

Beth McCann  
District Attorney  
Second Judicial District



201 W. Colfax Ave. Dept. 801  
Denver, CO 80202  
720-913-9000  
[Beth.McCann@denverda.org](mailto:Beth.McCann@denverda.org)

November 29, 2021

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

Norm Haubert  
Interim Chief of Police  
Westminster Police Department  
Westminster Public Safety Center  
9110 Yates St.  
Westminster, CO 80031

**RE: Investigation of the shooting death of Drew Lucero, DOB 06/10/1984, on September 3, 2021 in which members of the Westminster Police Department fired their weapons; Denver Police Department General Offense Number 2021-508574.**

Dear Chiefs Pazen and Haubert,

My investigation and consideration of criminal charges into the shooting death of Mr. Drew Lucero on September 3, 2021, is complete. After a thorough investigation by the Denver Police Department in conjunction with the Aurora Police Department and review by the Federal Bureau of Investigation under applicable Colorado law I conclude that charges are not warranted against Westminster Police Officers Anthony Stroup, Chris Neal, or Kevin Flores. My decision is based on criminal law standards. It does not limit administrative action by the Westminster Police Department, in which non-criminal issues can be reviewed, or civil action where less stringent laws, rules and legal levels of proof apply. This letter will be posted on our website.<sup>1</sup>

#### **STATEMENT OF FACTS**

On September 3, 2021, members of the Westminster Police Department's Special Enforcement Team (SET) were looking for Drew Lucero. Mr. Lucero had a warrant for his arrest for shooting a woman during a domestic violence incident in Westminster the prior year on September 16, 2020. He was wanted for attempted murder, first degree assault, and first degree

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<sup>1</sup> Parties interested in reviewing the file should contact the Denver Police Department. Said parties may also visit our website at [www.denverda.org/records-request/](http://www.denverda.org/records-request/) should there be additional material not contained in the Denver Police Department's files. Our officer-involved protocol is available on our website at <https://www.denverda.org/wp-content/uploads/2017/10/DENVER-DA-OFFICER-INVOLVED-SHOOTING-PROTOCOL-2017-.pdf>

burglary. Mr. Lucero's criminal history also included arrests for possession of firearms, aggravated robbery, menacing with a deadly weapon, eluding, assault, and domestic violence offenses. Members of the SET team searched for Mr. Lucero after the 2020 domestic violence shooting but were unable to apprehend him.

On September 2, 2021, Mr. Lucero was again brought to the attention of the Westminster Police Department when he caused damage to the same victim's residence. During that investigation the police learned Mr. Lucero was likely driving a black Subaru Impreza. After searching several locations, members of the SET team located the black Subaru Impreza across the street from a house at 5343 Billings Street in Denver.

At approximately 3:00 p.m. the members the SET team arrived and gathered nearby the Billings Street house. The SET team that day consisted of the following officers: Sergeant Blair Wilson, Officer Josh Verver, Officer Chris Neal, Officer Kevin Flores, Officer Anthony Stroup (and his K-9, "Gino"). The team donned tactical gear which included words and insignia identifying them as police officers. Officer Stroup was dressed in a SWAT-style police uniform. During this meeting the team members discussed Mr. Lucero's criminal history and the warrant for his arrest. Members of the team also were aware of the facts of Mr. Lucero's prior domestic violence incident. Specifically, Officers Stroup, Flores and Neal were all aware that Mr. Lucero shot the victim and had a criminal history that included multiple violent offenses.

At 3:50 p.m. the SET team called the Denver Police Department Dispatch Center and made a notification that they were in the area to conduct undercover surveillance. They told dispatch that they did not need assistance at that time and provided descriptions of the cars they were using. Officers Verver, Neal, Flores, Stroup and Gino were in a white minivan and Sergeant Wilson remained in his blue Toyota 4Runner. The team moved several times during the afternoon near and around 5343 Billings Street. During their surveillance the team positively identified Mr. Lucero when he walked out and stood on a second-floor wooden deck on the northeast side of the house.



*Figure 1. A Crime Scene Unit photo of the front of 5343 Billings Street. The second-floor wooden deck is visible in the right of the photo. The entrance to the home in covered breezeway is partially visible behind the dark blue minivan in the driveway.*

At some point during the surveillance Sergeant Wilson contacted a Denver Police Department Sergeant with the Metro SWAT team. Based on that conversation Sergeant Wilson believed that the SWAT team was unable to assist the SET team in apprehending Mr. Lucero.<sup>2</sup>

Around 7:30 p.m. the SET team members in the minivan positioned themselves directly across the street from 5343 Billings Street. They parked where they could see the recessed door in the breezeway, the second-floor wooden patio deck and the front yard. Sergeant Wilson was positioned up the street so he could see the side of the house. Inside the white minivan Officer Verver was in the driver seat and Officer Neal was in the front passenger seat. Officer Flores, Officer Stroup and Gino were in the rear seats of the minivan. The black Subaru was parked directly in front of the minivan. A dark blue minivan was in the driveway of 5343 Billings Street. Sergeant Wilson was in his dark blue Toyota 4Runner parked on Billings Street to the northeast of 5343 Billings Street.



*Figure 2. Aerial photo of the area around 5343 Billings Street with the approximate locations for the white minivan directly across the street from 5343 Billings Street, the black Subaru in front of the minivan, the dark blue minivan in the driveway of 5343 Billings Street, and Sgt. Wilson's dark blue 4Runner to the northeast of the address. Source: Google Maps*

The SET team planned to arrest Mr. Lucero when he left the house as he walked to the black Subaru. They planned to do so simply by exiting the passenger-side doors of the minivan then wrapping around the rear of the vehicle behind Officer Flores, who was armed with a rifle. Officer Verver would deploy a “flashbang” device to distract and disorient Mr. Lucero. They would then present themselves as officers and detain Mr. Lucero.

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<sup>2</sup> While this may have been Sergeant Wilson’s perception, the Denver Police Department’s position is that while the SWAT team may have not been immediately available, they would have responded to the scene and likely would have assisted in surrounding the house and calling Mr. Lucero to come out. Had this occurred, Mr. Lucero may have been apprehended without violence. In any case, whether this circumstance is true does not affect my decision not to file criminal charges against these Westminster police officers.

Shortly before 7:36 p.m. the SET team decided to call off the attempt to arrest Mr. Lucero and transition to a surveillance operation where they would continue to follow Mr. Lucero. Sergeant Wilson exited his vehicle up the street and walked southwest towards the rest of the team in the minivan. At this moment Mr. Lucero unexpectedly exited the house from the front door of the house through the covered breezeway. As he exited, he was partially concealed behind the dark blue minivan in the driveway.

Mr. Lucero walked along the passenger side of the dark blue minivan in the driveway toward officers' white minivan. The team members prepared to exit their vehicle and arrest Mr. Lucero. Officer Flores opened and exited the rear passenger-side door of the minivan. Officer Neal opened the front passenger-side door and moved to the rear of the minivan to get behind Officer Flores. As Officer Stroup prepared to exit, he watched Mr. Lucero from inside the back of the officer's vehicle. Mr. Lucero approached the officer's vehicle. As he was walking along the northeast edge of the driveway past the dark blue minivan in the driveway, Mr. Lucero slowed and looked at the officers' minivan. Based on this observation Officer Stroup headed toward the front rather than the rear of the white minivan so as to get an unimpeded view of Mr. Lucero. Upon seeing Officer Stroup move to the front of the minivan Officer Neal changed direction and went with Officer Stroup toward the front of the officers' minivan.

As Mr. Lucero neared the end of the driveway, he took a "bladed stance" and reached his right hand behind his back to his waistband. Officer Verver announced to the other officers that Mr. Lucero was reaching for what could be a weapon. Mr. Lucero then drew a black semiautomatic handgun. Mr. Lucero fired one round in the direction of Officer Stroup and Officer Neal. Officer Stroup returned fire. Mr. Lucero then ran back to the front of the dark blue minivan in the driveway. Officers Stroup and Neal began to approach Mr. Lucero from the east in an effort to contain him.

As Mr. Lucero ran toward the dark blue minivan, Officer Flores emerged from behind the white minivan. At the same time, Officer Verver exited the white minivan and immediately threw the flashbang toward Lucero. It exploded in the covered breezeway. Lucero then positioned himself on the ground between the vehicle and the garage still armed with his gun giving him a tactical advantage. The officers were without cover but pressed forward to contain and stop Mr. Lucero. Officer Flores moved toward Mr. Lucero from the west. Officer Verver took a more direct approach to the driveway. He then moved to the ground to get a line of sight on Mr. Lucero beneath the dark blue minivan in the driveway.

As Officer Stroup, Gino and Officer Neal moved toward Mr. Lucero from the east Mr. Lucero again pointed his gun at Officer Stoup. Officer Stroup released Gino and as Gino charged, Officers Stroup and Neal fired their weapons as they continued their advance. Officer Flores, seeing Mr. Lucero with his gun in a position of advantage, fired his rifle at Mr. Lucero. Gino latched on to Mr. Lucero's leg and the officers were able to safely approach. Officer Stroup holstered his weapon, went to Mr. Lucero and started to handcuff him. Officer Neal also approached and kicked Mr. Lucero's handgun into the breezeway. Once he was handcuffed, the officers searched Mr. Lucero, called for medical care and gave him medical attention.

Medical personnel responded to the scene. Mr. Lucero was awake and conscious at the scene. He was transported to University Hospital for treatment, however, Mr. Lucero was pronounced dead at 8:59 p.m. that evening.

Once Denver Police Officers arrived the involved officers were separated. Officer Flores' and Officer Neal's body-worn cameras were secured. Officer Stroup was not equipped with a body-worn camera.

## **LAW ENFORCEMENT WITNESSES**

### **Sergeant Blair Wilson**

Sergeant Blair Wilson was interviewed the evening of the shooting. He described the course of the surveillance. He also explained what happened immediately before the shooting. As it started to get dark Sergeant Wilson planned to move his vehicle toward the other officers. As Sergeant Wilson was on his way, he was told via radio that Mr. Lucero was coming outside. As he continued to the scene Sergeant Wilson heard gun fire. The gun fire stopped as he was getting closer to the house. Sergeant Wilson aired "shots fired" on his radio and checked on the other members of the team as they secured Mr. Lucero and then provided medical aid to him.

### **Officer Josh Verver**

Officer Verver was interviewed the evening of the shooting. He was aware of the previous domestic violence incidents involving Mr. Lucero. Officer Verver conducted most of the investigation which led to locating Mr. Lucero at 5343 Billings Street.

Officer Verver was about to drive the white minivan away when the door to 5343 Billings Street opened and Lucero stepped out. Officer Verver explained that when Mr. Lucero drew his gun, he was in fear for his life, the lives of the other officers and the public. As Officer Verver exited the white minivan he threw the flashbang and it exploded. As Officer Verver approached the back of the dark blue minivan van in the driveway he went down to the ground and saw Mr. Lucero on the ground. Geno was latched on to Mr. Lucero and other officers moved toward him. At this point Officer Verver explained there was no immediate threat and he did not fire his weapon. Officer Verver then started rendering medical aid to Mr. Lucero.

## **INVOLVED OFFICERS**

### **Officer Stroup**

Officer Stroup made a statement on September 4, 2021, at 2:13 a.m..

Officer Stroup, an officer assigned to a K-9 named Gino, was on call for the domestic violence incident the night before the shooting and recalls hearing that Mr. Lucero had a warrant for his arrest for "homicide." Officer Stroup looked into that incident a bit more and learned that it was a domestic violence shooting incident.

On the date of the shooting, September 3, 2021, Officer Stroup was asked by the SET team to assist in apprehending Mr. Lucero. At that time Officer Stroup learned that Mr. Lucero's criminal history consisted of multiple violent offenses, including robberies, weapons offenses, and

domestic violence offenses. Officer Stroup also told investigators that Mr. Lucero had a “the propensity to use violence” since he shot the victim in the domestic violence incident.

Officer Stroup explained what he saw and did as Mr. Lucero (who he referred to by his first name) exited the house:

*So I look at Drew and I see him reaching towards, his either—towards his right side of his body, and he—when his hand comes up, he had a black pistol in his hand. So I yelled "gun" and as soon as I got the word "gun" out the mouth – out of my mouth, Drew started firing. And he was firing right at me and I have no idea how he didn't hit me. It—I just don't have any clue. So I thought for sure I was going to get shot, so I returned fire from the—from behind the front of the van, more or less – under – behind cover. But I also knew that my other guys were to the left and most likely not behind cover.*

After the initial exchange of gunfire Mr. Lucero moved behind the dark blue minivan. Officer Stroup explained what occurred as he continued to move forward toward Mr. Lucero and he sat up:

*... but as I got a view on him and an angle of him, he sat up and looked at me and pointed the gun again at me. I think he fired more, but I – I couldn't be – I'm not completely sure, but he for sure had the pistol on me and I thought for sure I was going to get shot again.*

*So at that time, I let go of Gino [K-9], who had a good target lock on him; and as Gino was running towards him and he had the pistol at me, I fired more rounds –I believe about six – as he was sitting still concealed behind the van. After I fired that volley of rounds, Gino had reached him and engaged him in his leg or his foot. And as soon as he did that, I saw the pistol kind of fly or flop on the ground next to him and saw that it was actually locked back. So I – it – though training and experience, I knew – knew it to be empty.<sup>3</sup>*

### **Officer Neal**

Officer Neal gave a statement on September 4, 2021, at 12:58 a.m..

When he arrived, Officer Neal recalled he learned that the person they were looking for was Drew Lucero. Officer Neal recalled searching for Mr. Lucero for the prior shooting domestic violence incident. He learned that the warrant was still active. Officer Neal was also aware of the domestic violence incident the previous night and that was the reason the SET team's attention was again drawn to Mr. Lucero.

Officer Neal described what he saw as he was out of the minivan and Mr. Lucero was approaching them:

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<sup>3</sup> As noted elsewhere Mr. Lucero's gun malfunctioned before he could fire all of his rounds.

*INVESTIGATOR: So what is visible of him at that point?*

*NEAL: Gun, and like had—like he's reaching [indicating]—*

*INVESTIGATOR: Got it.*

*NEAL: — and then just like muzzle flash, smoke, gun.*

Officer Neal explained what occurred when he exited the minivan and then moved toward Mr. Lucero:

*He comes out and he's low to the ground and clearly firing at us, so realizing we don't have cover or whatnot, we just started pushing on him, trying to take the fight to him. Obviously, realizing this dude is trying to kill me and whatnot, so I exchanged fire with him. I think Stroup and Officer Flores did, too. And I was just absolutely in fear for my life and the lives of my partners there as he's actively shooting at us, so that's a first for me.*

Officer Neal was wearing a body-worn camera. After the shooting as he and other officers were attending to Mr. Lucero's wounds and awaiting the arrival of an ambulance Officers Neal and Verver began discussing their and Mr. Lucero's line of fire. The following discussion was captured on Officer Neal's body-worn camera:

*NEAL: Which way was he shooting though? Any of those other houses?*

*VERVER: Towards us, so.*

*NEAL: Just the van? Or you think these — house across the street?*

*VERVER: I think just towards us.*

*LUCERO: Just yous [sic throughout].*

*NEAL: Drew, you just shooting at us?*

*LUCERO: Yes.*

*NEAL: Why did you do that, man?*

*LUCERO: I'm—saw yous coming.*

*NEAL: You did?*

*LUCERO: Yep.*

#### **Officer Flores**

Officer Flores made a statement on September 4, 2021, at 1:08 a.m..

Officer Flores related that he was aware of the September 16, 2020, domestic-violence shooting incident involving Mr. Lucero. Specifically, he was aware that in that incident Mr. Lucero shot the victim and he currently had an active warrant for first-degree attempted murder. Officer

Flores also was aware that the night before the officer-involved shooting Westminster patrol was dispatched to Mr. Lucero's girlfriend's apartment in reference to a new "domestic violence harassment incident."

Officer Flores was armed with a rifle. Officer Flores explained what occurred as he made the decision to shoot after Mr. Lucero took a position behind the front of the dark blue minivan in the driveway:

*Mr. Lucero comes, wraps around that pretty quickly and I could still see that he's armed with a gun. He – it looks like he's taking tactical – tactical position at the front of the – of the vehicle. At that point, I engage him. I start firing my rifle because I'm – I'm worried he's going to shoot me or he's going to shoot my guys. I don't know if one of my guys has been hit yet, which I – I can only see them for the – for a second before I started pushing out. Mr. Lucero gets down behind the front bumper. I could see him roll onto the back and start what looks like – I could see the – the dust from – from what I – what I appear to be muzzle blast from – from what I think is him shooting back towards the other directions.*

*I still continue to engage, trying to get between – get a shot of him in between the – the bumper and the low position that he's in, and I'm slowly pressing up and trying to – trying to get to a place that's a little bit more advantageous, but I'm – I'm kind of stuck out in the open.*

*As I do that, I – I'm pretty sure I hit him, and then it seems like the – I – the only way I can describe it is, is someone – just the fight goes out of them and they kind of crumble. Once that happened, I stopped firing.*

### CRIME SCENE

A search warrant was obtained for the area near and inside 5343 Billings Street. Members of the Denver Police Department Crime Lab came to process and document the scene.



Figure 3. A Crime Scene Unit photo of the black Subaru Mr. Lucero was reported to have been driving and the white minivan the officers were in.



Seven 9mm shell casings were located between the white minivan and black car. These were consistent with ammunition in Officer Stroup and Officer Neal's handguns.



*Figure 4. A Crime Scene Unit photograph of the 9mm cartridge cases in front of the officer's white minivan. (This picture was brightened it to better illuminate the scene.)*

Four 9mm shell casings were located along the curb line at the northwest corner of the intersection. Seven 9mm shell cases were located on and around the sidewalk in front of 5343 Billings Street. Nine 9mm shell casings were located in and around the front yard of 5342 Billings Street.



*Figure 5 & 6. A Crime Scene Unit photograph of the cartridge case in the curb line, on and around the sidewalk, and the front yard.*

Seven .223 rifle shell casings were located in the street in front of the driveway to 5343 Billings Street.



*Figure 7. A Crime Scene Unit photograph of the cartridge cases in street in front of the driveway to 5343 Billings Street. The dark blue Toyota 4Runner in the middle of the photograph belongs to Sgt. Blair and was moved to that location after the shooting. (This picture was brightened it to better illuminate the scene)*

There were several bullet strikes located on the dark blue minivan in the driveway. There were bullet strikes on both the driver and passenger side. A spent bullet was recovered from the front passenger seat after it was processed with the registered owner's consent.



*Figure 8 A Crime Scene Unit photograph of the front of 5443 Billings Street. Sergeant Wilson's 4Runner is in the middle of the picture. It arrived at the scene after the shooting. The dark blue minivan in the driveway can be scene beyond the 4Runner. (This picture was brightened it to better illuminate the scene)*

Several items were located between the van and the garage door including Mr. Lucero's bloody clothing and medical supplies. There was also a bag with suspected crack cocaine, baggies with red "4:20" logos, a torch, and a wallet with Mr. Lucero's ID. There were numerous bullet strikes to the garage door. Four spent bullets were recovered from inside the garage. One round of bullets traveled out the north wall of the garage and appeared to ricochet off the eave behind the residence.



*Figure 9. A Crime Scene Unit photograph of between the dark blue minivan in the driveway van and the garage door.*

The breezeway to the front door had numerous bullet strikes. Mr. Lucero's Glock 22 .40 caliber handgun was recovered. The slide was partially locked back with a double feed malfunction. It appears that after Mr. Lucero's first shot the gun malfunctioned and was unable to fire any more rounds. The chamber of the gun held one round and the magazine in the gun contained 13 rounds – indicating it was fully loaded when Mr. Lucero fired his gun at these officers. A spent .40 caliber casing was on the porch and appeared to be deformed. Apparent burn marks were located on the west wall, possibly from the flashbang device.



*Figures 10 and 11. Mr. Lucero's gun.*

There were no penetrating bullets observed inside of the residence. A partially full box of .40 caliber ammunition was located in one of the upstairs bedrooms. A package of small plastic baggies with a red 4:20 logo was located near the box of .40 caliber ammunition.

The Crime Scene Unit recovered twenty 9 mm fired cartridge cases consistent with ammunition fired by Officers Stroup and Neal. The Crime Scene Unit recovered seven .223 fired cartridge cases consistent with ammunition fired by Officer Flores.

## Weapon Downloads

Members of the Denver Police Department Crime Lab documented the unloading of the involved officer's weapons.

Officer Verver's firearm was fully loaded as were his spare magazines. Based on the weapon download, he did not fire his weapon in this incident.

Officer Stroup had one 9mm handgun. According to the weapon download Officer Stroup fired his handgun 14 times.<sup>4</sup>

Officer Neal had a black Springfield XDM-9 9mm semiauto handgun. According to his weapons download Officer Neal fired seven rounds.

Officer Flores had a rifle and a sidearm. According to the weapons download, Officer Flores fired his rifle nine times. He did not fire his handgun in this incident.

## **AUTOPSY**

On September 4, 2021, an autopsy of Mr. Lucero was conducted by a pathologist with the Denver Office of the Medical Examiner. Mr. Lucero died as a result of gunshot wounds. Mr. Lucero had the following wounds: right shoulder; upper trunk in the right chest; the lower left trunk in the back; the lower right back; and the lower left calf.

## **LEGAL AUTHORITY**

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes. The justification of using physical force in self-defense is described in C.R. S. § 18-1-704:

. . . 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.

The use of deadly physical force "may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury." C.R.S. § 18-1-704(2)(a).

The justification for a peace officer's use of physical force while attempting to make an arrest is described in C.R.S. § 18-1-707:

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<sup>4</sup> The calculations for the number of shots fired by Officers Stroup, Neal and Flores is based on the information the officers gave during their interviews compared to the ammunition recovered from their firearms. The number of shots based on these calculations is inconsistent with the number of cartridge cases found on the scene. I am unable to resolve this discrepancy.

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When physical force is used, a peace officer shall:

(a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(b) Use only a degree of force consistent with the minimization of injury to others;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and

(d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

...

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

(a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

(b) The suspect poses an immediate threat to the peace officer or another person;

(c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

These legal justifications are "affirmative defenses." This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force.

Instead, the prosecution must prove, to a unanimous jury, that the force was not justified. Accordingly, the question I must consider is: *Is there enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt, that these officers acted without lawful justification?*

### ANALYSIS

After a thorough review of the evidence, I conclude that a jury would find that Officers Stroup, Neal and Flores had lawful justification to fire at Mr. Lucero in defense of themselves and defense of each other pursuant to C.R.S. § 18-1-704.

These officers reasonably believed that Mr. Lucero used unlawful physical force upon them. Each of these officers knew that Mr. Lucero was wanted for attempted murder for shooting a person. Officers Stroup and Neal saw Mr. Lucero pull a gun from his rear waistband and point and shoot that firearm at them. Officer Neal told investigators he saw a muzzle flash from Mr. Lucero's gun. I also find that these officers' belief that they needed to use deadly force was reasonable to defend themselves from Mr. Lucero's unlawful force. A lesser degree of force would have been inadequate. Finally, these officers had a reasonable belief that they were in imminent danger of being killed or receiving great bodily injury.

I also conclude that a jury would find that Officers Stroup, Neal and Flores had lawful justification to fire at Mr. Lucero in defense of themselves and defense of each other pursuant to C.R.S. § 18-1-707.

Once Mr. Lucero exited the house, produced a weapon and fired it, it was impossible for these officers to apply nonviolent means prior to resorting to physical force. Nonviolent means would have been ineffective in preventing an imminent threat of serious bodily injury or death to these officers.

These officers' use of physical force was permissible under C.R.S. § 18-1-707(2). Mr. Lucero was suspected of a serious and violent offense, attempted murder. At the time of the firing of their weapons these officers attempted to minimize injury to others.<sup>5</sup> Officer Stroup specifically told investigators he was aware of the backdrop behind which he was firing and ensured he was firing in a direction where it was less likely others might be injured, specifically the garage and dark blue minivan. Officer Flores described the garage and a brick façade as the backdrop where he was firing. Officer Neal also had awareness that there were only structures behind Mr. Lucero. After the shooting these officers immediately called for an ambulance and rendered medical aid to Mr. Lucero. Mr. Lucero's relatives were present inside the house and notified of the shooting that evening.

At the moment these officers used deadly force they were doing so in self-defense. In other words, they were not using deadly physical force merely to make an arrest. Nevertheless, I make

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<sup>5</sup> While I do have concerns that this incident may have been avoided with greater coordination with and involvement of the Denver Police Department and/or the Metro SWAT team, the question I am asked to consider is whether there is proof beyond a reasonable doubt that these officers acted with a lawful justification. Considerations of what could and should have been done tactically are better left to the involved agencies.

the following observations regarding the requirements of C.R.S. § 18-1-707(3). While the officers contemplated using other means to apprehend Mr. Lucero, namely arresting him as he approached his car, once he presented his handgun other means of apprehension became unreasonable. Mr. Lucero was wanted for felony charges for shooting a person. Mr. Lucero posed an immediate threat to the peace officers. Finally, the deadly force these officers used did not create a substantial risk of injury to other persons.

While the clothing these officers wore made them identifiable as officers, they did not have sufficient time to deliver warnings. Mr. Lucero quickly drew his weapon and fired it at these officers first. To provide warning of an intent to use firearms prior to doing so would have created a risk of death or injury to these officers.

Finally, and most importantly, I find that each of these officers had an objectively reasonable belief that a lesser degree of force was inadequate and had objectively reasonable grounds to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving serious bodily injury. Mr. Lucero used deadly force against these officers first. It is remarkable that he did not kill or injure any of them and in fact he may have done so had his gun not malfunctioned.

The Supreme Court of the United States 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 (1989) at pp. 396-397.

In this perilous situation, these officers' decision to shoot Mr. Lucero in defense of self and each other was justified under Colorado law.

Sincerely,



Beth McCann  
Denver District Attorney

CC: DPD Deputy Chief Barb Archer; DPD Deputy Chief Joe Montoya; DPD Commander Matt Clark; DPD Lieutenant Joel Bell; DPD Detective Mary McIver; DPD Detective Jacob Huffine; WPD Commander Edna Hendershot; WPD Officer Anthony Stroup; WPD Officer Chris Neal; and WPD Officer Kevin Flores