



OFFICE OF THE DISTRICT ATTORNEY
JOHN KELLNER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

September 19, 2022

Chief Dan Oates
Aurora Police Department
15001 East Alameda Parkway
Aurora, Colorado 80012

**Re: Report of findings with regard to the officer-involved shooting on February 9, 2022
Aurora Police Department #22-5379, 18th JD CIRT # 22-01**

Dear Chief Oates,

On February 9th, 2022, the 18th Judicial District's Critical Incident Response Team responded to investigate an officer-involved shooting at 17053 E. Jamison Avenue in Aurora, Colorado.

The shooting incident began as Aurora Police Department (APD) officers were seeking a suspect, Jose DeJesus Montoya-Villa, who was charged with murdering a woman and shooting two other men during a religious service at the Faro DeLuz church in Aurora. That crime had occurred just a few days prior to February 9th. Mr. Montoya-Villa was actively engaged in another crime spree on February 9th. He was carjacking vehicles, robbing a liquor store, shooting at people, and crashing the cars he stole.

At 4:40 pm, APD officers Kyle Villamor and Steven Gerdjikian spotted Mr. Montoya-Villa in a car he had just taken from another victim at gunpoint. The officers turned on their emergency lights to stop Mr. Montoya-Villa but he attempted to elude the officers. When Mr. Montoya-Villa turned into a driveway and stopped, the officers intentionally rammed the driver's door as Mr. Montoya-Villa raised his gun. Both APD officers then fired their handguns at Mr. Montoya-Villa, killing him. No one else was injured.

I reviewed all of the evidence provided by the Critical Incident Response Team (CIRT) in order to determine whether there was any illegal use of force by the APD officers who fired their weapons.

SUMMARY

Applying the law to the facts of this incident, as described in more detail below, I conclude that the APD officers who fired their weapons were legally justified in using lethal force against Mr. Montoya-Villa. The officers' use of force was reasonable, necessary, and appropriate in order to defend themselves and the public from the threat posed by Mr. Montoya-Villa.

STATUTORY FRAMEWORK

C.R.S. § 16-2.5-301 governs investigations into police officer-involved shootings. This statute provides, in relevant part: “Each police department, sheriff’s office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff’s office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.” C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by the 18th Judicial District Critical Incident Response Team (CIRT). The lead investigator was Detective Robert Shiller with the Littleton Police Department. Other investigators participated from the District Attorney’s Office as well as numerous police departments and sheriff’s offices throughout the jurisdiction.

C.R.S. § 20-1-114 provides, in relevant part: “The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney’s findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.” C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18th Judicial District, and includes the basis of the decision not to charge the involved officers with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I reviewed all materials provided by the lead investigators and members of the CIRT, including body-worn camera video, dispatch notes, radio traffic, reports of investigating officers and crime scene technicians, coroner reports and findings, interviews of the involved officers, all reports and recorded interviews with witnesses, and photographs and video of the scene.

SUMMARY OF THE FACTS

On February 4, 2022, Mr. Jose Montoya-Villa entered the Faro DeLuz church in Aurora, Colorado during a service. Using a handgun, he murdered his ex-girlfriend and shot two other men before fleeing with the gun. A warrant for his arrest was issued that evening. Officers throughout the Denver metropolitan area were searching for him in the days that followed.

Five days later, on the afternoon of February 9, 2022, Aurora Police Department officers were receiving numerous calls about a crime spree being committed by Mr. Montoya-Villa. These crimes began at about 3:45 pm. APD officers responded to a carjacking and shooting at 820 Dayton Street, where the suspect, later identified as Mr. Montoya-Villa, began firing a handgun at passing vehicles and then randomly into the air. He approached a woman in the parking lot and demanded her car keys at gunpoint. Mr. Montoya-Villa stole the victim’s car and rammed it into a truck while

fleeing. APD officers found Mr. Montoya-Villa had then crashed into two cars and shot at one driver in the area of E 11th Avenue and Dayton Street and shot the driver of another car in the area of E 13th Avenue and Dayton Street. APD officers next responded to an armed robbery committed by Mr. Montoya-Villa at the Hoffman Heights Liquor store at 728 Peoria Street. Finally, at 4:35 PM, APD officers responded to a report of a second carjacking committed by Mr. Montoya-Villa at S. Parker Road and Interstate 225, where he stole a silver 2013 Nissan Rogue at gunpoint from a victim who was stopped in traffic.

APD officers Gerdjikian and Villamor were riding together in a marked patrol vehicle when they spotted the stolen silver Nissan Rogue in the area of S. Parker Road and E. Jamison Avenue at 4:39 pm. A male matching the description of Mr. Montoya-Villa was driving the Nissan Rogue. The officers turned on their body-worn cameras. Both officers were aware of Mr. Montoya-Villa's warrant for first-degree murder and the violent crime spree he was committing that afternoon. Officer Gerdjikian, who was driving, turned on their vehicle's emergency lights and siren in an attempt to stop the Nissan Rogue. Mr. Montoya-Villa refused to stop and accelerated away from the officers, heading east on E. Jamison Avenue. The officers pursued him in their patrol car.



(Still photo from Officer V's body-worn camera)

Mr. Montoya-Villa abruptly turned left into a driveway at 17053 E. Jamison Avenue and stopped. The driver's side door of the stolen Nissan Rogue was facing the approaching officers. Both officers stated that they could see Mr. Montoya-Villa raising a handgun to bear in their direction.

Officer Gerdjikian intentionally rammed the driver's side door of the Nissan Rogue. He put the patrol car in park and stepped out, pointing his duty handgun at Mr. Montoya-Villa, who remained in the driver's seat of the Nissan Rogue. Officer Villamor, in the passenger seat of the patrol car,

drew his own duty handgun and pointed it at Mr. Montoya-Villa through the patrol car's windshield. The officers stated that they could see Mr. Montoya-Villa raising the gun a second time. Both officers then fired at Mr. Montoya-Villa.



(Still photo from Officer Gerdjikian's body-worn camera)



(Still photo from Officer Villamor's body-worn camera)

After both officers fired multiple times, the officers called out, "Shots fired," over the police radio, then began shouting for Mr. Montoya-Villa not to move and to show them his hands. At this point, an unknown man began walking up on the cars despite the officers' repeated orders for him to go

back inside his home. Once the man finally returned to his home, Officer Villamor cautiously approached to where he could see Mr. Montoya-Villa, who was still in the driver's seat of the stolen Nissan Rogue, and radioed that the suspect is conscious and has a handgun on his lap. Officer Gerdjikian gave additional commands to Mr. Montoya-Villa, ordering him not to move, and advised Officer Villamor that he could see that Montoya-Villa was still moving.

Within minutes, other officers arrived. The officers organized to safely approach Mr. Montoya-Villa, who Officer Gerdjikian could still see was moving. At 4:45 pm, SWAT officer Oscar Pena approached Mr. Montoya-Villa. Officer Pena called out to the other officers that Mr. Montoya-Villa was "down" and not moving but was still breathing. Officer Pena's body-worn camera clearly showed a black handgun laying on Mr. Montoya-Villa's lap. Officer Gerdjikian could be heard telling another officer, "As soon as we hit him, he pulled up with that gun."

Officer Gerdjikian and Villamor's patrol car was backed away from the Nissan Rogue and Mr. Montoya-Villa's gun was secured by the officers. Another officer confirmed that an ambulance was on the way. The officers began trying to extricate Mr. Montoya-Villa from the car and providing medical attention. Mr. Montoya-Villa was handcuffed and searched. An officer determined that he had no carotid pulse.

An ambulance arrived at 4:50 pm. Mr. Montoya-Villa was taken to Parker Adventist Hospital where he was pronounced dead. An autopsy revealed that Mr. Montoya-Villa had been struck by bullets ten times.

The CIRT investigation determined that Officer Gerdjikian fired seven times from his position standing beside the driver's door of the patrol car. Officer Villamor fired four times through the windshield of the patrol car. It did not appear that Mr. Montoya-Villa fired his weapon at the officers, as no shell casings were found inside the stolen Nissan Rogue. It was determined, however, that Mr. Montoya-Villa had fired multiple rounds from his gun at other crime scenes that afternoon. Four live rounds remained in the Springfield .45 caliber semi-automatic handgun found on Mr. Montoya-Villa's lap.



(Detail of the gun in Mr. Montoya-Villa's lap)

APPLICABLE LAW

The ethical obligation of prosecutors and the policy of the District Attorney's Office is to only prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime, and 2) there is a reasonable likelihood of conviction at trial. This is a higher standard than the probable cause standard used by police officers making arrest decisions. Criminal liability for charging is established when there is a good faith basis to believe the individual

committed the crime, and there is sufficient evidence to prove all of the elements of the crime beyond a reasonable doubt, to include the criminal conduct and the criminal mental state. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt.

The District Attorney's review of an officer-involved shooting event is guided by the statutes pertaining to the affirmative defenses applicable to use of force by peace officers, specifically 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 of death or serious bodily injury 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.

ANALYSIS AND CONCLUSION

The question presented to the District Attorney's Office for the 18th Judicial District is whether the APD officers who fired their weapons at Mr. Montoya-Villa reasonably believed their use of deadly physical force was necessary to defend themselves or others from what they believed to be the imminent use of deadly physical force by Mr. Montoya-Villa.

Greenwood Village Police Detective John Carr, co-leading the CIRT investigation with Littleton Police Detective Rob Shiller, interviewed Officer Villamor.

Officer Villamor stated that he and Officer Gerdjikian were both in full uniform and riding together in a marked patrol car, with Officer Gerdjikian driving and Officer Villamor in the passenger seat. They received a radio call to respond to a nearby carjacking. Both officers were aware of the manhunt for Mr. Montoya-Villa, for whom there was an outstanding arrest warrant following the murder and shootings in the church just days earlier. Both officers were also aware that Mr. Montoya-Villa was believed to have committed a series of carjackings and robberies earlier in the afternoon. As the officers were close to where Mr. Montoya-Villa was reported to have committed the last carjacking – of a silver Nissan Rogue just minutes earlier – the officers turned on their body-worn cameras. As they drove to the location, they discussed the possibility of their being a pursuit and potentially having to ram the stolen car so that Mr. Montoya-Villa could not get away or harm others.

Officer Villamor stated that, as they drove, he used the patrol car's computer to pull up a picture of a Nissan Rogue to assist in identifying the car. Officer Gerdjikian asked him if he wanted to retrieve the rifle from the rear of the car, but Officer Villamor declined because he did not want to take the time to get out of the car if Mr. Montoya-Villa drove by them.

Officer Villamor stated that he then saw the stolen Nissan Rogue southbound on S. Parker Road at the intersection with E. Jamison Avenue. Mr. Montoya-Villa made some rapid turns, like he was going to drive into the neighborhood, as Officer Gerdjikian pulled their police car in behind him. Mr. Montoya-Villa then quickly accelerated onto E. Jamison Avenue in a clear attempt to elude the officers as they activated the patrol car's lights and siren. Mr. Montoya-Villa then hit a speed bump very hard and abruptly turned into a driveway and stopped.

Officer Villamor stated that he could see Mr. Montoya-Villa in the driver's seat, and that he feared Mr. Montoya-Villa would try and get into a house to attempt to barricade himself inside or take hostages. He believed – based on his knowledge of the murder days earlier and the carjackings earlier this afternoon – that Mr. Montoya-Villa was armed. He and Officer Gerdjikian used the patrol car as a ram to disable the stolen Nissan Rogue with Mr. Montoya-Villa inside.

Officer Villamor stated that Mr. Montoya-Villa was right in front of him, at his "11 o'clock," so he did not get out of the car. Instead he drew his handgun and pointed it at Mr. Montoya-Villa through the patrol car's windshield. Officer Gerdjikian got out of the driver's seat and was yelling at Mr. Montoya-Villa. Officer Villamor saw Mr. Montoya-Villa look at Officer Gerdjikian while making furtive movements out of sight by his lap. Officer Villamor then saw Mr. Montoya-Villa's shoulders turn toward Officer Gerdjikian, and saw the top of a handgun. Officer Villamor believed

that Mr. Montoya-Villa was beginning to point the gun at Officer Gerdjikian, and he feared that Mr. Montoya-Villa was going to shoot and kill Officer Gerdjikian. At this point, Officer Villamor fired three or four times through the windshield at Mr. Montoya-Villa's head and left shoulder. He saw Mr. Montoya-Villa slump down in his seat. Officer Villamor got out of the patrol car and took cover behind it while Officer Gerdjikian kept Mr. Montoya-Villa at gunpoint.

Officer Villamor stated that Officer Gerdjikian said he could still see Mr. Montoya-Villa moving. Officer Villamor got back into the car to turn off the siren so they could communicate better. He looked into the Nissan Rogue and saw the gun in Mr. Montoya-Villa's lap but couldn't tell Mr. Montoya-Villa was conscious or not. He and Officer Gerdjikian kept Mr. Montoya-Villa at gunpoint until other officers arrived to take him into custody and begin emergency care.

Officer Villamor further stated that he didn't believe that Mr. Montoya-Villa ever saw him. He believed that Mr. Montoya-Villa was focused on Officer Gerdjikian as he brought the gun up. He feared that Mr. Montoya-Villa was going to kill Officer Gerdjikian. There was no time to attempt to deescalate the situation or use some kind of less-lethal force like a Taser – especially through the windshield of the car.

Greenwood Village Police Detective John Carr, on behalf of the CIRT investigation, also interviewed Officer Gerdjikian.

Officer Gerdjikian stated that on February 9th, 2022, he heard over the police radio that the suspect in the church murder was actively “carjacking” people and had robbed a liquor store. Officer Gerdjikian and Officer Villamor were dispatched to assist with the latest carjacking, that of the Nissan Rogue. As they were driving to that scene, Officer Villamor used the car's computer to find a picture of a Nissan Rogue and a photograph of the murder suspect, Mr. Montoya-Villa.

Officer Gerdjikian stated that he chose a path to drive to the crime scene in the hope of intercepting the stolen Nissan Rogue. Both officers turned on their body-worn cameras and discussed the risk of contacting Mr. Montoya-Villa due to the murder a few days earlier and the afternoon's shootings and carjackings. The officers discussed retrieving a rifle from the back of their patrol car but, before they could, they spotted what they believed was the stolen Nissan Rogue near the intersection of S. Parker Road and E. Jamison Avenue.

Officer Gerdjikian stated that he believed that Mr. Montoya-Villa saw their marked police car and was watching to see what the officers were going to do. Mr. Montoya-Villa's front wheels were moving right and left, like the driver was trying to decide which way he was going to go. When the light turned green, Mr. Montoya-Villa cut in front of traffic and headed east into the nearby residential neighborhood. Officer Gerdjikian turned on his emergency lights and siren and followed Mr. Montoya-Villa. As Mr. Montoya-Villa entered the neighborhood, he hit a speed bump hard which sent the Nissan Rogue airborne, possibly damaging it. Mr. Montoya-Villa then pulled into the driveway of the first or second house.

Officer Gerdjikian stated that when Mr. Montoya-Villa turned to go up the driveway, Officer Gerdjikian thought Mr. Montoya-Villa was going to make a U turn but he stopped. Mr. Montoya-Villa turned to face the officers while remaining in the driver's seat of the Nissan Rogue. Officer Gerdjikian saw Mr. Montoya-Villa raise a handgun to the window. He thought Mr. Montoya-Villa

was going to shoot him or shoot his partner so that he could get away. When he saw the gun come up, he rammed the side of the Nissan Rogue with the patrol car. Officer Gerdjikian's first instinct, he explained, was to get the gun out of the suspect's hand. Officer Gerdjikian hit the Nissan Rogue hard enough to knock the gun out of the suspect's hand. But very quickly, Mr. Montoya-Villa picked the gun back up.

Officer Gerdjikian stated that he did not know if Mr. Montoya-Villa fired a round. It was extremely loud due to his car's siren. Officer Gerdjikian immediately got out of the driver's seat and drew his handgun as he stood between the door and "A" pillar of the police car. He believed Mr. Montoya-Villa – just a few feet away – was still a threat because he had a gun in his hand again. Officer Gerdjikian fired, but he did not know how many rounds he fired. He stopped firing as soon as Mr. Montoya-Villa's gun dropped out of view, as Mr. Montoya-Villa was no longer a threat. After Officer Gerdjikian fired, Mr. Montoya-Villa slumped forward and was not "actively trying to kill me anymore" but he was still moving in the car.

Officer Gerdjikian stated that he then noticed a "homeowner" had come out of his house. He began yelling at him to go back inside his house. The homeowner kept coming towards them while Mr. Montoya-Villa was still moving in the car and in possession of a gun. Officer Gerdjikian was concerned that he would have to jump in front of the homeowner if Mr. Montoya-Villa again raised his gun and didn't know if he could react quick enough to that. He was concerned the homeowner could potentially be killed.

Although the view of Mr. Montoya-Villa's hands and gun from the officers' body-worn cameras is largely obscured by the patrol car's door, dashboard, and the officers' own arms and handguns, the video corroborates everything Officers Gerdjikian and Villamor stated during their interviews with CIRT investigators. Furthermore, the body-worn camera from other officers who pulled Mr. Montoya-Villa from the Nissan Rogue clearly showed a handgun in Mr. Montoya-Villa's lap. The location of the officer's shell casings from their handguns were also consistent with their statements. Mr. Montoya-Villa's gun still had several rounds in it. Shell casings from his gun were recovered from the scenes of the crimes he had committed earlier that afternoon. No casings from the gun were found in the silver Nissan Rogue, indicating that Mr. Montoya-Villa did not fire at the officers.

The actions of Officers Gerdjikian and Villamor, in firing their weapons at Mr. Montoya-Villa, were reasonably justified. Mr. Montoya-Villa, wanted for a murder and actively committing other violent crimes with a handgun that afternoon, fled from the officers in a stolen car and then raised the gun toward Officer Gerdjikian after the police car rammed the stolen car. Due to the situation instigated by Mr. Montoya-Villa, there was no opportunity for the officers to use a lesser amount of force. Mr. Montoya-Villa, by his actions, appeared willing to seriously injure or kill the officers. Mr. Montoya-Villa's actions were the proximate cause for the immediate use of deadly force by the officers. The officers only fired at Mr. Montoya-Villa to defend themselves and others in the vicinity.

I find that Officers Gerdjikian and Villamor reasonably believed that Mr. Montoya-Villa posed an imminent threat of deadly physical force to the officers and others in the area. The officers did not have the time or the ability to use lesser force or attempt to deescalate the situation. Officers Gerdjikian and Villamor were justified in using deadly physical force against Mr. Montoya-Villa

to defend themselves from the unlawful, imminent and attempted use of deadly physical force against them. Officers Gerdjikian and Villamor did not commit any crime and criminal charges will not be filed against them.

Clinton McKinzie

Chief Deputy District Attorney

18th Judicial District