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May 26, 2022

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to a pursuit that occurred in the City of Brighton on October 26, 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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May 26, 2022

Paul Southard
Chief of Police
Brighton Police Department
3401 E. Bromley Lane
Brighton, CO 80601

RE: October 26, 2021 Police Pursuit

Dear Chief Southard:

On October 26, 2021, police officers employed by the City of Brighton attempted to contact civilians in a reported stolen vehicle. The driver attempted to evade the contact, leading to a high-speed police pursuit within a residential area. The suspect ultimately crashed his vehicle, killing two uninvolved civilians. Brighton Police Department requested the assistance of an independent agency to review the conduct of the Brighton Police Officers for any criminal wrongdoing. Investigators with the Westminster Police Department and the Vehicular Crimes Unit of the Colorado State Patrol assisted with this aspect of the investigation. This letter summarizes the facts of the investigation and offers legal conclusions regarding the involved officer's conduct.

This review is limited to determining whether any criminal charges should be filed against the involved officer. The independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. The District Attorney's review does not evaluate compliance with any departmental policies, standards, or procedures.

The vehicle crash in this incident resulted in criminal charges against a civilian which, as of the date of this letter, are still pending in Adams County District Court. Individuals charged with a 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 this entire 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 case associated with this matter has been resolved, the record and any video evidence will be made available.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt against the

involved officer. Therefore, no criminal charges will be filed against the law enforcement officer involved in this incident.

SUMMARY OF THE INCIDENT

Around 11:30 a.m. on October 26, 2021, Brighton Police Officer Charles Hundley was dispatched to an address in a residential neighborhood on a report of a suspicious person in a 2011 Kia Sorento sport utility vehicle. Officer Hundley was in uniform driving a marked patrol vehicle. Upon arriving, Officer Hundley quickly learned that the Kia was reported stolen. He activated his overhead lights and got out to contact the occupants inside the Kia. Brighton Police Commander Nicholas Struck also arrived on scene in an unmarked vehicle. As Commander Struck got out of his vehicle, the Kia started to drive away, striking the front end of Commander Struck's vehicle. The Kia drove off. Commander Struck advised over the radio that the Kia "rammed" his vehicle as it fled the scene.

Officer Hundley got in his patrol car and pursued the Kia with his emergency lights and siren activated. The Kia drove through the neighborhood at a high rate of speed, disregarding stop signs and nearly striking other vehicles. Brighton Police Officer Travis Flemming drove his patrol vehicle behind Officer Hundley's vehicle. The Kia's speed was estimated to be between 50 mph and 60 mph during the chase. The speed limit in this neighborhood is 25 mph.

The Kia continued to speed northbound on Mt. Bierstadt Street, where it disregarded a stop sign and entered eastbound cross-traffic on East Bridge Street. As the Kia entered the intersection, it collided with the front passenger side of a 2002 Nissan Frontier pickup truck. The collision forced the ejection of the passenger of the Nissan Frontier onto the roadway. The Kia continued traveling across Bridge Street to the north edge of the road, where it entered the grassy area and collided with a pedestrian who was walking on the sidewalk. Both the passenger of the Nissan and the pedestrian died from the injuries they suffered in the collision.

Officer Hundley's patrol vehicle was equipped with a dashboard camera. The camera recorded the entire incident from Officer Hundley's initial contact with the driver of the Kia to the aftermath of the collision. The vantage point of the recording is from the front windshield of the vehicle. Officer Hundley began to pursue the Kia immediately after it impacted Commander Struck's unmarked vehicle. The pursuit continued through residential neighborhoods at an extremely high rate of speed for just over two minutes. At the time the Kia collided with the Nissan, Officer Hundley's vehicle is approximately one block behind the Kia, south of the intersection where the crash occurred.

An accident reconstruction expert determined that the calculated impact speed for the Kia was between 63 mph and 69 mph. The calculated impact speed for the Nissan was between 48 mph and 55 mph. The speedometer of the Kia was locked at 71 mph. The post-crash inspection of the Kia Sorento did not reveal any apparent mechanical defects or failures that would have contributed to the cause of the crash. There were no adverse weather conditions determined to contribute to the incident.

Officer Hundley stated that he engaged in the pursuit because the driver of the Kia

demonstrated an escalation of violent behavior by intentionally striking another police vehicle. He had his emergency lights activated and followed the Kia at what he considered to be a “safe distance,” averaging an estimated ¼ mile behind the vehicle. He explained that he assessed a number of factors in evaluating whether to terminate the pursuit such as the conditions of the roadways, the traffic, and the proximity of civilians in the area. He continued the pursuit because he believed the driver of the Kia committed crimes beyond simple traffic offenses and presented a “grave danger” to the public by his erratic driving. He believed that he had to intervene to stop the Kia before it caused someone injury. Just prior to the collision, Officer Hundley advised that he heard someone on the radio advise to discontinue the pursuit. By the time he processed this information, the collision occurred.

Officer Flemming drove his patrol car behind Officer Hundley throughout the pursuit. He also had his lights and siren activated. Officer Flemming explained that he engaged in the pursuit because Commander Struck reported that the Kia “rammed” his vehicle.

LEGAL ANALYSIS

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against Officer Hundley, 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. Criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. The facts of this case must be evaluated under the traffic code as it pertains to the way Officer Hundley operated his motor vehicle. In this regard, the evaluation must consider whether his conduct is a violation of traffic offenses such as reckless driving or careless driving:

“A person who drives a motor vehicle...in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property is guilty of reckless driving.” §42-4-1401, C.R.S. (2021).

“A person who drives a motor vehicle...in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, is guilty of careless driving.” §42-4-1402, C.R.S. (2021).

Under Colorado law, if Officer Hundley’s conduct violates either of these offenses, further consideration must be given to whether such conduct was the proximate cause of the death of another. “Proximate cause” is defined as a cause which in natural and probable sequence produced the claimed injury and is a cause without which the claimed injury would not have been sustained.

In addition to proving the elements of a crime, the prosecution must also consider any statutorily recognized justification or exception to the traffic code. For instance, when responding to an emergency call, a driver of an emergency vehicle may exercise certain privileges under the law. Specifically stated, “[t]he driver of an authorized emergency vehicle

may...[p]roceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation; [e]xceed the lawful speeds set forth in [the statute applicable to speed limits] or exceed the maximum lawful speed limits set forth [by statute] so long as said driver does not endanger life or property; [d]isregard regulations governing directions of movement or turning in specified directions” §42-4-108, C.R.S. (2021).

Here, Officer Hundley was justified in attempting to contact the driver of the Kia Sorrento, as the Kia was reported stolen. The Kia fled from the contact, striking another patrol vehicle in the process. The driver’s conduct established legal justification for Officer Hundley to engage in a traffic stop of the vehicle. However, the driver of the Kia disregarded the officers’ presence and clear show of authority, demonstrating an intent to evade arrest. The question presented by this review is whether Officer Hundley’s conduct of pursuing the Kia through neighborhood streets at a high rate of speed amounts to a criminal offense.

There is no dispute that Officer Hundley was driving his vehicle in excess of the maximum lawful speed limit, proceeding through stop signs and disregarding other traffic regulations. However, when evaluating whether criminal charges should be filed in this circumstance, there are factors beyond Officer Hundley’s driving that must be considered. First, Officer Hundley attempted to make a proper stop of the suspect when the Kia was parked and there was no threat to anyone’s safety. The suspect ignored the attempted contact and drove away. Second, the driver of the Kia struck another patrol vehicle in his effort to evade police contact. Third, the driver of the Kia drove erratically at a high rate of speed through the neighborhood, disregarding stop signs and speed limits, presenting a risk to the community.

Officer Hundley stated that he pursued the Kia with his emergency lights and sirens activated to try to intervene and stop the driver from causing harm to the public. While there is a legitimate question whether the decision to engage in this kind of pursuit through a residential area is reasonable and prudent (which I address below) the evidence supports a conclusion that Officer Hundley was responding to an emergency. Therefore, at the time of his pursuit, Officer Hundley was entitled to the statutory privileges available to a driver of an authorized emergency vehicle under §42-4-108.

The Kia drove into cross-traffic driving eastbound on E. Bridge Street at a speed of between 63 mph and 69 mph. Officer Hundley’s vehicle did not make physical contact with the Kia at any time prior to the collision. The Kia entered the intersection while Officer Hundley’s patrol vehicle was a block away. Considering all of the evidence, the prosecution cannot prove beyond a reasonable doubt that Officer Hundley drove his vehicle in such a manner as to suggest a willful disregard for the safety of others, or that his driving was careless or imprudent. Furthermore, the evidence supports a conclusion that the proximate cause of the collision was the erratic driving of the Kia, which was independent of Officer Hundley’s decision to pursue the vehicle. While it can be said that the erratic driving might not have occurred but for Officer Hundley’s pursuit, it cannot be said that Officer Hundley’s driving was a cause without which the collision would not have occurred.

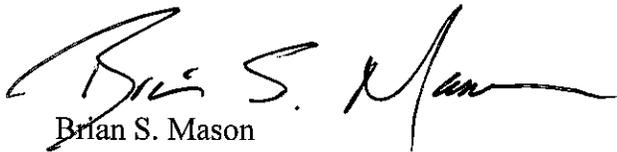
Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Hundley for his pursuit of the Kia

Sorrento on October 26, 2021.

Although the evidence does not support the filing of criminal charges against the officer, I nevertheless find the officer's decision to engage in this high-speed chase deeply troubling. While Officer Hundley's pursuit was not the proximate cause of the ensuing fatal crash, the significant safety risk inherent in the decision to pursue should have outweighed the legitimate interest in tracking down the suspect for his alleged crimes. Indeed, under the circumstances presented here, I believe the officer's decision to engage in the high-speed chase was unnecessarily dangerous and a disproportionate response to the alleged criminal activity and potential risk posed by the suspect.

Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Mason". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian S. Mason
District Attorney