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District Attorney



COLORADO'S 17TH JUDICIAL DISTRICT
Adams and Broomfield Counties

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August 27, 2024

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting of Miguel Robles Tovar on March 14, 2024.

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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.

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August 26, 2024

Darrel Guadnola
Chief of Police
Commerce City Police Department
7887 E 60th Avenue
Commerce City, CO 80022

RE: The officer-involved shooting of Mr. Miguel Robles Tovar on March 14, 2024

Dear Chief Guadnola:

On March 14, 2024, four officers of the Commerce City Police Department shot and seriously injured Mr. Miguel Robles Tovar. The 17th Judicial Critical Incident Response Team (CIRT) conducted an independent and thorough investigation into the matter. Westminster Police Department Detective Matt Neihart led the CIRT investigation and presented the factual findings to my office. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Commerce City 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.

The District Attorney's Office review is limited to determining whether any criminal charges should be filed against any of 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 of proving 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. As such, the District Attorney's Office review does not evaluate compliance with any departmental policies, standards, or procedures.

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 as it relates to any of the actions of the four involved officers in this incident. Therefore, there will be no criminal charges filed against the involved police officer.

The circumstances surrounding this incident resulted in criminal charges against Mr. Miguel Robles Tovar which, as of the date of this letter, are still pending. An individual charged with a crime retains the presumption of innocence until the final resolution of the case. Therefore, despite the law requiring public disclosure of decisions with respect to the filing of



charges against an officer, there is a prevailing interest in preserving the integrity of the pending criminal case. 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, including body worn camera footage by the involved officers, will not be made available until there is a disposition of the pending criminal case associated with this matter.

STATEMENT OF FACTS

At approximately 8:05 p.m., on March 14, 2024, the Commerce City Police Department received a 911 call from a Spanish speaking individual that identified himself as Miguel. The individual was later identified as Mr. Miguel Robles Tovar. The 911 dispatcher utilized language line services to assist in communicating with Mr. Tovar in Spanish. Mr. Tovar explained to the 911 operator he was having a problem with his family and requested the police to respond. The 911 dispatcher asked if he needed an ambulance or the police. He stated, "just the police." He then further explained that five people were fighting. Mr. Tovar noted that he had a knife. He stated, "I want you to come and save them. Otherwise, I will fucking kill them. Did you hear me?" The phone call then disconnected.

Officers were dispatched to 7044 Garden Lane, Commerce City, Colorado, to contact Mr. Tovar at approximately 8:08 p.m. All the responding officers wore full police uniforms that clearly identified them as police and they were outfitted with body worn cameras (BWC). While the officers were enroute, dispatch continued to update the officers with information, noting that the reporting party was armed with a knife. Officer Hernandez and Officer Cary reported they were enroute to the location, and Officer Laubert advised he would respond as back up. Within minutes of the call disconnecting, Commerce City Police Officers arrived on scene.

Officer Laubert initially arrived at 7044 Garden Lane at approximately 8:13 p.m. and observed Mr. Tovar standing outside of the residence in the yard. Officer Laubert unholstered his duty weapon as he approached due to the dispatch call involving a disturbance with weapons. Mr. Tovar walked away from the front yard toward the roadway. Officer Laubert observed a knife in his right hand. Officer Laubert immediately began giving commands for Mr. Tovar to drop the knife.

Officer Hernandez and Officer Cary arrived moments after Officer Laubert and parked their vehicle behind Officer Laubert's vehicle. Officer Hernandez was assigned as Officer Cary's field training officer. Officer Cary was driving, and Officer Hernandez was the passenger. Officer Hernandez and Officer Cary exited the vehicle and walked up to assist Officer Laubert. Officer Laubert advised them that Mr. Tovar had a knife. Officer Hernandez and Officer Cary



drew their duty weapons at this time. The three officers began to provide repeated commands for Mr. Tovar to drop the knife.

Mr. Tovar persisted in walking towards the officers. Officer Laubert eventually told Mr. Tovar, "if you do not drop the knife, I am going to shoot you." Mr. Tovar eventually responded to Officer Laubert in Spanish. Officer Hernandez is fluent in Spanish and began to communicate with Mr. Tovar. Officer Carpenter arrived and approached the other officers in the street and observed Mr. Tovar in the street with a knife in his hand. Officer Carpenter noted that Mr. Tovar appeared to be visibly upset and angry. The officers continued to give commands and Officer Carpenter believed the more commands that were given the more Mr. Tovar argued and continued his non-compliance.

Mr. Tovar continued to walk towards the officers and was then in the middle of the street. Officer Hernandez could see the knife in his right hand. She told him to drop the knife and he responded that the police cannot help him, "it's too late." Mr. Tovar went back and forth between saying that "they are all dead," and "someone is going to kill them." Officer Hernandez assured him that they could help Mr. Tovar, but he had to drop the knife. Mr. Tovar responded "no, it's too late." Officer Hernandez also communicated to Mr. Tovar that if he did not drop the knife, they would shoot him. Officer Cary also recalls advising Mr. Tovar if he did not drop the weapon he would be shot.

Mr. Tovar continued to advance towards the officers, ignoring the repeated commands. The officers provided over twenty commands for him to drop the knife. While in the street, Officer Laubert observed Mr. Tovar reposition the knife in his hand from having the blade out, to tucking the blade in more towards his forearm. Officer Laubert believed this to be a more aggressive fighting stance. Mr. Tovar briefly stopped walking in the street. Mr. Tovar then touched his forehead and his shoulder with his hand. Officer Laubert perceived this to be a praying type motion. Mr. Tovar then took a cigarette from his pocket and lit it, while still holding the knife.

The officers had retreated significantly since the initial contact with Mr. Tovar outside of his residence. Officer Cary, Officer Carpenter and Officer Hernandez were now positioned on the northside of the roadway, beside the driver's side of Officer Laubert's patrol vehicle. Officer Laubert was on the passenger side of his vehicle, forming a semicircle with the others.

At approximately 8:17 p.m., Officer Victoria arrived on scene with a non-lethal weapon, a direct impact foam round launcher. Officer Victoria then also began to provide commands in Spanish to Mr. Tovar to drop the knife. Officer Victoria was concerned for the safety of the officers on scene and initially fired one less lethal round that struck, but did not phase, Mr. Tovar. After this first round, Mr. Tovar continued walking towards officers with the knife, so Officer Victoria fired three additional less lethal rounds, with several rounds making contact.



After the less lethal rounds, as seen on the officers' BWC, Mr. Tovar quickened his pace with the knife while closing the distance with the officers. All four officers expressed their belief that either they themselves or their fellow officers would have been killed or seriously injured if they did not use physical force to stop Mr. Tovar. As he advanced, Officer Laubert, Officer Hernandez, Officer Cary, and Officer Carpenter discharged their firearms. Mr. Tovar was struck multiple times and fell to the ground. Mr. Tovar suffered multiple gunshot wounds and was provided life-saving measures on scene. Mr. Tovar was transported to University Hospital and was treated for his injuries. Mr. Tovar survived and is currently facing criminal charges.

Investigators contacted the residents of 7044 Garden Lane after the incident. All the residents inside were safe and unharmed. Mr. Tovar's family indicated that Mr. Tovar had left the residence around 7:00 p.m. but he had not advised his family where he was going. Mr. Tovar's sister-in-law identified the knife on scene as her fish fileting knife.

Criminalists and detectives assigned to the CIRT gathered evidence and processed the scene. The involved officers turned over their weapons for examination and round accountability. Based on the round accountability and evidence at the crime scene, it was determined that possibly twenty-four rounds were fired with eighteen shell casings recovered from the scene. All the officers were equipped with BWC at the time of the incident. Based on all the officers firing around the same time, a review of the BWC cannot delineate how many rounds each officer fired.

The knife held by Mr. Tovar was collected and examined. The knife is described as a sharp fish fileting knife.

Photo of knife at scene



Photo of knife after it was collected



LEGAL ANALYSIS

As 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. The involved



officers participated in a recorded interview with the CIRT investigators. Because the underlying criminal case remains pending, this review provides only a brief summary of the interviews only as it relates to the legal decision regarding potential 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 must be able to prove beyond a reasonable doubt that the involved law enforcement officers' actions were *not* justified under the circumstances surrounding this incident and the applicable law.

Under Colorado law, a law enforcement officer may use an amount of force, including deadly physical force, only when it is reasonable and appropriate under the circumstances. In this case, an analysis of the use of deadly physical force as defined by law is not necessary because the use of force did not cause death. As such, this review focuses on the officers' use of physical force against Mr. Tovar.

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.

Under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use 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 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.

Section §18-1-707(2), C.R.S. (2024).

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 question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Mr. Miguel Robles Tovar posed an immediate threat to the safety of the officers such that physical force was necessary. Here, Officer Laubert, Officer Hernandez, Officer Carpenter and Officer Cary all responded to a disturbance with a weapon. The officers were clearly identified as police officers. Upon arrival, the officers were confronted by Mr. Tovar who was brandishing a knife. The officers gave repeated commands in both Spanish and English for him to drop the knife. While giving commands, Mr. Tovar continued to advance on the officers as they walked backwards retreating towards their parked vehicles. Specifically, Officer Hernandez told Mr. Tovar to drop the knife, and he responded that the police officers cannot help him, “it’s too late.” Mr. Tovar went back and forth between saying that “they are all dead,” and “someone is going to kill them.” Officer Hernandez assured him that they could help Mr. Tovar, but he had to drop the knife. Mr. Tovar responded “no, it’s too late.”

As the officers continued to engage with Mr. Tovar, the officers utilized less lethal force in an effort to deescalate the situation and disarm Mr. Tovar. These efforts proved unsuccessful. From the time Officer Laubert initially arrived and Officer Victoria utilized the less lethal force, approximately two minutes and fifty-five seconds elapsed. During this time, the officers were retreating as Mr. Tovar continued advancing towards them, demonstrating his intent to harm the officers. Based on Mr. Tovar’s actions with the knife, all four officers expressed their belief that either themselves or their fellow officers would have been killed or seriously injured if they did



not use physical force to stop Mr. Tovar.

The investigation demonstrates compliance with the remaining provisions of the law as written. The officers who apprehended Mr. Tovar rendered medical aid. Additionally, his relatives were notified of the incident during the ensuing investigation.

Proper application of the law of self-defense must answer the question whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Tovar posed an immediate threat to the safety of the officers or others, and whether the officers used a degree of force that the officers reasonably believed to be necessary for the purpose of defending themselves or others. When Mr. Tovar was confronted by law enforcement officers, he was repeatedly warned, yet he brandished a knife and continued to advance towards the officers. There is no evidence to suggest that an objectively reasonable officer would have acted differently than the officers who were involved in this incident. While this situation escalated quickly, it was not because of the officers' behavior or conduct toward Mr. Tovar. The officers tried to assure Mr. Tovar that they could help him if he dropped the knife. Mr. Tovar, through his actions, demonstrated an intent to use force with a deadly weapon and refused repeated commands to drop the weapon. Each of the officers who fired their weapons explained that Mr. Tovar's actions caused them to fear for their own life, as well as the lives of the officers involved. Mr. Tovar's actions with a deadly weapon caused the officers to make a split-second and, indeed, reasonable judgment in a tense and evolving situation. I find that Officer Laubert, Officer Hernandez, Officer Cary, and Officer Carpenter were justified in the use of physical force against Mr. Tovar.

CONCLUSION

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. (2024). Therefore, applying the facts of this incident to the applicable law, no criminal charges will be filed against Officer Adam Laubert, Officer Jocelyn Hernandez, Officer Jonathan Cary or Officer Zach Carpenter.

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

Sincerely,

Brian S. Mason
District Attorney