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Second Judicial District



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August 12, 2019

Chief Paul Pazen  
Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204

Re: Investigation of the shooting of Anthony Solano Vasquez, DOB: 2/13/2000, DPD GO# 2019-222960, on April 10, 2019, involving Denver Police Department Officer Andrew Nielsen (Badge #14076), at the 1500 block alley between Quebec and Poplar Streets, Denver, Colorado.

Dear Chief Pazen:

The investigation and legal analysis of the non-lethal shooting of Anthony Solano Vasquez by Denver Police Department Officer Andrew Nielsen has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against this officer. My decision, based on criminal law standards, does not limit administrative action by the Denver Police Department, in which non-criminal issues can be reviewed or civil actions where less-stringent laws, rules and legal levels of proof apply. The file will be available in my office for inspection by the public.

#### **STATEMENT OF FACTS**

In the early morning hours of April 10, 2019, Anthony Solano Vasquez exchanged gunshots with Denver Police Officer Andrew Nielsen, at which time Mr. Solano Vasquez sustained a non-life threatening gunshot wound to the left shoulder. After being shot, Mr. Solano Vasquez ran from Officer Nielsen and hid in a window well of a nearby home. As police were closing in on his location, Mr. Solano Vasquez shot himself in the head, causing a gunshot wound to his left temple that eventually led to his death. The details leading up to Mr. Solano Vasquez's self-inflicted fatal gunshot wound are as follows.

On Tuesday, April 9, 2019, at approximately 10:00 p.m., 17-year-old WHR<sup>1</sup> had just parked his family's red 2003 Honda CRV in the vicinity of 16th Avenue and Nome Street in Aurora, Colorado when he was approached by three to five young men, one of whom was armed with a handgun. Two of the unarmed men searched WHR and removed his wallet which contained \$80, his car keys and his LG cell phone from his pockets, and then ordered him to take his shoes off, which they took from him. The suspects then entered the red Honda CRV SUV and drove away.

WHR ran home and told his father what had just happened and they called 911. Police Officers from the Aurora Police Department responded to WHR's home and recorded the incident as an aggravated robbery and carjacking, and entered the Honda CRV in a national database as having been stolen in an armed carjacking. Shortly after the Aurora officers completed their report, the Aurora Police Department shared the information and the description and license plate number of the Honda CRV with neighboring jurisdictions, including Denver.

Denver Police Department Officers Andrew Nielsen (Badge #14071) and Kim Blanchard (Badge #15071) were working together on a two-officer assignment. Just after midnight on April 10, 2019, both officers were sitting in their Denver patrol vehicle completing reports from an earlier call involving an incident of domestic violence. At approximately 12:20 a.m., a Denver police dispatcher issued a radio message to officers to be on the lookout for the Honda CRV and advised officers that the vehicle had been stolen at gunpoint. Officer Nielsen wrote the license plate number of the Honda CRV on his hand, and after discussion with Officer Blanchard, the officers decided to respond to the Denver/Aurora border near the vicinity of Yosemite Street and East Colfax Avenue in an attempt to locate the stolen Honda CRV. Both officers were in the Denver Police uniform and Officer Nielsen was driving their fully marked police SUV vehicle.

At approximately 12:49 a.m., in the area in between 17th and 18th Avenues near N. Syracuse Street, from across a park, the officers noticed two vehicles – a sedan and a red SUV – both parked in the middle of the street. The vehicles were parked next to each other, and only the sedan had its lights on. As the officers drove by the area, the vehicles started moving forward, very slowly at first, but both accelerated and took off in different directions when the officers made a turn to approach the vehicles. The red SUV travelled north toward 19th Street, turned right and then made a turn onto southbound N. Syracuse Street. The officers got behind the red SUV and quickly recognized it to be the red Honda CRV SUV that was stolen at gunpoint in Aurora two and a half hours earlier.

The officers later learned that there were three occupants in the Honda CRV. The driver was Anthony Solano Vasquez (DOB: 2/13/2000). The front seat passenger was Jonathan Acosta (DOB: 6/3/2002), and Jorge De La Torre (DOB: 3/12/2014) was sitting in the rear driver's side passenger seat.

With Officer Nielsen driving, the officers followed the Honda CRV south on N. Syracuse Street to E. Colfax Avenue, where it cut through a 7-Eleven parking lot and drove right into the path of Denver Police Sergeant Todd Shaklee (Badge #90220) who was also patrolling the area in a marked Denver patrol vehicle. The Honda CRV went west on Colfax Avenue and then south

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<sup>1</sup> We do not identify civilian witnesses in order to protect privacy.

on N. Rosemary Street. The Honda CRV accelerated away from the officers, so the officers began a pursuit, with Sergeant Shaklee's authorization. The pursuit traveled south to E. 12th Avenue, west to N. Quebec Street and then north, including going through a red light at E. Colfax Avenue. As the Honda CRV traveled at increasingly accelerated speeds, the officers employed their vehicle's police lights and sirens and attempted to stop the Honda CRV via a PIT maneuver<sup>2</sup>. Around this point, the driver of the Honda CRV turned off the vehicle's headlights in an attempt to keep out of sight of the pursuing police officers. At the intersection of N. Quebec Street and E. 16th Avenue, the Honda CRV, attempting to make a left turn to travel west on E. 16th Avenue, left the roadway, nearly crashing into a house on the northwest corner of the intersection. After the Honda CRV came to a stop, the officers saw both Mr. Solano Vasquez and Mr. De La Torre exit from the driver's side of the vehicle and run to the west. The front seat passenger, Mr. Acosta, remained in the Honda CRV and was eventually detained by Officer Blanchard.



*(The Honda CRV during the pursuit with its headlights extinguished).*

Before either of the police officers exited their marked patrol vehicle, they watched Mr. Solano Vasquez run into the middle of E. 16th Avenue. While Officer Blanchard was looking down to unfasten her seatbelt, Officer Nielsen observed Mr. Solano Vasquez turn toward the officers and fire two shots at them from a handgun. At the time, Mr. Solano Vasquez fired the shots, he was less than 10 yards from the officers' patrol vehicle, and both officers were still seated in the front seat of the vehicle.

Later, during an interview with Denver Police detectives, Officer Nielsen provided details about the moment that Mr. Solano Vasquez exited the Honda CRV and fired at him and Officer Blanchard:

I saw a cloud of smoke. I saw brake lights. I saw the car hit the tree and a pole. I came in. At this time, the two — the driver and the passenger on the driver's side were exiting

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<sup>2</sup> A Pursuit Intervention Technique ("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.

the vehicle. The driver got approximately 20, 25 feet from my vehicle. As I was still coming up putting it in park, he stopped. Turned. Faced towards the car, with a two-handed grip fired two rounds at me. When he fired, I tried to get as low as I could in the vehicle to try and hopefully, if he was a good shot, to try and use that engine block as a good barrier and cover. As soon as he shot, I yelled at Officer Blanchard, shots fired. Shots fired.



*(Spent casings from Mr. Solano Vasquez gun were recovered at the locations of the blue markers in the forefront of the photograph. Officers' Nielsen and Blanchard's patrol vehicle is in the center)*

During her interview with Denver Police Detectives regarding the moment that Mr. Solano Vasquez exited the Honda CRV, Officer Blanchard stated:

All of a sudden, I recall looking to my left, and right there at 16th and Quebec in the yard on the northwest corner there, the vehicle had crashed out. And the stop sign, there's a stop sign there that was bent over in the yard and you can just see the —because the yard was a lot of dirt — some grass, lots of dirt —and so I remember the dirt kind of flying up like that. And what I recall from there is looking down — because I couldn't get my seatbelt unlatched, and so I look down for just a second and I looked back up and I saw one party running across, and we weren't — although we were on 16th, which is an east/westbound street, we were — we were facing the vehicle — behind the vehicle, we were facing it. So we weren't essentially dead eastbound or, I'm sorry, heading westbound on that, on the 16th Avenue. We were kind of — kind of northwest bound. And so I reach over, get it. Look up. See the body run across, and as I look back down to grab it again, I hear the shots.

After Mr. Solano Vasquez shot at the officers, he continued running away from the officers in a southwest direction toward the 1500 block alley between Quebec and Poplar Streets. Officer Nielsen exited the patrol vehicle and started chasing Mr. Solano Vasquez on foot, during which time he fired five shots at Mr. Solano Vasquez, who kept running away from Officer Nielsen with his gun in his left hand. Officer Nielsen stated that at the time he fired at Mr. Solano Vasquez his “whole thought process was just to eliminate the threat” of the fleeing, armed suspect who'd just shot at him and could “shoot at someone else if they encounter him.” Officer Nielsen later told detectives that he'd waited to fire his weapon until Mr. Solano Vasquez was in front of a solid backdrop in case he missed.

Regarding firing his weapon, during his interview with the detectives Officer Nielsen stated:

I was tracking him the whole time with my gun. He, at that point, when he was running, the gun was in his left hand. Suspect was wearing like a red or orange shirt, color could have been a little off just because of the lights on the car. It could have made my perception a little bit different. He appeared to be either light-skinned younger black male or Hispanic male. I initially — I paused because I didn't want to take shots at that point, because I didn't have a backdrop; I just had a long way down the street. At the distance he was from me, it was approximately anywhere between 35 to 50 yards. That's a long shot with a pistol. I've been shooting for a long time and I know it's an extremely difficult shot and I didn't want my rounds just traveling down an open roadway and to [unintelligible] an innocent person.

There was a — right in the mouth of the alley, there was a brick garage. As he got in front of the brick garage, I realized I had a good, solid backdrop behind him and that if I didn't make contact with him or if I did make contact with him and the rounds went through him, my rounds are not going to be going into somebody's bedroom window, a kid's bedroom window.

I fired.

After firing his weapon, Officer Nielsen lost sight of Mr. Solano Vasquez as he disappeared down the alley. Meanwhile back at the Honda CRV, Officer Blanchard took front seat passenger Mr. Acosta into custody without further incident.

Numerous police officers from both the Denver and Aurora Police Departments responded to the area and set up a large perimeter to search for Mr. Solano Vasquez and backseat passenger Mr. De La Torre. The responding officers included police technicians from METRO/SWAT and K-9 Units. At approximately 2:19 a.m. as the search team was working south from E. 16th Avenue a single gunshot was heard in the vicinity of the 1500 block of Quebec Street. Then at 2:53 a.m. Mr. Solano Vasquez was discovered by the search team in a window well on the north side of 1537 Quebec Street. After Mr. Solano Vasquez did not comply with directives to show his hands, and after he didn't respond to a K-9 deployed to the window well, the officers discovered that Mr. Solano Vasquez was suffering from what appeared to be a self-inflicted gunshot wound to his head. Mr. Solano was removed from the window well and taken to Denver Health Medical Center where he was pronounced deceased on April 11, 2019 at 7:56 a.m.

Forensic Pathologist Meredith Frank, M.D. conducted an autopsy on Mr. Solano Vasquez at the Denver Medical Examiner's office on Monday, April 15, 2019. During the autopsy, Dr. Frank determined that Mr. Solano Vasquez had sustained two gunshot wounds during the incident on April 10, 2019. The first was a gunshot wound to his left shoulder blade area. Dr. Frank removed a projectile from the tissue beneath the shoulder blade and determined that since it did not strike any vital organs this would not have been a fatal wound. This gunshot wound was later attributed to one of Officer Nielsen's shots.

The second gunshot wound was a perforating, close range/contact gunshot wound to Mr. Solano Vasquez's head, in the area of his right temple. Based on the totality of the circumstances known to Dr. Frank, she determined the cause of Mr. Solano Vasquez's death to be the gunshot wound to his head, and the manner of his death to be suicide by self-inflicted gunshot wound.

The search of the crime scene, and a subsequent forensic analysis by the Denver Crime Laboratory, revealed the following:

- a black semi-automatic Glock 9mm handgun was recovered from under Mr. Solano Vasquez's body in the window well where he was discovered with the self-inflicted gunshot wound to his head;
- the 9mm Glock handgun had one live round in the chamber and 14 additional rounds in the magazine;
- one spent cartridge casing was recovered from the window well;
- the spent cartridge casing recovered from the window well was microscopically identified as having been fired from the handgun found under Mr. Solano Vasquez's body;
- two spent cartridge casings were recovered from in front of Officers' Nielsen and Blanchard's marked patrol car in the location where Officer Nielson described Mr. Solano Vasquez shooting at them and were microscopically identified as having been fired from the handgun found under Mr. Solano Vasquez's body;
- Officer Nielsen's firearm was functional, and all spent cartridge casings recovered from the location where he described firing his handgun were microscopically identified as having been fired by Officer Nielsen;
- all bullet projectiles fired by Officer Nielson were recovered and were microscopically identified as having been fired by Officer Nielsen's handgun, including:
  - one strike to Mr. Solano Vasquez's shoulder blade area;
  - one strike to 1563 Quebec's north, backyard fence;
  - three strikes to 1560 Poplar's east, backyard fence
- Officers' Nielsen and Blanchard's Denver Police patrol vehicle was parked facing northwest at the intersection of East 16th Avenue and North Quebec Street. One suspected penetrating bullet defect was located in the front bumper of their vehicle;
- a black wallet belong to WHR was found in the window well along with Mr. Solano Vasquez and the 9mm Glock handgun.





*(The window well where Mr. Solano Vasquez was found. The handgun used to shoot at the officers is at marker 15, and Mr. WHR's wallet is at marker 14.)*

## **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 the nonfatal gunshot wound to Anthony Solano Vasquez's left shoulder blade area resulted from shots fired by Officer Nielsen, so the determination of whether his conduct was criminal is primarily a question of legal justification.

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 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:
    - 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).

The issues are, therefore: whether at the time Officer Nielsen used deadly force<sup>3</sup> he reasonably believed that he was being subjected to or was about to be subjected to the imminent

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<sup>3</sup> Colorado law defines “deadly physical force” as force that actually causes death, section 18-1-901(2)(d),(e), CRS. Mr. Solano Vasquez sustained two gunshot wounds during this incident – a fatal self-inflicted gunshot wound to his



use of unlawful physical force against himself or another person, and whether his actions were objectively reasonable. Also, was Officer Nielsen legally justified in using deadly force to arrest a person who had committed a felony involving the use of a deadly weapon? Alternatively phrased, the question is whether a reasonable officer, confronted with the same facts and circumstances as the officer in this incident, could have concluded that it was necessary to use deadly force to defend himself or another or to arrest a person who had committed a felony involving the use of a deadly weapon. Accordingly, is there enough evidence of criminal conduct that a jury could find beyond a reasonable doubt that Officer Nielsen acted without lawful justification?

## CONCLUSION

I find that Officer Nielsen was authorized to use deadly physical force under Colorado law in the situation with which he was confronted on April 10, 2019.

C.R.S. section 18-1-707(2)(b) 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 either 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 that ... he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In examining the reasonableness of the use of deadly physical force, I consider the totality of the circumstances and the facts known to Officer Nielsen at the time he fired his weapon at Mr. Solano Vasquez. Even prior to Mr. Solano Vasquez shooting at the officers, Officer Nielsen believed that he was driving a vehicle that had been stolen at gunpoint just two and a half hours earlier. When Officer Nielsen turned his marked Denver patrol vehicle in the direction of the stolen vehicle that Mr. Solano Vasquez was driving, he accelerated away from the marked patrol vehicle in a manner that posed a risk of danger to the other vehicles on the road, driving at high speeds and at one point extinguishing his headlights in an attempt to escape the officers.

Officer Nielsen had reason to suspect that at least one of the occupants of the Honda CRV had a firearm that had been used in the commission of the carjacking and robbery of WHR. Even before shooting at the Officer Nielsen and his partner, Mr. Solano Vasquez evinced a willingness to escape at any cost. At this time, Officer Nielsen attempted to stop the occupants of the Honda CRV by use of lights and sirens and use of the less lethal PIT maneuver. After Mr. Solano Vasquez nearly crashed the stolen vehicle, ending a dangerous high speed vehicular eluding, he fired two close range shots at the Officers with a handgun — one shot hitting the marked patrol vehicle that the officers were in. After Mr. Solano Vasquez fired at the officers he continued to run away from the officers in possession of the handgun he had used to shoot at the officers still in his left hand.

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head, and a nonfatal gunshot wound to his left shoulder blade as a result of being shot by Officer Nielsen. Since the wound caused by Officer Nielsen to Mr. Solano Vasquez's left shoulder blade area was not deemed to have contributed to his death, deadly force was not used by Officer Nielsen with respect to him. However, because I conclude that the officer was justified in using deadly physical force, I also conclude that he was justified in using non-deadly physical force, which involves a lower standard.

At this point, Mr. Solano Vasquez was suspected of committing the armed carjacking of the Honda CRV, and had just fired two shots at the officers who were trying to apprehend him. Officer Nielsen fired at Mr. Solano Vasquez to not only prevent him from escaping arrest but to prevent him from escaping still in possession of the handgun he used to shoot at the officers. At the time he fired his weapon, Officer Nielsen believed that Mr. Solano Vasquez was a continuing threat to himself and others in the area. Officer Nielsen waited for an appropriately safe moment to fire his gun at Mr. Solano Vasquez — firing five shots at him and causing a nonfatal wound to Mr. Solano Vasquez's left shoulder.

As Officer Nielsen was legally justified in using deadly force in this incident because the use of deadly force was reasonably necessary to prevent Mr. Solano Vasquez — an armed suspect — from escaping arrest and preventing him further use or attempted use of deadly force, he was also justified in using a lesser degree of force.

In short, Officer Nielsen's use of his weapon during this incident was legally justified under C.R.S. 18-1-707(2)(a) and (2)(b), in defense of himself and others, as well as in effecting the arrest of Mr. Solano Vasquez for armed, felony conduct — including the attempted murder of two uniformed Denver Police Officers. None of the evidence collected in this case contradicts Officer Nielsen's assertions as to why he used force against Mr. Solano Vasquez.

To the contrary, the statements of Officers Nielsen and Blanchard, the crime scene investigation, the information provided by WHR and subsequent forensic examination of the evidence corroborates Officer Nielsen's account, making his actions reasonable under the circumstances.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Thus, it is my conclusion that Officer Nielsen was lawfully justified and used appropriate and reasonable force under Colorado law.

This letter and the attached officer-involved shooting protocol followed during this investigation will be posted on our website.

Sincerely,



Beth McCann  
Denver District Attorney

**cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Kathleen Bancroft, District 2; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Bruce Gibbs; Detective Eric Bueno; Officer Andrew Nielson; John Davis, Attorney for Officer Andrew Nielson; Kristin Bronson, City Attorney; and Nicholas E. Mitchell, Office of the Independent Monitor.**

