



For Immediate Release:

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November 29, 2023

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting death of Joseph Martinez in Thornton on April 14, 2023.

PowerPoint:

[OISDecisionLetterPowerPoint41423.pdf](#)

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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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November 28, 2023

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

RE: The officer-involved shooting of Mr. Joseph Gilbert Martinez on April 14, 2023

Dear Chief Gordon:

This letter is a review of the 17th Judicial District Critical Incident Response Team (CIRT) investigation into the April 14, 2023, police-involved shooting of Joseph Martinez. The 17th Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by Adams County Sheriff's Detectives Matthew Peterson 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 limited to determining whether any criminal charges should be filed against the involved officer 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. The 17th Judicial District Attorney's review does not evaluate compliance with departmental policies, standards, or procedures.

I find the actions of the involved officer to be justified in this incident. Furthermore, based on the evidence presented and applicable law, there is no reasonable likelihood of proving the elements of any crime beyond a reasonable doubt against the involved officer. Therefore, no criminal charges will be filed against the officer involved in this incident.

FACTUAL SUMMARY OF THE INCIDENT

On April 14, 2023, members of the FBI's Rocky Mountain Safe Streets Task Force were conducting surveillance at 301 Malley Drive, Unit #302, Northglenn, Colorado for a wanted party, Joseph Martinez. Joseph Martinez had several outstanding felony warrants to include:

attempted murder, motor vehicle theft, COCCA-pattern of racketeering, robbery, burglary, and possession of a controlled substance. On that day, law enforcement was able to positively identify Joseph Martinez as he was coming and going from unit #302. Law enforcement created a plan to surround the apartment with marked patrol units and activate the SWAT team. Members of the combined Thornton and Northglenn Police Departments SWAT team and crisis negotiation unit were deployed to assist with the developing situation.



Ariel view of 301 Malley Drive, Northglenn, Colorado

Law enforcement set up a perimeter around the apartment complex and worked to communicate with Joseph Martinez, to safely take him into custody. Initially, Sgt. Guzman with the Northglenn Police Department was positioned in the hallway outside of unit #302 with other officers and a ballistic shield. Sgt. Guzman observed Joseph Martinez open the front door and observe the police in the hallway and retreat back into the apartment.

At approximately 4:02 p.m., Sgt. Brown with the Thornton Police Department, a trained crisis negotiator, worked to contact individuals inside the apartment. Sgt. Brown made efforts to call and text Joseph Martinez and other individuals believed to be inside. Sgt. Brown received several text message responses from a phone number associated with a young female in the apartment. At that time, Sgt. Brown did not know the age of the person he was communicating with. Sgt. Brown received repeated requests not to enter the apartment. The text communication indicated that individuals in the residence were not able to leave and did not feel safe. Sgt. Brown determined that this was an active hostage situation.

In conjunction with the efforts by Sgt. Brown, law enforcement worked to communicate with Joseph Martinez in the apartment with the use of a bull horn. Repeated commands were given for Joseph Martinez to surrender and that he was under arrest. These communications were unsuccessful. E.T, Joseph Martinez's mother, arrived on scene and requested to assist with getting the hostages released. E.T. was able to communicate with Joseph Martinez and one

person was let out of the apartment. Additional individuals, reportedly to include three children and an adult, remained in the apartment with Joseph Martinez.

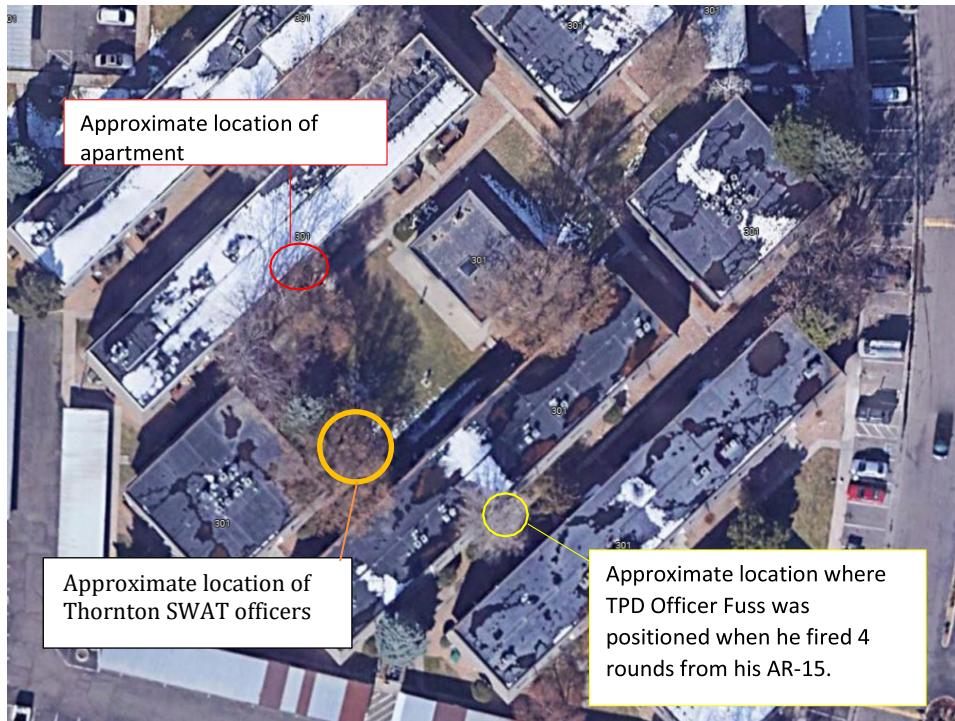
Law enforcement concerns were heightened as the scene developed into a hostage situation. SWAT members continued attempts at de-escalation through the negotiators and loud police announcements. Law enforcement also engaged in a reverse 911 call to residents of the apartment complex due to their growing concerns for the officers' safety and the safety of the residents. During this time, Joseph Martinez exited the apartment on the balcony and tried to climb on the roof. This effort was unsuccessful and Joseph Martinez retreated back into the apartment. The Northglenn Police Department flew a drone in the courtyard area of the apartment complex to maintain a visual on the apartment and record the events as they were unfolding.

Officer Fuss was one of the SWAT officers that responded to the scene. Officer Fuss has been with the Thornton Police Department for seven years and a sniper with the SWAT team for five years. Originally, Officer Fuss was posted on the northside of unit #302 and had a visual of the front door. Officer Fuss was armed with an AR-15 rifle. Officer Fuss was able to observe when E.T. had responded to the unit and an adult female left the residence with E.T. Officer Fuss then observed the front door moving as if someone from the inside was forcefully hitting the front door of the apartment.

Officer Fuss heard a single gunshot come from inside the apartment. Officer Fuss, along with Northglenn Officer Moreau, gained access to the neighboring apartment and continued to keep a visual on unit #302. While inside the neighboring apartment, Officer Fuss heard a series of five to six gunshots coming from the apartment and believed Joseph Martinez was shooting at the police. Officer Fuss heard the glass patio door breaking and thought that Joseph Martinez was porting the glass to have a better view to fire outside of the apartment.

As the efforts to communicate with those inside the apartment continued, law enforcement heard gunshots coming from the apartment out of the glass patio door. The glass patio door opens to the second level of the complex and faces a courtyard and other interior facing apartments. SWAT Officers Crowe, Sanchez and Violante were positioned in the courtyard area. The officers could observe some movement in the apartment. Officer Violante observed a male barricade the glass patio door. Officers then heard a series of gunfire coming from the apartment. Officer Violante and Officer Crowe believed they were being shot at and were in fear for their lives. The officers did not return fire as they did not have a good view of Joseph Martinez. There were three separate instances of gunfire coming from the apartment beginning at approximately 5:28 p.m. A total of seven shots were identified as coming from the apartment.

After being on the north side of the building for approximately forty minutes, Officer Fuss worked with Lt. Wilson to find a better tactical sniper position. Lt. Wilson, a Thornton Police Department SWAT Commander, provided presumptive authorization for Officer Fuss to use lethal force due to Joseph Martinez's continued shooting towards officers and civilians. This presumptive approval is limited to extreme situations when there is a growing and significant threat to life.



Officer Fuss took a tactical position across the courtyard from unit #302. Officer Fuss was positioned prone in the breezeway in the adjacent apartment to maintain a visual of the balcony. Officer Fuss' position was on the ground level, providing an upward angle if he had to engage with Joseph Martinez. From Officer Fuss' vantage point, he could see the balcony area with the broken glass and broken curtain slats. Officer Fuss was able to positively identify Joseph Martinez inside the unit.

Initially, Officer Fuss could not identify how many other individuals were inside the unit. Officer Fuss was analyzing the ballistics trajectory from his tactical position. Officer Fuss could see tree branches in the courtyard that were in his site line and was concerned if a bullet struck the tree before entering the unit it could deviate from the trajectory and potentially harm a bystander in the unit. Officer Fuss was aware that the surrounding apartments had not been vacated and the risk of Joseph Martinez injuring or killing another officer or civilian was high.

Officer Fuss was able to see Joseph Martinez through the curtain slats and then observed Joseph Martinez holding a silver handgun as he presented the firearm through the blinds, moving the blinds open. Joseph Martinez then leveled his gun in the direction of possible law enforcement and residents. Officer Fuss believed at that time that Joseph Martinez was about to shoot someone. Officer Fuss evaluated the trajectory of the elevation between himself and Joseph Martinez, and felt he greatly diminished the risk of collaterally shooting a hostage. Officer Fuss concluded that a verbal warning was ineffective because he was approximately forty yards away from Joseph Martinez. Officer Fuss decided to fire at Joseph Martinez, evaluating that if a round entered the apartment it would go into the ceiling and not harm anyone else inside the apartment.



Drone image of Joseph Martinez presenting a firearm out of the sliding glass door prior to Officer Fuss firing his AR-15 rifle.

Officer Fuss recalls shooting three to four times to incapacitate Joseph Martinez. Officer Fuss stopped shooting once he could no longer see Joseph Martinez. After Officer Fuss fired, an entry team entered the apartment to assist Joseph Martinez and the hostages. Law enforcement quickly entered the apartment and began providing life saving measures to Joesph Martinez and removed the children from the apartment. Joseph Martinez was transported to North Suburban and was later pronounced deceased.

On April 17, 2023, an autopsy was conducted by Dr. Stephen Cina, forensic pathologist, with the Adams County Coroner's Office. Joseph Martinez sustained three guns shot wounds. There was no evidence of close-range firing. The toxicology screen identified the presence of methamphetamine and alcohol. The cause of death was identified as multiple gunshot wounds and the manner of death was homicide.

A search warrant was authorized for unit #302 and law enforcement observed a sectional couch overturned near the shattered sliding glass patio door in the living room. A black, Smith and Wesson 9mm handgun was located, and eight 9mm Luger fired cartridge casings were in the apartment and balcony area.

Bullet strikes were observed in the apartment from the rounds fired by Officer Fuss. A bullet strike was observed in the center support column of the sliding glass patio door. Another round went through the glass patio door and struck a kitchen cabinet on the northwest side of the apartment. Two other rounds went through the glass patio door and struck the wall on the northwest side of the living room. Each of the rounds traveled through the wall, into the bathroom, through the northwest bathroom wall into the master bedroom closet.

Crime scene investigators located four fired rifle cartridge casings in the area where Officer Fuss fired his AR-15 rifle.

LEGAL ANALYSIS

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the law enforcement officer involved in this incident. 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, in order 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, a law enforcement officer may use an amount of force – including deadly physical force – that is necessary and reasonable. Additionally, 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 reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers' use of force at the time of this incident are found at §18-1-707, C.R.S. (2023), and the relevant portions of that subsection provide:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

...

(2) When 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....

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

(a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

- (b) The suspect poses an immediate threat to the peace officer or another person;
 - (c) The force employed does not create a substantial risk of injury to other persons.
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.
- (4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officers has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

In *Graham v. Conner*, 490 U.S. 386 (1989) a seminal U.S. Supreme Court case, the U.S. Supreme Court has 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. at 396-97.

Accordingly, applying the proper legal standard in this case, the critical inquiry is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have concluded that Joseph Martinez posed an immediate threat to the safety of the officers or another person such that the use of force, including deadly physical force, was necessary. Here, the involved officer responded to assist with the apprehension and arrest of a wanted party, Joseph Martinez. Law enforcement made continued efforts to communicate with Joseph Martinez in an effort to peacefully take him into custody. A crisis negotiator was utilized to contact Joseph Martinez and others in the apartment, while repeated announcements were made outside of the apartment. At least three children were inside the apartment and were unable to leave during these negotiations, creating a hostage situation. In addition, officers heard gunfire coming from the apartment out of the sliding patio door.

The evidence supports the conclusion that law enforcement officers used every effort to avoid

using force upon Joseph Martinez. Law enforcement officers worked repeatedly to establish a rapport with Joseph Martinez and his family inside the residence. However, Joseph Martinez refused to engage with law enforcement in a peaceful manner, instead firing repeated rounds into the courtyard at officers and potential residents in the nearby apartments. Even after the initial rounds fired by Joseph Martinez, officers continued efforts to communicate with him to surrender peacefully.

Ultimately, Officer Fuss observed Joseph Martinez produce a firearm out of the sliding glass patio door and level it down towards officers. Officer Fuss expressed his concern for himself, other officers, and residents in the apartment complex. Officer Fuss believed that someone could have been killed or seriously injured if he did not use deadly force against Joseph Martinez. Officer Fuss evaluated the trajectory of the elevation between himself and Joseph Martinez and felt he greatly minimized the risk of collaterally shooting a hostage. Based upon the observations of the officer, nonlethal means of apprehension proved unreasonable under the circumstances. Officer Fuss then proceeded to shoot at Joseph Martinez, hitting him three times, leading to his death.

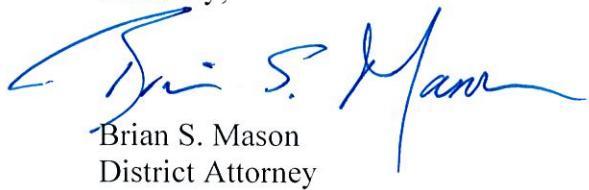
I find Officer Fuss's actions to be reasonable, appropriate, and justified under these circumstances. Joseph Martinez presented a clear threat to the lives of the officers and residents who were in the area. Law enforcement used verbal commands, crisis negotiators and even a family member to prevent the armed suspect from harming anyone, all without success. Joesph Martinez's refusal to obey commands and his repeated shooting of his gun in the direction of officers and residents caused presented a clear and present danger to everyone in the vicinity. Officer Fuss's decision to shoot Mr. Martinez eliminated this danger and very possibly saved the lives of innocent victims.

CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officer was 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 Thornton Police Officer Fuss.

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

Sincerely,



Brian S. Mason
District Attorney