



May 4, 2020

Chief Dan Vallero
Federal Heights Police Department
2380 W. 90th Avenue
Federal Heights, CO 80260

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

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

Re: Investigation of the officer-involved shooting of Hunter Steven James Lowry, DOB 03/21/1996, occurring on December 6, 2019

Dear Chiefs:

The Seventeenth Judicial District Attorney's Office has completed the review of the investigation regarding the officer-involved shooting of Mr. Hunter Lowry occurring on December 6, 2019. The Adams County Critical Incident Team conducted the investigation into this matter. Adams County Sheriff Detectives Richard Brookman and Marilyn Rush-Lara presented the factual findings of the investigation to our office on March 25, 2020. The investigation included reports, recorded interviews, photographs, body-worn camera videos and diagrams of the scene. 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 officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient; that evaluation is left to each individual agency.

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 officers involved committed any crime; therefore, no criminal charges will be filed against any officer as a result of this incident.

STATEMENT OF FACTS

On December 6, 2019 at approximately 7:55 p.m., the Federal Heights Police Department received a call of a robbery in progress at the Auto Zone located at 901 W. 84th Avenue. An employee reported that a male (later identified as Mr. Hunter Lowry) entered the store and filled up several baskets with items and walked out of the store without paying. An Auto Zone employee, C.B.¹, followed Mr. Lowry out of the store and tried to remove Mr. Lowry from his vehicle. Mr. Lowry grabbed a sharp object and cut C.B.'s finger. During this interaction, C.B.'s phone fell into Mr. Lowry's vehicle and Mr. Lowry quickly fled the scene. C.B. advised law enforcement that his phone was in the vehicle and utilized the "find my phone" application to track the phone. The location was determined to be at 1605 W. 92nd Avenue.

Federal Heights Police Corporal Joey Montoya responded to the location to contact Mr. Lowry. Corporal Montoya attempted to contact Mr. Lowry, who was outside his vehicle at the time, but quickly returned to his vehicle and drove towards Corporal Montoya. Mr. Lowry continued westbound on 92nd Avenue. Mr. Lowry's vehicle ran a red light and crashed into another vehicle in the area of 92nd Avenue and Federal Blvd. After the crash, Mr. Lowry fled the crash scene on foot and ran between a convenient store and the restaurant on the northwest corner of 92nd Avenue and Federal Blvd.

Thornton Police Department dispatch relayed information about the crash. Shortly thereafter, dispatch reported shots fired in the area. Federal Heights Police Department issued a BOLO (Be On The Lookout) report for Mr. Lowry. He was described as a white male wearing a gray jacket, running north through an alley behind the 7-11 located at the northwest corner of 92nd Avenue and Federal Blvd. Officers from both the Westminster Police Department and the Thornton Police Department responded to the area to assist. Westminster Police Officer Anthony Stroup observed a gray jacket laying on the ground near the alley entrance. Responding officers in the area heard gunshots coming from the fenced yard of the businesses that backed up to the alley.

Officers observed Mr. Lowry going over the fence behind an automotive business into the alleyway with parking spaces for a townhome complex. Officers observed Mr. Lowry with a silver metallic object in his hand as he ran through the parking lot. The officers believed the object to be a handgun. Mr. Lowry ran inside the perimeter that multiple officers set up in the parking lot area. The officers gave him loud verbal commands to stop. Mr. Lowry did not comply with the commands and the officers used a Taser to stun him, causing him to fall to the ground. A handgun fell next to him. Mr. Lowry reached for the handgun in an apparent effort to point it towards the officers. Four surrounding officers fired their weapons at Mr. Lowry in response, fatally wounding him.

¹ Initials are used to maintain privacy of citizen witnesses.

INVOLVED OFFICER INTERVIEWS

Investigators from the Adams County Critical Incident Team conducted interviews of all necessary witnesses at the police department. Though there were many witnesses interviewed, only the involved officers and material witnesses are specifically summarized herein.

Officer Anthony Stroup: Officer Stroup is a patrol officer with the Westminster Police Department, where he has worked since 2013. He was previously employed by the Northglenn Police Department for four and a half years. Officer Stroup was assigned to work in the K-9 unit.

Detectives Brookman and Rush-Lara interviewed Officer Stroup on December, 7, 2019, the day after the incident. At the time of the incident, Officer Stroup was on-duty wearing a black standard police uniform shirt and pants, affixed with "Westminster Police Department" patches on both shoulders, a nametag and badge on his left chest area. Officer Stroup carried a department issued Glock 17, .9 millimeter handgun.

Officer Stroup was working with his assigned K-9 unit on December 6, 2019. He was completing a call for service when he heard the dispatch call related to this incident. Officer Stroup heard another officer air over the radio that a male suspect was running in the area of 92nd Avenue and Federal Blvd. Upon his arrival in the area, Officer Stroup observed a car crash in the middle of the intersection of 92nd Avenue and Federal Blvd. Over the radio, Officer Stroup heard that a white male suspect wearing a grey jacket or sweatshirt ran north from the crash.

Officer Stroup drove north of the crash and parked his vehicle in the 7-11 parking lot located on the northwest corner of the intersection. Officer Stroup observed a grey sweatshirt on the ground near the alley behind the convenient store. He heard a gunshot as he got out of his patrol car. Officer Stroup saw a Federal Heights Police Officer nearby and confirmed that the sound was a gunshot.

Down the alley, Officer Stroup saw fresh footprints in the snow that went up to a fence of an automotive shop area densely filled with cars. Officer Stroup believed the suspect, later identified as Mr. Lowry, to be in the automotive shop area and heard another distinct gunshot. Another officer also reported the gunshot over the radio. Officer Stroup was working to set up a perimeter around the automotive shop. He heard movement and observed Mr. Lowry jump the fence that divides the automotive shop from a townhome complex. Officer Stroup described that the previous gunshot sounds came from the area of where Mr. Lowry jumped the fence.

Officer Stroup jumped the fence into the parking lot, where he placed Mr. Lowry at gunpoint and told him to "Stop." Mr. Lowry turned north and ran away from Officer Stroup. Officer Stroup distinctly observed a shiny object in Mr. Lowry's hand. Officer Stroup believed it to be a gun and yelled to other officers, "I think he has a gun!" Officer Stroup with his weapon drawn ran behind Mr. Lowry. Officer Stroup knew that other officers were in the area where Mr. Lowry was running. Officer Stroup ran behind a dumpster in the north end of the parking lot. Officer Stroup heard other officers yelling, "Taser!" He heard the sound of a Taser.

Officer Stroup came around the dumpster and observed Mr. Lowry falling to the ground. He saw a small chrome handgun and bullets next to Mr. Lowry. Mr. Lowry then reached over towards the gun and Officer Stroup yelled, "No!" Mr. Lowry grabbed the gun and raised it up towards the officers that were standing to the left of Officer Stroup. Officer Stroup thought Mr. Lowry was going to shoot at the officers. He feared for his life and the safety of his fellow officers. Officer Stroup believed that he had no other option but to shoot at Mr. Lowry to eliminate the threat. He fired his service weapon at Mr. Lowry and stopped shooting when he believed that Mr. Lowry no longer presented a threat.

Officer Garrett Dyrud: Officer Garrett Dyrud has been a patrol officer with the Thornton Police Department since 2017, and was previously with the US Secret Service Uniformed Division for two years.

Detective Brookman and Detective Rush-Lara interviewed Officer Dyrud on December 10, 2019 at the Westminster Police Department. At the time of the incident, Officer Dyrud was on-duty wearing a black standard police uniform shirt and pants, affixed with "Thornton Police Department" patches on both shoulders, a nametag, a tactical vest with "police" identified on the back, and a badge on his left chest area. Officer Dyrud carried his department issued Glock 17, .9 millimeter handgun.

Officer Dyrud was handling calls for service when he began to follow the radio reports involving a robbery suspect fleeing and ultimately crashing in the area of 92nd Avenue and Federal Blvd. As Officer Dyrud arrived near the intersection of the crash, he heard an update of "shots fired." Officer Dyrud quickly exited his marked patrol car and ran to the area of the 7-11 store, where he located two other officers. He confirmed with them that they were both okay. The officers explained that the gunshots were coming from the area of the nearby automotive shop.

Officer Dyrud walked down the alleyway behind the 7-11 and heard another distinctive gunshot. After hearing this gunshot, Officer Dyrud went over a fence into the townhome complex parking lot. Officer Dyrud worked to set up a perimeter and heard someone yelling, "He's jumping the fence!" Officer Dyrud illuminated the fence with his flashlight and saw a male, later identified as Mr. Lowry, running south along the fence line. Officer Dyrud ran towards Mr. Lowry yelling commands, "Get on the ground, get on the ground!" Officer Dyrud observed a shiny object in Mr. Lowry's hand. As Mr. Lowry got closer to Officer Dyrud, Mr. Lowry changed direction and ran north through the parking lot.

Officer Dyrud could see other officers on the north side of the parking lot. He repeatedly yelled to the other officers, "He's got something in his hand!" Another officer approached and stunned Mr. Lowry with a Taser. Officer Dyrud held cover with his handgun drawn. According to Officer Dyrud, a wall of officers surrounded Mr. Lowry, preventing his escape. As the Taser deployed, Mr. Lowry fell to the ground. A gun was clearly visible within arm's reach of Mr. Lowry. Several officers yelled, "Gun!" Mr. Lowry then reached for the gun. Officer Dyrud fired his weapon at Mr. Lowry until he no longer perceived a threat. Officer Dyrud stated that he had no other option but to shoot at Mr. Lowry, as he feared for his safety and the safety of his fellow officers.

Corporal Joey Montoya: Corporal Joey Montoya has been with the Federal Heights Police Department since 2018, and was previously with the Fort Morgan Police Department for two years. Corporal Montoya is assigned to the Patrol Division's Standard Response Team.

Detective Brookman and Detective Rush-Lara interviewed Corporal Montoya on December 10, 2019. At the time of the incident, Corporal Montoya was on-duty wearing a dark blue standard police uniform shirt and pants, affixed with "Federal Heights Police Department" patches on both shoulders, a nametag, a tactical vest with "police" identified on the back, and a badge on his left chest area. Corporal Montoya carried his department-issued AR15 rifle at the time of this incident. Corporal Montoya was also equipped with a body worn camera.

On the evening of December 6, 2019, Corporal Montoya heard the radio call of a robbery with a weapon at the Auto Zone located at 901 W. 84th Avenue. Corporal Montoya responded to the Auto Zone and arrived after the robbery suspect fled the scene. An employee of the Auto Zone advised the Federal Heights officers dispatched to the scene that a male filled up two baskets of items and left the store without paying. An employee followed Mr. Lowry out of the store and tried to recover the stolen merchandise. Mr. Lowry pulled out a sharp object and cut the employee on the hand. During the interaction, the employee accidentally dropped his cellphone into Mr. Lowry's vehicle. Utilizing a computer software application, the employee was able to locate his phone and provided this information to Officer Mason. The phone was reported to be located generally in the area of 92nd Avenue and Pecos Street.

Officer Mason and Corporal Montoya responded to the area of 92nd Avenue and Pecos Street. Corporal Montoya observed a truck matching the description of the suspect vehicle backed into a parking spot. He attempted to contact Mr. Lowry, who was no longer in the vehicle. Mr. Lowry returned to the truck. Corporal Montoya yelled commands to Mr. Lowry, "Stop! Police!" Mr. Lowry maneuvered his truck around Corporal Montoya and began to head westbound on 92nd Avenue. Officer Mason pursued the truck toward the intersection of 92nd Avenue and Federal Blvd., where the truck crashed into another vehicle and the suspect fled the scene. Corporal Montoya contacted dispatch to notify Westminster Police Department that Federal Heights Police Officers were arriving in the area. He also advised them to be on the lookout for Mr. Lowry.

Corporal Montoya drove to the area of 93rd Avenue and Federal Blvd., where he contacted an officer from the Westminster Police Department. Corporal Montoya was advised of "shots fired" in the area. Shortly after arriving, Corporal Montoya heard a gunshot and could smell gunpowder in the air. He repositioned his vehicle on the eastside of the fence of the townhouse complex to provide cover for the officers. He heard police commands from the other side of the fence. Corporal Montoya jumped the fence into the townhome complex parking lot. Corporal Montoya ran south as Mr. Lowry ran north.

As Corporal Montoya got closer to Mr. Lowry, he drew his Taser. Corporal Montoya recalls seeing Mr. Lowry grabbing for something in his waistband and pulling hard to get it out, so Corporal Montoya then transitioned to his rifle. Corporal Montoya was concerned for his

safety and the safety of the other officers. He fired his rifle at Mr. Lowry until he perceived the threat ended.

Officer Josh Azua: Officer Josh Azua is a patrol officer with the Westminster Police Department since 2014. Officer Azua is currently assigned to the Traffic Division.

Detectives Brookman and Rush-Lara interviewed Officer Azua on December 7, 2019. At the time of the incident, Officer Azua was on-duty wearing a black standard police uniform shirt and pants, affixed with "Westminster Police Department" patches on both shoulders, a nametag, and a badge on his left chest area. Officer Azua carried his department issued Glock 19, .9 millimeter handgun.

Officer Azua is assigned to the Traffic Unit and was working in that capacity on December 6, 2019. Officer Azua was in the area of 92nd Avenue and Yates Street when he heard radio traffic regarding a vehicle crash in the area of 92nd Avenue and Federal Blvd. Officer Azua responded to the location of the crash and received continuing updates regarding the suspect's description and possible location. He also heard that there was a report of a gunshot in the area.

Officer Azua is familiar with the location and decided to position himself at the nearby townhome complex. He parked his vehicle on the north side of the complex. As Officer Azua exited his vehicle, he heard a gunshot close to his location. Officer Azua drew his duty weapon and proceeded towards the complex. He heard movement by the wooden fence and observed two police officers come over the side of the fence. He also heard the officers issuing commands, "Show me your hands!" Officer Azua announced his presence. Officer Azua noticed a man matching the suspect's description proceed north in the parking lot.

As Officer Azua approached a dumpster, he observed another officer deploy a Taser. He then saw Mr. Lowry fall to the ground. Officer Azua saw a revolver laying next to Mr. Lowry. Mr. Lowry moved toward the revolver, gripped it, and raised it at the officers. Officer Azua discharged his weapon at Mr. Lowry because he was in fear for his safety and the safety of the officers in the area. Officer Azua stopped firing his weapon when Mr. Lowry dropped the handgun on the ground. Officer Azua approached and kicked the revolver away from Mr. Lowry.

WITNESSES

Officer Ken Parsons: Westminster Police Officer Ken Parsons was working with the Traffic Division on December 6, 2019. Officer Parsons heard the radio reports of the suspect fleeing the crash and responded to the townhome complex parking lot. After exiting his vehicle, he heard a distinct gunshot in the area of the tire shop. Officer Parsons approached the fence dividing the automotive shop and the townhome parking lot. He then heard another gunshot. Officer Parsons retreated towards the townhomes and saw Mr. Lowry coming over the fence into the parking lot. Officer Parsons drew his weapon and gave commands, "Police! Get on the ground!"

Mr. Lowry ran north in the parking lot. Officer Parsons and Officer Stroup continued giving commands as they tracked him through the parking lot. Officer Parsons saw a silver shiny object in Mr. Lowry's hand that he believed to be a handgun. Officer Stroup yelled to the other officers, "He's got a gun! He's got a gun!" Officer Stroup continued to advise Mr. Lowry to get on the ground and drop the gun. Mr. Lowry ignored the commands and continued running north towards a dumpster. Officer Parsons clearly saw a gun in Mr. Lowry's hand. Officer Parsons and Officer Stroup agreed that Officer Parsons would use his Taser on Mr. Lowry to gain compliance. Officer Parsons deployed the Taser, but Mr. Lowry was noncompliant and continued to move. Officer Parsons saw Mr. Lowry turn and raise the gun. At that point, Officer Parsons was in fear for his life as the other officers fired upon Mr. Lowry. Officer Parsons did not shoot his duty weapon.

K.F.: K.F. lives at 3066 W. 92nd Avenue, in the townhomes behind the 7-11 on the northwest corner of 92nd Avenue and Federal Blvd. K.F. was in his residence when he heard a large crash and then observed the vehicles in the intersection. K.F. observed several officers arrive in the area and began looking for someone. The officers displayed flashlights and searched the business behind the townhomes. K.F. was outside on his balcony when he heard two distant and separate sounds, but he could not determine if they were gunshots.

Moments later, K.F. saw a male jump over the fence into the townhome parking lot. He heard the officers giving verbal commands repeatedly to the suspect, such as, "Stop!" "Freeze!" and "Put your hands up!" K.F. advised that Mr. Lowry continued on his path running north towards the dumpster, where an officer stunned Mr. Lowry with a Taser. K.F. observed Mr. Lowry fall to the ground. From his vantage point, he was not able to see if Mr. Lowry had a weapon. K.F. identified the officer with the rifle as the first to fire his weapon, followed by the other officers.

CRIME SCENE INVESTIGATION

Criminalist Dennis Davenport with the Commerce City Police Department and Criminalist Karin Carroll with the Adams County Sheriff's Department responded to assist with the investigation. Initially, CSI Davenport conducted the round accountability for all four involved officers. He determined that Officer Stroup fired ten rounds, Officer Dyrud fired two rounds, Corporal Montoya fired fourteen rounds, and Officer Azua fired ten rounds.

Criminalist Davenport responded to the scene in the area of 92nd Avenue and Federal Blvd. to examine and collect evidence. The weather was clear, with a temperature of approximately 30 degrees. The lighting in the area was generally dark due to the time of day and limited lighting in the area. Some areas had snow from a previous snowstorm, but most walkways were clear. In the intersection, there were two vehicles that had collided. The vehicle driven by Mr. Lowry was impounded and determined to be stolen from Northglenn.

A 7-11 store was located on the northwest corner of the intersection. A restaurant was situated to the west adjacent to the 7-11. A gray windbreaker lay on the ground to the south of the 7-11 store. There was a chain link fence on the north side of the restaurant, which led to the back lot of an automotive shop. There was a ladder up against the fence in this area, and there

were several shoeprints in the snow. The automotive shop housed a number of vehicles. There were also shoe prints in the back lot of the automotive shop. The entire back lot of the automotive shop was fenced with a chain link fence. CSI Davenport located several shoeprints in the snow by the fence next to the restaurant, which appeared consistent with the tread pattern of Mr. Lowry's shoes.



(Fenced area of the tire shop)

To the west side of the back lot of the tire shop was the townhome complex. The complex consisted of several two-story buildings. The townhomes buildings were accessed by a long driveway running north and south, accessed by 92nd Avenue. The driveway appeared as an alleyway between the townhome buildings to the west and the restaurant to the east. A large metal dumpster sat on the east side of the driveway.



(Townhome complex parking lot)

Just to the north of this dumpster was the location of the shooting. The body of Mr. Lowry was located in this area, just west of the wooden fence. Around the body, Criminalist Davenport located fired casings, fired bullets and taser cartridges. There were twenty .9 millimeter shell casings and fourteen .223 shell casings.

Mr. Lowry's body was located near the dumpster. There were several taser probes stuck in his shirt, pants and the bottom of his right shoe. There was an empty knife sheath on Mr. Lowry's belt. Mr. Lowry's firearm was located near his body in the parking lot. The firearm was a Cobra model CB9, .9 millimeter two shot pistol. This pistol was loaded with two fired rounds in the pistol, which is consistent with the firing of two rounds the officers heard when they initially arrived. There were also several live .9 millimeter rounds recovered north of Mr. Lowry's body.

The investigators downloaded the recording preserved from Corporal Montoya's body worn camera. The video begins recording while Corporal Montoya is in his vehicle traveling to the initial call of a robbery. The recording includes his conversations with the employees of Auto Zone and information about the possible location of Mr. Lowry. Corporal Montoya then travels to a second location, in the area of 92nd and Pecos. A vehicle matching the description provided is seen and Corporal Montoya exits his vehicle and begins giving commands to Mr. Lowry. Mr. Lowry quickly enters the truck and takes off at a high rate of speed westbound on 92nd Avenue. Corporal Montoya reports that he is heading into the City of Westminster in pursuit of Mr. Lowry.

Over the radio, Corporal Montoya is advised that there is a crash. He proceeds past the crash and makes contact with a Westminster Police Officer. The Westminster Officer advises him of a gunshot in the area. Corporal Montoya moves his vehicle to provide cover and when exiting his vehicle, another gunshot is heard on the recording. As Corporal Montoya climbs a wooden fence into the townhome parking lot, several officers can be heard giving commands such as, "Police!" "Get on the ground!" "Hands!" "Something in his hands!" The recording captures officers firing at the suspect. Corporal Montoya quickly gets on the radio and advises that shots were fired. The body camera footage does not provide a view of Mr. Lowry during the encounter.

There were no additional recordings, as none of the other officers were equipped with body worn cameras.

MEDICAL EXAMINATION

On December 9, 2019 Dr. Stephen Cina, a Forensic Pathologist with the Adams County Coroner's Office, conducted a forensic autopsy of the body of Mr. Hunter Lowry. Dr. Cina noted the decedent had twenty-six entrance gunshot wounds, including two possible re-entrance wounds to the head, back of the neck, torso and extremities. There were multiple exit gunshot wounds and taser probe strikes on the left lateral chest. There was no evidence of close range firing. The toxicology report revealed a positive level of methamphetamine and THC. Dr. Cina determined the cause of death to be multiple gunshot wounds; the manner of death to be homicide.

SUSPECT INFORMATION

Mr. Hunter Lowry had a pending case in Adams County for Criminal Impersonation, Possession of Schedule I or II controlled substance and Criminal Possession of a Financial Device in 19CR4261. Mr. Lowry had two misdemeanor convictions from Wyoming for possession of a controlled substance and interference with a peace officer. Mr. Lowry's criminal history also included petty offenses and probation violations.

LEGAL ANALYSIS

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. In this instance, in order to file a criminal charge the District Attorney's Office must prove

beyond a reasonable doubt that the officers' actions were not justified under the circumstances surrounding this incident and the applicable Colorado law.

In this case, there is no dispute that Officer Stroup, Officer Dyrud, Corporal Montoya and Officer Azua all fired their weapons resulting in the death of Mr. Hunter Lowry. At the time of the shooting, all the involved officers were engaged in the course of their duties as a peace officer to affect an arrest. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time the officers fired their weapons, the Office of the District Attorney can prove beyond a reasonable doubt that their 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. (2019), 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. (2019).

OFFICER STROUP

Officer Stroup was engaged in the performance of his duties to affect an arrest of Mr. Hunter Lowry. On December 6, 2019, Officer Stroup responded to the location to assist in apprehending Mr. Lowry. When Officer Stroup came into contact with Mr. Lowry in the parking lot of the townhome complex, he continued to give Mr. Lowry commands, which were ignored. Mr. Lowry ran away from Officer Stroup, and other officers. Officer Stroup observed an object in Mr. Lowry’s hand that he thought might be a gun. Officer Stroup, along with the other officers, approached Mr. Lowry and continued to give him commands. Officer Parson and Corporal Montoya used non-lethal force (a Taser) to stun Mr. Lowry, who fell to the ground. Officer Stroup then observed a gun on the ground. Mr. Lowry reached for it and began to point the gun towards Officer Stroup and the other officers. Officer Stroup reasonably feared that Mr. Hunter Lowry was going to kill him or the officers. Officer Stroup stated that he discharged his weapon based on Mr. Lowry’s actions causing him to fear for his life and the lives of his fellow officers standing in close proximity to Mr. Lowry.

Under these facts, the Office of the District Attorney cannot prove that Officer Stroup was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regard to Officer Stroup.

OFFICER DYRUD

On December 6, 2019, Officer Dyrud was engaged in the performance of his duties to affect an arrest of Mr. Hunter Lowry. When he encountered Mr. Lowry in the parking lot of the townhome complex, he began to give Mr. Lowry commands, which were ignored. Mr. Lowry ran north away from Officer Dyrud and other officers. Officer Dyrud observed a shiny object in Mr. Lowry’s hand that he believed to be a gun. Officer Dyrud, along with the other officers, approached Mr. Lowry and continued to give him commands. Officer Parson and Corporal Montoya used the Taser as non-lethal force and Mr. Lowry fell to the ground. Officer Dyrud then observed a gun on the ground. Mr. Lowry reached for the gun. Officer Dyrud reasonably

feared that Mr. Lowry was going to kill him or the other officers. Officer Dyrud explained that he fired his weapon because he feared for his life and the lives of his fellow officers.

Under these facts, the Office of the District Attorney cannot prove that Officer Dyrud was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regards to Officer Dyrud.

CORPORAL MONTOYA

Corporal Montoya was engaged in the performance of his duties to affect an arrest of Mr. Hunter Lowry. When Corporal Montoya came into contact with Mr. Lowry in the parking lot of the townhome complex, he began to give Mr. Lowry commands, which were ignored. Corporal Montoya was able to get closer to Mr. Lowry and drew a Taser on him. Corporal Montoya recalled seeing the suspect grabbing for something in his waistband and pulling hard to get it out, so Corporal Montoya then transitioned to his rifle. Corporal Montoya was concerned for his safety and the safety of the other officers. Mr. Lowry's actions caused Corporal Montoya to fear that Mr. Lowry was going to kill him or the other officers. He discharged his weapon to stop the threat he perceived.

Under these facts, the Office of the District Attorney cannot prove that Corporal Montoya was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regard to Corporal Montoya.

OFFICER AZUA

Officer Azua was engaged in the performance of his duties to affect an arrest of Mr. Hunter Lowry. When Officer Azua encountered Mr. Lowry in the townhome parking lot, he began to give Mr. Lowry commands, which were ignored. As Officer Azua approached the dumpster, he observed another police officer deploy a Taser and Mr. Lowry fall to the ground. Officer Azua saw a revolver lying next to Mr. Lowry. Mr. Lowry moved toward the revolver, gripped it, and raised it at Officer Azua and the other officers. Officer Azua was in fear for his safety and the safety of the officers. Based on Mr. Lowry's actions, Officer Azua discharged his weapon, reasonably fearing for his life and the lives of his fellow officers standing in close proximity.

Under these facts, the Office of the District Attorney cannot prove that Officer Azua was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regard to Officer Azua.

CONCLUSION

Mr. Hunter Lowry committed a robbery at the Auto Zone in Federal Heights. He fled the scene in a stolen vehicle and crashed at the intersection of 92nd Avenue and Federal Blvd. Mr. Lowry fled the crash scene and ran behind several businesses into the lot of an automobile shop. Officers and witnesses heard two distinct gunshots coming from that area. Mr. Lowry jumped a wooden fence into the townhome complex parking lot. Mr. Lowry was confronted by several officers and ignored their multiple commands to stop. Mr. Lowry proceeded to run north in the parking lot when officers observed a shiny object in his hand. The officers believed that the object was a handgun. Several officers again confronted Mr. Lowry and he continued to ignore their many commands. Corporal Montoya and Officer Parsons attempted to subdue Mr. Lowry with the use of a Taser.

Just after the Taser was deployed, a silver handgun fell out onto the ground near Mr. Lowry. He reached for it and started to point it towards the officers. Officer Stroup, Officer Dyrud, Corporal Montoya and Officer Azua all fired their weapons, fatally wounding Mr. Lowry. Each of these officers explained that at the time they fired their weapons they were in fear for their lives and the lives of their fellow officers.

Applying the facts of this incident to the applicable Colorado law, the evidence does not support the filing of any criminal charges against any of the involved officers, as there is no likelihood of proving beyond a reasonable doubt that their actions were not justified or unreasonable under the circumstances. Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that no criminal charges will be filed against Officer Anthony Stroup, Officer Garrett Dyrud, Corporal Joey Montoya and Officer Josh Azua.

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

Respectfully,



Dave Young
District Attorney