquez seen falling to the ground after being shot.
The silver 22 Cal. Handgun in his right hand (circled above).*



Thomas Marquez on the ground with handgun in his right hand pointed at Officer DeHaan.

On May 27, 2020, forensic pathologist Dr. Cina performed the autopsy on Mr. Marquez. Dr. Cina noted twelve bullet type wounds, ten entrance wounds and two through and through wounds to the exterior of the body. Given the wound paths, Dr. Cina could not determine which projectile caused which wound. A toxicology report showed Mr. Marquez to have a blood alcohol concentration of .355. Dr. Cina determined the cause of death to be multiple gunshot wounds.

According to some family and friends, interviewed after this incident, for some time Thomas Marquez had suffered emotional, mental, and alcohol addiction issues. His estranged wife, L.M., reported that she was concerned Mr. Marquez was suicidal.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt to a jury that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes.

Applicable here is Colorado law on the justification of using physical force in defense of a person.

Use of Physical Force in Defense of a Person

The justification of using physical force in self-defense is described in §18-1-704, C.R.S. (2019). As pertinent to this case, §18-1-704 (1) provides:

... a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

The use of deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.” Section 18-1-704(2)(a), C.R.S. (2020).

Further, Colorado law allows for the use of deadly physical force “if the other person is committing or reasonably appears about to commit... assault as defined in... section 18-3-202.” Section 18-1-704(2)(c), C.R.S. (2020). One type of assault is first degree assault, as provided in section 18-3-202, occurs when:

With intent to cause serious bodily injury upon the person of a peace officer... he or she threatens with a deadly weapon a peace officer... engaged in the performance of his or her duties and, the offender knows or reasonably should know that the victim is a peace officer...acting in the performance of his or her duties.

The foregoing justification – defense of a person -- is an “affirmative defense.” Section 18-1-710, C.R.S. (2020). This means that a person accused of a crime for using this type of force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was not justified. Accordingly, the issue here is whether there is enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt that Officers Stroud and DeHaan acted without lawful justification.

Here, the issues in this case are whether the use of deadly physical force by Officers Stroud and DeHaan was justified and whether the force used was appropriate. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989). Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to defend himself and the other officer and stop the threat that Thomas Marquez presented.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer’s beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

Graham v. Connor, 490 U.S. 386, 396-97 (1989).

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat the officer faces. Illinois v. Lafayette, 462 U.S. 640 (1983); Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994). The 9th Circuit Court of Appeals has stated:

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. Scott v. Henrich, *supra*, 39 F.3d at 915.

CONCLUSION

Under the particular facts of this investigation, the actions of Officers Stephen Stroud and Officer John DeHaan were legally justified under Colorado law and United States Supreme Court precedent. Pursuant to sections 18-1-704(2)(a), and (2)(c), Officers Stroud and DeHaan were justified in using deadly physical force. First and foremost, under section 18-1-704(2)(a), the BWC footage corroborates Officers Stroud's and DeHaan's reports that Mr. Marquez refused commands and wheeled around with a handgun and fired it at one of the officers. The evidence supports the objectively reasonable conclusion that Officers Stroud and DeHaan were in "imminent danger of being killed or of receiving great bodily injury."

Additionally, Colorado law, section 18-1-704(2)(c), further allows the use of deadly physical force if Mr. Marquez was "committing or reasonably appears about to commit....assault." The evidence supports that Mr. Marquez unlawfully committed a first degree assault against both officers. This allows for the justification of using deadly physical force in response to the assault. In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing affirmative defenses.

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Stephen Stroud or Officer John DeHaan for discharging their weapons in the fatal shooting of Thomas Marquez on May 26, 2020.

Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Sincerely,



Dave Young
District Attorney