



June 29, 2017

Chief of Police Nicholas Metz
Aurora Police Department
15001 E. Alameda Parkway
Aurora CO 80012

Re: *Investigation of the officer-involved shooting of Michael Adrian Torres (DOB 1/4/1993) on April 1, 2017 in Aurora, Colorado.*

Dear Chief Metz,

The Seventeenth Judicial District Attorney's Office has completed the review of the investigation regarding the officer-involved shooting of Mr. Michael Adrian Torres occurring on April 1, 2017 in Aurora. The Aurora Police Department in conjunction with the Denver Police Department conducted the investigation into this matter. Detective Mike Prince with the Aurora Police Department presented the factual findings of the investigation to my office on May 26, 2017. Detective Prince presented law enforcement reports, audio and video recorded interviews, photographs, body cameras, and diagrams of the crime 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 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 your 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 officer involved committed any crime, therefore, no criminal charges will be filed.

The Incident

Aurora Officer David Musgrave of the Colorado Auto Theft Prevention Authority (CATPA) and Central Metropolitan Auto Theft Task Force (CMATT) was actively investigating multiple auto thefts in the area of 1030 N. Cimarron Circle and the nearby trailer park of 14470 E. 13th Avenue in Aurora. On March 31, 2017, Officer Musgrave drafted and disseminated, department wide, an Aurora Police Department bulletin detailing Mr. Michael Torres as a wanted party for an outstanding felony auto theft warrant. The bulletin outlined the following:

Be on the look-out for the above pictured male. Torres is currently wanted on a felony no bond warrant out of Denver for Aggravated Motor Vehicle Theft. He may be driving the pictured Toyota RAV4 with Stephanie Cervantes-Facio (DOB 8/11/99). Please also note that Torres is actively involved in the Subaru Impreza thefts in the Denver Metro Area.

Exercise extreme caution when approaching the vehicle or Torres as he may be armed with a gun and confirm warrant active status through CCIC/NCIC.

On April 1, 2017, Officer Musgrave received a phone call from Officer Lonnie Crump advising he had observed a stolen Subaru Impreza located in the parking lot of 1030 N. Cimarron Circle. Officers believed the stolen Impreza might be associated with Mr. Torres. Officer Musgrave requested assistance from the Aurora Police Department's Fugitive Apprehension and Surveillance Team (FAST) and members of the Strategic Response and Tactics Team (SRT) for the possible arrest of Mr. Torres. Surveillance was conducted in the area until approximately 2:00 p.m., but Mr. Torres was not observed and the operation was cancelled. At approximately 2:25 p.m., Officer Tim King received calls from neighbors advising that Mr. Torres was in the area with a female and leaving in a white Toyota RAV4. Upon hearing this, Officer King contacted the SRT officers and requested them to return to assist with the apprehension of Mr. Torres. Officer Musgrave responded to the area to conduct surveillance and to maintain a visual on Mr. Torres. Eventually, the Toyota RAV4 drove to the area of Colfax and Sable and parked in front of the S-Mart.

SRT responded to the area in three separate vehicles. As the SRT vehicles were driving to the S-Mart location, they were advised that Mr. Torres was exiting the store and returning to his vehicle. SRT members; Sergeant Barnes, Officer Graham and Officer Shipley, were the first vehicle to arrive at the location and a vehicle takedown was initiated. Officer Shipley drove an unmarked Ford F150 behind the RAV4 and made contact with the bumper to prevent the vehicle from backing out. Sergeant Barnes and Officer Graham exited the passenger side of the vehicle and approached the RAV4. The officers observed the vehicle move forward and then immediately reverse back towards the officers. Sergeant Barnes aimed his AR-15 rifle at the back window of the vehicle and fired three rounds. Officer Graham was armed with a less lethal 40mm foam launcher, and simultaneously fired four less lethal foam rounds at Mr. Torres' vehicle.

The RAV4 cleared the store front and was slowly traveling north across the street towards a construction site, while SRT officers followed on foot. Officer Graham fired another foam round into the front driver's window. The vehicle then traveled down an embankment, Officer Graham followed on foot and fired a final foam round into the rear passenger window.

Mr. Torres and Ms. Stephanie Cervantes-Facio exited the vehicle and crawled up the embankment. Mr. Torres complained of left leg pain. Sergeant Barnes and other officers examined Mr. Torres and observed a bullet wound to his lower back. Officers provided first aid until medical staff arrived and transported Mr. Torres to the hospital. Dr. Marian Betz treated Mr. Torres and noted that he suffered from two gunshot wounds to his lower left back. A third wound was observed on his upper back, which appeared to be a possible bullet fragment that did not penetrate the skin. Mr. Torres was released from the hospital and later charged with vehicular eluding.

Aurora Police Department Major Crime/Homicide Unit Detective Mike Prince was assigned to investigate this incident.

Witness Interviews

Investigators from the Aurora Police Department and the Denver Police Department conducted interviews of all necessary witnesses at the police department. Though there were many witnesses interviewed, only the involved officers and material witnesses who provided relevant information to this investigation are specifically summarized herein.

Sergeant Kevin Barnes: Sergeant Kevin Barnes is a police officer employed by the Aurora Police Department for the last twelve years. Prior to his service with the Aurora Police Department, Sergeant Barnes served for five years in the United States Army and five years with the Department of Youth Corrections. At the Aurora Police Department, Sergeant Barnes worked uniform patrol and in the Vice and Narcotics Unit. Sergeant Barnes was promoted to Sergeant in November of 2015. He was assigned as a supervisor for the Strategic Response and Tactics Team (SRT) in November of 2016. Sergeant Barnes received numerous hours of training through the Aurora Police Department Academy, the field training program and receives continuing in-service training.

Detective Mike Prince and Detective Warren Miller interviewed Sergeant Barnes on April 3, 2017 at the Aurora Police Department with his attorney present and he stated the following:

At the time of the incident, Sergeant Barnes was on-duty wearing a dark blue standard SRT BDU uniform shirt and pants, affixed with "Aurora Police Department" patches on both shoulders, a name tag and badge on his left chest area. Sergeant Barnes carried his duty gun (Glock 17, 9mm) on his duty belt, and a backup subcompact gun (Glock 40, 9mm) on his ankle. He also maintained his department issued AR-15 rifle. Sergeant Barnes was also outfitted with a police department issued body camera.

Sergeant Barnes said that the SRT unit at the Aurora Police Department was a combination of the Special Weapons and Tactics Team (SWAT) and the Direct Action Response Teams (DART). The SRT serves as a secondary enforcement team to patrol officers as well as specialized units. SRT is comprised of four teams, each consisting of six officers and one Sergeant. SRT works to develop tactical plans prior to each operation when time allows;

assigning specific duties to each officer. If time is limited and an operation plan cannot be fully developed, SRT officers rely on their prior training and experience to handle dynamic situations.

Sergeant Barnes explained his training as it related to vehicle takedowns; describing the best technique is to use two police vehicles, one to block the suspect vehicle in the front and the other to block it from behind. The team tries to ensure they can adequately limit the vehicles movement; identifying that the front and rear pin is the most ideal scenario. Sergeant Barnes articulated the main safety concern is that a suspect could use their vehicle as a weapon. However, with this incident, pinning the RAV4 from the front and the rear was not an option due to its location in front of the S-Mart. The officers are trained to get out of the vehicle as soon as possible to get a visual and make contact with the occupants in the vehicle. A danger with vehicle takedowns is the potential harm to citizens if the suspect's vehicle is able to break free from the pin and flee.

Sergeant Barnes had personal experience with Mr. Michael Torres approximately a month prior when he was working with CMATT and FAST on a vehicle takedown in the area of Mississippi and Peoria. Sergeant Barnes was behind the vehicle in an unmarked SUV and a determination was made to pin the vehicle at a traffic light. The vehicle was pinned on the front and back side of the suspect vehicle by unmarked police vehicles, a brown Ford F150 and a blue Chevy Tahoe. Several vehicle occupants were noncompliant and less lethal force was used to take them into custody. Mr. Torres was contacted as the front seat passenger and was compliant with officers during this particular incident.

On April 1, 2017, Sergeant Barnes was working off duty in the morning, but continued to monitor radio communications. Through this communication, Sergeant Barnes learned that SRT was assisting in an operation to apprehend Mr. Torres. Sergeant Barnes began his shift around noon. He was requested to pick up a SRT van to assist in the apprehension of Mr. Torres and motor vehicle theft recovery in the area of 1097 Cimarron. Initially, he received the information from Officer Shipley and Officer Muldoon. Sergeant Barnes was familiar with Mr. Torres and learned he had a felony no bond warrant and knew him to be armed and dangerous. Sergeant Barnes did not receive the bulletin that day, but heard the details of the bulletin from other officers. Sergeant Barnes and Officer Shipley responded to the Aurora Police Department to pick up the SRT van to participate in the ongoing operation.

The SRT officers responded to the area of 1097 Cimarron with the van, and established a position near the stolen vehicle. Sergeant Barnes and his team wanted to apprehend Mr. Torres before he entered the stolen vehicle. Members waited until 2:00 p.m., and then Sergeant Barnes called off the operation because there was no activity. The SRT officers left the area, while members of CMATT stayed to maintain surveillance and provide an update if an identification was made of Mr. Torres.

Shortly after leaving the area, Sergeant Barnes received information that Mr. Torres was leaving the trailer park in a Toyota RAV4. Sergeant Barnes assembled the SRT officers and headed back to the area to assist. Officer Dieck and Officer Marek drove in a blue Chevy Tahoe. Officer Sutherland and Officer Miles drove in a Dodge Ram pickup. Sergeant Barnes, Officer

Graham and Officer Shipley, who was driving, were in a Ford F150 pickup truck. Sergeant Barnes was in the front passenger seat and Officer Graham was in the rear passenger seat. Sergeant Barnes said that the same Chevy Tahoe and Ford F150 that had previously been used in the vehicle takedown involving Mr. Torres a month earlier were being used during this incident.

Although there was no formal briefing or tactical plan regarding apprehending Mr. Torres for this incident, Sergeant Barnes indicated the responsibilities were understood based upon prior training and experience of the involved officers. The roles of the officers were discussed amongst the three of them while in route to the location. Sergeant Barnes was assigned as the lethal cover and was responsible to neutralize the threat if a threat occurred arming himself with an AR-15 rifle. Officer Graham was not equipped with tactical gear, so he was designated as the less lethal cover. Officer Shipley was responsible for driving and maintaining the pin on the vehicle.

Surveillance officers in the area were following the Toyota RAV4 and were providing radio communication updates to Sergeant Barnes and the SRT officers. The surveillance team advised that the vehicle was heading north on Sable and then pulled into the parking lot of the S-Mart. Sergeant Barnes explained that they received updates on Mr. Torres' location and clothing description. Officer Shipley, Sergeant Barnes and Officer Graham were in the lead unmarked vehicle. As Officer Shipley drove north on Sable, they observed Mr. Torres and a female getting into the RAV4 in a parking space in front of the S-Mart. Mr. Torres got into the driver seat of the RAV4. This heightened the sense of urgency that Mr. Torres would flee, so Sergeant Barnes made the call to conduct the vehicle takedown at that time. Sergeant Barnes advised that usually on these operations they like to do a visual and then make a determination on how and when to pin the vehicle, however, they did not have time for that on this occasion.

Officer Shipley pulled into the parking lot behind the RAV4 so the front bumper of the Ford F150 made contact with the rear bumper of the RAV4. The purpose of this was to pin the RAV4 against the curb line of the S-Mart. Sergeant Barnes primary responsibility was to apprehend Mr. Torres. As they were pulling up, Sergeant Barnes observed Mr. Torres making furtive movements in the vehicle; his hands were diving down in the vehicle. As soon as Officer Shipley made contact with Mr. Torres' vehicle, Sergeant Barnes got out of the passenger side of the vehicle with his AR-15 rifle over his shoulder. Sergeant Barnes believed that Officer Graham exited the rear passenger side at the same time and moved to his right side. Officer Dieck, who parked the blue Tahoe directly behind them, exited and provided cover on the driver's side of the RAV4. Sergeant Barnes said other vehicles were in the parking lot, but could not recall their positioning.

Sergeant Barnes sole focus was on the driver, Mr. Torres. Sergeant Barnes heard Officer Graham yelling orders to the occupants of the vehicle. As soon Sergeant Barnes and Officer Graham established their positions and got closer to the RAV4, Mr. Torres began driving aggressively forward and backward to try and get out of the vehicle pin. Sergeant Barnes could not say definitively, but estimated that he was a couple of feet away from the back of the RAV4. Mr. Torres made contact with the Ford F150 parked directly behind him. Sergeant Barnes could not estimate a speed, but noted the vehicle going backward two to three times and making contact with the Ford F150 at least twice. Sergeant Barnes did not recall seeing reverse lights.

He described Mr. Torres as manipulating the vehicle, so the rear of the vehicle was facing south and driving in a reckless and aggressive manner. He thought Mr. Torres' vehicle had also collided with the front of the S-Mart, but was not certain.

Sergeant Barnes felt that the situation was escalating. He said he was concerned for his safety, the safety of the other officers, and citizens in the area. He observed that there was little room for the officers to move or get out of the way of Mr. Torres' vehicle. Sergeant Barnes observed the vehicle reverse towards him, causing him to fear for his immediate safety and the safety of others around him. He feared he was going to be crushed by the vehicle. Sergeant Barnes described Mr. Torres actions as aggressive, violent and reckless.

Sergeant Barnes wanted to stop the immediate threat posed by Mr. Torres' driving, so he took aim with his rifle at the torso area of Mr. Torres. Sergeant Barnes fired three rounds from his AR-15 rifle through the rear window of the vehicle. Sergeant Barnes was mindful of the angle of his shot, as to avoid a bullet that might over penetrate the vehicle and harm someone else. Sergeant Barnes observed his rounds penetrate the rear window. Sergeant Barnes stopped firing as he believed they had the intended impact and neutralized the threat posed by Mr. Torres. After firing three rounds, Mr. Torres' vehicle continued to move at a slower pace. Sergeant Barnes, Officer Shipley and Officer Graham followed on foot, as the vehicle moved slowly.

The vehicle headed north, across the parking lot, and came to a final rest in a muddy construction site. Sergeant Barnes ordered additional officers to stay away from the RAV4, so they gave verbal commands for the driver and passenger to exit the vehicle. The female passenger immediately complied and was taken into custody. Mr. Torres rolled down his window and put his hands out the window. Mr. Torres said, "I wasn't trying to hit you guys, I wasn't trying to back into you guys but there is something wrong with the car." Mr. Torres complied with the commands and exited the RAV4. Mr. Torres had difficulty walking and he crawled up the embankment to the officers. Mr. Torres complained of pain in his leg and Sergeant Barnes requested a first-aid kit. Sergeant Barnes saw that Mr. Torres had a bullet wound to his lower back. Sergeant Barnes directed officers to contact rescue and have them respond.

Officer Brad Graham: Officer Graham is a police officer employed by the Aurora Police Department for fourteen years. He became a full-time SWAT team member in 2015 and is currently assigned to SRT. On April 1, 2017, Officer Brad Graham participated in a recorded interview at the Aurora Police Department and stated the following:

On April 1, 2017, he joined the members of the SRT team for lunch in the area of East Iliff and South Blackhawk Street. During this time, he overheard radio communication requesting assistance in apprehending a wanted party. Earlier in the day, Officer Graham received an email with the information about the wanted party including; a photo, vehicle information, a female associate and his association with an armed robbery. Sergeant Barnes asked for Officer Graham to assist in the operation.

Officer Graham, seated in the rear passenger seat, rode in the vehicle with Officer Shipley and Sergeant Barnes. In route to the area, Officer Graham overheard radio communication between SRT officers and the surveillance officers, identifying the location and the vehicle that Mr. Torres was driving. The initial plan was to drive by the vehicle to make observations of the RAV4 and the current location, but radio communication advised Mr. Torres and the female were getting back into their vehicle. Officer Graham observed the vehicle and saw the female passenger getting into the vehicle and shutting the door. Officer Graham heard either Officer Shipley or Sergeant Barnes state that they were going to move in on the vehicle instead of driving by. Officer Graham was outfitted with a 40mm foam launcher used for less lethal situations.

Officer Shipley drove into the parking lot and made contact with the rear bumper of the RAV4 with Ford F150's front bumper. As soon as Officer Graham felt contact with the vehicle, he exited the vehicle and felt the truck still moving forward. Officer Graham observed the suspect vehicle move forward toward the business, as the police vehicle moved forward slightly. Officer Graham could see through the windows and observed a driver and passenger inside the vehicle. Officer Graham was positioned near a parked car directly next to the suspect vehicle. Officer Graham positioned himself to allow access for Sergeant Barnes to cover the occupants of the RAV4, this afforded Officer Graham the opportunity to use less lethal force on Mr. Torres if he attempted to flee.

Officer Graham described the vehicle as jerky, going backward and forward. Officer Graham was unable to identify the speed of Mr. Torres' vehicle as it was moving. Officer Graham did not hear any commands being given. Officer Graham believed there was sufficient room for Mr. Torres' vehicle to reverse through the gap that existed between the Ford F150 and the parked car. Officer Graham was concerned about Mr. Torres fleeing and wanted to use less lethal rounds to try and stop the suspect from making these movements. Officer Graham expressed concern for citizens that might be in the store or in the area if the suspect made additional attempts to flee. He also stated that he felt secure in his position by the parked vehicle, but did not know where the other officers were and did not know where Sergeant Barnes was positioned. Officer Graham fired four less lethal rounds; from the time Mr. Torres started to pull forward and then go backwards. The rounds went through the back window and were intended for the driver's side area. Officer Graham described the purpose of firing the less lethal rounds was to gain compliance from the driver.

During the firing of the less lethal rounds, Officer Graham heard multiple rifle rounds being fired. The firing of the rifle rounds stopped prior to Officer Graham completing the firing of the less lethal rounds. Officer Graham recalls that Mr. Torres' vehicle was still in reverse when the rifle rounds were being fired. Officer Graham advised the vehicle might have been stopped or started to drive away when he fired his fourth less lethal round through the back window. Officer Graham fired a fifth round into the driver's side window as it was driving away at a slow rate of speed. He believed the round broke the glass, but did not penetrate the window.

Mr. Torres' vehicle then continued out of the parking lot traveling north. Officer Graham fired a sixth round through the rear passenger window. The vehicle was going slowly through

the roadway, over the curb into the construction site. The vehicle rested at the bottom of a ditch and a female immediately exited the passenger side. Officer Graham describes the driver's hands out of the window, and Mr. Torres stated that he could not move, and that he had been hit. Mr. Torres then exited the vehicle and made his way up to the officers and was taken into custody. Mr. Torres advised he had been shot and Officer Graham observed blood on Mr. Torres' lower back area. Officers then begin to treat Mr. Torres with a medical kit.

Officer Justin Shipley: Officer Shipley is currently assigned to the SRT unit and was working in that capacity on April 1, 2017. Officer Justin Shipley participated in a recorded interview on April 1, 2017 at the Aurora Police Department and stated the following:

Officer Shipley completed off duty work and responded to the District One Station to assist with surveillance operations at the 1032 Cimarron location. Officer Shipley previously observed a bulletin regarding Mr. Torres, who was wanted for a no bond felony warrant for aggravated motor vehicle theft and was suspected in several armed robberies. The bulletin advised to be cautious as Mr. Torres might be armed and dangerous.

Officer Shipley explained the surveillance concluded around 2:00 p.m. because no observations were made of Mr. Torres. Officer Shipley joined SRT officers for lunch. As they were in the restaurant, radio communication advised that officers had located Mr. Torres and requested assistance with his apprehension. The SRT officers responded to assist. Officer Shipley was driving an unmarked Ford F150, along with Sergeant Barnes in the front passenger seat and Officer Graham in the rear passenger seat. The original plan was to drive by the observed address to determine the exact location and develop a plan for blocking the vehicle and apprehending Mr. Torres. As Officer Shipley turned north onto Sable, he overheard radio communication that Mr. Torres and a female passenger were getting into a RAV4.

With this new information, SRT officers decided that contacting Mr. Torres before he could move his vehicle was the safest way to affect an arrest. Officer Shipley observed Mr. Torres and the female passenger entering the RAV4 and he maneuvered the Ford F150 into a blocking position. Officer Shipley made contact with the rear bumper of the RAV4 to prevent the vehicle from backing out. Immediately after this contact, Mr. Torres placed the RAV4 into reverse and tried to push out of the pinned position. Officer Shipley described Mr. Torres as violently rocking the RAV4 forwards and backwards. Officer Shipley was concerned that Mr. Torres' vehicle would go forward through the open business or reverse towards the officers behind the vehicle.

Officer Shipley exited on the driver's side, while Sergeant Barnes and Officer Graham exited the passenger side. Officer Shipley did not approach the RAV4 for fear of being hit by Mr. Torres' vehicle. Officer Shipley then heard the 40mm foam launcher being fired, but could not recall how many rounds were fired. Officer Shipley then observed Mr. Torres' vehicle turn enough to slowly drive northbound along the front of the S-Mart. Officers yelled for Mr. Torres to stop the vehicle, and Mr. Torres' advised that he could not. Officer Shipley indicated the RAV4 continued across an alley-way, up an embankment, and came to rest in a construction site.

Mr. Torres was ordered out of the RAV4 by officers. Mr. Torres complied and crawled up the embankment. Mr. Torres began to complain of pain in his leg and asked, "Why did you guys shoot me?" Officer Shipley retrieved a medical bag from his vehicle and provided treatment to Mr. Torres until medical arrived. He observed a small bleeding wound on Mr. Torres and realized that Mr. Torres had been shot. Officer Shipley accompanied paramedics in the ambulance while Mr. Torres was transported to a nearby hospital.

Officer Jeremiah Miles: Officer Jeremiah Miles is employed at the Aurora Police Department and is a member of SRT. Officer Jeremiah Miles participated in a recorded interview on April 1, 2017 at the Aurora Police Department and stated the following:

On April 1, 2017, Sergeant Barnes contacted Officer Miles to assist in providing surveillance on a stolen vehicle. The vehicle was associated with Mr. Michael Torres who was wanted on a felony warrant. Officer Miles responded to assist with the surveillance, but it was discontinued at approximately 2:00 p.m. because there was no activity. Officer Miles joined SRT officers for lunch. While in the restaurant, radio communication announced that Mr. Torres had been located and requested assistance. Officer Miles assisted SRT with this operation.

Officer Shipley's vehicle was the lead SRT vehicle. Officer Shipley used his vehicle to block Mr. Torres' vehicle from behind. Officer Miles was in a blue Chevy Tahoe driven by Officer Sutherland. Upon entering the S-Mart parking lot, Officer Miles exited the passenger side of the vehicle and displayed his rifle, focusing on the passenger side of the RAV4. Officer Miles observed the RAV4 pull forward with the wheels turned to the left. Officer Miles walked behind a parked car to avoid being struck by the RAV4 reversing. He observed the driver of RAV4 put the vehicle into reverse, backing towards the officers that were behind Mr. Torres' vehicle. As Mr. Torres' vehicle reversed, Officer Miles heard the firing of the less lethal 40mm foam launcher. He observed Mr. Torres' vehicle pull forward again and navigate the vehicle slowly northbound. SRT officers continued to yell for Mr. Torres to stop, but the RAV4 continued over an embankment, ending in a construction site. Officer Miles observed the female passenger and Mr. Torres exit the vehicle and climb up the embankment. Mr. Torres was treated for his injuries and transported to the hospital.

Stephanie Cervantes-Facio: Ms. Stephanie Cervantes-Facio is the girlfriend of Mr. Michael Torres. She participated in a recorded interview on April 1, 2017 in the presence of her father, Adrian Cervantes-Villareal, at the Aurora Police Department, and stated the following:

Ms. Stephanie Cervantes-Facio admitted to knowing Mr. Torres and being present with him on April 1, 2017. Ms. Cervantes-Facio was aware that police previously had come to the trailer looking for Mr. Torres, but had been unsuccessful in locating him. Ms. Cervantes-Facio advised she knew Mr. Torres was wanted for a vehicle trespass. Ms. Cervantes-Facio advised that they were together at a trailer park in the area of 13th and Sable and left around 1:45 p.m. to drive to a store (S-Mart) to purchase a long-sleeve shirt.

She said that Mr. Torres drove to King Soopers (located at East Colfax and Chambers Road) and turned around driving towards the S-Mart. Ms. Cervantes-Facio observed they were being followed as the same unmarked SUV was near King Soopers and then again at S-Mart. She did not share her observations with Mr. Torres, but believed he knew based on the unusual route he took to the S-Mart. She advised, upon leaving the S-Mart, they got into the RAV4 and Mr. Torres stated, "They're coming" as their vehicle was hit from behind. Mr. Torres then stepped on the gas in an effort to flee by driving over the sidewalk. Ms. Cervantes-Facio said that Mr. Torres was shot by the police. She described the RAV4 continued to move and Mr. Torres could not stop. The vehicle then came to rest at a construction site.

Other Witnesses: On April 1, 2017, Officer Michael Dieck, Officer Dave Sutherland and Officer Jon Marek were interviewed at the Aurora Police Department. All three officers were assigned to the SRT unit on April 1, 2017 and were present on the scene of this incident. They all observed Mr. Torres' vehicle move forward and then heard shots. The officers were not in a position to observe who was shooting, but did hear shots being fired. Officer Dieck, Officer Sutherland and Officer Marek could not determine whose gun was being fired.

Video Surveillance

The S-Mart had video surveillance with interior cameras only. A camera was located on the east wall facing west and showed the front doors of the business. A portion of the parking lot was visible through the front glass doors. A review of the video surveillance, through the front glass doors, showed a white vehicle (RAV4) pull into the parking lot from southbound Sable and park just to the north of the front doors of the store. Once parked, the RAV4 was out of view of the camera. Both Mr. Michael Torres and Ms. Stephanie Cervantes-Facio enter through the front doors of the S-Mart. Mr. Torres appears to be looking out the front windows and glass doors. Mr. Torres walked around a table and to the south part of the store and again appeared to look out the front windows of the store. Mr. Torres and Ms. Cervantes-Facio walked around the store and then back to the front and looked out through the doors. After being in the store for approximately six minutes, both Mr. Torres and Ms. Cervantes-Facio exit the front doors and walk to the RAV4.

The video displayed Ms. Cervantes-Facio getting into the passenger side of the RAV4. Within moments, the SRT Ford F150 pulls into the parking lot and appears to stop directly behind the RAV4. Sergeant Barnes exits the front passenger door of the F150 holding a rifle. The F150 displays some movement, then Sergeant Barnes moves towards the front passenger quarter panel of the F150 and was aiming the rifle towards the RAV4. Sergeant Barnes quickly jumps backwards as the RAV4 reverses towards him almost striking him. The RAV4 drove away north east and out of the view of the camera. Sergeant Barnes also moved northbound out of the view of the camera. Officer Graham is observed just to the south of the front doors, pointing his weapon to the north. Officer Graham is seen moving north in front of the front doors of the store and out of view of the camera.

Body Camera Footage

On April 1, 2017, Sergeant Barnes was outfitted with an Aurora Police Department issued body camera. The initial thirty seconds does not record audio. When the recording begins, Sergeant Barnes is inside the Ford F150 and the camera displays the interior dashboard and the view outside of the windshield displaying the area of East Colfax and Sable. The vehicle movement is displayed as the Ford F150 pulls into the S-Mart parking lot directly behind the white RAV4.

The Ford F150 stops and Sergeant Barnes exits the front passenger seat. Officer Graham passes in front of him and takes a position near the RAV4. Sergeant Barnes moves around the opened passenger door of the F150. Officer Graham moves to the right, as Sergeant Barnes moves forward toward the RAV4. Sergeant Barnes' camera captures the view of the RAV4, which moved forward onto the walkway of the S-Mart. The video reveals that the RAV4's reverse lights were on. A large hole, consistent with the impact of a 40 mm foam round is observed in the back window. The RAV4 reverses towards Sergeant Barnes and then moves forward. Sergeant Barnes raises his rifle and only a portion of his hand is displayed, but is briefly moving in rapid succession. The RAV4 is then seen driving slowly across the side street to the north of the S-Mart with officers walking behind it.

The audio then begins and an unknown officer states, "Stop it, stop it....stop the car!" Officer Marek stepped forward and used the hammer to smash and clear the front driver's side window. The RAV4 rolled down the embankment. Multiple officers are providing verbal commands. Ms. Cervantes-Facio appears as she walks up the embankment and was taken into custody. Mr. Torres can be heard in the background stating, "I'm hit....the car, I couldn't stop it!" This is followed by officers, including Sergeant Barnes, providing Mr. Torres with instructions to climb up the embankment towards them. Mr. Torres is taken into custody, stating he had been shot in the leg. Officers began first aid treatment. Sergeant Barnes is relieved of his command at the scene by Sergeant Brandon Samuels and is escorted to a nearby patrol vehicle by Sergeant Todd Alscher. The footage is then discontinued.

Crime Scene Investigation

On April 1, 2017, Detective Alton Reed, accompanied by Crime Scene Investigator Sarah Bailey, conducted an examination and bullet count of Sergeant Barnes' weapons. Sergeant Barnes carries a rifle only for use during specific tactical operations. In accordance with Aurora Police Department Policy, a 30 round rifle magazine is loaded with twenty-eight (28) rounds. Sergeant Barnes said he carries a full magazine (28) and one (1) round in the chamber, for a total of twenty-nine (29) rounds. Examination of the rifle revealed one (1) round in the chamber and twenty-five (25) rounds in the magazine, leading to the conclusion that three (3) rounds were fired.

Crime Scene Investigator Darvin Harrell responded to the scene. Investigator Harrell observed the S-Mart to be a convenience store located east side of Sable Blvd with the entrance facing west. There was a paved parking lot on the west side of the store with two driveway entrances on the west side of the lot. In front of the convenient store was a sidewalk and then a

row of marked parking spaces. There was no evidence of damage to the front area of the store. In the parking lot, Investigator Harrell observed two vehicles facing northeast; a brown Ford F150 and a white Dodge Ram. These were unmarked police SRT vehicles. He observed and collected three cartridge casings consistent with the rounds from Sergeant Barnes rifle located in the S-Mart parking lot. The weapon inspection and examination of the crime scene supports the conclusion that Sergeant Barnes fired three (3) rounds from his rifle during the incident.

To the north of the S-Mart was a paved road that ran east to west. To the north of the road was a construction drainage pond encircled with a short black plastic erosion fence. Investigator Harrell observed that the Toyota RAV 4 was in the pond at rest facing north. The front driver's side window was smashed. There were four large holes and one small hole in the rear window, and one small hole in the frame on the driver's side of the rear window. There was also a large hole in the rear passenger side window.

Crime Scene Investigator Michael Brewer and Susan Castellano, conducted a search of the white Toyota RAV4. There was evidence verifying that three rounds were fired into the back end of the vehicle, along with four less lethal rounds. One of the gunshots was through the lower driver's side of the back window, one was through the left side framing of the back window, and the third was through the rubber molding along the bottom edge of the back window. The shot through the molding was on the driver's side of the window. The three bullets were fragmented upon entering the interior of the vehicle. There were five small bullet fragment holes into the back, driver's side of the rear seat. There were eleven exit holes in the front of the rear seat. The driver's seat was reclined back and there were nine fragment holes in the back. There were seven exit holes in the front of the driver's seat. There was a small bloodstain adjacent to the bottom of the driver's seat back. There was a bullet fragment entry hole in the interior side of the driver's door and an additional entry hole in the lower portion of the driver's side in the dashboard.

The four less-lethal rounds went through the rear window and were grouped together in the approximate center mass of the window. An additional less-lethal round was fired through the rear passenger side window. There were two fired less-lethal rounds on the cargo area floor, one on the rear driver's side floor, one on the passenger side of the rear seat, and one on the floor between the passenger seat and door.

Examination of the exterior of the RAV4 showed damage to the rear bumper and the rear mounted tire. Crime Scene Investigators Michael Brewer and Kimberly Gilbreth noted that there was damage to the Ford F150. The front end of the truck had numerous scratches, white paint transfer and dents along the passenger side vertical push bumper. Damage was also seen on the bolt and washer assembly along the push bumper's lower mount.

Suspect Information

Detective Mike Prince spoke with Dr. Marian Betz of the University of Colorado Medical Center and learned that Mr. Torres had suffered two apparent gunshot wounds to his lower back, both of which were in close proximity to each other. There was a third wound on his upper back, which appeared to be a possible fragment that did not penetrate the skin.

On April 2, 2017, Mr. Torres participated in a recorded interview with Detective Mike Prince and Detective Warren Miller at the University of Colorado Medical Center. Mr. Torres stated the following:

Mr. Torres explained he was staying with his mother at 14470 East 13th Avenue. On April 1, 2017, he left his mother's house in a Toyota RAV4 with Ms. Stephanie Cervantes-Facio. Mr. Torres was not aware that he had a warrant for his arrest. He stated that he drove to the S-Mart, parked out front and went into the store looking for a long-sleeve t-shirt. They remained in the store for approximately ten minutes. Mr. Torres and Ms. Cervantes-Facio left the store and got back into the RAV4. Mr. Torres advised he put the RAV4 into reverse and felt a bump from behind. He looked behind him and observed the front bumper and windshield of a Ford F150 pickup truck pressed up against the rear bumper of his vehicle. He initially saw the truck when it hit the rear bumper of the RAV4. He described the Ford F150 pushing his vehicle forward and turning his steering wheel so it would not hit the storefront.

He said that undercover officers exited their unmarked vehicles and they were wearing clothing that identified them as police officers. Mr. Torres stated he was scared and he did not know what was going on. The officers were repeatedly yelling at him to get out of the car. Mr. Torres described the next thing he knew, someone was shooting. Mr. Torres felt the first shot and said the officers continued to shoot. Mr. Torres said he was shot when his vehicle was moving forward. Mr. Torres said that he could not stop moving the car because he was hit and his leg went numb. The officers continued to yell commands for him to stop the vehicle.

Detective Mike Prince explained to Mr. Torres the video surveillance from the S-Mart displays his vehicle backing up with reverse lights on. Mr. Torres denies driving in reverse, but then stated he was driving in reverse when he was bumped by the F150.

At the time of this incident, Mr. Torres had a warrant out of Denver for aggravated motor vehicle theft arising out of Denver Police Department Case # 17-176826. Mr. Torres' criminal history consists of several juvenile adjudications, municipal violations and a conviction for aggravated driving under revocation (F6).

Following this investigation, Mr. Torres was charged with one count of vehicular eluding in case number 17CR1315. Case is pending in Adams County District Court.

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 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 Sergeant Barnes' actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Sergeant Barnes fired his weapon and wounded Mr. Torres. At the time of the shooting, Sergeant Barnes was engaged in the course of his duties to arrest a suspect with an active felony warrant. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Sergeant Barnes fired his weapon, the Office of the District Attorney can prove beyond a reasonable doubt that his actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under C.R.S. § 18-1-707, the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

(1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; 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.

At the time of this incident, Sergeant Barnes was making efforts to apprehend Mr. Michael Torres who had a no bond felony warrant for his arrest. Mr. Torres was known to Sergeant Barnes from a prior contact where Mr. Torres' associates made efforts to flee during a vehicle takedown. Additionally, Sergeant Barnes knew Mr. Torres was suspected in an aggravated robbery and was considered to be armed and dangerous.

Sergeant Barnes reevaluated the operation plan when he observed Mr. Torres return to his vehicle after leaving the S-Mart. Sergeant Barnes believed it was necessary to conduct a vehicle takedown in the parking lot, thus limiting Mr. Torres' ability to flee. Upon initiating the vehicle takedown, Mr. Torres began to move his vehicle in an effort to escape. Sergeant Barnes stated that he felt his life, as well as the lives of the other officers and citizens were in danger at the time he fired his weapon. Based upon the circumstances known to Sergeant Barnes, this was a reasonable conclusion when a wanted suspect made aggressive movements with his vehicle in an effort to escape and avoid apprehension, putting others at risk of serious bodily injury or death.

Under these facts, the Office of the District Attorney cannot prove that Sergeant Barnes' actions of firing at Mr. Michael Torres were not justified as applied to C.R.S. § 18-1-707. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regards to Sergeant Barnes.

Conclusion

The investigation demonstrates that Mr. Michael Torres was aware that the police were following him and made aggressive maneuvers with his vehicle to avoid apprehension. Sergeant Barnes fired his rifle three times in response to Mr. Torres' actions. At the time Sergeant Barnes fired his weapon, he stated he was in fear for his life, the lives of his fellow officers and citizens. Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Sergeant Barnes for the shooting of Mr. Torres on April 1, 2017. Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that no criminal charges will be filed against Sergeant Barnes.

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', written in a cursive style.

Dave Young
District Attorney