



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

May 8, 2020

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

**Re: Critical Incident Response Team Investigation 19-06 (Officer
Involved Police Shooting of Matthew Martinez)**

Dear Chief McCasky:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on October 27, 2019 to investigate the shooting of Matthew Martinez by Lakewood Police Agents Guidry, Brunk, and Lee. Matthew Martinez survived the shooting.

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 person 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 Agents Guidry, Brunk, and Lee in the incident.

At the time of CIRT activation in this case, I dispatched the Assistant District Attorney and several District Attorney Investigators to respond and work in coordination with CIRT Investigators and lend legal assistance as necessary. They observed key interviews of witnesses including Agents Guidry, Brunk, and Lee.

CIRT Investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and

completed a background of Matthew Martinez 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, and photographs.

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 attempted use of deadly force in this incident by Agents Guidry, Brunk, and Lee 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 October 27, 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 of the shooting by Agents Guidry, Brunk, and Lee it was reasonable for them to believe that Mr. Martinez posed an imminent threat of serious bodily injury or death to each of them. Throughout the incident, Matthew Martinez appeared to be in possession of a handgun and refused to obey commands issued by the police. There is no reasonable probability of disproving the affirmative defenses available to the agents and, therefore, no criminal charges are appropriate at this time.

Summary of Facts

On October 27, 2019, at approximately 2:45 P.M., Jacqueline Sandoval called 911 from her home at 10705 W. 7th Avenue Unit #5 in the city of Lakewood, to report that her son, Matthew Martinez, was drunk and destroying her property. Ms. Sandoval stated that her son was slamming a door, being disrespectful, and was yelling at her. According to Ms. Sandoval this was approximately the third time that her son had engaged in this type of behavior. During the call, Ms. Sandoval asked for a police response and told the 911 operator that she did not think her son, Matthew Martinez, had any weapons.

Agent Guidry responded to the call for service and began to drive to Ms. Sandoval's apartment. While en route, Agent Guidry called Ms. Sandoval to obtain more information. Ms. Sandoval reiterated that Matthew Martinez was drunk, and she asserted that she just wanted police officers to speak to him.

Agent Pacot was also assigned to respond to this call for service. Agent Pacot drove to the apartment complex and met Agent Guidry. Together, they approached Unit #5 located on the second-floor at the eastside of the building. Agent Guidry announced their arrival at the front door to Unit #5. Ms. Sandoval came to the door and opened it. Agent Guidry looked beyond Ms. Sandoval into the interior of the apartment and

saw a male subject, later identified as Matthew Martinez. Mr. Martinez was not wearing a shirt, had a heavy build, and was approximately 6'00 tall. It appeared to Agent Guidry that Matthew Martinez had just walked from a back bedroom and he was carrying a handgun. Agent Guidry backed up very quickly and bumped into Agent Pacot. Agent Guidry observed Mr. Martinez turn towards them. Agent Guidry got on his police radio and announced they needed more police units to respond and that the male subject was armed with a gun.

Agents Guidry and Pacot moved to positions of safety on the ground level. After a short time, Agent Guidry ran to his patrol car, retrieved his rifle and took cover.

Additional Lakewood Police Agents arrived at the scene to include Agents Brunk and Lee. Upon arrival, Agents Brunk and Lee got out of their patrol vehicles and positioned themselves behind cover on West 7th Avenue. Agent Lee then moved to a position to contain Mr. Martinez should he flee to the west.

At this time, Agent Guidry was to the east of the apartment building and using his police vehicle as cover. As Agent Guidry observed the front of Unit #5, Mr. Martinez emerged. Mr. Martinez was still carrying a handgun.

Mr. Martinez walked down the east staircase and directly toward Agent Guidry. The gun carried by Mr. Martinez was visible to Agent Guidry. Agents repeatedly yelled commands to Mr. Martinez to drop the gun. Mr. Martinez disregarded all commands issued by the police and continued to advance on Agent Guidry. As Mr. Martinez was getting closer to Agent Guidry, agents believed a dangerous cross-fire situation was developing. As a result, both Agents Guidry and Brunk were forced to break from positions of cover and move into the middle of West 7th Avenue.

As Mr. Martinez advanced he began to raise his gun toward Agent Guidry. Agent Guidry believed he was in imminent danger of serious bodily injury or death and he fired two shots at Mr. Martinez. Agent Brunk also observed Mr. Martinez raise his handgun as he approached Agent Guidry. Fearing for his safety, and that of Agent Guidry, Agent Brunk fired one round at Mr. Martinez. Agent Lee, who was to the west of Agent Guidry, observed Mr. Martinez and ordered him to drop the gun. After Mr. Martinez failed to comply and raised his gun, Agent Lee believed Mr. Martinez was going to shoot him or Agent Guidry. Agent Lee fired two rounds at Mr. Martinez. Mr. Martinez fell to the ground. Agent Lee approached Mr. Martinez and kicked the gun out of his hand. The gun came apart, and at that time Agent Lee could see a CO2 cartridge. CO2 cartridges are a common component in many pellet or BB guns. The gun had no visible markings or colored muzzle tip to show it may not be an actual firearm.

Agents rendered aid to Mr. Martinez and had him transported to a nearby hospital. Mr. Martinez survived the shooting.

All the agents involved in the shooting, and some witnesses, were interviewed by CIRT Investigators at the Lakewood Police Department.

Interviews of Lakewood Police Agents Using Force

Agent Guidry

Agent Guidry was interviewed by members of the CIRT regarding the events and shooting of October 27, 2019.

Agent Guidry has been a Lakewood Police Agent for almost 6 years. He is currently assigned to the Patrol Division. On October 27th Agent Guidry responded to 10705 W. 7th Avenue, Unit #5 on a disturbance call at approximately 3:00 P.M. On the way to the call, Agent Guidry called Ms. Sandoval to obtain more information concerning the nature of the disturbance, and to discuss her request for assistance from the police.

After Agent Guidry arrived at 10705 W. 7th Avenue, he waited a very short time for his partner, Agent Pacot. Once Agent Pacot arrived, the two of them walked to a staircase that led to the second floor of the apartment building. Once on the second floor, Agents Guidry and Pacot walked toward the front door of Unit #5. As Agent Guidry approached a front window to Unit #5 he heard a “commotion.” Agent Guidry then went a few feet further to the east and to the front door. The storm door for the apartment was closed, but the front door to the apartment was open. Agent Guidry knocked on the storm door and announced, “Lakewood Police.” Ms. Sandoval responded and opened the door for Agent Guidry. Agent Guidry scanned the area behind and around Ms. Sandoval and immediately saw a male subject with a “black pistol” in his hand. The male subject, later identified as Matthew Martinez, was estimated by Agent Guidry to be about 6 feet tall with a heavy build. He had no shirt on and appeared to walk from a bedroom where Agent Guidry previously heard the “commotion.”

As soon as Agent Guidry observed Mr. Martinez with a gun he drew his service weapon and backed up quickly. Mr. Martinez turned towards Agents Guidry and Pacot. Agent Guidry recalled announcing over the radio that Mr. Martinez had a gun and more police units were needed.

Agent Guidry was attempting to hold the door and watch the bedroom window to make sure Mr. Martinez did not shoot at them as Agent Pacot moved away from Unit #5 to the ground level. After Agent Pacot moved to a position of relative safety,

Agent Guidry also backed away from the apartment to the ground level. Agent Guidry tried to find cover below the apartment, but was not satisfied he was in a safe location. He informed Agent Pacot over the radio he was going to sprint to his police vehicle on the north side of the street in front of the apartment, retrieve his rifle, and take cover behind his car.

As Agent Guidry sprinted toward his car he looked toward the apartment to make sure he was not going to be shot by Mr. Martinez. Once at his patrol car, Agent Guidry put on a police helmet and retrieved his rifle.

As Agent Guidry maintained cover he observed Ms. Sandoval come outside of the apartment speaking on the phone. He yelled at her to come to him. He was concerned that if Ms. Sandoval did not leave the apartment Mr. Martinez might take her hostage. Ms. Sandoval did not come to Agent Guidry, and instead went back inside the apartment.

Approximately one minute after Ms. Sandoval went back inside the apartment, Agent Guidry saw Mr. Martinez come to the screen door and look around. He did not open the door and then disappeared from sight.

A few minutes later Mr. Martinez came outside of the apartment. He was wearing a yellow shirt, and still carrying a pistol. Mr. Martinez walked in some circles and then began to make his way to the stairs. Agent Guidry announced over the police radio that Mr. Martinez was outside of the apartment with a gun.

Agent Guidry described the actions of Mr. Martinez from that point forward and the shooting as follows:

“And after he paces for a few seconds and looks around, he starts walking down the stairs. And then he turns and I start yelling, "Police. Drop your gun," several times, ordering him to drop his gun. I'm yelling at him. And at this point, he, like, starts walking directly to me with the gun in his hand. He's kind of, like... He's... he has this, like, aggression and he's just, like, staring at me. And at this point, I'm like, "This guy's going to walk right at me and try to shoot me.”

And we're probably about 100 feet from each other at this point. And I'm kind of at an angle and I'm still yelling at him and he keeps coming forward. And about halfway through the parking lot, um, because I'm so focused on him, my other part- uh, partner, starts yelling at him also. And they were pretty close. Like, they... So, it was kind of like a V.

Um, he was walking and then he kind of directs his, his, uh, his way, his, his, uh, his route, like, kind of towards the middle, walking directly south. And I keep yelling at him, "Drop the gun." And I specifically said, "Drop the gun or I'm going to shoot you." And he keeps walking and he, he, would, like, look at me and, like, he had this, like, glare in his, his face. And he... It felt like he was looking right through me. And, um, at that moment, I knew, like, he was going to try to shoot me or my partner.

So, um, he comes... He keeps walking and walking. And then I, I recognize that he's, he's, uh, creating a, a crossfire situation with my partners. I've got several blue people over here and I'm right here, and we're basically even and he keeps coming. And so he forced me away from my hard cover position and I just had to sprint, I guess. Because I... He forced me to the middle of the road. I just sprinted, because I knew he was, he was about to shoot it out with us.

And um, because if, if I didn't move, we... My partners... I, I could have got shot by my partners. And then I... And then that would have created a situation where I'm shooting right at my partners, too. So, I, I, I was forced to break cover because of his actions. I kind of, uh, ran at an angle in the middle of the street. And as I was doing that, I was coming up, like, trying to keep, keep him, like, in my, in my sights. I had my sights up and then running and making sure, you know, my target and beyond is not, like, um, fellow officers.

And at that point, I knew I had no choice. After I ordered for 100, 100 feet to drop the gun and he would not. And um, I knew I wouldn't have time to, to shoot if he just extended his arm and just started shooting at me or, or my officers that were, like, right over here. So, um, that was, that was the... Probably the scariest moment of my entire life, was forced... Getting forced off that cover. And I had no cover in the middle of the street, but it was, it was like the best situation to create for, for us so we didn't shoot each other.

But also, once I broke that cover, I, I immediately realized that my, my life was in imminent danger by this guy, a guy 10 to 15 feet away from me, with a gun in his hand, not dropping it. And that's when I came up there very quickly and shot two times.

And then, um, once he, uh, once he was on his stomach, we were assessing the situation and, um, these, uh... My partners, I don't know exactly who, who they were, but a handful of my partners over here slowly approached and, um, I don't, I don't remember much after that, like, if they kicked the gun away or, um... Because I was, I was kind of keeping an eye on the, uh, apartment as well.

And once, uh, the main... The scene was safe, I sprinted to my car and they were attending to him, um, rendering aid. I sprinted to my car, grabbed my med bag, in the- on the passenger side. And I threw my, uh, med bag to, uh... I, I don't even know who it was, but I yelled at him. I was like, "Med bag!", and I threw it at him."

In response to a question from a CIRT Investigator Agent Guidry clarified his thought process at the time of the shooting:

"Because I was out in the middle in the street and I knew that I, I had no choice. And um, my, my life was immediately in danger. Um, I gave him plenty of opportunities over probably 100 feet and what, what, what I'm thinking over 100 feet. And the way he was coming, I, I knew he was going to either shoot me or my officers. And um, I, I wouldn't have enough time to basically stop the threat if I didn't shoot him right there, once I got to the middle of the street, because he kept... He just, he just kept coming and, um, and I knew that would have created a dangerous situation for myself, um, and my partners if we're even, you know, exchanging gunfire. So... Um, basically, "Oh, my God." Like, you know, seeing a guy in front of you, like, wondering if, you know, you're going to get shot or thinking, you know, you, you could die right here. So..."

Agent Brunk

Investigators assigned to the CIRT contacted Agent Brunk at the Lakewood Police Department and interviewed him concerning the shooting of Matthew Martinez.

Agent Brunk explained that he was on duty October 27, 2019, and in his patrol car, when he heard a disturbance call that involved a male with a gun. Agent Brunk was not far from the location of the call for service so he activated his vehicle's emergency lights and proceeded to the address.

When Agent Brunk arrived on scene he observed Agent Guidry taking cover behind a marked patrol car. Agent Brunk estimated that Agent Guidry was approximately 200-300 yards to the east of his location. Agent Brunk also saw Agent Pacot behind a white work truck. Agent Brunk was informed by Agent Pacot that the male with the gun was also to the east. As Agent Brunk maintained a position of cover behind a cinder block pillar he was joined by Agent Lee. The two of them then left that position and joined Agent Pacot by the white work truck, which was facing west and parked on the north side of West 7th Avenue. Agent Pacot was standing by the driver's side wheel well and Agents Brunk and Lee stood near the back of the truck.

At that time, Agent Brunk heard Agent Guidry announce that the gunman was out of the apartment and was walking in his direction. Agent Brunk then saw Matthew Martinez carrying a handgun and walking toward Agent Guidry. It appeared to Agent Brunk that Mr. Martinez was fixated on Agent Guidry. Agent Brunk recalled that multiple police agents yelled for Mr. Martinez to drop the weapon. Mr. Martinez did not comply with those commands.

Agent Brunk observed Mr. Martinez walk to the east driveway entrance to the apartment complex and stop. Agent Brunk was concerned about a crossfire situation and moved into the middle of West 7th Avenue. As he did that Mr. Martinez looked at him, took a step, and started raising his firearm.

Agent Brunk described his thought process and the shooting at different times in his interview as follows:

“So I'm thinking he's raising the gun. And I'm, I'm, uh, fearful for my safety, Agent Guidry's safety and I fire a shot. At that point, as I'm assessing it, I hear, uh, two additional shots, uh, faster than I can even release my, my trigger. I see the, the individual fall to the ground, uh, in which it appeared the threat had been, uh, the threat had been stopped and I don't fire a second round.”

“First I was like, are you kk, eh, uh, uh, I was somewhat shocked, um, because this guy is in my mind, he's deadset on Guidry and he's walkin' to Guidry, posing like, uh, in my opinion he's, 1) He's gonna shoot Guidry; 2) He's posing a threat and/or posturing to Guidry. Um, so, at that point, I become very, very concerned for Guidry's safety, 'cause I don't know where he's moving through here, there's a privacy fence and there's the blue dumpster I was talkin' about roughly right there.”

“Not to mention, um, there's additional officers comin' up this way, uh, that could possibly, um, be struck by gunfire.”

“Um, so at that point, I see him, uh, as he's turning he's raising it. I'm thinkin' I'm gonna get shot and I need to act now.”

“And then, uh, once he fell to the ground, uh, uh, we removed the gun from his possession, checked his injuries, trying to assess his injuries, got the trauma kits, uh, helped administer aid, plug in the, he had a, uh, what I believed possibly could've been an, uh, exit wound in, in his back or, you know, an entry wound; I don't know. Uh, tried to plug that hole, that, uh, injury up with gauze, combat gauze and then another officer came in and kinda took over, uh,

putting the seals on, tourniquets on his right leg 'cause he had an injury on his right leg. And, uh, I was relieved from the scene. And as I was walking away from the scene, uh, in close proximity to where I was standing, I saw my shell casing in the ground, or on the street.”

Agent Brunk stated he did not feel that he had any alternative to shooting Mr. Martinez.

Agent Lee

Agent Lee was interviewed at the Lakewood Police Department by CIRT Investigators the evening of October 27, 2019 regarding his observations and role in the incident with Matthew Martinez.

Agent Lee was on duty October 27th and was at a Lakewood substation at around 3:00 P.M. A few minutes after the hour Agent Lee recalled hearing another police agent transmit over the radio something to the effect of “he’s got a gun, we need more cars.” Agent Lee then heard the address dispatched so he left the substation and drove to the area of West 7th Avenue.

As Agent Lee arrived on scene he observed Agent Brunk and Agent Pacot. Agent Lee joined Agent Brunk initially and then moved to a position near Agent Pacot. Agent Pacot pointed out Unit #5 and told Agent Lee that is where the gunman was located.

Agent Lee heard another police agent announce over the radio that the gunman was “coming out.” Agent Lee observed Mr. Martinez, armed with a handgun, walking toward Agent Guidry. Agent Lee heard Agent Guidry order Mr. Martinez to stop and drop the gun. Agent Lee also started yelling commands to Mr. Martinez to stop and drop the gun. Agent Lee moved to a position in the street, West 7th Avenue, and saw Mr. Martinez start to raise his handgun.

Agent Lee described these events, his reaction, and the shooting as follows:

“...I saw him step farther out where I could actually see his whole body, and he was walking toward Agent Guidry. Uh, I stepped out or down the street a little ways. There was another car, a dark-colored car, I think a blue car. I stepped out behi (sic), uh, to that one and then as the guy kept coming I could hear Agent Guidry telling him to stop and stop the gun, uh, drop the gun. I saw that the, the, the guy had a gun in his hand, a pi (sic), um, a black handgun in his, I think in his right hand, and as he was walking out toward Guidry I stepped out away from that blue car, um, thinking that if, if he kept coming and he, you

know, tried to run or something like that, I'd be between him and, and being able to get to the west so I could order him back. So I started yelling at him also to, to drop the gun. I said that several times. Uh, I also told him to stop. Um, just as he got to the, the driveway of the, the apartment complex there, that, that parking lot where I'd seen him, um, I noticed that the gun in, in his right hand started to move up, and so I thought he was going to raise the gun up and, and, um, either shoot at, at Guidry or was like right in front of him, or turn and shoot me, and, uh, at that point I, um, had already drawn my, I'd already drawn my gun and was already pointing it at him when I was giving the, the commands which I don't know that he ever saw me, but, um, prior to him walking out, I had stepped out where I could see him. Um, he was walking, like I said, with the gun down by his side and then he brought it up in a, what I think was a deliberate motion to bring it up toward Agent Guidry so I thought he was gonna shoot either him or me, and, uh, I fired, um, my gu, handgun at him, um, I think striking him. I think I fired twice. Um, I think at, at least I, um, I believe I hit him. I heard at least two other shots. I'm not sure where they came from. I saw the man fall. I stepped back behind the dark-colored car. I think the blue car took cover there, still covering him with my gun out. Um, he was laying on his back, still holding the gun in his, I believe in his right hand. After a few seconds, um, I don't know if I said it to Agent, um, Pacot, but I know she and I moved up to cover him, uh, and then I kicked the gun out of his, out of his hand, and at that point the, the, um, the handle came apart and I saw that it was a, uh, had a CO2 cartridge, and I said something like, "It's a BB gun", and then, um, shortly thereafter, um, Agent Pacot and I and, uh, someone else, I don't remember who, figured we better, uh, give this guy some aid now. He's hurt. Um, I saw that he had blood on one of his pant legs and a hole that I thought was probably a bullet wound. I pulled up that, that pant leg and I could see, um, a wound in that leg, so I took my ker, tourniquet from my belt and, um, and put that tourniquet on. Um, another agency was standing up, asked me did you put, just get the tourniquet on, and I said yes, and then he aired over the radio, to dispatch, to tell 'em to time stamp what time we put the, put the tourniquet on. Um, I asked a couple of the other agents who were there, you know, is the guy still breathing 'cause I figured if he's not breathing we need to start doing CPR. Um, they said he's breathing. I could hear like a raspy, uh, sound..."

Agent Lee was asked if he had any other options at the time Mr. Martinez began to raise his handgun. Agent Lee stated, "No, it just happened so fast. It, it, um, we told him to stop. We told him to drop the gun and he didn't, and we were, I think for a split second, kind of in a frozen moment where he had stopped where he could've dropped the gun. He could've stopped. He could've obeyed what we did, what we told him to do but he didn't."

Agent Lee stated that he believed the gun was real, and that if he did not shoot Mr. Martinez one of the police agents was going to be killed.

Interviews of Lakewood Police Agents Not Using Force

Numerous police agents were on scene or arriving at the scene at the time of the shooting. None of these agents had a complete and unobstructed view of Mr. Martinez as he approached Agent Guidry. These agents were interviewed and pertinent information from a few of the interviews follows.

Agent Pacot

Agent Pacot was dispatched on the disturbance call along with Agent Guidry. She met Agent Guidry at the apartment complex and the two of them ascended a flight of stairs to make their way to Unit #5. She recalled the security glass door was closed. Agent Guidry was facing the door, and she was behind him. She could not see inside the apartment because Agent Guidry was in front of her. Agent Guidry knocked on the security door and she heard a woman's voice say, "Come on in." Agent Guidry crossed the threshold, and saw the male suspect first, at which time she heard Agent Guidry say, "Drop the gun, he has a gun." Agent Pacot saw the male suspect, but she did not observe a gun. She and Agent Guidry immediately backed away from Unit #5. She proceeded to the furthest west staircase, and Guidry proceeded to the furthest east staircase. Both of them then went to the ground level to find cover.

Eventually Agent Pacot made her way behind a vehicle on West 7th Avenue to obtain a view of Unit #5, and for protection from the armed man. From there she could see Agent Guidry, who had moved to his patrol car in the street. He was armed with his rifle and was wearing a helmet. Agent Pacot could hear sirens in the distance, indicating additional police agents were coming to provide assistance. She recalled Agents Brunk and Lee arriving and taking up an initial position by the first apartment building to the northwest.

Agent Pacot was then joined by Agent Lee and she heard Agent Guidry air that the male suspect was coming out of his apartment. She heard Agent Lee announce that the male was carrying a gun. Agent Pacot never saw Mr. Martinez come out of his apartment and come down the stairs because the trees were blocking her view. She moved to another car and heard multiple verbal commands to "drop the gun" from multiple agents. She then heard 3 gunshots. Agent Pacot did not know who fired the shots, but when she came out from behind a car she saw Mr. Martinez on the ground. She saw a police agent kick a gun away from Matthew Martinez and thought it could

have been a Glock. She said the gun looked real until it came apart after being kicked and she saw the CO2 cartridge.

Agent Yazdani

Agent Yazdani was working patrol on October 27th and monitored radio transmissions from Agent Guidry. He heard Agent Guidry report a man with a gun, and then received additional information concerning the call from dispatch. Agent Yazdani activated his vehicle emergency equipment and drove directly to the scene at 10705 W. 7th Avenue. He followed Agent Alfano into the area and the two of them parked near West 7th Avenue and Oak Street. Agent Yazdani recalled hearing Agent Guidry announcing that the male with the gun was coming outside. Agents Yazdani and Alfano began to move quickly toward Agent Guidry's position.

Agent Yazdani observed multiple agents and then saw Mr. Martinez walking from the apartment building toward the police agents. Mr. Martinez was armed with a handgun and the agents issued commands to drop the gun. Mr. Martinez did not comply and continued toward the agents. Agent Yazdani then heard a series of shots when Mr. Martinez was within approximately 10 feet of the agents. He did not know who fired their guns.

Agent Alfano

Agent Alfano reported he was one of the many agents who responded to the call for service at 10705 W. 7th Avenue. He was asked to cover the rear of the apartment building along with Agent Yazdani. They attempted to make their way to that area but after hearing Agent Guidry air that the gunman had come out of the apartment, Agents Alfano and Yazdani reversed course and made their way to West 7th Avenue. As he and Agent Yazdani ran in Agent Guidry's direction he heard gunshots. He saw Mr. Martinez fall to the ground but did not know who discharged their weapons.

Agent Hassell

Agent Hassell was on patrol and monitoring the police radio the afternoon of October 27th. He heard Agent Guidry's request for additional officers at 10705 W. 7th Avenue. Agent Hassell activated his patrol car's emergency equipment and responded to lend assistance to Agent Guidry. As Agent Hassell was en route to the scene he continued to monitor information from Agent Guidry and others. As Agent Hassell turned onto West 7th Avenue, he could see Agent Guidry taking cover behind his patrol car.

Agent Hassell parked his car some distance to the east of Agent Guidry. He then went to the rear of his vehicle to retrieve his rifle and obtain his tactical helmet. As he was getting his helmet on he heard Agent Guidry say the suspect was walking out with a gun in his hand. At that point he could see Agent Guidry was pointing his rifle in the direction of the apartment building. Agent Hassell heard several commands to drop the gun being issued to Martinez. Agent Hassell believed commands were being given by Agents Guidry and Lee.

Agent Hassell began running to Agent Guidry's location. He described that Agent Guidry was now standing in front of his patrol vehicle facing towards the apartment building just on the east side of the driveway leading out of the east side of the parking lot area. Agent Hassell indicated that he came up near the right hand side of Agent Guidry and was between Agent Guidry and Agent Guidry's patrol vehicle. Agent Hassell also observed Agent Lee standing in the street on the west side of the driveway leading out of the east side of the parking lot. Agent Hassell also noticed one or two other uniformed agents in the same vicinity as Agent Lee, but he wasn't sure of the identity of these other two agents.

Agent Hassell thought there was a dumpster near the driveway leading out of the parking lot area that was obstructing his view because he wasn't actually able to see Mr. Martinez walking towards the street until he was almost to the street. Agent Hassell estimated he saw Martinez for only one or two seconds and then shots were fired. From his position, Agent Hassell could only see the left-hand side of Mr. Martinez and did not see the gun until after the shooting.

Agent Hassell estimated that Martinez was approximately 20 feet away from Agent Guidry at the time of the shooting. Agent Hassell indicated he heard approximately three shots, but did not know who was shooting.

Interview of Jacqueline Sandoval

Jacqueline Sandoval consented to an interview the evening of October 27, 2019. Miss Sandoval stated she is the mother of Matthew Martinez. She informed the investigators that her son had been drinking and that he seemed intoxicated on October 27th. Ms. Sandoval said that around 3:00 P.M. Matthew Martinez was yelling at her and throwing things in the apartment. She was getting scared and decided to call the police. After she called the police Mr. Martinez told her "You know I'm going to jail right." Miss Sandoval said she then heard Matthew state he was going to get his gun and he was going to get shot by the police. Ms. Sandoval reported she told Mr. Martinez that the police just wanted to talk to him.

Ms. Sandoval believed it took police about 15 minutes to arrive. When the police arrived, they knocked at the front door. She said that as the police were at the front door, her son came around a corner inside the apartment carrying his BB gun and held it up toward the police. Ms. Sandoval told the CIRT Investigators she yelled it was a BB gun. She described her son's BB gun and said it looked like a pistol with an orange tip. Ms. Sandoval said the police yelled "freeze" and then backed away. A few minutes later several police cars arrived in the area.

Ms. Sandoval reported that she then observed Mr. Martinez walk down the stairs of the apartment complex and into the parking lot. She said she could hear police officers yelling commands to Mr. Martinez. She heard the police officers repeatedly yell "freeze" and "put the weapon down." Ms. Sandoval informed the investigators, "I know he raised his gun because I saw him." At that point Ms. Sandoval described that she looked away because she did not want to see her son get shot. She heard three gunshots.

Attempt to Interview Matthew Martinez

Investigators responded to St. Anthony's Hospital on November 1, 2019 to meet with Mr. Martinez. He was being treated for his injuries after the shooting.

Upon entering the room the CIRT Investigators introduced themselves and apologized they were meeting under the circumstances. In response, Mr. Martinez stated, "I am too, it's my fault though."

One of the detectives read Mr. Martinez his Miranda rights and Mr. Martinez then explained that he believed he had been appointed a public defender in a prior case and requested they be present during the interview.

Mr. Martinez was not interrogated, but he was asked if he was comfortable speaking about his medical prognosis. Mr. Martinez did not answer that question but replied, "I acted on alcohol like a fool, carried a fake gun out there, got way too close to them... but I understand why they shot me, the 21-foot rule."

Evidence Collection and Processing

Numerous crime scene analysts assisted in documenting the scene of the shooting, the police agents involved in the shooting, and Mr. Martinez.

Shooting Scene

Crime Scene Analyst (CSA) Olander documented the efforts by police to process the scene of the shooting, largely consisting of the roadway surface of West 7th Avenue in front of the Villa Rosa Apartments. In his report CSA Olander stated in part:

“In the roadway, between the west and east Villa Rose (sic) parking lot driveways, CSA Olander observed 3 yellow placards (Numbers 12,13, and 14, respectively) that had been placed by initially responding investigators, which marked spent cartridge cases. A marked LPD patrol vehicle (3090) was observed to have pulled into/across the east driveway entryway of the parking lot and south of the vehicle was a blue “Lakewood Police” tent that was covering an area of evidence that had been marked by a yellow placard (Number 9), which consisted of a black pistol, a bottle of liquor, a brown coat, a CO2 air cartridge, and various items of medical intervention. Further to the east, on the roadway of W. 7th Ave., CSA Olander observed additional placards (Numbers 10 & 11) that marked (2) additional spent cartridge cases.”

“CSA Olander took overall photos of the scene and close-up photos of the evidence as it was initially observed, and then assisted by CSA Weadock, replaced the yellow tent placards with high visibility green placards and marked additional items as evidence. CSA Olander took an additional set of photographs of the overall scene and individual items of evidence with the newly placed placards, prior to Officers McElroy and Steiner collecting scans of the scene with their FARO 3D scanner.”

“Following the completion of 3D scanning, CSA Olander, assisted by CSA Weadock, collected the following items as evidence:

- Marker 1: (1) spent “WIN 9MM LUGER” cartridge case from the roadway of W. 7th Ave, west of east driveway of parking lot. (L19035615)
- Marker 2: (1) spent “WIN 9MM LUGER” cartridge case from the roadway of W. 7th Ave, west of east driveway of parking lot. (L19035616)
- Marker 3: (1) spent “WIN 9MM LUGER” cartridge case from the roadway of W. 7th Ave, west of east driveway of parking lot. (L19035617)
- Marker 4: (1) spent “SPEER 223 REM 14” cartridge case from the roadway of W. 7th Ave, east of east driveway of parking lot. (L19035618)
- Marker 5: (1) spent “SPEER 223 REM 14” cartridge case from the roadway of W. 7th Ave, east of east driveway of parking lot. (L19035620)
- Marker 6: (1) black, UBREX-brand, “40 X-P” air pistol, .177 caliber, and bearing S/N: 5E52952. Recovered without air cannister from the roadway of W. 7th Ave., at the east driveway of parking lot. (L19035626)
- Marker 7: (1) CROSMAN-brand, 12-gram, CO2 air cannister from the roadway of W. 7th Ave, at the east driveway of parking lot. (L19035629)

The spent cartridge cases were from the discharged police firearms. It should also be noted that the gun carried by Mr. Martinez, collected at Marker 6, did not have an orange tip.

Matthew Martinez and Apartment

At St. Anthony's Hospital, Mr. Martinez was first treated by medical personnel and then photographed. Bandaged areas, believed to be his injuries, were photographed. These included his right armpit region, upper right leg, and lower left leg. A bullet removed from Mr. Martinez during medical intervention was seized, as well as his clothing.

A search of the apartment occupied by Mr. Martinez prior to the shooting was conducted. Multiple empty alcohol containers were located and documented.

Legal Analysis

This office's review of the shooting of Matthew Martinez 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 assigned to the CIRT, there is no question that Agents Guidry, Brunk, and Lee intentionally shot, and shot at, Matthew Martinez. Their statements and the evidence support that conclusion. The legal analysis then shifts to a consideration of Colorado law regarding affirmative defenses, self-defense, and the "reasonableness" of the agents use of force under our laws.

In Colorado, pursuant to §18-1-704 (2), C.R.S 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 he reasonably believes a lesser degree of force is inadequate and 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.

A peace officer is also justified in using deadly physical force upon another person as provided 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.

On October 27, 2019, Matthew Martinez was armed with what reasonably appeared to be a handgun throughout the course of his contact with law enforcement personnel. He threatened the police agents at the front door to the apartment by carrying a handgun, and further threatened police agents as he walked toward them, raising the weapon in the final moment before the shooting. As Mr. Martinez walked toward the police, namely Agent Guidry, police agents repeatedly ordered Matthew Martinez to stop and to drop the gun. Mr. Martinez defied all commands and the police had every reason to believe he intended to shoot them. Importantly, it was only after the shooting that police realized the gun Mr. Martinez was carrying was not real. The handgun carried by Mr. Martinez did not have an orange tip, contrary to the statement of Ms. Sandoval, signifying it is less than lethal. Rather it appeared to be a black pistol capable of producing serious bodily injury or death. The gun was discovered to be a BB gun only after it was kicked away from Mr. Martinez and broke apart following the shooting.

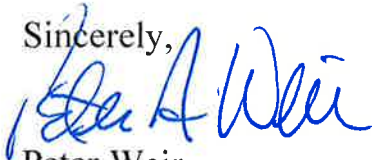
A critical issue in analyzing self-defense is whether, from the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not

required under the law and what is reasonable is based upon all known information and circumstances. It is also important to my analysis, that the United States Supreme Court in *Graham v. Conner*, 109 S.Ct. 1865 (1989), a case involving litigation under 42 U.S.C. §1983, held in all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, or other ‘seizure’ of a citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard. Under the Fourth Amendment, the “reasonableness” of a particular use of force must be judged from the perspective of a reasonable police officer on the scene, rather than with the 20/20 vision of hindsight. Furthermore, the Court in *Graham* recognized that the determination of reasonableness must also account for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation, and in circumstances that are tense, uncertain, and rapidly evolving. The beliefs held by the Lakewood police agents that Mr. Martinez posed an imminent threat of serious bodily injury or death were reasonable, and their actions in response to that threat were reasonable under these circumstances.

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 Agents Guidry, Brunk, and Lee 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 Agents Guidry, Brunk, and Lee beyond a reasonable doubt.

Therefore, I conclude that the conduct by Agents Guidry, Brunk, and Lee, did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir

District Attorney

First Judicial District Attorney