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Second Judicial District



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October 23, 2019

Sheriff Jeff Shrader  
Jefferson County Sheriff  
Jefferson County Sheriff's Office  
200 Jefferson County Parkway  
Golden, CO 80419

Re: Investigation of the shooting of Robert Lee Martinez, DOB: 02/03/1973 and Sandra Pacheco, DOB: 12/08/1983, on February 1, 2019, involving Jefferson County Investigator Patrick Schreiner (Badge #1441), in the area of the 200 block of South Canosa Court, Denver, Colorado.

Dear Sheriff Shrader:

The investigation and legal analysis of the lethal shooting of Robert Martinez and non-lethal shooting of Sandra Pacheco by Jefferson County Investigator Patrick Schreiner has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against Investigator Schreiner. My decision, based on criminal law standards, does not limit administrative action by the Jefferson County Sheriff Department, any applicable federal agency or 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.

#### **STATEMENT OF FACTS**

On Friday, February 1, 2019, at approximately 12:00 p.m., United States Marshals Service (USMS) Deputy Joshua Clesi, who is assigned to the Metro Gang and Gun Task Force (MGGTF), was conducting surveillance at 216 South Canosa Court. Deputy Clesi was attempting to locate and arrest fugitive Robert Lee Martinez, dob: 02/03/1973. Martinez had an active warrant for a Supervised Release Violation Petition issued through United States District Court (Case No. 1:15CR00314-1). The original charges which resulted in Mr. Martinez being on probation involved selling a sawed -off shotgun and 70 rounds of shotgun ammunition to a Confidential Informant (CI) for 3.7 grams of methamphetamine. The warrant was issued on January 9, 2019.

Deputy Clesi obtained a federal search warrant for a cellular phone number associated with Martinez to obtain location information. This information led Deputy Clesi to an address of interest at 216 South Canosa Court. This is the residence of Elaine Martinez, dob: 5/16/1975, who is the ex-wife of Martinez. Deputy Clesi was driving his undercover blue Chevy Equinox when he was conducting surveillance on February 1, 2019.

Deputy Clesi requested additional resources and the following law enforcement officers arrived on scene to assist (all officers were wearing marked tactical vests over plainclothes.) Due to the nature of the operation and consistent with policy and procedures, no member of this task force was wearing a body worn camera (BWC).

- Jefferson County Sheriff's Office (JCSO), Investigator Patrick Schreiner  
Assigned to Metro Gang and Gun Task Force (MGGTF)  
Driving a gray Toyota Tacoma (no emergency equipment)
- Immigration and Customs Enforcement (ICE), Special Agent (SA) Trenton Blatt  
Assigned to Colorado Violent Offender Task Force (CVOTF)  
Driving a black Ford Edge (emergency equipment)
- Drug Enforcement Administration (DEA), Special Agent (SA) Shannon Moham  
Assigned to Colorado Violent Offender Task Force (CVOTF)  
Driving a blue Dodge Ram (emergency equipment)
- United States Marshals Service (USMS), Deputy Thomas Rohm  
Assigned to Colorado Violent Offender Task Force (CVOTF)  
Driving a black Dodge Durango (emergency equipment)

Investigator Schreiner was not assigned to the same fugitive task force as Deputy Clesi, but he volunteered to assist. The unit was looking for Mr. Martinez at a number of possible locations. Investigator Schreiner was posted approximately a block north of the 200 block of South Canosa Ct. in his unmarked vehicle. He was equipped with binoculars to use if Martinez was spotted at 216 South Canosa Court.

At approximately 3:10 p.m., a maroon 2009 Ford Taurus bearing Colorado license plate (IHQ-629) parked in front of 216 South Canosa Court. The vehicle was on the east side of Canosa Court, facing northbound. It was later discovered the driver was Sandra Pacheco, dob: 12/08/1983. Unbeknownst to the officers at that time, Michael Coffey, dob: 03/25/2015 (three-year-old) and Tyler Coffey, dob: 08/23/2016 (two-year-old) were in the backseat of the vehicle. It was later learned that Sandra Pacheco was supposed to be babysitting these children at their home, and the vehicle she was driving was owned by the family of the Coffey children.

*The following chronology of events was determined based on witness interviews, the crime scene investigation, and all other information related to this investigation:*

- Robert Martinez was observed exiting 216 South Canosa Court by Investigator Schreiner. Investigator Schreiner was north of the address near West Cedar Avenue and South Canosa Court. Martinez's identity was confirmed by other agents/officers.
- SA Moham (driving a blue Dodge Ram) drove southbound in the 200 block of South Canosa Court and observed Martinez entering the passenger side of the Ford Taurus. SA Moham continued southbound and made a u-turn to travel back northbound on South Canosa Court.

- Investigator Schreiner drove southbound on South Canosa Court (driving a Toyota Tacoma) and drove toward the front bumper of the Ford Taurus.
- SA Blatt (driving a black Ford Edge) drove northbound on South Canosa Court, activated his red and blue lights, and stopped near the rear of the driver's side of the Ford Taurus.
- Deputy Clesi (driving a Chevrolet Equinox) stopped behind SA Blatt (Ford Edge).
- Investigator Schreiner exited his vehicle, displayed his gun, ordered the occupants of the Ford Taurus to show their hands. He was wearing a tactical vest that displayed a badge on the front and "SHERIFF" on the back. Investigator Schreiner also repeatedly identified himself as law enforcement.
- According to SA Blatt and Investigator Schreiner, the Ford Taurus drove forward striking Investigator Schreiner's Toyota Tacoma. (Photo is after truck is moved)



- The Ford Taurus then reversed into SA Blatt's Ford Edge.
- Investigator Schreiner moved toward the front of the Ford Taurus.
- The Ford Taurus accelerated toward Investigator Schreiner.
- Investigator Schreiner fired two gunshots at the driver of the Ford Taurus (Sandra Pacheco) striking her in the right arm and the left arm. Investigator Schreiner later reported during his video interview that he was in fear of his life when he fired at Pacheco.
- Investigator Schreiner then jumped to the driver's side of the Ford Taurus to avoid getting struck as the vehicle was trying to drive away.
- The Ford Taurus struck and attached to Investigator Schreiner's Toyota Tacoma, pushing the Tacoma causing it to rotate/move.
- The Ford Taurus continued across the street, stopped in front of 221 South Canosa Court, facing north, slightly pointed to the west.
- Investigator Schreiner's Tacoma was hit with such prolonged force at its front left corner that the truck was pushed in a northwesterly direction and rotated clockwise. The result was that as the Ford Taurus was trying to flee, it moved to the west side of Canosa Court while still facing mostly northward. The Tacoma was pushed/rotated also across the street coming to rest against the passenger side of the Ford Taurus.

First photo after Deputy Rohn's vehicle stopped the Taurus, second photo during the processing of the Taurus.



- SA Moham drove his blue Dodge Ram northbound on South Canosa Court, activated his red and blue lights, and made slight contact with the rear of the Ford Taurus, given the movement of the vehicle.
- Deputy Rohn activated his red and blue lights, and drove his black Durango to the front of the Ford Taurus, given the movement of the vehicle.
- SA Moham removed Sandra Pacheco from the driver's seat of the vehicle. He began rendering first aid to her.
- Officers repeatedly told Mr. Martinez to show them his hands.
- Investigator Schreiner was standing on the driver's side of the Ford Taurus. This put him tactically in a position to focus on Martinez without having the children (now known to officers) potentially in the range of fire.
- Martinez began reaching in his waistband and making statements that the officers would have to kill him and he would not submit to the officers' authority and be arrested without a fight.
- Multiple commands were given to Martinez to put his hands up. Martinez refused all commands. All officers on scene were concerned that Mr. Martinez was trying to produce a weapon.

- Deputy Clesi, who was on the rear passenger side of the Ford Taurus, deployed his Taser striking Martinez. This had minimal effect.
- SA Blatt, from the passenger side of the Ford Taurus, attempted to remove Martinez from the front passenger seat by his shirt collar. Martinez reached in his waistband and said, "I'm going to kill you motherfucker." SA Blatt disengaged Martinez and SA Blatt drew his firearm (did not fire).
- Investigator Schreiner, while standing on the passenger side of the Ford Taurus, observed Martinez reaching toward his waistband. Martinez at some point also reached toward the children in the backseat. Investigator Schreiner, believing Martinez was attempting to obtain a weapon, feared for his safety, the safety of the children and the safety of the law enforcement officers. Investigator Schreiner fired three gunshots at Martinez striking his upper left shoulder and his right forearm.
- SA Moham applied a tourniquet to Pacheco's left arm.
- Based on radio traffic, it was approximately 18 seconds from the time the Ford Taurus was moving until Deputy Clesi aired "shots fired." Deputy Clesi advised he aired "shots fired" after Martinez was shot.

At 3:12 p.m., witness Carol Gonzales, dob: 01/21/1958, drove up to the scene. Investigator Schreiner requested Gonzales call 911 and request emergency services. Denver Police Department (DPD) officers, Denver Fire Department (DFD) firefighters, and Denver Health Medical Center (DHMC) paramedics were dispatched to the scene. Martinez was removed from the vehicle and transported to DHMC. This was after the Tacoma had to be moved to allow access to the passenger side door. Pacheco was also transported to DHMC for her injuries.

Denver Police Officer Isaac Ocampo's BWC showing the Tacoma's positioning before it was moved. (Denver police officers wear body worn cameras but they arrived after the shooting.)



The two children, Michael and Tyler Coffey, were not injured but also transported to DHMC for precautionary measures. The children were later released to their father Michael Coffey, dob: 05/02/1983. It was learned that the Ford Taurus was owned by Mr. Coffey and Ms. Pacheco was babysitting the children.

The involved witness officers and Investigator Schreiner were contacted by DPD personnel, separated, and transported to Denver Police Headquarters for interviews. Firearm unloads were conducted with all witness officers. It was determined Investigator Schreiner was the only officer that fired during the incident. Upon Pacheco's arrival at DHMC, a baggie containing suspect narcotics were recovered from her underwear by DHMC personnel. This baggie contained Cocaine: 0.515 g and Methamphetamine: 3.293 g.

At 3:32 p.m., Homicide Unit, Detective Adam Golden, 06157, and Homicide Unit, Detective Daniel Andrews, 96015, were notified of the aforementioned officer involved shooting incident. Detective Golden was assigned as the primary detective to the investigation and instructed to respond to Denver Police Headquarters. Detective Andrews was assigned as the secondary detective and instructed to respond to the crime scene. Aurora Police Department (APD), Sergeant Stephen Jokerst, 24202, Detective Steve Conner, 8207, and Detective Pete Szuch, 25319, were also notified of the incident and responded to participate the investigation. The Aurora PD case number is 19-4209.

At 3:36 p.m., Mr. Martinez was pronounced deceased by DHMC Doctor Burlaw.

At 4:30 p.m., Detective Andrews, Crime Scene Supervisor (CSS) Daniel Fox, Crime Scene Investigator (CSI) Skye McGlawn, B15040, CSI Cody Olander, B18006, CSI Thomas-John Giannasca, and CSI Amy McCowan, B16067, processed the crime scene in the 200 block of South Canosa Court. The scene was documented by photographs, video, and 3D FARO scans. The Ford Taurus was later towed to the Denver Police Crime Laboratory, Vehicle Processing Bay, in anticipation of an application for a search warrant. The following items were among the multiple items of evidentiary value recovered from the scene:

- Two spent 40 caliber cartridge cases in front of 216 South Canosa Court (Markers 3 and 5).
- Spent Taser cartridge in the street, on the passenger side of the Ford Taurus (in front of 221 South Canosa Court (Marker 6).
- Comingled items (associated with Robert Martinez) to include a folding knife, clothing, and suspected crack cocaine from a jacket pocket (Markers 8 and 9).
- Three spent 40 caliber cartridge cases in front of 221 South Canosa Court, near the blue Dodge Ram.

At 11:04 p.m., the Honorable Judge Fran Simonet reviewed and approved a Sealed Arrest Warrant for Sandra Pacheco for violation of CRS 18-3-202(1)(c): Assault in the First Degree, a Class 3 Felony, and CRS 18-18-403.5: Possession of a Controlled Substance, a Drug Felony 4.

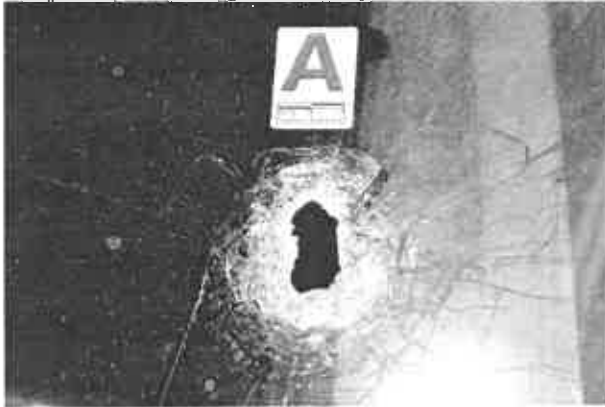
On Saturday, February 2, 2019, at 9:00 a.m., Detective Golden attended the postmortem examination of Robert Martinez at the Denver Office of the Medical Examiner (DOME) located at 500 North Quivas Street. The examination was conducted by Chief Medical Examiner, Doctor James Caruso. Detective Golden learned Martinez had a penetrating gunshot wound to his upper

left shoulder and the bullet continued toward his chest. Martinez also had a perforating gunshot wound to his right forearm.

At 11:39 a.m., Detective Golden and Detective Andrews conducted a video recorded interview with Sandra Pacheco at Denver Health Medical Center located at 777 North Bannock Street. Through the course of the interview, Pacheco advised she was babysitting her friend Michael Coffey's children (Tyler and Michael Coffey). Pacheco put the children in the backseat of Coffey's vehicle and Pacheco drove to meet with Robert Martinez at 216 South Canosa Court. Martinez exited the residence carrying a black backpack, entered the front passenger seat of the Ford Taurus, and provided Pacheco with methamphetamine. Pacheco was given the methamphetamine in exchange for giving Martinez a ride to the area of West Hampden Avenue and Sheridan Boulevard. Pacheco placed the methamphetamine in her underwear in case she was pulled over by police. Pacheco observed a vehicle pull in front of her and a male exited the vehicle with a gun telling her to get out of the car. Martinez told Pacheco to "Go!" Pacheco tried to get away, and she was shot in the left and right arm. Pacheco stopped the vehicle and got out of the car. Pacheco heard voices who she believed were police officers yelling at Martinez. Pacheco then heard additional gunshots.

On Monday, February 4, 2019, at 9:00 a.m., the Ford Taurus was processed at the Denver Police Crime Laboratory, Vehicle Processing Bay, located at 1371 North Cherokee Street. Detective Andrews applied for and received a search warrant to process the vehicle. Through the course of the search warrant execution, the following was documented:

- Marker A: One perforating defect to exterior driver side front windshield

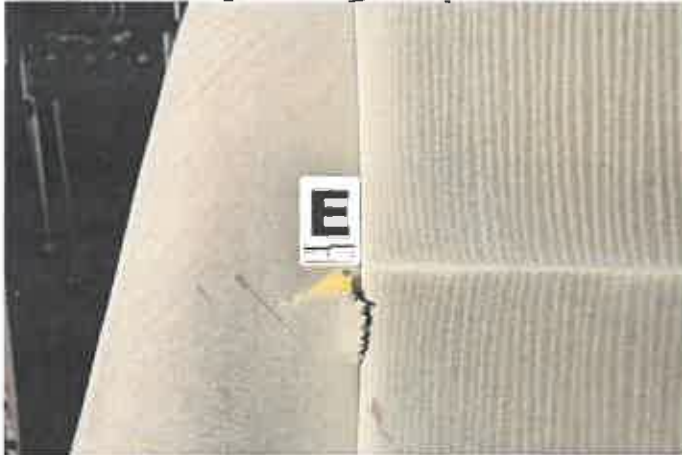


- **Marker C:** One perforating defect to front surface of front driver seat head rest



- **Marker C1:** One perforating defect to rear surface of front driver seat head rest
- **Marker D:** One penetrating defect to front surface of front driver seat head rest

- **Marker E:** One perforating defect to front surface of front driver seat back, right side



- **Marker F:** One perforating defect to rear surface of front driver seat back, just right of center



- **Marker F1:** One bullet strike to interior metal frame of front driver seat back, right side
- **Marker 2:** One black backpack containing miscellaneous personal, paper, a blue 'ZTE' cellphone, and drug paraphernalia items to include one plastic bag of unknown orange pills, one



plastic baggie of suspected heroin, two glass pipes, digital scale with weights, and empty plastic baggies; all located in the front passenger floorboard.

The locations of the defects were consistent with Investigator Schreiner being in the path of the Taurus.

### APPLICABLE LAW

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 Sandra Pacheco's injuries and Robert Martinez's death resulted from shots fired by Investigator Schreiner, so the determination of whether his conduct was criminal is primarily a question of legal justification. The question then is whether Investigator Schreiner was legally justified in his actions causing Ms. Pacheco's injuries and Mr. Martinez's death.

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<sup>1</sup> 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:

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<sup>1</sup> Colorado law defines "deadly physical force" as force that actually causes death, section 18-1-901(2)(d), (e), CRS. Since Sandra Pacheco survived her wounds in this case, deadly force was not used with respect to her. 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.

- 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.

It is also necessary to look at C.R.S. § 18-1-704 which defines the circumstances under which any person can justifiably use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:

(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

...

Officers are also 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 United States Supreme Court has held that it is not unreasonable for police officers to continue to pursue a fleeing vehicle, even where doing so puts the occupants at risk of serious injury or even death<sup>2</sup>:

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

Last, it is important to note that Colorado encompasses within the law of self-defense, the “no duty to retreat” rule. This is seen throughout Colorado self-defense law and jury instructions in this area. This means that a person is not required to retreat in order to claim the right to employ force in his defense of himself or others. C.R.S. § 18-1-704 (2)(a).

### LEGAL ANALYSIS

The issues are: 1) whether at each time Investigator Schreiner used physical force (*see footnote 1 on page 9*), he reasonably believed it was necessary to effect an arrest. 2) whether at the time Investigator Schreiner used deadly physical force he reasonably believed it was necessary to defend himself or other officers from what he reasonably believed to be the use or imminent use of deadly physical force. Alternatively phrased, the question is whether reasonable officers, confronted with the same facts and circumstances, could have reasonably concluded that it was necessary to use deadly force to defend themselves or another and stop the threat that the suspect vehicle and its occupants presented. Is there enough evidence of criminal conduct that a jury could find beyond a reasonable doubt that Investigator Schreiner acted without lawful justification?

Here, we need to look at both shootings individually, in that there were two distinct episodes in which the involved Investigator Schreiner using deadly physical force: (1) when Investigator Schreiner fired his weapon toward the suspect vehicle and Sandra Pacheco as it drove toward Investigator Schreiner and (2) after the vehicle was stopped and Investigator Schreiner fired at Robert Martinez.

It should be noted that in this case there are no body-worn cameras (BWC) or any other video that captured the events leading up to or during the shootings. Also, it is worth noting that the vehicles, most notably the grey Toyota Tacoma that was driven by Investigator Schreiner, were moved prior to the Crime Scene Unit (CSI) of the Denver Police Department arriving to document the scene. This was done to attempt to render aid to Mr. Martinez, hence there are no photographs or video of the positions of all the vehicles at the time of the shootings.

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<sup>2</sup> The Supreme Court was interpreting “reasonableness” for purposes of the Fourth Amendment and police conduct during searches and seizures, not for purposes of examining the legal justifications for use of deadly physical force. However, the Court’s rationale is still instructive in this context.

## CONCLUSION

Regarding the shooting of Sandra Pacheco, after reviewing all the evidence I have concluded that the use of physical force by Investigator Schreiner was justified. Ms. Pacheco was attempting to flee, perhaps pursuant to Mr. Martinez's direction, and was dangerously and repeatedly moving her vehicle back and forward in an attempt to escape. Directly in front of her was Investigator Schreiner and his Toyota Tacoma truck, which had already been struck by Ms. Pacheco's car. At that point, Investigator Schreiner was in the path of Ms. Pacheco's vehicle and with the vehicle coming toward him, he fired twice at the driver striking her in each arm. This occurred after Ms. Pacheco's failure to acquiesce to Investigator Schreiner's request to get out of the vehicle and given his identification as a law enforcement officer with his firearm drawn.

The actions of Investigator Schreiner are legally justified under Colorado law, as he was authorized to use deadly physical force by C.R.S. sections 18-1-707(2)(a). Section (2)(a) allows him to defend himself or a third person from what he reasonably believed to be the use or imminent use of deadly physical force. The immediate approach of the vehicle that had already struck the truck behind him qualifies as the imminent use of deadly physical force.

Regarding the shooting of Robert Martinez, given all the facts known at the time, I conclude that Investigator Schreiner is not criminally liable in the shooting of Robert Martinez. Mr. Martinez was wanted by the federal authorities. He was tracked to the home of his ex-wife and was seen leaving the house getting into a vehicle that was waiting for him. The federal officers attempted everything within their power to resolve the situation peacefully using a lesser amount of force, but Mr. Martinez's actions consistently increased the dangerousness of the situation leading to the eventual shooting. The federal task force officers surrounded the vehicle and tried to control the situation only to have Mr. Martinez try to get Ms. Pacheco to flee the officers by ramming vehicles. After that was unsuccessful, Mr. Martinez would not obey the officers and told them that they would not take him alive. Officers' efforts to get Mr. Martinez out of the vehicle were unsuccessful. Officers attempted to use a Taser to force Mr. Martinez into compliance, but were again unsuccessful. Mr. Martinez was reaching around the vehicle and toward his waistband and finally toward one of the children in the backseat while the officers were trying to get him to comply with their orders. At that time, Investigator Schreiner believed that he and his fellow officers and possibly one of the children were in imminent danger of serious injury or death caused by deadly physical force.

In examining the reasonableness of the use of deadly physical force, I consider the totality of the circumstances and the facts known to the officer at the time of the incident. When Investigator Schreiner discharged his firearm, the officers had attempted to use lesser amounts of force to take Mr. Martinez into custody safely. The investigator had reason to believe that a lesser degree of force was inadequate, since officers used lesser degrees of force to no avail. He also believed that Mr. Martinez was reaching for a gun when he started reaching around in the car and toward his pants. Although we now know that Mr. Martinez did not have a firearm (however he did have a knife clipped to his sweatpants), the investigator is allowed to rely on the doctrine of apparent necessity, as mentioned above.

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 Investigator Schreiner did not use deadly physical force without lawful justification under Colorado law and no criminal charges are warranted. Investigator Schreiner's actions were legally justified to defend himself and third persons from the use or imminent use of deadly physical force.

However, I expect the various local and federal departments will take a close look during the administrative review as to whether there was a coordinated plan to effect this arrest with representatives of so many law enforcement agencies and whether the response was in accordance with policy and if that policy is appropriate in all situations.

Records related to this case will be made available upon request to the Denver District Attorney's Office. Any interested party may seek judicial review of my decision under C.R.S. §16-5-209.

Sincerely,



Beth McCann  
Denver District Attorney

cc: Chief Paul Pazen, Barb Archer, Deputy Chief of Police; Commander Mark Chuck, Major Crimes; Lieutenant Matthew Clark, Major Crimes; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Adam Golden; Detective Daniel Andrews; Assistant District Attorney Helen Morgan; Steven Mandelaris, Attorney for Investigator Patrick Schreiner; and Nicholas E. Mitchell, Office of the Independent Monitor.