



For Immediate Release:
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July 6, 2023

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting death of Daryllay Lopez in Thornton on September 5, 2022.

Body-Worn Camera Video:

[Axon Body 3 Video 2022-09-05 0745 X60A10277 AdobeExpress.mp4](#)

Please be aware the video is graphic.

PowerPoint:

[OISDecisionLetterPowerPoint9522.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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July 6, 2023

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

Re: The officer-involved shooting of Darylray Lopez, occurring on September 5, 2022

Dear Chief Gordon:

This letter concerns the investigation conducted by the 17th Judicial District Critical Incident Response Team (CIRT) into the September 5, 2022, shooting death of Darylray Lopez. Adams County Sheriff Office Detective Marilyn Rush-Lara led the investigation and presented the factual findings to the 17th Judicial District Attorney's Office. 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.

The District Attorney's 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 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. As such, my review does not evaluate compliance with any departmental policies, standards, or procedures.

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 officers involved in this incident.

STATEMENT OF FACTS

On September 5, 2022, at approximately 7:30 a.m., the City of Thornton dispatch received several calls that a man wearing a white t-shirt and blue jeans was walking in a northbound lane of traffic on Interstate 25 near 84th Avenue. The callers reported that the male's actions were causing vehicles traveling northbound to swerve to avoid him.

Within minutes, several uniformed Thornton Police Officers responded to the area in their marked patrol vehicles with emergency lights activated. Sergeant Cushing was the first officer on scene. He arrived traveling southbound on I-25 and parked in the far left lane next to the concrete barrier that separates the north and southbound lanes of traffic.

Sergeant Cushing got out of his patrol car and left his red and blue lights activated to alert oncoming traffic. As he walked toward the male pedestrian, the male jumped over the barrier and into the northbound lanes of traffic. Sergeant Cushing called out to the male, who turned and walked back toward Sergeant Cushing. The male remained standing on the other side of the barrier and stated that he was sick. Sergeant Cushing responded that he was there to help and asked the male if he needed an ambulance.

Officer Arthur Brown arrived moments later and parked next to the concrete barrier in the same northbound lane of traffic as the male. Officer Brown exited his vehicle while the male stood near Sergeant Cushing. Vehicles continued to pass by in both directions on I-25.



Still image from Officer Brown's body-worn camera as he exited his vehicle.

As Officer Brown approached, the male suddenly pushed off the barrier and stepped into the northbound lane of traffic. The male faced Officer Brown and reached behind his back with his right arm concealed. Officer Brown asked, "What's going on, bro?" Sergeant Cushing also called out to the male, "Come here, we will help you, bud." The male turned back to Sergeant Cushing and returned to the barrier. The male held a knife in his right hand. Officer Brown drew his gun and pointed the gun at the male. Officer Brown stood near the front fender of his patrol car as the male stood approximately ten feet away. The male turned toward Officer Brown and stepped away from the barrier. Officer Brown yelled, "Put it down!" The male ignored the command, raised his arms to the side, and took several steps toward Officer Brown.

Officer Brown stepped backward with his gun aimed at the male and yelled, “Put it down now!” The male continued to advance toward Officer Brown as Officer Brown backpedaled toward the rear of his patrol car. Officer Brown again yelled, “Put the knife down!” at which point the male charged towards Officer Brown while continuing to hold the knife. Officer Brown fired three rounds at the male, striking him and causing him to fall to the ground.



Still image from Officer Brown's BWC displaying the male holding his right arm behind his back.



Still image from Officer Brown's BWC displaying the male advancing toward Officer Brown as Officer Brown backpedaled and gave him commands to drop the knife.



Still image from Officer Brown's BWC when the male began to charge at him while armed with a knife.

Officer Austin Crowley arrived seconds later to assist. The male remained on the ground with the knife in his hand. Officer Crowley and Officer Brown repeated commands to drop the knife. Officer Brown held the male at gunpoint while Officer Crowley kicked the knife out of the male's hand and rendered aid. The male was later identified as Darylray Lopez.

Criminalists assigned to the CIRT gathered evidence and processed the scene. Three expended .9 millimeter shell casings were located near Officer Brown's patrol vehicle. Sergeant Cushing and Officer Brown turned over their firearms for examination and round accountability. In addition, the officers 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, leads to the conclusion that Officer Brown fired three rounds from his firearm. Sergeant Cushing did not fire his weapon. Both officers were equipped with body-worn cameras (BWC) that captured video of the entire shooting incident. The video corroborates the firearms evidence. The knife held by Mr. Lopez was collected and examined. The knife was a folding knife with a blade that measured approximately three inches in length.

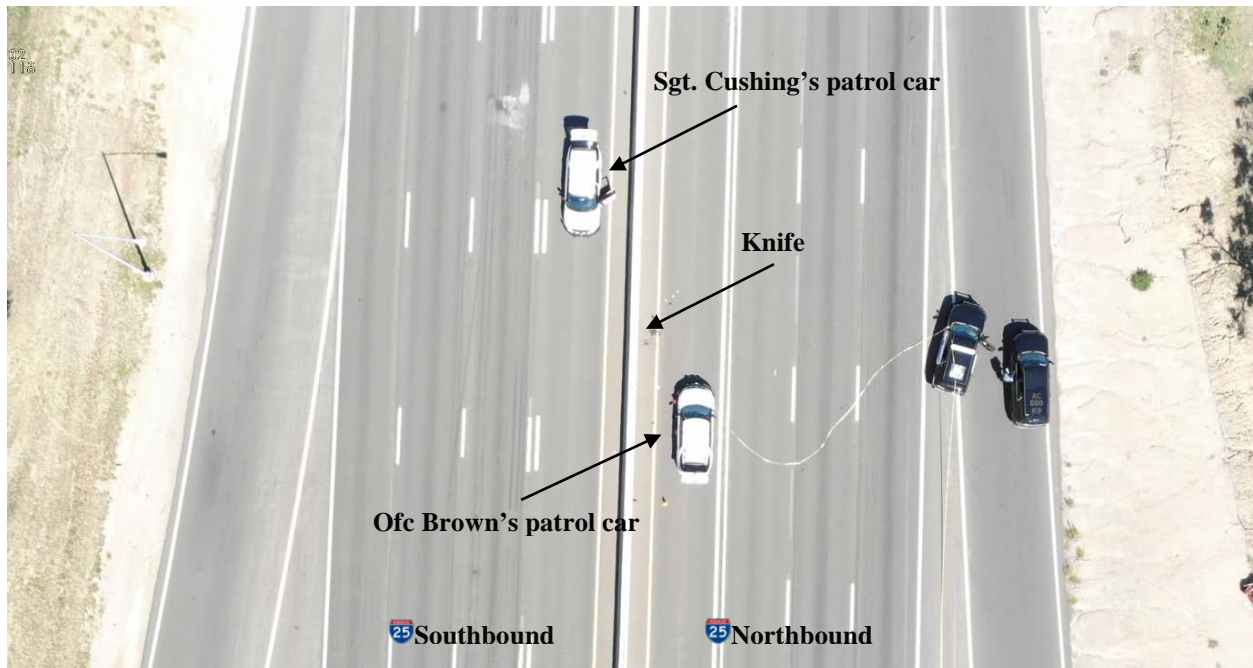


Photo of the knife held by Mr. Lopez at the time of the incident.

Mr. Lopez suffered multiple gunshot wounds and did not survive. A later autopsy confirmed the cause of death to be multiple gunshot wounds to the chest. A toxicological examination supports a conclusion that Mr. Lopez ingested methamphetamine prior to his death.

Examination of the BWC recordings reveals that Sergeant Cushing arrived at 07:45:25 and first attempted contact with Mr. Lopez at 07:45:43. Officer Brown arrived two seconds later at 07:45:42. At 07:45:56, Mr. Lopez pushed off the barrier and stepped into the middle of the northbound lane. For several seconds, Mr. Lopez is seen concealing his right arm behind his back. At 07:46:08, Mr. Lopez stepped closer to Sergeant Cushing at the barrier. At 07:46:12, Officer Brown drew his weapon and at 07:46:13, started yelling commands at Mr. Lopez to drop the knife. The second command was given at 07:46:15. At 07:46:16, Mr. Lopez charged towards Officer Brown, and at 07:46:17 Officer Brown gave the third command to drop the knife. Immediately after that command, from 07:46:17 to 07:46:18, Officer Brown fired three rounds in succession.

The investigation identified travelers who observed Mr. Lopez in the left lanes of I-25 before the police arrived. Witnesses expressed concern for Mr. Lopez's actions and behavior as if he were having an issue with his mental health. One of these witnesses described seeing Mr. Lopez rock back and forth, as if he was waiting for the right moment to jump into oncoming traffic to take his own life.



Aerial view of the location of the incident.

LEGAL ANALYSIS

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved 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, 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 is found at §18-1-707(4.5), C.R.S. (2023), and that subsection provides:

(4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly force if the peace officer 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.

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).

In this case, there is no dispute that Officer Brown discharged his firearm multiple times at Darylray Lopez, causing his death. The legal question for this analysis is whether Officer Brown’s use of deadly force was reasonable and necessary. Applying the proper legal standards to the facts and circumstances of this situation of this case, the central issue is whether an objectively reasonable officer would have concluded that Darylray Lopez posed an immediate threat to the safety of the officer or another person such that the use of deadly force was necessary to prevent serious injury or death.

Here, Officer Brown and Sergeant Cushing responded to multiple calls for service concerning an individual walking on I-25, creating a danger to himself and other travelers. The patrol officers with the Thornton Police Department responded to the scene and attempted to de-escalate the situation in a calm and balanced manner. The officers were clearly identified by their uniforms and marked patrol cars with emergency lights activated. Sergeant Cushing arrived first and used a conversational tone to engage Mr. Lopez. Sergeant Cushing directed Mr. Lopez away from traffic. He asked him about his condition and if he should call an ambulance. Officer Brown also used a conversational tone as he tried to divert Mr. Lopez away from oncoming traffic. Mr. Lopez did not respond to the officers’ peaceful attempts to resolve the situation.

Within moments of the officers’ contact, Mr. Lopez concealed his right arm behind his back. While it remains unclear when Mr. Lopez armed himself, Officer Brown observed the knife in Mr. Lopez’s hand as Mr. Lopez stood near Sergeant Cushing. Officer Brown drew his weapon, pointed it at Mr. Lopez and gave repeated commands to drop the knife. Given the fact that Mr. Lopez was within striking distance of Sergeant Cushing, Officer Brown appropriately escalated his show of authority. Mr. Lopez did not comply with the commands and took several steps toward Officer Brown. After Officer Brown’s third command to drop the knife, Mr. Lopez charged towards the officer, quickly closing the distance between them.

There were few options available to Officer Brown in this situation. He previously attempted to gain Mr. Lopez’s attention with conversation, he gave multiple commands to drop the weapon, and he displayed his weapon pointed at Mr. Lopez during the commands. Officer

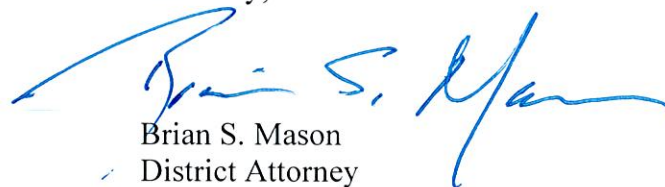
Brown correctly perceived the actions of Mr. Lopez as a threat to his life and expressed fear for his safety as he backpedaled. Sergeant Cushing also expressed his concern for Officer Brown's safety but did not use lethal force given his location and the concern for people traveling on I-25 if he were to fire his weapon at Mr. Lopez. Given the location and Mr. Lopez's conduct, there were no reasonable less lethal alternatives available to stop Mr. Lopez from quickly advancing on Officer Brown with a knife. In this extremely dangerous situation, Officer Brown's actions were entirely appropriate and justified.

There is no evidence to suggest that an objectively reasonable officer would have acted differently than Officer Brown in this situation. While this interaction escalated within a matter of seconds, it was not the result of the officers' behavior or their actions. Rather, both officers attempted to diffuse the situation in a calm and peaceful manner, and they treated Mr. Lopez with dignity. Mr. Lopez, by his actions, demonstrated not only an unwillingness to comply with the officers' reasonable commands, but an aggression toward Officer Brown. Any reasonable person would perceive Mr. Lopez's conduct with the deadly weapon to be a threat to safety. That this conduct occurred on a major US highway with cars literally streaming by within feet of the officers made it that more dangerous. Mr. Lopez's conduct caused Officer Brown to exercise split-second and, indeed, reasonable judgment in a tense and quickly evolving situation. This conclusion is confirmed by the BWC footage. I, therefore, find that Officer Brown was justified in the use of deadly physical force against Mr. Lopez.

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. (2023). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Arthur Brown for firing his weapon at Darylray Lopez and causing his death.

Sincerely,



Brian S. Mason
District Attorney