

Beth McCann
District Attorney

Second Judicial District



201 W. Colfax Ave. Dept. 801
Denver, CO 80202

720-913-9000

Beth.McCann@denverda.org

July 20, 2020

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

RE: Investigation of the shooting death of Jamie Fernandez a/k/a Jamie Velasquez, DOB 09/26/1987, in which Denver Police Officer Ismael Lopez (badge 13079) and Corporal Brandon Reyes (badge 15029), fired shots on August 15, 2019, in the area of 1490 Perry Street in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the shooting of Jamie Fernandez, in which shots were fired by Denver Police Officer Ismael Lopez and Corporal Brandon Reyes is complete. I conclude that under applicable Colorado law no criminal charges are warranted against these officers. My decision, based on standards of criminal law, does not limit administrative action by the Denver 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 our website and our file will be available for interested citizens to review.

STATEMENT OF FACTS

On August 15, 2019, Officer Ismael Lopez and Corporal Brandon Reyes completed a call of service regarding a disturbance. As they entered their respective Denver Police vehicles¹ and began to drive away, they communicated that they were both interested in a quick break and decided to meet nearby at the 7-11 store at 1490 Perry, at the intersection of W. Colfax Ave and Perry St. Officer Lopez arrived first coming from northbound on Perry Street. Upon his arrival, he noticed a dark Jeep Patriot with Colorado license plate 515-OXO. Officer Lopez recalled a

¹ Both Officers were driving standard marked DPD Ford Explorers, white in color with light bar, push bumpers and large badge on the doors.

couple of days earlier a report that this vehicle was involved in an eluding with the police department and there was an ATL (attempt to locate) for this vehicle. Based on this, Officer Lopez turned from getting into a parking spot to pulling up behind the Jeep.²

Officer Lopez exited his vehicle and observed a man putting air into the front driver's side tire and a female in the front seat of the Jeep. Officer Lopez contacted this person, Justin Lucero. Mr. Lucero told the officer that the owner of the Jeep was in the store. Mr. Lucero was acting nervous and trying to walk away from the officer in disregard to the officer's commands. Due to his behavior and the vehicle previously being involved in an eluding, Officer Lopez decided to pat down Mr. Lucero for weapons. Officer Lopez discovered a syringe in Mr. Lucero's front pants pocket. At that time the decision was made to detain Mr. Lucero and place him into handcuffs.

As Officer Lopez was placing Mr. Lucero in handcuffs, the female, later identified as Jamie Fernandez, opened the passenger door of the Jeep. Officer Lopez gave repeated commands for Ms. Fernandez to stay in the car. Ms. Fernandez refused to comply with these commands and instead started running east along the north wall on the 7-11 in the direction of the Osceola/Perry alley.

At the same time, Corporal Reyes arrived from westbound on Colfax and turned into the northside parking lot of the 7-11. As he was exiting his car, Officer Lopez told him to stop Ms. Fernandez based on the fact that she was fleeing and not obeying Officer Lopez's commands to wait in the car. At that time, without any warning, Jamie Fernandez reached into her purse and produced a black Ruger .380 semi-automatic handgun. She leveled it at the officers³ and Mr. Lucero and she fired one time.



² This is on the north side of the 7-11. The store's main doors face westerly and there are gas pumps in the northwest corner. On the north side of the store is an air pump, dumpster and parking spaces. Upon retrieval of the video surveillance from the 7-11, there are 4 cameras, however no camera captures the north side of the store.

³ Although not next to each other, Officer Lopez and Corporal Reyes were in approximately the same line of fire from where Ms. Fernandez was standing. It is estimated Corporal Reyes was 10-15 feet behind Officer Lopez.



Figures 1, 4 and 5 Officer Lopez BWC - Ms. Fernandez running towards the alley

Corporal Reyes was the first to return fire as Ms. Fernandez continued to run into the alley. He fired a number of rounds while contemporaneously moving to cover eastward at the northern mouth of the alley behind a storefront. Officer Lopez was still in the process of placing handcuffs on Mr. Lucero and was sideways to Ms. Fernandez at the time of her shot. Officer Lopez pushed Mr. Lucero down, pulled his firearm and took cover behind a dumpster. He then returned fire. Upon emptying his magazine, he heard gunfire continue from Ms. Fernandez and took cover to reload and return fire until it appeared that Ms. Fernandez was no longer a threat to himself, fellow officer, Mr. Lucero or the community.⁴

At that time, Officers radioed requesting an ambulance and additional officers to get there immediately. They requested that a perimeter be established around the 7-11. During the shooting, a security guard traveling eastbound on Colfax stopped to render assistance, if needed to the officers. He was in the proximity of Corporal Reyes, just east of the northern mouth of the

⁴ There were numerous people in front of the 7-11 who hid behind cars, luckily there was no one on the north side of the building in the area of the shooting.

alley. After verbally checking with each other regarding injuries, the officers approached Ms. Fernandez. Upon contact, she was nonresponsive. The gun was found where Officer Lopez saw it fall from her hand and it was moved to safety. Ms. Fernandez was handcuffed and then unhandcuffed when medical treatment arrived. She was transported by medical personnel. Officer Lopez and Corporal Reyes, after brief medical checks were performed, were separated according to OIS procedure. Homicide detectives from the Denver and Aurora Police Departments as well as members of the Denver District Attorney's Office and the Crime Lab were called out to conduct this investigation.

Officer Ismael Lopez

Officer Lopez consented to be interviewed. He did not watch his body worn camera (BWC) before his interview. This interview was recorded and both DPD, APD and the DA Office were present to ask questions if needed. Officer Lopez has been an officer with the police department since 2013. He has been assigned to District 1 (encompassing the area of the incident) the entire time apart from a brief temporary assignment with the Gang Unit. He was dressed in standard DPD uniform driving a solo car covering precinct 161B.

Officer Lopez was able to activate his body worn camera prior to any contact in this case. It stayed active (on) until Officer Lopez was separated from others due to this event and his body camera was taken and uploaded by the investigating detectives.

Officer Lopez discussed the prior call for service and the plan to meet Corporal Reyes at the 7-11 for a coffee break. As he entered the parking lot of the 7-11, he saw the dark colored Jeep with plate 515-OXO. Based on his recollection, this vehicle was wanted from a prior eluding of the Gang Unit a couple of days prior.

He contacted Justin Lucero who was just finishing putting air in the left front tire. According to Officer Lopez, Mr. Lucero was acting nervous and inching away from him. During a pat down for weapons, he saw a syringe in his pants pocket. Mr. Lucero was increasingly getting tense and due to that, the syringe and the prior eluding, Officer Lopez decided to handcuff him. He had noticed a female in the vehicle, but otherwise was not engaged with her at the time. During this time, he also noticed Corporal Reyes enter the 7-11 parking lot from westbound on Colfax. The information that was aired about the prior eluding was that it was possibly a woman driver. The woman in the passenger seat opened her door and Officer Lopez told her to stay in the vehicle at least twice in a loud voice. She ignored what the officer said and put her purse over her left shoulder and started quickly walking along the north wall of said 7-11. Officer Lopez quickly asked Corporal Reyes to "grab her".

As she stepped away from the car, she put her hand in the purse and pulled out a black gun. Officer Lopez saw the gun and internally questioned why she would do that. She was more than 10 feet away at this point and aimed the gun towards him, and he saw the muzzle flash from the gun and believed it was pointed straight at him.

Officer Lopez pushed Mr. Lucero down and saw Corporal Reyes moving east to the point where the alley meets Colfax for cover. He heard Corporal Reyes discharge his weapon and the woman went into the alley. He was moving as the dumpster was now in the way of his view of Ms. Fernandez. When he came around the dumpster, he saw her falling down, but she still had her head up and was holding the gun with her arm raised in his direction and he started discharging his weapon at her. At this point he did not know if anyone was hit by her bullet(s). Very quickly⁵ his magazine was empty, and he believed he heard her fire more rounds. He took cover again behind the dumpster and reloaded his weapon. When he emerged, he saw she was on her left side but still had her head and right arm raised and the gun pointed in his direction. He yelled to Corporal Reyes that she still has the gun in her hand. He fired 2-3 more rounds and saw her head fall and her arm drop releasing the gun. At this point, she was not moving. They waited about 15 seconds then radioed for an ambulance and other officers.

Then they moved forward towards Ms. Fernandez. As they were approaching her, Officer Lopez told Corporal Reyes exactly where the gun was that fell from her hand. He moved it away from Ms. Fernandez. Corporal Reyes secured her, and Officer Lopez and the security guard checked on Mr. Lucero and secured him in front of the Jeep. At the direction of Officer Lopez, the security guard handcuffed Mr. Lucero. Very quickly, the ambulance arrived and started rendering aid to Ms. Fernandez.



Figure 7 Corporal Reyes BWC showing Officer Reyes moving the firearm away from Ms. Fernandez

⁵ On the BWC, it is approximately 19 seconds from the first shot of Ms. Fernandez to the last shot of Officer Lopez



Figure 8 - Firearm recovered from Ms. Fernandez

Officer Lopez was then medically checked and separated with senior ranking staff according to OIS protocol.

Corporal Brandon Reyes

Corporal Brandon Reyes has been with DPD since 2015, prior to that he was employed by the Department of Corrections. He has been assigned in District 1 since completing the academy. He was promoted to the rank of Corporal approximately 1 month before this incident. It is a training supervisory role; however, on this night, he was working in a solo capacity. He was dressed in a standard DPD uniform and driving a marked DPD Ford Explorer.

Corporal Reyes consented to an interview. He did not watch his body worn camera (BWC) before his interview. This interview was recorded and both DPD, APD and the DA Office were present to ask questions if needed.

Corporal Reyes stated that the incident started after both Corporal Reyes and Officer Lopez were called to investigate young people starting a trash fire a few blocks away. After the call, both officers drove away and communicated about stopping at the 7-11 at 1490 Perry for a coffee break. Corporal Reyes came to the location westbound on Colfax.

As Corporal Reyes came to the location, he saw Officer Lopez contacting a man outside a black Jeep on the north side of the 7-11. Corporal Reyes turned in to the north side of the lot. As he stepped out, Officer Lopez informed him that this vehicle eluded the gang unit previously and asked him to "grab that girl", since there was a female walking east into the alley from the

passenger side of the Jeep. She had a purse over her left arm. As he was getting out of his car, Corporal Reyes saw Ms. Fernandez look like she was about to run. Corporal Reyes yelled “hey stop” or something to that effect.

Corporal Reyes was getting ready to run after her and then saw her turn and pull out a black handgun with her right hand and he believes she fired twice, hearing “bang bang” and seeing 2 bright flashes that he believed were pointed directly at him. He then dropped his keys and pulled his pistol and fired at her to stop her. He wasn’t sure how many times he fired but it was done quickly. He noted that she was firing back. Corporal Reyes side-stepped to the east in the direction of cover. He saw Ms. Fernandez quickly walking east as well to the alley and after a short while fell. After she fell, Corporal Reyes stopped firing. Corporal Reyes used that time to get behind cover at the entrance to the alley. Corporal Reyes radioed ambulance and cover officers. He heard a couple of more shots and was unsure if that was Officer Lopez or Ms. Fernandez who was firing. Corporal Reyes described that the way she was laying, he could only see the back of her body and legs and not her face, hands or gun.

Corporal Reyes saw someone who he thought was a police officer, but later realized it is a security guard. Corporal Reyes reloaded his weapon, knowing he was low on ammunition. Corporal Reyes and Officer Lopez communicated to move towards Ms. Fernandez. As they approached her, Officer Lopez moved the handgun to safety. She was initially handcuffed and unhandcuffed as medical personnel quickly arrived. Corporal Reyes was then medically cleared and separated by senior officers in accordance with OIS policy.

Corporal Reyes had a BWC that day, but as fast as the situation occurred, he was unable to activate it until he was in a position of safety after conclusion of the shooting. It was activated at that time.

Dustin Triolo

Dustin Triolo is an armed security guard⁶ who was driving eastbound on Colfax Avenue as this scene was unfolding. When he heard the shooting begin, he stopped his vehicle to see if he could render any aid to the police officers. He met up with Corporal Reyes at the mouth of the alley where it meets Colfax Avenue.

He recalled being contacted by Corporal Reyes and told to cover him. He heard the officers yell to the woman to drop the gun repeatedly. When she stopped moving, he joined the officers approaching Ms. Fernandez and then assisted in the handcuffing of Mr. Lucero.

Justin Lucero

Mr. Lucero was initially contacted outside the black Jeep. He was taken into custody for the syringe found on him, drugs found in his possession and a warrant. He agreed after advisement to discuss this incident with the detectives.

⁶ There is no evidence from video, witnesses or forensically to suggest that Mr. Triolo fired his weapon this evening.

At the beginning of the contact, he told Officer Lopez that the woman who owns the car was inside the 7-11. In his interview he is confused whether Amy (car owner) was in the store or not with them at all. His story changes however it has no real bearing either way regarding the shooting.

Mr. Lucero has known Ms. Fernandez since the 3rd grade. He knows she usually is in possession of a firearm but claimed to have no knowledge why she got out of the car or reached in her purse or shot at officers while he was in close proximity. In his interview, he stated that the first shots came from where Ms. Fernandez was near the mouth of the alley and says that he saw her reach into her purse and pull the handgun.

AUTOPSY

Ms. Fernandez had an autopsy performed on her on August 16, 2019 by Dr. Dawn Holmes, M.D. The cause of death was due to multiple gunshot wounds. She suffered a number of wounds including:

- A through and through wound of her right lateral chest. No organs or major vessels were involved.
- A penetrating wound to the right chest. This wound track involved the right lung, heart, ascending aorta, main pulmonary artery and left lung.
- A through and through wound to her posterior right armpit. No organs or major vessels were involved.
- A penetrating wound to her right suprapubic area. No organs or major vessels were involved.
- A penetrating wound to her superior right buttock. No organs or major vessels were involved.
- A penetrating wound to her superior right buttock. This wound involves the right kidney.
- A through and through wound to her posterolateral (to the back and side) of her right upper arm. No organs or major vessels were involved.
- A through and through wound to the lateral left upper arm. No major vessel or organs are involved. Unlike all the other wounds found, this wound shows the presence of stippling.⁷
- A penetrating wound of the posterolateral right thigh. This wound involves the cecum.
- A through and through wound to the posterior right thigh. No organs or major vessels are involved.
- A through and through wound to the lateral right ankle. No organs or major vessels were involved.
- A penetrating wound to anterior left lower leg. No organs or major vessels were involved.
- A through and through wound to the left foot. No organs or major vessels were involved.

⁷ Stippling is a pattern of unburned or partially burned gunpowder that, when fired from an intermediate or close-range weapon can leave evidence on a person's skin or sometimes clothing. It is unclear in this case, but since the officer's discharge of their weapons was from a significant distance, this wound is consistent with being self-inflicted.

- A graze wound to the superior right shoulder. No organs or major vessels were involved.
- A graze wound to the right lower chest. No organs or major vessels were involved.
- A graze wound to the right calf. No organs or major vessels were involved.

Her toxicology report was positive for alcohol, amphetamine and methamphetamine.

WEAPONS UNLOADING

Officer Lopez, after being separated from all other DPD officers, conducted a firearms unload with detectives and the Crime Lab personnel. Officer Lopez carried a Glock 19 9mm semiautomatic firearm that holds 15 rounds in the magazine and 1 in the chamber, for a total of 16. He also carried 3 spare magazines all with 15 rounds in each. At the unloading, there were 11 rounds in the magazine and one in the chamber. There was an empty magazine found at the scene belonging to Officer Lopez. This reveals that there were 19 rounds fired by Officer Lopez. This is confirmed through both BWC and 19 9mm shell casings that were recovered from the scene in the area where Officer Lopez was standing. These 19 shell casings were forensically determined to have been fired from Officer Lopez's Glock 19 handgun.

Corporal Reyes, after being separated from all other DPD officers, conducted a firearms unload with detectives and the Crime Lab personnel. Corporal Reyes carries a Smith and Wesson MP-9 9mm. All of the magazines have a 17-round capacity. His firearm had 1 round in the chamber so it contained 18 rounds of ammunition. During the unloading, his magazine was removed with 17 rounds in the magazine with 1 round in the chamber, this is consistent with reloading on scene but not firing any rounds after the reload. There was a magazine at the scene containing 6 live rounds. This indicates Corporal Reyes fired 11 rounds. This is confirmed by the 11 9mm shell casings found at the scene that forensically determined to be fired from Corporal Reyes' Smith and Wesson MP-40 9mm handgun.

The weapon recovered from Jamie Fernandez was a Ruger LCP .380 auto semiautomatic pistol with an attached laser sight. Upon recovery of this firearm, it was determined that the magazine and the chamber were empty. The magazine has a capacity of 6 rounds. In Ms. Fernandez's purse was an additional magazine for the same gun containing 6 rounds of .380 ammunition.

CRIME SCENE

The scene is largely at 1490 Perry Street in the northern parking lot and alleyway between Perry and Osceola. Part of the scene also takes place across the street to the north at 3937 W. Colfax Avenue. At KAYA dispensary, there is a bullet strike through the storefront window. Just inside the window are several file cabinets. The bullet striking the window continued through to one of the file cabinets. The bullet was recovered and forensically determined to have been fired from Ms. Fernandez's Ruger .380 firearm. From where Ms. Fernandez was standing (based in part on the statement of both officers, the shell casing and BWC) this was in the direction of both officers and Mr. Lucero.



Figure 10- KAYA dispensary, across the street from the 7-11 to the north



Figure 11 - Bullet hole in window of KAYA dispensary

In the street, parking lot and alleyway, numerous shell casings were recovered. It was determined that 2 shell casings were from the Ruger .380. One of these is near the north wall of the 7-11 and another is behind the 7-11 in the alley (marker 33 and marker 46) and there was also a live .380 bullet recovered near Ms. Fernandez's last position (marker 39). It is unknown why a live bullet would be found except possibly through Ms. Fernandez's cycling of the firearm, a misfire situation or during an attempt to reload her firearm with the other magazine.

Ms. Fernandez's purse was recovered close to her at the scene. In this purse was another magazine (fully loaded) to the Ruger handgun as well as 2 baggies of a suspected controlled substance and a bottle of alcohol.

Throughout the rest of the parking lot and alley were shell casings, bullet fragments and magazines from the officer's weapons. All the evidence was documented, photographed and collected by the crime lab.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all 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:

... 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.

Deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable grounds 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. 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

C.R.S. § 18-1-707(2) states that:

[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, or 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...
 - (III) otherwise indicates ... 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 would find, beyond a reasonable doubt, that Corporal Reyes and Officer Lopez acted without lawful justification?**

After a thorough review of the evidence, I conclude that the evidence does not disprove that the force used was justified.

The officers had actual knowledge that Ms. Fernandez was armed with a semi-automatic handgun. While disobeying a lawful order of a police officer, she pulled the handgun out of her purse, aimed it at the officers and fired the weapon in their direction. Both officers discussed seeing the gun and believed it was pointed right at them. This is consistent with the location of the recovered bullet across the street in the dispensary. Both officers returned fire. It appears Corporal Reyes fired first. Ms. Fernandez then continued to run from the officers into the alley. At that point, she fired the gun again. After she fell to the ground, Officer Lopez was in a position to see her arms and hands. Based on the fact that she was still holding the gun up and raising it at the police officers, he continued to fire as the threat was still present. This was in spite of Officer Lopez's commands to drop the gun. Corporal Reyes was not in a position to see Ms. Fernandez's arms or hands to see how she was holding the gun, accordingly he stopped shooting at that time. Officer Lopez stopped firing once Ms. Fernandez dropped her arm and the gun to the ground. When they approached Ms. Fernandez, her gun was visible on BWC and Officer Lopez's contemporaneous comments are consistent with his statement. When faced with this lethal threat, therefore, each officer reasonably believed that no lesser amount of force could be used to defend himself or his fellow officer. Although there were many rounds fired, once Ms. Fernandez lowered and dropped her gun from being aimed at the police, the lethal force used by the police stopped.

For all of these same reasons, both officers reasonably believed that a lesser degree of force would have been inadequate and that they were in imminent danger of being killed or of receiving great bodily injury. The gun in Ms. Fernandez's hand easily could have killed Corporal Reyes, Officer Lopez or Mr. Lucero.

For these reasons, Corporal Reyes and Officer Lopez had a lawful and justifiable claim of self-defense. Furthermore, Corporal Reyes and Officer Lopez were justified in using deadly force pursuant to C.R.S. 18-1-707. The officers had a reasonable belief that it was necessary to defend themselves from the imminent use of deadly force upon them. The reasons for this belief demonstrate a justifiable claim of self-defense.

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 (9th 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, Officers Lopez and Reyes were forced to make split-second judgments, and their decision to shoot Ms. Fernandez in self-defense and in defense of others was justified under Colorado law.

Sincerely,

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

Beth McCann
Denver District Attorney

cc: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Jeff Martinez District 1; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Brock Ellerman; Sgt. Scott Hagan; Detective Joseph Trujillo; Detective Martin Smith; Corporal Brendon Reyes; John Davis, attorney for Corporal Reyes and Officer Lopez; Officer Ismael Lopez; Kristin Bronson, City Attorney, and Nicholas E. Mitchell, Office of the Independent Monitor.