

**Beth McCann**  
District Attorney

Second Judicial District



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July 22, 2019

Daniel McCasky  
Chief of Police  
Lakewood Police Department  
445 S. Allison Parkway  
Lakewood, CO 80226

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

RE: Investigation of the shooting of  
Alfredo Vallejos DOB 06/03/1972, in  
which Lakewood Police Agents Tracey  
Lee and Joshua Guerra fired shots on April  
29, 2019, at approximately 3<sup>rd</sup> Avenue and  
Sheridan Boulevard, Denver, Colorado.

Dear Chiefs McCasky and Pazen,

The investigation and legal analysis of the shooting of Alfredo Vallejos, in which shots were fired by Lakewood Police Agents Tracey Lee and Joshua Guerra, has been completed. I conclude that, under applicable Colorado law, no criminal charges are warranted. The facts show that the force used by the officers was legally justified and not unlawful under Colorado law. My decision, based on standards of criminal law, does not limit administrative action by the Lakewood Police Department where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. This letter will be posted on the Denver District Attorney website, and our file will be available for interested citizens to review.

#### STATEMENT OF FACTS

On April 29, 2019, at approximately 3:27 p.m., Lakewood Police Agents responded to the area of 4<sup>th</sup> Avenue and Harlan St, in Lakewood.<sup>1</sup> They responded to two separate 911 callers who

<sup>1</sup> The Denver District Attorney's Office reviews all officer-involved shootings which occur in Denver, no matter where the incident originated. Here, the reports of a man armed with a knife originated in Lakewood but concluded within the boundaries of Denver.

reported seeing a man wielding a large knife. One caller stated that the man was walking in the street, and children were present. The man was reported to be walking on 3<sup>rd</sup> Avenue toward Sheridan.

Several Lakewood Police Agents responded to that area, first seeing Mr. Vallejos at 3<sup>rd</sup> and Depew St. After officers noted that he was carrying a large 6- to 8-inch butcher knife, they demanded that he put the weapon down. Instead of disarming, Mr. Vallejos responded by running up a driveway and into someone's backyard. He then emerged and ran eastbound, onto Sheridan Blvd. Agent Guerra followed Mr. Vallejos as they ran northbound. In an effort to protect citizens who were stopped in traffic, Agent Guerra remained to the west of Mr. Vallejos. During this foot pursuit, Agent Guerra twice heard other officers deploy their Tasers, which had no effect on Mr. Vallejos.<sup>2</sup>



Aerial view of the relevant area

In his interview, Agent Guerra stated:

[Mr. Vallejos] had started to run northbound, and I heard a Taser deployment and I looked at [Mr. Vallejos]. Me – it was honestly ineffective. He was still running. A little further down, I heard a second deployment – was ineffective.... And so my intention was to keep him from turning left and going towards other people.... Other agents were giving him commands to stop, to drop the knife. He turned and faced Agent Lee. I gave him a loud command: “drop the knife!” ... And it looked like he just took a deep breath and he took two like aggressive long steps towards Agent Lee with the knife pointed towards him. I pushed out and fired twice.... After my second shot, the suspect dropped down to the ground and rolled onto his back.

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<sup>2</sup> This was likely due to the fact that Mr. Vallejos was using his jacket as a shield to prevent the Taser prongs from making contact with him.

When asked why he fired his weapon, Agent Guerra stated “once he pointed the blade towards Lee and took those hard steps towards him, I thought he was going to stab Agent Lee. I thought he could kill Agent Lee if he got – if he continued towards him and got ... intertwined with him.” He stopped discharging his firearm because “[Mr. Vallejos] started to drop down to the ground and I perceived that the threat was at least stopped to the point where we could retreat.” Agent Guerra estimated that Mr. Vallejos was approximately five feet away from Agent Lee when Agent Guerra began to fire his weapon.



*Still shot of surveillance footage in the area. The time stamp is incorrect.*

## Vallejos' advance:

Senior Agent Lee  
Agent Guerra



*The moment when officers determined they were forced to shoot in self-defense.*

Agent Lee arrived on scene when Mr. Vallejos was already on Sheridan Blvd. Agent Lee stated:

I saw [Mr. Vallejos] running westbound with a couple other agents running near him... [H]e was carrying a very large knife and he was running toward the east side of Sheridan Boulevard... and then he suddenly stopped and he turned around and he was yelling.... I heard the sound of a Taser being deployed. And so then the man turned around facing me and he started to walk back out onto – out into the street onto Sheridan Boulevard.... And I remember yelling at him, telling him to get down on the ground – yelling that repeatedly. He stopped and was facing me, and he was yelling something, and he was kind of acting in an aggressive manner. I could see the large knife that was up next to the left side of his head.... I could see it was a really large knife, really long.... At one point he started to yell “shoot me!”.... And I kept yelling at him to get on the ground.... I knew that I didn’t want to get any closer to him, because I knew with that – that knife, that he could close the distance ... quickly and he could get to me and he could stab me or could stab somebody else.... I saw the knife come down away from his head, and he moved – he started to come toward me. And he was still yelling, and he was – he was coming at me like in an aggressive manner, like he was really trying to get to me. And I knew the only way I could stop him from getting to me was to shoot him.



*Photo of the knife wielded by Mr. Vallejos.*

Agent Lee fired four times. Agent Guerra fired two times. Mr. Vallejos was struck by five to six rounds.<sup>3</sup> He sustained three gunshot wounds to the abdomen; a perforating gunshot wound to the left wrist; a possible graze wound to his left upper/back or shoulder; and a gunshot wound to the upper left thigh. He survived his injuries.

Mr. Vallejos was interviewed at the hospital. He stated that he was sober at the time of this incident. He stated that he had hoped the police would kill him. He said that officers shot him because he had a knife, which he always carries in his pants. Mr. Vallejos has been charged in Jefferson County with seven counts of Assault to a Peace Officer; one count of Felony Menacing; one count of Disorderly Conduct; and one count of Disobeying a Police Order (19CR1636).

### **LEGAL ANALYSIS**

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. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

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<sup>3</sup> The injuries described are based upon a review of photos taken at the hospital. Due to privacy concerns, we did not have access to Mr. Vallejos's medical records.

... 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 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. As pertinent to this case, C.R.S. § 18-1-707 (1) states:

... 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 ... 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 ....

The definition of deadly physical force includes the requirement that the recipient of the force die. Thus, because Mr. Vallejos did not die, deadly physical force was not used. However, the justification for use of deadly physical force as explained below would apply in this situation.

C.R.S. § 18-1-707(2) states:

A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
  - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
  - (II) Is attempting to escape by the use of a deadly weapon; or
  - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

These 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 could find, beyond a reasonable doubt, that Agents Lee and Guerra acted without lawful**

**justification? At the time they used physical force, did they believe they were about to be subjected to the imminent use of unlawful physical force and was this belief objectively reasonable?**

## **CONCLUSION**

The question presented in this case is whether, at the instant Agents Lee and Guerra fired their weapons, the legal justification for using physical force as set forth in C.R.S. § 18-1-704(1) and §18-1-707(2) were applicable. I conclude that they were. The officers initially responded to a call of a man with a knife in the area where children were present. They saw Mr. Vallejos with a large knife and made numerous commands for him to put down that knife. Mr. Vallejos responded by demanding that officers shoot him. Officers responded by deploying their Tasers four times. Each deployment had no effect on Mr. Vallejos. Although he could have continued running from the officer, Mr. Vallejos elected to stop, and deliberately and intentionally face Agent Lee. He then made the decision to take two large aggressive steps in Agent Lee's direction. When Mr. Vallejos was approximately five feet away from Agent Lee, and when he was close enough to Agent Lee to fatally stab him, both officers discharged their weapons – practically simultaneously. When these agents shot Mr. Vallejos, they had reasonable grounds to believe, and did believe, Agent Lee was in imminent danger of being killed or of receiving great bodily injury. They also reasonably believed that a lesser degree of force was inadequate to protect themselves in these circumstances.

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat an officer faces. Illinois v. Lafayette, 462 U.S 640 (1983). As stated in Scott v. Henrich, 39 F.3d 912 (9<sup>th</sup> Cir. 1994):

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. *Id.* at 915.

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 (1989) at pp. 396-397.

Under these dangerous circumstances, Agents Lee and Guerra made split-second judgments, and their decisions to shoot Mr. Vallejos in self-defense and in defense of others were justified under Colorado law.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McCann", followed by a horizontal line extending to the right.

Beth McCann  
Denver District Attorney

cc: Lakewood Police Agent Tracey Lee; Lakewood Police Agent Joshua Guerra; Jenna Roth, Lakewood Police Advisor, City Attorney's Office; Barb Archer, Denver Deputy Chief of Police; Denver Police Commander Mark Chuck, Major Crimes; Denver Police Lieutenant Matthew Clark, Major Crimes; Troy Riggs, Executive Director of Department of Public Safety; Kristin Bronson, Denver City Attorney; Assistant District Attorney Ryan Brackley; and Nicholas E. Mitchell, Office of the Independent Monitor.