



April 11, 2014

Chief Randy Nelson
Thornton Police Department
9551 Civic Center Drive
Thornton, CO 80229

Chief Robert White
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

Re: Officer involved shooting of Wesley
Maldonado, January 2, 2014

Dear Chiefs Nelson and White,

The investigation and legal analysis of the shooting of Wesley Maldonado on January 2, 2014 is completed. The Seventeenth Judicial District Critical Incident Team's investigation of the shooting was presented to our office on March 5, 2014. The documents provided to the Seventeenth Judicial District Attorney's Office include police reports, videos, transcripts of interviews from lay witnesses and police officers, photographs and diagrams of the scene. Our review of these materials found the investigation to be thorough and complete. Based upon the review of the materials provided and applicable Colorado law, no criminal charges will be filed against the officer(s) involved in this incident.

STATEMENT OF THE INVESTIGATION

The incident began on January 2, 2014 when Wesley Maldonado went to his girlfriend's, Vanessa Esquibel's apartment located at 368 East 88th Avenue, #617, Thornton, Adams County, Colorado. There was a restraining order in effect at the time preventing Mr. Maldonado from contacting Ms. Esquibel at her apartment. Mr. Maldonado was armed with a sawed-off 410 caliber shotgun and accused Ms. Esquibel of having an affair. At the apartment with Ms. Esquibel was the daughter of Ms. Esquibel and Mr. Maldonado, Ms. Esquibel's cousin, Richard and her friend, Tony Velasquez. When Mr. Maldonado with his shot gun in his hands began the confrontation with Ms. Esquibel, Richard grabbed Ms. Esquibel's daughter and ran out the front door of the apartment. Ms. Esquibel was concerned for the safety of her daughter and herself and was able to get out of the apartment as well.

Mr. Velasquez was left alone in the apartment with the armed Mr. Maldonado. There

was another confrontation between the two men and Mr. Maldonado shot a .45 caliber round in the living room of the apartment. The shotgun Mr. Maldonado had is capable of shooting both 410 shotgun ammunition and .45 caliber ammunition. During the subsequent investigation, investigators recovered a .45 caliber casing and round from the living room area of the apartment.

Ms. Esquibel went to the apartment of Christina Jaquez, her friend who lived next door. Both of them heard the shot and called 911. As police officers began to arrive, Mr. Maldonado drove away in a stolen Ford Explorer SUV at a high rate of speed. Mr. Maldonado was still armed with the sawed-off shotgun. He proceeded toward 84th Avenue and I-25 committing various traffic violations along the way. The Thornton Police Department began a pursuit as Mr. Maldonado entered onto southbound I-25. He was clocked at speeds approaching 90 mph. Dispatch aired that Mr. Maldonado was in a stolen SUV, armed and driving at a high rate of speed. Police cars in pursuit had their emergency lights and sirens on, however Mr. Maldonado refused to pull over. Denver Police and Colorado State Patrol joined in the pursuit.

Mr. Maldonado exited off of I-25 to westbound I-70 and drove to Pecos Street where he exited onto Pecos Street. Mr. Maldonado then proceeded onto eastbound I-70 and exited onto northbound I-25. He was driving in excess of 80 mph and weaving in and out of traffic. Mr. Maldonado exited onto 84th Avenue and turned north on to Pearl Street. Upon reaching 88th Avenue, he ran the red light and he made a left turn on to 88th Avenue and turned into the west entrance of the apartment complex where this incident started. Mr. Maldonado drove through the parking lot, almost striking a police car, jumped a curb and drove onto the grass. He then left the apartment complex and proceeded to southbound I-25.

Stop sticks were deployed at I-25 and 58th Avenue. Mr. Maldonado drove the SUV over the stop sticks which caused the front driver side tire to deflate. This occurred at approximately 11:50 p.m. At this time, numerous officers were involved in the pursuit. Mr. Maldonado continued to elude police officers, but at a slower rate of speed because of the punctured tire. Mr. Maldonado continued south on I-25 to 6th Avenue on three tires and a rim. He exited eastbound onto Santa Fe Drive. Denver Officer Lee Simones was monitoring the radio traffic. He learned that Mr. Maldonado had committed felony menacing and had fired a shot. Officer Simones decided to wait on Highway 6 and I-25 to see if Mr. Maldonado came his way. Officer Simones switched to channel one and listened to Air One, the police helicopter channel. He spotted the SUV and started to follow the pursuit.

The radio traffic indicated that the suspect was going through downtown Denver. Officer Simones believed that he was some distance behind the pursuit. Officer Simones entered northbound I-25 and he believed that he was running parallel to the pursuit because the suspect was driving northbound on Washington. Air One and other officers were following the suspect as he headed north on Washington. Officer Simons recalled hearing something about them being in the vicinity of 88th and Pearl. Officer Simones exited on 84th Avenue toward Pearl and turned north toward 88th Avenue. He saw the apartment complex and could see other patrol cars in the vicinity. He could see residence of the apartment complex out onto their balconies. Officer Simones heard Air One indicating that the suspect was going east through the parking lot toward him. At this time "shots fired" aired over the radio.

Officer Simones stopped his patrol car, exited and was going to open the trunk to retrieve his rifle. His overhead lights were on. Officer Simones then saw the suspect vehicle. Officer Simones had no cover and jumped back into his vehicle. At that time, a Denver Police Officer hit the suspect vehicle and the suspect lost control of the SUV. The SUV came right toward Officer Simones. The suspect's vehicle hit Officer Simones' left front quarter panel just in front of the driver's door. Officer Simones could see one occupant in the SUV. Officer Simones saw the suspect pop up and clearly raised a dark gun. Officer Simones believed the suspect was going to shoot him and that the suspect was going to kill him. Officer Simones knew there were other officers around and innocent bystanders. Officer Simones opened the door of his patrol vehicle. He yelled "gun, gun" and started to shoot at the suspect. Officer Simones was firing through the rear passenger door window toward the driver's side of the car. Officer Simones became aware that another officer was to his left and was firing as well. Radio traffic indicated that the shots were fired at 12:07 a.m. on January 3, 2014.

Officer Simones is a thirteen year veteran of the Denver Police Department. He carries an H and K, USP .45 caliber with one in the chamber and twelve in the magazine. Officer Simones could tell that the bullets were striking the victim because of how the suspect was being "jolted" and then the suspect slumped down. Officer Simones then stopped firing. He did not know how many shots he fired. The suspect car was still revving up and stuck against the front part of his patrol car. The tires were spinning and Officer Simones did not know that the tires were deflated. He did not recall if Air One had the suspect vehicle "lit up" and had no doubt that the suspect was armed with a gun.

Denver Officer Jay Otey is a fourteen year veteran of the Denver Police Department. He was answering a call in the area near 45th and Pecos. Officer Otey heard the dispatch information regarding the pursuit. He heard that the Thornton Police Department was involved in the pursuit and a shot had been fired. Officer Otey spotted the suspect at I-70 on the north side roundabout and Officer Otey joined in the pursuit. Officer Otey was second in line with a Thornton Police vehicle leading the pursuit.

Officer Otey ended up at the apartment complex parking lot on 88th Avenue. Within seconds, Officer Otey heard that the suspect was leaving the complex going towards 84th Avenue. Officer Otey attempted to join the pursuit again, but realized he was too far behind. He exited onto 6th Avenue and then decided to get back on northbound I-25 as he heard through dispatch that the pursuit was heading north again.

Officer Otey exited off onto 84th Avenue and heard the suspect was at the same apartment complex. Officer Otey heard that the suspect was heading through the apartment parking lot, so Officer Otey pulled into one of the entrances. Officer Otey saw the SUV coming toward him. He was concerned that an innocent bystander or a police officer was going to be hit by a stray bullet and decided to ram the SUV in an effort to disable it. Officer Otey rammed the suspect's driver side rear quarter panel. The SUV went forward and came to a stop. The SUV tires were spinning. Officer Otey got out of his patrol car and heard officers yelling commands, but could not hear what there were saying. Within seconds, he saw the suspect bring up a gun. Officer Otey did not feel he had adequate cover. Officer Otey did not know if the suspect pointed the

gun toward the windshield or the driver's window. He could not see in which direction the suspect was looking. Officer Otey fired four times at the suspect. Officer Otey was aiming at the rear driver's side area of the car. Officer Otey was armed with a Glock .45 caliber. He carried one in the chamber and twelve in the magazine. Officer Otey believed he was 25 to 30 feet behind the SUV when he started to shoot.

After the shooting, other officers moved up on the SUV and handcuffed the suspect. Officer Otey indicated that the lighting was decent. He did not notice whether Air One had "spotted up" the scene. Officer Otey believed that prior to him shooting his weapon that the suspect was going to shoot at officers. The SUV kept accelerating and a large cloud of smoke was covering the SUV. Officer Otey saw an officer on the passenger rear side shoot out the tires of the SUV. Those were the only other shots that he heard. After that, the suspect was taken into custody. During Officer Otey's interview, he indicated that he was in fear for his life as well as for other officers.

Thornton Officer Twinem, a sixteen year veteran was working his K-9 when he heard the radio traffic regarding the felony menacing and he responded to the apartment complex. Officer Twinem initiated his emergency lights and joined the pursuit. Officer Twinem went southbound on I-25 and exited on I-70 toward I-76 to see if he could contact the suspect. Officer Twinem got back on I-25 north and joined the pursuit. The suspect sped right by him and Officer Twinem was now number two in the pursuit. The suspect sped through the apartment complex parking lot and back onto southbound I-25. The pursuit continued onto southbound I-25. Officer Twinem was still number two with a Denver officer in the lead. Officer Twinem was aware that stop sticks had been deployed near 58th Avenue and I-25. Radio traffic indicated that the suspect had a flat and sparks were coming from the SUV. The suspect started to go through downtown Denver. Officer Twinem kept following the pursuit through downtown Denver which was now headed north. The suspect started north on Washington.

Officer Twinem started to lose contact with the pursuit. He heard that the pursuit was near 88th Avenue near the same apartment complex. Officer Twinem thought he heard Officer Ward state, "shots fired." Officer Twinem knew based upon the radio traffic that the suspect was armed. Officer Twinem went to the east entrance of the apartment complex. He observed the suspect's SUV strike a Denver Police vehicle. The suspect vehicle was now stalled with the tires spinning facing in a southwest direction. The Denver officer was out of his car and at the passenger side of the suspect vehicle with his gun drawn. Officer Twinem got out of this vehicle. He was two to three feet to the left of the Denver Officer. Officer Twinem had his weapon drawn. He was fifteen feet away from the suspect and had no cover. Officer Twinem saw a pistol in the suspect's hand. It appeared that the passenger window was shattered. Officer Twinem could clearly see the suspect moving. The Denver officer fired his weapon and Officer Twinem believed that both officers were facing a lethal threat. The suspect was rotating towards them with his gun in his hand. Officer Twinem shot four to six times at the suspect and saw the suspect slump down.

The suspect's tires were still spinning and Officer Twinem believed that the accelerator was locked up, but the threat was over. The SUV was turned off. Officer Twinem felt that the lighting was good. There were police car emergency lights activated and a street light on nearby.

Officer Twinem carries a Smith 1911 .45 caliber. He keeps eight rounds in the magazine and one in the chamber.

Denver Officer David Nguyen arrived in the area of the shooting as it ended. He was asked to retrieve his shotgun and shoot out the rear tires of the SUV. He shot four times into the rear passenger tire to disable the vehicle. The vehicle was secured at this point.

CRIME SCENE INVESTIGATION

During the processing of apartment #617, a .45 caliber Colt cartridge case was located on the floor between the living room and dining room. On the lower portion of a couch were two defects consistent with the bullet passing through it. Another defect was located in a heat register. The grate to the register was removed. Lying on top of the heating element was a piece of metal consistent with a bullet.

The area around the Ford Explorer and the patrol units was processed that night. Twenty-one .45 caliber casings were recovered around the Ford Explorer. Four shotgun shells were recovered. Located near the suspects body was a 410 sawed-off shotgun with a spent .45 caliber Colt cartridge case located in the barrel. The casing was the same type of ammunition located in apartment #617.

Extensive body damage was observed on the Ford Explorer. The right front of the Explorer was in contact with the left front of a Denver Police car (Simones'). That police car had body damage to the left front fender area. The left front of the Explorer was in contact with the right rear of a Thornton Police vehicle. That patrol car had body damage to the right rear quarter panel. Located on the driver side door of that police car was a bullet impact. Another Thornton police car located on the north side of the Ford Explorer was in contact with the Explorer. No body damage was noted on that police vehicle.

The Explorer had body damage to both front fenders. The left front wheel was completely missing. The left rear tire was flat (shot out by Officer Nguyen.) The right rear tire was shredded. Both front windows (driver's and passenger) were shattered. The rear passenger window was shattered. Five bullet impacts were located on the exterior driver's side of the vehicle.

On January 6, 2014, the vehicles were processed. On the driver's side of the Ford Explorer, four of the five bullets were determined to come from outside of the Explorer. The other impact located in the driver's roof near the door was consistent with a bullet shot from inside the vehicle. The trajectory was at a 41 degree upward angle. The metal around the defect was pushed out. Suspected burned gun powder was found on the interior roof of the Explorer. During the processing of the interior door panels, four metal pieces were found which were consistent with four separate bullets. Two more bullet impacts were seen on the passenger side of the vehicle. It appears that these two bullets may have splintered after striking the Explorer. Located inside the vehicle was a \$100 bill, two cell phones and an empty plastic Southern Comfort bottle. One bullet strike was located on the Thornton Police car. It was possible that it

came from one of the police officers who fired at the suspect.

The autopsy of Wesley Maldonado was conducted on January 7, 2014 by Dr. Michael Arnall, a forensic pathologist. Seventeen bullet wounds were observed on Maldonado's right side. Twelve projectiles were recovered during the autopsy along with a zip lock baggie weighing .45 grams of suspected methamphetamine. Another bullet was recovered from Mr. Maldonado's clothing. The cause of death was numerous gunshots which penetrated Mr. Maldonado's vital organs. Toxicology reports indicated that he had methamphetamine and alcohol in his system.

A round (ammunition) accountability check was conducted on the officer's weapons. Denver Officer Lee Simones shot his weapon twelve times. Thornton Officer Twinem shot a total of six times. Denver Officer Otey shot four times. This total of twenty one shots was consistent with the number of casings found at the scene. A total of nineteen expended bullets were recovered.

Both Denver and Thornton Police Departments have a pursuit policy. They both indicate that a pursuit is appropriate when a person has committed or there is a reasonable suspicion that a person has committed a violent felony or has committed an act of violence that in an officer's reasonable judgment requires that that person be pursued for the immediate protection of the public safety.

Thornton Police Department defines a violent felony as "An attempted or completed felony in which a perpetrator uses physical force, i.e. homicide, kidnapping, felonious assault, vehicular assault, sexual assault, robbery, arson, etc."

Denver Police Department's pursuit policy authorizes where there is probable cause or reasonable suspicion that the person has committed a crime and there is a compelling need to apprehend the suspect. Compelling need is established when facts or circumstances are clear and convincing that a suspect's action are so dangerous that they present an imminent threat of serious bodily injury or to effect the arrest or to prevent the escape of a person whom the officer reasonably believes has committed or is committing a felony involving the use or threatened use of a deadly weapon or a violent felony against a person. Mr. Maldonado had active warrants for his arrest.

The radio traffic indicated that Mr. Maldonado was armed, that he had committed a felony using a deadly weapon and had fired a shot. During the pursuit, Maldonado came back to the same apartment complex where the victims resided and drove through the parking lot. He continued to drive, ran over stop sticks which deflated one tire and then continued on three tires and a rim. Sparks were flying off the vehicle. The speeds were too great to try other methods, i.e. pit stop, to try to end the pursuit. The pursuit finally ended in the apartment complex where it had begun when Mr. Maldonado was boxed in. The reasons justified the pursuit and how it ended.

During the last few minutes of the pursuit, Mr. Maldonado made a phone call to a friend, which the friend recorded. The phone call lasted approximately twenty three minutes. During

the early stages of the call, Mr. Maldonado told his friend that he was going to die, that he had fired a shot when he was with Vanessa, that the police were chasing him, and that he was on three tires. He was emotional during the call. In listening to the call, police sirens can be heard in the background. Noises that sound like metal scraping can also be heard. At nine minutes into the call, it sounds like gunshots go off. At thirteen minutes into the call, more gunshots can be heard. The friend listening to the call states "he just crashed." At fifteen minutes into the call, spinning wheels can be heard. At sixteen minutes into the call, officers' voices can be heard requesting emergency medical help.

CRIMINAL BACKGROUND ON WESLEY MALDONADO

Mr. Maldonado's (DOB: 09/07/1978) criminal history includes prior arrests for possession of drugs, illegal possession of weapons, domestic violence and menacing. There was a restraining order in effect at the time of this incident preventing him from contacting Ms. Esquibel. Mr. Maldonado had two active warrants outstanding at the time of this incident.

Legal Standards for Use of Deadly Force

C.R.S. §18-1-707(2) states the following:

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection paragraph 1 of this section only when he reasonably believes that is it 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 affect 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's likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

CONCLUSION

Applying the facts of this incident to C.R.S. §18-1-707(2), the officers were justified in using deadly force on January 2, 2014 as to Mr. Maldonado. All grounds cited above were applicable during the pursuit and shooting on January 2, 2014.


Mr. Maldonado entered Ms. Esquibel's apartment without her permission and violated the restraining order that was in place. He was armed with a sawed off shotgun. The gun was loaded. Mr. Maldonado threatened Ms. Esquibel and Mr. Velasquez. He fired a shot in the apartment. Police were called and the suspect left in a stolen vehicle. There was probable cause

to believe that Mr. Maldonado had committed a violent crime and motor vehicle theft. He led Thornton and Denver Police Department officers on a pursuit southbound on I-25 at high speeds, exited onto I-70, turned around on Pecos and returned northbound on I-25. The police had their sirens and emergency equipment activated. Mr. Maldonado drove back to the same apartment complex, through the parking lot, endangering innocent bystanders and he continued back down southbound I-25.

Near I-25 and 58th Avenue, he ran over stop sticks disabling his front driver's side tire. He continued to elude officers on three inflated tires and a rim exiting on 6th Avenue. The police were still in pursuit with their emergency equipment activated. Mr. Maldonado proceeded through downtown Denver and onto northbound Washington Street. He arrived again at the same apartment complex and finally came to a stop after a police car rammed the SUV causing the pursuit to stop. All of Mr. Maldonado's actions were an attempt to prevent his apprehension. Thornton Officer Twinem, Denver Officer's Simones, and Otey, from different positions saw Mr. Maldonado raise his weapon which exposed those officers to deadly force. Further, there were innocent bystanders on their balconies or standing near the parking lot who were also exposed to deadly force. The three officers did not have good cover and shot their weapons in self defense. Under these circumstances, the officers were legally justified in using deadly force as they reasonably believed an imminent threat existed to not only their lives, but to the lives of other officers and bystanders in the area.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that Officers Twinem, Simones and Otey were justified in the use of deadly force against Wesley Maldonado pursuant to C.R.S. 18-1-707 (2) and no criminal charges will be filed against Officers Twinem, Simones and Otey. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,


Dave Young
District Attorney