



December 6, 2018

Chief Tim Carlson
Westminster Police Department
9110 Yates Street
Westminster, CO 80031

Re: *The investigation of the officer involved shooting of Michael Lee Gonzales, DOB: 11/13/1960, occurring on August 2, 2018.*

Dear Chief Carlson,

The investigation and legal analysis of the officer-involved shooting of Michael Lee Gonzales is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Thornton Police Detectives Fred Longobricco and Robin Danni. 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 October 18, 2018. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation was 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.

As further set forth herein, based upon the evidence presented and applicable law, there is no reasonable likelihood of success of proving beyond a reasonable doubt that the involved officer committed any crime during this incident. Therefore, no criminal charges will be filed against the involved officer.

The Incident

On August 2, 2018 at approximately 2:10 p.m. Westminster Police Officers were dispatched to a shoplifting involving two suspects at the Kohl's Department Store located at 11875 Sheridan Boulevard. Dispatch later advised responding officers that one of the suspects had threatened a Kohl's loss prevention officer with a knife and was fleeing the scene in a blue Chevrolet Aveo. Officer Anthony Guzman arrived on scene and observed the suspect Aveo leaving the Kohl's parking lot toward Sheridan Boulevard. The suspect Aveo eluded Officer Guzman through a surrounding neighborhood. Officer Guzman attempted a PIT maneuver on at least two occasions during the pursuit in an attempt to stop the suspect. The pursuit eventually ended up back at the Kohl's parking lot where the suspect Aveo drove northbound on the west side of Kohl's. Officer Guzman performed another PIT maneuver on the suspect Aveo causing it to spin around and stop.

Officer Guzman then got out of his marked patrol vehicle with his gun drawn and gave commands for the driver of the Aveo to "stop the car, get out of the car" and "put your hands up." The suspect Aveo revved its engine and accelerated forward before quickly reversing towards Officer Guzman. Officer Guzman fired his weapon at the driver of the Aveo stating that he felt his life was in danger and that he did not have time to get out of the path of the Aveo. The suspect Aveo then drove west and ended up in a ravine on the north side of the frontage road. The suspect driver, later identified as Michael Lee Gonzales, was later pronounced deceased at Good Samaritan Hospital.

Witness Interviews

Investigators with the 17th Judicial Critical Incident Team conducted interviews of all necessary witnesses at the Westminster Police Department. Though there were many witnesses interviewed, only the involved officers and material witnesses are specifically summarized herein.

Officer Anthony Guzman

Thornton Police Detectives Fred Longobricco and Robin Danni interviewed Officer Guzman shortly after this shooting incident with his attorney present. Officer Guzman has been with the Westminster Police Department since October of 2017 and has an additional two years of experience with the Littleton Police Department.

On August 2, 2018, he was on routine patrol when he responded to a report of a shoplift at the Kohl's department store located at 11875 Sheridan Boulevard in Westminster. While Officer Guzman was in route, he read in the dispatch notes that the suspect had "produced a knife" and showed it to a Kohl's loss prevention officer. Officer Guzman then heard on his police radio that the suspect was fleeing westbound in a blue Chevrolet Aveo. Officer Guzman then activated his marked patrol car's emergency lights and sirens as he continued to the Kohl's.

As Officer Guzman approached the Kohl's, he saw the suspect's vehicle exit the Kohl's parking lot on to 118th Avenue heading toward Sheridan Boulevard. Officer Guzman pursued

the suspect with his lights and sirens still activated, but the driver of the Aveo did not stop. Officer Guzman pursued the Aveo through several surrounding streets. When the Aveo slowed down at the 118th block of Sheridan Boulevard, Officer Guzman attempted a PIT maneuver by striking the driver's side rear of the Aveo with the front of his patrol vehicle in attempt to stop the suspect, however the suspect continued to elude Officer Guzman. The suspect turned right on Chase Street and the pursuit continued back towards the Kohl's parking lot area. Prior to returning to the Kohl's store parking lot Officer Guzman attempted a second PIT maneuver to no avail.

When the suspect's Aveo entered the frontage road in the parking lot of Kohl's, Officer Guzman initiated a third PIT maneuver which caused the Aveo to spin and it stopped. Officer Guzman got out of his patrol car, pulled his duty weapon and yelled commands at the driver. Officer Guzman repeated commands to "stop the car, get out of the car" and "put your hands up." The driver ignored these commands and looked directly at Officer Guzman and shook his head no. The driver of the Aveo revved its engine loudly and accelerated forward to the north on to the curb of the frontage road. Although Officer Guzman had his service weapon pointed at the driver, he did not fire at that time because he did not feel he was in danger. Officer Guzman moved to the back of the suspect's vehicle to get out of danger. Officer Guzman continued to give commands, but the suspect vehicle quickly accelerated in reverse at a high rate of speed in his direction. Officer Guzman said he became concerned that the suspect was going to "run me over" or that the vehicle was going to "whip around" and hit him. At that point, Officer Guzman fired his weapon at the driver of the Aveo.

Officer Guzman fired his weapon until the driver slumped down and the vehicle changed direction. The Aveo jumped a nearby curb and crashed in a ditch and other officers arrived at the scene and provided medical assistance to the driver. Once Officer Guzman initiated the pursuit, he maintained an uninterrupted visual of the vehicle. When Officer Guzman got out of his patrol car, after the successful PIT, he was "close" to the suspect's vehicle. Officer Guzman did not know if the suspect had his side windows up or down, but based on the suspect shaking his head "no" and the suspect's body language Officer Guzman felt that the suspect could hear his commands.

When the vehicle initially accelerated on to the curb, Officer Guzman did not feel threatened and was able to easily step to safety. However, when the vehicle reversed, it was close enough to cause him to be in fear of being hit. The vehicle was moving fast enough that he could not get out of the way. Officer Guzman estimated that he was approximately "arm's length" from the vehicle at this time he shot and was in fear for his life. Officer Guzman did not recall how many times he shot his firearm.

Officer John Bradshaw

On August 2, 2018 shortly after this incident Adams County Sheriff's Office Detective Liliana Cano interviewed Westminster Police Officer John Bradshaw regarding this incident. Officer Bradshaw has been a patrol officer with the Westminster Police Department for over a year. Officer Bradshaw also has nine years of experience as a patrol officer with the Phoenix Police Department.

Officer Bradshaw and Officer Guy Saruwatari were riding together in a marked patrol vehicle and were dispatched to the Kohl's Department Store at 11875 Sheridan Boulevard, Westminster, regarding an active shoplifting on August 2, 2018 at approximately 2:00 p.m. As they were on their way to Kohl's, Westminster dispatch aired that a male suspect was possibly involved in other shoplifting occurrences and that the shoplifting suspect pulled a knife on a loss prevention officer. Dispatch also aired that this suspect was exiting the Kohl's parking lot in a blue vehicle. Officer Guzman aired via the police radio that he was pursuing the suspect while Officer Bradshaw was driving to the location. As Officer Bradshaw was driving south bound on Sheridan Boulevard from W. 120th Avenue, he saw the blue suspect vehicle and two marked patrol cars following behind it northbound on Sheridan Boulevard.

The suspect continued to drive southbound in the northbound lanes at the intersection of W. 118th Place and Sheridan Boulevard. Officer Bradshaw saw Officer Guzman turn to go southbound in the southbound lane paralleling the suspect vehicle. The blue suspect vehicle then goes west at about W. 117th Avenue, with Officers Guzman and Officer Salazar following in their patrol vehicles.

The suspect vehicle then went northbound on Chase Street until it turns into eastbound W. 118th Place. The suspect vehicle then took the first entrance into the Kohl's parking lot which is situated on the southwestern entrance of the Kohl's parking lot going northbound. Officer Bradshaw could see the suspect vehicle as it went through the parking lot northbound most of the time and lost sight of it briefly. As Officer Bradshaw gained sight of the blue vehicle again, it was now facing southbound in the grassy area on the north western portion of the Kohl's parking lot where the W. 120th Avenue Frontage Road bend begins. Officer Bradshaw did not see a PIT maneuver take place, but assumed that is what probably occurred based on the direction the suspect vehicle was facing. Officer Bradshaw saw the suspect driver moving his body around in an effort to see who was in the vicinity. Officer Bradshaw saw Officer Guzman, dressed in his full police officer uniform, out of his patrol vehicle with his gun drawn and his vehicles police lights were activated. The suspect vehicle reversed straight towards Officer Guzman. Officer Bradshaw was focused on the vehicle and saw Officer Guzman in his peripheral vision. Officer Bradshaw did not remember hearing tires squeal. Officer Bradshaw heard more than two to three shots fired, but was uncertain of the exact number. Officer Bradshaw felt the blue vehicle was going to strike Officer Guzman.

Officer Bradshaw saw glass break on the suspects back driver's side window. The suspect vehicle still moved backwards as the shots were fired, then stopped temporarily, and continued forward on the frontage road. Officer Bradshaw did not hear verbal commands being yelled as his patrol car windows were up and other patrol vehicle's sirens were on. Officer Bradshaw did not see any other officers in the area of where Officer Guzman was standing. Officer Guzman ran towards the blue vehicle. Officer Bradshaw also went to the blue vehicle that ended up going into a ditch. Officer Bradshaw assisted in giving the suspect medical attention until Westminster Fire responded and took over lifesaving efforts. The suspect was then transported to the hospital.

Officer Guy Saruwatari

On August 2, 2018, 17th Judicial District Attorney Investigator Aran Conroy and Detective Liliana Cano interviewed Officer Guy Saruwatari shortly after this incident. Officer Saruwatari has been employed with the Westminster Police Department for over five years and has over four years of prior law enforcement experience with the Glendale Police Department.

Officer Saruwatari was working a two-man unit with Officer John Bradshaw in a marked police SUV. Officer Saruwatari was the passenger in the SUV on the day of this incident. Westminster Police dispatch aired that there were two males involved in a shoplifting and one was running away. Westminster dispatch then aired that a knife was pulled on a loss prevention officer and updated the call as a felony menacing. Dispatch aired that this suspect was leaving the parking lot in a blue Chevy vehicle.

As Officers Bradshaw and Saruwatari approached Sheridan Boulevard, Officer Saruwatari heard officers transmit via radio that a PIT maneuver was attempted on the suspect vehicle. Officers radioed that the car went over the curb into a church parking lot as they approached W. 120th Avenue and Sheridan Boulevard, they saw two marked patrol vehicles going south on Sheridan Boulevard following a blue sedan at 118th Place. The patrol cars went west at W. 117th Avenue and Sheridan Boulevard then westbound towards Chase Street. The blue vehicle then returned to 118th Place. They were the third patrol car behind the suspect vehicle. Both marked patrol cars in front of them had their lights and sirens activated.

Officers Saruwatari and Bradshaw were following the vehicles into the Kohl's parking lot. Officer Bradshaw stopped their patrol car at the median area before the W 120th Avenue frontage road. The suspect vehicle was facing southbound at that location. Officer Guzman was out of his car and was attempting to contact the driver of the vehicle. Officer Saruwatari observed one person in the driver seat of the suspect vehicle. Officer Saruwatari got out of the passenger seat of the patrol vehicle and thought that they were going to do a felony stop while the blue vehicle was facing southbound. Officer Saruwatari pointed his duty weapon towards the driver.

Officer Saruwatari was "about to pull the trigger" due to the suspect's movement in the vehicle and could not see the suspect's hands which were down by the wheel. The suspect was turning his body in both directions looking around the area. Since no threat was presented at that time, Officer Saruwatari said he did not pull his trigger. Officer Saruwatari was about twenty five yards away. The vehicle then suddenly reversed eastbound "as fast as it could go" towards Officer Guzman and Officer Saruwatari heard approximately three gunshots fired. The suspect vehicle then proceeded westbound on the W 120th Avenue frontage road. Officer Saruwatari holstered his weapon and did not hear anything said during this time other than the shots being fired. Officers Saruwatari and Bradshaw went up to the vehicle that was now in the ditch. The suspect was outside the front passenger window. Officer Saruwatari began giving medical attention to the driver until Westminster Fire arrived on scene and they continued the life saving measures. Westminster Fire then transferred the male to Good Samaritan Hospital.

Officer Daniel Gilbert

Thornton Police Department Detectives Fred Longobricco and Brad Barkley interviewed Officer Daniel Gilbert shortly after this incident in an interview room at the Westminster Police Department. Officer Gilbert has been with the Westminster Police Department for one year, with another year of law enforcement experience with the Adams County Sheriff's Office.

Officer Gilbert heard Officer Guzman being dispatched to the Kohl's on a report of a theft in progress. Dispatch updated the call as a menacing, as a suspect had apparently pulled a knife on a Kohl's loss prevention officer. Officer Gilbert "self-dispatched" to that call to assist. Officer Gilbert had been driving northbound on Sheridan Boulevard when he heard that a pursuit of a blue sedan, involved in the incident was travelling south bound on Sheridan Boulevard. Officer Gilbert began following Officer Guzman, who lead the pursuit as well as two other Westminster patrol cars, who were already involved in the pursuit.

The pursuit eventually ended up on 118th Place behind the Kohl's store. The suspect vehicle then travelled northbound through the Kohl's parking lot driving north along the west side of the store. The suspect vehicle reached the northwest corner of the parking lot and started to exit the parking lot on a road that curves to the west, turning into the frontage road along the south side of 120th Avenue. As the suspect vehicle negotiated this curve, Officer Guzman initiated a PIT maneuver, which caused the suspect vehicle to spin counterclockwise, and come to a rest against the south curb line of this frontage road, facing south. Officer Guzman stopped his patrol car and stepped out to encounter the suspect, who was still seated in the driver's seat of the vehicle. Officer Guzman's vehicle was parked in the curve as the frontage road exits the parking lot, facing northwest. The other two marked patrol cars in the pursuit had stopped behind Officer Guzman's car.

Officer Gilbert drove around the parked police cars and approached the grassy area south of the suspect vehicle, intending to position his car toward the front of the suspect vehicle in an effort to prevent him from escaping in a southerly direction. Officer Gilbert saw Officer Guzman standing outside his patrol car and pointing his firearm toward the suspect vehicle. Officer Gilbert saw the suspect alert and look around at Officer Guzman as Officer Guzman issued verbal commands to the suspect. Officer Gilbert then saw the suspect vehicle begin backing up in an arc from its south facing position, travelling in reverse so the rear of the car was changing direction towards the east in Officer Guzman's direction. The suspect vehicle drove in reverse somewhat quickly. Officer Gilbert then heard several gunshots. Officer Gilbert said that the suspect vehicle came close to Officer Guzman's car, but he was not sure if the suspect vehicle struck Officer Guzman's car or not. The suspect car then reversed direction and began to rapidly accelerate toward the west. The speed of the suspect vehicle then rapidly dropped off and the vehicle appeared to coast to the north side of the frontage road, jumping the curb, and continuing west but drifting to the north until the car slid into a drainage ditch between the frontage road and 120th Avenue. The suspect vehicle slid sideways down into the ditch, coming to rest at a severe angle almost onto its passenger side in the bottom of the ditch in about two feet of water.

Officer Gilbert drove his patrol car across the grass area to the frontage road and drove to the area where the car was now in the ditch. The other officers ran to the area on foot. Officer Gilbert exited his patrol car and covered the suspect vehicle with his sidearm while Officers Salazar, Bradshaw, and Saruwatari, approached the suspect vehicle from the north side of the ditch. Officer Gilbert was joined by Officer Guzman and they covered the suspect vehicle with their side arms until the other three officers had extricated the suspect from the passenger side of the car and carried him up from the ditch. Those officers performed CPR, and called for rescue personnel.

Officer Richard Salazar

Thornton Police Detectives Scott Hendrickson and Doug Parker interviewed Westminster Police Officer Richard Salazar shortly after this incident. Officer Salazar has been with the Westminster Police Department for approximately fourteen years and was training a new officer, Jeremiah Neave, on the day of this incident. They were attending to an unrelated call at the Whole Foods parking lot near 120th Avenue and Vrain Street when the call of a shoplifting at Kohl's came out on the police radio. Officer Guzman was their cover car at Whole Foods and was not needed, so Officer Guzman headed to Kohl's. Dispatch then aired that the shoplifter pulled a knife on security at Kohl's, so they quickly headed to the Kohl's. Officer Neave drove and Officer Salazar was in the passenger seat of their marked patrol vehicle.

Officer Salazar and Officer Neave were at the intersection of 118th Avenue and Sheridan Boulevard when Officer Guzman aired that he was pursuing the suspect vehicle from the shoplift southbound on Sheridan Boulevard. Officer Neave positioned their patrol vehicle and joined the pursuit as the suspect vehicle came back north on Sheridan Boulevard. The suspect vehicle then went through a neighborhood and ended up back on the west side of the Kohl's parking lot. Officer Guzman performed a PIT maneuver on the blue suspect vehicle in the area where the frontage road and the Kohl's parking lot meet. Officer Salazar and Officer Neave were still in their vehicle as Officer Guzman was out of his vehicle yelling commands at the driver of the suspect vehicle.

As Officer Salazar was getting out of his vehicle and approaching Officer Guzman's position on foot, he saw the suspect vehicle reverse at a fast speed toward Officer Guzman. Officer Salazar said that there was nothing blocking the suspect's vehicle from going forward and he could have gone forward if he wanted to. Officer Salazar stated that he was concerned for Officer Guzman's safety as the suspect vehicle was reversing towards him. Officer Salazar then heard four to five gunshots, and then the suspect vehicle drove forward ending up in a ravine. Officer Salazar assisted in getting the suspect out of the vehicle after it was in the ravine.

Officer Jeremiah Neave

Thornton Police Detectives Scott Hendrickson and Doug Parker interviewed Westminster Police Officer Jeremiah Neave shortly after this incident. Officer Neave is in training and was with Officer Richard Salazar and they were on a call at the Whole Foods parking lot when a call of shoplifting at Kohl's came out over the police radio. After it was aired that the shoplifter pulled a knife on security at the Kohl's, they left Whole Foods and headed to the Kohl's. Officer

Neave drove the patrol vehicle and Officer Salazar was in the passenger seat. Officer Guzman was already in pursuit of the suspect vehicle southbound on Sheridan Boulevard. Officer Neave gave details about the streets and direction of travel of the pursuit as he followed Officer Guzman.

As the suspect vehicle drove northbound on the west side of Kohl's, Officer Guzman performed a PIT maneuver on the suspect vehicle causing it to spin around. Officer Neave saw Officer Guzman out of his vehicle with his gun drawn. Officer Neave saw the suspect vehicle make an "intentional act" of reversing towards Officer Guzman. Officer Neave described the reverse driving as quick and deliberate. Officer Neave stated that there was nothing blocking the path of the suspect vehicle from going forward and the suspect could have driven away from Officer Guzman. As Officer Neave was getting out of his vehicle he heard gunshots. The suspect vehicle then drove west and ended up in a ravine on the north side of the frontage road.

Anthony Smith

Detective Cano interviewed Anthony Smith at the Westminster Police Department shortly after this incident. Mr. Smith works as a loss prevention officer for the Kohl's department store and called the Westminster Police Department on this incident to report the shoplifting. Mr. Smith observed an older bald white male, later identified as Michael Lee Gonzales, enter the store, immediately grab a mesh bag, and move to the side of the store. Mr. Smith thought this was unusual and continued to monitor Mr. Gonzales's movements in the store through the surveillance cameras. Mr. Gonzales removed shoes from there box and emptied them into the mesh bag. He also began taking various items throughout the store and placed them in the mesh bag. Mr. Smith called dispatch at this point to report a shoplift in progress and he learned that Mr. Gonzales's actions matched the descriptions of prior shoplifts that occurred at Kohl's stores in the northern Denver metro area.

Mr. Smith observed Mr. Gonzales give some of the items in the mesh bag to another younger Hispanic male in the front of the store. At this point, Mr. Smith decides to confront the two males as they were leaving the store. As Mr. Smith confronts them, Mr. Gonzales threw the mesh bag at Mr. Smith and walked away from him towards the parking lot. Mr. Smith followed Mr. Gonzales into the parking lot. Mr. Gonzales then pulled a pocket knife out of his pocket and told Mr. Smith "to get away from me" in a threatening manner. Mr. Gonzales then got into a blue Chevy Aveo as police cars were approaching with their lights and sirens activated. Mr. Smith was still on the phone with dispatch and gave the dispatcher a description of the car as well as the license plate number. Mr. Smith saw Mr. Gonzales run a red light and completely disregard the police cars that were on scene. Mr. Smith later heard gunshots, but did not see anyone shooting.

Luke Sassen

Detective Doug Parker interviewed Luke Sassen at the Westminster Police Department shortly after this incident. Mr. Sassen was in a vehicle in the Kohl's parking lot with his father while he waited for his mother, who was inside the store shopping. Mr. Sassen stated that he saw a man in a gray shirt on a telephone. Mr. Sassen then saw four to five cops chasing a blue

Toyota. The cops “spun out” the car and had it pinned in where the Kohl’s parking lot and the frontage road come together. Mr. Sassen initially said that he heard the cops yelling at the suspect to “surrender.” However, he later clarified that he didn’t actually hear the cops yelling, but that is what it appeared they were doing. Mr. Sassen then heard four gun shots. He stated that the blue car was still moving when he heard the gunshots. It was after the shooting that Mr. Sassen got out of his vehicle. The blue car then went into the ditch after the police shot at it.

Scene Investigation

On August 2, 2018, Broomfield Police Department Criminalist’s Brenda Harris and Steve Austin responded to the Westminster Police Department to photograph Officer Guzman and collect his service weapon, a Sig Sauer P226 Tacops, 9mm semi-automatic handgun and three magazines. Two of the magazines contained twenty rounds of Speer 9mm Luger hollow point bullets. The third magazine was empty. Officer Guzman told the criminalists that he had discharged one full magazine during this incident and the round in the chamber, for a total of twenty one rounds. Officer Guzman further stated that he had done a tactical re-load.

Both criminalist later went to the scene. The scene is located on the northwest corner of the Kohl’s parking lot. The parking lot exits to the W. 120th Avenue service road and goes from Adams County into the City and County of Broomfield. The closest business near the scene is Wonderland Brewing Company, 5450 W. 120th Avenue, Broomfield, Colorado 80020, which is located in the southwest corner of the scene. Thornton Police Department Criminalist Doug Young responded to the scene of the shooting to assist with the processing of the scene.

Near the parking lot exit, at the corner where the service road begins, responding officers had marked and taped off the area where Officer Guzman had discharged his weapon. Officers had used small traffic cones marking the locations of most of the empty 9 mm shell casings discharged from Officer Guzman’s handgun.

Criminalist replaced the Westminster Police Department’s small traffic cones, marking the empty shell casing, with numerical markers and put them in numerical order. Criminalist Austin used a metal detector to locate the unaccounted for empty 9mm shell casings. Ultimately, he was able to account for nineteen 9 mm shell casings at the scene.

A Westminster Police Department patrol car was parked near the south of the scene area and a Westminster Police Ford SUV patrol vehicle was parked in the northwest corner of the parking lot. Both vehicles were facing north – northwest. Located in the northwest area of the parking lot is a roadway that leads in and out of the parking lot. The roadway then turns west and proceeds parallel to the eastbound lanes of 120th Avenue for a distance before turning back north and intersecting with 120th Avenue. A blue Chevrolet Aveo sedan was located in the ditch between the service road and W. 120th Avenue just west of this location.

The Aveo’s driver’s side, left rear, and right front passenger window glass was broken out. There were numerous visible bullet holes along the driver’s and left rear passenger doors

and door frames. Criminalist Young used trajectory rods and accounted for seventeen bullet impacts on the driver's side of the Aveo.

Medical Examination Analysis

On August 6, 2018, Dr. Stephen Cina, a Forensic Pathologist with the Adams County Coroner's Office, conducted a forensic autopsy of the body of Mr. Michael Gonzales. Dr. Cina found seven gunshot wounds to Mr. Gonzales. Six of the gunshot wounds were located in both of Mr. Gonzales' legs with the fatal gunshot wound located in his back. Four projectiles from this incident were recovered from his body. An old bullet from a prior incident was found in Mr. Gonzales' left hip. None of the entrance wounds showed evidence of close range firing. The toxicology report revealed positive levels of methamphetamines. Dr. Cina noted that Mr. Gonzales was intoxicated by methamphetamine at the time of his death. Dr. Cina determined the cause of death to be multiple gunshot wounds and the manner of death to be homicide.

Suspect Information

Mr. Michael Gonzales has a significant criminal history dating back to 1979 to include burglaries, assaults, thefts, DUI's, escapes and numerous other criminal offenses. He also had several active arrest warrants out of the Denver metro area.

Legal Analysis

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officer. The decision to file criminal charges involves an assessment of all the 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 the involved officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Guzman fired his weapon at Mr. Michael Gonzales. Likewise, there is no dispute that the death of Mr. Gonzales resulted from multiple gunshot wounds. Officer Guzman was engaged in his duties as a peace officer to arrest a suspect who had just menaced a Kohl's loss prevention officer with a knife at the time of the shooting.

The use of force by a law enforcement officer necessarily invokes an analysis under § 18-1-707, C.R.S. (2018), 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 immanent 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 the 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. (2018).

Officer Guzman was engaged in the performance of his duties as a peace officer to affect an arrest of Mr. Michael Gonzales. Officer Guzman had information from the dispatch notes that a shoplifting suspect had "produced a knife" and showed it to a Kohl's loss prevention officer. Officer Guzman then heard on his police radio that the suspect was fleeing westbound in a blue Chevrolet Aveo. As Officer Guzman arrived on scene, he immediately began to pursue the suspect driving this blue Chevrolet Aveo with his patrol lights and sirens activated. Mr. Gonzales eluded all police vehicles until he returned to the area of the Kohl's parking lot where Officer Guzman successfully performed a PIT maneuver stopping Mr. Gonzales.

Officer Guzman gave repeated commands to "stop the car, get out of the car" and "put your hands up." Mr. Gonzales ignored those commands and looked directly at Officer Guzman and shook his head no. He then revved the Aveo's engine loudly and accelerated forward to the north on to the curb of the frontage road. Although Officer Guzman had his service weapon pointed at the driver, he did not fire because he did not feel he was in danger at that time. Officer Guzman moved to the back of the suspect's vehicle to get out of danger. Officer Guzman continued to give commands, but Mr. Gonzales quickly accelerated in reverse at a high rate of speed toward Officer Guzman. Other officers on scene witnessed the Aveo accelerating in reverse directly at Officer Guzman. Officer Guzman said he became concerned that Mr. Gonzales was going to "run me over" or that the vehicle was going to "whip around" and hit him. At that point, Officer Guzman fired his weapon at Mr. Gonzales.

Officer Guzman said that when the vehicle initially accelerated on to the curb, he did not feel threatened and was able to easily step to safety. However, when the vehicle reversed, it was close enough to cause him to be in fear of being hit. The vehicle was moving fast enough that Officer Guzman could not get out of the way. Officer Guzman estimated that he was approximately "arm's length" from the vehicle at this time and was in fear for his life.

Therefore, the legal question presented to the Office of the District Attorney is whether the prosecution can prove beyond a reasonable doubt that the Officer Guzman's actions were not justified under Colorado law at the time Officer Guzman fired his weapon. There is no evidence to contradict the suggestion that Officer Guzman used a reasonable amount of force at the time he fired his weapon. When Mr. Gonzales chose to operate his vehicle in a manner that caused a clear threat to Officer Guzman, there is no basis to conclude that a lesser degree of force was necessary. Under these facts, the Office of the District Attorney cannot prove that Officer Guzman was not justified in protecting himself from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. (2018).

Conclusion

The evidence in this investigation demonstrates that Mr. Michael Gonzales accelerating his vehicle in reverse directly at Officer Guzman dictated Officer Guzman's response. Therefore, applying the facts of this incident to the applicable Colorado law, the evidence does not support the filing of any criminal charges against Officer Guzman for the fatal shooting of Mr. Michael Gonzales on August 2, 2018.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that no criminal charges will be filed against Officer Guzman. 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