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May 9, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the Officer-Involved Shooting of Lucas Antonio Salas on August 18, 2021.

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District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

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May 9, 2022

Chief of Police Terrence Gordon
City of Thornton Police Department
9551 Civic Center Drive
Thornton, CO 80229

Chief of Police James S. May Jr.
City of Northglenn Police Department
50 Community Center Drive
Northglenn, CO 80234

Re: The officer-involved shooting of Mr. Lucas Antonio Salas, occurring on August 18, 2021

Dear Chief Gordon and Chief May:

The 17th Judicial District Critical Incident Response Team (CIRT) has completed its investigation into the August 18, 2021 shooting death of Lucas Antonio Salas. Adams County Sheriff's Office Detectives Dylan Lussier and Jamie Keefer led the investigation and presented the factual findings to the 17th Judicial District Attorney's Office on December 22, 2021. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the two involved officers, one from the City of Thornton Police Department and the other from the City of Northglenn Police Department. The investigation consisted of law enforcement reports, audio and video recorded interviews, photographs, body cameras, and diagrams of the crime scene. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a summary of the facts and materials that the CIRT presented for review.

The District Attorney's Office review is limited to determining whether any criminal charges should be filed against any of the involved officers for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all elements of a crime beyond a reasonable doubt. In a potential criminal prosecution, the prosecution must also prove beyond a reasonable doubt that the use of force was *not* legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, the District Attorney's Office review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and the applicable Colorado law, there is no basis for charging the involved officers in this incident, nor would there be a reasonable likelihood of success of proving the elements of any crime as it relates to the law enforcement officers' involvement in

this incident. Therefore, there will be no criminal charges filed against the officers involved in this incident.

SUMMARY OF THE INVESTIGATION

On August 17, 2021, an agent with the Colorado Bureau of Investigation (CBI) contacted a detective with the Northglenn Police Department to request assistance locating Lucas Antonio Salas, an individual who had an active arrest warrant for a parole violation and possible involvement in a murder. Mr. Salas was associated with a 2003 blue Nissan Sentra and was believed to be at his stepmother's residence located at 301 E. Malley Drive, an apartment complex in the City of Northglenn.

During the daytime hours of August 18, 2021, Detective Gesi went to the apartment complex and observed the Nissan Sentra. Detective Gesi called patrol officers to assist him in contacting the vehicle. Detective Gesi observed Mr. Salas and three others enter the vehicle, with Mr. Salas in the driver's seat. Officers drove their marked patrol vehicles into the parking lot with emergency lights and sirens activated in an attempt to block Mr. Salas in his vehicle. Mr. Salas drove his vehicle off road and through a fence to avoid apprehension. Northglenn Police Officer Joshua Moreau pursued the vehicle to the area of 120th Avenue and Washington Street, where Mr. Salas fired a gun at Officer Moreau's patrol car. The pursuit continued as Mr. Salas drove recklessly and went off the road into a ditch near the Thorncreek Golf Course, located at 136th Avenue and Washington Street. The vehicle stopped and Mr. Salas exited the passenger side of the vehicle. The other occupants remained inside.

Mr. Salas ran through the golf course. At this point, uniformed patrol officers from the Thornton Police Department joined the Northglenn officers in the pursuit. The officers pursued Mr. Salas, shouting multiple commands to him to stop and get onto the ground. Mr. Salas ignored the commands and continued to run through the golf course heading towards golfers and nearby homes. As the officers caught up to Mr. Salas, Thornton Police Officer Mikal Timm reached out to try to grab Mr. Salas and make his arrest. Officer Moreau also approached, armed with a Taser. Northglenn Police Officer Charles Festi was also nearby armed with his handgun. As Officer Timm was within arm's reach, Mr. Salas drew a handgun and fired it at the officers, narrowly missing both Officer Timm and Officer Moreau. Officer Timm and Officer Festi returned fire. Mr. Salas was struck and killed.

POLICE OFFICER INTERVIEWS

Officer Joshua Moreau: Officer Joshua Moreau is a police officer employed by the City of Northglenn where he has worked for four years. Officer Moreau is assigned to the patrol division. At approximately 11:35 a.m. on August 18, 2021, marked Northglenn patrol vehicles entered the parking lot with their lights and sirens activated and parked behind the suspect vehicle. Officer Moreau got out and approached the driver's side of the parked vehicle while giving commands. The suspect vehicle accelerated over the landscaping and through a chain link fence to escape. The driver was later identified as Mr. Salas.

Officer Moreau chased the vehicle. Mr. Salas drove north on Grant Street and began to increase his speed. In the area of 124th Avenue, Mr. Salas changed direction and drove southbound. Mr.

Salas then made a U-turn and headed back northbound. As Mr. Salas began the U-turn, Officer Moreau observed him lean out the driver's side window and fire a handgun aimed at Officer Moreau's patrol car. Officer Moreau was approximately fifteen to twenty feet away at the time shots were fired at him. Officer Moreau advised over the radio that the driver fired a gun at him. Officer Moreau observed two additional rounds fired out of the back window of the Nissan toward his direction. Mr. Salas continued driving northbound, weaving in and out of oncoming traffic.

The pursuit continued to 136th Avenue where the suspect vehicle drove westbound in the eastbound lanes of traffic. The suspect then drove off the roadway into a ditch near the Thorncreek Golf Course, where it stopped. Officer Moreau stopped his vehicle and got out with his weapon drawn. Mr. Salas crawled from the driver seat to the passenger seat and got out of the front passenger side. He ran south on the golf course, while the three other occupants remained inside the vehicle. Officer Moreau observed Mr. Salas running with a handgun in his hand. Officer Moreau remained at the vehicle with the passengers until other officers arrived. Officer Moreau and another uniformed officer pursued Mr. Salas toward a wooded area alongside of the golf course. The officers yelled at Mr. Salas to stop, identifying themselves as police and ordering Mr. Salas to get down. Mr. Salas ignored the commands to stop and continued toward the driving range and nearby residences. Officer Moreau was concerned for the safety of the citizens on the golf course.

Northglenn Officers Charles Festi and Moreau, along with Thornton Officer Mikal Timm finally caught up to Mr. Salas on the golf course. Officers Moreau and Timm approached Mr. Salas from the right side, while Officer Festi approached from the rear. Officer Moreau drew his Taser and advanced towards Mr. Salas, telling him to stop moving. When Officer Moreau got within approximately eight feet of Mr. Salas, he observed Mr. Salas reach for his waistband and draw a handgun. Mr. Salas raised the gun and fired multiple rounds at Officers Moreau and Timm.

Officer Moreau deployed his Taser, but was unsure if it contacted Mr. Salas, as Mr. Salas was still able to fire the gun at him. Officer Moreau described feeling the wind of the bullet on his arm and being terrified. Officer Moreau dropped the Taser and drew his handgun but did not fire it, as he observed Mr. Salas drop the weapon and fall to the ground. Officer Moreau immediately attempted to perform lifesaving measures on Mr. Salas prior to the paramedics arrival. Officer Moreau sustained no injuries during this incident.

Officer Timm: Officer Mikal Timm is a patrol officer for the City of Thornton, where he has worked for five years. On August 18, 2021, Officer Timm was at the Thornton Police Department when he heard about a police pursuit over the radio. He left the police department and headed northbound to assist, ultimately ending up at the Thorncreek golf course. Officer Timm saw Mr. Salas out on the golf course and approached him. Officer Timm was aware that Mr. Salas reportedly fired a gun at Officer Moreau, but did not initially see anything in Mr. Salas's hands. Officer Timm was concerned for the safety of the community and the safety of the officers in the area since Mr. Salas had already fired a weapon at Officer Moreau. Officer Timm joined the other officers approach of Mr. Salas while giving him repeated commands. Mr. Salas continued to walk away from officers.

Officer Timm advised Officer Moreau that he would go hands on with Mr. Salas, while Officer Moreau had his Taser drawn and Officer Festi provided cover. Officer Timm holstered his weapon so he could apprehend Mr. Salas. Mr. Salas pulled a handgun from his waistband and fired it at Officer Timm.

Mr. Salas turned towards his left and attempted to fire at a nearby officer. Officer Timm described that he believed his use of deadly physical force was necessary because Mr. Salas was a wanted homicide suspect and had fired a gun in his direction. He believed that there were no other alternatives that were available in the moment. Officer Timm drew his firearm from the holster and fired three rounds at Mr. Salas. Officer Timm recalled a Northglenn officer also fired his gun. Officer Timm saw Mr. Salas drop the firearm and fall to the ground. Officer Timm attempted to perform life saving measures. Officer Timm was not injured during this incident.



Still image of Officer Timm's body-worn camera when Mr. Salas drew his handgun and fired at Officer Timm.



Still image from Officer Timm's body-worn camera when Mr. Salas turned and aimed the handgun at Officer Moreau.

Officer Charles Festi: Officer Charles Festi is a police officer employed by the City of Northglenn for six years. He is assigned as a school resource officer. On August 18, 2021, Officer Festi was at Northglenn Middle School monitoring the radio traffic. He listened to Officer Moreau's updates during the pursuit, including that the suspect had fired at Officer Moreau's vehicle. Upon hearing this information, Officer Festi decided to join the pursuit. Officer Festi responded to the area of the Thorncreek golf course and parked at the clubhouse. Citizens in the area advised that the suspect was in a white shirt out on the golf course. Officer Festi asked someone at the clubhouse to make a public announcement over the speakers that everyone should go inside. Officer Festi was concerned that the suspect was armed and might start shooting people that were still out on the golf course.

Officer Festi headed towards the driving range, and he saw Mr. Salas walking on the golf course. Officer Festi saw Officer Moreau and Officer Timm following Mr. Salas from behind. The officers yelled repeated commands to Mr. Salas to get on the ground. As Officer Festi got closer, he drew his firearm based on his knowledge that Mr. Salas reportedly shot at an officer.

Officer Festi observed Mr. Salas pull a firearm from his waistband and point it at Officers Timm and Moreau. He heard a couple of shots and observed the line of fire was in the direction of the officers. Officer Festi fired four rounds at Mr. Salas. Officer Festi was concerned for the safety of the other officers, stating, "I was scared he was going to shoot the other officers...and kill them." He saw the suspect drop the gun and fall to the ground.



Still image of Officer Festi's body-worn camera when Mr. Salas pulls out handgun and points it at Officer Timm.



Still image of Officer Festi's body-worn camera when Mr. Salas turns gun on Officer Moreau.

OTHER EVIDENCE

Civilian witnesses at the golf course advised they heard police sirens approaching the golf course and observed Mr. Salas walking down the fairway. They observed uniformed officers approaching Mr. Salas, yelling commands to “get down” and to “get on the ground.” According to these witnesses, the officers followed Mr. Salas for approximately one hundred yards giving repeated commands that were ignored. These witnesses observed Mr. Salas turn towards the officers then they heard a shot, followed by five additional shots.

Crime scene investigation revealed that Officer Timm fired three rounds and Officer Festi fired four rounds. Officer Moreau did not fire his weapon. A .40 caliber Smith and Wesson M&P handgun and magazine were located near Mr. Salas’s final resting place. Investigators located a spent .40 caliber casing leading to the conclusion that Mr. Salas fired his weapon one time. A search of the Nissan Sentra revealed three additional .40 caliber casings inside the vehicle. The back window of the Nissan was shattered with two bullet holes in the right rear corner and a large piece of glass missing from the left corner.

On August 20, 2021, a forensic pathologist performed the autopsy of Mr. Salas. Mr. Salas suffered six gunshot wounds, with no evidence of close-range firing. The pathologist determined that the cause of death was multiple gunshot wounds. A drug screen of Mr. Salas was positive for amphetamines and fentanyl.

LEGAL ANALYSIS

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. Consequently, in order to file a criminal charge, the District Attorney’s Office must be able to prove beyond a reasonable doubt that the involved law enforcement officers’ actions were not justified under the circumstances surrounding this incident and the applicable law.

Here, there is no question that Officers Timm and Festi discharged their firearms at Mr. Salas, causing his death. The legal question is whether these two involved officers’ conduct supports the filing of criminal charges.

Under Colorado law, a law enforcement officer may use an amount of force that is necessary and reasonable to effect an arrest. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer’s right to use reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers’ use of force at the time of this incident is found under §18-1-707, C.R.S. (2021). The affirmative defenses applicable to the

officers' use of force at the time of this incident is found at §18-1-707(4.5), C.R.S. (2021), and that subsection provides:

Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

The legal definition of "deadly physical force" as contemplated by the use of force statute cited above means "force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death."

In the 1989 case of *Graham v. Connor*, the United States Supreme Court set forth a "reasonableness standard" in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer's use of force must: (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and, (2) be judged from the perspective of an objectively reasonable officer on the scene "in light of the facts and circumstances confronting them, without regard to [his] underlying intent or motivation." Further, the United States Supreme Court noted, "[t]he 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."

In this case, the involved police officers were engaged in the course of their duties to search for and apprehend Mr. Salas, who had an active arrest warrant for a parole violation and was reported to be a suspect in a murder. Mr. Salas evaded police contact and drove recklessly on public highways in an apparent effort to avoid arrest. Mr. Salas's conduct demonstrated that he would use any means possible to evade police, even if it involved risks to the public. Additionally, Mr. Salas fired a handgun at Officer Moreau during the pursuit, further demonstrating Mr. Salas's willingness to use violence against the police officers trying to apprehend him and the danger he posed to those around him.

Despite Mr. Salas's conduct, these officers did not immediately resort to the use of force. On the contrary, the officers gave Mr. Salas repeated opportunities to resolve the situation without violence or injury. During the foot pursuit on the golf course, the officers approached Mr. Salas with repeated commands to stop and to get onto the ground. Mr. Salas disobeyed these reasonable orders right up until the point in which Officer Timm attempted to grab Mr. Salas and arrest him.

With Officer Timm within arm's reach and the other two officers close by, Mr. Salas quickly raised a .40 caliber handgun, pointed it at the officers and fired it. Fortunately, no officer was struck or killed. This conduct undoubtedly posed an immediate threat to the officers, causing them to respond with the use of deadly force. Officers Timm and Festi both stated that they discharged their firearms fearing that their lives were in danger if they failed to act. Under these

circumstances, I find that Officers Timm and Festi were justified in using deadly physical force against Mr. Salas. Their decision to do so may have saved the lives of others.

CONCLUSION

As stated above, I find that the actions of Officers Timm and Festi in using deadly physical force was justified. Therefore, under the totality of the circumstances and after a review of the evidence gathered in this investigation, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2021). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Charles Festi and Officer Mikal Timm for firing their weapons at Mr. Lucas Salas.

Please feel free to contact me if you have any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Brian S. Mason", is written over the typed name and title.

Brian S. Mason
District Attorney