



## CITY AND COUNTY OF DENVER

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### **PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING THE OFFICER INVOLVED SHOOTING AT 22<sup>ND</sup> AVENUE AND DOWNING STREET INVOLVING OFFICER DAVID RYAN AND OFFICER ROBERT WARREN, RESULTING IN THE DEATH OF DAVID JEROME MAESTAS ON AUGUST 6, 2011**

#### **I. EXECUTIVE SUMMARY**

##### *The Incident*

On the morning of August 6, 2011, around 8:15 a.m., Denver Police Department (“DPD”) officers were dispatched to a home in the 2900 block of Lafayette Street on a report of a home invasion/robbery. One of the victims of the home invasion informed the officers that the perpetrator attempted to sexually assault her, pistol whipped her approximately 25 times about the head, discharged the gun and tied her up. She was not sure if she had been shot; she was confused and bleeding profusely from her head. The second victim, her male roommate, told the officers that he also was assaulted by the suspect and tied up in the basement.

Officers were informed that the suspect, later determined to be David Jerome Maestas, fled the scene in the male victim’s Jeep and officers were dispatched to search for the stolen Jeep. Officer David Ryan located Maestas<sup>1</sup> driving the Jeep around 9:10 a.m. at East 38<sup>th</sup> Avenue and High Street. Officer Ryan, driving a marked police car with lights and sirens activated, attempted to stop the Jeep, but Maestas fled. Sergeant Ian Culverhouse authorized Officer Ryan to pursue Maestas based on the extreme danger he posed to the public, the violent nature of the crime committed, and his specific use of a deadly weapon. In addition, officers were aware of a previous home invasion robbery which occurred the day before at approximately the same time, two blocks away, by a suspect with a similar description using a weapon.

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<sup>1</sup> Mr. Maestas will be referred to herein as “Maestas” and individual DPD officers will be referred to with their respective professional titles to signify that they are members of DPD and individuals over whom the Manager of Safety has responsibility.

DPD Corporal John Repjar, Technician Jeffery Jenkins and Officer Robert Warren, all in separate vehicles, joined Officer Ryan in pursuit of Maestas. The four officers followed Department chase protocol with authorization to pursue Maestas and approximately three minutes after the pursuit began, the officers were able to stop Maestas by causing the Jeep to spin and crash into a light pole on Downing Street near 22<sup>nd</sup> Avenue. Officer Ryan, Corporal Repjar and Technician Jenkins got out of their vehicles and approached Maestas at gunpoint, yelling at him and ordering him to get out of the car.

Citizens who witnessed the incident confirmed that officers attempted to stop Maestas and ordered him out of the car. According to witness AR<sup>2</sup> who was waiting at a bus stop with her 2-year old child in a stroller, Maestas did not listen to the officers and was not concerned if he hit her, her child, officers or anyone else on the street. She said the police were doing what they were supposed to do and Maestas' actions escalated the situation and put everyone in danger.

Technician Jenkins approached the Jeep and attempted to open the passenger side door. Technician Jenkins intended to pull Maestas out of the vehicle but the door was locked. Maestas revved the engine of the Jeep, dislodged it from its resting point, and began to flee again. Citizen RW was at work at Denver North, a nursing home located at 22<sup>nd</sup> Avenue and Downing Street, at the time of the incident. He said the officers were "trying to get him [Maestas] to stop" and that Maestas was trying to run them over. Witness FC, who was at work at a liquor store nearby, also said Maestas was trying to run over the officers. Maestas moved the Jeep only a few feet when Officer Warren drove his vehicle into the Jeep, pushing the Jeep into a tree on the west side of the street and effectively ending the pursuit.

The four officers approached the Jeep on foot and surrounded it. They again attempted to get Maestas to exit the Jeep, but Maestas pulled out a gun and pointed it at Technician Jenkins' face. The officers and a number of citizens saw Maestas point the gun directly at Technician Jenkins. (See statements of witnesses VA, MC, WF and RW.) Officer Ryan began yelling, "Gun! Gun!" and then shot at Maestas, hitting him. Officer Warren also saw the gun pointed at Technician Jenkins and fired his weapon, hitting Maestas. Technician Jenkins was not injured. Officers removed Maestas from the Jeep, handcuffed him, and called for medical assistance. An ambulance responded and Maestas was pronounced deceased at 9:24 a.m. by Dr. Sara Krzyzaniak.

### *The Criminal Investigation and Post-Mortem Examination*

This case was jointly investigated by the DPD Homicide Unit and the Denver District Attorney's Office. The Office of the Independent Monitor ("OIM") was on hand to observe the investigation and provide input, as were members of the DPD Internal Affairs Bureau ("IAB"). Interviews were observed by the OIM, as required by Ordinance and permitted by the protocol of the District Attorney's Office. Members of the Manager of Safety's Office were also present and observed interviews of witnesses.

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<sup>2</sup> For the purposes of this public statement, civilian witnesses are identified by initials only. The full identities of these witnesses are contained in the DPD files related to this case and are available for review by members of the public during regular office hours by contacting the Records Custodian in the Manager of Safety's Office at 720-913-6020.

Assistant Medical Examiner, John D. Carver, M.D., performed the autopsy of Maestas. Dr. Carver's diagnoses were: 1) multiple gunshot wounds; and 2) mixed drug intoxication including: blood ethanol, blood cocaine, blood cocaethylene, and blood benzoylecgonine.

Once the criminal investigation was completed and after consideration and review of the autopsy report, the District Attorney ("DA") issued his decision regarding whether or not criminal charges would be filed against the officers who fired their weapons. The DA determined that the facts of the case do not support a finding of any criminal use of force by any of the involved law enforcement officers. Thus, the DA declined to file charges against the officers, concluding:

Based on a review of the totality of facts developed in this investigation, we could not prove beyond a reasonable doubt that it was unreasonable for the two officers to fire the shots that caused Maestas' death. In fact, the officers acted with professional restraint, in spite of the obvious danger to them posed by Maestas' conduct, by not using deadly force at an earlier point in the confrontation as would have been legally permissible under C.R.S. 18-1-707(2)(b)(1)&(2). They only used deadly force when it was necessary 'to defend' against the imminent deadly threat to their fellow officer. They were clearly legally justified to shoot Maestas under Colorado law.

Accordingly, based on the criminal investigation, the DA directed that no criminal charges be filed and the criminal review of this case was concluded.

#### *The Administrative Review*

Following the decision by the DA, this case was turned over to IAB for further investigation into the tactics and force procedures used by the officers. After IAB completed its broadened investigation, it presented the case to the Use of Force Review Board. The Board found that the officers acted in accordance with policy. Both the Chief of Police and the OIM agreed with this determination and so advised the Manager of Safety ("the Manager"). This case was then brought to the Manager for a final determination as to whether the officers violated DPD's Use of Force policy or any other DPD policy or law.

As a general matter, an administrative review by the Manager analyzing whether a death occurring in connection with a use of force was in violation of Department policies focuses on three areas:

- (1) the reasonableness of the tactics utilized by the officers immediately prior to and during the use of force;
- (2) the reasonableness of the officers' assessment of the threat posed by the person; and
- (3) the reasonableness of the use of force options selected by the involved officers.

The Manager finds that all four officers acted reasonably in determining that Maestas posed an imminent threat and should be forcibly stopped after he refused to obey the officers' lawful orders and continually attempted to abscond without regard to the safety of others. In addition, the Manager concludes that Officers Ryan and Warren reasonably believed that Maestas posed a deadly threat to Technician Jenkins when he pointed a gun at Technician Jenkins, and that Officers Ryan and Warren acted appropriately in firing their weapons at Maestas.

Based on a careful review of the facts, a comprehensive analysis of the policies and the law, and a consideration of the recommendations of the OIM and the Chief of Police, the Manager concludes that the officers did not violate DPD's Use of Force policy, any other Department rules, or any laws with regard to the use of force. Therefore, disciplinary sanctions will not be ordered.

## **II. FINDINGS OF FACT**

The information considered in reaching these findings is contained in the DPD files related to this case. The files are available for review by members of the public during regular office hours by contacting the Records Custodian in the Manager of Safety's Office at 720-913-6020. The files and information that were relied upon by the Manger include recordings of and/or transcripts of interviews of civilian witnesses, interviews of the subject officers, and interviews of non-subject officers who witnessed the event. The Manager also reviewed and relied upon the following additional documents and materials: written statements of civilian witnesses and officers; written statements of Denver Health Medical Center ("DHMC") paramedics; a study of the crime scene, physical evidence recovered and all scientific testing conducted; and, other records and reports. Relevant portions of these interviews, statements and reports are referenced or quoted throughout this public statement. Summaries of some of the witnesses' statements are attached hereto in Appendix A.

### *The Home Invasion*

CR lives in the 2900 block of Lafayette Street. On August 6, 2011, around 8:00 a.m., CR awoke to a Hispanic male with a red bandana over his face and wearing a red t-shirt, later determined to be Maestas, pointing a gun at him. Maestas said to him, "Wake up, turn around." Maestas then tied CR's feet to his hands with a dog leash and tore his room apart looking for valuables. Maestas took CR's computer, iPod, phone, watch, and wallet, among other items. He then questioned CR about his female roommate who was sleeping upstairs. CR asked for water, which Maestas brought to him and then dumped on him. Maestas then told him he didn't care about fingerprints because his "record was huge." Maestas then went upstairs and woke up HW who was asleep in her bedroom.

HW awoke to a door shutting; she looked up and saw Maestas with a bandana covering part of his face and armed with a handgun. Maestas pointed the gun at her head and said, "Wake the fuck up bitch . . . We got your roommate tied up . . . Show me your pussy." HW screamed and tried to get away. She made it to the front door, opened the door, and screamed for help; but Maestas grabbed her, pulled her back into her

bedroom and bent her over her bed. HW continued to struggle and resist Maestas. Maestas kept saying, "Show me your pussy." Maestas attempted to sexually assault her but he did not succeed. He then struck her multiple times with his pistol on and around her head. At one point, the gun went off. Maestas tied her arms and legs together with a retractable dog leash and covered her with a blanket and left her bedroom.

HW freed herself and ran outside. Neighbors who had been alerted by her screams and who had heard the gunshot saw HW running naked and bloody down the street. HW was bleeding profusely from her head and was dazed and incoherent. The neighbors called her to them, wrapped her in a blanket and comforted her as they called 911. (See statements of SM, KM and BF.) HW had received significant multiple lacerations to her head and face and numerous facial and body contusions from being struck repeatedly by Maestas. She bled profusely from the cuts to her head and face.

Sergeant Culverhouse was the first officer on the scene. He was flagged down by neighbors and directed towards HW.

In the meantime, CR had been struggling in the basement to free himself. He had heard the gunshot upstairs. When CR got loose from the dog leash, he went upstairs and saw a lot of blood and thought that HW might have been killed. He was not sure if Maestas was still in the house and he ran out of the house. CR saw the neighbors, HW and Sergeant Culverhouse. He also had been injured by Maestas. CR had a small laceration in his right eyebrow, a red round imprint by his right eye, and marks on his wrists.

As other officers began to arrive on scene, Sergeant Culverhouse directed one to stay with HW and CR while he and other officers went into the house to search for Maestas.

Technician Jenkins and Officers Repjar, Ryan and Warren were among the officers who responded to the scene. Technician Jenkins, Officer Ryan and Officer Warren assisted with searching the house and Maestas was not located. Corporal Repjar interviewed CR. All four officers knew that Maestas was armed, had fired the weapon, had tied up both of the victims and had violently assaulted HW.

CR informed the officers that he did not think that Maestas was still in the house and that he thought Maestas had stolen his vehicle. CR explained that Maestas had taken his car keys and his vehicle was now gone.

### *The Pursuit*

CR provided a description of the vehicle, a silver four door Jeep Wrangler Unlimited with a soft top, and advised that it was equipped with LoJack. LoJack is a stolen vehicle recovery system that allows vehicles to be tracked by police with the aim of recovering them in case of theft. In the event of a theft, the vehicle owner reports the incident to the police who make an entry into a database which interfaces with the National Crime Information Center (NCIC) system, triggering a remote command to the specific LoJack unit in the stolen vehicle. The information from the Jeep was entered into the NCIC

database and at approximately 9:00 a.m., Colorado State Patrol (“CSP”) advised that they were receiving a LoJack hit on the stolen Jeep. CSP began to narrow the area of the Jeep and officers were dispatched to search for the vehicle.

Officer Ryan, who was still at the scene of the home invasion, heard that Maestas was being tracked in the Jeep by LoJack. Officer Ryan’s police vehicle was equipped with a LoJack tracking unit which is alerted by the LoJack system when a stolen vehicle is within a 3–5 mile radius of the tracking unit. Officer Ryan went back to his vehicle and saw that his LoJack had been activated and had located Maestas north/northeast of his location. Officer Ryan stated:

State Patrol was describing the vehicle to be in the area northeast of Mile High Stadium. So I advised Dispatch that I was going to take Steele up to I-70 and just check that area . . . My LoJack indicated north/northeast and then that’s when CSP started talking about the Purina Plant. So I went north on Downing Street and I was just going to wrap it around; and take it the long way back up to Steele . . . So I took Downing Street up – once I hit . . . around 39<sup>th</sup>/38<sup>th</sup> – the LoJack actually spun around and started pointing south from behind me . . . So I turned east on 39<sup>th</sup> . . . I turned south onto that block the Jeep was headed westbound on 38<sup>th</sup> – and it almost hesitated as if he [Maestas] was about to turn up that street and he saw me . . . he continued west on 38<sup>th</sup> and that’s when I advised Dispatch that I had the suspect vehicle.

Officer Ryan located the Jeep around 9:10 a.m. at East 38<sup>th</sup> Avenue and High Street. He attempted to stop the Jeep but Maestas fled, despite the fact that an officer in a marked car with visual and audible signals of lights and sirens was attempting to pull him over. Sergeant Culverhouse authorized Officer Ryan to pursue Maestas based on the need to immediately apprehend Maestas due to the extreme danger he posed to the public, the violent nature of the crime committed, and the specific use of a deadly weapon. In addition, Sergeant Culverhouse was aware of a previous home invasion robbery from the day before which occurred at approximately the same time, only two blocks away, with a similar suspect description and similar suspect MO in which a weapon was used. Moreover, it was still relatively early on a Saturday morning and vehicular traffic in the area was light.

Sergeant Culverhouse further authorized a Precision Immobilization Technique (a “PIT maneuver”) in order to end the pursuit quickly and as safely as possible. A PIT maneuver is a technique used by law enforcement officers as a safer alternative to continuing to pursue a vehicle and bring a chase to conclusion. During a PIT maneuver, the pursuing vehicle pulls up alongside a target vehicle and rides parallel. The pursuing vehicle’s front tires should be roughly lined up with the target’s rear tires. To execute the PIT maneuver, the driver of the pursuing vehicle steers sharply into the side of the target which causes the target vehicle to skid. The driver of the target vehicle loses control and his vehicle is likely to either spin out or come to a stop.

Officer Ryan pursued Maestas with lights and sirens activated southbound on Gilpin Street from 38<sup>th</sup> Avenue. Maestas turned westbound on Bruce Randolph Boulevard to Downing Street and then turned southbound on Downing Street.

At the scene of the home invasion, Corporal Repjar heard State Patrol over the radio saying that they were getting a LoJack hit on the suspect vehicle. Corporal Repjar got in his car and overheard Officer Ryan on the radio saying he had located the Jeep near High Street and headed in that direction. Maestas passed Corporal Repjar at an intersection and Corporal Repjar activated his lights and sirens, joining the pursuit behind Officer Ryan as they went southbound on Downing Street.

According to Officer Ryan:

I continued to advise Dispatch of our location . . . as we continued south on Downing I saw a police vehicle [Repjar's vehicle] at 31<sup>st</sup> – facing . . . west. He got in behind us after we passed; and we continued to go south on Downing Street. And then somewhere in the 2200 Block of Downing – I think that what happened was a vehicle in front of him stopped abruptly; and he [Maestas] had to swerve to get around him. And then there's another vehicle coming northbound that stopped. So he had to start moving around vehicles. I was able to catch up to him at that point because for the most part, he had a pretty good lead on me. When I caught up to him, and prior to this, [Sergeant Culverhouse] had given permission to PIT; and when we were going south on Downing, I confirmed it that [we] had permission to PIT.

Technician Jenkins had also left the scene of the home invasion to assist in the pursuit of Maestas. Technician Jenkins located the pursuit and joined as the third police vehicle in pursuit, driving with both lights and sirens activated. Officer Jenkins stated, "Officer Ryan started calling out the chase. I got on the radio and asked if we were authorized to PIT – if we were able to catch up with him. Sergeant Culverhouse gave us authorization to PIT – if we could do it safely."

Approximately three minutes after the pursuit began, Officer Ryan performed a PIT maneuver on the Jeep driven by Maestas at East 22<sup>nd</sup> and Downing Street causing the Jeep to spin out and come to a stop. According to Officer Ryan, he performed the maneuver after noting that there was no other traffic coming head-on or any other hazards. It was a successful PIT and the Jeep went off to the east curb line. Officer Ryan continued following Maestas into the intersection. Officer Ryan stated, "I gave him about 60 to 80 feet – I didn't want to stop right next to him being that he had a gun."

Technician Jenkins witnessed the PIT maneuver. He said he saw Officer Ryan maneuver his vehicle "with his passenger front to the driver's rear of the Jeep and initiated a PIT maneuver which caused the Jeep to rotate counterclockwise and he spun out on – onto the eastside of the street, facing me." He then saw Officer Ryan pull past the Jeep, which Maestas was maneuvering to take off again. As Maestas started to take off, Technician Jenkins observed Officer Ryan maneuver his car and again hit Maestas on the driver's side door of the Jeep, causing him to go up on the eastside of the curb. The Jeep went up on two wheels and caught the sign on the eastside of the curb. According to Technician Jenkins, the Jeep "kind of teetered and then came back down."

With the Jeep now facing north, Maestas continued to again attempt to flee the officers. Technician Jenkins hit the Jeep once more with his vehicle, pushing Maestas into a light pole. The officers got out of their vehicles and began to approach the Jeep. According to civilian witnesses, officers were telling Maestas to get out of the car and were trying to stop him. According to witness AR, who was waiting at a bus stop with her 2-year old child in a stroller, Maestas would not listen to the officers and Maestas was not concerned if he hit her, her child, officers or anyone else on the street. She said the police were doing what they were supposed to do and Maestas was escalating the situation and putting everyone in danger. RW was at work at Denver North, a nursing home located at 22<sup>nd</sup> Avenue and Downing Street, at the time of the incident. He said that the officers were "trying to get him [Maestas] to stop" and that Maestas was trying to run them over. Witness FC, who was at work at a liquor store nearby, also said that Maestas was trying to run over the officers.

Technician Jenkins stated that he exited his vehicle with his gun drawn and started giving Maestas commands. Jenkins noted that he could tell Maestas was trying to manipulate the vehicle back into reverse. According to Technician Jenkins, Maestas kept trying to "slam it into a gear" but he could not get it to go. Technician Jenkins reached for the passenger side door and tried to yank it open but the door was locked. Maestas got the Jeep in reverse and "started jacking it over the sign and stuff." Maestas was able to maneuver the Jeep back and around the rear of Technician Jenkins' vehicle. Maestas started to take off northbound.

At this point, a fourth officer, Officer Warren, was approaching the scene heading southbound on Downing Street with lights and sirens activated. Officer Warren could see that the officers had PIT-ed the Jeep. According to Officer Warren, Maestas was continuing to try to flee, revving his engine and beginning to move forward and trying to maneuver his way between the officers' cars. Officer Warren rammed the Jeep with his vehicle, pushing it into a tree and severing the tree on the west side of the street. Officer Warren effectively ended the vehicle pursuit and Maestas did not try to drive off again.

According to Officer Warren:

As I come pulling up I see that the Jeep is on the curb of the northeast corner – coming back westbound - and jump in the curb threading between a couple of Patrol Units. So I made the decision to, to ram the, the Jeep. [I] hit him in the passenger side just before the rear tire. I - and spun him around and slid him up onto the curb.

This was confirmed by Officer Ryan who stated:

Then he [Maestas] pulls forward and clears from . . . the area we had – me, I thought maybe he was pinned-in, but he clears that area. I start to run back to my vehicle; and I kind of look over my shoulder and I see another police car coming Code 10 south on Downing. I didn't actually see the collision – I didn't see the move that Maestas made, but I saw that the officer PIT-ed him again – put him into a tree. The tree fell over – the car was into the tree, uh, so at that point I stopped running toward my car, I went back to the suspect vehicle.

*The Final Confrontation*

The four officers got out of their vehicles and approached the Jeep to apprehend and arrest Maestas. The officers were yelling, "Stop and get out of the car," "Hands up," "Don't move!" The windows of the Jeep were tinted and it was difficult for the officers to see into the Jeep. Within seconds of the crash into the tree, the officers moved into various positions, surrounding the Jeep with their guns drawn and pointed at Maestas. Maestas did not indicate that he had any intention to get out of the Jeep or surrender peacefully. Technician Jenkins ran to a position on the driver's side just behind the front door. Simultaneously, Corporal Repjar moved to the rear of the passenger side. Officer Ryan moved to the front of the Jeep, directly in front of Maestas. Officer Warren positioned himself at arm's length from the front passenger door. The officers took positions at angles that would avoid cross fire if they were forced to shoot.

WF was in the area at the time of the incident. He said that he heard officers say, "Come out with your hands up!" According to WF, Maestas replied, "I ain't coming out!" GG was house-sitting for a friend who lives on Downing Street near the incident. He said he could see the officers yelling but he could not hear what they were saying. GG said the officers were "posturing" for Maestas to surrender. WF said the officers gave Maestas "fair warnings" and were "awful generous" to Maestas.

According to Officer Ryan, "Knowing that [Jenkins] was in my line of fire – I moved around and took a position in the front of the vehicle, where I was standing directly in front of the driver – looking at him through the windshield." Officer Ryan stated that they gave Maestas orders to, "Get your hands up" and "Get out of the car."

Technician Jenkins said he went to the driver's side door to try to pull Maestas out of the Jeep "because he's already tried to leave three times." According to Technician Jenkins:

I didn't want it to go any further so I figured if I could just get him out of the car – we could put him, you know, just to shut down where this doesn't take off again . . . So I come around, I grab the, the driver's side door and it's locked. So I say well the only chance we got is to get the window out and maybe bust the window out, and maybe I can hit him, you know, or something – disorient him, so I took my baton out and snapped it open. And I, I hit the window approximately three times, and it caused a hole in the window . . . but the safety glass kind of splintered and stayed in there.

Both Officer Ryan and Officer Warren confirmed that Technician Jenkins tried to open the door. Officer Ryan said that he observed Technician Jenkins struggling with the door. Officer Warren stated that he could see Technician Jenkins approaching from the driver's side back of the vehicle, attempting to open the door and pull Maestas out.

Corporal Repjar also shattered a window. He explained that he broke out the rear passenger window with his baton in order to see into the Jeep better and to cause a distraction to get Maestas' attention. Corporal Repjar said, "It's obviously a very dangerous situation; and this guy had just committed a felony crime – has a gun and officers are trying to get in the car to arrest him."

As Technician Jenkins broke out the driver side window, Maestas made a quick movement down and to his right toward the console and floor area of the Jeep. This action was observed by not only the officers, but also a number of civilian witnesses. (See statements of VA, MC, WF and RW.)

As Maestas came back up into view, he was moving his head and torso up and around to his left and had a semi-automatic pistol in his right hand. He brought the gun from right to left across his chest and pointed it directly at Technician Jenkins' face. Technician Jenkins described this split second action as seeing what appeared to be a very large barrel of the gun pointed directly in his face. As he instinctively moved his head backward and spun face down to the ground, he believed that Maestas had fired two shots at him and that he had seen a muzzle flash. Jenkins stated:

He pointed it right at my face; as I was standing towards the rear – in between the passenger and the driver's seat—and he fired – from what I remember – from what I recall he fired at least two rounds - I saw muzzle flash from two rounds; as I fell backwards, I kind of get out of the, the way of the muzzle.

WF said he saw Maestas cock the gun and fire at Technician Jenkins. MA, who was visiting her grandmother in her 3<sup>rd</sup> floor apartment nearby, said there was "no doubt" that Maestas fired at the officers first. Unbeknownst to everyone at the scene, Maestas' gun actually malfunctioned and did not fire. MA said she was so relieved when she went downstairs and found out that the officer had not been killed.

Instantly upon seeing the gun, Officers Ryan and Warren began firing at Maestas through the front window and front passenger door window, respectively. According to Officer Ryan, he saw Maestas ". . . kind of leaning back in the driver's seat . . . looking at Jenkins. And then he brought up a gun, which looked like a Glock. He brought it up and held it out the windows – he was going to shoot Jenkins." Officer Ryan said he "fired several rounds through the windshield." He explained:

As Maestas had the gun up I began to shoot. He started to go down towards the passenger side; and I just followed my shots with Maestas. The gun was still a threat, uh, thinking that he was going to be shooting at Jenkins. And I don't know if he took any shots, but when Maestas dropped below the dashboard or the line of the dashboard, I no longer saw Maestas with a gun, I stopped shooting.

Officer Warren said he heard Officer Ryan yell out, "Gun! Gun!" and "He has a gun!" Officer Warren stated:

I see Officer Jenkins dive back towards the rear of the vehicle. And at this point, I can see Maestas had his right arm coming up – he appeared to have a, a grey gun in his hand. I thought he was going to shoot Technician Jenkins. I'm not sure if I started firing first or Officer Ryan did, but I opened fire on him through the window . . . I know I had a couple impacts in on him.

Officer Warren said as Maestas fell over towards the passenger side door where Officer Warren was positioned, Maestas turned a little bit towards Officer Warren and “then just was coming up out of the seat in my direction.” Officer Warren explained:

He, he was lunging towards me. He wasn't making eye contact or anything like that, but he was - his head was down and he was lunging towards me so I continued to fire.

Officer Warren emptied his magazine, causing him to stop firing. He did a tactical reload and aired over the radio that shots were fired. Officer Ryan yelled out, “Cuff him! Cuff him! Let's get him in cuffs!” The officers went to the driver's side of the vehicle, got the door unlocked, and pulled Maestas from the driver's seat.

Citizen WF said he did not see any of the officers do anything inappropriate before, during or after the shooting. He said that it was fortunate that a police officer was not killed. According to WF, the officers who shot Maestas saved Technician Jenkins' life.

Both officers who fired were asked why they used deadly force in this situation. Officer Ryan responded, “At this point I believe he is going to engage with Officer Jenkins – or Technician Jenkins – I'm sorry. Uh, he raised the gun and pointed it directly at Technician Jenkins.” Officer Ryan concluded that Maestas was about to shoot Technician Jenkins and he was concerned for Technician Jenkins' safety.

To this same question, Officer Warren responded, “Fear that he was going to fire at – attempted to kill Officer, uh, Technician Jenkins . . . He was focused on Technician Jenkins over his left shoulder.”

### **III. MEDICAL RESPONSE**

Paramedics from Denver Health Medical Center (DHMC) arrived approximately five minutes after the shooting. Maestas was pulseless with no signs of consciousness.

The paramedics provided written statements. Attending Paramedic Shane Uryan wrote that he was called to the location for a gunshot wound. Upon arrival, he observed Maestas prone and handcuffed next to a silver-colored Jeep with two holes noted in his posterior head and two holes in his posterior back. Maestas had no vital signs. Paramedic Gregoro Mochan stated that he was called to the location for a gunshot wound. Upon arrival, he observed Maestas prone and handcuffed next to a silver-colored Jeep with obvious trauma to his right shoulder and left scapula. Paramedic Eric Wienk responded to the location on a report of a gunshot victim. Upon arrival, he observed Maestas prone and handcuffed next to the Jeep. He observed three gunshot wounds, two in the posterior lobe of the head, and one in the left posterior superior portion of the back.

The paramedics contacted Dr. Sara Krzyzaniak at DHMC and reported their observations at the scene. Dr. Krzyzaniak pronounced the time of death at 9:24 a.m. Maestas was not transported via ambulance and no additional medical care was given on scene.

#### **IV. CRIME SCENE INVESTIGATION**

Personnel from the Denver Police Department Crime Laboratory and Homicide Unit responded to the scene and collected evidence. The scene was taped off, videotaped and photographed. Measurements were taken and a neighborhood survey for witnesses was conducted by detectives and officers assigned to those tasks. Detectives searched the crime scene and located all fifteen (15) of the shell casings from both officers' weapons.

Officer Ryan was armed with his Sig Sauer, Model P-220 semi-automatic firearm. The weapon was being carried with eight rounds in the magazine and one additional round in the chamber—a total of nine rounds. Crime Laboratory personnel processed the weapon and magazines after the shooting and there were a total of three rounds in the weapon. This is consistent with Officer Warren firing six rounds during the incident. The weapon was loaded with departmental issue Speer .45 Auto JHP cartridges.

Officer Warren was armed with his Sig Sauer, Model P-220 semi-automatic firearm. The weapon was being carried with eight rounds in the magazine and one additional round in the chamber—a total of nine rounds. Laboratory personnel processed the weapon and magazines after the shooting and there were a total of eight rounds in the weapon. This is consistent with Officer Warren firing nine rounds during the incident and doing a tactical reload. The weapon was loaded with departmental issue Speer .45 Auto JHP cartridges.

Technician Jenkins and Corporal Repjar were also armed; however, neither officer discharged his firearm.

Maestas was armed with a Glock, Model 22, .40 caliber semi-automatic pistol. A federal firearms trace was conducted on Maestas' weapon and it was determined that the firearm had been stolen in a residential forced entry burglary on July 21, 2011, in Aurora, Colorado. Maestas' stolen firearm has a 15 round capacity. When it was recovered from the stolen vehicle, the weapon contained one spent Federal .40 caliber round in the chamber and seven live Federal .40 caliber rounds in the magazine. At the time Maestas fired the weapon at the scene of the home invasion and assault, the weapon slide did not function properly and the spent shell casing did not eject. Because of this, when Maestas pointed the weapon at Technician Jenkins, the malfunction prevented it from firing.

Officers also recovered items in the Jeep that were stolen during the home invasion, including the victim's computer, iPod, cell phone, watch, passport and wallet. Officers also recovered a glass "crack pipe," a bag of marijuana and a glass Mason jar containing marijuana. Numerous clothing and personal items were also recovered from the Jeep.

#### **IV. Post-Mortem Examination**

An autopsy was performed on August 24, 2011, by Dr. John Carver. In the autopsy report, Dr. Carver noted “two gunshot wounds of vertex of head . . . gunshot injury to right posterior scalp . . . gunshot wound of left posterior auricular scalp . . . gunshot wound of occipital scalp . . . perforating gunshot wound of right occipital scalp . . . penetrating gunshot wound of right shoulder . . . penetrating gunshot wound of left upper back . . . penetrating gunshot wound of right posterior arm . . . penetrating gunshot wound of the right hip . . . penetrating gunshot wound of right thigh.” Dr. Carver found the cause of death to be multiple gunshot wounds.

Basic post-mortem blood and urine toxicology tests revealed that Maestas tested positive for blood ethanol, blood cocaine, blood cocaethylene and blood benzoylecgonine, indicating the use of alcohol and cocaine.

#### **VI. CRIMINAL HISTORY**

A records check was conducted on Maestas by detectives after this incident. Maestas had a lengthy criminal record. His criminal history began in 1996 when he turned 18. His arrests include 2nd Degree Burglary (multiple), 1st Degree Criminal Trespass, Escape, Parole Violation (multiple), 2nd Degree Assault, Possession of Controlled Substance (multiple), Conspiracy to Distribute Controlled Substance, Obstructing Police, False Information (multiple), Felony Theft, Felony Menacing, 1st Degree Assault with Deadly Weapon & Serious Bodily Injury, and other misdemeanor offenses. Maestas served multiple sentences to prison in the Colorado Department of Corrections.

According to the DA, had Maestas survived, he would have been charged with multiple felony counts related to the home invasion robbery and serious assault, and related to the multiple crimes committed during his attempt to escape apprehension. Furthermore, according to the DA, Maestas was a prime suspect in other recent home invasion robberies and an armed robbery of a fast-food restaurant in Lakewood, in which the perpetrator shot an employee in the back. Maestas had been identified in the restaurant crime by a person who knew Maestas and saw the surveillance video on Crime Stoppers.

#### **IV. THE CRIMINAL INVESTIGATION**

As discussed above, the criminal case was jointly investigated by the DPD Homicide Unit and the DA's Office. The Office of the Independent Monitor (OIM) and members of the Internal Affairs Bureau observed the investigation and provided input. Members of the Manager of Safety's Office were also present and observed interviews of witnesses. The criminal investigation was completed and the DA issued his decision on August 19, 2011, as to whether or not criminal charges would be filed against the two officers who fired their weapons. Pursuant to the DA's decision letter, the DA declined to file charges against Officers Ryan and Warren. The DA stated that based on a review of the totality of the facts developed in the investigation, he could not prove beyond a

reasonable doubt that it was unreasonable for the officers to fire the shots that caused Maestas' death. The DA summarized the facts as follows:

Maestas committed a home invasion robbery and brutal assault. His semi-automatic pistol was fired during the attack. He later made the decision to attempt to escape apprehension by leading officers on a high-speed chase in the stolen Jeep while still in possession of the pistol. When the authorized PIT maneuver was successfully executed by Denver police and he crashed, rather than surrender peacefully, he chose to continue his reckless driving—intentionally endangering officers and citizens. When struck by another Denver patrol car in an effort to stop him—he crashed again. With the stolen Jeep stalled, but still in gear, he chose to continue to refuse to surrender peacefully. Instead, he intentionally chose to grab the pistol and point it directly at a Denver police officer. This was his last bad decision.

The DA reviewed Maestas' criminal history and noted that Maestas' adult life had been a continuous pattern and cycle of committing crimes, victimizing citizens, residing in prison, being released on parole, violating parole and committing more crimes. In the decision letter, the DA stated:

Maestas' life resume is consistent with his decisions and actions in this life-threatening encounter. It includes committing multiple crimes against people and property, serving multiple prison sentences at taxpayer expense, followed by multiple paroles and parole violations, beating women, shooting hardworking people in the back, and threatening the lives of citizens and police officers. Maestas' actions suggest he had no rules, no conscience and no respect for the value of human life.

The DA concluded that Officers Ryan and Warren only used deadly force when it was necessary to defend Technician Jenkins against the imminent deadly threat posed by Maestas pointing a gun at his face. The DA said, "They were clearly legally justified to shoot Maestas under Colorado law." The DA concluded that no criminal charges are fileable against the involved officers for their conduct and the case proceeded to administrative review.

## **V. THE ADMINISTRATIVE REVIEW**

Following the decision by the DA, this case was turned over to the DPD IAB for further investigation into the tactics and force procedures used by the officers. After IAB completed its broadened investigation, it presented the case to the Use of Force Review Board. The Board found that the officers acted in accordance with policy. Both the Chief of Police and the OIM agreed with this determination and so advised the Manager. This case was then brought to the Manager for a final determination as to whether the officers violated DPD's Use of Force policy or any other DPD policy or law.

## V. ANALYSIS

As stated above, as a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas:

- (1) the reasonableness of the tactics utilized by the officers immediately prior to and during the use of force;
- (2) the reasonableness of the officers' assessment of the threat posed by the person; and
- (3) the reasonableness of the use of force options selected by the involved officers.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that an officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that the involved officers could not be found criminally liable unless there was proof beyond a reasonable doubt that, at the time they fired their weapons, it was unreasonable to believe that Maestas presented a threat of serious bodily injury or death to himself or to a third person.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that the involved officer violated the Department's Use of Force Policy regarding deadly force or any other rules and regulations that were in effect on the date of the shooting. The departmental policy encompasses the criminal statute applied by the District Attorney's Office, C.R.S. § 18-1-707, as it relates to the reasonableness of an officer's actions at the moment deadly force is used. The applicable language states, in part:

A peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The Department's policy also encompasses other aspects of tactics and training regarding an officer's actions prior to the actual use of force. The policy indicates that an officer should recognize that the officer's conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation.

The policy also specifically indicates that an officer is to rely upon his or her training in making the decision as to the level of force to be used. It provides that an officer may escalate or de-escalate the use of force as the situation progresses or circumstances

change and may use tactical options as a preferable response to a deadly force confrontation, if reasonable under the circumstances. With regard to potential deadly force situations, Denver Police officers are trained in classroom lectures, video based scenarios, and practical exercises to employ certain tactical options or principles wherever possible or practical. The purpose of these tactical options is to better ensure the safety of officers and the safety of the public. These include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication among the involved officers, as well as with the potential threat; and
4. the use of movement to:
  - a. seek a better tactical position;
  - b. increase the distance between the officers and the threat; and
  - c. increase the time the officers have to react to the threat.

In applying the policy, the task in this administrative review is to determine whether the evidence and circumstances of this case make it more likely than not that a police officer would not have been reasonable in believing that Maestas presented a threat of the imminent use of deadly physical force against that officer or a third person. In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when confronting Maestas.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officer(s) as well as any reasonable inferences arising from that information; the observations of the officer(s); the lighting that was present and the visibility at the scene; the distances between the officer and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of other offenses believed to have been committed; the manner in which force was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of these officers against what would be expected of an objectively reasonable police officer under similar circumstances.

#### **A. Reasonableness of the Officers' Tactics**

To determine whether the officers' tactics were reasonable, the Manager considers all of the actions taken by the officers to get Maestas to comply with their orders without having to use force or resort to lethal force. The Manager also reviews and considers the actions the officers took once they were engaged in force in attempting to de-escalate and/or cease force once the threat had diminished or no longer existed. Officers are trained to attempt to use non-physical force, including verbal and non-verbal communication, to help establish and maintain a controlled environment at any

stage of a situation. However, the safety of the public and the officers must be the overriding concern. If non-physical force options do not work, the officers are taught that they may resort to force, including lethal force.

The officers in this case made the appropriate tactical decision that Maestas needed to be stopped and arrested. Maestas was not isolated in a secure place; he was in the middle of a residential neighborhood, with a nursing home, businesses and residences nearby. The officers knew that Maestas was armed and non-complaint and had violently assaulted innocent victims, discharged a weapon, and driven recklessly at excessive speeds through residential neighborhoods. They also knew he had gone to great lengths to avoid apprehension. Officers were duty-bound to attempt to apprehend Maestas.

The officers used appropriate tactics in trying to detain and arrest Maestas. Up until the final use of deadly force, the officers tried to use voice commands and other tactical options to stop the fleeing Maestas. First, Officer Ryan attempted to pull Maestas over using the visual signals of the lights on his marked police vehicle and the audible signal of his siren. Then, Sergeant Culverhouse authorized a pursuit and three other officers joined Officer Ryan in the chase of Maestas, providing an immediate show of force. Such a show of force, with numerous officers responding, showcases law enforcement's capabilities and will oftentimes intimidate a suspect into surrendering. In this case, however, Maestas was not deterred by four officers in marked vehicles with lights and sirens pursuing him and he continued to try to evade them.

The officers then used an authorized PIT maneuver to attempt to get Maestas to stop. The Jeep spun out and came to a stop on the east side of Downing Street. Officer Ryan and Technician Jenkins hit Maestas' vehicle a minimum of three times as he continued to try to flee.

Once the officers thought that Maestas had been immobilized, the officers began utilizing the tactics of verbal commands and command presence in an attempt to get Maestas to do what they wanted him to do. As civilian witnesses confirm, the officers told Maestas to get out of the car and the officers began approaching the Jeep. The officers used the police vehicles as cover as they approached, and Technician Jenkins then moved over to a utility pole for cover.

Simply by being in uniform and giving clear concise directions such as, "Get out of the car" and "Get your hands up," the officers asserted what is known as a "command presence." Though there is no single precise definition of "command presence," it is generally understood to mean projecting the appearance of being in control both of oneself and the situation in a manner that actually helps create control. The police uniform has traditionally been a major source of establishing a command presence because it is immediately recognizable and projects authority. Despite the verbal commands from the officers, the lights and sirens of the police vehicles, and the command presence of the officers, Maestas ignored the officers and continued to attempt to abscond.

Maestas did not indicate that he did not understand what the officers were saying and there were no lighting or visibility issues since the incident took place in the morning, outdoors in daylight. Citizens knew that the officers were verbally telling Maestas and physically gesturing to him to get out of the car and surrender. Citizens stated that Maestas not only ignored the officers but that he was attempting to run over the officers. According to Technician Jenkins, "I was like, 'Do not move the vehicle,' 'Put your hands up' and he was looking right at me as he manipulated the gearshift."

Officer Ryan drew his gun and approached the vehicle. At great risk to himself, Officer Ryan tried to open the passenger side door to pull Maestas out of the Jeep but the door was locked. Maestas got the Jeep dislodged and started moving.

As Officer Warren approached the scene in his police vehicle and saw Maestas beginning to take off again, Officer Warren hit the Jeep, crashing it into and severing the tree on the west side of the street. At this time, officers again tried to de-escalate the situation and resolve the incident without the use of deadly force. The officers surrounded the Jeep, again using the tactics of show of force and command presence. The officers took tactical positions surrounding the Jeep on all sides and keeping Maestas at gunpoint. Officer Ryan even stood directly in front of Maestas in order to avoid crossfire and injuring one of his fellow officers in case he was provoked into shooting. The officers continued to give verbal commands. Officer Ryan stated that he told Maestas, "Get your hands up," and "Get out of the car." Corporal Repjar stated that the officers were telling him, "Stop," "Hands up," "Don't move," and "Get out of the car." Technician Jenkins said, "The whole time – I was, 'Get your hands up,' 'Get 'em, get 'em up,' 'Do not move the vehicle,' 'Don't go anywhere.'"

Technician Jenkins and Corporal Repjar made tactical decisions to break out windows of the Jeep so they could get a better view inside the vehicle. They also hoped that the breaking glass would distract Maestas. Technician Jenkins thought that once the window was broken, he might be able to hit Maestas with his baton and disorient him. Technician Jenkins tried to open the driver's side door in order to pull Maestas out of the vehicle. The officers engaged in these tactics in hopes of avoiding using deadly force and harming Maestas. The DA praised the officers for their tactics and professional restraint which put their safety at risk in an attempt not to have to use lethal force on Maestas.

At this point, officers had used numerous tactics to try to bring this matter to a relatively peaceful conclusion. They had used verbal commands, lights and sirens, a command presence, pursuit, and PIT maneuvers to stop Maestas. They approached the Jeep with weapons drawn and surrounded him, continuing to give clear verbal commands to Maestas to put his hands up and get out of the Jeep. Rather than comply, Maestas pulled out a firearm and pointed it at Technician Jenkins' face. Any opportunity for the officers to continue to try to de-escalate the situation vanished the moment that Maestas pointed his gun at Technician Jenkins. When he aimed the gun at Technician Jenkins, the officers on scene were rightfully concerned for Technician Jenkins' life, as well as their own safety and the safety of the citizens in the area. There simply was nothing more the officers could do to de-escalate the situation so they fired their weapons.

In assessing whether the tactics used by the officers involved in this shooting were reasonable, this Office has considered the totality of the circumstances, including the information available to the officers at the time, the specific actions of Maestas and the specific actions of all officers, up to and including the use of deadly force by Officers Ryan and Warren. When Maestas refused to obey police commands and instead chose to raise a revolver at Technician Jenkins, he eliminated any opportunity for the involved officers to de-escalate the situation or to use any other tactic that would lessen the likelihood or necessity for deadly force. The officers were confronted by their sworn duties to protect the public and other officers and to enforce the law and apprehend suspects. The officers properly chose to take all necessary measures, including deadly physical force, to carry out those duties. Based on these reasons, the Manager concludes that the officers acted in accordance with their training and that appropriate tactics were used.

### **B. The Reasonableness of the Assessment of the Threat**

In order for the Manager to evaluate whether Officers Ryan and Warren's assessment that they needed to use deadly physical force was reasonable, the Manager must examine what the officers knew at the time they were assessing the threat before them.

The four involved officers had all been at the scene of the home invasion/robbery. They arrived at that scene to find a woman bleeding from the head after being repeatedly pistol whipped. Officers knew that she and her roommate had each woken up to face an armed intruder who tied them up with dog leashes and assaulted them. They knew that the intruder fired the gun at least one time. They also had evidence that he had attempted to sexually assault the female victim. Officers knew that they were dealing with a violent and unpredictable person who was willing to violently, physically assault innocent people. The officers had no reason to anticipate that Maestas would be any less of a threat to them.

In addition, at least one of the officers suspected that Maestas might be wanted in a similar home invasion/robbery that occurred the previous day. Corporal Repjar said that at roll call that day they had been informed of the previous day's home invasion/robbery. Corporal Repjar further stated that when they were at the scene that morning, officers were discussing whether or not the two crimes were connected.

In assessing the threat that Maestas posed, the officers also knew that he was brazenly fleeing four police officers in a stolen vehicle. They knew he was aggressive and resolute in his determination to abscond. They knew that even crashing police vehicles into the Jeep he was driving did not daunt him. Maestas was not deterred by officers yelling at him and pointing their weapons at him.

The officers further knew that Maestas had a gun, had threatened HW and CR with it and had shot it. Technician Jenkins said in reference to Maestas, "He's armed, and dangerous, a...a danger to the community, and to officers that may come - encounter him."

The officers were reasonable in concluding that Maestas posed a significant threat and was extremely dangerous. As Corporal Repjar stated:

It's obviously a very dangerous situation; and this guy had just committed a felony crime – has a gun and officers are trying to get in the car to arrest him . . . I can remember running up to the car – having the fear that, . . . that there were officers out on foot, that there was a guy who, who . . . just robbing people trying to get away - fearful that this guy was going to run over a policeman . . . I just remember thinking that same thing . . . This guy already got out of this situation once, uh, we need to make sure that we're not going to get run over.

When Maestas leaned down, picked up the gun and rose back up pointing it at Technician Jenkins, the officers reasonably believed that Maestas was about to shoot Technician Jenkins. They knew the gun was a real gun since they had information that Maestas had already fired it during the earlier assault. A number of witnesses also thought that Maestas was going to shoot, or did shoot, Technician Jenkins. At the moment the officers saw the gun, all four officers felt Maestas was a deadly threat and two officers fired shots almost simultaneously. The fact that all four officers perceived a deadly threat and two fired at the same time supports the conclusion that their assessment of the threat posed by Maestas was reasonable and objectively apparent.

The fact that Maestas' gun malfunctioned and did not fire at Technician Jenkins does not affect the determination that officers reasonably perceived that Maestas was about to use deadly force against Technician Jenkins. An officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. Pursuant to the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer need only base a decision to use deadly force on an "apparent necessity," not an "actual necessity." Thus, an officer is entitled to act on appearances drawn from reasonable conclusions based on the facts and surrounding circumstances.

Officers Ryan and Warren decided to use deadly force based on the reasonable conclusion that Maestas was about to shoot Technician Jenkins. This was a reasonable assumption and one reached by many individuals, including the citizen witnesses and Technician Jenkins. In fact, Technician Jenkins and a number of witnesses thought that Maestas had actually fired shots at Technician Jenkins before Maestas was shot by Officers Ryan and Warren. At least one citizen expressed certainty of this fact.

Officers Ryan and Warren stated that they did not know whether Maestas fired shots before they shot him. However, an officer is not required or expected to wait until he or another person is fired upon in order to use deadly physical force. Such a policy or practice would subject an officer and/or others to the grave danger of being injured or killed and would be highly impractical.

A thorough review of this case leads the Manager to the determination that the conclusion reached by Officers Ryan and Warren was reasonable. At the time each officer fired his weapon at Maestas, they reasonably believed that Technician Jenkins was in imminent danger of having deadly force used against him by Maestas. They also were reasonable in concluding that Maestas posed a further serious risk to citizens, themselves and other officers and they reasonably assessed the threat that Maestas posed.

### **C. The Reasonableness of the Use of Force Option**

To assess the reasonableness of the use of force option, the Manager must consider the justification for the amount of force utilized by the officers once they decided that force was necessary. It also requires that the Manager consider whether the escalation of the level of force throughout the interaction, up to and including the use of lethal force, was reasonable. The assessment of the reasonableness of the officers' use of force requires an analysis of the laws and DPD's use of force policy. As stated earlier, the language of C.R.S. § 18-1-707 which defines the circumstances under which a police officer may use deadly force, is incorporated into the Denver Police Department's Use of Force policy. The section reads, in pertinent part:

A peace officer is justified in using deadly physical force upon another person . . . when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions. In such circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

Throughout the entire encounter, officers relied on their training and consistently used the least amount of force necessary to try to control Maestas. Officers did everything that they could to not resort to deadly force. They crashed into Maestas' vehicle repeatedly, they gave verbal commands telling Maestas to exit his vehicle and surrender, and they even attempted to physically pull him out of the Jeep. Officers only escalated the force to the level of lethal force in response to Maestas' escalation to lethal force. Witnesses and officers saw Maestas point the gun at Technician Jenkins. (See statements of VA, MC, WF and RW). One witness, WF, even stated that he saw Maestas cock the gun.

Officers Ryan and Warren were reasonable in firing their weapons at Maestas. Officers are trained that the greater the level of threat facing them or citizens, the greater the level of force that may be used by the officer. In looking at the officers' statements, they are consistent as to why they fired at that time. Officer Warren stated he was in "fear that he was going to fire at – attempted to kill . . . Technician Jenkins . . .he was focused on Technician Jenkins over his left shoulder." To this same question, Officer Ryan responded, "At this point I believe he is going to engage with . . .Technician Jenkins . . . he raised the gun and pointed it directly at Technician Jenkins . . . [I think] he's about to shoot him, [my concern is] Jenkins – Off- . . . or Technician Jenkins' safety . . . [so] I fire." Technician Jenkins and citizens also believed that Technician Jenkins' life was in danger.

At the time Officers Ryan and Warren fired their weapons, they had reasonably arrived at the same conclusion - Maestas was an imminent threat to the officers and civilians and deadly physical force was needed to stop that threat. The Manager concludes that Officers Ryan and Warren's decision that they needed to use deadly force in response to Maestas' actions was objectively reasonable.

**VI. CONCLUSION**

After a careful review and analysis of this case, the Manager of Safety concludes that the officers acted in accordance with the law, the Department's policies and their training.

In closing, this Office would like to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions were reached independently by the Manager and are consistent with those of the District Attorney's Office, the Chief of Police and the Use of Force Review Board and the Independent Monitor. These consistent conclusions result entirely from the reason that they are based on the facts determined from the similar observations of a number of witnesses. The statements of each person, from civilian witnesses to the officers, are consistent with regard to the most important facts in this case. Maestas was recklessly fleeing from the officers and once his vehicle was stopped, he bent down toward the floor of the vehicle, picked up a gun and pointed it at Technician Jenkins' face. The Manager has concern when a police officer has to use deadly force in the line of duty. However, in many instances, such as this case, the actions of the person against whom force was used have precipitated that use of force.

  
Alex J. Martinez  
Manager of Safety

2-13-12  
Date

  
Ashley Kilroy  
Deputy Manager of Safety

2-13-12  
Date

## APPENDIX A

### Civilian Witness Statements - Summaries

Responding police officers contacted numerous witnesses who were in the area at the time of this incident. Set forth below are summaries of the statements of some of those witnesses. Although not detailed below, there were other witnesses who were questioned. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

GG – On the morning of the incident, GG was house-sitting for a friend who lived on Downing Street near the incident. That morning, he was awake in bed when he heard sirens coming up the street. He then heard “acceleration” and an engine revving. He then heard wheels screeching and then what sounded like a car crash “metallic popping noise.” He went to the window and saw a Jeep facing him, “off the road on the grass/sidewalk area.” GG stated that while the view was not 100% unobstructed, he could see the Jeep and could see several meters on either side of the Jeep. He could see officers on foot approaching the Jeep. He believed there were three officers and at least one on each side of the vehicle. GG stated that the windows were closed so he could not hear what officers were saying but it appeared they were trying to control the situation. He could see officers “yelling” but could not hear what they were saying. He stated that “it didn’t have the appearance of an accident and, ‘oh can we help you?’ . . . this is a . . . ‘we need to get control of you in the vehicle’ sort of thing.” He saw the officer on the passenger side of the door break the front passenger side window. Immediately after that he heard a “series of pops” which he believed to be gunfire. The shots came in rapid succession so he could not tell how many but he believed it was approximately six gunshots. The shots sounded similar so he thought there was one gun or similar guns used. He also could not tell if it was an officer or the person in the vehicle shooting. He saw officers take a person, determined to be Maestas, out of the front driver’s side door. Other officers began to arrive on scene.

AR – On the morning of the incident, AR was outside trying to catch a bus with her 2-year old child. She was on the phone trying to confirm the time for the next bus when she heard police sirens and then saw the Jeep driving south on Downing Street. She stated that the Jeep was driving “really fast” and there were three police cars behind the Jeep. When they got to 22<sup>nd</sup>, a police car hit the Jeep, causing the Jeep to turn approximately 180 degrees. The officers got out of their vehicles and approached the Jeep, yelling something to the effect of, “Stop the car, or I’ll fucking shoot you!” and, “Put your hands up, get out of the car!” The Jeep then tried to go in reverse and backed up trying to go. She was unsure if an officer hit him a second time but the Jeep ended up hitting the bus stop and then hit a tree with the back end of the Jeep. She stated that the driver appeared to be trying to get away from the officers and was not concerned if he hit her, her child, officers or anyone else on the street. She heard officers trying to break the driver’s side window of the Jeep. She then said she heard one or two gunshots that she believed came from inside the Jeep. Immediately after, she heard 6-7 more gunshots fired in rapid succession. After that there was nothing else from the Jeep. AR stated that it was Maestas who escalated the situation. When asked if the officers were in danger when Maestas tried to leave the scene, AR responded, “Everyone was in danger.”

MA – On the morning of the incident, MA was at her grandmother's 3rd floor apartment near the location of the incident. She heard the Jeep "racing" down the street followed by sirens of police cars. She saw the Jeep hit a car that was coming from another direction and then a second police car hit the Jeep causing the Jeep to hit a pole. An officer approached the driver's side of the Jeep. When he approached, the person inside of the Jeep opened fired on the officer. She heard three gunshots from the Jeep followed by six or seven gunshots being fired from an officer. MA noted that the guns had two distinct sounds. The officer near the driver's side door went to the ground, causing MA to believe the person in the Jeep shot the officer. The officers removed the person from inside of the Jeep and put him on the ground. An ambulance arrived 2-3 minutes later. MA said that officers did what they had to do in the situation.

VA – VA was in her second floor apartment on Downing Street near the area of the incident. She was in her apartment when she heard a crash and then sirens. She looked out her window and saw the Jeep hit a police car and as it tried to back out, the Jeep hit a pole. The person driving the Jeep then ran into either a tree or another officer's car. Approximately three officers ran towards the Jeep and yelled, "Freeze!" There were two officers on the passenger side and one on the other side of the Jeep. She confirmed that the person driving the Jeep was trying to run the officers over. She saw the person in the Jeep quickly reach towards the passenger seat when she heard gunfire. She heard approximately 7-8 gunshots fired in rapid succession. When she heard gunshots, she backed away from the window.

MC – MC works at Denver North, a nursing home located at 22<sup>nd</sup> and Downing Street. On this morning, she was at the nurse's station when she heard "squeal, like brakes" outside. She was near a large window which gave her a view of what was occurring outside. She saw a police car hit a "gray Jeep" which caused the Jeep to hit a post by the bus area. The Jeep then tried to turn around and then hit a police car while trying to flee. At that point, another police car hit the Jeep causing it to hit a tree and come to a complete stop. Officers then surrounded the Jeep. One officer got out his "night stick" and "pounded on the window," shattering the driver's side window. This made a hole in the window. Through this, MC could see the driver move towards the passenger side. She stated that she could not tell if he was trying to move away from the officer or if he was reaching for something but she could see him move towards the passenger seat. More officers came in front of the Jeep and began firing "quite a few" shots. She believed two or three officers fired their weapons. She noted that the Jeep had been going "really, really fast."

TR – On the day of the incident, TR was walking across Downing Street with her children when she heard tires screeching. She noted that she did not hear sirens. She turned around and saw an officer's car do a "donut." Officers then came out of their cars with their weapons out. She then heard sirens. An officer yelled, "Stop right there mother fucker!" The man in the Jeep started trying to back up. Maestas then put his car back in drive and hit a tree; then she heard approximately three gunshots. She stated that there was more than one officer shooting. TR stated that she did not believe that the officers did anything wrong but thought that sirens should have been activated earlier.

WF – WF was in the area when he heard police sirens and then saw a policeman hit a gray Jeep which was pushed into a pole. That Jeep continued to move and then was hit by another officer which caused the Jeep to hit a tree. Officers began to approach the Jeep on foot. He stated that he could see the driver of the Jeep, determined to be Maestas, reach for something and believed it was a gun. He also stated that he believed that he saw Maestas cocking the weapon. He commented, “He’s getting ready to have a shoot out!” Police instructed him to get out of the vehicle saying, “Come out with your hands up!” Maestas replied, “I ain’t coming out!” At that point Maestas fired 3-4 rounds at police. Police returned fire. He thought it was just one officer shooting 4-5 shots. WF stated that the first officer to approach the driver’s side was lucky not to get shot and it was the next officer that actually fired on Maestas. He stated that Maestas was leaning at an angle towards the passenger seat. After the officers stopped firing, they removed Maestas from the vehicle. He also noted that police twice told Maestas to drop his weapon and come out of the vehicle. He stated that the police were “100%” right except “they should have been a little more aggressive.”

RW – RW was at work at Denver North at the time of the incident. He was looking out of the front window when he heard tires. He looked up and saw the Jeep; he stood up and saw police cars following behind the Jeep. The Jeep tried to do a u-turn and hit the bus stop sign. He then backed up and hit the corner pole. The police were trying to get the driver, determined to be Maestas, to stop “running into him and everything, trying to make him stop.” Maestas then “takes off” and another police officer hit him, causing Maestas to hit the tree. Officers jumped out of their cars. There were 3-4 officers around the Jeep. Officers were yelling for Maestas to, “Stop!” and “Get out of the car!” One officer took out his “stick” and tried to break the driver’s side window. He could see Maestas move in the Jeep. He could not tell if he was reaching for something or trying to jump out of the car, but he did see Maestas shift his body towards the passenger side of the car. He then heard gunshots from more than one police officer. RW saw two officers fire their weapons. He did not hear any gunshots that did not appear to come from officers. The officers then opened the door and removed Maestas from the vehicle and handcuffed him. RW did state that in his opinion, it appeared that Maestas was trying to run the officers over

BF – BF was in his front yard with SM when he heard a lady yelling, “Help me!” approximately three times. He saw someone at the front door of the house at the corner of 30<sup>th</sup> and Downing and then heard one gunshot. He ran inside to call 9-1-1. He walked to the corner to see if he could see anyone and on his way back to his home, his neighbor, HW, ran out of her house, bleeding, wearing only a jacket. BF got a blanket from his Jeep and wrapped HW in it. HW told him that her roommate was tied up in the basement and she had been hit repeatedly in the head with a gun. She asked BF to untie her hands which were tied behind her back with a dog leash. She stated that the man was still in the house, he was Latino, and may have been wearing a bandana.

## **Responding Officers**

The information provided by Officer Ryan, Officer Warren, Technician Jenkins and Corporal Repjar is set forth in detail throughout this Public Statement. In addition to the above officers, numerous other members of the Denver Police Department, including command staff, officers, detectives and lab personnel responded to this incident. Homicide Bureau and other detectives, along with crime laboratory personnel, also responded to the location of the shooting. These personnel were responsible for documenting the crime scene, photographing, collecting and preserving any physical evidence for further testing, and locating and interviewing witnesses. Homicide and Crime Lab personnel are further responsible for processing the body of the deceased and documenting the post-mortem examination of the body conducted by the coroner's office.

Only Sergeant Culverhouse's statement is summarized in this addendum. All law enforcement statements and reports can be found in the case file and are available for review by members of the public during regular officer hours by contacting the Records of custodian at 720-913-6020.

Sergeant Ian Culverhouse – At approximately 8:15 a.m., Sergeant Culverhouse heard officers being dispatched to the 2900 block of Lafayette for an unknown disturbance. Dispatch advised that there was a female out front screaming and that one gunshot was heard. Sergeant Culverhouse was the first officer to arrive on scene. He was directed to the female victim, HW, who was only partially clothed, with her face and head covered in blood. She told Sergeant Culverhouse that Maestas fired a gun and she did not know if she had been shot. She explained to Sergeant Culverhouse what had happened in the house and that she was not sure if Maestas was still inside. He passed this information to the officers at the house, around which time the roommate, CR, came running out of the house. CR told officers that Maestas took the keys to his Jeep and that the Jeep was gone. Sergeant Culverhouse got a description of the Jeep and aired it over the radio. He and other officers cleared the house. Around 9:01 a.m., CSP advised that they had a LoJack hit on the stolen Jeep. At that point, he authorized a pursuit of the vehicle and advised Officer Ryan to perform a PIT maneuver when he was able so that the chase would be ended as quickly and safely as possible. Officer Ryan, Corporal Repjar, and Technician Jenkins continued providing updates of their locations. He was then notified that the Jeep had been stopped with the use of a PIT maneuver. Shortly after that he heard that shots had been fired and Maestas was down. He responded to the location and confirmed that officers were okay and that an ambulance had been requested. He separated the involved officers and ordered them not to talk about the incident.