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June 5, 2023

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to an officer-involved shooting in Broomfield on September 29, 2022.

Warning, Graphic Content Contained in the Links Below:

Link to Denver Police Detective James Waidler's Body Camera Video:

[Detective James Waidler - OIS.mp4](#)

Link to Summary PowerPoint:

[OISDecisionLetterPowerPoint92922.pdf](#)

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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.

*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)*



June 5, 2023

Chief Ron Thomas
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

Re: The officer-involved shooting of Anthony Lainez, occurring on September 29, 2022

Dear Chief Thomas:

The 17th Judicial District Critical Incident Response Team (CIRT) recently completed its investigation into the September 29, 2022 shooting death of Anthony Lainez. City of Westminster Police Detectives Zeb Smeester and Jessica Beren led the investigation. The remaining investigators on the CIRT who worked on the investigation are associated with law enforcement agencies independent of the Denver Police Department. 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 the death of a civilian. 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* legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. The 17th Judicial District Attorney's review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and applicable law, 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

In September 2022, the Denver Police Department Fugitive Unit sought Anthony Lainez in connection with the investigation of a homicide in Denver. Mr. Lainez had outstanding warrants for his arrest, and the Fugitive Unit was engaged in physical and electronic

surveillance to locate and apprehend him. During the early afternoon hours of September 29, 2022, investigators tracked Mr. Lainez's cell phone to a residence in Broomfield near the intersection of 136th Avenue and Sheridan Boulevard. Detectives with the Fugitive Unit responded to the residence and maintained surveillance.

The Denver Detectives contacted the City of Broomfield Police Department and requested the presence of uniformed patrol officers as part of the plan to apprehend Mr. Lainez. During the surveillance, a male and female walked out of the residence and got into a white Ford Edge bearing temporary tags from New Mexico. The male was positively identified as Mr. Lainez. Mr. Lainez got in the driver's seat and the female got into the front passenger seat. Broomfield patrol vehicles moved in with emergency lights to stop the Edge as it drove away from the residence. The Edge drove around the patrol vehicles and successfully eluded them. Neither the uniformed Broomfield officers nor the undercover Denver officers pursued Mr. Lainez as he drove the Edge southbound on Sheridan Boulevard at a high rate of speed.

Mr. Lainez recklessly drove the Edge as he attempted to turn left onto E. Midway Boulevard to head eastbound. He lost control and collided with another vehicle in the intersection. The Edge became disabled and spun out in the westbound lanes of E. Midway Boulevard. Mr. Lainez and the woman got out of the Edge and ran to a gray Toyota Corolla that was parked in the lanes of traffic facing westbound. The driver of the Corolla witnessed the crash and stopped just east of the Edge to avoid another collision.

Mr. Lainez entered the passenger's side front door of the Corolla, and the woman entered the passenger's side rear door. As he sat in the front passenger's seat, Mr. Lainez pressed a handgun into the driver's ribs and said "Go!" The driver removed the car keys from the ignition and tried to get out of the car through the driver's door. Mr. Lainez grabbed the driver and pulled him back into the car.

The Denver Fugitive Unit Detectives were in close proximity and quickly arrived on scene. The Detectives drove undercover vehicles and wore plain clothes but were equipped with tactical vests affixed with a badge on the front and labeled "POLICE" on the front and back. Denver Detective James Waidler saw the crash and reported what he believed might be an attempted carjacking to his fellow officers over the radio. He was first to the scene and saw Mr. Lainez hanging on to the driver as the driver screamed and struggled to get away. Detective Waidler ran up to the open driver's door of the Corolla while giving commands to Mr. Lainez to show his hands. Mr. Lainez appeared to hold the victim as a shield between himself and Detective Waidler as he pulled the victim back inside the Corolla.



Still image from Detective Waidler's BWC showing Mr. Lainez holding the victim.



Still image from Detective Waidler's BWC showing Mr. Lainez using the victim to shield himself from police.

Denver Detective Jay Lopez arrived moments after Detective Waidler. He saw the driver struggling to get away from Mr. Lainez. Realizing that Mr. Lainez was holding onto the victim, Detective Lopez drove his truck up close to the Corolla to distract Mr. Lainez. Detective Lopez got out and ran up to the front quarter panel of the Corolla to break the windshield with the muzzle of his rifle. From that vantage point, he could see Mr. Lainez

seated in the driver's seat, pulling the victim inside and holding him hostage. Within moments, Mr. Lainez drew a handgun and shot at Detective Lopez, striking him in the neck. Detective Lopez fired one round from his rifle and fell to the ground in front of the Corolla.



Still image from Detective Lopez's BWC showing Mr. Lainez holding the victim.



Still image from Detective Lopez's BWC showing a shell casing eject from Mr. Lainez's handgun as he fired at Detective Lopez.

As Mr. Lainez raised his gun and fired at Detective Lopez, Detective Waidler pulled the carjacking victim by the arm and returned fire at Mr. Lainez, seated in the driver's seat. The carjacking victim fell to the ground. Detective Waidler stepped backwards and fell to the ground. Mr. Lainez got out of the driver's door while holding the gun and advanced on Detective Waidler. Detective Waidler fired his gun at Mr. Lainez several more times, striking him and causing him to fall to the ground.



Still image from Detective Waidler's BWC showing Mr. Lainez pointing his handgun at Detective Lopez.



Still image from Detective Waidler's BWC showing Mr. Lainez getting out of the Corolla and advancing upon Detective Waidler while holding the handgun.



Still image from Detective Waidler's BWC showing Mr. Lainez on the ground reaching for the handgun.

Denver Detective Cole Connors heard the report of the crash and attempted carjacking. He was the third officer on scene. Upon his arrival, he saw Mr. Lainez pulling the victim back into the Corolla. As Detective Connors was putting on his tactical vest, he heard the discharge of gunfire, but did not know who was shooting. He saw Detective Waidler backpedal and fall

to the ground. He also saw Mr. Lainez on the ground reaching for the handgun that lay next to him. Detective Connors yelled, "Don't grab the gun!" Mr. Lainez ignored the command and reached for the handgun, causing Detective Connors to fear for the safety of everyone in the immediate area. Detective Connors fired his handgun at Mr. Lainez until he stopped moving and was no longer a threat to anyone.

Immediately after the shooting incident, the Denver Detectives were joined by their fellow Fugitive Unit officers and Broomfield police officers. The officers tended to Detective Lopez and the female was taken into custody without incident. The female was identified as Sky Toya. Mr. Lainez was pronounced dead on scene. An autopsy confirmed the cause of death to be multiple gunshot wounds. Further toxicological study revealed presumptive positive results for methamphetamine and cocaine.

Criminalists assigned to the CIRT gathered evidence and processed the scene. A loaded 9mm semi-automatic handgun was located a few feet from Mr. Lainez's final resting place. Evidence collected from the scene confirmed that Mr. Lainez fired two rounds from this gun. The weapon was later discovered to have been reported stolen. Inside the Toyota Corolla, investigators discovered additional firearms, firearm evidence, and a large volume of suspected controlled substances. A search of the Ford Edge revealed additional firearms evidence, suspected controlled substances, and more than one thousand dollars in cash.

The involved officers turned over their weapons for examination and round accountability. In addition, each of the involved officers participated in a recorded interview with CIRT investigators. Based on these interviews, along with an examination of the officers' firearms and the collection of evidence at the scene, the criminalists concluded that Detective Lopez fired one round from his .223 rifle, Detective Waidler fired nine rounds from his 9mm semi-automatic handgun, and Detective Connor fired six rounds from his 9mm semi-automatic handgun. All of the involved officers were equipped with body-worn cameras. However, only Detective Lopez's and Detective Waidler's cameras captured the shooting incident. Detective Connors was unable to activate his camera until just after the shooting.

Ms. Toya, the female participant who was arrested on scene, was charged with aggravated robbery, possession of a controlled substance, and first degree criminal trespass. Ms. Toya pled guilty to aggravated robbery in Broomfield County District Court and, on April 27, 2023, was sentenced to twelve years in the Department of Corrections.

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, the evidence confirms that Detectives Lopez, Waidler, and Connors fired their weapons at Anthony Lainez and that Mr. Lainez's death was the result of multiple gunshot wounds. This legal analysis must also include an assessment of the affirmative defense of self-defense or defense of others. Applying the proper legal standard of self-defense to the facts of this case, the critical question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Anthony Lainez posed an immediate threat to the safety of another person such that the use of deadly physical force was necessary.

Here, the Denver Fugitive Unit was conducting undercover surveillance of Mr. Lainez, when Mr. Lainez fled from uniformed Broomfield police at a high rate of speed. He drove recklessly through a busy intersection, causing a collision with another vehicle. Detective Waidler saw the crash and pursued Mr. Lainez. Within moments, Mr. Lainez entered a

civilian's vehicle and sought to take that civilian hostage. The detectives with the Fugitive unit confronted Mr. Lainez to get him to release the hostage. As the detectives drew close, Mr. Lainez quickly turned the gun on them, shooting at Detective Lopez, who was struck in the neck. Miraculously, Detective Waidler pulled the hostage to safety just as he returned fire on Mr. Lainez.

Mr. Lainez posed a grave threat to the lives and safety of others and his actions warranted the use of force by law enforcement officers to save lives. The Denver Police detectives acted with courage and valor in their effort to save lives and stop Mr. Lainez from kidnapping an innocent victim. The detectives used the least-restrictive amount of force possible under the circumstances and, when Mr. Lainez demonstrated his intent to use deadly force, including by shooting and striking Detective Lopez in the neck, they responded with a degree of force necessary to save lives. Detective Lopez acted heroically during his encounter with Mr. Lainez. He courageously advanced on the car where Mr. Lainez was holding a victim hostage and sought to prevent Mr. Lainez from further harming the victim, taking a bullet in the process. Detective Lopez's heroism in the face of mortal danger was remarkable. Tragically, because of Mr. Lainez's criminal attempt to kill him, Detective Lopez will suffer for the rest of his life. Detective Waidler also acted heroically during this encounter. His singular action of pulling the kidnapping victim away with one arm while returning fire with another likely saved the kidnapping victim's life. Finally, Detective Connors acted heroically during this encounter. His immediate action to stop Mr. Lainez from reaching for his gun again likely saved lives as well. All three Denver detectives acted with courage and heroism. And the actions of all three likely saved lives that day.

Watching the body worn camera video of this incident corroborates the detectives' statements that they were in fear for their lives and the lives of others. Indeed, watching the footage dramatizes just how harrowing and dangerous this situation was. There is no evidence to suggest that an objectively reasonable officer would have acted differently than the detectives who were involved in the incident. The split-second tactical decisions made by these detectives were remarkable and heroic. Had the detectives not intervened and responded in such a manner, Mr. Lainez very likely would have hurt or killed others in his efforts to escape arrest.

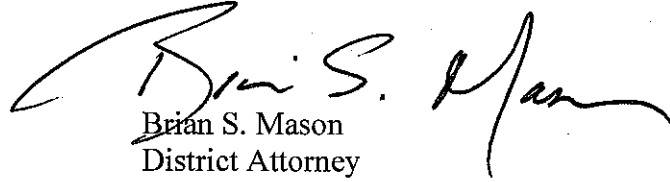
For the above reasons, I find that Detectives Lopez, Waidler, and Connors were justified in their use of deadly force against Anthony Lainez.

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 Detective Jay Lopez, Detective James Waidler or Detective Cole Connors for firing their weapons at Anthony Lainez and causing his death.

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

Sincerely,



Brian S. Mason
District Attorney