



For Immediate Release:
Chris Hopper
Director of Communications
chopper@da17.state.co.us
da17media@da17.state.co.us
(303) 835-5639

March 6, 2023

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to an officer-involved shooting in Adams County on July 2, 2022.

###

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.

*AdamsBroomfieldDA.org, Facebook: [@da17colorado](https://www.facebook.com/da17colorado) Twitter: [@da17colorado](https://twitter.com/da17colorado)
Instagram: [@da17colorado](https://www.instagram.com/da17colorado) YouTube: [ColoradoDA17](https://www.youtube.com/ColoradoDA17)*



March 6, 2022

Sheriff Gene Claps
Adams County Sheriff
4430 S Adams County Pkwy 1st Floor, Suite W5400
Brighton, CO 80601

Re: The officer-involved shooting of Ponciano Alvarez-Guzman, occurring on July 2, 2022

Dear Sheriff Claps:

The 17th Judicial District Critical Incident Response Team (CIRT) recently completed its investigation into the July 2, 2022 shooting death of Ponciano Alvarez-Guzman. City of Aurora Police Detectives Heath Graw and Jeff Chamberlin led the investigation. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Adams County Sheriff's Office. 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 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 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* legally justified. The independent investigation and review are not intended to take the place of an internal affairs investigation by your agency. As such, my review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and applicable law, I find the actions of the involved officers to be justified. Furthermore, there is no reasonable likelihood of proving the elements of any crime beyond a reasonable doubt against the involved officers. Therefore, no criminal charges will be filed against the officers involved in this incident.

FACTUAL SUMMARY OF THE INCIDENT

During the evening hours of July 2, 2022, a woman called 911 to report a physical altercation at 7040 Pecos Street, unit #311. The woman, R.B.,¹ appeared to be in distress and reported that her husband, Ponciano Alvarez-Guzman, "banged" her head into a wall, grabbed her by her hair, threw her on the ground, and "stomped" her on the head. She reported that Mr. Alvarez-Guzman was currently in the residence and that she could not get away from him. She

¹ Initials are used to protect the confidentiality of the citizen witness.

begged for help and advised that he was “waving” a “big knife” as he stood in front of her. On the audio recording of the dispatch call, R.B. repeatedly yells “No! No! No!” and “He’s gonna cut me!” as she breathed heavily and asked for medical help. A male voice can be heard in the background.

Within a few minutes, uniformed patrol deputies from the Adams County Sheriff’s Office arrived on scene and knocked on the door of unit #311. This unit is on the third floor of a multifamily complex with an exterior front door situated near an outside stairwell. R.B. yelled at the deputies to come inside. Mr. Alvarez-Guzman opened the door with a knife in his hand. The deputies drew their handguns and yelled “Drop the knife!” Mr. Alvarez-Guzman responded with an expletive and slammed the door shut on the deputies.

Deputy John Bitterman kicked the door open and entered into the residence as Deputy Jake Padilla stood in the threshold of the doorway. Sergeant Robert Hannah remained outside, just behind Deputy Padilla. Through the open doorway, all three deputies observed R.B. struggling to get away from Mr. Alvarez-Guzman, as he held a large knife near her body. The two fell to the ground and the deputies saw blood spurting from R.B.’s neck.

The deputies yelled commands to drop the knife. Deputy Bitterman advised Mr. Alvarez-Guzman that he would be shot if he did not drop the knife. Mr. Alvarez-Guzman ignored the commands and continued to stab R.B. with the knife. Deputy Bitterman and Deputy Padilla each fired their weapons at Mr. Alvarez-Guzman, striking him multiple times and causing his death. A later autopsy confirmed the cause of death to be multiple gunshot wounds. Further toxicological study revealed Mr. Alvarez-Guzman had a blood alcohol concentration of .391 g/100 mL at the time of his death.

R.B. was admitted to the hospital for emergency medical treatment. She suffered penetrating injuries to the right side of her neck as a result of the stab wounds. She survived the injuries and was later released.

Criminalists assigned to the CIRT gathered evidence and processed the scene. The knife held by Ponciano Alvarez-Guzman was recovered beneath his body. The length of the blade measured approximately eight inches and appeared to have blood on it. The involved deputies turned over their weapons for examination and round accountability. In addition, each of the involved deputies participated in a recorded interview. Based on these interviews, along with an examination of the deputies’ firearms and the collection of evidence at the scene, the criminalists concluded that Deputies Bitterman and Padilla discharged a total of fifteen rounds at Mr. Alvarez-Guzman. The other two deputies did not fire their weapons. None of the deputies was equipped with a body-worn camera at the time of the incident.

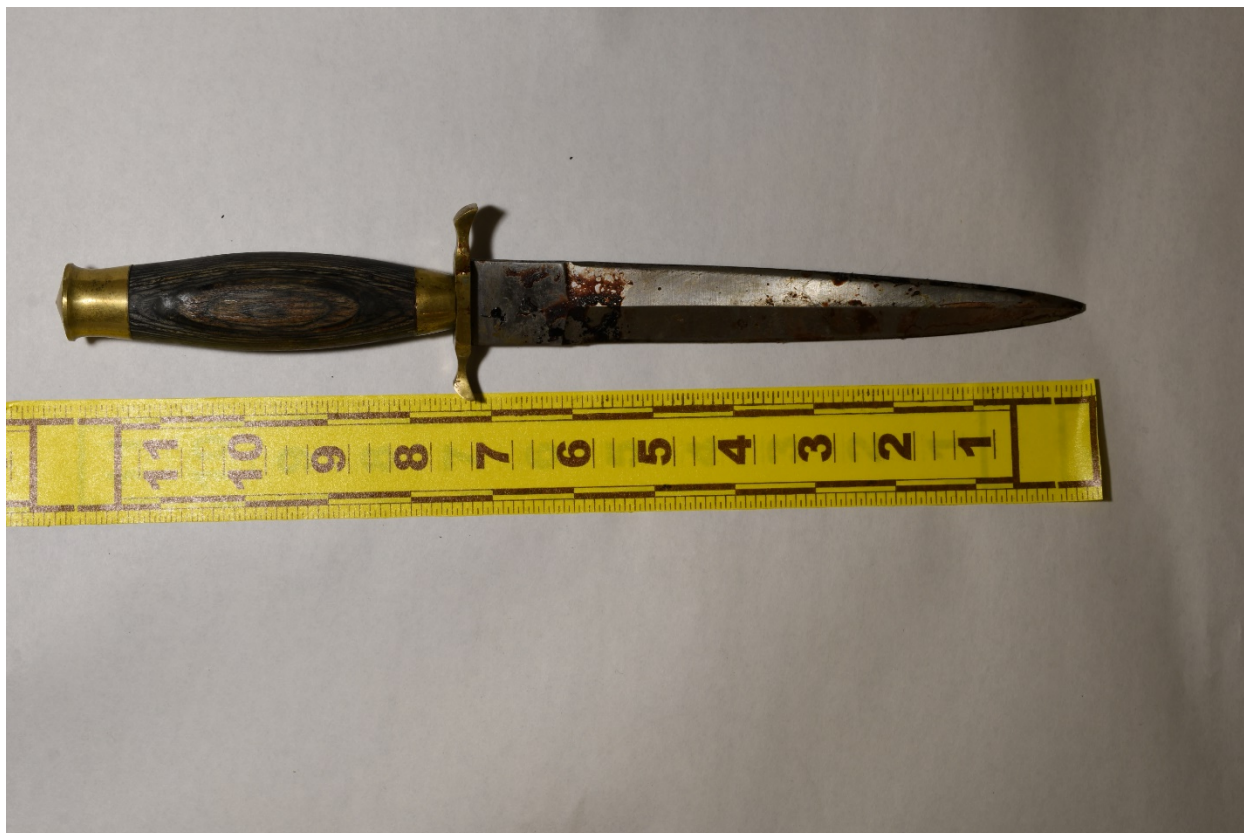


Photo of the knife held by Ponciano Alvarez-Guzman.

LEGAL ANALYSIS

As 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, 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.

Under Colorado law, a law enforcement officer may use an amount of force, including deadly physical force, that is necessary and reasonable. 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 at §18-1-707, C.R.S. (2022). Specifically stated:

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.

§18-1-707(4.5), C.R.S. (2022).

The United States Supreme Court has examined the standard of “objective reasonableness” 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 notes, “[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.” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

In this case, there is no dispute that Deputies John Bitterman and Jacob Padilla fired their weapons at Ponciano Alvarez-Guzman, causing his death. However, the legal analysis must include an assessment of the affirmative defense of self-defense. Applying the proper legal standard of self-defense to the facts of this case, the question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Ponciano Alvarez-Guzman posed an immediate threat to the safety of another person such that the use of deadly physical force was necessary.

Here, patrol deputies with the Adams County Sheriff’s Office responded to a report of a physical domestic altercation between a male and female where the male had armed himself with a large knife. The deputies initially confronted the male in a non-violent manner. The deputies knocked on the door to the apartment and announced their presence. The male answered the door while holding a knife. The deputies ordered the male to drop the knife, but the male ignored the commands and slammed the door. The deputies heard the female screaming and forced the door open. They observed the male still armed with the knife holding it against the female’s neck. The female appeared to be bleeding from the wound in her neck.

Deputies Bitterman and Padilla later explained that they were initially concerned that the male would confront the officers. When the male holding the knife refused to drop the knife, slammed the door, and the woman started screaming, both deputies became concerned for the woman’s safety. Once they kicked in the door and saw the altercation between the male and female in a close area, they believed that the male was going to kill the female victim with the knife. Both deputies explained that, at the time they fired their weapons at the male, a lesser degree of force was not reasonable, as it would not have stopped the male from killing the

female.

The evidence in this case clearly demonstrates that Mr. Alvarez-Guzman posed a threat to the life and safety of R.B.. Deputy Bitterman and Deputy Padilla observed this conduct and acted valiantly to intervene with the least-restrictive amount of force possible under the circumstances. Despite these efforts, Mr. Alvarez-Guzman's conduct put R.B.'s life in danger and the deputies responded with the degree of force necessary to save R.B.'s life. There is no evidence to suggest that an objectively reasonable officer would have acted differently than the deputies who were involved in this incident. Indeed, these officers almost surely saved R.B.'s life as R.B. may well have suffered fatal injuries had the deputies not used deadly physical force. For these reasons, I find that Deputy Bitterman and Deputy Padilla were justified in the use of force against Mr. Alvarez-Guzman and I commend them for their decisive action in saving this woman's life.

CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using deadly physical force under §18-1-707, C.R.S. (2022). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Deputy Bitterman or Deputy Padilla for firing their weapons at Ponciano Alvarez-Guzman and causing his death.

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

Sincerely,

A handwritten signature in blue ink that reads "Brian S. Mason". The signature is fluid and cursive, with the first name "Brian" being the most prominent.

Brian S. Mason
District Attorney