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November 7, 2022

## **Decision Letter:**

Attached is the decision letter issued by District Attorney Brian Mason related to an officer-involved shooting in Thornton on March 3, 2022.

###

*District Attorney Mason assumed the oath of office on January 12, 2021. The 17<sup>th</sup> 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 17<sup>th</sup> Judicial District.*

*[AdamsBroomfieldDA.org](http://AdamsBroomfieldDA.org), Facebook: [@da17colorado](https://www.facebook.com/da17colorado) Twitter: [@da17colorado](https://twitter.com/da17colorado)  
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November 7, 2022

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

Re: The officer-involved shooting of Mr. Dean Saiki, occurring on March 3, 2022

Dear Chief Gordon:

On March 7, 2022, the City of Thornton Police Department requested the 17<sup>th</sup> Judicial Critical Incident Response Team (CIRT) to participate in an investigation into a suspected police-involved shooting that occurred on March 3, 2022. At the time of the incident, it was believed that none of the officers struck the involved civilian identified as Dean Saiki. However, a later autopsy revealed that Mr. Saiki suffered a gunshot wound to his foot. The incident was initially investigated by the Thornton Police Department until the Thornton Police Department discovered evidence leading to a conclusion that they may have caused injury to Mr. Saiki. At that time, the investigation was immediately turned over to the 17<sup>th</sup> CIRT. Westminster Police Detective Zeb Smeester led the investigation into the matter. The investigation consisted of law enforcement reports, audio and video recorded interviews, photographs, and body-worn camera recordings related to the incident. 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, along with my pertinent legal conclusions.

This review is mandated by Colorado law which requires the public release of a report explaining findings and the basis for a District Attorney's decision relative to the filing of criminal charges when an officer is involved in a shooting that results in serious bodily injury. As such, this review is limited to determining whether any criminal charges should be filed against 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 the elements of a crime beyond a reasonable doubt. The prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified by the laws pertinent to self-defense or defense of others. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. The 17<sup>th</sup> Judicial District Attorney's 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 reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt as it relates to the law enforcement officers involved in this incident. Therefore, there will be no criminal charges filed against the officers involved in this incident.

### **FACTUAL SUMMARY OF THE INCIDENT**

During the late afternoon hours of March 3, 2022, Thornton Police Officers responded to two related dispatch calls regarding a man by the name of Dean Saiki. The callers, who were both related to Mr. Saiki, reported that Mr. Saiki was mentally unstable and was behaving in a manner that made them feel unsafe. One of the family members advised dispatch that Mr. Saiki was circling her residence in a white Dodge Ram pickup truck.

Thornton Police Officer Aja Williams responded in her marked patrol car to the neighborhood where Mr. Saiki was reportedly seen. While driving around the area, Officer Williams observed a white Dodge pickup truck pulled over on the side of 120<sup>th</sup> Avenue, just west of Quebec Street. The truck was facing eastbound. Officer Williams made a U-turn and parked behind the truck. Officer Williams got out and walked to the driver's side door of the truck. Officer Williams had the emergency lights of her patrol car activated and was dressed in a standard-issue police uniform. As Officer Williams got to the door, the driver rolled the window down and displayed the barrel of a handgun as the window came down. The driver fired two rounds from the gun at Officer Williams. Officer Williams saw the muzzle flash and heard the shots. She quickly drew her handgun and ran west down 120<sup>th</sup> Avenue back toward her patrol car. She was not able to return fire because she was focused on trying to get away from the shooter.



*Still image taken from Officer Williams' body-worn camera showing a shell casing eject as the driver fired a handgun pointed in the direction of Officer Williams.*

Thornton Police Officer Eric Cos-Y-Leon approached the intersection of 120<sup>th</sup> Avenue and Quebec Street in his marked patrol car as the shooting happened. He saw the driver shoot at Officer Williams and Officer Williams run back westbound. Officer Cos-Y-Leon drove westbound toward the truck. The suspect got out of the driver's side of the truck and pointed the handgun at Officer Cos-Y-Leon as Officer Cos-Y-Leon drove by. Officer Cos-Y-Leon drew his 9 millimeter handgun and fired two rounds at the suspect from his driver's side window, but thought he missed the suspect. He continued to drive toward Officer Williams to check on her and provide her cover.

Thornton Police Officer Brendan Wise heard over the radio that the suspect fired shots at the officers. He arrived in his marked patrol vehicle and parked near the other two patrol vehicles on 120<sup>th</sup> Avenue. The officers positioned themselves behind their patrol cars approximately three hundred feet west of the white truck. Officer Wise armed himself with a .556 rifle and watched the suspect from afar. The suspect held a semi-automatic handgun in his hand as he moved around the white truck. The officers yelled at the suspect, "Drop the gun!" "Police, you're under arrest!" and "Put your hands in the air!" The suspect ignored these commands, paced around the truck, and pointed his handgun at the officers. When Officer Wise saw the suspect raise the gun, he fired one round at the suspect from his rifle. Officer Wise thought he missed the suspect. The officers repeated commands to the suspect to drop the gun from the patrol car's sound amplification system.

Additional officers arrived on scene and set up a perimeter around the suspect, who was confirmed to be Dean Saiki. Specialists from the Thornton Police Department Crisis Negotiation Unit attempted to defuse the situation by joining a phone call between Mr. Saiki and his younger sister, who was out of state. During this call, Mr. Saiki expressed his belief that the FBI and CIA were after him and that the law enforcement officers were part of a cult that worshipped "666." Officers observed Mr. Saiki pace around the public roadway, alternating between a kneeling and standing position, and at times shouting and raising his arms. He removed his sweatshirt and t-shirt, exposing his bare upper body. He shouted to the officers, "Take the shot!" Mr. Saiki was observed holding a black handgun in his right hand. Both the crisis negotiator and Mr. Saiki's sister pleaded with Mr. Saiki to put his gun down. He refused to comply and continued to engage in a standoff with officers as he remained outside of the truck.



*Still image taken from video recorded by civilian witness of Mr. Saiki appearing to be on the phone and holding handgun while officers commanded him to drop the weapon.*

Just after 6:00 p.m., law enforcement officers employed a tactical plan to approach Mr. Saiki from opposite directions in armored vehicles so that they could safely resolve the situation. A helicopter operated by the Denver Police Department hovered above to observe the interaction. As the officers approached, a less-lethal round was fired at Mr. Saiki but missed him. Within a second, Mr. Saiki raised the handgun to his head and fired one round. He immediately fell to the ground. The officers observed Mr. Saiki with a gunshot wound to the head and found a black Hi-Point 9 millimeter semi-automatic handgun on the ground by his side. The officers called for emergency medical services, and Mr. Saiki was transported to a local hospital where he later died.

An autopsy of the body revealed evidence of a fatal gunshot wound to the right side of Mr. Saiki's head. A muzzle imprint abrasion surrounded the wound, leading to the conclusion that the barrel of the gun was pressed against Mr. Saiki's head at the time he sustained the injury. In addition, a non-lethal perforating gunshot wound was observed on Mr. Saiki's right foot between his first and second toe. This wound did not demonstrate evidence associated with close-range discharge of a firearm.

Criminalists conducted an examination of the scene and collection of evidence. Two 9 millimeter shell casings were found near the truck where Mr. Saiki was found deceased. Two additional 9 millimeter cartridge casings were located in the roadway on 120<sup>th</sup> Avenue, consistent with Officer Cos-Y-Leon's location where he fired his weapon. A single .223 caliber cartridge casing was found in the grass near where Officer Wise's location reported firing his rifle. This casing is consistent with the ammunition used in the rifle fired by Officer Wise. The

involved officers turned over their weapons for examination and round accountability. In addition, each of the involved officers participated in a recorded interview. The evidence was consistent with a finding that Officer Cos-Y-Leon fired his handgun two times as he traveled westbound on 120<sup>th</sup> Avenue and that Officer Wise fired his rifle one time from a distance away.

## 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 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, 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, both Officers Cos-Y-Leon and Wise discharged their firearms at Mr. Saiki while he was outside of his truck. At the time the officers fired their weapons, they did not believe that they struck Mr. Saiki. However, at the time of Mr. Saiki's death, he was discovered to have suffered a nonfatal gunshot wound to his right foot. Therefore, for purposes of this legal analysis, it is assumed that either Officer Cos-Y-Leon or Officer Wise shot Mr. Saiki in the foot, causing him injury. 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 pertinent language of the statute reads as follows:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
  - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

- (b) Use only a degree of force consistent with the minimization of injury to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly 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” means “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” While the force here did not produce death, this legal analysis evaluates the officers’ discharge of a firearm under both physical and deadly physical force provisions.

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 first responding officer, Officer Aja, attempted a welfare check of Mr. Saiki by employing nonviolent means. However, Mr. Saiki quickly escalated the encounter when he pointed his handgun out of the driver’s side window and fired two times at Officer Aja. Consequently, the ensuing effort of the law enforcement officers to apprehend Mr. Saiki was for his attempted use of deadly physical force upon a uniformed officer.

Officer Cos-Y-Leon observed Mr. Saiki fire his gun at Officer Williams. Officer Cos-Y-Leon observed Officer Williams run away and saw Mr. Saiki get out of the truck and pursue her while holding a black semi-automatic handgun. Mr. Saiki raised the handgun at Officer Cos-Y-Leon as Officer Cos-Y-Leon drove by. Believing that Mr. Saiki was about to shoot, Officer Cos-Y-Leon fired his handgun at Mr. Saiki from his driver’s side window. Officer Cos-Y-Leon did not announce his intent to use force or activate his body-worn camera because the situation rapidly evolved while he was driving.

Officer Wise heard over the radio that shots were fired at the uniformed officers attempting a welfare check on Mr. Saiki. He positioned himself near the officers who took cover some distance from Mr. Saiki and the white truck. The officers gave Mr. Saiki multiple commands to drop the weapon. Officer Wise saw Mr. Saiki walk onto the grass off the side of the road, where he raised the handgun and pointed it at the officers. Officer Wise fired his rifle one time at Mr. Saiki because he feared that he or one of his fellow officers was about to be shot.

The officers in this situation made every reasonable effort to safely contact Mr. Saiki without harm. Unfortunately, this incident did not resolve peacefully and resulted in Mr. Saiki taking his own life. While the officers’ conduct did not cause Mr. Saiki’s death, it is assumed that Mr. Saiki’s foot injury was caused by one of the involved officers. However, based upon a thorough evaluation of the evidence under the applicable standard of review, these officers resorted to the use of force only when Mr. Saiki posed an immediate threat to them. The officers were clearly identified as police officers by their uniforms and their associated marked police vehicles. Mr. Saiki engaged in conduct with a purpose to harm or, at the least, threaten the safety of these officers. He fired a weapon at Officer Williams from close range. He pointed his gun at Officer Cos-Y-Leon driving a marked patrol car. He pointed his gun at Officer Wise and the other uniformed officers taking cover near a marked patrol car. The evidence supports each of these officers’ belief that Mr. Saiki presented an imminent danger to them and that responding with a lesser degree of force was not reasonable in the moment. Given this evidence, I find the officers’ use of force to be legally justified.

## **CONCLUSION**

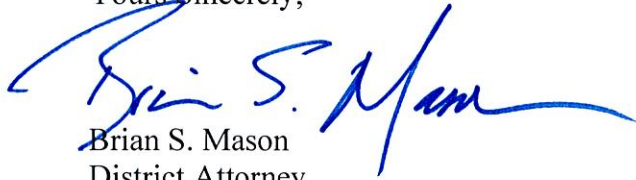
Under the totality of the circumstances and evidence gathered in this investigation, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2021). Therefore, applying the facts of this incident to the applicable



law, the evidence does not support the filing of criminal charges against Officer Eric Cos-Y-  
Leon and Officer Brendan Wise for firing their weapons at Mr. Dean Saiki.

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

Yours Sincerely,

A handwritten signature in blue ink that reads "Brian S. Mason". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian S. Mason  
District Attorney