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Chief Doug Stephens
Chief of Police
Littleton Police Department
2255 West Berry Avenue
Littleton, Colorado 80120

Chief John Collins
Chief of Police
Englewood Police Department
3615 South Elati Street
Englewood, Colorado 80110

Re: Investigation of the shooting of Stephanie Lopez 2/28/1985 and Marta Sanchez 5/28/1981, DPD #27670, on June 30, 2017, involving Englewood Police Department Officer Brian Martinez (Badge #4401), and Littleton Police Department Officers Anthony Guzman (Badge #1510), Luke McGrath (Badge #1407), and Joseph Carns (Badge #1402), in the area of West Louisiana Avenue and South Bannock Street, Denver, Colorado.

Dear Chief Stephens and Chief Collins:

The investigation and legal analysis of the lethal shooting of Stephanie Lopez and non-lethal shooting of Marta Sanchez by Englewood Police Department Officer Brian Martinez and Littleton Police Department Officers Anthony Guzman, Luke McGrath, and Joseph Carns, has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against these officers. My decision, based on criminal law standards, does not limit administrative action by the Englewood or Littleton Police Department, in which non-criminal issues can be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply.

STATEMENT OF FACTS

Shortly before midnight on June 29, 2017, uniformed Littleton Police Department officers were dispatched to attempt to locate a vehicle that had just been stolen in the area of Dunkin Donuts, 4670 Mineral Avenue, Littleton. The officers were informed that a male reporting party had called 911 and stated that he had just been carjacked by a group of four people. The group had approached the victim in his white, four-door sedan and asked for a ride to the Lucky U in Englewood. When the victim refused, a female in the party fired one round from a handgun over the victim's head. The four suspects then left in the victim's white car. Because of the group's statements to the victim, Officer Luke McGrath surmised that the group would likely go northbound toward Englewood. In his marked patrol car, he drove to South Santa Fe Drive, which would be a likely route north from the site of the carjacking. In a separate marked patrol car, Officer Anthony Guzman also responded to patrol South Santa Fe Drive.

Officer McGrath spotted a white four-door Chevy Malibu sedan (the "suspect vehicle") sitting in the parking lot of a Shell gas station at 6200 South Santa Fe Drive, even though the gas station appeared to be closed. He aired over the radio that he had spotted a suspicious vehicle matching the description from the carjacking. The suspect vehicle was then starting to drive northbound on South Santa Fe Drive. Officer Joseph Carns, in his own separate marked patrol car, located the suspect car driving northbound on Santa Fe and pulled behind it to initiate a traffic stop. The suspect car did not stop in response to Officer Carns' activated lights and sirens. Therefore, Officer Carns aired over the radio that the suspect car was failing to yield. Officer Guzman followed behind Officer Carns, and Officer McGrath followed behind Officer Guzman.

As required by departmental policy, the officers received authorization over the radio from a Littleton police commander to pursue the fleeing suspect vehicle. During the pursuit, Officer Guzman updated the Littleton Police Department dispatch of their location, changes in speed, the traffic, density, and other conditions. The officers pursued the suspect car north on South Santa Fe Drive into Englewood and then Denver. During the pursuit, the suspect vehicle drove recklessly and in such a manner that indicated to officers that the driver was attempting to elude them. The vehicle drove at high rates of speed, disregarded multiple red lights, and narrowly avoided collision with a motorcycle at the intersection with West Oxford Avenue.

Officer Carns, still in the primary position, requested permission from command over the radio to execute a Pursuit Intervention Technique (or "PIT") maneuver. A PIT maneuver is used as a non-lethal method to stop a vehicle that is fleeing from police. To execute a PIT maneuver, an officer contacts the rear corner of the fleeing vehicle with the front corner of his or her patrol vehicle and then steers sharply into the fleeing vehicle, which forces it to spin out. Officers then surround the vehicle to prevent it from fleeing further after regaining control, effectively ending the pursuit.

Command gave Officer Carns permission to execute the PIT maneuver when the suspect vehicle was slowed to a speed sufficient to execute the maneuver safely. At approximately the intersection of South Santa Fe Drive and East Arkansas Avenue, the suspect vehicle temporarily lost control and slowed significantly, at which point Officer Carns executed the PIT maneuver. He contacted the right rear corner of the suspect car with the left front corner of his patrol car, causing the suspect car to spin nearly 180 degrees clockwise. The suspect vehicle came to rest on South Santa Fe Drive, pointing toward the southeast. The officers parked their patrol vehicles

around the suspect vehicle. Officer McGrath's patrol vehicle blocked the suspect vehicle to the north; Officer Carn's patrol vehicle blocked the suspect vehicle to the west; and Officer Guzman's patrol vehicle blocked the suspect vehicle to the south. After exiting his patrol vehicle and drawing his gun, Officer Guzman walked directly in front of the suspect vehicle, blocking it to the southeast.

Regarding what occurred next, Officer Guzman stated in his subsequent interview with Denver Police Department Lieutenant Matthew Clark:

. . . When I started circling across my car, I realized the vehicle had now been facing southeast in a sense, in a diagonal portion, putting myself in front of the vehicle.

At that point, I pointed my duty weapon at the driver portion of the vehicle and started giving commands to stop the vehicle and put your hands up. I gave numerous loud verbal commands, which the driver of the vehicle did not follow.

At this point, I heard the engine of the vehicle rev extremely high and the vehicle started to come at me. I started to move towards the right of the vehicle, which would have been north on Santa Fe, to attempt to get out of the direction of the vehicle because I saw the two headlights on that white car coming directly at me.

At the speed that the vehicle was coming, I was concerned that I was not going be able to get out of that direction quick enough. At that point, I was in fear for my life, that I was going to get hit by that car and suffer some serious injury.

At that point, I did fire my weapon at the -- at the driver portion of that vehicle. I don't know how many rounds I fired. The vehicle continued driving at me. I started hearing rounds coming out from my right and my left. I don't know which officers was were on the other side. The car still continued at me. I continued walking right to get out of its direction of travel. It eventually passed me. As the vehicle passed me, to the point I didn't feel it was at a threat no more, I stopped firing rounds. . . .

Nine shell casings that matched the ammunition from Officer Guzman's weapon were later recovered from this scene.¹ Detectives subsequently obtained surveillance video footage that captured this encounter from the business at 1410 South Santa Fe Drive. One of two cameras at this location was pointed northwest, providing a view of the intersection at South Santa Fe Drive and East Arkansas Avenue. At camera timestamp 23:02.38, it shows the suspect car regaining control and slowly driving north on Santa Fe toward the intersection. Officer Carns executes the PIT maneuver, and three patrol vehicles park on the street surrounding the suspect vehicle. Officer Guzman exits his patrol car and runs to stand in front of the suspect vehicle. Within seconds, the suspect vehicle starts driving east on Arkansas toward Officer Guzman. Officer Guzman steps rapidly away from the oncoming vehicle with his arms extended, consistent with him firing his weapon at the

¹ That night, Officer Guzman had a 40 caliber, Glock 22 handgun; Officer McGrath had a 9mm, Smith and Wesson M&P handgun with #20 F.C. Lugar 9mm ammunition; Officer Carns had a 9mm, Glock 34 handgun; and Officer Martinez had a 45 caliber, Glock 21 handgun.

vehicle while it was driving toward him. After the suspect vehicle passes him, the officers return to their patrol vehicles and head east on Arkansas as well.

During this encounter, Officer McGrath had exited his patrol vehicle and was standing to the north of the suspect vehicle, on its driver's side. In his subsequent interview, Officer McGrath described the encounter to Lieutenant Clark as follows:

. . . I got out of my car and started walking towards the driver's side of the car – the car was stopped – and I see Officer Guzman at the front of the car and I hear the car revving – you know, revving and revving and revving, and, you know, the last that I saw with Guzman in my peripheral was he was directly in front of that car.

You know, all of us are yelling, “Get out of the car! Get out of the car! Get out of the car!”

Hear the car revving and I see it start moving forward and that's when I fired my weapon. . . .

Regarding his decision to fire his duty weapon, Officer McGrath specifically stated: “I was afraid that that vehicle was going to hit and kill or injure Officer Guzman.” Seven shell casings that matched the ammunition from Officer McGrath's weapon were later recovered from this scene. In his interview, Officer Carns indicated he was near the rear of the suspect vehicle during this encounter and never discharged his weapon. Indeed, no shell casings that matched the ammunition from Officer Carns' weapon were recovered from this scene. Therefore, a total of 16 shots were fired in the approximate location of South Santa Fe Drive and East Arkansas Avenue.



Still photo from the surveillance footage from 1410 South Santa Fe Drive. At the top middle of the photograph, Officer Guzman can be seen standing in front of the white suspect vehicle. The video footage shows the suspect vehicle driving directly toward Officer Guzman, who steps quickly backward while extending his arms toward the vehicle. Note the time stamp on the video is off by an hour from real time.

After this encounter, the officers returned to their patrol vehicles to continue the pursuit, with Officer Guzman in the lead, followed by Officer Carns and then Officer McGrath. The suspect vehicle drove east on Arkansas Avenue and then turned left to head north on South Cherokee Drive. It turned right on West Louisiana Avenue, and then left on South Bannock Street. The suspect vehicle continued north on South Bannock Street to West Mississippi Avenue, at which point it made a U-turn and started heading back south on Bannock Street toward the patrol vehicles. Officer Guzman made U-turn to get behind the suspect vehicle and then executed a second PIT maneuver, contacting the rear passenger side of the suspect vehicle with the front driver side of his patrol vehicle. The suspect vehicle spun clockwise, coming to rest nearly perpendicular to the residence at 1233 South Bannock Street, with the front of the vehicle facing the residence. The residence blocked the suspect vehicle to the west. Officer Guzman parked his patrol vehicle behind the suspect vehicle, blocking it to the east. Officer McGrath parked his patrol vehicle to block the suspect vehicle to the south, and Officer Carns parked his patrol vehicle to block the suspect vehicle to the north.

Officer Guzman described the encounter at 1233 South Bannock Street as follows:

. . . At that point, I got out of my vehicle. I, again, unholstered my weapon. I pointed it at the driver portion of that vehicle and gave loud, verbal commands: Stop the vehicle, put your hands in the air -- over and over and over again.

At this point, the vehicle started to reverse towards our patrol cars very quickly. At this point, I'm concerned that either -- if she hits our patrol cars, she is going to push our cars under us and we're going to get -- we're going to get hit by our own cars, or she's going to continue driving back into us until she makes contact with one of us, causing injury or death.

As that car is reversing and I'm in fear for my life, I do start firing additional rounds towards that driver portion of that vehicle. I don't know how many rounds I shot, but I did shoot additional rounds.

At that point, the vehicle was able to maneuver out of the box and continue driving south on Bannock towards Louisiana. . . .

In his interview with Lt. Clark, Officer Carns described this encounter as follows:

. . . I got out of my vehicle and I made eye contact with the passenger. When I made eye contact with the passenger saying, show me your hands, show me your hands, and the suspect was reaching for something on the ground looking at me, continuing to -- reaching at the floorboard area, at which point in time, again, I heard that transmission of the vehicle, I guess go into gear, but rough, and it appeared -- or it sounded like the person had, you know, stomped on the accelerator and it -- the vehicle jumped and I thought the vehicle had ran over Officer Guzman.

As the vehicle was in reverse, you know, at the time, for me, I thought he was running over Officer Guzman. I went from the location I was at with my door open in my car, around his vehicle, and I saw that vehicle backing up at me.

The vehicle was backing up quicker that I could get out of the way. I was blocked by Officer Guzman's car to the right, to try to get out of the way, so not familiar with the terrain behind me and to the side of me and I was in fear for me life and I discharged my firearm at the driver -- where the driver sits in the vehicle.

I remember the reverse lights -- once the reverse lights went away and the vehicle started driving away, I stopped shooting my firearm because it was no longer a threat to me, and then shortly thereafter -- still having my firearm out -- I saw Officer Guzman's vehicle go after that vehicle, and I was under the impression that he was back in that vehicle and he was okay. . . .

At this scene, detectives recovered a total of seven shell casings: two from Officer Guzman's duty weapon and five from Officer Carns' duty weapon. Officer McGrath never exited his patrol vehicle at this scene. Detectives located surveillance video footage from 1200 South Bannock Street, which captured this encounter from a vantage point to the

north. The camera is pointed in a south easterly direction. Beginning at camera timestamp 12:04.10, the footage shows Officer Guzman executing the PIT maneuver, the patrol vehicles boxing in the suspect vehicle, the suspect vehicle driving in reverse directly at Officer Guzman, and then the suspect vehicle driving away south on Bannock Street. The suspect vehicle was able to maneuver between Officer McGrath's patrol vehicle and Officer Guzman's patrol vehicle in reverse, before shifting to drive forward down Bannock Street toward Louisiana Avenue.



Still photo from the surveillance footage from 1200 South Bannock Street. It shows the suspect car as it reverses from the residence at 1233 South Bannock Street. Officer Guzman can be seen illuminated by the suspect car's headlights, having just avoided being hit by the suspect car moments earlier.

The officers again returned to their patrol vehicles and pursued the suspect vehicle, with Officer Guzman in the primary position. Regarding what happened next, Officer Guzman stated:

. . . As she approached Louisiana, prior to the intersection, she made a wide right turn. What I mean by that, she first started left and circled out wide to go on Louisiana Street. As she turned, Louisiana was in front of her and she was not yet at the intersection yet.

As she crossed me, at this point, I realized if we don't stop the car now, it -- she's going to cause -- it's not going to be good; she is going to hurt somebody or she's

going to hurt another officer. So at this point, as she started across my vehicle, I did push down on the accelerator of the vehicle and I collided with her car at a high rate of speed, in an attempt to immobilize the vehicle. As I hit the car, the vehicle continued driving west on Louisiana onto the curb of South Bannock Street. At this point, I stop my car. I got out of my vehicle. I ran on the backside of my car, and as I ran on the backside of my car, I completed another tactical reload of my gun. Again, I didn't shoot my gun until dry, but I did not know how many rounds I had left in my weapon.

At this point, a patrol vehicle, which was a Chevy Tahoe, pulled in front of the suspect car and pulled directly in front of that white car, not making contact with it, but directly in front of it. At this time, I saw that it was an Englewood police car.



Still photo from the surveillance footage from 1294 South Bannock Street. It shows the suspect car's taillights as it is being rammed by Officer Guzman's patrol vehicle, just north of the intersection of Bannock Street and Louisiana Avenue.

The marked Englewood Police Department patrol vehicle was driven by uniformed Englewood Police Department Officer Brian Martinez. Officer Martinez had received information from his dispatch that the Littleton Police Department was requesting assistance from the Englewood Police Department in the pursuit of a carjacking suspect, with shots fired. At the time, the Littleton Police Department officers were pursuing the suspect vehicle northbound on Santa Fe Drive, approaching Oxford. As Officer Martinez arrived in the area, he was informed that the Littleton officers had executed a PIT maneuver at approximately Santa Fe and Florida, and that shots were being fired. He had

no information regarding whether it was a suspect or officers who were firing the shots. He then learned that the pursuit was continuing and that the suspect vehicle was driving south on Bannock Street. Arriving at Louisiana and Bannock, Officer Martinez saw Officer Guzman's patrol vehicle collide with the suspect vehicle. Officer Martinez parked his patrol vehicle at the northwest corner of Louisiana and Bannock. He exited his patrol vehicle. Regarding what occurred next, he stated in a subsequent interview:

And the vehicle was pitted and I was standing right there and the vehicle started coming towards me. I moved to the side, and the vehicle -- when it came -- after I saw the pit, it started driving towards me. At that point, I turned to the side. I fired, I believe, three to four rounds into the car.

I ordered the driver, show me hands, show me hands, show me hands -- well, the car stopped -- let me finish there. The car stopped. I ordered the driver, show me hands, show me your hands, show me hands. She -- I could see her putting her hands up, and I [inaudible] the window was damaged. She put up her hands. I remember Littleton was firing into the back of the car. I yelled -- you know, I kind of go stop, stop, stop; because she's got her hands up. The officer stops.

With respect to this encounter, Officer Guzman stated:

The Englewood police officer ran from the back of his car and near that -- the front of the suspect car. That officer started giving verbal commands for the vehicle to stop. I started giving verbal commands for the vehicle to stop, and I believe the other officers did as well.

At this time, the engine on the vehicle started revving very highly again. The vehicle was -- continued traveling west towards the Englewood officer. At this point, I believe the Englewood officer started shooting. At this point, I'm worried he's going to -- the vehicle is going to make contact with that Englewood officer, potentially killing him or causing him serious bodily injury, and I'm also concerned if she does get away, she's going to cause death to either the public or serious bodily injury as well, and it's got to stop at this point.

At this point, because I fear for that officer's safety, I do fire additional rounds. I do not know how many rounds I shot, but I did not shoot till dry -- to empty my gun. As soon as rounds went off, the engine revving extremely high, completely stopped and the car stopped moving completely. At this point, I no longer fire any rounds. The Englewood officer took out -- if it was a baton or flashlight -- and bashed the windows out on the driver portion of the vehicle, both the front and back.

At that point, I could see there was a female driver in the white vehicle, and there was a passenger slumped over on the passenger side.

At this scene, detectives recovered a total of 21 shell casings: eleven from Officer Guzman's duty weapon and five from Officer Martinez's duty weapon. Surveillance video footage collected from two cameras at 1294 South Bannock Street recorded this encounter from vantage points east of the scene, with the cameras pointed west. Beginning at camera timestamp

04:34, footage from one of the cameras shows the suspect vehicle drive south on Bannock Street approaching Louisiana Avenue. The suspect vehicle turns right prior to reaching the intersection and slows, at which point it is hit by Officer Guzman's patrol vehicle. The suspect vehicle then starts to roll forward again, turning southeast towards the corner of Bannock Street and Louisiana Avenue. Officer Martinez is standing near the corner of Louisiana Avenue as the suspect vehicle turns in his direction. Officer Guzman is standing on the driver side of his patrol vehicle and can be seen extending his arms in the direction of the suspect vehicle while it rolls toward Louisiana, consistent with him firing his weapon at the suspect vehicle as it drove toward Officer Martinez.



Still photo from the surveillance footage from 1294 South Bannock Street. It shows the suspect car as it turned in the direction of Officer Martinez, who can be seen on the far left of the photo, in front of the suspect car.

An eyewitness- Mr. C.A.R. later described to detectives what occurred from his perspective on Louisiana Avenue. In a written statement, Mr. C.A.R. indicated that he had stopped at the intersection because he was concerned about Officer Martinez:

The cop was standing outside next to his SUV. The white car was accelerating towards the cop and I think they tried to run him over. The cop was yelling "stop, stop, don't move". The cop started shooting at the white car. The white car hit the

pole and I saw the driver trying to put the car in reverse. Other cops started shooting, too.²

The female driver of the suspect vehicle was identified as Marta Sanchez, DOB 5/28/91. Sanchez was transported to Denver Health Medical Center with multiple gunshot wounds resulting in paraplegia. Detectives were able to recover two rounds removed from Sanchez intact enough to match to the officer's ammunition, and identified them as belonging to Officers McGrath and Guzman.

The female passenger, who was pronounced dead at the scene, was identified as Stephanie Lopez, DOB 2/18/1985. Her autopsy revealed multiple gunshot wounds. Bullets recovered during her autopsy matched the ammunition of Officers Carns, Guzman, and Martinez. The medical examiner identified the fatal injury as a gunshot wound on the right back side of Ms. Lopez's head. The round recovered from that wound matched ammunition from Officer Carns' weapon. Therefore, Lopez was fatally injured at 1233 Bannock Street – the only scene at which Officer Carns discharged his weapon. The toxicology screen revealed the presence of alcohol, methamphetamine and marijuana in Ms. Lopez's blood.

Denver Police Department detectives investigated the incident. In total, detectives recovered 44 shell casings from the three scenes, which accounts for all of the rounds missing from the officer's magazines, which were collected on scene immediately after the incident. Defects in the suspect vehicle were concentrated on its driver side, consistent with the officers aiming at the driver whenever they discharged their firearms. The detectives received a search warrant for the suspect vehicle, and recovered a loaded Lorcin 38 caliber handgun in a purse, a large knife, over 115 grams methamphetamine, 16.75 grams powder ibuprofen, needles, and a scale, from inside. The shell casing recovered from the scene of the carjacking in Littleton matched the weapon found inside the suspect vehicle.

Detectives later interviewed both Ms. Sanchez and Dominic Martinez, DBO 11/15/1985. Mr. Martinez admitted to being in the vehicle with Lopez and Sanchez during the carjacking in Littleton and early pursuit. He stated that he got scared after officers fired their weapons at Santa Fe and Arkansas, and that he jumped out of the suspect vehicle at Bannock and Mississippi and hid all night in the field adjacent to that intersection. Both Ms. Sanchez and Mr. Martinez indicated that the fourth person involved in the carjacking had exited the suspect vehicle prior to the officers locating them at the Shell gas station in Littleton. Both admitted that the occupants of the vehicle were knowingly eluding the police to avoid apprehension for the carjacking.

According to Mr. Martinez, that night he had consumed methamphetamine, heroin, and marijuana; Ms. Lopez had consumed methamphetamine; and Ms. Sanchez had consumed methamphetamine and marijuana. In addition, Ms. Lopez and Ms. Sanchez both had active warrants for their arrests outstanding at the time of this incident. Ms. Lopez was wanted for a parole violation out of the Colorado Department of Corrections, whereas Ms. Sanchez was wanted on three separate arrest warrants.

² Note that in his written statement, Mr. C.A.R described the driver of the white car as a male and the passenger as a female, and that after the white car crashed into a pole, the alleged male driver tried to climb into the passenger seat of the vehicle.

At the time of this letter, possible charges against Ms. Sanchez in connection with this incident are pending in Arapahoe County.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. The evidence establishes that Marta Sanchez's injuries and Stephanie Lopez's death resulted from shots fired by Officers Carns, Guzman, Martinez, and/or McGrath, so the determination of whether their conduct was criminal is primarily a question of legal justification.³

C.R.S. § 18-1-707 defines the circumstances under which a peace officer can justifiably use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:

- (1) Except as provided in subsection (2) 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**⁴ 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 the arrest or to prevent the escape from custody of a person whom he reasonably believes:**

³Because the officers were aiming for the driver in each shooting, the question of whether the officers knowingly or intentionally shot at Stephanie Lopez is susceptible to debate. However, because I conclude in any event that the use of deadly physical force was legally justified under Colorado law, I do not examine that question in detail here.

⁴ Colorado law defines "deadly physical force" as force that actually causes death, section 18-1-901(2)(d),(e), CRS. Since Marta Sanchez survived her wounds in this case, deadly force was not used with respect to her. However, because I conclude that the officers were justified in using deadly physical force, I also conclude that they were justified in using non-deadly physical force, which involves a lower standard.

- 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.**

Officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See, *People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P. 274, (Colo. 1910).

Importantly, the United States Supreme Court has held that it is not unreasonable for police officers to continue to pursue a fleeing vehicle, even where doing puts the occupants at risk of serious injury or even death⁵:

[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people’s lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. *Scott v. Harris*, 550 U.S. 372 (2007).

The issues are, therefore: whether at the time officers used deadly force, they reasonably believed that they were being subjected to or were about to be subjected to the imminent use of unlawful physical force while attempting to affect an arrest or prevent an escape, and furthermore, that their actions in defending against that force were objectively reasonable. Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that it was necessary to use deadly force to defend himself or another and stop the threat that the suspect vehicle presented.

Here, there were four distinct episodes in which the involved officers used deadly physical force: (1) when Officers Guzman and McGrath fired their weapons toward the suspect vehicle as it drove toward Officer Guzman at the intersection of South Santa Fe Drive and East

⁵ The Supreme Court was interpreting “reasonableness” for purposes of the Fourth Amendment and police conduct during searches and seizures, not for purposes of examining the legal justifications for use of deadly physical force. However, the Court’s rationale is still instructive in this context.

Arkansas Avenue; (2) when Officers Guzman and Carns fired their weapons at the suspect vehicle as it reversed toward them near 1233 Bannock Street;⁶ (3) When Officer Guzman hit the suspect vehicle as it turned west prior to the intersection at West Louisiana Avenue; and (4) when Officers Martinez and Guzman fired their weapons at the suspect vehicle as it drove toward Officer Martinez on West Louisiana Avenue.

CONCLUSION

In this case, the actions of Officers Carns, Guzman, Martinez, and McGrath are legally justified under Colorado law. At each and every one of the four episodes described above, the officers were authorized to use deadly physical force by C.R.S. section 18-1-707(2)(b). That subsection provides that an officer may use deadly physical force where he or she reasonably believes that it is necessary to effect the arrest of a person whom the officer reasonably believes: has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or is attempting to escape by the use of a deadly weapon; or 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.

The officers all had knowledge of facts establishing that the occupants of the suspect vehicle had committed a felony robbery offense involving the use of a firearm. Therefore, they were legally justified in using deadly force so long as use of deadly force was reasonably necessary to effect arrest for that armed robbery offense, C.R.S. section 18-1-707(2)(b)(i).

In examining the reasonableness of the use of deadly physical force, I consider the totality of the circumstances. When Officers Guzman and McGrath first discharged their firearms at the intersection of South Santa Fe Drive and West Arkansas Avenue, they had pursued the suspect vehicle at a high rate of speed through Littleton, Englewood, and Denver. The suspect vehicle had driven in a manner that posed a risk of danger to the other vehicles on the road, driving at high speeds, disregarding red lights, and nearly colliding with a motorcycle. The officers believed that the occupants of the suspect vehicle had a firearm in their possession that had been discharged in the commission of the robbery at Dunkin Donuts. Prior to resorting to deadly physical force, the officers attempted to effect arrest with safer methods, namely, by performing a low speed PIT maneuver and surrounding the suspect vehicle. The suspect vehicle evinced a willingness to escape at any cost when it then started driving again directly at an armed and uniformed police officer, surrounded by patrol vehicles with activated emergency equipment, and in violation of the officers' loud commands. With each subsequent use of force, the suspect vehicle's continued efforts to escape from police demonstrated a brazenness that justified the officers' fears that the suspects posed a significant risk of danger not only to the officers, but to the public at large. Therefore, the officers' actions were also legally justified by C.R.S. section 18-1-707(2)(b)(iii), insofar as the suspect vehicle attempted to run over officers, which indicated to officers that the suspects were likely to endanger human life or to inflict serious bodily injury to another unless they were apprehended without delay.

Moreover, each officer who discharged his firearm was legally justified to use deadly force under C.R.S. 18-1-707(2)(a), in defense of himself or a third person. At Santa Fe and

⁶ I examine each of these episodes with the standard for use of deadly physical force, even though the evidence tends to establish that the only fatal injury occurred at 1233 Bannock Street.

Arkansas, Officers Guzman and McGrath fired their weapons to defend Officer Guzman from what they reasonably believed to be the imminent use of deadly physical force. Both officers stated that they discharged their firearms at the driver in an attempt to prevent her from hitting Officer Guzman with the suspect vehicle. None of the evidence collected in this case contradicts those assertions. To the contrary, the surveillance video footage from 1410 South Santa Drive shows the suspect vehicle drive directly at Officer Guzman. Similarly, at 1233 South Bannock Street, Officers Guzman and Carns discharged their firearms at the driver to prevent her from hitting them with the suspect vehicle. Finally, at the approximate location of Bannock and Louisiana, Officers Martinez and Guzman believed, under all of the circumstances that Officer Martinez was in danger. They discharged their firearms at the driver to prevent her from hitting Officer Martinez with the suspect vehicle. The surveillance footage from 1200 Bannock and 1294 Bannock corroborate the officers' accounts, as does the statement of the witness Mr. C.A.R. In each instance, the officers aimed for the driver and ceased firing once the suspect vehicle no longer posed an immediate threat of striking the officers, making their actions reasonable under the circumstances.

The Denver Police Department is the custodian of records related to this case. All matters concerning the release of records related to administrative or civil actions are controlled by the Civil Liability Division of the Denver Police Department. As in every case we handle, any interested party may seek judicial review of my decision under C.R.S. § 16-5-209.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McCann", with a long horizontal flourish extending to the right.

Beth McCann
Denver District Attorney

cc: Chief Robert White, David Quinones, Deputy Chief of Police Operations; Matt Murray, Deputy Chief of Police Administration; Barb Archer, Commander of Investigative Support; Lieutenant Matthew Clark, Major Crimes; Assistant District Attorney Ryan Brackley

