



## OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

July 5, 2019

Lakewood Police Department  
Dan McCasky, Chief of Police  
4455 S. Allison Parkway  
Lakewood, CO 80226

### **Re: Critical Incident Response Team Investigation 19-01 (Officer Involved Police Shooting of Anthony Montoya)**

Dear Chief McCasky:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on March 11, 2019 to investigate the fatal shooting of Anthony Montoya by Lakewood Police Detectives Barben and Valenzuela. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. A CIRT investigation was completed for the purpose of determining whether criminal charges are warranted with respect to the conduct of Detectives Barben and Valenzuela in the incident.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney and the Assistant District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. They observed key interviews of witnesses including Detectives Barben and Valenzuela.

CIRT investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and completed a background of Anthony Montoya as part of a thorough and complete investigation into this incident. The investigative file is voluminous and includes transcripts of

witness interviews, reports, diagrams, digital media containing recorded interviews, police communications, photographs, and autopsy findings.

A review of the investigative file, including all CIRT reports and documentation has been completed by my office and I, along with members of my staff, have been fully briefed regarding this incident by CIRT Commanders in charge of the investigation.

My findings, analysis, and conclusions of law with respect to the use of deadly force in this incident by Detectives Barben and Valenzuela are as follows:

### **Applicable Law**

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes.

#### **§ 18-1-704, C.R.S. Use of physical force in defense of a person**

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

#### **§ 18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape**

(1) Except as provided in subsections (2) and (2.5) of this section, 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 effecting 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.

### **§18-1-901, C.R.S. Definitions**

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

### **§ 18-1-407, C.R.S. Affirmative defense**

(1) “Affirmative defense” means that unless the state’s evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

### **§ 18-1-710, C.R.S. Affirmative defense**

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

## **Summary of Opinion**

Applying these statutes to the facts presented in this investigation, I find that the involved law enforcement officers are not subject to criminal prosecution for their actions on March 11, 2019.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. Moreover, in cases where the evidence supports an affirmative defense of self-defense or use of physical force in making an arrest, there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time at the time of the shooting Detectives Barben and Valenzuela shot Anthony Montoya it was reasonable to believe that Montoya posed an imminent threat of serious bodily injury or death to them, other police officers, and citizens in the community. Throughout the incident, Anthony Montoya was in possession of, and discharging, firearms in a densely populated residential area. There is no reasonable probability of disproving the affirmative defenses available to the detectives and, therefore, no criminal charges are appropriate at this time.

## **Summary of Facts**

On March 11, 2019, at approximately 8:30 A.M., Lakewood Police Agents were dispatched to the area of W. Mexico Avenue and S. Marshall Court on a report that gunshots were being fired by an active shooter. Once in the area police agents determined that gunshots were being fired from the interior of the residence at 6412 W. Mexico Avenue. Many of the rounds fired from the interior of 6412 W. Mexico Avenue impacted nearby residences. A woman, who resided on S. Marshall Circle, reported that her home was struck by bullets and she sustained lacerations from flying glass. In an effort to protect citizens from the gunfire, a police perimeter was established around the home.

One of the first reporting parties, Mr. Huston, was contacted. He informed a Lakewood police agent that he was walking in his neighborhood when he heard gunshots. As he continued to walk he heard "bullets whizzing" by his head and added that this, "scared the hell" out of him. Mr. Huston stated that he believed his life was in jeopardy and that he could have died as a result of the shooting.

Lakewood police that were in the area of 6412 W. Mexico Avenue reported hearing continuous gunshots and bullets passing through the air. Agent Brunk, being advised of the shooting, informed police agents on scene that he had prior contacts with the resident of 6412 W. Mexico Avenue, Anthony Montoya. Agent Brunk advised that based upon a prior contact, Mr. Montoya had multiple guns in his residence including an AR-15 style rifle with a high-powered scope, a shotgun, and possibly a .308 rifle, as well as fifty-thousand to one-hundred thousand rounds of live ammunition. Agent Brunk also informed agents that he believed Montoya had sustained a traumatic brain injury in an accident, and may ingest illicit drugs.

At approximately 9:00 A.M. members of the West Metro Special Weapons and Tactics (SWAT) team were activated and requested to respond, local schools were placed on lock-down status, and a reverse 911 was sent to area neighbors with directions to shelter in place. Due to the nature of the incident and the number of gunshots that were being fired, requests were also made of the Jefferson County Sheriff's Office and the Denver Police Department for assistance and armored vehicles (Bearcats).

SWAT operators and a negotiator responded to a command post that was established at 1673 S. Lamar Street. The negotiator, Agent Ezell, was provided with Anthony Montoya's name and date of birth. Agent Ezell was informed that Montoya had handguns, rifles, and semi-automatic rifles inside of his home. Every few minutes Agent Ezell could hear multiple gunshots coming from the area of 6412 W. Mexico Avenue. Agent Ezell heard over the police radio that gunshots were being fired across a greenbelt toward homes to the southwest. Agent Ezell was provided with two phone numbers for Anthony Montoya. Agent Ezell tried calling both numbers. One of the numbers was no longer in service. The other number went to voicemail belonging to "Anthony Montoya." Agent Ezell left a message identifying himself and requested Montoya to call him.

Agent Ezell was then able to obtain a phone number for Anthony Montoya's son, Anthony Montoya III. Agent Ezell spoke with Montoya III and was told that he had spoken with his father earlier in the morning. Montoya III said his father was acting strange, making odd statements, and said that the Lakewood Police had been to his home and there was a shootout. Montoya III also reported that his father has taken methamphetamine in the past, and due to his behavior, he may currently be on methamphetamine. Mr. Montoya III said he was not surprised by his father's behavior. Agent Ezell then called Anthony Montoya's daughter, Alexis. She also told Agent Ezell she had been on the phone earlier in the day with her father and that he was acting anxious. Alexis said her father was talking fast and said people were out to get him. Alexis reported that her father has been violent in the past.

Agent Ezell believes he tried to call Anthony Montoya approximately 18 times and got no answer. Agent Ezell recalled hearing more shots and police yelling “He’s in the truck driving away!”

A SWAT vehicle (Bearcat) was staged on the lawn at the southeast corner of the residence at 6419 W. Mexico Avenue (across the street from 6412 W. Mexico Avenue). Several SWAT operators were in and around the vehicle, and were watching the front of Montoya’s residence. Detective Barben, who is also a member of the SWAT team, was positioned in the turret on the top of the Bearcat. Detective Valenzuela, a SWAT operator, was positioned on the south side of 6419 W. Mexico Avenue, also with a view toward the front of Montoya’s residence.

At approximately 10:18 A.M., almost two hours after the first shots were fired, Montoya left his residence and made his way to his truck parked in the driveway. Montoya was armed with a handgun and fired a shot before entering his truck. SWAT operators did not have a clear view of Montoya at this time, but as he backed out of the driveway and began to drive eastbound on W. Mexico Avenue, both Detectives Barben and Valenzuela discharged their weapons at Montoya. After the shots were fired, Montoya drove away at a high rate of speed eastbound on W. Mexico Avenue. Montoya then turned northbound on Eaton Street and crashed through a fence, coming to rest in the yard at 1673 S. Eaton Street. Denver police officers and SWAT operators took Montoya into custody. He was transported to St. Anthony’s Central Hospital and was pronounced dead at 11:17 A.M.

### Interview of Detective Barben

Detective Barben was interviewed by members of the CIRT regarding the events and shooting of March 11, 2019. Detective Barben’s normal assignment is with the Special Investigations Unit of the Lakewood Police Department. He also serves on the West Metro SWAT team. Detective Barben has over 20 years of experience in law enforcement.

On the morning of March 11, 2019, Detective Barben was at work. He heard there was an active shooter situation over his police radio. Detective Barben gathered his gear, consulted with his SWAT commander, and responded to the scene. Detective Barben monitored the situation while en route, and upon arrival at the scene could hear the sound of gunshots. Based upon his experience, Detective Barben recognized the gunshots as coming from a larger caliber rifle.

After arriving on scene, Detective Barben was provided information concerning Anthony Montoya, who lived at 6412 W. Mexico Avenue. During the post-incident interview, Detective Barben recounted that he was informed that Anthony Montoya

owned a scoped rifle and armor piercing ammunition. Detective Barben knew that the police had responded to Montoya's home in the past and there were concerns about his mental health. Detective Barben was also advised that Anthony Montoya's weapons were not removed from the home following the police contact.

Following the initial briefing, Detective Barben decided to take a position across the street from Montoya's residence in a protected police vehicle known as a Peacekeeper. The Peacekeeper is designed to afford some protection to its occupants but is not rated to prevent rifle round penetration. As gunshots continued to be fired from the interior of 6412 W. Mexico Avenue, members of the Jefferson County Regional SWAT team arrived with an armored vehicle, a Bearcat. The Bearcat is outfitted with thicker armor and provides greater protection against rifle rounds. SWAT members replaced the Peacekeeper with the Bearcat to afford them better protection.

Detective Barben then took a position in the Bearcat. During this time Detective Barben learned that the home they were parked next to was occupied by approximately 11 disabled individuals. Eventually those individuals were evacuated with police assistance.

As Detective Barben maintained visual contact with Montoya's residence from the turret of the Bearcat, other police officers took positions around the home. Detective Barben indicated he heard approximately 200-300 gunshots coming from the residence at 6412 W. Mexico Avenue.

Detective Barben recalled there was a lull in the firing and then another police officer reported that the occupant of 6412 W. Mexico Avenue was outside and getting into a pickup truck that was parked in the driveway. Detective Barben did not have an unobstructed view of Anthony Montoya getting into his pickup truck. It appeared that Montoya was entering the pickup truck from the passenger side. Detective Barben saw the door close and the vehicle back out of the driveway. Detective Barben was asked what he was thinking when the pickup truck, driven by Anthony Montoya, backed out of the driveway. He responded:

“Um, as, as he starts backing up, I thought to myself, uh, this suspect is a, is, is the, um, causing, gonna cause imminent death, um, or serious bodily injury to, uh, myself, to all the other police officers that are involved in this locale right here – ... and to the general public should he go mobile, um, because he's already demonstrated through firing to 2 to 300 rounds in my estimation to the south of this location which – ... are, to my knowledge, are occupied homes... Um, and in addition, uh, I didn't want him to get out into further neighborhoods, uh, and into more populated neighborhoods.”

After the Anthony Montoya backed up out of the driveway he began to travel eastbound on W. Mexico Avenue. Detective Barben “zeroed” in on the driver’s area of the pickup and believed he had a narrow window of time and space to neutralize the threat. Detective Barben fired his weapon several times, estimating between 8 to 12 rounds. He described that after shooting at the pickup truck it continued eastbound on W. Mexico Avenue. Detective Barben then lost sight of the vehicle.

Detective Barben checked on the status and condition of other nearby officers and heard on his police radio that the pickup truck driven by Anthony Montoya had crashed through a fence on Eaton Street. Detective Barben and other officers made their way in the Bearcat to Eaton Street to support police personnel that were in contact with Anthony Montoya.

### Interview of Detective Valenzuela

CIRT Investigators interviewed Detective Valenzuela regarding the shooting of Anthony Montoya. Detective Valenzuela informed investigators that he is a Detective with the Lakewood Police Department and is currently assigned to the Major Crimes Unit. He is also a member of the West Metro SWAT team. On March 11, 2019, Detective Valenzuela received notice of a SWAT team activation concerning an active shooter. Detective Valenzuela responded to the area of W. Mexico Avenue in his SWAT capacity.

While en route to the area of W. Mexico Avenue, Detective Valenzuela monitored his police radio. He heard gunshots in the background of radio transmissions from police agents that were at the scene. Upon arrival, Detective Valenzuela reported to the command post and met with Detective Barben. Detective Valenzuela was told to take a position on the west side of 6419 W. Mexico Avenue with another group of SWAT operators. Detective Valenzuela made his way to the west side of 6419 W. Mexico Avenue and joined SWAT members Jones and Goodrich. Once in position Agent Jones began coordinating the evacuation of the group home at 6419 W. Mexico Avenue. Detective Valenzuela stated they were concerned for the safety of the occupants in the group home should Anthony Montoya start shooting in that direction.

Detective Valenzuela reported hearing gunfire from 6412 W. Mexico Avenue through the entirety of the incident. Based upon Detective Valenzuela’s experience with firearms he believed that the weapon being fired was a large caliber. He described the sound as louder than his “AR.”



As the shooting continued, and Detective Valenzuela watched the residence, he considered his options. Detective Valenzuela described this to the CIRT Investigators as follows:

“...so, at that time I began thinking about, like, well if this guy comes around from this back quarter, I know I don't know if these guys will probably see him, will be able to see him, so it's gonna be on me to if he comes around the corner armed and ready to hurt somebody, I'm gonna have to be ready to take that. Well, what's my backdrop? My backdrop is gonna be that wall of that house. You know what I mean? They can go through it, but it, it's better than open out here because at least there I know that the house is in play to keep it contained, and then we'll have that area there as well to lay at least protective fire, if that's what needs to happen. Um, so, I was kind of concentrating on that, backdrop, and then just thinking about what I knew so far is that he's been shooting. On the radio I heard that there was at least 30 or 40 holes in the houses across this green space. \*\*\*\* there was this green space as well, so I knew that that was also gonna make at least, there wasn't, like, another house or family or anybody else being injured. \*\*\*\* here but hearing as we're trying to set up our sniper, I knew that his rounds are hitting other homes and it's kind of weird, but like, my first thought was like, there's probably some kid in his, like bedroom upstairs right now, so, um, I remember thinking about that. So, I was like, well, um, you know, it's a bad place to be with all these people out here. Um, even for Matt, and he's trying to set up as the sniper, set up like, I remember him asking for another rifle shield because the rounds are still coming, they're still going across and still hitting all those houses. So, even if you're trying to set up a countersniper, you're gonna get hit, and this guy's just shooting with blatant disregard for human life. Um, so, we're thinking about my backs drop. I think about if he comes through what am I gonna do, uh, what are the options, can we address them, can we make contact with him? I was ready for that. Uh, so \*\*\*\* uh, I heard some noise over here and I couldn't see what was going on in this, in this part of the driveway because my vantage point was cut off by the fence, and, but, um, I thought I heard gunshots, um, and, and I don't know if he was firing at us but it sounded like there was gunshots in that area, and then I hear a door close and I hear the engine turn on, and then I hear that he, he, he's got, he's outside, he's outside, he's outside, um, and like I told you, I knew there was that white pickup truck there. So, I hear it, I hear it back out and I hear him start going. Um, so, my thought at that point was, I mean, you've got a guy who's just spent a half hour shooting out the window with small arms, high, high-caliber rifles. He clearly doesn't have any regard for human life as he's shooting, there's clear impact being made to all these houses across the greenbelt.”

At that time Detective Valenzuela knew that Anthony Montoya was leaving the residence. Detective Valenzuela described his thought process and shooting in the following manner.

“ Um, he hadn't responded to any negotiation attempt on the radio. They aired that they had called him several times, not responding, they confirmed the number with family as well and, uh, really made every attempt possible trying to get, resolve this peacefully. So, I know he's got that white pickup truck, \*\*\*\* and then as I'm running through, I see the front fender of his pickup truck, so then I see the white so I'm like okay, pickup truck, white pickup truck moving, um, further I see the wheel, okay, this is the, this is a white vehicle moving, and I look at the cab and so I see the, the cab, and I can see a male in there, and I can see that gray hair, so, at that point in time, my thought was, like, well, this guy's he's mobile this is not, this is, this is fucking terrible like, this is real bad. This is really bad. He's just spent all this time shooting at everybody, now he's in a car and he's got guns, so, my thought was, like, well, I see him, I've brought my red dot I down, my highest likelihood of hitting \*\*\*\*\* if I shoot center mass where he's at least got the most area and that's gonna be probably right around the door area. So, as he, as he's going through, I had him for a split second, and so I fired one round, um, and then I lost sight of him... Once I lost sight of him I came off target, put it in safety, um, I think Pauley aired rounds fired, or shots fired, um, so, at that point, at that point we have to make the decision, okay, do we, what, then it turns into somewhat of a pursuit, 'cause you've got an armed guy that's been shooting, uh, for the past hour, and so, \*\*\*\* radio I hear that and I make the decision, well we know the house isn't clear yet so, we decide hey, we're gonna leave Agent Jones here, he's gonna stay behind \*\*\*\* right now. Myself and Goodrich and are gonna meet up with the, with the BearCat which had since moved over here, and replaced the Lakewood ARV, and we hop on with 'em, we go out, uh, to where this guy here has crashed into a home. We get there, um, he, when we get out, he's being taken into custody already. Um, I saw for a split second and I think, uh, Denver guys were cuffing him, and then we're like okay, we still gotta clear the house, let's go back there. So, we hop back in the BearCat, we get out there. Once we get back here in the area and the CP, um, myself and Pauley pull off from the main group, uh, since we both shot, and, uh, we, we go to the CP and advise them.”

Later in his interview, Detective Valenzuela clarified that after Anthony Montoya left his residence and before he entered his pickup truck he fired another round. Detective Valenzuela also explained his thought process and reasons for shooting at Anthony Montoya in greater detail during the course of the interview. Detective Valenzuela stated:

“...I only heard, um, like a door and then, I heard a gunshot, um, and I don't know if he was shooting at us or, or what was goin' on but \*\*\*\* he's been shooting for the past hour and I was like, in, in my mind, there was, he probably took a shot at us 'cause we then heard the car turn on, heard it back out and started coming through. It, it was headed eastbound and so the first part I see is the, the, the, the front of the vehicle.”

“...Like I just saw it and I saw like the bumper, okay, there's the engine, there's the tire, there's the front cab, there's the guy, there's, I could see the white hair here and then, I was like, okay, that's my guy. He's moving still and, before that, it was like the oh shit movement, moment of like oh, crap, he's gone mobile. This has, this has just gone from bad to worse, um, so that's, uh, the moment where I said, in my mind, we've got a guy who's been shooting at everybody for past half hour. Doesn't care about hitting anybody 'cause he's, he's gonna kill somebody, um, and now, he's got another weapon, he's on the move, um, he, this guy's gonna go out and kill somebody and, and this is my, uh, my one chance to try and stop him and then, I had that clear sight at that moment and that's when I took my shot.”

“He's gonna go kill somebody. He's gonna kill one of us, he's gonna kill some poor family down the street. If he starts shooting out the window, some family sittin' in, in, in their living room. He's gonna kill somebody. It's only a matter of time, based on his previous behavior. Now, he's got a vehicle, he's moving, he, I mean.”

“As soon as I saw, I saw the silver of the hair match with what appeared to be a male, to me. I knew there was a white pickup truck. I knew my backdrop was safe. I knew that if this guy was allowed to continue, he was gonna hurt or kill somebody so this was the one chance I was given, so I took my chance as best as I could and tried to stop him from hurting anyone else.”

“He was an immediate danger to myself, the public, other officers and to, immediate danger, in terms of like, he was gonna cause serious bodily death to people he came across and people he decided was gonna try to stop him. He was out to kill someone. And you don't care about enough about human life to start shooting across a a park, hittin', \*\*\*\* you know, you don't know who lives there. It could be a bunch of little kids. Could be, I don't know, kids playing outside and then.”

Following the shooting Detective Valenzuela joined other SWAT members at the Bearcat and they drove to the area of Eaton Street. When they arrived, Anthony Montoya was being taken into custody by Denver police officers.

### Agent Dunlevy

At approximately 9:09 A.M., Agent Dunlevy, of the Lakewood Police Department, received notification as a member of the West Metro SWAT team of a full team call out regarding an active shooter. When he arrived at the command post on Lamar Street he was tasked with joining a group of officers in a Denver Police Department armored rescue vehicle (ARV). Agent Dunlevy was informed that the active shooter was possibly armed with multiple firearms including a high powered scoped rifle.

As he was entering the ARV he heard a single gunshot. A few seconds later he heard a volley of 6 to 7 more gunshots. Agent Dunlevy then heard radio traffic that police had fired shots and the active shooter was fleeing east on W. Mexico Avenue in a white Chevy pickup truck. Agent Dunlevy then observed a white pickup truck traveling at a high rate of speed passing the intersection of S. Lamar Street and W. Mexico Avenue.

Agent Dunlevy, and other SWAT operators entered the ARV and began to search the area for the pickup truck. The location of the pickup truck was aired by other officers in the area. The pickup had crashed on the northwest corner of W. Mexico Avenue and S. Eaton Street. Agent Dunlevy and the officers he was with arrived at the crash scene. Anthony Montoya was in the cab of the truck and unresponsive. Denver police officers removed Montoya from the pickup, and Agent Dunlevy began to check him for injuries. At that time, Agent Dunlevy located what appeared to be a single gunshot wound to Anthony Montoya's left hip. Paramedics then arrived on scene and attended to Mr. Montoya.

Agent Dunlevy observed that Anthony Montoya had a brown leather holster inside of his waist band, and there was a black semi-automatic handgun inside the white pickup truck on the driver side floorboard. Agent Dunlevy also observed a pistol magazine on the passenger side floorboard.

### Antonio Montoya

CIRT Detective Brunner interviewed Antonio Montoya on March 19, 2019. Antonio Montoya is Anthony Montoya's father. Antonio Montoya explained to Detective Brunner that at approximately 8:00 A.M. on March 11, 2019 he spoke to Anthony Montoya. Anthony Montoya told Antonio that the Lakewood police were speaking

with him and advising that Antonio and his wife Judith leave their home in Denver because they were not safe. According to Antonio Montoya, he was also told that "these guys" were out to kill him and his wife. Anthony Montoya told his father that he loved them and hung up the phone.

Anthony and Judith Montoya clarified that the people who were out to get them, according to Anthony Montoya, were with the "Irish mob." They believed the information to be false.

### Alexis Montoya

Alexis Montoya is Anthony Montoya's daughter. She was interviewed by CIRT detectives concerning her father. She reported that at approximately 8:50 A.M. on March 11, 2019 she received a phone call from her father, Anthony Montoya. She recalled that during the phone call he stated: "Lexi, everything that's been happening at my house is starting to transpire. They're after me." He also said: "There's a hit out on me and now there's a hit out on my family." Alexis said Anthony told her to get out of her home and not to tell him where she was. Alexis asked Anthony if he called the police. He told her yes, and they were "here now."

Alexis Montoya and other family members were asked about Anthony Montoya's medical condition. They reported that Anthony Montoya had sustained a traumatic brain injury as a result of a motorcycle accident in or around 2007. The family informed CIRT detectives that after the accident treating physicians said to expect Anthony Montoya's mental capacity to diminish over time.

### Evidence Collection and Processing

#### Chevrolet Silverado

Crime scene analysts processed the vehicle driven by Anthony Montoya, a white Chevrolet Silverado. Exterior inspection revealed four bullet impacts to the lower half of the front windshield, one bullet impact to the front quarter panel, two bullet impacts to the driver's side door, and one bullet impact to the driver's side B pillar.

The interior of the pickup truck was searched and the following items were collected:

- Fully loaded Glock brand magazine containing 10 rounds RP 45 auto hollow point on the front passenger's side seat
- .45 caliber Glock semi-automatic pistol loaded with one round on the front driver's side floor

- 10 round capacity magazine seated in the .45 caliber Glock firearm containing 8 live rounds of ammunition
- Colt Match Target .223 caliber rifle and one round of ammunition on rear floor
- Benelli Armi 12-gauge shotgun loaded with one live round of Herters 12 GA slug ammunition
- Expended police flashbang device

#### Lakewood Police Department Patrol Vehicle

A police vehicle was parked in the street in front and to the west of 6412 W. Mexico Avenue. The vehicle's left front push bar was damaged and a small metal fragment was protruding from the rubber bumper. Multiple small metal fragments were located on the pavement below the push bar. This apparent bullet impact site was photographed and documented.

#### 6412 W. Mexico Avenue

A search warrant was obtained for Mr. Montoya's residence. The warrant was executed and the exterior and interior of the home was inspected and searched. The following items were collected and/or documented:

- Rear sliding glass door was broken out
- Curtains covering sliding glass door was peppered with bullet holes
- Pieces of shotgun shell wadding were scattered in the backyard
- Numerous bullet holes in patio furniture
- Numerous bullet holes in shed
- Netgear Arlo Cameras at the top of two windows facing the backyard
- Guns safes with ammunition cans
- Bullet holes in viewing window by front door
- Numerous bullet holes in front door
- Numerous bullet holes in walls
- Numerous spent casings and live cartridges on floor and furniture
  - 270 spent rifle casings
  - 98 spent 12-gauge shotgun shells
  - 11 45 Auto casings
  - Total 379 casings
- Two barrel magazines on love seat

- Smith & Wesson, M&P 340 Revolver
- .357 S&W Mag

### Residences

Several residences in the area of 6412 W. Mexico Avenue were struck by bullets shot by Anthony Montoya and one person was injured.

The residence at 1874 S. Marshall Circle was damaged by bullets. Approximately 46 bullet holes were located in the deck, siding, and windows of the home. An expended slug and pellets were located in the home.

The residences at 1891 S. Marshall Circle and 1863 S. Marshall Circle and a yellow Nissan Xterra had apparent bullet impacts. All were in line of site from 6412 W. Mexico Avenue.

Four other homes in the area may have also been struck by bullets from 6412 W. Mexico Avenue. These homes were not in direct line of sight from 6412 W. Mexico Avenue.

A resident of 1874 S. Marshall Circle was injured. She stated her sliding glass door shattered and she went to sweep up the glass and debris. As she bent over to pull back an area rug another projectile came through the sliding glass door and she was struck by flying glass. She sustained multiple facial abrasions. Her injuries were documented and photographed.

### Autopsy

Anthony Montoya was removed from his pickup truck and taken to Swedish Medical Center. He underwent a thoracotomy and was transfused with several units of blood. Resuscitation efforts were unsuccessful and he was pronounced dead.

The autopsy on Anthony Montoya was performed March 12, 2019 by Dr. Carver, a forensic pathologist. He opined that the cause of Anthony Montoya's death was "hemorrhage from a gunshot wound of the hip, that severed the decedent's left iliac artery."

## **Legal Analysis**

This office's review of the shooting of Anthony Montoya is limited to an analysis of applicable criminal statutes and affirmative defenses which apply to the facts.

As is frequently the case, and as documented in scientific literature, individuals involved in high-stress events such as a shooting may experience wide-ranging emotions and perceptual distortions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often, recall of particular details will differ from witness to witness, and those interviewed may not recall all of the same events in the same chronological order. Witnesses have different perspectives to an event and their statements will so reflect. In this case, each of the witnesses offered versions of the event from their perspective and some minor inconsistencies are apparent. While there are some inconsistencies regarding some recollections of this incident, there are no inconsistencies which are relevant to my determination of criminal culpability. The inconsistencies here are not consequential in the analysis.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, there is no question that Detectives Barben and Valenzuela intentionally shot, and shot at, Anthony Montoya. Their statements and the evidence support that conclusion. The legal analysis then shifts to a consideration of Colorado law regarding affirmative defenses and self-defense.

In Colorado, all citizens, including police officers, have the right to self-defense, including the right to use "deadly physical force" under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or another, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. A critical issue in self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2). That statute provides in pertinent part that a peace officer is justified in using deadly physical force upon another person... 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...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...

(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.

Anthony Montoya was armed with several deadly weapons, including high-powered rifles, and handguns. Mr. Montoya fired hundreds of gunshots in a residential area over a prolonged period, and in so doing he endangered the lives of numerous citizens and police officers. Anthony Montoya committed multiple felony offenses by firing multiple rounds that penetrated dwellings and occupied structures. The evidence also supports a finding that Anthony Montoya fired one round into a police car parked in the street as he left his residence and just prior to entering his pickup truck.

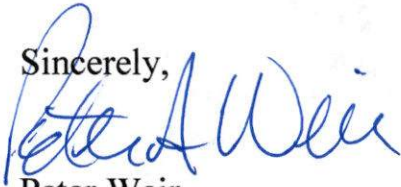
The police on scene repeatedly attempted to contact Mr. Montoya by telephone to convince him to stop shooting. Anthony Montoya did not respond to those telephone calls, and at no time did Anthony Montoya give the police reason to believe he was going to stop shooting of his own accord and surrender peacefully.

As Anthony Montoya began to drive away from his residence, Detectives Barben and Valenzuela reasonably believed that they, as well as other police officers and citizens, were at risk of death or serious bodily injury. In order to end the threat posed by Mr. Montoya, Detectives Barben and Valenzuela exercised deadly physical force.

I find in the review of this shooting, based upon the facts as determined in the investigation and the applicable law, that the actions taken by Detectives Barben and Valenzuela during this incident meet the legal requirements of the affirmative defenses as contained in §18-1-704 and §18-1-707 C.R.S. I am certain there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defenses available to Detectives Barben and Valenzuela beyond a reasonable doubt

Therefore, I conclude that the conduct by Agents Barben and Valenzuela, did not violate any criminal statutes nor involve criminal conduct.

Sincerely,

A handwritten signature in blue ink that reads "Peter A. Weir". The signature is written in a cursive style with a large initial "P" and "W".

Peter Weir

District Attorney

First Judicial District Attorney