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February 24, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to an incident that involved two Adams County Sheriff's Deputies and a civilian on March 23, 2021.

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District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

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February 24, 2022

Rick Reigenborn
Adams County Sheriff
4430 S Adams County Pkwy 1st Floor, Suite W5400
Brighton, CO 80601

Re: The officer-involved incident occurring on March 23, 2021

Dear Sheriff Reigenborn:

The 17th Judicial District Critical Incident Response Team (CIRT) was called upon to review an officer-involved incident involving an Adams County Sheriff's Deputy and a civilian that occurred on March 23, 2021. Westminster Police Department Detectives Matt Calhoun and Scott Spurr led the investigation and presented the factual findings to the District Attorney's Office on June 14, 2021. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Adams County Sheriff's Office. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a brief summary of the facts and legal conclusions reached based upon the materials reviewed.

The investigation of this incident resulted in criminal charges against two civilians, one of which, as of the date of this letter, is still pending in Adams County District Court. Individuals charged with any crime retain a presumption of innocence until the final resolution of the case. Consequently, based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, this letter does not reveal all of the facts pertinent to the investigation. Furthermore, in an effort to preserve the integrity of the pending case, the record of this investigation will remain restricted from public access until the conclusion of the criminal proceedings. Once the pending cases associated with this matter have been resolved, the record and any video evidence will then be made available.

SUMMARY OF THE INCIDENT

During the daytime hours of March 23, 2021, Adams County Sheriff's Office Deputy James Graham was on uniformed patrol when he observed a 2012 Mercedes travel eastbound on 70th Avenue at a high rate of speed, passing cars in the center median. Deputy Graham activated the emergency lights of his patrol vehicle and attempted to conduct a traffic stop of the Mercedes. He discontinued his pursuit near the intersection of 70th Avenue and Broadway due to the nature of the erratic driving and the traffic conditions at the time. The Mercedes continued toward the exit for southbound I-25, where it appeared to have lost control and stuck a roadway barrier.

Two male occupants got out of the vehicle and fled eastbound across the southbound lanes of I-25. The males, later identified as Dominick Perea and Joseph Wiley, ran southbound within the lanes of northbound traffic on I-25, causing traffic to slow. Deputy Graham got out of his patrol vehicle and chased the men on foot. A uniformed Denver Police Officer, Steve Hammack, also got out and assisted with the pursuit. Deputy Graham observed the two men try to stop vehicles and open the doors. He also saw Mr. Wiley reach into his waistband and became concerned that he possessed a weapon and would use it to get into a vehicle. From his perspective, Deputy Graham believed that the two men were armed and that the civilians in the passing vehicles were in danger of being robbed or kidnapped if the men were able to enter a vehicle.

Mr. Perea opened up the door to a Subaru and got inside, laying on top of the female driver. Deputy Graham caught up to the vehicle, but found the door locked. Fearing for the safety of the female driver, Deputy Graham broke out the driver's side window with his department-issued baton. Deputy Graham heard the female driver scream for help and observed Mr. Perea fighting with the driver in an apparent attempt to keep the vehicle in motion. Mr. Perea ignored multiple commands to get out of the car. Deputy Graham swung his baton at Mr. Perea in an effort to get him to comply with the commands to stop and get out of the car. Deputy Graham attempted to deploy his Taser on Mr. Perea, which was ineffective. The Denver Police Officer also attempted to deploy his Taser, but it was unsuccessful.

Adams County Sheriff's Deputy Layne Paintin arrived and assisted the other officers to physically remove Mr. Perea from the vehicle. As the officers took Mr. Perea to the ground, Mr. Perea continued to fight and attempted to avoid arrest. During the course of the struggle, Deputy Paintin struck Mr. Perea in the head. Mr. Perea was successfully arrested and paramedics were called to provide medical aid to his injuries. Mr. Perea's companion, Mr. Wiley, fled the scene and was later arrested and charged with possession of a weapon by a previous offender, possession of a defaced weapon, and trespass. Mr. Perea was charged with attempted kidnapping, attempted robbery, vehicular eluding, and motor vehicle theft.

LEGAL ANALYSIS

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. 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. Consequently, in order to file a criminal charge, the District Attorney's Office must be able to prove beyond a reasonable doubt that the involved law enforcement officers' actions were not justified under the circumstances surrounding this incident and the applicable law. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, my review does not evaluate compliance with any departmental policies, standards, or procedures.

Under Colorado law, a law enforcement officer may use physical force in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another

person. However, physical force may be used only if nonviolent means would be ineffective and must use only that degree of force consistent with the minimization of injury to others. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use physical force in self-defense is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified.

Applying the legal standard in this case, the first question is whether physical force was appropriate under the statute. I find that it was. Here, Deputy Graham resorted to the use of physical force in an effort to arrest Mr. Perea only after it became apparent that nonviolent means were unsuccessful. Further, Deputy Graham used force on Mr. Perea as Mr. Perea appeared to be engaged in an effort to carjack a citizen on I-25. Despite the use of commands and physical force, Deputy Graham was unable to gain control of Mr. Perea. With the assistance of Denver Police Officer Hammack and Deputy Paintin, Mr. Perea was removed from the vehicle. Mr. Perea continued to violently struggle with officers, which led to officers to continue using physical force until Mr. Perea was successfully arrested.

The second question is whether the degree of force was consistent with the minimization of injury to others. Again, I find that it was. Deputy Graham used an expandable baton to break the driver's side window to get to Mr. Perea. He also used the baton to strike Mr. Perea, but it had minimal effect because Mr. Perea was inside of the vehicle. Deputy Graham and Officer Hammack both tried to deploy their Tasers, which also had no effect. Once the officers had Mr. Perea out of the vehicle, Deputy Paintin struck Mr. Perea with his fist to gain compliance. The use of physical force escalated due to Mr. Perea's noncompliance and combative nature. The degree of force proved to be necessary to effectively arrest Mr. Perea given his refusal to submit to a lawful arrest.

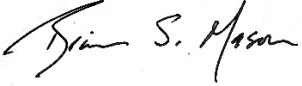
The final question is whether an objectively reasonable officer, confronted with the same facts and circumstances, would have reasonably believed that Mr. Perea posed an immediate threat to the safety of others such that the use of physical force was necessary. I answer this in the affirmative. Based on Deputy Graham's observations of Mr. Perea reaching into his waistband and trying to open car doors, Mr. Perea presented a potential threat to the safety of citizens driving on the interstate. When Mr. Perea entered the vehicle, got on top of the driver and shut the door, Deputy Graham reasonably believed that the use of physical force was necessary to prevent Mr. Perea's use of unlawful force on the driver.

The other officers responded to Deputy Graham's call for help and observed Deputy Graham struggling to gain control of Mr. Perea. These officers reasonably believed that the use of physical force was necessary to arrest Mr. Perea and prevent the risk of harm to Deputy Graham.

Consequently, given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2021). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Deputy James Graham or Deputy Layne Paintin for striking and causing injury to Mr. Perea.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Brian S. Mason". The signature is written in a cursive style with a large initial "B" and a distinct "S" and "M".

Brian S. Mason
District Attorney