

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

August 14, 2015

Randy Nelson
Chief of Police
Thornton Police Department
9551 Civic Center Drive
Thornton CO 80229

Jim May
Chief of Police
Northglenn Police Department
11701 Community Center Drive
Northglenn, CO 80233

Re: The investigation of the officer involved shooting of James Edward Strong, DOB 11/18/82, occurring on May 28, 2015

Dear Chief Nelson and Chief May;

The investigation and legal analysis of the officer involved shooting of James Edward Strong is complete. The 17th Judicial District Critical Incident Team (CIT) conducted the investigation into this matter, led by Detectives Luis Lopez and Jessica Beren of the Westminster Police Department. The CIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to my office on July 14, 2015. The Critical Incident Team presented police reports, videos and transcripts of interviews from lay witnesses and police officers, photographs, diagrams and the crime scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officer, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to each individual agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against the law enforcement officers involved in this incident.

OVERVIEW OF THE INCIDENT

In April and May 2015, the North Metro Drug Task Force (NMTF) conducted a lengthy investigation into drug distribution activity associated with the location of 10909 E. 109th Place, Northglenn, Colorado. Specifically, through the use of confidential informants and surveillance activity, NMTF identified James Strong, Jr. as the individual distributing large amounts of cocaine from this Northglenn address. Based on the information gathered over several weeks, NMTF applied for a search warrant.

The court issued a search warrant on May 19, 2015 for 10909 E. 109th Place. Because the investigation revealed evidence of Mr. Strong's violent gang affiliation and access to multiple firearms, the court authorized a "no-knock" search warrant designed to minimize the danger to officers executing the warrant.

The warrant was executed on May 28, 2015 by multiple law enforcement officers from various agencies designated as the SWAT Team for the 17th Judicial District. At 10:00 a.m., the officers made forced entry into the residence, along with making simultaneous loud verbal announcements identifying themselves as police and their purpose for entering. As they entered the residence, Northglenn Police Officer Nicholas Wilson and Thornton Detective Jason Schlenker moved into an interior hallway towards the back bedrooms. As Officer Wilson proceeded down the hallway, a male fired numerous rounds from inside a bedroom. Officer Wilson was struck by bullets in the arm, chest and leg as he tried to move away from the bedroom door opening and farther down the hallway. Officer Wilson returned fire with his semi-automatic rifle, shooting in the general direction where he perceived the shots were coming from. Detective Schlenker, also standing near the bedroom door opening, fired his semi-automatic rifle at the male shooting at Officer Wilson.

The male in the bedroom was later identified as James Strong, Jr., the suspect of the drug distribution activity. He was declared deceased at the scene.

BACKGROUND INVESTIGATION

In early April of 2015, Detective Adam Nielson with the North Metro Drug Task Force was in contact with a previously reliable confidential informant (CI). The CI told Detective Nielsen about people selling cocaine in the City of Northglenn. The CI indicated they had been at this residence recently and seen a cocaine transaction occur between an identified individual¹ and James Strong Jr. The individual offered to coordinate a cocaine deal between Mr. Strong and the CI. The individual made it clear that any deals from Mr. Strong would have to be facilitated by the individual. Based on this information, Detective

¹ The individual is not identified herein so as to not compromise the NMTF investigation.

Nielsen began conducting surveillance on the residence associated with James Strong Jr., 10909 E. 109th Place. Detective Nielsen observed James Strong Jr. (DOB: 11-18-1982) and vehicles registered to him at this address on several occasions.

On April 27, 2015, the CI met with the previously identified individual just down the street from 10909 E. 109th Place. They drove in separate cars to the address and the CI observed the individual and James Strong enter the residence and return approximately five minutes later. Once outside, Mr. Strong returned to his car where he retrieved suspected cocaine. The individual then provided the CI with 7.10 net grams of cocaine. On May 5, 2015 the CI conducted a controlled purchase of 5.88 grams of cocaine from both the individual and Mr. Strong at 10909 E. 109th Place. On May 18, 2015, the CI conducted a controlled purchase of 14 grams of cocaine from both the individual and Mr. Strong at 10909 E. 109th Place.

In late April, a neighbor contacted Northglenn police expressing concern about the residence of 10909 E. 109th Place that the residents were selling drugs because of the frequent activity at the residence. Detective Nielsen conducted research on James Strong Jr. and viewed his public facebook page. James Strong Jr.'s page included several photos of firearms and thousands of dollars in cash. These photographs showed multiple semi automatic handguns, a revolver, an assault rifle with a loaded magazine and a Glock handgun with a loaded 26 round magazine. Messages associated with the photographs declared that Mr. Strong was the owner of the firearms. One recent photo displayed a number of handguns on the lap of an individual and included the comment, "I don't even have enough hands." Text and photographs also established Mr. Strong's association with the Bloods (a violent street gang known for drug dealing). The CI viewed a photograph from James Strong's facebook page and confirmed the photograph depicted the inside of the residence.

On May 19, 2015 Detective Nielson applied for a search warrant on 10909 E. 109th Place. Based on the information that Mr. Strong had access to a number of weapons, including semi-automatic handguns and assault rifles, Detective Nielsen requested a "no-knock" search warrant to minimize the safety risk to officers executing the warrant. The court authorized the no-knock search warrant and Detective Nielsen requested coordination of the Northglenn/Thornton combined SWAT Team to execute the search. On May 28, the SWAT Team prepared to execute the warrant on 10909 E. 109th Place by conducting a briefing of the location, the identified suspect, and other circumstances attendant to the drug investigation.

SUSPECT INFORMATION

James Strong Jr. is a convicted felon with no documented state wages for over a year. James Strong Jr.'s criminal history includes possession of a controlled substance, aggravated assault, forgery and identity theft. James Strong Jr.'s public facebook account posts include several photographs of firearms, cash, and messages claiming ownership to the firearms and cash. The photographs display multiple semi-automatic handguns, a revolver, an assault rifle with a loaded magazine and a Glock handgun with a loaded 26-round magazine. The facebook postings also include messages and photographs claiming an association with the Bloods street gang.

WITNESS INTERVIEWS

Officer Nicholas Wilson: Officer Nicholas Wilson was interviewed by Detectives Luis Lopez and Jessica Beren of the Westminster Police Department. Officer Nicholas Wilson is an eight-year veteran with the Northglenn Police Department, currently assigned to NMTF. Because of the risk of compromising his current assignment with NMTF, his interview was audio recorded but not video recorded. Officer Wilson is also assigned to the Northglenn/Thornton SWAT Team. On May 28, 2015, he was wearing his SWAT uniform, which includes green pants, green long sleeve shirt, helmet and boots. Officer Wilson also wore a black SWAT tactical vest with "Police" marked conspicuously on both the front and the back. He had a handgun in the right holster and a taser on the left side. He carried a .223 caliber semi-automatic rifle during the execution of the search warrant at 10909 E. 109th Place.

On May 28, 2015, Officer Wilson attended a briefing at the Northglenn Police Department with the SWAT Team. Detective Adam Nielsen from North Metro Task Force provided an explanation of the no knock warrant and identified the suspect of the drug investigation to the SWAT team using facebook photos. Officer Wilson observed the facebook photos of the suspect, James Strong Jr., showing images of numerous firearms, including an assault rifle and money, as well as photos depicting the interior of the residence that was the subject of the search warrant.

Prior surveillance conducted on the home had shown the female leaving the home with the children around 8:30 a.m. in the morning. Accordingly, the execution time of the warrant was scheduled for 10:00 a.m. The team went over the briefing sheet and conducted rehearsals. The team viewed pictures of the exterior of the target residence. After the rehearsals, the team loaded up in the SWAT tactical vehicle, identified as the "Bearcat," and drove to a staging area a few blocks away from the suspect residence where they awaited the time to execute the warrant.

Officer Wilson was assigned to a position second in the line to enter the residence, following Sergeant Pete Rice, and in front of Detective Jason Schlenker. Once the Bearcat was positioned outside 10909 E. 109th Place, Officer Wilson waited on the exterior of the Bearcat for the other officers to get into place. Snipers went ahead of the Team to conduct surveillance of the residence and noted an unknown male was outside of the home in a blue Chevy Camaro. It was determined that certain SWAT members would handle the male in the Camaro, while the entry team went into the home.

An officer was assigned to breach the door with a battering ram prior to the line of officers assigned to enter the residence. The door went open with one hit and immediate contact was made with individuals in the living room. Upon entry, Sgt. Rice repeatedly announced "police search warrant." Sgt. Rice went directly to the kitchen area to contact an adult male in the kitchen. Officer Wilson went to the left side of the home towards a hallway to pick up Sgt. Rice's blind spot. Det. Schlenker came up from behind Officer Wilson and said "we're good," meaning there are enough officers to make contact with the people in the living room and kitchen area.

Officer Wilson then began moving towards the hallway. As he looked down the end of the hallway, he observed a door open about a quarter of the way and saw a little girl on a bed. To his immediate left, was another door that was only partially open about an inch. Officer Wilson took his left hand off his rifle and began to push the door open to a dimly lit room. He observed a female on the far side of the bed from the door. He could hear some movement in the part of the room behind the door where he could not see. The door reached about three-quarters of the way open and then Officer Wilson saw a muzzle flash and heard a gunshot. He observed the posture of a male who appeared to be holding a handgun held up. The male had his head tucked down like he was anticipating being shot. The male had his chin to his chest and his head was looking away while he was shooting. When the shooting began the male was approximately ten to twelve feet away from him. The male was on the near side of the bed closest to the door and was continuing to move towards him.

Officer Wilson immediately felt burning in his arm at the elbow. He knew that he had just been shot. Officer Wilson immediately pointed his rifle at the male who shot him and returned fire. Officer Wilson heard another gunshot as he began to exchange fire. According to Officer Wilson, the difference between the shots was clear between the rifle and the handgun. After hearing what he recalled two shots and then returning fire, all he heard was his own firearm.

Officer Wilson was shooting as he moved across the doorway and turned his weapon on the male who fell down to the ground. The male continued to shoot. When the male was on the ground, Officer Wilson saw a muzzle flash and felt pain in his leg. Officer Wilson moved to the opposing doorjamb when he saw the male go down. At that point, Officer Wilson began shooting through the wall from the hallway into the bedroom in the general direction of the male on the ground. Officer Wilson moved out of the doorway to allow Detective Jason Schlenker assist him with the threat. Officer Wilson expressed that he was in fear for his life, the lives of the other officers and the other individuals in the home.

Officer Wilson did a quick look into the child's room and observed the girl stuffing herself between her bed and the wall. He observed no adults in the child's room. Once the gun fire stopped, Officer N. Wilson began to assess his own injuries and knew he had been hit. Sergeant Dan Wilson approached down the hallway, put a tourniquet on Officer Wilson's leg and assisted in getting him out of the residence.

Officer Wilson suffered a gunshot wound to the inside of his right arm near the elbow. He also suffered a gunshot wound to the left leg that entered just above the knee and exited the middle portion of his inner thigh. He was taken to a hospital where he was treated for his injuries and later released. A projectile was also located in Officer Wilson's tactical vest located on the front of his SWAT uniform.

Detective Jason Schlenker: Detective Jason Schlenker was interviewed by Detectives Luis Lopez and Jessica Beren of the Westminster Police Department. Detective Schlenker is a ten-year veteran with the Thornton Police Department. He is assigned to the detective division and to the Northglenn/Thornton SWAT team. On May 28, 2015, Detective Schlenker was wearing a basic duty uniform (BDU) with a tactical vest marked "Police" on the front and the

back. He carried a pistol and a rifle, and carried extra magazines of ammunition. His rifle was a semi-automatic M4 .223.

On the morning of May 28, 2015, Det. Schlenker met with the SWAT Team for the briefing of the execution of the warrant for 10909 E. 109th Place. During the briefing, North Metro Task Force covered the facts of the investigation that led to the no knock search warrant. The SWAT unit was provided with information about the suspect, James Strong Jr. The Team understood that James Strong Jr. was posting pictures on facebook of firearms, drugs and money. After the briefing, the Team went through multiple rehearsals on different contingencies. After the team was comfortable with the rehearsals, they loaded up in the Bearcat for the execution to commence at 10:00 a.m.

At the staging area, Det. Schlenker transitioned to the exterior of the Bearcat. As the Bearcat took position outside the residence, the snipers notified the team there was an unknown male outside of the residence in a blue Chevy Camaro. Officer Couture breached the door with one hit and the door came open. Immediately upon entry, Sgt. Pete Rice was yelling, "Police! Search Warrant! Police, Search Warrant!" As soon as the breach happened, similar announcements repeated inside and outside of the home. Sgt. Rice entered the home and contacted a male in the kitchen.

Officer Wilson went to the left towards the hallway. Detective Schlenker saw Officer Wilson was alone and got behind him and said, "I'm with you" and "we're good." Officer Wilson then began moving down the short hallway. Detective Schlenker observed a child's bedroom at the end of the hallway with the door wide open. A child was sitting on the bed looking at the officers. Officer Wilson was able to get two or three steps down the hallway, when Detective Schlenker then heard three distinct pops and saw Officer Wilson flinch on his left side and then turn into the doorway on the left.

Detective Schlenker described seeing the bedroom door almost all the way open and hearing the three gunshots coming from what sounded like a small caliber gun. Officer Wilson continued to move past the doorway down the hallway. Detective Schlenker observed Officer Wilson turn into the doorway and begin to fire his weapon. Detective Schlenker came up inches behind Officer Wilson and observed a male on the ground.

The male was lying on his back, looking up at Officer Wilson, with a pistol in his hand pointed and firing at Officer Wilson. Detective Schlenker observed Officer Wilson move from the bedroom door opening continuing to shoot through the wall in the direction of the male as he tried to move away from the door opening. Detective Schlenker believed that Officer Wilson shot at least five times through the wall. He observed the male continuing to fire approximately four more times, as he continued to see muzzle flashes from the male's gun. Detective Schlenker pointed his rifle at the male and fired an unknown number of times until he believed the male was no longer a threat. He explained that he fired until he observed the male go limp and stop shooting. Detective Schlenker believed it was one of his last shots that ended the exchange of gunfire. He estimated that the end of his gun barrel was approximately eighteen inches to two feet away from the male. He recalls that one shot hit the male in the head.

Detective Schlenker was concerned for Officer Wilson's safety since Officer Wilson was standing in the doorway when the shooting started. Detective Schlenker felt the male's intent was to try and kill the police officers; he also felt he had to kill the male or the male would kill them. Det. Schlenker expressed fear for his own life and the life of Officer Wilson. Detective Schlenker described the weapon the male was holding as appearing to match one of the photographs that had been posted on James Strong Jr.'s facebook page.

Sergeant Peter Rice: Sergeant Rice is a patrol sergeant for the Northglenn Police Department and assigned to the Northglenn/Thornton SWAT Team. On May 28, 2015, Sergeant Rice participated in the briefing, where he reviewed the operations plan, as well as photographs associated with the suspect and the residence of the investigation. Sergeant Rice was assigned to be the first person to enter the residence after the door was breached. Immediately upon entry, Sergeant Rice repeatedly announced "Police, Search Warrant! Police, Search Warrant!" Sergeant Rice observed three adult males in the living room and kitchen area and ordered all of them to the ground. Officer Thibodeau assisted Sergeant Rice with covering the males in the area of the kitchen while the residence was secured by other officers. Sergeant Rice heard gunshots seconds after taking his cover position in the kitchen. He heard two to three shots he described as, "pop pop pop," from a smaller caliber weapon followed by the sound of a larger caliber weapon and a muffled sound. Sergeant Rice recalled hearing roughly eight to ten shots total. Sergeant Rice went to the hallway and observed a male on the ground, not moving, with a handgun in his right hand.

Officer Jamie Thibodeau: Officer Jamie Thibodeau is assigned to the patrol division of the Northglenn Police Department, and is a member of the Northglenn/Thornton SWAT Team. On May 28, 2015, Officer Thibodeau coordinated the SWAT briefing for entry into the residence and provided the team with the information on the no knock warrant and photographs associated with the underlying investigation. He was assigned as the number four person to enter the residence. After the briefing, the officers conducted rehearsals relative to the plan for entry into the residence. Officer Thibodeau recalled that once the door was breached and entry was made into the residence, officers made repeated announcements: "SWAT Team, Search Warrant! SWAT Team, Search Warrant!" Upon entry into the residence, Officer Thibodeau went directly to the kitchen and living area to assist Sergeant Rice maintain security of the individuals located there. Officer Thibodeau then heard an unknown number of gunshots. He heard what he described as a distinct difference between the caliber of guns being fired, but did not know in what order. It appeared to be all one episode to him, as he did not hear a pause between shots.

Sergeant Dan Wilson: Sergeant Dan Wilson is employed with the Thornton Police Department and assigned to the Northglenn/Thornton SWAT Team. On May 28, 2015, Sergeant Wilson attended the briefing at Northglenn Police Department that included the background investigation, purpose for the no knock search warrant, criminal history of the suspect, and the operations plan. The officers also reviewed photographs of the exterior of the home, the interior floor plan and photographs taken from James Strong Jr.'s facebook page. Sergeant Wilson was assigned as the entry team leader. As entry team leader, Sergeant Wilson's responsibilities were to control the movement in the interior and to make sure the plan is executed appropriately.

Sergeant Wilson described the process of how the Team proceeded to the suspect's home and recalled hearing an announcement of police presence through the public announcement

system of the SWAT vehicle prior to entry into the home. Sergeant Wilson approached the home with the entry team and deployed a flash bang in the front yard as a diversion tactic. Officer Couture breached the door and the officers began to make entry into the residence. Sergeant Wilson recalled hearing a small caliber handgun fire first and then hearing a “.223” return fire. Sergeant Wilson went towards Detective Schlenker in the hallway and observed a male on the ground bleeding from his head with a handgun lying next to him. He proceeded to check Officer Wilson’s injuries and immediately applied a tourniquet to Officer Wilson’s leg. He observed a female on the far side of the bedroom yelling and screaming and escorted her out of the home.

Officer Matt Brooks: Officer Matt Brooks is an officer with the Thornton Police Department and is assigned to the SWAT Team. On May 28, 2015, Officer Brooks was assigned as team leader for the rear entry of the residence. After the backdoor was breached, Officer Brooks was standing in the kitchen area. Officer Brooks could hear announcements inside: “Police, Search Warrant!” continuing until he heard gunfire. He recalled hearing two to four distinct small caliber sounds, followed by “.223” rounds, and estimated that he heard between five to six shots fired. He noted it was not a continual volley between the two types of weapons; the weapons appeared to be firing back and forth.

Lanhisha Richmond: Lanhisha Richmond is a resident of 10909 E. 109th Place and James Strong Jr.’s fiancée. She was interviewed by Detective Jessica Beren and Detective Luis Lopez on May 28, 2015. She stated that on May 28, 2015, she was in bed sleeping with James Strong Jr. The bedroom was dark. She awoke to the sound of rumbling. Mr. Strong also awoke and retrieved a gun from underneath the mattress. She believed the gun was a 9mm handgun. She described seeing Mr. Strong open the door that was just barely cracked open, carrying the gun in his hand. Through the door, she saw army green fatigues. The door opened and then the SWAT officers had guns in their faces and started shooting. According to Ms. Richmond, Mr. Strong fell to the ground as the SWAT officers continued shooting. She described the officers coming in and immediately shooting because Mr. Strong had a gun in his hand. She did not remember Mr. Strong shooting his gun. She stated that she purchased the firearm used by Mr. Strong.

CRIME SCENE INVESTIGATION

Criminalist Ivania Stene with the Westminster Police Department gathered evidence and processed the scene at 10909 E. 109th Place. Additionally, Westminster Senior Criminalist Chandra Thurston, Broomfield Senior Criminalist B. Harris, Broomfield Crime Scene Investigator S. Caldwell, Colorado Bureau of Investigation Crime Scene Analyst Erick Bryant, and CBI Forensic Scientist Megan Honderd all assisted with processing the scene.

Criminalist Stene collected and examined the firearm used by Detective Schlenker during the incident. The weapon is identified as a Colt, M4 Carbine .223 caliber rifle with a “suppressor,” a mechanism designed to muffle the sound of the gun discharge. The rifle has the ability to fire in automatic or semi-automatic mode. Criminalist Stene’s inspection revealed that the weapon was set to the semi-automatic mode. The magazine had a maximum capacity for thirty rounds and nineteen were present, leading to the conclusion that eleven rounds were fired from the weapon during the incident.

Officer Nicholas Wilson's weapon was examined by CSI B. Harris with the Broomfield Police Department. Officer Wilson had a semi-automatic Colt, M4 Carbine .223 caliber rifle, set to the semi-automatic mode. The magazine had a maximum capacity for thirty rounds and fifteen were present, leading to the conclusion that fifteen rounds were fired from the weapon during the incident. Both firearms were sent to CBI for further examination and analysis. Both rifles were determined to be functioning properly.

The team of criminalists conducted a thorough examination of the residence at 10909 E. 109th Place. The house is a one-story, two-bedroom home with a basement and an unattached garage on the east side of the house. The front door faces south. Upon entry into the home, through the front door, is the living room; straight ahead is a hallway that leads to the west part or, from entry, the left portion of the home. There is a bedroom located at the western end of that hallway in the northwest corner of the home. There is another bedroom just south of the hallway where the shooting occurred. That bedroom appears to be the "master" bedroom and is in the southwest corner of the residence. The bathroom is located north of the hallway, immediately opposite the master bedroom. The kitchen is located north of the living room and leads to a rear door and basement entry.

The suspect was located on the floor in the southwest or "master" bedroom on his left side, with his feet directed south and head directed north. He was wearing a white t-shirt and black shorts. A handgun was located on the floor next to the suspect and his right hand was around the grip of the gun. The handgun was identified as a Ruger, SR9 .9 mm handgun. The magazine had a maximum capacity of ten rounds. Criminalist Stene observed six rounds in the magazine and one round in the chamber of the weapon.

Three spent casings of .9 mm caliber were located in the southwest or "master" bedroom; one on the floor near the door, one on the top of some items of clothing next to the door, and one on a pile of clothes by the closet. Three projectiles consistent with .9 mm ammunition were recovered from the scene. A projectile was located on the floor in the hallway leading to the bedrooms containing what appeared to be wood particles. A second projectile was located in the floor inside the living room closet which appeared to have drywall particulates. A final projectile was recovered from Officer Wilson's tactical vest on the front of his SWAT uniform.

There were numerous bloodstain patterns located throughout the southwest bedroom. Criminalist Stene conducted blood stain pattern analysis on each of the distinct areas. Significantly, the blood spatter patterns on the north wall inside the bedroom were consistent with the male suspect having been upright or in a standing position in the bedroom at the time of impact. The other blood spatter patterns analyzed appear from the floor to several feet above the floor, indicating impact points near the ground.

CBI Crime Scene Analyst Bryant did a trajectory analysis based on the evidence at the scene. The hallway walls of the residence revealed multiple penetrating defects in the drywall. The first area examined revealed a hole on the north wall and one on the east wall at the end of the hallway. Both were consistent with bullet holes approximately three feet above the floor.

The second area examined revealed twelve holes in the south wall with dark gray areas of suspected soot surrounding the holes, indicating close proximity to the barrel of a firearm. The trajectory rods used to examine the defects aligned with several defects noted in the door, floor and baseboard of the master bedroom. An additional defect was noted on the master bedroom door. This defect was located on the western exterior corner edge of the door at the height of about four feet above the ground.

MEDICAL EXAMINATION ANALYSIS:

On May 29, 2015, Dr. Jim Caruso conducted an autopsy of the male suspect identified as James Strong Jr. The decedent had visible gunshot trauma to the right side of his face, neck, chest, arms, left hand middle finger and lower extremities. The decedent had a visible broken right femur from a possible gunshot wound. Dr. Caruso identified nineteen possible entry wounds, one being an exit and re-entry wound. Dr. Caruso determined all shots were fired from a right to left and downward angle. The decedent toxicology test was positive for THC 14.9ng/ml. Dr. Caruso classified the manner of death as a homicide and the cause of death as multiple gunshot wounds.

LEGAL ANALYSIS:

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. In this instance, in order to file a criminal charge, the District Attorney's Office must prove beyond a reasonable doubt that Officer Nicholas Wilson and Detective Schlenker's actions were not justified under the circumstances surrounding this incident and the applicable law.

There is no dispute that Officer Nicholas Wilson and Detective Jason Schlenker fired their weapons causing the death of Mr. James Strong Jr. Likewise, there is no dispute that, at the time of Mr. Strong's death, Officer Wilson and Detective Schlenker were both law enforcement officers engaged in the course of their duty executing a no-knock search warrant. The legal question presented to the Office of the District Attorney is whether, at the time Officer Wilson and Detective Schlenker fired their weapons, the prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (2014), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

(1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(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; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If they believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” §18-1-901(3)(d), C.R.S. (2014).

LEGAL ANALYSIS AS TO OFFICER NICHOLAS WILSON

Officer Nicholas Wilson was engaged in the execution of a no-knock search warrant for a suspect considered to be armed and dangerous in connection with a narcotics investigation. As he proceeded to clear the residence that was the subject of the search warrant, he observed a young girl in a bedroom at the end of a hallway. When he opened the door to another bedroom, he encountered a male suspect standing on the other side of the threshold with a raised gun. The male fired the gun at Officer Wilson as he opened the door. Officer Wilson felt the pain in his arm and leg associated with the gunshot wounds he suffered. As he perceived the suspect shooting at him, Officer Wilson pointed and fired his weapon at the suspect and tried to move away from the bedroom door. Officer Wilson observed the male continue to shoot his weapon even while the male had fallen to the ground. Officer Wilson was shot a total of three times by the male.

The physical evidence collected at the scene corroborates Officer Wilson's account that James Strong Jr. fired his .9 mm handgun from inside the bedroom. Mr. Strong was found lying in the "master" bedroom with his right hand wrapped around the grip of a .9 mm handgun. Investigators also discovered three spent shell casings in the bedroom. In addition, projectiles consistent with .9 mm ammunition were discovered in Officer Wilson's tactical vest, as well as in the hallway and inside the closet.

The trajectory of the gunfire also supports Officer Wilson's explanation of events. Officer Wilson described first seeing the male suspect in a standing or upright position with a raised handgun, seeing the muzzle flash, hearing two shots, and feeling the pain of the gunshot wound to his arm. He then described firing his gun at the suspect and the suspect continuing to fire as he went to the ground, at which point Officer Wilson felt the gunshot wound to his leg. The gunshot wound to Officer Wilson's right arm and the projectile in his tactical vest are consistent with the first two shots taken by the suspect while positioned upright. The gunshot wound to Officer Wilson's leg is consistent with the male being in a lower position, whether during the fall or while he was on the ground.

Further, other officers' descriptions of the gunfire and the physical evidence corroborate Officer Wilson's account of returning fire only after the male suspect fired his weapon. Several officers inside the residence described hearing a smaller caliber weapon fire before hearing the gunfire from what they recognized as a higher caliber weapon. The twelve holes in the south wall of the hallway surrounded by soot support Officer Wilson's statement that he fired his semi-automatic weapon through the wall in the direction of the suspect as he was trying to move away from the threat he perceived.

Officer Wilson explained that, at the time he fired his weapon, he was in fear for his life, as well as the lives of the other individuals in the residence. Under these facts, the prosecution cannot prove that Officer Nick Wilson's actions were not justified as applied to §18-1-707, C.R.S. (2014).

LEGAL ANALYSIS AS TO DETECTIVE JASON SCHLENKER

Detective Jason Schlenker was covering Officer Wilson when Officer Wilson proceeded down the hallway to clear the residence. He heard shots from a small caliber gun and observed Officer Wilson flinch. Through the bedroom door, Detective Schlenker described seeing an armed male actively shooting at Officer Wilson. He observed the male continue to shoot his weapon even while the male was on the ground. Detective Schlenker stated that, at the time he fired his weapon, he was in fear for his life, as well as for the life of Officer Wilson. Under these facts, the prosecution cannot prove that Detective Jason Schlenker's actions were not justified as applied to §18-1-707, C.R.S. (2014).

CONCLUSION

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against either Officer Nicholas Wilson or Detective Jason Schlenker for the fatal shooting incident involving James Strong Jr. on May 28, 2015. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,



Dave Young
District Attorney

C: Commander Dante Carbone
Commander Kevin Currier
Commander Dean Villano