



December 22, 2017

Sheriff Michael McIntosh
Adams County Sheriff's Office
332 N. 19th Avenue
Brighton, CO 80601

Re: The investigation and legal analysis of the death of Gaston Dominguez-Dominguez, dob 08/05/1975, occurring on September 22, 2017.

Dear Sheriff McIntosh:

The investigation and legal analysis of the death of Gaston Dominguez-Dominguez is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Westminster Police Detectives Bernard Vonfeldt and Sarah Jourdan. The CIIT 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 our office on November 14, 2017. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of 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 officer 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 the involved 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.

The Incident

On September 22, 2017, at approximately 12:15 p.m., Adams County Sheriff's Deputy Geoffrey Coster made a traffic stop of a 2004 white Ford F-150 pickup truck at the Shell gas station located at 9001 Monaco St. in unincorporated Adams County. Deputy Coster stopped the vehicle because the license plate was registered to a blue Dodge truck. The single occupant male driver gave Deputy Coster a passport identification card with the name Jose Luis Rodriguez. In the course of running the name through the crime information database, Deputy Coster noticed information revealing that the individual was denied possession of firearms or explosives. There was no other record of this individual's name or passport number.

Deputy Coster returned to the vehicle and contacted the male driver. The male consented to a search of the vehicle and got out of the vehicle. Upon the male's exit, Deputy Coster performed a pat-down search for his safety. The male immediately reached for his waist and broke free from Deputy Coster's contact. The male fled on foot and ran northbound up Monaco Street. He crossed Monaco Street and climbed a six-foot chain-link fence. Deputy Coster pursued the driver to the fence, where he tried to apprehend him with a Taser, but was unsuccessful. The male cleared the fence and continued to run into a field, where Deputy Coster lost sight of him. Deputy Coster reported the incident on his radio and returned to the location of the traffic stop.

A number of law enforcement officers with the Adams County Sheriff's Office arrived in the area to search for the suspect. Sergeant Ian Austin observed the suspect run southbound across 88th Avenue, where he scaled a barbed-wire fence. Sergeant Austin tried to stop the suspect by grabbing him and deploying his Taser, but was unsuccessful. The suspect continued running toward a business complex located at 6255 E. 88th Avenue.

Sergeant Austin drove around to the south side of the business complex. He continued his search on foot, ultimately catching up to the suspect as he climbed another barbed-wire fence. The male again refused Sergeant Austin's commands to stop. Sergeant Austin followed the suspect over the fence and caught up to him. The suspect took an aggressive stance and came at Sergeant Austin, striking him in the face multiple times. Sergeant Austin attempted to fight back by striking the male in the face and kicking him between the legs. The male was undeterred and continued to engage Sergeant Austin. Sergeant Austin attempted to deploy his Taser, but was again unsuccessful. The suspect attempted to grab the Taser and, during the struggle, the suspect disarmed Sergeant Austin of the Taser. During the hand-to-hand fight, the suspect also reached for the holster for Sergeant Austin's firearm. Sergeant Austin fought him off. Sergeant Austin disengaged from the suspect and drew his firearm. He pointed his gun at the suspect and yelled, "Stop! I'm going to shoot you!" However, the suspect continued to advance. Sergeant Austin tried to retreat from the suspect and fell backwards to the ground. The male refused commands to stop and continued coming toward Sergeant Austin. As the male continued to advance closer, Sergeant Austin felt that his life was in danger. Sergeant Austin fired his handgun three times at the male, killing him. The male was later identified as Gaston Dominguez-Dominguez.

Witness Interviews

Investigators from various law enforcement agencies including the Westminster Police Department, Thornton Police Department, Brighton Police Department, Commerce City Police Department, and the District Attorney's Office conducted interviews of the necessary witnesses. The following are summaries of the interviews pertinent to this review.

Deputy Geoffrey Coster: Deputy Geoffrey Coster is a patrol officer with the Adams County Sheriff's Office. Westminster Detectives Vonfeldt and Jourdan conducted his interview hours after the incident.

Deputy Coster said he was working routine patrol on September 22, 2017. He wore a standard-issue uniform with a badge affixed to his breast area. Around noon, he drove his marked patrol vehicle to the Shell gas station located on the frontage road of Interstate 76 near the 88th Avenue exit. A white Ford F-150 pickup truck turned in front of him and he ran a database check on the license plate. The license plate registered to a blue Dodge truck. Deputy Coster activated his emergency lights and the pickup stopped.

Deputy Coster walked up to the pickup to contact the driver and sole occupant. The driver held a passport identification card outside the window. The name on the card was Jose Luis Rodriguez. Deputy Coster told the driver why he stopped him and asked some questions about the vehicle. The driver spoke in broken English and held up what appeared to be burritos wrapped in foil. He said something about "work." From his actions and the language he used, Deputy Coster assumed the man was trying to explain that he was getting lunch and returning to work. Deputy Coster described the man as wearing blue jeans and an orange "work shirt" with a roofing logo on the front pocket.

Deputy Coster ran the name on the passport identification card through his computer database and noticed information regarding the denial of issuance or possession of firearms or explosives. The name and passport number revealed no further record or other information. Deputy Coster returned to the vehicle to contact the driver and asked him if there were any weapons in the vehicle. The driver acted "fidgety" and responded, "No, you can look." Deputy Coster opened the door and the driver stepped out of the truck.

Deputy Coster asked the man to face the car, so he could conduct a pat-down search for weapons. He had the man interlock his fingers on top of his head. As Deputy Coster placed his hand on the man's hands, the man quickly pulled down his right arm and reached down to his waist. Believing the man might be reaching for a weapon, Deputy Coster disengaged from his contact with the man and drew his handgun. The man ran away from Deputy Coster. He ran north up Monaco Street, just west of the Shell gas station. Deputy Coster chased after him, repeatedly yelling, "Stop! Get on the ground! Police! You're under arrest!" The man held his right arm down by his abdomen the entire time he ran, leading Deputy Coster to think he may possess a weapon in his front waist area. Deputy Coster caught up to the man as he climbed a fence. Deputy Coster attempted to fire his Taser at the man, but missed. The man continued up over the fence. The man ran through a dirt field west of Monaco Street and Deputy Coster lost sight of him.

Deputy Coster called out on the radio that he was chasing a suspect from a traffic stop. He gave a description of the man and the location he saw him run. He also reported that he did not know if the man was armed, but that he acted "skittish" when asked about firearms. Deputy Coster returned to the location of the truck and stood by listening to the radio traffic of fellow officers in the area searching for the suspect.

Sergeant Ian Austin: Sergeant Ian Austin is a patrol supervisor for the Adams County Sheriff's Office. Westminster Detectives Vonfeldt and Jourdan conducted two interviews of Sergeant Austin—one hour after the incident and again later, on September 26, 2017—both interviews were in the presence of his attorney.

On September 22, 2017, Sergeant Austin was working as a patrol shift supervisor. He wore a standard-issue patrol uniform, complete with a badge on his breast. He carries a Glock model 22 .40 caliber handgun as his primary firearm. Sergeant Austin also carries other less lethal weapons such as chemical pepper spray, a Taser, and a collapsible baton. He is an instructor for firearms as well as for defense tactics, known as "arrest control."

Around 12:45 p.m., Sergeant Austin overheard through radio dispatch that Deputy Coster stopped a suspicious vehicle at the Shell gas station near I-76 and 88th Avenue. Sergeant Austin was aware that the stop involved an investigation into a license plate that did not match the vehicle. Sergeant Austin later heard Deputy Austin report that he was in a foot pursuit with the suspect driver, described as a Hispanic male wearing an orange shirt. He also heard Deputy Coster report that the suspect got "really squirrely" during a pat-down search and that he might be armed. Sergeant Austin drove his patrol vehicle to the area with his emergency lights and siren activated.

As Sergeant Austin arrived near the location of the stop, he heard that the suspect crossed 88th Avenue and they needed cover in the area. He drove to 88th Avenue, where he observed a Hispanic male wearing an orange shirt climbing a six-foot chain-link fence to the south. He estimated the suspect's physical stature as approximately 6'4" and 250 to 300 pounds. He got out of his vehicle and ran to the fence, where he observed the suspect straddling the barbed wire at the top. With his Taser deployed, Sergeant Austin ordered the suspect to get off the fence. The suspect ignored his commands and continued over the fence. Sergeant Austin discharged his Taser in an attempt to apprehend the suspect, but missed. Sergeant Austin dropped his Taser and attempted to grab the suspect's arm and leg, telling him, "Get down off the fence, you're under arrest." The suspect broke free and was able to get to the other side of the fence. The suspect ran through the yard and past a row of semi-trailers, where Sergeant Austin lost sight of him.

Sergeant Austin returned to his vehicle and drove around to the area where other officers were located. He drove into the business complex from the west side and parked his vehicle. He got out on foot and walked through a building looking for the suspect. Over the radio, he heard officers report that the suspect was on the north side of the building. When Sergeant Austin came out of the building, he heard a rustling sound and saw the suspect running away from him from a distance of approximately one hundred yards. The suspect climbed a chain-link fence and

Sergeant Austin followed him over the fence. Sergeant Austin called out to him, "Stop! You're under arrest!" The suspect ignored the commands to stop and continued running.

Sergeant Austin caught up to the suspect and shoved him from behind. The suspect fell down, but got back up, turned around and faced Sergeant Austin in a "fighting stance." Sergeant Austin described the suspect standing with his feet shoulder width and holding his fists up near his face as if he were ready to fight. Sergeant Austin told the suspect he was under arrest and ordered him to the ground. Sergeant Austin reached for the suspect's right wrist. The suspect punched Sergeant Austin in the face three or four times with his left fist. Sergeant Austin grabbed the suspect's right side and continued to give him loud verbal commands to stop. The two engaged in hand-to-hand combat and fell against the chain-link fence. As they fought, Sergeant Austin felt the suspect reach for his Taser. Sergeant Austin used his thumb to gouge at the suspect's left eye and ordered the suspect to stop. He felt the Taser come out of his holster and fought the suspect for control of the Taser. Sergeant Austin was able to get the Taser out of the suspect's hand, and attempted a "drive stun" on the suspect by placing the Taser against the suspect's chest and pulling the trigger. Sergeant Austin pulled the Taser trigger a couple of times and realized that he forgot to release the safety. When he released the safety and pulled the trigger, the suspect was able to block the Taser and Sergeant Austin stunned his own hand. Realizing the Taser was ineffective, Sergeant Austin tossed it.

The suspect again took a "fighting stance." Sergeant Austin believed he could not beat the suspect in a boxing match. As such, Sergeant Austin kicked him in the groin, thinking that he could control him if he could get him to the ground. The suspect was not subdued. He punched Sergeant Austin in the face and Sergeant Austin again grabbed ahold of him. The two continued to engage in a struggle. There were no other deputies around. Sergeant Austin tried to reach for his radio, but it had fallen off his hip. He lost his earpiece and chest microphone. He reached for his microphone, but could not find it. He felt the suspect grabbing at the holster for his firearm affixed to his left side. He fought the suspect off his gun and was able to disengage and get about ten feet away from the suspect.

Sergeant Austin drew his handgun and again instructed the suspect to get on the ground as he was under arrest. The suspect advanced toward Sergeant Austin, coming within a distance of approximately ten feet. Sergeant Austin tried to retreat by taking a few steps backward. As he did so, he repeatedly yelled commands including, "Stop, or I'll fucking shoot you!" Sergeant Austin described the area as "brush," consisting of broken tree limbs and downed tree branches. As he was walking backward, Sergeant Austin stumbled and fell onto his back. The suspect continued to advance forward and got within a distance of approximately five feet of Sergeant Austin. Sergeant Austin was concerned that the suspect repeatedly ignored his commands and continued to advance. Additionally, the suspect was no longer trying to flee and had become aggressive, as he punched Sergeant Austin several times, tried to disarm his Taser, tried to disarm his firearm. Sergeant Austin believed the suspect was physically larger and was worried that the suspect would gain control of his firearm and kill him. With the suspect continuing to approach, Sergeant Austin pointed his .40 caliber handgun at the suspect's chest and fired it three times. When he pulled the trigger, he estimated that the suspect was a distance of approximately three to five feet away from him.

After he fired the shots, Sergeant Austin saw the suspect stop and fall backward. Sergeant Austin got up on his feet and held the suspect at gunpoint. During this time, he was able to find his microphone and report shots fired. He saw his fellow officers and motioned for them to come over. Other deputies handcuffed the suspect and assessed his condition.

Commander Sam Thede: Commander Sam Thede was at the Adams County Sheriff's Office substation in Commerce City when he heard Deputy Coster report that he was in a foot chase with a suspect. He left the substation and drove his unmarked patrol vehicle to the area of the traffic stop. He spoke with Deputy Coster about the incident and then drove to the field where the suspect ran west of the Shell station. Commander Thede encountered Deputy Padilla, who was driving a marked patrol vehicle through the area.

Commander Thede observed the suspect running south up a dirt hill toward E. 88th Avenue. Commander Thede and Deputy Padilla both got out of their vehicles and chased the suspect on foot, yelling verbal commands to stop. The suspect ignored the commands and continued running toward E. 88th Avenue.

Commander Thede returned to his vehicle and drove over to the business complex at E. 88th Avenue and the frontage road for Interstate 76. He entered from the southeast corner and got out of his vehicle. While he was looking for the suspect, Commander Thede heard gunshots to the north of a building within the complex. He ran over to the location of the shots, where he saw Sergeant Austin and the suspect with the orange shirt.

Sergeant Doug Templeton: Sergeant Doug Templeton drove to the business complex at E. 88th Avenue in response to Deputy Coster's report that he was in a foot pursuit of a suspect. He followed Sergeant Austin's patrol vehicle into the area and parked on the west side. He saw the suspect peer from the north side of a building. He heard the sound of a chain-link fence rattling and saw the suspect run eastbound. Rather than scale the fence, Sergeant Templeton ran east around the other side of the building. He heard shots fired while he was on the other side of the building.

Joseph Swanson: Westminster Detective Troy Gordanier interviewed Joseph Swanson hours after the incident. Mr. Swanson works at a business called "Remainders Estate Services," located at 6300 E. 88th Avenue, the property southwest of the intersection of the Interstate 76 frontage road and 88th Avenue. He was in the back area of the building cleaning up around the garage door when he heard a voice yell, "I'm gonna shoot you" two times. The voice came from the area overgrown with trees behind the business. He decided to go inside and tell his boss what he heard. On his way in, he noticed a marked police car drive to the back area. When he came back outside, he again heard someone yell, "I'm gonna shoot you, get down! Don't move!" approximately four more times. During the shouting, he also heard the sound of tree branches breaking. He then heard three gunshots.

Other Witnesses: There were a number of other law enforcement officers who were interviewed in connection with the investigation of this incident. In summation, these officers either were on scene or in route to the scene of the original traffic stop based on Deputy Coster's report that he was in a foot pursuit of the suspect driver of the traffic stop. These officers'

interviews are not summarized here because their interviews did not add significant details to the investigation of the incident.

In addition, investigators canvassed the businesses in the area of the Interstate Business Park in an effort to identify additional witnesses. None of the individuals contacted had any further information beyond what is summarized herein.

Crime Scene Investigation

Criminalist Chris Pardo from the Westminster Police Department and Criminalist Shobian Callahan from the Thornton Police Department processed the scene and the evidence. There were two scenes—the scene of the traffic stop and the scene of the shooting. The traffic stop was located at the Shell gas station located at 9001 Monaco Street, near the interchange of E. 88th Avenue and Interstate 76. At that location, criminalists observed a 2004 white Ford F-150 pickup truck that was sealed and transported for further processing. A “sand pit” construction yard exists on the other side of Monaco Street to the west of the Shell station. A six-foot barbed-wire fence surrounds the area. Criminalists found a Taser cartridge with probes attached on the ground near the fence line to the sand pit.

The scene of the shooting was located at 6255 E. 88th Avenue, a private business complex called “Interstate Business Park,” consisting of warehouses, garages, vehicles, trailers and various other heavy equipment. The decedent was located along the northern edge of the property, between a building and a six-foot high barbed wire fence. The length of the building runs east to west, parallel to the fence line. The area immediately surrounding the decedent consisted of heavy foliage, cut tree limbs, empty drum barrels, and wooden pallets. The decedent was lying on the ground, face up, his feet to the east and his head to the west. The distance between the building and the northern fence line is approximately twenty feet. The decedent’s feet were approximately twenty feet to the west and fourteen feet to the north of the northeast corner of the building. A cluster of three .40 caliber shell casings lay in the tree limbs approximately five feet north of the decedent’s feet. Criminalists found a Taser thirty-three feet to the west of the decedent’s head. This Taser was later discovered to be issued to Sergeant Austin.

Criminalists conducted a search of the area around 88th Avenue for evidence associated with the decedent’s flight from officers. On the south side of E. 88th Avenue, a barbed-wire fence surrounds the business complex. A Taser cartridge was located on the ground just north of the barbed-wire fence, near the area law enforcement officers reportedly saw the decedent climb the fence and run into the yard. The probe wires for the cartridge remained attached and clung to the top of the fence.

The criminalists collected Sergeant Austin’s firearm and examined it. The firearm is described as a Glock 22, .40 caliber semi-automatic pistol. At the time of examination, the weapon contained one live round in the chamber and thirteen (13) rounds in the magazine. The magazine is at full capacity with sixteen (16) rounds. Sergeant Austin reported that he started his shift with a full magazine and one round in the chamber, totaling seventeen (17) rounds in the

weapon. As such, the round accountability was consistent with three rounds fired from the weapon.

Investigators observed the available surveillance video from the Shell gas station, but it did not prove helpful to the investigation. Apparently, there was an electrical power outage in the area around the time of Deputy Coster's traffic stop.

Radio Traffic

Investigators collected the recorded audio of the radio traffic from the time of Deputy Coster's traffic stop of the white Ford F-150. This exchange followed Deputy Coster's report that he was in a foot pursuit with a Hispanic male wearing an orange shirt:

1A67 (Deputy Coster): I don't know if he's armed. He a, got real fidgety about weapons and took off running.

Dispatcher: "Copy. Unknown if he's armed."

K7 (Deputy Trail): I broke and I'm in route. Do we have charges on this party? Have they been trafficked?

1A67 (Deputy Coster): Not that I can tell. There was something in the system about a warrant and firearms and explosives. Still waiting on that.

The radio traffic continues with exchanges between the officers reporting the location of suspect near E. 88th Avenue. Sergeant Austin was part of the communication confirming that the suspect climbed a fence south of 88th Avenue and was walking towards the business complex. There were no further radio calls made by Sergeant Austin before other officers communicated shots fired.

Decedent Information

Through fingerprint analysis, investigators identified the deceased male as Gaston Dominguez-Dominguez, date of birth, 8/5/1975. Subsequent to his identification, law enforcement officers researched criminal history databases and located a number of police contacts and a relatively lengthy criminal history. Additionally, this information showed active arrest warrants for Mr. Dominguez at the time of the incident.

Further background investigation revealed that on June 21, 2017, Colorado State Patrol stopped Mr. Dominguez driving a maroon Ford F-350 pickup on Interstate 25 near Castle Rock. The truck contained a large amount of illegal narcotics hidden in the tailgate. Mr. Dominguez admitted to transporting the drugs to Denver from Phoenix in exchange for \$2,000. He was arrested, jailed, and subsequently charged with felony charges in Douglas County. These charges were pending at the time of his death.

Following his June 2017 arrest, Immigration and Customs Enforcement (ICE) took Mr. Dominguez into their custody. On August 11, 2017, Mr. Dominguez received an order of deportation and was released to Mexico through the Port of Entry in Nogales, Arizona. According to ICE records, Mr. Dominguez was also deported in 2008.

A search of the criminal database pertaining to the name "Jose Luis Rodriguez" on the passport identification card given to Deputy Coster revealed the following information:

***** NOTICE: DO NOT DETAIN OR ARREST BASED ON THIS HIT. THE DATE OF NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) DENIAL (DND) PROVIDED IN THIS RECORD IS THE DATE THE SUBJECT WAS DENIED BY THE NICS FROM THE RECEIPT AND/OR THE POSSESSION OF A FIREARM OR THE ISSUANCE OF A FIREARM OR EXPLOSIVES PERMIT PURSUANT TO STATE AND/OR FEDERAL LAW. HOWEVER, IT IS POSSIBLE THIS SUBJECT MAY NO LONGER BE A PROHIBITED PERSON.

There was no further record of this name beyond the reference to the NICS denial.

Medical Examination Analysis

On September 25, 2017, Dr. Stephen Cina conducted an autopsy of the male identified as Gaston Dominguez-Dominguez. Mr. Dominguez was measured at a height of 5'9", weight of 203 lbs.

There were three penetrating gunshot wounds to the body—one to the head, one to the chest, and one to the right shoulder region. Three bullet projectiles were located and collected. The trajectory of the three wound paths was front to back. Dr. Cina concluded that the wound to the chest was the fatal injury, as it lacerated the heart, lung, and liver, causing internal bleeding. The remaining gunshot wounds were non-fatal. There were also a number of non-fatal abrasions and contusions located on the head, torso and extremities.

The decedent's toxicology report revealed positive levels of Benzoylcegonine, a primary metabolite of cocaine, supporting a conclusion that he ingested the substance some hours prior to death. Dr. Cina determined the cause of death to be multiple gunshot wounds; the manner of death to be homicide.

Legal Analysis

As was previously noted, this review is limited to a determination of whether to file criminal charges against the involved officer. 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 any of the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Sergeant Austin fired his handgun at Gaston Dominguez-Dominguez causing his death. At the time of the shooting, Sergeant Austin was engaged in the course of his duties as a law enforcement officer seeking to apprehend who he believed to be a fleeing suspect of the earlier traffic stop. The legal question presented to the Office of the District Attorney is whether, at the time Sergeant Austin fired his weapon, the prosecution can prove beyond a reasonable doubt that his 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. (2017), 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

...

(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. (2016).

Here, through radio traffic, Sergeant Austin knew that Deputy Coster conducted a traffic stop of a suspicious vehicle for a license plate discrepancy. He later heard Deputy Coster report that he was in a foot pursuit with the suspect. He also heard that Deputy Coster did not know if the suspect was armed with a weapon and that the suspect acted “squirrely” during a pat-down search for weapons. As such, under the circumstances of this case, Sergeant Austin was attempting to effect an arrest of a suspect who fled from a justified traffic stop. Further, there was suspicion that the suspect might be armed with a weapon.

Upon arriving at the location, Sergeant Austin contacted the suspect climbing a fence. Sergeant Austin tried various non-lethal means of apprehending the suspect such as telling him he was under arrest and ordering him down from the fence, physically pulling him off the fence, and firing his Taser. None of these were successful, as the suspect actively resisted and continued to run away.

When Sergeant Austin caught up to the suspect a second time, he again tried to employ the non-lethal use of force to arrest the suspect. He told him he was under arrest and commanded him to stop, he shoved him down and tried to hold his arms. The suspect not only ignored the commands and physically resisted arrest; he actively fought Sergeant Austin and disarmed him of his Taser. The suspect punched Sergeant Austin multiple times and tried to reach for Sergeant Austin’s handgun. Once again, Sergeant Austin’s use of non-lethal force failed to subdue the suspect.

Once Sergeant Austin disengaged from the hand-to-hand combat with the suspect, he backed away. He drew his weapon and threatened to shoot the suspect if the suspect did not stop. The suspect continued advancing toward Sergeant Austin. As Sergeant Austin stepped backward to get away, he fell down to the ground. The suspect continued to move closer. Sergeant Austin explained that at the time he pulled the trigger, he was fearful that he could not continue to fight with the suspect. Given the suspect’s previous attempts to reach for the Taser and the handgun, Sergeant Austin was afraid that the suspect would eventually get his handgun and kill him.

Under the circumstances of this case, Sergeant Austin was attempting to effect an arrest of Mr. Dominguez, who fled from a justified traffic stop. Mr. Dominguez not only refused Sergeant Austin’s commands to stop, he became physically aggressive with Sergeant Austin, including trying to disarm him. There is no evidence to dispute Sergeant Austin’s reasonable belief that he was using reasonable and appropriate physical force to effect Mr. Dominguez’s arrest. Further, there is no evidence to dispute that Sergeant Austin fired his weapon at Mr. Dominguez because he reasonably believed it was necessary to defend himself from what he perceived to be the imminent use of deadly physical force by Mr. Dominguez. Therefore, the prosecution cannot prove that Sergeant Austin’s actions were not justified as applied to §18-1-707.

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Sergeant Austin for the killing of Mr. Dominguez on September 22, 2017. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young
District Attorney