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September 18, 2019

Chief Kirk Wilson
Lone Tree Police Department
9220 Kimmer Drive, Suite 120
Lone Tree, CO 80124

RE: Review of the shooting of Kenneth Sisneros

Dear Chief Wilson:

I have reviewed the investigation by the 18th Judicial District's Critical Incident Response Team concerning the shooting of Kenneth Sisneros by City of Lone Tree police officers. This shooting occurred on February 28, 2019 in the parking lot of the Park Meadows Shopping Resort at 8405 Park Meadows Center Drive. The purpose of my review was to determine if the police officers involved acted in conformity with Colorado law. For the reasons set forth below, I conclude that no criminal charges are warranted against either officer who fired a weapon.

EXECUTIVE SUMMARY

At 8:16 pm on the evening of February 28, 2019, Macy's asset protection personnel notified the Lone Tree Police Department (LTPD) of a theft-in-progress by a male and a female at the Park Meadows mall. An asset protection security guard attempted to stop the suspects as they fled the store but the male, later identified as Kenneth Sisneros, drew a handgun from his waist and menaced the guard. Uniformed LTPD officers arrived during the confrontation and pursued Sisneros on foot as he fled into the parking lot. Stopping between two cars, Sisneros fired on the officers. Two officers returned fire, killing Sisneros. Applying the law to the facts of this incident as summarized below, I conclude that the use of force by the officers was reasonable, justified and appropriate in order for the officers to defend themselves and the public from the danger posed by Mr. Sisneros.

THE STATUTORY FRAMEWORK FOR INVESTIGATIONS INTO OFFICER-INVOLVED SHOOTINGS

Section 16-2.5-301 C.R.S. governs investigations into peace 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.

Section 16-2.5-301(1) C.R.S.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Arapahoe, Douglas, and Elbert County Sheriff's Offices, the Lone Tree, Littleton, Parker, and Sheridan police departments, and the 18th Judicial District Attorney's Office.

Section 20-1-114 C.R.S. 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.

Section 20-1-114(1) C.R.S.

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 deputies with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I was provided with materials collected and produced by the 18th Judicial District's Critical Incident Response Team (CIRT), the multi-agency team responsible for investigating nearly all officer-involved shootings in the 18th Judicial District. The materials I reviewed include the following: investigator reports, body camera recordings, witness interviews, interviews of the officers involved, photographs, FARO images, dispatch notes, radio traffic and ballistic reports.

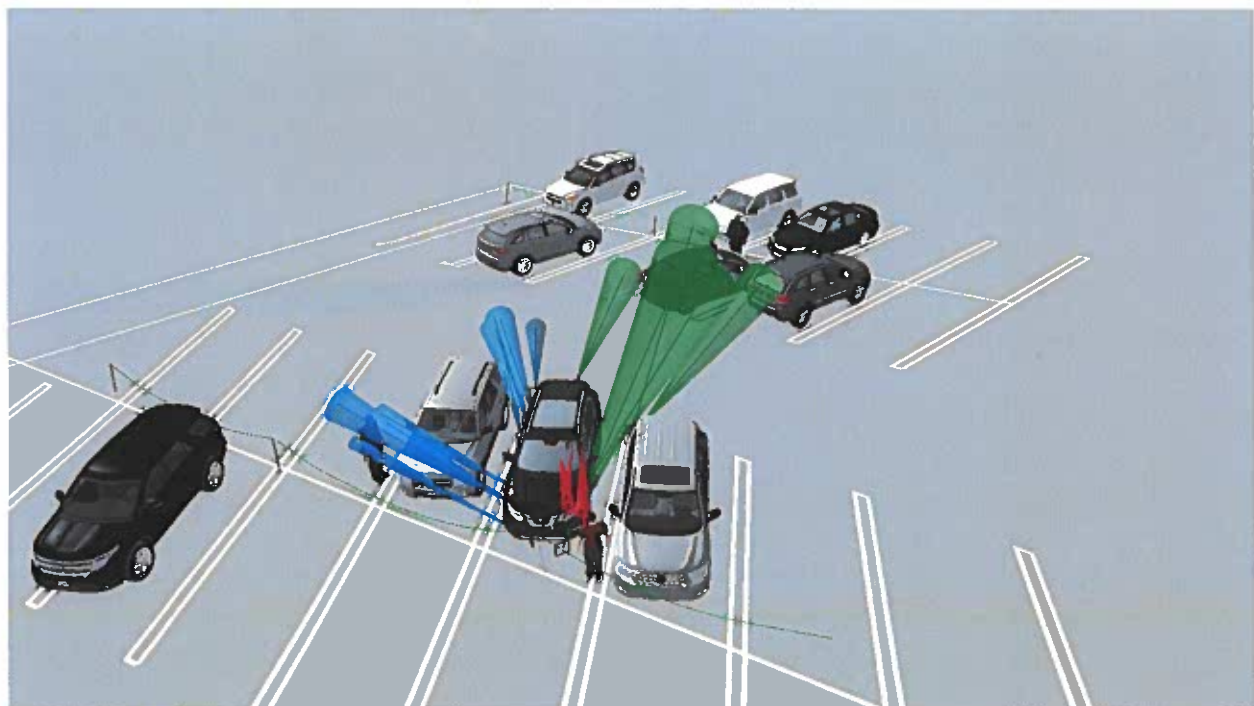
SUMMARY OF THE FACTS AND WITNESS INTERVIEWS

On February 28, 2019 at 8:16 p.m., asset protection personnel at Macy's Department Store at the Park Meadows Shopping Resort (located at 8405 Park Meadows Center Drive, City of Lone Tree, County of Douglas) notified the Lone Tree Police Department of a theft of merchandise. The two suspects, a man and a woman, were being actively monitored as they prepared to steal clothing and other items from the store. Their physical descriptions were communicated to the police department, which aired them on a police radio channel to responding officers. The suspects would later be identified as Kenneth Sisneros and Mercedes Ann Cruz.

At 8:24 p.m., Mr. Sisneros and Ms. Cruz hurriedly left the store – without paying – via exterior doors with approximately \$2,000 of merchandise in their arms. A Macy’s asset protection employee confronted them in an attempt to stop the theft. The employee demanded that the Sisneros and Crus release the merchandise and showed them his store security credentials. Sisneros and Cruz dropped the merchandise. Sisneros then pulled a handgun from a concealed holster on his waist and pointed it at the employee.

At this time LTPD Officer Charles Miller arrived in a marked patrol car. Seeing the confrontation, he turned on his overhead lights. Sergeant Andrew Montes and Officer Kelly Korzekwa arrived moments later in another marked patrol car. Sisneros pointed the handgun at Officer Miller, who thought Sisneros was about to shoot him, and then Sisneros began to run to the west into the parking lot. Cruz ran in a different direction. All three uniformed police officers got out of their cars and began to pursue Sisneros as he was the one with the gun. As they chased him, the officers were shouting “Police!” and “Stop!” as well as ordering him to drop the gun and get on the ground.

Mr. Sisneros stopped between two parked cars and turned toward the officers, and Miller observed Sisneros raise his arm. Sisneros began firing at them (it was later determined that he fired four rounds with a Jimenez Arms 9mm handgun). Fearing for his own life and the lives of other officers and people in the parking lot, Officer Miller drew his duty handgun and returned fire. When he shifted his position for a better view of Sisneros, Miller saw that Sisneros was preparing to shoot again at Sergeant Montes and Officer Korzekwa. Miller fired at Sisneros again then stopped firing when he saw Sisneros fall to the ground.



(The computer-generated image above comes from a FARO 3D scan of the scene, trajectory analysis of the bullets that struck vehicles at the scene, as well as other data. Sisneros appears in a red shirt with a red trajectory path for the rounds he fired. Officer Miller’s rounds show as blue. Sergeant Montes’ rounds show as green).

Sergeant Montes, during the initial foot-chase, called out over his police radio that the suspect was armed with a gun while also shouting for Mr. Sisneros to stop. Montes observed Sisneros stop between two parked cars and turn – raising the handgun toward Montes and Korzekwa – and firing it. Montes fired back with his own handgun. He believed that Sisneros was trying to kill him and his fellow officers. When he saw Sisneros fall to the ground, Montes called for Miller and Korzekwa to “group up” with him while keeping the suspect covered.

Officer Korzekwa saw an object in Sisneros’ hand and heard someone yell “Gun!” when she and Sergeant Montes began pursuing Sisneros into the parking lot. She shouted for him to stop and that they were the police. When Sisneros stopped between two parked cars, she saw him turn and face Sergeant Montes and then raise a handgun in their direction. Scared for her life and her fellow officers, she ducked behind a car and drew her handgun as shots were fired. Korzekwa quickly checked herself to see if she had been struck. When she came up to return fire she couldn’t see the suspect and therefore didn’t fire.

Mr. Sisneros was laying on the pavement when the officers approached. A silver handgun was in his right hand. He was handcuffed while the officers waited for South Metro Fire rescue personnel to arrive. When they did, they pronounced him dead. In addition to the 9mm handgun Sisneros fired at the officers, two additional loaded handguns (both .380s) were found in his front pockets.

Ms. Cruz fled in a different direction. She was apprehended on March 3rd, 2019. When interviewed by investigators, she admitted to the theft at Macy’s with Mr. Sisneros and other thefts. Sisneros had driven her to Macy’s in a car she knew was stolen. Cruz also knew Sisneros was armed with three handguns. He had told her he felt harassed by police and that, if they were stopped, he intended to shoot at the police because he wasn’t going to go back to prison. When they were confronted by store security as they left Macy’s with armfuls of stolen merchandise, she heard Sisneros tell the guard to “back off” and that he had a gun. The police were already there so she began running and managed to get away. She heard the gunshots but kept running.

The investigation determined that both Officer Miller and Sergeant Montes fired twelve rounds each from their duty Glock .40 caliber handguns. Officer Korzekwa did not fire. Mr. Sisneros fired four times with a Jimenez Arms 9mm handgun. Sisneros was struck ten times and died at the scene.

APPLICABLE LAW

The District Attorney’s review of this event is guided by the following statutes pertaining to the use of deadly force by peace officers:

Deadly physical force “means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” Section 18-1-901(3)(d) C.R.S.

Section 18-1-707 C.R.S. states in relevant part:

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

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

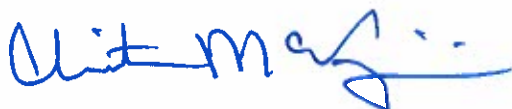
(II) Is attempting to escape by the use of a deadly weapon.

ANALYSIS AND CONCLUSION

The question presented by law is whether each of the LTPD officers who fired their weapons reasonably believed that the use of deadly physical force was necessary to defend themselves or others from what they reasonably believed to be the imminent use of deadly physical force, or had reasonable grounds to believe, and did believe, that they or another person was in imminent danger of being killed or of receiving great bodily injury. If so, each officers' use or attempted use of deadly physical force was legally justified.

The evidence from the investigation shows that the three officers of the Lone Tree Police Department were attempting to stop a shoplifting suspect, Mr. Sisneros, who menaced a store security guard with a handgun and then pointed that handgun at Officer Miller. The officers pursued the suspect into the parking lot while shouting "Police" and commanding Sisneros to stop. When Sisneros turned and fired on the officers, Officer Miller and Sergeant Montes returned fire, killing Sisneros. Both officers fired on Sisneros in order to defend themselves and others from Sisneros' use of deadly physical force in order to escape. The officers were justified in doing so to prevent Sisneros from killing them or anyone else in the parking lot.

The officers who fired had reasonable grounds to believe, and did believe, that both themselves and other people were imminent danger of being killed or of receiving great bodily injury because of the actions of Mr. Sisneros, who was firing his gun at them. Therefore, I find, based on the law and the facts, that Officers Miller and Sergeant Montes were justified in using deadly force to stop the imminent threat posed by Mr. Sisneros. No criminal charges against either of the officers is warranted.



Clinton McKinzie
Chief Deputy District Attorney
18th Judicial District