



February 17, 2017

Chief Randy Nelson  
Chief of Police  
Thornton Police Department  
9551 Civic Center Drive  
Thornton, CO 80229

Re: *The investigation of the officer involved shooting of Adrian Munoz, DOB 9/8/87, occurring on December 3, 2016.*

Dear Chief Nelson:

The investigation and legal analysis of the officer involved shooting of Adrian Munoz is complete. The 17<sup>th</sup> Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Luis Hernandez of the Adams County Sheriff's Office and Detective Kent Hampshire of the Westminster Police Department. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17<sup>th</sup> Judicial District, as well as investigators from the Office of the District Attorney for the 17<sup>th</sup> Judicial District. The factual findings of the investigation were presented to my office on February 1, 2017. 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 officer 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 officer, 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 each individual agency.

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

## **OVERVIEW OF THE INCIDENT**

On December 3, 2016 at approximately 6:13 p.m., Thornton Police Officers were dispatched to a call of shots actively being fired at the Creekside Place Apartments building #2, located at 9189 Gale Blvd. in Thornton. There were five separate 911 calls that dispatch received concerning this shooting and the reporting parties described the shooter as wearing a Broncos Jacket, hat and blue jeans. The reporting parties also stated that the suspect fled southbound on foot. In at least one of these 911 calls, gunshots could be heard in the background. Thornton Police Officer's were advised that a male suspect wearing a Broncos jacket and jeans had fired shots outside of building #2.

Officer Jesenia Ledesma was on routine patrol and responded to the call from the north of the Creekside Place Apartments. As she turned her patrol vehicle around, and was at the red traffic light at Gale Blvd. attempting to turn southbound onto Gale Blvd., she heard what sounded like three to four gunshots coming from the apartment complex. While Officer Ledesma was still at the traffic light, she observed a Hispanic male with dark hair wearing a baggy letterman style jacket walking northbound away from her vehicle on the sidewalk located on the west side of Gale Blvd.

At that time, Officer Clarendon Tate was in a separate patrol vehicle responding to the call from the south of the Creekside Place Apartments. As Officer Tate approached the apartment complex, he saw a white or Hispanic male party matching the description that dispatch relayed of the suspect walking at a fast pace southbound on Gale Blvd. Officer Tate stopped his marked patrol vehicle, got out and immediately identified himself. Officer Tate gave loud, repetitive verbal commands to the suspect: "Police! Stop! Get on the ground, get on the ground!" The suspect immediately ran westbound through a parking lot then south around the west side of building #6 of the apartment complex. Officer Tate chased the suspect. Rather than follow the suspect around the building, Officer Tate ran parallel to the suspect on the other side of building #6, thinking he would see him through the gap between building #6 and building #7.

As the suspect ran around building #6 toward building #7, Officer Tate saw him in the open space between the two buildings. The two made eye contact with each other. The suspect ran with his left arm raised up as if he was pointing a gun at Officer Tate. Based on the information received from dispatch, the nature of the call, the number of callers, and the fact the dispatcher heard shots fired, Officer Tate believed the suspect was pointing a gun at him.

Officer Tate saw the suspect continue to run on the south side of building #7 (between building #7 and #8). Officer Tate was on the north side of the gap between building #7 and #8 and again identified himself by giving loud, repetitive verbal commands: "Police! Get on the ground!" At that time, the suspect slowed down, and began walking towards Officer Tate. Officer Tate continued to shout repetitive verbal commands. As the suspect walked towards Officer Tate, he raised and extended both arms up in front of his body, as if he were taking a "shooter's stance," pointing in the direction of Officer Tate. Unable to see exactly what the suspect had in his hands, Officer Tate fired his service weapon at the suspect, striking him in the leg.

Officer Ledesma heard the gunshots and approached the south side of building #7 and west side of building #8. Officer Ledesma saw the suspect on the ground and Officer Tate holding him at gunpoint. Officer Ledesma heard Officer Tate command the suspect not to move. Officer Ledesma assisted Officer Tate take the suspect into custody. Officer Ledesma observed the suspect bleeding from his left leg and assisted Officer Tate secure a tourniquet on the suspect's upper left thigh. The officers immediately called for medical assistance for the suspect. As they were waiting for medical to arrive, Officer Tate asked the suspect to identify the location of the gun. The suspect replied, "I'm not gonna tell you where the gun is at!" A handgun was later found in a bush at the southwest corner of building #7. The suspect was later identified as Adrian Munoz, and was charged with crimes for his involvement in this incident. A criminal case is currently pending in Adams County District Court.

### **SYNOPSIS OF LAW ENFORCEMENT OFFICER INTERVIEWS**

#### **Officer Clarendon Tate:**

Adams County Sheriff Detective Luis Hernandez and Westminster Police Detective Kent Hampshire interviewed Officer Tate the night of this incident with his attorney present. Officer Tate stated that he has approximately eleven years of experience as a law enforcement officer with the last three being with the Thornton Police Department.

Officer Tate stated on December 3, 2016 at approximately 6:13 pm he was on routine patrol in full police uniform in a marked police patrol vehicle. Officer Tate had just cleared a call at the 7-11 store located at 8801 Huron Street when dispatch reported shots fired at 9189 Gale Blvd., building #2. Officer Tate advised dispatch that he was in the area and would be responding on Gale Blvd. from the south. Dispatch advised him that there were multiple callers for this incident, and that the dispatchers could hear shots being fired in the calls. Dispatch described the suspect as being armed, wearing blue jeans and a black Denver Broncos jacket.

Officer Tate stated that as he drove northbound on Gale Blvd., he heard another officer on the radio relaying information that she saw the suspect walking south on Gale Blvd. Officer Tate said he saw a white or Hispanic male party matching the description walking at a fast pace southbound on Gale Blvd. Officer Tate stopped his patrol vehicle, got out, and immediately identified himself. He also gave loud, repetitive verbal commands, "Police! Stop! Get on the ground, get on the ground!" The suspect looked at him and immediately ran westbound through a parking lot then south around the west side of building #6. Officer Tate said he chased the suspect but decided not to follow the suspect around the building. Instead, Officer Tate ran parallel to the suspect on the opposite side of building #6, thinking he would see him through the clearing between building #6 and building #7.

As the suspect ran around building #6 toward building #7, Officer Tate stood in the shadow of a tree waiting for him. Officer Tate saw him run through the open space between the two buildings. As the suspect ran, Officer Tate said they made eye contact with one another. Officer Tate said the suspect ran by with his left arm raised up, as if he's pointing a gun at Officer Tate. Officer Tate said based on the information received from dispatch—the nature of the call, the number of callers, and the fact the dispatcher heard shots—he thought the suspect

had just pointed a gun at him. Officer Tate said, "He pointed his arm up like he had a gun; he's a serious threat. He just pointed a gun at me." Officer Tate estimated the distance between the two to be approximately seventy feet at the time the suspect raised his arm and pointed at him. He also said that although it was dark outside, there was enough light from the apartment buildings for him to see the suspect and for the suspect to see him. Officer Tate said the suspect continued running behind building #7 on the west side of the building, so he cautiously approached to the south, found a little cover, and waited for the suspect to emerge on the south side of building #7. When the suspect was visible on the south side of building #7, between #7 and #8, he was still running. Officer Tate said he continued to try and stop the suspect by identifying himself as an officer and giving him loud, repetitive verbal commands such as, "Police! Get on the ground!"

Officer Tate described how the suspect slowed down from running, and began walking towards him. Officer Tate continued shouting repetitive verbal commands to stop. As the suspect walked towards Officer Tate, he put both arms up in front of him, in what Officer Tate described as a "shooting stance." The suspect had both arms extended out in front of him and he appeared to be holding something. Officer Tate stated he was unable to see exactly what the suspect had in his hands. He said at that exact point and time, based on everything that had just transpired, he was in fear for his life. Officer Tate stated he was not sure how many rounds he fired at the suspect, but that he continued to fire until the suspect went down. When asked why he shot at the suspect, Officer Tate said,

"Because I was in fear for my life. I thought he was gonna start shooting at me and I figured my train of thought was I'm gonna get him before he gets me. Based on everything that happened, I know he has a gun, I know he just fired rounds at somebody, I don't know if anybody's dead, I don't know anything. I know that he pointed a gun at, point, he pointed something at me here. I don't know what it was, but him challenging me at this point, I figured he was gonna try and take me out because I was probably, he, one of the only cops there at the point that he saw, he'd get rid of me, he's gone. I figured that he about, he, his intent was to take me out or at least scare me with firing rounds at me or something."

Officer Tate stated that after he shot, the suspect fell to the ground and the suspect began shouting out "you shot me!" Officer Tate said he was still behind a tree, and when he saw the suspect's arms were out to the side, he cautiously approached. At that time, he saw another officer near the suspect. He said he and the other officer approached the suspect. Officer Tate secured his weapon and placed handcuffs on the suspect. Officer Tate then asked the suspect where he was hit, and the suspect stated he was shot in his leg. Officer Tate observed blood on the suspect's left leg, applied a tourniquet to the suspect's upper leg to stop the bleeding, and called for medical assistance for the suspect. As they were waiting for medical, Officer Tate began asking the suspect where his gun was, but the suspect never responded. Officer Tate patted the suspect down and did not locate a gun. When medical arrived, the shift supervisor instructed Officer Tate to go to the Thornton Police Department.

Officer Tate stated there were light poles sporadically placed throughout the apartment complex and apartment parking lot, therefore he was able to clearly see the suspect, as well as his (suspect's) actions. He was also able to clearly see behind the suspect. There were no other

pedestrians or vehicles behind, giving him a clear backdrop at the time that he shot. Officer Tate stated that from the moment he first saw the suspect to the time he discharged his weapon, took approximately ten seconds.

#### **Officer Jesenia Ledesma:**

Adams County Sheriff Detective Luis Hernandez and Westminster Police Detective Kent Hampshire interviewed Officer Jesenia Ledesma the night of this incident. Officer Ledesma stated that she has been with the Thornton Police Department for approximately two years.

Officer Ledesma stated that at 6:13 pm, dispatch alerted shots being fired at 9189 Gale Blvd., building #2. She was already in the area, eastbound on Thornton Parkway near Gale Blvd. She turned her patrol vehicle around, and while at the traffic light at Gale Blvd. attempting to turn southbound onto Gale Blvd. with her window down, she heard what sounded like three to four gunshots coming from the nearby apartment complex. Officer Ledesma stated that dispatch identified a suspect as a male party wearing a dark coat and jeans. While she was still at the traffic light, she observed a Hispanic male with dark hair wearing a baggy letterman-style jacket walking northbound on the sidewalk located on the west side of Gale Blvd. As she started to turn southbound onto Gale Blvd., the suspect may have seen her patrol car, as he turned around and started walking southbound away from her.

Officer Ledesma stated that Officer Tate was in the area in his marked patrol vehicle, traveling northbound on Gale Blvd. Officer Ledesma observed no other vehicle or pedestrian traffic, and the suspect immediately began running westbound through the apartment complex. Officer Ledesma said approximately one to two seconds went by and she saw Officer Tate chase the suspect on foot. Officer Ledesma estimated approximately ten to fifteen seconds after seeing Officer Tate chase the suspect, she heard eight to ten rapid gunshots coming from the direction of Officer Tate and the suspect. She drove around the backside of building #7 and saw the suspect on the ground with Officer Tate holding him at gunpoint on the south side of building #7, just west of building #8. She heard Officer Tate giving the suspect commands not to move. Officer Ledesma assisted Officer Tate, and together they took the suspect into custody.

Officer Ledesma observed the suspect bleeding from his left leg. Officer Tate removed his tourniquet and Officer Ledesma secured the tourniquet on the suspect's upper left thigh. The officers immediately called for medical assistance for the suspect. As they waited for medical to arrive, Officer Tate asked the suspect to identify where the gun was located. The suspect replied, "I'm not gonna tell you where the gun is at!" The suspect was uncooperative with medical staff. He had to physically be picked up and placed on a gurney. Officer Ledesma could smell the odor of an unknown alcoholic beverage on the suspect's breath.

#### **SUSPECT INFORMATION:**

The suspect was identified as Adrian Munoz, DOB 9/8/87. Mr. Munoz has been in the criminal justice system since 2001 and has several prior convictions. Mr. Munoz is currently

facing the following charges for his alleged involvement in this incident: two counts of Attempted Murder in the First Degree, Assault in the First Degree and Attempted Assault in the First Degree. The charges were filed and are pending in Adams County District Court. Mr. Munoz exercised his constitutional rights to remain silent and refused to discuss this incident with law enforcement. Additionally, he refused to release any of his medical records. It is apparent from the officers who came into contact with Mr. Munoz after this incident that he had one gunshot wound to his upper left leg. Although there were several witnesses to the initial shooting, only Officer Tate and Mr. Munoz were present at the exact time of the shooting incident between the two of them. Mr. Munoz's criminal case is currently set for Jury Trial on June 16, 2017. The underlying facts of the initial shooting that led up to the call for service are not part of the analysis and conclusions regarding this incident, as Mr. Munoz is presumed innocent in his underlying criminal case.

### **SCENE INVESTIGATION**

Adams County Sheriff Sergeant Richard Coffee processed the scene and collected evidence from Officer Tate. Sergeant Coffee retrieved Officer Tate's service weapon which was a .45 caliber Glock 21 semiautomatic handgun. In addition to the magazine in his duty weapon, Officer Tate carried an extra magazine on his duty belt. Each magazine was capable of carrying thirteen (13) cartridges and Officer Tate stated that he carried his magazines full with one cartridge in the chamber. Sergeant Coffee removed the magazine from the handgun and found five (5) live Speer 45 cartridges and one (1) live cartridge from the chamber. Eight (8) cartridges appeared missing, indicating that Officer Tate fired his weapon a total of eight (8) times during this incident.

The scene is made up of a series of apartment buildings located on the west side of Gale Blvd. The buildings that are relevant to this investigation are buildings #2 through #8. Building #2 is located closest to the intersection of Thornton Parkway and Gale Blvd. with Building #8 located further south from the intersection. This shooting incident occurred between building #7 and building #8. Building #7 is located at the far west side of the complex, near the property line. The footprint of the building is from north to south with a parking lot located on the west and south sides of the building. A large grassy area is located on the east side of building #7. Building #8 is located at the south east corner of building #7. The footprint of building #8 is from east to west with a small grassy area on the west side and a parking lot to the south of building #8. There is a sidewalk that goes in between buildings #7 and #8.

Blood was located on this sidewalk south of building #7 and just west of building #8. This is the approximate area where it was reported that Mr. Munoz was found after the shooting. A .45 caliber FEG model GKK-45 handgun was located in a bush located to the southwest corner of building #7. The slide of this handgun was locked in the rear position, a common position of a handgun that has discharged all of its rounds. Sergeant Coffee removed the magazine from the handgun and it revealed no cartridges.

In an open area southeast of the corner of building #7, west of the sidewalk, were four (4) Speer .45 caliber cartridge casings consistent with Officer Tate's service weapon. This area consisted of several thick bushes where it could be presumed that the other four cartridge casings that were not found are located. In the grassy area between buildings #7 and #8 are four furrow

areas consistent with projectile impacts in the grass. These impact points were in line from the area where Officer Tate's cartridge casings were located on the southeast corner of building #7 in a southwest direction toward the parking lot. Further in this same direction in the parking lot, a trash dumpster was located that had two additional projectile impact points. A projectile was recovered from the interior of the dumpster area and another projectile was recovered in a storage shed behind and to the southwest of the dumpster.

### LEGAL ANALYSIS

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officer. 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 officers actions were not justified under the circumstances surrounding this incident and the applicable law.

There is no dispute that Officer Clarendon Tate intentionally fired his weapon and caused injury to Adrian Munoz on December 3, 2016. The legal question presented to the Office of the District Attorney is whether it can be proved beyond a reasonable doubt that at the time the officer fired his weapon that his actions were **not** justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under § 18-1-707, C.R.S. (2016), 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 immanent 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.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If they believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is affecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

“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. (2016).

Officer Tate was responding to shots actively being fired at the Creekside Place Apartments building #2, located at 9189 Gale Blvd. in Thornton on December 3, 2016. Dispatch provided a description of the suspect. When Officer Tate arrived on scene, he observed a suspect matching the description given to him walking at a fast pace southbound on Gale Blvd. Officer Tate stopped his marked patrol vehicle, got out, and immediately identified himself. Officer Tate gave the suspect loud, repetitive verbal commands, "Police! Stop! Get on the ground, get on the ground!" The suspect then ran westbound through a parking lot then south around the west side of building #6 of the apartment complex. Officer Tate chased the suspect, thinking he would see him through the gap between building #6 and building #7.

As the suspect ran around building #6 to building #7, Officer Tate saw him run through the open space between the two buildings and the suspect made eye contact with Officer Tate. The suspect ran by with his left arm raised up, as if he was pointing a gun at Officer Tate. Officer Tate believed the suspect had pointed a gun at him based on the information received from dispatch, the nature of the call, the number of callers, and the fact the dispatcher heard shots. This is certainly a reasonable conclusion based on the circumstances at the time.



When Officer Tate saw the suspect on the south side of building #7 (between building #7 and #8), he was still running. Officer Tate was on the north side of the gap between building #7 and #8 and again identified himself by giving loud, repetitive verbal commands such as Police! Get on the ground! At that time, the suspect slowed down and walked towards Officer Tate. Officer Tate continued to shout repetitive verbal commands. As the suspect was walking towards Officer Tate, he put both arms up in front of him, in a "shooter's stance," with his arms extended out in front of him. Officer Tate was unable to see exactly what the suspect had in his hands, but fearing for his life, he fired his service weapon at the suspect striking him in his left leg.

There are no other eye witnesses to this shooting other than Mr. Munoz and Officer Tate. Mr. Munoz did not provide a statement in this investigation. However, the physical evidence and Officer Ledesma's statement corroborates Officer Tate's version of events. The location of the handgun in a bush on the southwest corner of building #7 is consistent with Mr. Munoz having thrown it in the bush as he rounded building #7 running away from Officer Tate. This is also consistent with Mr. Munoz possessing the handgun as he was running past the area between building #6 and building #7—the area that Officer Tate observed Mr. Munoz point the handgun at him. The location of the cartridge casings and projectile impacts are also consistent with how Officer Tate described this shooting incident.

Based on the information available to him at the time of the incident, Officer Tate had a reasonable belief that he was actively pursuing a suspect who was armed with a handgun and had just committed a felony. In addition, having just observed Officer Tate taking a "shooting stance," he also had reason to believe that his life may be in danger just prior to firing his service weapon.

Under these facts, the Office of the District Attorney cannot prove that Officer Clarendon Tate's actions were not justified as applied to CRS §18-1-707. Therefore, the prosecution is unable to prove beyond a reasonable doubt that Officer Tate committed the elements of any crime.

### CONCLUSION


Based on Officer Tate's observations at the time of the shooting, he had a reasonable belief that Mr. Munoz had committed a felony with the use of a deadly weapon and was trying to escape. He also reasonably believed that there was an imminent need to stop Mr. Munoz in the interest of public safety.

Additionally, the amount of force used was reasonable, because Mr. Munoz was armed with a handgun, was in close proximity of Officer Tate, refused to comply with Officer Tate's lawful orders and appeared to advance on Officer Tate. Officer Tate stated that he fired his service weapon because at that exact point and time based on everything that had just transpired, he was in fear for his life. As such, there is no basis for which to conclude a lesser degree of force was necessary.

Given all the facts and circumstances of this incident, the prosecution cannot prove that Officer Tate's actions of shooting Mr. Munoz was not justified under CRS §18-1-707. Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Tate for shooting Adrian Munoz on December 3, 2016.

Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young  
17th Judicial District Attorney