



November 2, 2018

Sheriff Michael McIntosh
Adams County Sheriff's Office
332 North 19th Avenue
Brighton, CO 80601

Re: *The investigation of the officer-involved shooting of Adrian Emmanuel Martinez,*
DOB 12/22/2000, occurring on July 7, 2018

Dear Sheriff McIntosh,

The investigation and legal analysis of the officer-involved shooting of Adrian Emmanuel Martinez is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation in this matter, Detective Fred Longobricco with the Thornton Police Department and Investigator Mark Rule with the 17th Judicial District Attorney's Office led the investigation into this matter. 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. The factual findings were presented to my office on September 11, 2018. The CIIT presented police reports, videos of interviews, photographs and diagrams of the 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. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond 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 police department policies were followed, or whether policies, practices, or training from 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 beyond a reasonable doubt that the involved officer committed any crimes. Therefore, no criminal charges will be filed against the law enforcement officer involved in this incident.

OVERVIEW OF THE INCIDENT

On July 7, 2018, Adam's County Sheriff's Deputies responded to 7028 Lipan Street, in unincorporated Adams County, several times regarding a Facebook party and contacted several individuals who were at the location. The 7028 Lipan Street address had been shared through social media as a location of a "pop-up party." That same evening, a black Honda with stolen license plates had successfully eluded Sheriff's Deputies.

Sergeant Brett Eskam and Deputy Kierstead responded to 7028 Lipan Street at approximately 1:30 a.m. A Chrysler 300 and a black Honda, matching the description from the earlier eluding call, were parked outside of the address. Sergeant Eskam and Deputy Kierstead approached the Honda in their marked patrol vehicles. Deputy Kierstead aired over the radio that he located the stolen Honda from earlier in the evening.

The Honda reversed and began driving away from the location. The Chrysler 300 also began to leave the area. The Chrysler 300, followed by the Honda, went northbound on Lipan Street and turned right on West 70th place, heading east. Both cars eventually drove east on West 70th avenue towards Broadway. The vehicles were travelling at high rates of speed and neither vehicle had their lights on. Deputy Kierstead and Sergeant Eskam followed the vehicles. Deputy Kierstead put on his lights and sirens as the vehicles drove eastbound on West 70th Avenue. The Chrysler 300 and the Honda continued travelling at high rates of speed. As the vehicles approached the intersection at West 70th Avenue and Broadway, the eastbound light on 70th Avenue was red. A Buick Enclave was proceeding southbound on Broadway through the intersection. The Chrysler 300 drove through the red light and crashed into the Enclave. The Honda drove through the red light and did not stop.

After colliding with the Enclave, the Chrysler rotated clockwise while traveling eastbound across the intersection and came to a final rest facing southwest in the eastbound lanes of 70th Avenue. Three males jumped out of the Chrysler and ran southbound and eastbound. Deputy Kierstead aired over the radio that the suspects had on dark shirts and dark pants. He then aired an update over the radio that a suspect was now running westbound and was wearing a black jacket and black pants.

Sergeant Eskam parked his vehicle in a parking lot located southeast of the intersection. Sergeant Eskam observed two males running away from the intersection. One male had on a red shirt and the other had on a black shirt. Sergeant Eskam began chasing the male wearing the black shirt eastbound through the parking lot. Meanwhile, Deputy Isaiah Acosta approached the intersection in his marked patrol vehicle and observed a Hispanic male matching Deputy Kierstead's description running southwest. Deputy Acosta in his vehicle followed the male suspect, later identified as Adrian Martinez. Mr. Martinez ran into a parking lot on the west side of Broadway.

As Deputy Acosta approached Mr. Martinez in his vehicle, Deputy Acosta observed Mr. Martinez looking over his shoulder and reaching into his waistband. As Mr. Martinez was looking back, he ran into a parked RV in the parking lot and fell. Deputy Acosta parked his vehicle, exited his vehicle, and yelled at Mr. Martinez to "stay on the ground." Mr. Martinez began getting up off the ground. Mr. Martinez's hands were in his waistband. Deputy Acosta drew his weapon. Deputy Acosta then observed a gun in Mr. Martinez's hands. Deputy Acosta fired several rounds at Mr. Martinez causing Mr. Martinez to fall to the ground. Mr. Martinez was pronounced dead at the scene.

SYNOPSIS OF WITNESS INTERVIEWS

Investigators from the Thornton Police Department, Westminster Police Department, and the 17th Judicial District Attorney's Office conducted interviews of all necessary witnesses at the Sheriff's substation. The following are summaries of the interviews of the involved officers and material witnesses.

Deputy Isaiah Acosta: Deputy Acosta has been employed as a sheriff's deputy with the Adams County Sheriff's Office for approximately three and a half years. Thornton Detective Fred Longobricco and 17th Judicial District Attorney's Office Investigator Mark Rule conducted a recorded interview of Deputy Acosta on July 7, 2018.

Deputy Acosta was dispatched to a trespass of a home in progress on Lipan Street. As Deputy Acosta was responding, Deputy Kierstead aired over the radio that a vehicle at the location matched a stolen black Honda that eluded Deputy Engle earlier in the evening. Deputies aired over the radio that this vehicle was leaving the location. Deputies began airing out the vehicle's location over the radio.

Deputy Acosta began actively searching the area for the black Honda. Deputy Acosta arrived at 7028 Lipan Street and did not see either Deputy Kierstead or Sergeant Eskam. Deputy Kierstead then aired over the radio that the black Honda was travelling east bound on 70th Avenue and failing to yield. Deputy Acosta activated his lights and sirens and attempted to catch up to Deputy Kierstead and Sergeant Eskam. As Deputy Acosta was proceeding to their location, he heard over the radio that another vehicle had been involved in a car accident and came to a stop at the intersection of 70th Avenue and Broadway. Deputy Kierstead aired over the radio that multiple people were running from the vehicle.

As Deputy Acosta approached the intersection, Deputy Kierstead aired that one of the suspects was running westbound. Deputy Kierstead aired that the suspect was a Hispanic male, wearing a black shirt and either black or blue jeans. Deputy Acosta observed a male matching the description running westbound. The male was later identified as Adrian Martinez. Deputy Acosta followed Mr. Martinez in his marked patrol vehicle. Deputy Acosta believed that Mr. Martinez saw him because Mr. Martinez turned back and looked in Deputy Acosta's direction several times and Deputy Acosta's lights and sirens were activated. While Mr. Martinez was running away, he turned to look at Deputy Acosta and Deputy Acosta observed Mr. Martinez tuck his hands into his waist area. Deputy Acosta believed that either Mr. Martinez had a gun concealed or Mr. Martinez's pants were "sagging." Deputy Acosta stated that he did not feel threatened at that time because he was not certain that Mr. Martinez had a gun.

As Mr. Martinez continued to run away, he tripped and fell towards a parked RV camper. Deputy Acosta stopped and got out of his vehicle. Deputy Acosta and Mr. Martinez were now approximately five to seven feet from each other. Deputy Acosta yelled "police" and to "stay on the ground." Deputy Acosta's initial plan was to jump on Mr. Martinez, subdue him, and place him into handcuffs. As Deputy Acosta yelled commands, Mr. Martinez stood up and continued to place his hands in his waistline. At this point, Deputy Acosta believed that Mr. Martinez may be reaching into his waistline because he had a gun. This caused Deputy Acosta to draw his service weapon. Mr. Martinez then turned towards Deputy Acosta, Deputy Acosta saw a black handgun in Mr. Martinez's hands pointed directly at him.

Deputy Acosta remembered seeing the barrel of the gun pointing directly at him and he ordered Mr. Martinez to "drop the gun." Deputy Acosta "pied" to the side and began shooting Mr. Martinez. Deputy Acosta believed that his life was in danger causing Deputy Acosta to shoot Mr. Martinez. Deputy Acosta fired his gun until Mr. Martinez was on the ground and the threat was over. Deputy Acosta aired over the radio "shots fired." Deputy Acosta stated at the time he fired he felt that Mr. Martinez was going to shoot and kill him to get away. Deputy Acosta said that he was close to me that he could have easily killed me. Mr. Martinez fell next to the left rear tire of the camper.

Deputy Acosta began searching for the gun in order to ensure that Mr. Martinez was separated from the gun. Deputy Acosta located the gun on the opposite side of the trailer from where Mr. Martinez was lying. The gun was on the ground next to the front passenger side of the camper. Deputy Acosta stated that it was a black semi-automatic handgun.

Sergeant Brett Eskam: Sergeant Eskam is employed by the Adams County Sheriff's Office. Thornton Detective Fred Longobricco and 17th Judicial District Attorney's Office Investigator Mark Rule conducted a recorded interview of Sergeant Eskam on July 7, 2018.

Sergeant Eskam was dispatched to a trespass at 7028 Lipan Street. Sergeant Eskam was aware that Adams County Sheriff's Deputies responded earlier in the evening to the same location. Sergeant Eskam stated that it was a "Facebook party" and individuals had returned to the abandoned house located at that address.

Sergeant Eskam drove north on Lipan Street towards the address. He observed a Honda facing south, parked west of a Chrysler at the location. Sergeant Eskam drove past the Chrysler, turned around and approached the Honda. Deputy Kierstead had arrived behind Sergeant Eskam. Sergeant Eskam assumed that Deputy Kierstead was going to contact the Chrysler. As Sergeant Eskam approached the Honda, the Honda reversed and started going northbound on Lipan Street. The driver of the Honda did not activate the vehicle's lights. Deputy Kierstead aired over the radio that the Honda may be the same stolen vehicle deputies attempted to contact earlier in the night.

The Honda continued north, stopped, and turned eastbound on 70th Place. Sergeant Eskam attempted to get behind the Honda in order to shoot a star chaser GPS tracker onto the Honda. Sergeant Eskam believed that the driver of the Honda saw the GPS tracker's green laser because the Honda began making left and right movements. Sergeant Eskam was unable to attach the GPS device to track the Honda. Sergeant Eskam aired over the radio that the Honda may be headed to Broadway. Deputy Kierstead then passed Sergeant Eskam's vehicle. Deputy Kierstead began following the Honda, with Sergeant Eskam following behind Deputy Kierstead.

As the group of vehicles approached Broadway, Deputy Kierstead activated his overhead lights. Sergeant Eskam observed a car in the distance driving south on Broadway, crossing the intersection of 70th Avenue. At this point, a car accident occurred. Sergeant Eskam had difficulty seeing the accident from his vantage point. Sergeant Eskam initially thought that the Honda was involved in the car accident.

Three or four people exited the vehicle involved in the car accident and began running southeast. Sergeant Eskam parked his vehicle in the southeast business parking lot and activated his spotlight. Sergeant Eskam observed a male matching the description of one of the individuals seen running from the vehicle wearing a red shirt. This male looked to the left, to the right and back to the left. Sergeant Eskam looked towards the left and observed a second male wearing a black shirt. This male ran eastbound through the southern part of the parking lot and through a gap in the fence. Sergeant Eskam began following this male. Sergeant Eskam announced "police, stop, you are under arrest." The male turned back at Sergeant Eskam but continued running southbound.

As this was occurring, Sergeant Eskam observed another patrol car park in the parking lot located west of Broadway. The patrol vehicle's lights and sirens were activated. Sergeant Eskam then heard rapid gunfire coming from that area. Sergeant Eskam ceased chasing the male and ran towards the gunfire, while airing "shots fired" over the radio. The gunfire stopped while Sergeant Eskam was running across Broadway.

Sergeant Eskam observed Deputy Acosta in the parking lot with his service weapon out. As Sergeant Eskam approached Deputy Acosta, Sergeant Eskam observed a man lying on the ground bleeding. Sergeant Eskam stated that the male appeared to be deceased. Sergeant Eskam asked if Deputy Acosta had been injured and asked whether anyone else had been involved. Deputy Acosta responded, "I am safe, I am good" and "I am going home tonight." Deputy Acosta told Sergeant Eskam that the male had a gun. Sergeant Eskam asked Deputy Acosta where the gun was located. Deputy Acosta replied that he did not know and that the male may have thrown it. Sergeant Eskam located a handgun on the ground next to the front passenger side of the camper. The camper was parked in the southern part of the parking lot. A magazine was also located on the ground next to the gun. Sergeant Eskam began securing the scene and airing information about the other males that ran southbound.

Deputy Dana Kierstead: Deputy Kierstead is a deputy sheriff employed by the Adams County Sheriff's Office. He has been assigned to patrol for two and a half years. Thornton Detective Fred Longobricco and 17th Judicial District Attorney's Office Investigator Mark Rule conducted a recorded interview of Deputy Kierstead on July 7, 2018.

Deputy Kierstead stated that earlier in the evening, a black Honda civic had successfully eluded sheriff's deputies. The only individual in the vehicle was a young Hispanic male who was driving the Honda. Deputies later learned that the license plates on the Honda had been stolen. Deputy Kierstead also stated that earlier in the evening, he had responded to a trespass of an abandoned home located at 7028 Lipan Street. The reporting party had indicated there were several people either in the house or the backyard. Deputy Kierstead cleared the party. While on scene, Deputy Kierstead learned that the gathering was a "Facebook pop up party."

Between 1:20 a.m. and 1:30 a.m., a trespass in progress at 7028 Lipan Street was aired over the radio for a second time. Deputy Kierstead and Sergeant Eskam responded to the location. Deputy Kierstead observed several vehicles parked at the location, including a van, a Chrysler 300 and black Honda Civic. The black Honda Civic was spray painted black and was occupied by a single male Hispanic driver. Deputy Kierstead approached the Honda in his patrol vehicle. As he approached, the driver of the Honda turned on the vehicle, placed the vehicle in reverse, quickly reversed and made a"

J-turn." Deputy Kierstead aired that he believed that Honda was the same stolen vehicle from earlier in the evening. Sergeant Eskam began to follow the Honda.

Deputy Kierstead drove east on 70th Place. The Chrysler 300 and Honda both turned east on 70th, both vehicles accelerated from 35-40 miles per hour to 70 miles per hour. Both vehicles lights were also "blacked out." At this point, Deputy Kierstead realized that the Chrysler was eluding as well. Both of the vehicles approached the intersection of Broadway and 70th Avenue at approximately seventy miles per hour. The light at the intersection was red. Deputy Kierstead was about to air out that the two vehicles were eluding when the Chrysler drove through the intersection and t-boned another vehicle. Instead of airing out that vehicles were eluding, Deputy Kierstead aired out that there had been an accident. The Honda continued driving eastbound. Deputy Kierstead remained on scene with the Chrysler.

Two female front seat occupants remained in the Chrysler and three males exited the backseat of the Chrysler and ran. The three males ran east and then south past a tire shop. Deputy Kierstead remained with the female passengers and began giving commands for them to put their hands up. The females were later identified as Grisel Dominguez and Destiny Rodriguez. As he was giving commands, Deputy Kierstead observed one of the males running westbound.

Deputy Kierstead aired over the radio that the male was running west and wearing a black jacket, black pants and black shoes. Deputy Kierstead observed Deputy Acosta arrive in a marked patrol vehicle with his lights on. At this point, Deputy Kierstead aired, "there he is, there he is, there he is." Deputy Kierstead then returned his attention to Ms. Dominguez and Ms. Rodriguez ordering them out of the vehicle. Deputy Kierstead then heard two to three gunshots. Deputy Kierstead stated that he was unable to see Deputy Acosta and the male from where he was standing. Deputy Kierstead then placed Ms. Dominguez and Ms. Rodriguez in handcuffs and responded to Deputy Acosta. Deputy Kierstead ensured that Deputy Acosta was not injured.

Deputy Kierstead then returned to the intersection and began directing incoming traffic and emergency vehicles. Deputy Kierstead also checked on the driver of the vehicle that was hit by the Chrysler. He then drove Ms. Dominguez and Ms. Rodriguez to the Sheriff's substation for an interview.

Bryan Navarrete: Mr. Navarrete was interviewed shortly after the incident at the Adams County Sheriff's Office Substation. Detective Dean Groff of the Federal Heights Police Department interviewed Mr. Navarrete.

Mr. Navarrete was the second vehicle stopped in the left turning lane at the stop light on 70th Avenue and Broadway. As he was waiting for the light to turn, he observed a Suburban drive through the green light. Mr. Navarrete heard sirens coming from the top of the hill. He then observed a "dark colored, dark green" vehicle going extremely fast and being chased by the police. The dark green vehicle ran the red light and hit the Suburban, causing the Suburban to spin out of control. Mr. Navarrete observed at least two people get out of the dark green vehicle and run away. Mr. Navarrete then drove to a parking lot and parked his vehicle. He remained in his car with the lights on. The parking lot contained an empty car and an RV.

Mr. Navarrete looked in his rear view mirror and observed a police car that had its overhead lights on. He also observed a male run from behind the RV towards the front of the RV. Mr. Navarrete was uncertain about where they had come from. The police officer was standing next to the officer's vehicle and the officer repeatedly yelled the order, "get on the ground." Mr. Navarrete estimated that he was three to four car lengths away from the officer and the male. Mr. Navarrete was unable to observe the male's hands and did not know whether anything was in the male's hands. He heard gunshots, but did not see the shooting. He heard two continuous shots, a slight pause of 1-2 seconds then heard more shots. He is unsure of how many shots he heard but believes it was four shots.

After the shooting, the police officer remained alone for about 20-30 seconds. During this time, the officer remained facing the male with his gun drawn. The officer remained in this position until other police officers arrived. Mr. Navarrete did not observe any of the officers pick anything up off of the ground. Mr. Navarrete believed that the male came from the dark green vehicle but he was not certain.

Destiny Rodriguez: Detective Steve Sanders of the Westminster Police Department and Detective Adam Sherman of the Adam's County Sheriff's Office interviewed Ms. Rodriguez on July 7, 2018.

Ms. Rodriguez is friends with Grisel Dominguez. Ms. Dominguez was by herself when she picked Ms. Rodriguez up at her home at approximately 11:30 p.m. on July 6, 2018 in the Chrysler 300. The two of them went to a party in Montebello for a short period of time. They then went to a party in Aurora. When they arrived at the Aurora party, they observed a fight outside the party and everyone leaving.

The two then proceeded to a party in Thornton. They knew about the party from Facebook. There were other vehicles pulling up to the party when Ms. Rodriguez and Ms. Dominguez arrived. A van was parked behind Ms. Dominguez's vehicle. The individuals from the van were outside of the van, drinking and smoking. They told Ms. Rodriguez that there had been a party at the location earlier in the night but the police had broken it up.

The group from the van began shooting off fireworks. At this point, three "guys" jumped in the backseat of their vehicle. Ms. Rodriguez stated that she did not know who these male individuals were and that they kept calling each other "B." This caused Ms. Rodriguez to assume that they were associated with the bloods gang. The only description that Ms. Rodriguez provided of the males was that one of them had a black shirt on. Ms. Rodriguez stated she was unable to provide a more detailed description because she was seated in the front passenger seat and focused on rolling a "blunt" (marijuana cigarette). The males also began to roll a "blunt" in the backseat.

Ms. Rodriguez observed a police car arrive at the location and make a U-turn. The police car had a bright light on, but no sirens. The males in the backseat closed the doors and started yelling at Ms. Dominguez to start driving. Ms. Dominguez panicked and drove away. Ms. Rodriguez stated that she was unsure whether the police were following Ms. Dominguez's vehicle because there was another vehicle between the Chrysler 300 and the police vehicle. Ms. Rodriguez stated that the males in the backseat stated that the police were not chasing them but were chasing the other vehicle. The males repeatedly said to Ms. Dominguez, "you are good, you are okay." Despite this, Ms. Dominguez told the males that the police car was chasing her vehicle.

Ms. Dominguez approached the stoplight at 70th Avenue and Broadway. Ms. Dominguez stopped for a moment but the males in the back yelled at Ms. Dominguez to keep going. Ms. Rodriguez observed a car driving towards the intersection causing Ms. Rodriguez to tell Ms. Dominguez to stop. Ms. Dominguez then proceeded through the red light. The vehicle that was approaching the intersection crashed into the passenger side of the Chrysler 300. The air bags deployed and Ms. Rodriguez flew forward into the passenger side airbag.

Ms. Rodriguez heard the males in the back scream, "get out, get out." The males then got out of the vehicle and ran away in an unknown direction. A police officer approached the vehicle with his gun drawn. The officer ordered Ms. Dominguez and Ms. Rodriguez to exit the vehicle. Ms. Rodriguez complied with the Officer's orders. Ms. Rodriguez heard the officer state over the radio that one of the back passengers ran west. Ms. Rodriguez heard gunshots but was unable to see where the gunshots were coming from. Ms. Rodriguez did not know whether anyone in their vehicle had a gun.

Grisel Dominguez: Detective Steve Sanders of the Westminster Police Department and Detective Adam Sherman of the Adams County Sheriff's Office interviewed Ms. Dominguez shortly after the incident at the Adam's County Sheriff's Office Substation.

Prior to the accident, Ms. Dominguez stated that she and her friend Destiny had been at a party. Ms. Dominguez insisted that this was the only party that she and Destiny had attended that evening. Destiny had learned about the party on Facebook. Ms. Dominguez drove herself, Destiny and three "guys" to the party. Ms. Dominguez stated she had only met them one time before and only knew them by their nicknames; their nicknames are MOA, Little E, and Little B. Ms. Dominguez believed all three of them were bloods. Ms. Dominguez stated that Destiny also knew the three individuals.

When the group arrived at the party, they were told that the party had been "crashed." There were two other vehicles parked at the party, a van and a car. Ms. Dominguez was unable to provide details about the car other than that there were two males inside of it. Ms. Dominguez stated that the occupants of the van were shooting fireworks. Ms. Dominguez stated that she was just "chilling" in her car and they never exited the vehicle. A police car drove up to the location, made a U-Turn and flashed a bright light on the vehicles. Ms. Dominguez panicked and drove away.

Ms. Dominguez believed that the police car was chasing her but everyone in her car kept yelling that the police were chasing another car. At other times, she stated that the males screamed at her to keep driving. She did not know what to do so she kept driving. Ms. Dominguez drove through a red light, without stopping, and crashed into another vehicle. MOA, Little E and Little B jumped out of her car and ran in an unknown direction. A police officer approached her vehicle and had Ms. Dominguez and Destiny exit the vehicle. The officer placed them both into his patrol car, while she was in the back of the police car, Ms. Dominguez called her mother. Ms. Dominguez told her mother that she was in an accident.

Ms. Dominguez then heard gunshots and believed them to be "cop shots." Ms. Dominguez was unable to see the shooting from her vantage point. Ms. Dominguez stated that she heard officers yelling stop prior to the shooting.

Ms. Dominguez allowed the Detectives to look at the contents of her cell phone. Her call log indicated that she had called Brian at 2:01 a.m. via Facebook messenger audio. Ms. Dominguez stated that Brian was her brother and that she was attempting to call him and her mother. At this point in the interview, Detective Sanders confronted Ms. Dominguez about the inconsistencies between Ms. Dominguez's story and that of other witnesses. Ms. Dominguez then requested to start over.

Ms. Dominguez admitted that she knew the three individuals in her backseat and their names are Brian, Adrian, and Frankie. Earlier in the evening, Destiny and she had gone to a party in Aurora. When she arrived at the party, a crowd was fighting outside and she heard gunshots. Ms. Dominguez saw Brian, Adrian and Frankie in the crowd. She did not speak to them while she was at the Aurora location because they were involved in the fight. Ms. Dominguez left the party without exiting her vehicle.

Ms. Dominguez received a text from Brian shortly after she left the Aurora party. Brian asked her to pick the group up. Ms. Dominguez agreed and picked Brian, Adrian, and Frankie up at her house. The group then traveled to the party on Lipan Street. When she arrived, she parked her vehicle behind a gray Honda. She stated an individual named Sosa was driving the Honda. She did not know Sosa but everyone greeted him by this name. Initially, the Honda parked in front of her but then turned around and parked on the other side of the street facing the opposite direction.

Officers arrived and she drove off. Ms. Dominguez believed the officers were following her through the neighborhood. As she approached the "big road", the officer turned on his emergency lights. She stated that everyone in the car was screaming at her to keep going and to get onto the highway. Ms. Dominguez was focused on getting away and never stopped her vehicle. Ms. Dominguez did not know why the males were so intent on fleeing the scene. Ms. Dominguez felt that they "probably" had guns and all three of them had "dope."

Other witnesses: Additional witnesses that were in the area were contacted and interviewed by investigators. None of the individuals contacted had any further information beyond what is summarized here. In summation, these witnesses were near the scene but did not see the shooting take place or had no additional information relevant to the decision to file criminal charges in this matter.

SCENE INVESTIGATION

Senior Criminalist Ivanie Meir from the Westminster Police Department and Criminalist Brenda Harris of the Broomfield Police Department conducted the scene investigation.

Both Criminalist Meir and Criminalist Harris first went to the Adams County Sheriff's Office Substation and received a briefing about the incident. Criminalist Meir then photographed Deputy Acosta. Deputy Acosta was wearing an Adams County Sheriff's Office issued police uniform with a duty belt containing a firearm, two extra magazines, handcuffs, a Taser and a radio. Criminalist Harris collected Deputy Acosta's Glock 9mm weapon and his spare magazines. Deputy Acosta confirmed that this was the firearm used during the shooting. He stated that he had seventeen rounds in the magazine and one round in the chamber prior to the shooting. Deputy Acosta's weapon contained four

9mm Winchester luger bullets, and one chambered round. A total of thirteen rounds were missing from Deputy Acosta's weapon.

Criminalist Meir and Criminalist Harris then proceeded to the scene located at 70th Avenue and Broadway. The entire intersection was secured with crime scene tape. Criminalist Harris photographed the scene and Criminalist Meir placed evidence markers throughout the scene.

Vehicle parts were scattered on the road and gouge marks were present on the asphalt. A brown Buick Enclave was facing northwest on Broadway. Both back tires were destroyed and the vehicle was sitting on its rims. The front passenger side tire was flat and the back right quarter panel was severely damaged. The vehicle's airbags were deployed. A second vehicle, a Chrysler 300 was located on 70th Avenue, east of Broadway, pointing west. The Chrysler 300 had front-end damage. The Chrysler 300's airbags were deployed.

A Colorado Land Tire and Service business with a parking lot is located just west of the intersection. An RV camper was parked in the south section of the parking lot. The camper was positioned at a slight angle, with the front end of the camper facing east. The ground clearance of the RV camper was 1.4 feet. The criminalists observed a deceased male body lying on the ground in a supine position. His head was positioned north, his left arm extended out and away from his body. His right arm was close to his torso with his elbow slightly bent. He was dressed in white sneakers, black pants, a white t-shirt, and a black jacket.

A handgun was located on the ground next to the front passenger side of the camper. The gun was lying next to the curb on top of dried grass. The magazine was located just west of the handgun. One live 9mm Winchester round was observed next to the handgun and magazine. Four 9mm Winchester shell casings were located near the front of the back left tire of the camper. Five 9mm Winchester shell casings were located underneath or behind the back left tire of the camper. Three shell casings were located behind the camper. One 9mm Winchester shell casing was located near the right heel of the male body. A total of thirteen 9mm Winchester shell casings were collected from the scene.

Criminalist Harris processed the handgun recovered at the scene. It was a Ruger 9mm handgun, Serial #320-67039. It had plant material lodged underneath the slide, just below the open chamber. The handgun contained scrape marks on the front part of the slide and on the left of the slide. Criminalist Harris opined that these scrape marks are consistent with the handgun sliding across the pavement of the parking lot. Plant material was also observed on the top part of the slide area. The weapon had five live 9mm Winchester rounds in the magazine; one of the rounds was a hollow point.

On July 10, 2018, Criminalist Harris requested that Criminalist Steve Austin of the Broomfield Police Department determine the functionality of the firearm and the magazine recovered at the scene. Criminalist Austin confirmed that the firearm is capable of being fired but that when the handgun is empty, it will not fire without having a magazine inserted. Criminalist Austin also confirmed that the magazine falls freely from the firearm by pressing the magazine release button.

MEDICAL EXAMINATION ANALYSIS

On July 9, 2018, Dr. Stephen Cina conducted an autopsy of the male identified as Adrian Martinez, date of birth, December 22, 2000. Dr. Cina noted that there was evidence of medical intervention consisting of an EKG lead on the lower legs and wrists.

Dr. Cina identified a total of thirteen gunshot wounds. Dr. Cina opined that two bullets exited his arm and reentered his head. There was no evidence of close range shooting. Ten projectiles and bullet fragments were recovered during the autopsy. Mr. Martinez suffered injury to his heart, esophagus, spinal cord, diaphragm, liver, T10 vertebral body, multiple ribs and both lungs. Mr. Martinez had minor abrasions on his right elbow and right knee.

The toxicology report revealed positive levels of alcohol (.112 g/100 mL), 11-Hydroxy Delta-9 THC (2.0 ng/mL), Delta-9 Carboxy THC (46 ng/mL), and Delta0 THC (34 ng/mL). Dr. Cina opined that Mr. Martinez had used marijuana and ethanol prior to his death. Dr. Cina concluded that the cause of death to be multiple gunshot wounds and the manner of death to be homicide.

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 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 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.

In this case, there is no dispute that Deputy Acosta fired his service weapon at Mr. Martinez. Likewise, there is no dispute that the death of Mr. Martinez resulted from multiple gunshot wounds. At the time of the shooting, Deputy Acosta was engaged in the course of his duties as a law enforcement officer. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Deputy Acosta fired his weapon, the prosecution can prove beyond a reasonable doubt that the officers' actions were criminal and 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. (2017), 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.

(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 effecting 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. (2017).

Deputy Acosta believed that a stolen vehicle was eluding officers. It was aired over the radio that the vehicle was driving at high rates of speed and ran a red light causing a car accident. It was also aired over the radio that three suspects were running from the vehicle. Deputy Acosta arrived on scene and observed a male running westbound matching the description aired over the radio by Deputy Kierstead. Deputy Acosta followed the male into a parking lot. Deputy Acosta observed the male fall causing Deputy Acosta to park and exit his vehicle. Deputy Acosta’s initial plan when he exited his

vehicle was to detain Mr. Martinez. Once Mr. Martinez was standing, Deputy Acosta observed a handgun in Mr. Martinez's hands pointed directly at Deputy Acosta. At this point, Deputy Acosta stated he feared for his life and shot Mr. Martinez multiple times. Deputy Acosta was a short distance away from Mr. Martinez and had no other opportunity to find cover.

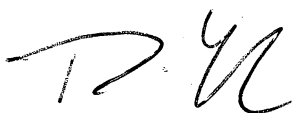
The evidence corroborates Deputy Acosta's version of events. Bryan Navarrete stated that he observed Officer Acosta and Mr. Martinez in the parking lot. Mr. Navarrete heard Deputy Acosta yell at Mr. Martinez to get on the ground. Mr. Navarrete also observed Deputy Acosta keep his gun pointed at Mr. Martinez until other officers arrived. Sergeant Eskam arrived on foot moments after the shooting and Sergeant Eskam also observed Deputy Acosta pointing his gun at Mr. Martinez. After Sergeant Eskam arrived, a firearm was located a short distance away from Mr. Martinez's body. The scrape marks and plant material located on and in the gun are consistent with the firearm either being kicked or thrown at an angle and travelling underneath the camper.

Under these facts, the Office of the District Attorney cannot prove that Officer Acosta's actions of firing at Mr. Adrian Martinez were not justified as applied to C.R.S. § 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 Deputy Acosta for the shooting of Mr. Adrian Martinez on July 7, 2018. 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 dark ink, appearing to read 'D. Young'.

Dave Young
District Attorney