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August 15, 2023

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related the officer-involved shooting that occurred in Thornton on December 27, 2022.

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District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

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



August 15, 2023

Chief of Police Terrence Gordon
Thornton Police Department
9551 Civic Center Drive
Thornton, CO 80229

RE: The officer-involved shooting of Angel Matthew Gallegos and April Martinez on
December 27, 2022

Dear Chief Gordon:

This letter is a review of the 17th Judicial District Critical Incident Response Team (CIRT) investigation into the December 27, 2022, police-involved shooting that resulted in bodily injury to Angel Gallegos and April Martinez. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by Adams County Sherriff's Office Detectives Jason Shearer and Daniel Hill. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Thornton Police Department. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a summary of the facts and materials that the CIRT presented for review, along with my pertinent legal conclusions.

This review is mandated by Colorado law which requires the public release of a report explaining findings and the basis for a District Attorney's decision relative to the filing of criminal charges when officers are involved in the discharge of a firearm that results in serious bodily injury. As such, this review is limited to determining whether any criminal charges should be filed against the involved officers for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all the elements of a crime beyond a reasonable doubt. The prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. The 17th Judicial District Attorney's review does not evaluate compliance with any departmental policies, standards, or procedures.

The circumstances surrounding this incident resulted in criminal charges against Mr. Angel Gallegos and his associate, which, as of the date of this letter, are still pending in Adams County Court and Federal District Court for the State of Colorado. Individuals charged with a crime retain a presumption of innocence until the final resolution of the case. Therefore, despite Colorado law requiring public disclosure of decisions with respect to the filing of charges against an officer, there is great interest in preserving the integrity of the pending criminal cases.

Consequently, and based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, this letter does not reveal all the facts pertinent to the entire investigation. Furthermore, to preserve the integrity of the pending case, the record of this investigation will remain restricted from public access until the conclusion of the criminal proceedings. The record and any video evidence of this investigation will not be made available with this mandatory review.

Further, the involved officers participated in recorded interviews with the CIRT investigators. This review provides a summary of those interviews only as it relates to the legal decision not to file criminal charges against those officers. Mr. Gallegos retains the constitutional right to be presumed innocent, which in no way contributed to the overall analysis of this review.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt against the involved officers. Therefore, no criminal charges will be filed against the law enforcement officers involved in this incident.

FACTUAL SUMMARY OF THE INCIDENT

On December 27, 2022, at approximately 1:00 p.m., Thornton Police Officers responded to a call of an alleged armed robbery at the Wells Fargo Bank located at 12040 Colorado Boulevard in the City of Thornton. The officers responded to the location and met with bank employees who advised them that two individuals armed with firearms entered the bank demanding money. The male suspect was alleged to demand money and use a shotgun to strike a bank employee. The female suspect, who the witnesses claimed was also armed, allegedly participated in the effort to escape. The two suspects left the bank with over forty-one thousand dollars and fled the scene in a dark-colored Lexus SUV. The driver of the suspect vehicle was later identified as Angel Matthew Gallegos.

Multiple uniformed officers responded to the calls for service in their marked patrol vehicles with their emergency lights and sirens activated. Thornton Police Officer Peter Singer initially observed the suspect vehicle in front of the entrance of the bank. As Officer Singer turned into the bank parking lot, the suspect vehicle drove through the lot, over landscaping material, and entered onto Colorado Boulevard. Other marked patrol vehicles pursued the suspect vehicle eastbound on 120th Avenue. The pursuit was terminated at that time due to the excessive speeds.

Thornton Police Officers Rob Lowe and Austin Crowley heard the call and located the suspect vehicle near the intersection of McKay Road and 104th Avenue. Officer Lowe attempted to stop the vehicle with his emergency lights and sirens activated, but the vehicle continued to elude him, driving southbound on McKay Road toward 88th Avenue, then eastbound on 88th towards Highway 2. Just prior to Highway 2, the vehicle crashed head-on into a Toyota pickup truck, disabling both vehicles and leaving the driver of the Toyota truck injured. The suspect vehicle careened off the roadway into a dirt area, just north of 88th Avenue.

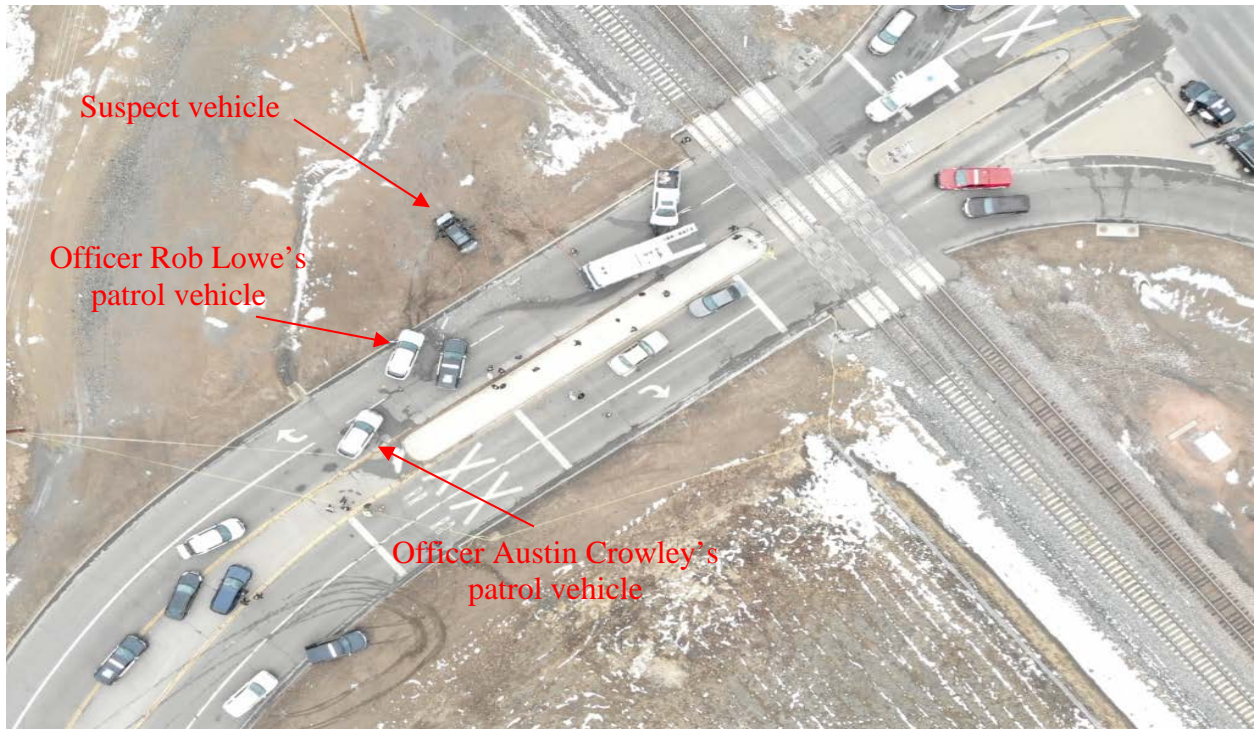
Officer Lowe was the first officer to arrive on scene after the crash. As he got out of his patrol car, Officer Lowe saw the door to the suspect vehicle open. He observed Mr. Gallegos in the driver's seat with a pump-action shotgun in his hands at the "low ready" position. Officer Lowe drew his handgun and saw Mr. Gallegos looking at him. He believed Mr. Gallegos was about to raise the shotgun and fire it at him. Mr. Gallegos's actions caused Officer Lowe to be concerned for his safety. Consequently, Officer Lowe fired multiple rounds from his handgun at Mr. Gallegos. Officer Lowe did not know if Mr. Gallegos fired the weapon at him. Officer Lowe stopped firing his weapon and repositioned himself behind his patrol vehicle.

Officer Crowley responded to the area within moments of hearing Officer Lowe announce "shots fired" over the radio. Officer Crowley parked his patrol vehicle behind Officer Lowe's patrol vehicle as he saw Officer Lowe running for cover. Officer Crowley got out with his handgun drawn and took cover inside his driver's side door. From this vantage point, he observed Mr. Gallegos inside the driver's seat "hunkered down," appearing to manipulate some type of long gun. He recalled in the dispatch report that the male robbery suspect was armed with a shotgun. Officer Crowley became scared because Mr. Gallegos's actions caused him to believe that Mr. Gallegos was going to shoot at the officers. Officer Crowley fired his weapon at Mr. Gallegos until he saw Mr. Gallegos on the ground.

Meanwhile, Officer Lowe took a position at the rear of his patrol vehicle. Mr. Gallegos's movements caused Officer Lowe to believe that he was about to take more shots at the officers. In response, Officer Lowe fired several more rounds at Mr. Gallegos. Officer Lowe stopped to reload his weapon and saw Mr. Gallegos get out of the vehicle and onto the ground.

Both officers yelled verbal commands to Mr. Gallegos to get down and to drop the gun. The officers stopped firing because they saw Mr. Gallegos on the ground without a weapon and believed that he was no longer a threat to them. The officers gave repeated commands to Mr. Gallegos to show his hands. Mr. Gallegos ignored the officers, got up, and ran away toward Highway 2. Mr. Gallegos ran into the roadway, waving at vehicles, until he stopped the driver of a Commerce City Public Works vehicle. The driver opened the door and Mr. Gallegos engaged in a struggle with the driver just inside the driver's side door. Uniformed patrol officers quickly arrived and arrested Mr. Gallegos. Mr. Gallegos suffered a gunshot wound to his left elbow and to his back. He was transported to the hospital for medical treatment.

As Mr. Gallegos was arrested, other police officers approached the suspect vehicle where they found a female passenger slumped over in the passenger seat. The female wore gloves, a black mask, and had a sweatshirt with a black hood pulled up over her head. The female was unresponsive and appeared to be suffering from severe injuries because of the vehicle crash. She was also discovered to have suffered a gunshot wound to her right wrist. She was transferred to the hospital for treatment. The female was later identified as April Martinez, the female who fled from the bank with Mr. Gallegos. Though Ms. Martinez was gravely injured, the gunshot wound was not found to be the cause of those injuries.



Aerial photo of shooting incident scene.



Aerial photo of arrest scene.

Criminalists assigned to the CIRT gathered evidence and processed the scene. Officers

Lowe and Crowley turned over their firearms for examination and round accountability. In addition, the officers each participated in a recorded interview with CIRT investigators. These interviews, along with an examination of the officers' firearms and the collection of evidence at the scene, led to the conclusion that Officer Lowe fired eighteen rounds and Officer Crowley fired six rounds. Additionally, a search of the suspect vehicle revealed a black pump-action shotgun loaded with six live rounds on the driver's side floorboard. A black bag was discovered in the front passenger seat containing over forty-one thousand dollars and a fully-loaded handgun. Investigators also found a black mask on the ground outside the driver's side of the vehicle. There was no evidence to conclude that either Mr. Gallegos or Ms. Martinez discharged a firearm.

LEGAL ANALYSIS

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the law enforcement officers involved in this incident. In addition, the involved officers participated in a recorded interview with the CIRT investigators. Because the underlying criminal case remains pending, this review provides a summary of the interviews only as it relates to the legal decision to not file criminal charges against the officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Criminal liability is established when the evidence is sufficient to prove all the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. Consequently, to file a criminal charge, the District Attorney's Office must be able to prove beyond a reasonable doubt that the involved law enforcement officers' actions were *not* justified under the circumstances surrounding this incident and the applicable law.

Under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force when it is reasonable and appropriate under the circumstances. The legal analysis of an officer's use of force depends upon whether the force used resulted in death to another person. In this case, for the sake of this analysis, it is presumed that both officers caused the injuries to Mr. Gallegos and Ms. Martinez. However, because the officers' use of force did not cause death, this review focuses on the officers' use of physical force against Mr. Gallegos and Ms. Martinez.

A law enforcement officer may use physical force in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person. However, physical force may be used only if nonviolent means would be ineffective and must use only that degree of force consistent with the minimization of injury to others. An officer's right to use physical force in self-defense is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The law applicable to the officers' use of physical force at the time of this incident requires that

[w]hen physical force is used, a peace officer shall:

(a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(b) Use only a degree of force consistent with the minimization of injury to others;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and

(d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

§18-1-707(2), C.R.S. (2023).

The United States Supreme Court has set forth a standard of “objective reasonableness” in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer’s use of force must (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (2) be judged from the perspective of an objectively reasonable officer on the scene “in light of the facts and circumstances confronting them, without regard to [his] underlying intent or motivation.” Further, the United States Supreme Court notes, “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Applying the legal standard in this case, the first question is whether physical force was appropriate under the statute. Officer Lowe and Officer Crowley were assisting in the apprehension of Mr. Gallegos after he was alleged to have committed an armed robbery at the Wells Fargo Bank. Based upon information available to the officers at the time, Mr. Gallegos fled the crime scene and successfully eluded Thornton Police Officers. Officer Lowe observed Mr. Gallegos crash head-on with a civilian vehicle causing extensive property damage and physical injury to others.

Immediately after the crash, Officer Lowe described seeing Mr. Gallegos in the driver’s seat, armed with a shotgun. Officer Lowe described seeing Mr. Gallegos hold the shotgun in a “low ready” position, raising the gun up as if he were going to shoot at Officer Lowe. Based upon his observations of Mr. Gallegos’s behavior, Officer Lowe expressed concern for his safety. Specifically, Officer Lowe stated his perception that he was “outgunned,” and that he felt a “sense of dread” because he was about to be shot or killed by Mr. Gallegos. These initial observations caused Officer Lowe to fire multiple rounds at Mr. Gallegos. Officer Lowe stopped shooting to reassess the situation, but continued to perceive Mr. Gallegos’s actions as life-threatening. As such, Officer Lowe fired additional rounds at Mr. Gallegos.

Officer Crowley arrived moments after the first volley of gunfire. He described observing Officer Lowe taking cover behind his own patrol vehicle. Officer Crowley observed Mr. Gallegos through the open driver's door manipulating a shotgun. Officer Crowley's observations of Officer Lowe and Mr. Gallegos's movements caused him to believe that Mr. Gallegos was firing upon the officers. Officer Crowley expressed concern that he and Officer Lowe were exposed without cover and that they could be shot and killed by Mr. Gallegos. Based upon his observations, Officer Crowley fired multiple rounds at Mr. Gallegos.

Under the circumstances, Officer Lowe and Officer Crowley's statements and observations support their reasonable belief that Mr. Gallegos was armed and presented a threat to the officers by use of a deadly weapon. It would be unreasonable to expect the law enforcement officers here to apprehend Mr. Gallegos by nonviolent means. Accordingly, the use of physical force by the officers here was appropriate not only to affect Mr. Gallegos's arrest, but also to prevent the imminent threat of injury to the officers.


The second question is whether the degree of force was consistent with the minimization of injury to others. Again, Mr. Gallegos was alleged to have committed violent crimes while in possession of a deadly weapon. Further, Mr. Gallegos engaged in a high-speed pursuit that resulted in severe injury and property damage. Mr. Gallegos's behavior presented a threat to the officers and others, resulting in the officers' escalation of force. Unfortunately, this use of force resulted in bodily injury not only to Mr. Gallegos, but also his passenger, Ms. Martinez. However, due to the nature of the conduct involved, this degree of force proved to be necessary to address the threat presented by Mr. Gallegos. The bodily injury caused to Ms. Martinez appears to be the result of her proximity to Mr. Gallegos at the time he presented a threat to officer safety.

The investigation demonstrates compliance with the remaining provisions of the law as written. The officers who apprehended Mr. Gallegos and Ms. Martinez rendered medical aid to them. Further, their relatives were notified of the incident during the ensuing investigation.

Though not specifically required by the language of the statute applicable here, proper application of the law of self-defense must answer the question of the reasonableness in the use of force. That is, whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Gallegos posed an immediate threat to the safety of the officers or others, and that the officers used a degree of force that the officers reasonably believed to be necessary for the purpose of defending themselves or others. As previously stated, the facts of this investigation support the finding that any reasonable officer would have responded in the same manner as Officers Lowe and Crowley. Under the circumstances, the degree of force used by these involved officers was the only reasonable alternative.

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2023). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Lowe or Officer Crowley.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian S. Mason". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Brian S. Mason
District Attorney