

Beth McCann
District Attorney
Second Judicial District



201 W. Colfax Ave. Dept. 801
Denver, CO 80202
720-913-9000

Beth.McCann@denverda.org

July 18, 2024

Ron Thomas
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

Re: Officer Involved Shooting in the intersection of Broadway and Lawrence Street, in Denver, CO, on Sunday June 16, 2024, resulting in the death of Miguel Tapia (dob 3/7/72). GO# 24-321166.

Dear Chief Thomas,

Our office has reviewed the investigation of the officer involved shooting on June 16, 2024, that occurred in the middle of the intersection of Broadway and Lawrence Street, in Denver, Colorado. The shooting occurred shortly after two Denver Police officers approached Miguel Tapia, age 52, who had been standing in the intersection for a prolonged period. He pulled a large hunting knife out of a satchel and advanced toward the officers. Both officers fired their Tasers. However, the Tasers were ineffective, and Tapia continued to advance. Both officers backed away. As Tapia continued to charge, both officers transitioned to their handguns and fired shots while hurrying backwards. A third officer who saw Tapia attacking also fired shots. Tapia was struck by multiple gunshots and died at the scene. After reviewing this investigation, I have concluded that deadly force was legally justified and that criminal charges will not be filed against any of the officers.

Summary of Facts

On June 16, 2024, a camera on the east side of Broadway recorded that Miguel Tapia walked to the middle of the intersection at Broadway and Lawrence Street at 11:12 a.m. He remained in the intersection for the entire 41 minutes until the shooting occurred at 11:53 a.m. This is a busy intersection north of downtown, where traffic flows in three directions and multiple traffic lanes cross. The recording shows Tapia standing, walking, turning, and occasionally making gestures with his hands and arms, but he stayed in the middle of the intersection as vehicles went around him. (See photos below). It was reported he was saying "hit me". Some drivers honked but none hit him. Some witnesses described Tapia as a female, others as a male, others were unsure. Tapia presented as a female at the time of this incident but the medical examiner identified him as a male. Because we do not know how the individual preferred to be identified or addressed, we refer to Tapia as "he/him" in the body of this letter.

Corey Beaton, a uniformed Denver Parks and Recreation Ranger, saw Tapia and walked to the corner on the west side of Broadway and north side of Lawrence Street. He tried to persuade Tapia to move out of the intersection. He later told investigators that he assumed Tapia was having a mental health crisis. He told Tapia that he was going to call “Policia”, and he radioed a police dispatcher. When he told Tapia the police were coming, “she pulled out a long, six-to-eight-inch blade knife, made a motion like this [demonstrating a throat slash] and put it back in her purse.



Photos from the building-mounted camera on the east side of Broadway.

Three officers arrived at the intersection in separate vehicles in this order: Officer Julian Barajas (18047), Officer Francisco Zarate (22102), and Sergeant Marc Smith (01040).

When Officer Julian Barajas arrived, he drove northbound on Broadway to the middle of the intersection and stopped near Tapia, who faced him. It was 11:51:34 a.m. He later told investigators: “... she immediately pulls out a large knife ... and she immediately tells me in Spanish ... “*Mátame! Mátame!*” ... directly at me, which means, “Kill me! Kill me!”

Officer Barajas stayed in his vehicle and radioed this information to dispatch and asked for code 10 cover. He backed up and saw Tapia put the knife away. He then moved his vehicle out of mid-intersection to block traffic on Lawrence Street to reduce the chances of people encountering Tapia. He saw that Officer Francisco Zarate was arriving via Lawrence Street, with his lights and siren activated. Officer Barajas walked back toward Tapia to assist Officer Zarate as he was stopping his vehicle in front of Tapia. Officer Barajas had his Taser drawn as he walked.

Officer Zarate, from his driver seat, gestured with his hands to his head and told Tapia through his side window: “Put your stuff down and put your hands on your head.” Tapia, who was looking at Officer Zarate, was moving his arms around and speaking loudly to him. He said (translated from Spanish): “Hey! Don’t get down, because if you get close, I’m going to fuck you up!” Officer Zarate got out of the vehicle but stayed behind the open driver’s door.

At this point, Officer Barajas was to the left of Officer Zarate, and slightly behind him, and he was pointing his Taser at Tapia. Tapia looked at Officer Barajas, and then yelled:

Tapia: "Hagale" ("Do it!")
Officer Barajas: "¡Détente!" ("Stop!")
Tapia: "¡Jálale!" ("Pull it!")

As Tapia was yelling "¡Hagale!" he was moving his right hand to a satchel that was hanging in front of him at his waist. He pulled out a large knife. (See three photos below).



Photos from Officer Barajas' body worn camera at 11:53:38 a.m. Officer Zarate, not seen, is standing behind the open vehicle door.



Tapia then began advancing toward both officers wielding the knife in his right hand. Officer Barajas fired his Taser. The taser prongs hit Tapia, who flinched. Officer Barajas yelled: “¡Bájate!” (“Get down!”). Tapia continued forward, so Officer Barajas fired a second Taser shot, which had no effect. After this second Taser shot, both officers began backing up. As the officers back-pedaled, Officer Zarate fired his Taser, which had no effect on Tapia.

While these events were occurring, Sergeant Marc Smith was arriving in his police vehicle. He passed behind both officers and came to a stop to their left. He saw Tapia advancing on the officers. He immediately got out and ran around the rear of his vehicle to confront Tapia. Sergeant Smith was to Tapia’s right, facing Tapia’s right side. He had his firearm drawn.

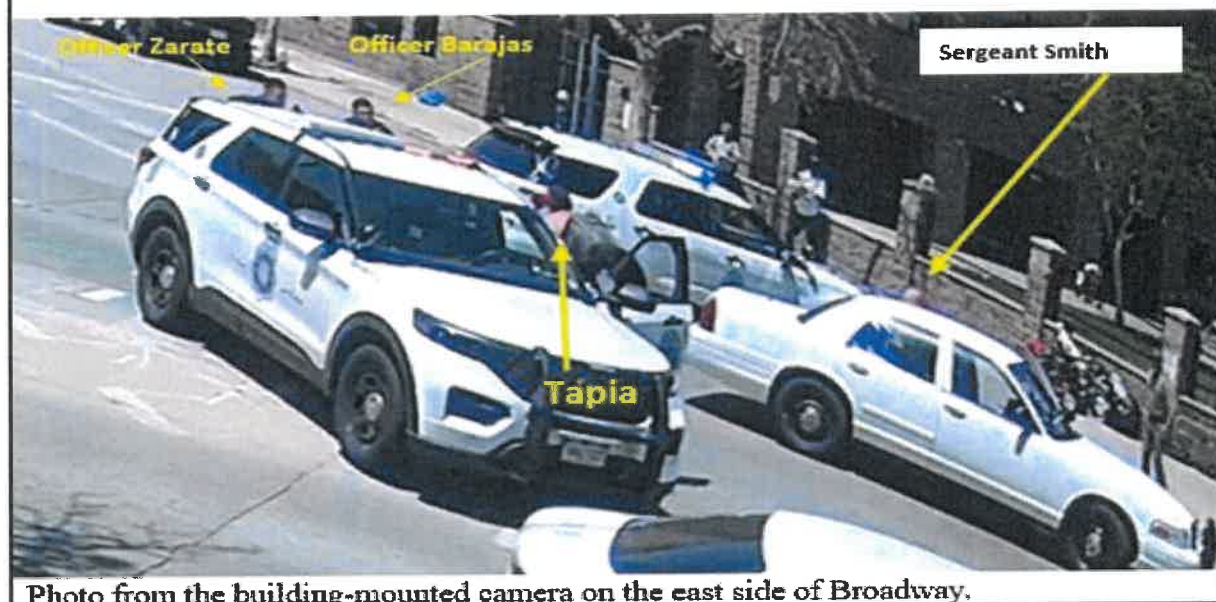


Sergeant Marc Smith's police vehicle.

Officer Barajas

Officer Zarate

Photo from Officer Barajas' BWC.



Officer Zarate

Officer Barajas

Sergeant Smith

Tapia

Photo from the building-mounted camera on the east side of Broadway.

Tapia advanced faster, beginning to run. As Officers Barajas and Zarate were hurrying backwards, they dropped their Tasers and drew their firearms. All three officers fired their weapons at Tapia. Twelve shots were fired within a three second span (11:53:45 -- 11:53:47). Before the first shot was fired, Tapia had charged more than the length of Officer Zarate's vehicle.



Photo from Officer Barajas's BWC. He has drawn his handgun. Officer Zarate is dropping his Taser.





Officer Zarate gripping his handgun. He fires two shots.



View from Sgt. Smith's BWC when Officer Zarate fires his first gunshot.



Sgt. Smith's first shot. He fires three shots.

Tapia was struck by multiple bullets and fell to the pavement. The officers removed the knife from Tapia's right hand, notified dispatch that the shooting had occurred, and requested an ambulance. The ambulance and Paramedics arrived at the scene within two minutes. They found that the gunshot wounds to Tapia were fatal. He was pronounced deceased by Denver Health Medical Center Dr. Seigel at 11:59 a.m.

An autopsy was later performed by Chief Medical Examiner James L. Caruso, M.D. It was confirmed that Tapia was biologically male. He had received multiple gunshot wounds to his head and torso. A written autopsy report is pending.

After the shooting, the Denver protocol for Officer Involved Shootings was initiated. The three officers were taken separately to DPD Headquarters and instructed not to speak about the incident, other than to their attorneys. They did not view or listen to recordings from their body worn cameras. Their weapons were taken by investigators and examined. This investigation was conducted by the Denver Police Department in conjunction with the Colorado Bureau of Investigation and the Colorado State Patrol. Written statements and reports were provided by officers, crime scene investigators, crime lab personnel, paramedics, and some witnesses. Video recorded interviews were conducted. Body worn camera recordings from officers were downloaded and reviewed. The scene was examined and photographed. Surveillance videos were obtained. Denver Police Homicide Unit Detectives Daniel Andrews (96015) and Andrew Landon (13077) were assigned as primary and secondary investigators, respectively. They reviewed and compiled numerous reports, documents, videos, photographs, body worn cameras, etc., and thoroughly reported the investigation in DPD GO #24-321166.

Crime Scene Evidence & Weapons Unload

DPD Crime Scene Unit investigators responded to the scene. Twelve spent cartridge cases were located. The weapons fired by each officer were unloaded at DPD Headquarters by the Crime Scene Unit and observed by investigators from CBI. The conclusions after the unload procedure were that Officer Barajas fired seven bullets; Officer Zarate fired two bullets; and Sergeant Smith fired three bullets. This is consistent with the twelve spent cartridge cases recovered.

Legal Analysis

Legal justification for the use of deadly physical force

Criminal liability is established only if it is proved beyond a reasonable doubt that all elements of a criminal offense have been committed without legal justification. When deciding whether any of the officers should be criminally liable in this case, my analysis is governed by the legal justifications for using deadly force in self-defense and in defense of another person. These legal justifications are set forth in C.R.S. §18-1-704 (1) and (2) and in C.R.S. §18-1-707 (4.5).¹ As pertinent to this case, C.R.S. §18-1-704 states:

¹ Note that under Colorado case law a person accused of a crime does not have to prove he or she acted with legal justification. Instead, the prosecution has the burden of proof to show the legal justifications do not apply by proving all the elements of the crime beyond a reasonable doubt.

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.
- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
 - (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury; or
 - (b) ... [not applicable to this case]; or
 - (c) The other person is committing or reasonably appears about to commit ... assault as defined in sections 18-3-202 and 18-3-203.²

C.R.S. §18-1-707 (4.5) provides:

- (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.

The facts are clear that Tapia was unlawfully charging Officers Zarate and Barajas with a large hunting knife and was about to commit assault. If he had closed the distance to either of them, he could have caused serious injury or death. The fear of that happening was expressed by all three officers in their interviews. Officer Zarate told investigators, *"It was close" ... "I felt her on me."* He said he fired at Tapia because *"I felt like I was going to get stabbed. Like I said, it was that close. I remember being worried about falling back."* Officer Barajas said he was most concerned about Officer Zarate since Tapia advanced closest to him. Officer Barajas fired because Tapia *"might cause harm to him and possibly kill him...."* Sergeant Smith was concerned that both retreating officers would be overtaken by Tapia: *"It was quick ... and if they continued on their path of trying to backpedal and retreat from this person, they would get bowled over and stabbed. So, that's why I fired my weapon."*

The surveillance camera recording and the body worn camera recordings show how rapidly this happened and how quickly the officers had to make decisions of life or death. The recordings are very persuasive evidence that this shooting was legally justified. Also persuasive is that several non-police witnesses who saw this event and gave interviews to investigators conveyed their

² Per C.R.S.18-3-203(1): "A person commits the crime of assault in the second degree if: ... (b) With intent to cause bodily injury to another person, he or she causes such injury by means of a deadly weapon."

opinions that the officers acted reasonably and justifiably. One witness who saw the incident from a good vantage point said:

“I thought he [Officer Zarate] was going to be stabbed...”

“I was scared for that officer....”

“That knife was so close to that officer that he had to shoot. He had to shoot.”

After considering the evidence, I find that Tapia was about to commit assault with his knife, and that all three officers had objectively reasonable grounds to believe, and did believe, that Officer Zarate and Officer Barajas were in imminent danger of being killed or of receiving serious bodily injury. The severity of the threat, coupled with how rapidly Tapia was attacking, meant time was of the essence, and that it was necessary to use a degree of force in defense that was immediately effective. I find it was objectively reasonable for the officers to believe that deadly force was necessary, and that a lesser degree of force would have been inadequate to safely defend against Tapia’s actions. Therefore, I find that all three officers were legally justified in using deadly physical force.

Other requirements of C.R.S. 18-1-707 (1), (2), (4) regarding a peace officer’s use of force

Other provisions of C.R.S. §18-1-707 are not specific to using force defensively but are relevant generally to the use of force by a peace officer. Those provisions are:

C.R.S. §18-1-707(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 injury to the peace officer or another person.

C.R.S. §18-1-707(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.

C.R.S. §18-1-707(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.

I find the requirements of C.R.S. 18-1-707 were appropriately met in this case. Because of the immediacy of the threat by Tapia, there was no time for officers to warn that gunshots would be fired. They had already retreated a significant distance and fired their Tasers. Any more delay to verbally warn Tapia would have endangered the officers.

Conclusion

The officers acted in defense against Tapia who was advancing toward them with a large knife, and their actions were justified by the statutes mentioned above. Therefore, no criminal charges will be filed against the officers.

Sincerely,

A handwritten signature in black ink that reads "Beth McCann". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Beth McCann
Denver District Attorney

cc: Armando Saldate, Director of Public Safety; Deputy Chief Joe Montoya; Commander Matt Clark; Commander Ed Leger; Commander Joel Bell; Commander Brad Qualley; Lieutenant Rich Laber; Sergeant Scott Murphy; Sergeant Scott Hagan; Detective Daniel Andrews; Detective Andrew Landon; Sergeant Marc Smith; Officer Francisco Zarate; Officer Julian Barajas; John Davis, Esq.; Sean Lane, Esq; Denver City Attorney Kerry Tipper; Director of the Office of Independent Monitor Lisabeth Pérez Castle