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April 14, 2022

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

**RE: Investigation of the shooting resulting in injury of Vincent Martinez (DOB 08/06/1985) by Denver Police Officers on March 2, 2022 at Colorado Blvd. and Yale Ave.; Denver Police General Offense #22-105429.**

Dear Chief Pazen,

The investigation and legal analysis of the shooting resulting in injury of Vincent Martinez by Denver Police officers is complete. I conclude that under Colorado law no criminal charges are warranted against these officers.<sup>12</sup> My decision, based on standards of criminal law, does not limit administrative action by the Denver Police Department or civil actions where less stringent laws, rules and legal levels of proof apply. This letter will be posted on our website.<sup>3</sup>

#### STATEMENT OF FACTS

On March 2, 2022, at 1:49 pm a detective with the Arvada Police Department contacted a detective with the Denver Police Department's Fugitive Unit. The Arvada detective advised that he and fellow Arvada police officers were conducting surveillance on a person wanted for attempted murder named Vincent Martinez. The Arvada police officers tracked Mr. Martinez to a location in the City and County of Denver.

The Arvada detectives relayed to the Denver detectives the facts of the case that caused Mr. Martinez to be wanted by law enforcement. Three days earlier, on February 27, 2022, Mr. Martinez was with his wife, Erica Martinez, in a stolen vehicle parked outside of her address in Arvada. A "Door Dash" delivery driver double parked outside of her residence blocking Mr. Martinez's vehicle. The delivery driver and Mr. Martinez were involved in a verbal altercation. The delivery driver made his delivery and when he returned to the vehicle, Mr. Martinez and the driver continued their verbal altercation. Mr. Martinez then allegedly shot the delivery driver in

<sup>1</sup> Pursuant to C.R.S. §20-1-114 I am required to release and publicly disclose a report explaining my findings.

<sup>2</sup> Mr. Martinez is currently charged with two counts of assault in the first degree against a police officer, two counts of menacing, and two counts of possession of a weapon by a previous offender in Denver District Court case no. 22CR1242.

<sup>3</sup> <https://www.denverda.org/officer-involved-shooting-investigations-decision-letters-2/>

the face with a handgun. He then fled on foot. Arvada detectives applied for and received an arrest warrant for Mr. Martinez for the charge of attempted first degree murder.

In the early afternoon of March 2, 2022, Arvada detectives tracked Mr. Martinez and his wife to a Great Clips hair salon where Erica Martinez was employed in the area of E. Yale Ave. and S. Colorado Blvd. Arvada detectives positively identified Vincent Martinez inside of a black Cadillac sedan which was parked in the rear of the business.

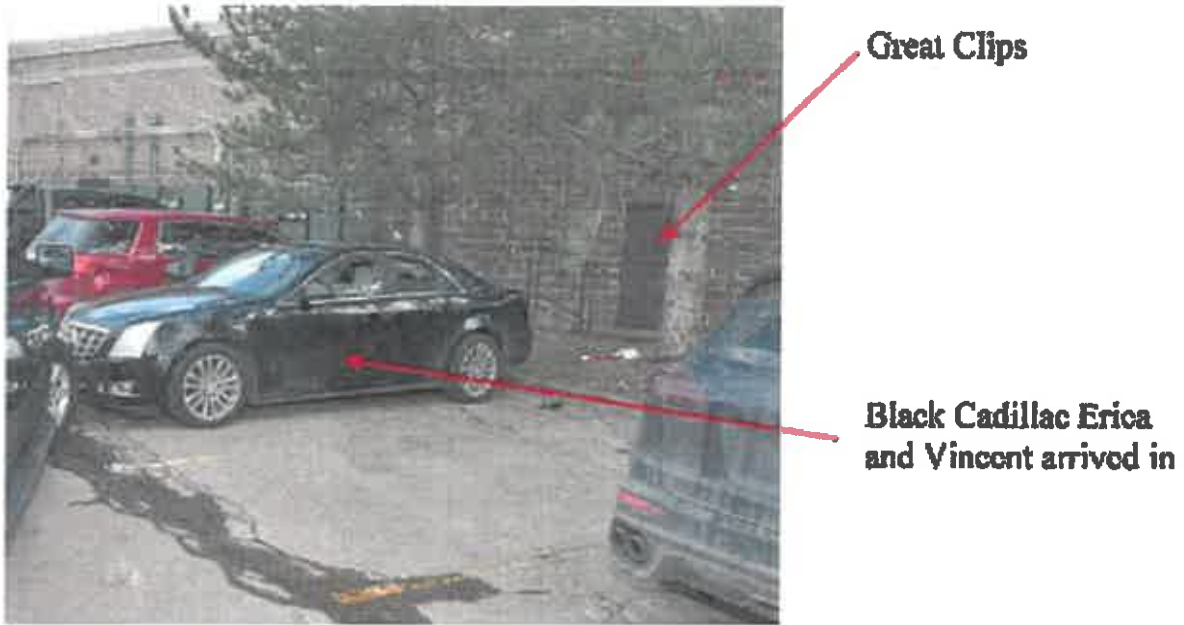


**Parked Cadillac**



*Figure 1. Parked Cadillac at Great Clips*

Based on this information the Denver police fugitive detective requested additional assistance from other members of the DPD Fugitive Unit and the Denver Police Department SWAT Team. He then responded to the area himself. Upon arrival, he positioned his vehicle on the northside of East Yale Ave. directly at the rear entrance to the business.



*Figure 2. Scene at East Yale Ave.*

The Denver Police detective confirmed with the Arvada detective that this vehicle was associated with Mr. Martinez. Detectives conducting surveillance on the other side of the business confirmed Mr. Martinez and Erica Martinez were observed inside the business.

Based on this information, a plan was established to position SWAT Team officers inside nearby businesses and wait until Mr. Martinez exited the rear of the business. Then, as Mr. Martinez moved to his car SWAT Team officers would deploy a flashbang device as a diversionary tactic. SWAT Team members would then place Mr. Martinez in custody.



*Figure 3. Scene at East Yale Ave.*

After a short time, the Martinezs exited the business. The Denver fugitive detective watching the doors aired over his DPD radio for SWAT team members to move in and attempt to make the arrest. At 3:06 p.m., SWAT team members approached Mr. Martinez at gunpoint and gave Mr. Martinez several commands to raise his hands up.



Erica MARTINEZ

Vincent MARTINEZ

*Figure 4. A still from Sgt. Martinez' body-worn camera*

Ms. Martinez moved to the driver's side of the Cadillac as Mr. Martinez ran to the passenger side of the car. Officers deployed two flashbang devices toward Mr. Martinez.

**Smoke from flashbang devices**



**SWAT Team members in uniform**

*Figure 5. A still from Sgt. Martinez' body-worn camera*

Despite the diversionary devices, Mr. Martinez was able to enter the front passenger seat of the Cadillac. After a brief struggle over the door with a SWAT team member Mr. Martinez locked the door. Officers continued to give commands to Mr. Martinez but he refused to comply. Mr. Martinez then quickly reached into the glove box of the vehicle. Two SWAT Team members

were positioned on the passenger side of the Cadillac. Sgt. Marco Martinez and Technician Fred Jones moved to the driver's side of the Cadillac.

**Mr. Martinez inside of the car**



*Figure 6. A still from a witness officer's body-worn camera*

Mr. Martinez, now with a gun in his hand, pointed the weapon at Sgt. Martinez and Technician Jones and may have fired it.<sup>4</sup> Sgt. Martinez yelled "No!" and "Don't do it!". Sgt. Martinez and Technician Jones then fired their rifles into the driver side of the vehicle at Mr. Martinez. Mr. Martinez was struck multiple times as he sat in the car. Mr. Martinez remained in the seat. Officers could still see Mr. Martinez gripping the handgun in his right hand with his finger on the trigger. They continued to order Mr. Martinez to drop the gun. However, he refused to comply. Unsure whether Mr. Martinez could move his arms or was instead preparing to ambush the officers, officers continued to plead with Mr. Martinez to let go of the handgun. At 3:11 p.m., guessing that Mr. Martinez could not actually move his arms, officers made entry into the passenger door and removed the gun from Mr. Martinez' hand.

<sup>4</sup> See discussion of whether Mr. Martinez fired his weapon *infra*. Analysis section, p. 12.



*Figure 7. A still from a witness officer's body-worn camera*

Mr. Martinez was quickly removed from the car and medically treated by officers before Denver Health paramedics arrived on scene at 3:15 p.m. Mr. Martinez was transported by ambulance to the Denver Health Medical Center for gunshot wounds to his extremities, including both arms.

## **INVOLVED OFFICERS**

### Sergeant Marco Martinez

Sgt. Martinez was interviewed on March 7, 2022. At the time of the interview Sgt. Martinez had not discussed these events with any other witnesses, nor had he viewed his body-worn camera or any video of the incident.

Sgt. Martinez is a twenty-six year veteran of the Denver Police Department. In 2007 Sgt. Martinez joined the SWAT team. In 2014 Sgt. Martinez became a supervisor on the SWAT team. On the day of the shooting Sgt. Martinez was wearing a green police SWAT uniform. Over the uniform he wore a green tactical vest. The tactical vest had a Denver police department patch in the shape of shield. Sgt. Martinez carried an M4 short rifle.

Sgt. Martinez reported that on March 2, 2022, at approximately 2:15 p.m. the SWAT Team received a call for assistance from the Denver Police Department Fugitive Unit who was in turn assisting the Arvada Police Department Fugitive Unit to arrest a person on a warrant for attempted homicide in Arvada. The information known to Sgt. Martinez included that this person was wanted for attempted homicide and was known to drive stolen cars. In addition, Sgt. Martinez learned that this person was "armed and dangerous and shot a delivery driver in the face over a parking dispute". This person also had an "extensive criminal history". The information from the fugitive units was that this person was in the area of South Colorado Blvd. and East Yale Ave. in Denver.

Sgt. Martinez and other SWAT team members responded to the area near a shopping complex at Colorado Blvd. and Yale Ave. They first staged in a location on the other side of the shopping complex out of sight of the business to which Mr. Martinez was tracked. While staged

at this location Sgt. Martinez assigned two of his team members to scout the location and create a plan to arrest Mr. Martinez. Mr. Martinez was reported to be in a hair cutting salon on the north side of the shopping complex. Those two team members responded to the salon with plain-clothes detectives and surveyed the area. Mr. Martinez's car was located in the rear of the business backed into a parking spot facing north. The team then contemplated several plans to arrest Mr. Martinez. Ultimately it was decided that the plan that posed the least amount of risk to the suspect, the woman he was with, and the public was to gain permission of adjoining businesses to secret SWAT members inside. Once the suspect exited the building to approach his car the teams in the businesses would exit and deploy flashbang devices to divert his attention and gain peaceful compliance. At the same time a team from the west would approach to pin Mr. Martinez's car into its parking space. Finally, a detective and a SWAT team lieutenant were positioned to the north of the location in a position from where they could view the entire scene.

Sgt. Martinez was positioned in an adjoining business west of the hair cutting business. Sgt. Martinez was with two other team members. While staged in position the team learned that the female would be working until 7:00 pm. The team anticipated having to wait a long time before being able to arrest Mr. Martinez. Suddenly it was announced over the radio that Mr. Martinez was exiting the building. Sgt. Martinez gave the order to initiate the plan. He exited the door, and he saw Mr. Martinez approaching the passenger side of his vehicle. Sgt. Martinez attempted to keep an eye on both Mr. Martinez and the female who was on the other side of the vehicle. The flashbang device exploded near Mr. Martinez. He briefly stopped and bent over. Sgt. Martinez thought the plan might work and that Mr. Martinez would be arrested without force. However, he suddenly moved to the front passenger door, opened it and jumped in. Sgt. Martinez could see that another SWAT team member was able to grab the handle of the door and a brief struggle over the door ensued. However, Mr. Martinez was able to lock the door.

At this time Sgt. Martinez approached the driver's window. Technician Jones was on the right side of Sgt. Martinez. The female with Mr. Martinez was still on this side of the car near the officers. Though the window had a tint, Sgt. Martinez was able to see inside. Sgt. Martinez saw Mr. Martinez reach under his seat and then reach into the glove box and pull out a handgun. Sgt. Martinez announced to the other team members that "he has a gun!". Mr. Martinez then pointed the gun at Sgt. Martinez. He immediately feared for his life as well as the lives of the female and Technician Jones. Sgt. Martinez saw Mr. Martinez have a grip on the gun then a gunshot came out of the window toward them. Sgt. Martinez reported that first he heard the shot then he saw the glass on the window shatter, obscuring his vision inside the vehicle.

**Possible hole from bullet exiting car**



*Figure 8. A still from Sgt. Martinez' body-worn camera*

Sgt. Martinez retreated to his right and briefly bumped into Technician Jones. Simultaneously Sgt. Martinez returned fire into the car. He believed he fired eight or nine times. He reportedly pointed at a downward angle as to avoid striking anyone or anything downrange of Mr. Martinez. He stopped firing when he felt the threat had stopped and there were not any more rounds coming out of the car.

Sgt. Martinez and Technician Jones moved to the rear of the vehicle. Sgt. Martinez called for an ambulance. Mr. Martinez lay motionless for a short time then started to move again with the gun on his lap. Team members were able to break out the back window to improve their view. Sgt. Martinez then took over announcements and communicated with Mr. Martinez to get him to surrender. After a brief time during which Mr. Martinez told officers that he could not move his arms. A SWAT team member was able to open the car, reach inside and secure the handgun. Mr. Martinez was removed from the car. The SWAT team members removed his clothes to better facilitate medical treatment. An ambulance arrived quickly and transported Mr. Martinez away from the scene.

***Weapon Unload***

During this incident Sgt. Martinez's M4 rifle used a magazine that held 30 rounds of ammunition. Sgt. Martinez told investigators that his practice was to load each magazine to capacity. When Sgt. Martinez pulled his rifle out for use in an operation his practice was to load a round in the chamber. Thus, when deployed Sgt. Martinez' rifle carried one round in the chamber and 29 rounds in the magazine.

When his weapon was unloaded by Denver Crime Lab personnel, they located one live round of ammunition in the chamber and 20 live rounds in the magazine. Based on this unload, Sgt. Martinez fired his weapon nine times.



## Technician Fred Jones

Technician Jones was interviewed on March 7, 2022. Prior to his interview he did not discuss this incident with any other witnesses nor did he view body-worn camera or other video of the incident.

Technician Jones is a fourteen-year veteran of the Denver Police Department. In 2014 he was assigned to the SWAT team.

On the date of the shooting Technician Jones was dressed in a green SWAT uniform. On his chest was a patch in the shape of a Denver Police Department badge. During this event Technician Jones had with him an M4 rifle. He also had a sidearm which he did not fire.

On the date of the shooting, Technician Jones explained that the SWAT team received a request for assistance from the Denver and Arvada Police Department fugitive units in arresting a wanted person. Technician Jones recalled learning that the person was wanted for "shooting an Uber driver in the face for double parking" and that he was "dangerous". Technician Jones was shown a picture of the wanted person and learned his name was "Vincent Martinez". This person was tracked to an area near Yale and Colorado with a female. The SWAT team responded to a location near the area.

Once a plan of arrest was decided Technician Jones was staged in a business to the east of the Great Clips where Mr. Martinez was located. After only approximately five minutes of waiting an announcement came over the radio from the team members across the street that Mr. Martinez was coming out of the building.

Technician Jones exited the door. He immediately saw Mr. Martinez moving toward the car. Technician Jones threw a flashbang device which landed near the feet of Mr. Martinez. Mr. Martinez then jumped in the car. Technician Jones was now standing toward the rear of the vehicle. He could see into the car and observed Mr. Martinez reach over toward the steering wheel. Technician Jones moved over to the driver side of the car in between the front and rear driver side windows. From here he saw Mr. Martinez and another SWAT team member struggle over the front passenger door. After that he saw Mr. Martinez inside the car and then saw him reach into the glove compartment. Based on Mr. Martinez' prior history, Technician Jones immediately became concerned that he was reaching for a gun. Technician Jones then saw a pistol in Mr. Martinez' hand and that the muzzle of the handgun was pointed at him. Technician Jones' focus was drawn to the muzzle when his view became distorted as the glass broke. He immediately felt something hit his ear protection and his left shoulder. Technician Jones related he was immediately in fear for his life. He stepped to his right to create distance between himself and Mr. Martinez, and he returned fire into the car. Technician Jones stated his aim was into the car at a downward angle to avoid hitting anyone or anything downrange. He stopped firing when he felt the immediate threat was over. He repositioned again to the rear of the car and, believing he may have been struck by a bullet, asked another SWAT team member to check him for injuries. Technician Jones then attempted to reload his rifle, however as he was attempting to do so he dropped the magazine. He then returned the original magazine to the weapon and returned the replacement magazine to his belt.

Technician Jones then described the brief stand off as Mr. Martinez had the gun on his lap but was stating he could not move his arms. He described a concern that Mr. Martinez may be deceiving them but also wanting to render aid as soon as possible. Eventually, the gun was secured and Mr. Martinez was removed from the car.

### *Weapon Unload*

Technician Jones carried a rifle with a magazine of 30 rounds of ammunition. When carrying his rifle Technician Jones's practice was to load one round in the chamber leaving 29 rounds in the magazine.

Based on review of body-worn camera in this incident, Technician Jones was observed to have dropped one live round to the ground when attempted to reload his rifle.

When his weapon was unloaded by Denver Crime Lab personnel one live round of ammunition was located in the chamber and 21 rounds were located in the magazine. Based on this unload, and the fact that one round was dropped on scene, Technician Jones fired his weapon seven times.

## **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.

### C.R.S. § 18-1-704. Use of physical force in defense of a person

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.

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).

### C.R.S. § 18-1-707. Use of force by peace officers

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:

(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**

### **C.R.S. § 18-1-704. Use of physical force in defense of a person**

After a thorough review of the evidence, I conclude that a jury would find that both Sgt. Martinez and Technician Jones had a lawful justification to fire their weapons in defense of themselves and others pursuant to C.R.S. § 18-1-704.

These officers had a reasonable belief that Mr. Martinez used or was about to use unlawful physical force against them. Each of these officers knew Mr. Martinez was wanted for an attempted homicide in which he allegedly shot a person in the face for little reason. They were also aware that he had a criminal history and was known to be armed and dangerous. Furthermore, Mr. Martinez resisted arrest by fleeing into the car and locking the door. He then reached inside the glove compartment in a manner consistent with trying to arm himself with a gun. Finally, both officers saw him with a gun in his hand pointed in their direction and both officers heard, saw and felt a gun being fired at them. In addition, the amount of force these officers used was reasonable to defend themselves. A lesser degree of force would have failed to stop the threat Mr. Martinez posed. Finally, though these officers did not use deadly force<sup>5</sup>, I do find that these officers' fear that they were in imminent danger of being killed or receiving great bodily injury was reasonable.

It is unclear to me whether Mr. Martinez fired his handgun at these officers. Based on body-worn camera video it appears a round exited the car window a split second before the officers returned fire. Technician Jones related he felt what he later believed was glass strike his ear protection and his shoulder. Both officers thought Mr. Martinez fired his gun at them. Finally, Mr. Martinez's weapon, a semiautomatic handgun, was recovered with a round in the chamber and not loaded to capacity, indicating a round could have been fired from it. On the other hand, a shell casing from Mr. Martinez's weapon was never recovered from inside the car or at the scene. This would indicate he did not shoot his weapon. In any case, whether Mr. Martinez fired his handgun is not relevant to my determination, because I find that he pointed his gun at both Sgt. Martinez and Technician Jones. This fact alone is enough for me to determine that these officers had a reasonable belief that unlawful physical force was about to be used against them and that firing their weapons was a degree of force reasonably necessary to defend themselves.

### **C.R.S. § 18-1-707. Use of force by peace officers**

I also conclude that jury would find that Sgt. Martinez and Technician Jones had a lawful justification to fire their weapons during this encounter pursuant to C.R.S. § 18-1-707.

These officers and other members of the SWAT team attempted to use nonviolent means before resorting to force. In fact, the team was careful to devise a plan that minimized the risk of injury to Mr. Martinez and others. They did carry out the plan of using a flash bang grenade to

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<sup>5</sup> See *People v. Ferguson*, 43 P.3d 705, 707 (Colo. App. 2001) (in light of the way that "deadly physical force" is defined by statute, it is error to instruct the jury concerning the concept in a case in which the victim did not die); *People v. Silva*, 987 P.2d 909, 917 (Colo. App. 1999) (same).

distract Mr. Martinez so they could make a peaceful arrest. However, it must be remembered that Mr. Martinez's recent history indicated he would resort to using deadly force with little provocation. When Mr. Martinez fled to the inside of the car, grabbed a gun, and pointed it at the officers they were left with no other choice than to return fire to stop an imminent threat of serious bodily injury or death. Nonviolent means would not have been effective.

Mr. Martinez had a warrant out for his arrest for attempted murder. The degree of force these officers used was consistent with the minimization of injury to others, and they immediately ensured that assistance and medical aid were rendered to Mr. Martinez. Mr. Martinez's wife was present during the encounter. She was kept apprised of Mr. Martinez' condition.

While I find that these officers were acting in self-defense when they fired their weapons, I note that other means of apprehension were unreasonable once Mr. Martinez armed himself with a handgun. The arrest was for a felony involving including the use or threatened use of deadly physical force, specifically, shooting a person in the face. Mr. Martinez posed an immediate threat to Sgt. Martinez, Technician Jones and Ms. Martinez. Finally, the force employed did not create a substantial risk of injury to other persons.

These officers were clearly identified as officers. The team also made announcements to Mr. Martinez. Officers were not able to give notice of intent to use deadly force because to do so before returning fire would have unduly placed these officers at risk of injury or would create a risk of death or injury to other persons.

Finally, and perhaps most importantly, both Sgt. Martinez and Technician Jones had an objectively reasonable belief that a lesser degree of force was inadequate. Indeed, both officers believed Mr. Martinez fired his weapon directly at them at close range. Their belief that they had to use their weapons to stop the threat was reasonable. These officers also had objectively reasonable grounds to believe, and did believe, that they and Ms. Martinez were in imminent danger of being killed or of receiving serious bodily injury.

The Supreme Court of the United States has instructed use 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 fast-moving and dangerous encounter, these officers' decision to shoot Mr. Martinez in defense of self and others was justified under Colorado law.

Sincerely,



Beth McCann  
Denver District Attorney

cc: Deputy Chief Barb Archer; Division Chief Joe Montoya; Commander Matt Clark; Commander Mike O'Donnell; Lieutenant Joe Bell; Sergeant Scott Murphy; Sergeant Brock Ellerman; Sergeant Scott Hagan; Detective Neil Baker Trujillo; Detective Joseph Trujillo; Sergeant Marco Martinez; Technician Fred Jones; Sean Lane, Esq.; Denver City Attorney Kristin Bronson; Armando Saldate, Executive Director, Department of Public Safety; and, Gregg Crittenden, Interim Director of the Office of Independent Monitor.