



April 25, 2016

Chief Jim May
Northglenn Police Department
11701 Community Center Drive
Northglenn, CO 80233

Re: The investigation of the officer-involved shooting of Adrian Moya, DOB 3/6/1992,
occurring on December 19, 2015

Dear Chief May:

The investigation and legal analysis of the officer involved shooting of Adrian Moya is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Robin Danni of the Thornton Police Department and Patrick Ness of the 17th Judicial District Attorney's Office. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to my office on February 24, 2016. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the individual law enforcement agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving Officer Kuenning committed any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against Officer Kuenning in this incident.

Overview of the Incident

During the early morning hours of December 19, 2015, Northglenn Police Officer Anthony Magness conducted a traffic stop on a Volkswagen sedan as it pulled into a Diamond Shamrock parking lot in the City of Northglenn. Two males occupied this vehicle. Officer

Magness contacted the driver of the vehicle as he suspected the driver may have been driving under the influence. Northglenn Police Officer Tim Kuenning arrived on the scene to assist and approached the passenger side of the vehicle. Officer Magness had a brief conversation with the driver and passenger and took down their identifying information. The passenger, identified as Adrian Moya, asked Officer Magness if he could get out of the vehicle so he could go inside the convenience store to pay for gas. Finding no immediate reason to detain Mr. Moya, Officer Magness agreed to the request. Officer Magness then cleared Mr. Moya's name through dispatch while motioning to Officer Kuenning, to "keep an eye" on Mr. Moya. Within moments, Officer Magness learned that Mr. Moya had an active warrant for his arrest and told Officer Kuenning to stop Mr. Moya.

As Mr. Moya opened the door to the gas station, Officer Kuenning called out to him to stop. Mr. Moya immediately dropped his backpack and started to run away. Officer Kuenning chased him. During the pursuit, Officer Kuenning observed Mr. Moya's hands in front of his body as if he were reaching to retrieve something from the front of his waist area. Mr. Moya quickly turned around, pointed a handgun at Officer Kuenning, and fired four rounds, striking Officer Kuenning two times—once in the chest and once in the abdomen. Officer Kuenning returned fire, striking Mr. Moya several times. Officers on scene applied a tourniquet to Mr. Moya's legs and treated him until emergency medical assistance arrived and transported him to Denver Health Medical Center. Officer Kuenning was transported to Saint Anthony's North Hospital for medical treatment. Both Mr. Moya and Officer Kuenning survived the incident. Mr. Moya is facing criminal charges for his actions related to the shooting.

The passenger was identified as Anthony Muniz. Muniz was taken into custody on two arrest warrants unrelated to this incident. During the booking process, Muniz was discovered in possession of 1.29 grams of methamphetamine.

Witness Interviews

Investigators from various law enforcement agencies including the Thornton Police Department, Adams County Sheriff's Office, and the District Attorney's Office conducted interviews of the necessary witnesses within hours of the shooting.

Officer Anthony Magness Officer Magness is a patrol officer employed by the Northglenn Police Department. Thornton Detective Robin Danni and DA Investigator Patrick Ness conducted his interview hours after the incident with his attorney present. Officer Magness started his shift at 9:00 p.m. on December 18, 2015. His duties consisted of responding to calls for service within a specified geographical area. He was wearing a police uniform and driving a marked patrol car equipped with an emergency light bar.

At approximately 1:00 a.m. on December 19, 2015, Officer Magness observed a Volkswagen sedan that caught his attention because it was driving ten to fifteen miles an hour under the posted speed limit. As Officer Magness drove behind the vehicle, he observed it cross the solid lane marker on the right side. The vehicle then proceeded into the left turn lane at the intersection of W. 112th Avenue and Huron Street. When the traffic signal turned green, the vehicle turned left onto southbound Huron Street and then turned right into the Diamond Shamrock gas station but failed to properly give a continuous turn signal at least one hundred

feet before the turn. Based on these observations and in light of his training and experience, Officer Magness believed the driver could be driving under the influence. Officer Magness activated his overhead lights intending to stop the vehicle to investigate the traffic violations. The vehicle continued into the gas station and drove very slowly stopping next to a gas pump on the south side of the convenience store facing westbound.

Officer Magness got out of his patrol vehicle and contacted the driver at the driver's side window of the Volkswagen and asked him for his identification. The driver stated that he did not have any. Officer Magness perceived the driver to have a "bit of an attitude" with the way he was asking about the traffic stop. During Officer Magness's conversation with the driver, the front seat passenger leaned forward and said "Hey, I know you." Officer Magness asked how, and the passenger responded that Officer Magness had stopped him in the past. Officer Magness took out a notepad and wrote down the name and dates of birth for both the driver, Anthony Muniz, and the passenger, Adrian Moya. Neither the driver nor the passenger were the registered owners of the vehicle.

As Officer Magness was about to return to his patrol car, Mr. Moya asked if he could go inside the store and pay for gas. Finding no reason to detain Mr. Moya, Officer Magness told him that he could go inside. At about that time, Officer Tim Kuenning arrived on scene as the cover officer. Officer Kuenning walked up on the passenger side of the Volkswagen as Mr. Moya got out of the car and walked toward the convenience store. While recognizing it was "strictly a gut feeling," Officer Magness stated that something about Mr. Moya "just wasn't hitting right with me." As such, Officer Magness looked to Officer Kuenning, and in a nonverbal manner of communication, pointed to his own eyes so as to say, "watch him," referring to Mr. Moya.

Officer Magness cleared Mr. Moya's name through dispatch as he returned to his patrol car. Upon learning that Mr. Moya had a felony warrant for his arrest, Officer Magness got on his radio and relayed that detail to Officer Kuenning by stating, "Tim, stop him" or "Tim, detain him." It appeared to Officer Magness that Officer Kuenning said something to Mr. Moya, as he saw Mr. Moya look back at Officer Kuenning. Officer Magness then saw Officer Kuenning reach for Mr. Moya's backpack at the entrance of the convenience store. Mr. Moya pulled away and dropped his backpack to the ground. Mr. Moya proceeded to run southwest across the parking lot with Officer Kuenning chasing after him. Officer Magness stayed back at the Volkswagen with the driver, Anthony Muniz, who was still seated in the driver's seat.

Officer Magness heard two gunshots, a brief pause, and then a "volley of gunfire." He approximated hearing a total of eight gunshots, but could not see what happened because the gas pumps obstructed his view. In addition, while the area surrounding the gas pumps was well-lit, the area beyond canopy to the gas pumps was dark. Due to the uncertainty surrounding the situation, Officer Magness held Mr. Muniz at gunpoint. He peered around the pumps and observed Officer Kuenning standing up and Mr. Moya lying on the ground. He then pulled Mr. Muniz out of the car, handcuffed him, and reported to dispatch hearing shots fired. During a pat-down search of Mr. Muniz, Officer Magness discovered a hatchet and a knife.

With other officers arriving to the scene, Officer Magness left Mr. Muniz and ran over to Officer Kuenning's location. Officer Kuenning had Mr. Moya at gunpoint from a distance of two to three yards. Officer Magness observed Mr. Moya lying in a pool of blood with a silver or

chrome handgun lying nearby. At that point, Officer Magness realized that Mr. Moya fired a gun at Officer Kuenning and asked Kuenning if he was hit. Officer Kuenning responded, "I took two, but it was in the vest."

Officer Magness turned his attention to Mr. Moya and asked him where he was shot. Mr. Moya responded "all over." He handcuffed Mr. Moya and searched him for another gun. Noticing a lot of blood appearing to come from Mr. Moya's legs, Officer Magness believed Mr. Moya may have had an arterial injury. Officer Magness retrieved a tourniquet and applied it to Mr. Moya's right leg. Officer Magness was subsequently instructed to step away and let other officers assist with the investigation.

Officer Tim Kuenning Officer Kuenning is a patrol officer with the Northglenn Police Department. Thornton Detective Robin Danni and DA Investigator Patrick Ness interviewed him during the early morning hours of December 19, 2015 with his attorney present. Officer Kuenning had approximately four and one-half years experience. He was wearing a uniform at the time of the incident.

Around the time Officer Magness conducted the traffic stop in the Volkswagen sedan, Officer Kuenning was a block away conducting a traffic stop on the 11100 block of Huron Street. During the stop, he observed Officer Magness activate his emergency lights and pull into the Diamond Shamrock gas station at 112th Avenue and Huron Street. Officer Kuenning decided to drive over to Officer Magness's location to make sure everything was alright. Once he arrived, he could see Officer Magness on the driver's side of a sedan speaking to the driver.

As Officer Kuenning approached the passenger side of the vehicle, he observed the passenger reaching down to the floorboard of the vehicle. Based on his observations, it appeared to Officer Kuenning that Officer Magness was allowing the passenger, later identified to him as Adrian Moya, get out of the vehicle. Officer Kuenning got out of the way as Mr. Moya got out of the car. Mr. Moya was wearing a backpack and Officer Kuenning asked, "What's in the backpack?" Mr. Moya brushed Officer Kuenning off without answering.

From his vantage point, Officer Kuenning noticed an open container of alcohol on the passenger's side floorboard and was uncomfortable allowing Mr. Moya to walk away from the vehicle during the traffic stop. With Mr. Moya approaching the door to the gas station convenience store approximately fifteen yards away, Officer Kuenning decided to pursue him to request his identification information. About that time, he heard Officer Magness state over the radio, "Grab him." Officer Kuenning then ordered Mr. Moya to stop.

According to Officer Kuenning, when he told Mr. Moya to stop, Mr. Moya "shrugged his backpack off" and ran southwest across the gas station parking lot. Officer Kuenning ran after Mr. Moya through the parking lot. During the pursuit, Officer Kuenning observed Mr. Moya place both hands in front of his body, as if he were "digging around in his front waistband for something." Officer Kuenning could not see Mr. Moya's hands. Based on what he observed, Officer Kuenning believed Mr. Moya was reaching for a weapon and slowed down to create some distance between himself and Mr. Moya.

Mr. Moya stopped running, turned around and faced Officer Kuenning at an angle with his right hand held behind his back. As he moved his right hand, Officer Kuenning saw "a glint

of silver” he described as a “metallic object” that he thought could be a gun. Mr. Moya walked backward, continuing to hold his right hand behind his back and obstructing Officer Kuenning’s view. Officer Kuenning had his handgun drawn and pointed at Mr. Moya. Officer Kuenning ordered, “Stop or I will shoot.” As they stood a distance of about twenty feet apart, Mr. Moya spun toward Officer Kuenning, pulled his right arm from behind his back and started shooting at Officer Kuenning. Officer Kuenning felt one bullet hit him in the lower abdomen and another in his upper chest area. Officer Kuenning immediately returned fire, shooting at Mr. Moya until Mr. Moya fell to the ground and stopped shooting. He did not know how many shots he fired.

After the shooting, Officer Kuenning moved away to get out of Mr. Moya’s line of sight. He saw a silver semi-automatic handgun a few feet away from Mr. Moya. He tried to use his lapel microphone to report the incident over the radio, but realized it was inoperable. He held Mr. Moya at gunpoint and observed Officer Magness struggling to detain the driver of the vehicle. Once he made sure he was safe, he pulled his hand-held radio and heard Officer Magness report shots fired. He also requested medical assistance to the scene.

Anthony Muniz Thornton Detective Robin Danni and DA Investigator Patrick Ness conducted an interview of Anthony Muniz on December 19, 2015 at the Northglenn Police Department. Mr. Muniz claimed to be living on the streets and hanging out with his friend, Adrian Moya, who he had only known for a few months. He described Mr. Moya as “rambunctious.” He was driving a vehicle belonging to Mr. Moya’s girlfriend’s grandfather. Mr. Moya was riding in the front passenger’s seat. Mr. Muniz was driving because Mr. Moya had been drinking alcohol. He believed that the police pulled him over for driving too slow.

According to Mr. Muniz, just after the stop, Mr. Moya and the officer were talking about another time the officer pulled Mr. Moya over. The officer then allowed Mr. Moya to go inside the store to pay for gas. A second police officer arrived and appeared to have an issue with Mr. Moya getting out of the car. Mr. Muniz heard the officer ask Mr. Moya “a bunch of questions” and then the two started arguing about a backpack. Mr. Muniz estimated ten to twenty seconds elapsed before he saw Mr. Moya running and the officer chasing him through the parking lot. He then heard a lot of shots fired. He did not see the shooting. He claimed to be unaware of any gun in the car or in Mr. Moya’s possession. He knew Mr. Moya and the officer were shooting at each other because he heard two different guns shooting—a large caliber and a small caliber. He did not know who shot first.

Mr. Muniz was taken into custody on active arrest warrants for felony crimes out of Denver County (possession with intent to distribute a controlled substance) and Broomfield County (identity theft).

Other Witnesses Additional lay witnesses were identified and interviewed. However, these witnesses were inside the convenience store of the gas station and, while they heard the gunfire, they did not see anything of significance to the investigation.

Crime Scene Investigation

Criminalists from the Adams County Sheriff’s Office and the Colorado Bureau of Investigation gathered evidence and processed the scene. The scene consisted of the south side

of a Diamond Shamrock gas station with a total of four gas pumps. A large lighted canopy covered the location of the gas pumps. A Volkswagen Jetta was parked on the north side of the two eastern most gas pumps, facing westbound. Two marked patrol cars for the Northglenn Police Department were parked facing the same direction immediately behind the Volkswagen. The south glass door of the convenience store was shattered and a bullet fragment was recovered. A camouflage backpack was recovered near the south door.

Near the two western most gas pumps, investigators located one (1) fired .380 casing and nine (9) fired 9mm casings. A large pool of suspected blood was observed west of these gas pumps, approximately twenty feet beyond the west perimeter of the gas station canopy. To the north of the blood pool were three (3) fired .380 casings. Near the perimeter of the blood was a Beretta .380, model 1934 handgun and three (3) unfired cartridges laying loose. The magazine was inside the weapon, but was empty and had lost its base plate and spring which were lying nearby. There was no ammunition in the chamber of the gun.

Both Officer Magness and Officer Kuenning were wearing official police uniforms. Officer Kuenning's shirt and body armor revealed defects in the left abdomen area. No projectiles were recovered within the armor. Another defect was observed in the right upper pocket. Inside the pocket, investigators located a small notepad, a broken cellular iPhone, and a suspected fired bullet. These observations led investigators to conclude that a bullet penetrated the upper right shirt and notepad, and was stopped by the phone.

Officer Kuenning's weapon was identified as Glock 17, 9mm handgun. The magazine of this weapon carries seventeen (17) cartridges, or rounds. Officer Kuenning carried the weapon with a fully-loaded magazine and one round in the chamber of the gun, for a total of eighteen (18) rounds. Inspection of his weapon following the incident revealed eight (8) unfired cartridges in the magazine and one in the chamber of the weapon, for a total of nine (9) unfired cartridges. Two spare magazines were fully loaded. Accordingly, the evidence reveals that Officer Kuenning fired nine (9) rounds from his weapon.

Officer Magness was in possession of two handguns, a Glock 17 9mm and a Glock 26 9mm. Both weapons had fully loaded magazines and one round in the chamber. Officer Magness also had two spare magazines that were loaded to capacity. As such, there is no evidence that Officer Magness fired his weapon.

Anthony Muniz possessed a sandwich baggie containing 1.29 grams of methamphetamine.

A search of the camouflage backpack dropped at the entrance of the gas station revealed a number of items of contraband: a glass smoking pipe, two separate packages totaling nearly one gram of methamphetamine, four containers of marijuana totaling more than forty-eight grams, and one container of more than seven grams of Psilocybin mushrooms.

According to the Northglenn Police Department radio traffic, at 2:43 minutes into the traffic stop, Officer Magness calls out "Stop him." At 2:50 minutes, Officer Magness repeats, "Tim, stop him." At 3:08 minutes, Officer Magness reports "Lots of shots fired."

Suspect Information

Adrian Moya was transported by helicopter from the scene to Denver Health Medical Center, where he was treated. Mr. Moya refused to release any medical information to law enforcement. The hospital released limited information revealing a diagnosis of multiple gunshot wounds to the right and left upper shoulder, the chin, and to both legs. Medical evaluation also discovered what appeared to be a bullet fragment in the abdomen. Mr. Moya was medically released to police custody eight days following his hospital admission.

On December 21, 2015, Northglenn Detective Rod Windholdz and DA Investigator Patrick Ness contacted Adrian Moya at Denver Health Medical Center and requested an interview. Mr. Moya claimed he did not remember what happened. He appeared to nod off, stated that he was "out of it," and asked the investigators to come back at a later time. The following day, Mr. Moya advised that his attorney told him not to discuss the case.

As a result of this case, Adrian Moya was charged with attempted murder in the first degree, assault in the first degree, and possession of a weapon by a previous offender. At the time of his arrest, Mr. Moya also had an active arrest warrant for felony menacing and forgery, a case currently pending in Adams County District Court. Mr. Moya has a criminal history consisting of a felony conviction for attempted assault in the second degree, misdemeanor convictions for assault and violation of a protective order, and a juvenile adjudication for theft.

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. Generally speaking, 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. In this instance, in order to file a criminal charge, the District Attorney's Office must prove beyond a reasonable doubt that the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Kuenning fired his weapon at Adrian Moya. Likewise, there is no dispute that the injuries to Adrian Moya consisted of serious bodily injury as a consequence of multiple gunshot wounds. At the time of the shooting, Officer Kuenning was actively engaged in the effort to arrest a wanted suspect. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Officer Kuenning fired his weapon, the prosecution can prove beyond a reasonable doubt that the officer's actions were not justified under Colorado law.

The use of force by Officer Kuenning under this circumstance necessarily invokes an analysis under §18-1-707, C.R.S. (2015), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

(1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

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

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” §18-1-901(3)(d), C.R.S. (2015). Since Officer Kuenning’s use of force in this instance did not, in fact, cause death, the appropriate standard to apply is §18-1-707(1). It should be noted, however, that to the extent an argument could be made that the provisions of §18-1-707(2) should apply, the legal analysis is similar.

Here, Officer Kuenning’s original intent was to detain Mr. Moya based on a valid traffic stop and what he observed to be a violation of the open container law. Prior to effecting Mr. Moya’s detention, Officer Kuenning learned of an arrest warrant and called out to Mr. Moya. Mr. Moya fled. During the flight, Mr. Moya displayed a handgun aimed at Officer Kuenning and fired several shots, striking him two times. Officer Kuenning perceived the shots fired. He saw the gun pointed at him, saw the muzzle flash, heard gunshots, and felt the impact of the projectile hitting him. He responded by firing his weapon. Therefore, there is substantial evidence to support Officer Kuenning’s reasonable belief that Mr. Moya was about to use unlawful physical force upon him.

Additionally, the amount of force used was reasonable. Mr. Moya was armed with a handgun and fired upon Officer Kuenning. Officer Kuenning stated that he fired his weapon because the suspect was shooting at him. He further stated that he stopped shooting because the suspect stopped shooting. As such, there is no basis for which to conclude a lesser degree of force was necessary. Mr. Moya's actions and behavior dictated Officer Kuenning's response of firing his weapon.

Given all the facts and circumstances, the prosecution cannot prove that Officer Kuenning's action of pulling the trigger intending to shoot Mr. Moya was not justified as applied to §18-1-707.

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Kuenning for discharging his weapon in the shooting incident involving Adrian Moya on December 19, 2015. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read "D. Young", written in a cursive style.

Dave Young
District Attorney