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July 22, 2019

Chief John Collins  
Englewood Police Department  
3615 South Elati Street  
Englewood, CO 80110

RE: Review of the shooting of Chayley Tolin

Dear Chief Collins:

I have reviewed the investigation by the 18<sup>th</sup> Judicial District's Critical Incident Response Team concerning the shooting of Chayley Tolin by Englewood police officers on January 16, 2019 at Swedish Medical Center. 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.

#### **EXECUTIVE SUMMARY**

On the morning of January 16, 2019, police officers from the Englewood Police Department attempted to detain the occupants of a stolen vehicle on the 6<sup>th</sup> floor of the parking garage at Swedish Medical Center. The driver, Chayley Tolin, attempted to strike officers with the vehicle as she fled. Ignoring shouted commands to stop, Ms. Tolin accelerated directly at three officers who were on foot. Two officers fired at the driver. Ms. Tolin was seriously wounded and a passenger was arrested. 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 Ms. Tolin.

#### **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 18<sup>th</sup> 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 18<sup>th</sup> 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 18<sup>th</sup> Judicial District's Critical Incident Response Team, the multi-agency team responsible for investigating nearly all officer-involved shootings in the 18<sup>th</sup> Judicial District. The materials I reviewed include the following: investigator reports, witness interviews, the interviews of the officers involved, dispatch notes, radio traffic and ballistic reports.

### **SUMMARY OF THE FACTS AND WITNESS INTERVIEWS**

At approximately 8:00 a.m. on the morning of January 16, 2019, Pueblo Police Officer Leah Morales had an off-duty appointment at Swedish Medical Center (SMC) at 604 E. Hampden Avenue in the City of Englewood, County of Arapahoe, State of Colorado. She parked her vehicle on the 6<sup>th</sup> level of the parking garage. While parking her own unmarked car, she observed a dark-colored Ford sedan with two people inside. Officer Morales thought the car looked suspicious. [It was damaged, missing a window and a back bumper]. Via her police radio, she called in the license plate to her dispatch center and learned that the car had been reported as stolen. She

conveyed this information to the Englewood Police Department (EPD) by calling 9-1-1 on her cell phone. Officer Morales was still on the phone with the EPD's dispatch and observing the stolen Taurus when a marked EPD patrol car arrived.

EPD Officers Matthew Creaghe, Dirk Smith, Sam Ayres, Ryan Kaspar and Sergeant Tracy Jones all responded to SMC and initially met on the 2<sup>nd</sup> level of the parking garage. All officers were in EPD uniforms and armed with handguns and/or rifles. (Pursuant to their department's policy, none of the officers were wearing body worn cameras). A plan was quickly formulated to contact the occupants of the stolen Taurus on the 6<sup>th</sup> level of the parking garage. Officer Smith intended to use his marked patrol SUV to drive up to the stolen car, while other officers would park on the 4<sup>th</sup> level and approach the 6<sup>th</sup> level on foot in order to serve as an arrest team if the suspects attempted resist or flee.

Officer Smith, however, reached the stolen vehicle sooner than the other officers. Creaghe, Ayres, Kaspar and Johnson were still climbing the stairs to the 6<sup>th</sup> level and expecting to be in position there before Smith approached the stolen car. They arrived at the 6<sup>th</sup> level doorway just in time to see Smith, who was already out of his vehicle, jump away from the Taurus as the car began to speed down the ramps towards the parking garage's exit. Several officers believed Smith had been struck or "clipped" by the stolen car due to their viewpoint and Smith's uncharacteristically excited voice over the radio. The officers could hear the Taurus' engine revving and its tires squealing as it descended the ramps.

Officers Creaghe, Kaspar, Ayres and Sergeant Jones ran down the stairs and attempted to intercept the stolen car on the 4<sup>th</sup> level of the parking garage. This was where they had parked their two marked patrol cars and one marked police motorcycle. Here, beside these clearly marked vehicles, the officers shouted orders for the approaching car to stop. The officers were in front of the car but were not blocking the car's anticipated path around the patrol vehicles and down the ramps. Jones stated that there was room for the car to pass them on one side.



According to all four of the officers, the car initially slowed but then accelerated at them. Officer Kaspar stated that he locked eyes with the female driver and she drove the car directly at him. He fired his handgun to stop the threat and saw his rounds hit the windshield. Creaghe, Ayres and

Jones stated that they saw the female driver intentionally turn the stolen vehicle towards Kaspar. They each stated that they believed she was going to run over him. They feared for his life, their own lives, and the lives of the pedestrians in the parking garage. Ayres fired several rounds from his handgun at the driver. Jones attempted to shoot as well but his rifle did not fire despite him recalling that he pulled the trigger. Creaghe stated that he did not have a clear shot so he did not fire.

As the officers leapt out of the way, the stolen Taurus continued down the ramps with its engine revving and its tires squealing. The officers pursued it on foot – using both the ramps and the stairwell. They observed the Taurus strike other occupied and unoccupied cars in its path, at one point ramming its way between two vehicles.

On the 2<sup>nd</sup> level of the garage Officer Creaghe again attempted to intercept the stolen car and pointed his rifle at the driver. This time the Taurus stopped. The driver unlocked the doors and Creaghe pulled the driver from the car and placed her in handcuffs. The passenger was detained as other officers arrived. The officers immediately began rendering medical aid to the driver, who was identified as Chayley Tolin.



The passenger, James Helms, was interviewed by officers shortly after his arrest. He stated that both he and the driver, Chayley Tolin, are heroin addicts. They had been awake for two days and in possession of the car for three days. Tolin told him that she borrowed the car from a friend. Tolin had also told him that the “car was hot and if [they got] pulled over, I’m not stopping.” On the morning of January 16<sup>th</sup> they drove to the parking garage at SMC to watch the sunrise. When the police arrived Tolin drove away from them and down the levels of the parking garage. Helms told Tolin to stop the car but she said, “No, no, no.” He saw officers trying to get out of the way of the car so that they wouldn’t be struck by it. The officers fired, striking the windshield and the passenger-side window. Chayley told him she had been shot. He repeatedly asked her to stop but she drove down several more levels before stopping. At this point, according to James, he was placed in handcuffs while other officers took custody of Chayley and were “beating her up.” (There is no evidence the responding officers did anything at this point except provide medical assistance to Tolin).

It was determined that Chayley Tolin had been shot twice in the torso. After receiving medical treatment, she was ultimately released to the custody of the jail for pre-existing warrants for her arrest. She has been charged for this incident with numerous counts including Attempted Murder of a Police Officer, Felony Menacing and Aggravated Motor Vehicle Theft. James Helms was taken into custody for the several outstanding warrants for his arrest. Needles and syringes were found in the stolen Ford along with marijuana and suspected psilocybin. Crime scene analysts observed 11 apparent bullet strikes to the vehicle. The car had been stolen from a grocery store parking lot in Lakewood on January 13, 2019.

Based on an inspection of Officer Kaspar's handgun and the nine .45 caliber shell casings found at the scene, it is believed that Officer Kaspar fired nine times. The inspection of Officer Ayres weapon and the three .40 caliber shell casings found at the scene indicate that Ayres fired three times. Sergeant Jones attempted to fire his rifle but it did not discharge.

### **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 both of the EPD 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.

Here, the evidence shows that the officers of the Englewood Police Department were attempting to stop a stolen vehicle on the 6<sup>th</sup> level of the Swedish Medical Center's parking garage. The driver of the stolen car, Shayley Tolin, used the vehicle to evade Officer Smith despite his shouted commands and the presence of his own patrol vehicle. Ms. Tolin sped down the ramps of the garage attempting to escape. On the 4<sup>th</sup> level Officers Creaghe, Kaspar, Ayres and Sergeant Jones again tried to stop the vehicle with their uniformed presence and their shouted commands. Ms. Tolin steered the vehicle at them while accelerating directly at Officer Kaspar. Kaspar fired nine rounds into the car and at Ms. Tolin. Officer Ayres fired three rounds. They did so to stop Ms. Tolin from using the stolen vehicle as a weapon of deadly force to wound or kill Officer Kaspar and the other officers nearby.

Both officers who fired had reasonable grounds to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving great bodily injury because of the actions of Ms. Tolin, who was in control of the stolen car and attempting to use it as a weapon. Therefore, I find, based on the law and the facts, that Officers Ayres and Kaspar were justified in using, or attempting to use, deadly force to stop the stolen vehicle being driven at them. No criminal charges against either of the officers is warranted.



Clinton McKinzie  
Chief Deputy District Attorney  
18<sup>th</sup> Judicial District