



April 21, 2017

Chief Jim May
Chief of Police
Northglenn Police Department
11701 Community Center Dr.
Northglenn, CO 80233

Re: *The investigation of the officer involved shooting of Hector Navarrette, DOB 5/26/85, occurring on January 7, 2017.*

Dear Chief May:

The investigation and legal analysis of the officer involved shooting of Hector Navarrette is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detective Doug Parker of the Thornton Police Department and Detective Michael Lynch of the Westminster Police Department. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to my office on February 24, 2017. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation is 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 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 each individual agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving that the involved officers committed any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against the officers involved in this incident.

OVERVIEW OF THE INCIDENT

On January 7, 2017, at approximately 6:00pm, Northglenn Police Officers responded to the area of 10544 Carmela Lane on a report of a domestic violence disturbance. One of the reporting parties observed a male drag a female off a porch and hit her in the face multiple times. This reporting party further observed the male suspect leave the scene in a silver Mercedes, which was reported stolen out of Arvada, Colorado. Officer Joshua Burke located the Mercedes in the area of 10700 Pecos Street and attempted to contact the suspect in the parking lot of the Northwest Open Space park. Officer Jarrod Guzman also arrived on scene and assisted Officer Burke with the contact of the suspect vehicle. The suspect vehicle entered the parking lot and became stuck in the snow. Both officers parked their patrol vehicles, exited, and gave several loud commands for the driver to show his hands and turn off the vehicle. The suspect driver did not comply.

Officer Burke approached the driver side window and shattered it with his asp in an attempt to remove the suspect from the vehicle. The suspect continued to accelerate the vehicle, which caused the wheels to spin in the snow. As the suspect was attempting to flee he kept his left hand on the steering wheel and appeared to be reaching for something in the front passenger area of the vehicle. The suspect vehicle then gained traction and accelerated through the lot which caused Officer Burke to lose his footing and fall to the ground. Officer Guzman believed Officer Burke had been run over or hit by the suspect vehicle, which caused him to return to his patrol car in an attempt to pursue the suspect vehicle through the parking lot. The suspect vehicle proceeded north through the lot, turned the vehicle to face southbound, at which point the suspect vehicle and Officer Guzman's patrol vehicle collided head on, with their front bumpers striking each other.

Officer Guzman observed the driver through his front windshield say "fuck you" and accelerate his vehicle. Officer Guzman also observed the driver keep his left hand on the steering while reaching for something in the passenger area with his right hand. Officer Guzman was fearful that the driver had a gun within the car. The vehicles broke free of one another, which caused the suspect vehicle to spin and collide with Officer Guzman's patrol vehicle again. This time, the front driver side bumper of the suspect vehicle made impact with the front left passenger side of the patrol vehicle. The suspect continued to reach for something in the front passenger seat area. Officer Guzman continued to be fearful that the suspect had a gun in the vehicle and was fearful the suspect was going to engage in a gun battle.

Officer Guzman exited his patrol vehicle and approached the suspect vehicle from the left passenger rear of the vehicle. As he approached he heard gunshots and saw a muzzle flash from his peripheral vision. Officer Burke had approached from the rear of the suspect vehicle by foot and fired rounds at the suspect driver through the back windshield. Officer Guzman observed the driver go limp. The suspect driver was later identified as Hector Navarrette and a handgun as well as a large knife were recovered from the front passenger area of the suspect vehicle.

SYNOPSIS OF LAW ENFORCEMENT OFFICER INTERVIEWS

Officer Joshua Burke:

Westminster Police Detective, Michael Lynch, and Thornton Police Detective, Doug Parker, interviewed Officer Joshua Burke the night of this incident. Officer Burke stated that he has approximately four and a half years of experience as a law enforcement officer with Northglenn Police Department and he currently works on the swing shift for District 2.

Officer Burke stated on January 7, 2017, at approximately 6:00pm, he was on routine patrol in full uniform in a marked police vehicle. Officer Burke was on duty on a civil call at 11260 Grant, Unit B, when dispatch aired a possible domestic violence incident nearby on Carmela Lane. Dispatch indicated that a reporting party stated that a female was pounding on her door and screaming. Dispatch then aired additional information from a different reporting party that a male subject was observed grabbing a female off a porch, punching her several times and then dragging her to a silver car. Because no other officers were available at the time of the call, Officer Burke broke from the civil assist, proceeded southbound on Grant, and responded to the area. Sergeant Digiovanni and Officer Mendez were in route to the location as well. As Officer Burke responded to the area he learned the female victim was located at a nearby house and the male suspect had fled the scene in a silver vehicle, reported as a silver Mercedes SLR, with a license plate that contained the number 308 and several Q's. He proceeded southbound on Grant to 104th, then westbound on 104th to Huron, where he checked the neighborhood for the suspect vehicle. Officer Burke continued through the neighborhoods and eventually reached 106th and Pecos, which was a few blocks east of the location of the original call, to search the neighborhood for the suspect.

Officer Burke traveled to Pecos and Rosianna, at which time he observed a vehicle that matched the description travel past him in the opposite direction, so Officer Burke made a u-turn to pursue the suspect. Officer Burke was able to confirm the license plate contained QQQ and 308. At this time Officer Burke activated his emergency overhead lights in an attempt to contact the vehicle. Officer Burke said that he believed he had probable cause to contact the driver for attempted kidnapping charges, assault and driving a stolen vehicle. The suspect vehicle did not stop but instead continued northbound on Pecos St., which eventually merges westbound, and into the parking lot of a Northwest Open Space park. Once inside the parking lot, the snow packed road and lot conditions rendered the vehicle unable to travel further. The vehicle became stuck just inside the parking lot facing northbound and Officer Burke parked his patrol vehicle slightly behind the suspect.

As Officer Burke exited his patrol vehicle, he observed the wheels on the suspect vehicle spinning rapidly in attempt to gain traction. Officer Burke left his overhead emergency lights on during his attempted contact with the suspect in the parking lot. Officer Burke utilized his spot light directly onto the driver of the vehicle through the passenger window. Officer Burke began to approach the suspect vehicle but as he did, the wheels on the car spun faster as the suspect was attempting to flee the scene. Officer Burke had a clear visual of the driver, and made eye contact with him as the driver looked at him through the passenger window. Officer Burke observed the driver keep one hand on the steering wheel while he looked down at the passenger seat. At this time, Officer Burke noticed the driver had opened the driver side door and he believed the

suspect was going to flee on foot. As a result, Officer Burke exited his patrol car, drew his service weapon, and approached the suspect vehicle.

Officer Guzman appeared on scene and parked to the west of the suspect vehicle. Officer Burke continued to approach the vehicle and as he did, the wheels on the car continued to spin. Officer Burke was approximately twenty feet from the vehicle and shouted several loud commands for the driver to show his hands. The suspect failed to comply with these commands. Officer Burke then observed the driver reach over into the passenger seat and because Officer Burke could not see both of the driver's hands, he was in fear for his safety. Officer Guzman was also shouting commands to the driver, which the driver ignored. The suspect then slammed shut the driver's door, at which time Officer Burke stepped closer to the vehicle as the wheels continued to spin. Both officers continued to shout commands at the driver. Officer Burke approached the driver side window, with his weapon holstered, retrieved his asp and with one stroke he shattered the driver side window. The driver responded and said "Fuck man," and continued to look towards the passenger seat. The driver then leaned over to the passenger seat, towards the passenger floor board attempting to reach for something. Officer Burke could not see into the passenger seat from his vantage point and because the driver was non compliant, and the wheels were still spinning, Officer Burke attempted to grab the driver's left hand. The driver continued to reach for something near the passenger seat. Officer Burke said he was in fear for his and Officer Guzman's safety because the driver was very focused on attempting to retrieve something from inside the vehicle.

At this point the suspect vehicle began to gain traction, and fishtail, as it moved back and forth from its original position. Officer Burke was afraid he would be struck by the car so he stepped back from the driver door, and as he did, he lost his footing and fell to the ground. Officer Burke was laying on the ground, parallel to the car, facing the driver's side rear wheel, as the wheels continued to spin and the car eventually moved northbound through the parking lot. Officer Burke saw Officer Guzman return to his patrol car. The suspect vehicle drove northbound in the parking lot and then turned to face southbound, with Officer Guzman's vehicle in pursuit in close proximity. Officer Guzman maneuvered his patrol car to stop the suspect vehicle and they collided head on, positioned front bumper to front bumper. Officer Burke observed both vehicles attempt to drive forward, pushing against one another. The snow and force of the vehicles caused the suspect vehicle to slide out from its original position, rotate, and the suspect's front driver side bumper collided into the front passenger side of Officer Guzman's patrol car.

Officer Burke saw the collision and continued to approach by foot. Officer Burke eventually positioned himself behind the suspect vehicle, looking through the car from the rear window. As Officer Burke approached, he noted the suspect vehicle's wheels were still spinning and he saw the driver continue to reach over and look into the passenger seat. Officer Burke said he was concerned about the driver's movements towards the passenger seat, he was concerned about the driver's failure to comply with the multiple commands given by both officers, he was afraid the driver had a gun located in the car, and he was in fear for Officer Guzman's life. In addition, based on the initial reports of the domestic violence and kidnapping incident, Officer Burke said he was afraid for community safety. Based on these concerns, Officer Burke drew his service weapon, pointed it at the vehicle through the rear window, and fired his weapon multiple times. As he fired, the wheels of the suspect vehicle continued to spin which made

Officer Burke believe the suspect was still attempting to flee the scene or ram Officer Guzman's vehicle.

Officer Burke observed Officer Guzman approach by foot from the rear of Officer Guzman's patrol car, and walk towards the suspect vehicle, towards the driver side window. Officer Burke continued to fire shots as he saw Officer Guzman approach and simultaneously heard Officer Guzman fire shots towards the suspect vehicle as well. As the officers fired multiple shots, the wheels on the suspect vehicle continued to spin, so they maintained gun point from their positions. Officer Guzman then aired on the radio that shots were fired. Officer Burke estimated that he fired approximately six rounds and conducted a tactical reload and his magazine fell in the parking lot. Both officers maintained position until other officers arrived, at which time Officer Burke used Officer Guzman's asp and shattered the passenger side window. At this time, Sergeant DiGiovanni arrived on scene, approached the vehicle, reached through the window into the car, and turned off the ignition.

Once other officers arrived, Officer Burke returned to his patrol car to wait further instruction and be transported to the Northglenn Police Department.

Officer Jarrod Guzman:

Thornton Police Detective Doug Parker and Westminster Police Detective Michael Lynch interviewed Officer Jarrod Guzman on January 9, 2017. Officer Guzman stated that he has been with the Northglenn Police Department for approximately four and a half years and he currently works the swing shift for District 1.

On January 7, 2017, dispatch aired an unknown disturbance in progress. As Officer Guzman traveled to the location, dispatch further advised the incident was a possible kidnapping in progress at 10455 Carmela Lane. Based on accounts from the reporting parties, Officer Guzman learned that a male party was observed dragging a female across a driveway or through a yard, punching her in the face. The reporting parties also gave a description of the suspect vehicle as a silver Mercedes, which came back as stolen. Officer Guzman responded to the area to search for the vehicle. Officer Burke aired on the radio that he had a visual on the suspect vehicle traveling north on Pecos towards 10701 Pecos. As Officer Guzman traveled on Pecos and approached the area, he observed Officer Burke traveling behind the suspect vehicle, as it turned left, continued on Pecos, and eventually into the parking lot of Northwest Open Space park. Officer Burke was in pursuit with activated overhead emergency lights on. Officer Guzman also activated his overhead emergency lights and followed the vehicles into the parking lot.

Officer Guzman said as the suspect vehicle entered the parking lot and attempted to travel north through the lot, it became stuck in the snow and was rendered immobile. Officer Burke parked his patrol vehicle behind the suspect vehicle and Officer Guzman parked towards the east side of the suspect vehicle. Both officers exited their patrol vehicles, approached by foot with their service weapons drawn to conduct a felony stop and gave several loud commands for the driver to stop the vehicle, turn off the vehicle, and show them his hands. The driver did not comply and failed to respond to any of the verbal commands. Officer Guzman observed the

driver look towards them and shake his head and mouth something, which Officer Guzman believed was "fuck off."

The driver proceeded to shift the gears from drive to reverse, and back to drive, in an attempt to gain traction in the snow. Both officers continued to shout commands at the driver, at which time Officer Burke determined it was necessary to break the driver side window. Officer Burke instructed Officer Guzman to maintain lethal coverage while he broke the window, with the intent to pull him from the vehicle. Officer Burke approached the vehicle, deployed his asp, and shattered the driver side window. At almost the same time the window was broken, the car fishtailed, gained traction and began to move north through the lot. Officer Guzman saw Officer Burke fall to the ground at the same time the car began to move and lost visual of Officer Burke. Officer Guzman believed Officer Burke was either run over by the vehicle or hit by the vehicle. Officer Guzman ran back to his patrol vehicle to pursue the suspect vehicle through the parking lot.

As the suspect vehicle turned around in the lot to travel south, Officer Guzman approached in his patrol vehicle and their cars collided head on, with both of their front bumpers colliding. Officer Guzman had a visual of the driver through his windshield and the driver said "fuck you." The driver kept his left hand on the steering wheel but continued to lean over into the passenger seat to reach for something with his right hand. At this point Officer Guzman believed the driver had a gun in the vehicle and it became evident that the suspect was not going to surrender.

Both Officer Guzman and the suspect driver accelerated their vehicles and the force eventually caused their vehicles to break apart. As a result, the suspect vehicle spun and hit the front passenger door of Officer Guzman's patrol vehicle with its front left bumper. Officer Guzman now had a visual of the suspect driver through his passenger window, and through the suspect vehicle driver side window that was previously shattered by Officer Burke. Immediately after this collision, Officer Guzman observed the driver keep his left hand on the steering wheel but reach for something in the passenger side with his right hand. Officer Guzman thought the driver was reaching for a gun so he exited his patrol car, drew his firearm, proceeded around the back of his patrol car, and approached the suspect vehicle from the driver side.

As he approached, he heard gunshots and could see a muzzle flash through his peripheral vision. Officer Guzman believed Officer Burke was still lying on the ground at the initial location where the suspect vehicle became stuck in the snow, so Officer Guzman was unaware who was shooting a firearm at that time. The suspect driver was accelerating the car causing the wheels to continue to spin and the car started to slowly move Officer Guzman's patrol vehicle. Officer Guzman was concerned the suspect may exit his vehicle and engage in a gun fight. Officer Guzman said he then approached the suspect's vehicle and fired his service weapon what he thought was two times, aiming at the suspect's center mass and chest area. At this time, Officer Guzman observed that a shot was fired from behind the suspect vehicle, which traveled through the back windshield hitting the suspect. As a result, Officer Guzman believed the suspect was dead, even though the wheels of the vehicle continued to spin.

Officer Guzman then saw Officer Burke and approached to determine if Officer Burke needed medical. Officer Burke was not injured and they determined they needed to turn the suspect vehicle off for safety considerations. Officer Burke used Officer Guzman's asp to break

the front passenger window and Sergeant DiGiovanni, who just arrived on scene, reached through the passenger window area and turned off the vehicle. Officer Guzman was able to observe bottles of alcohol in the suspect vehicle as well as a knife on the passenger seat and a handgun in the area where he observed the suspect reaching.

Witness Interviews:

Christina Stanley and Reginald Amundson:

On Sunday, January 8, 2017, Broomfield Detective Dale Hammell interviewed Christina Stanley and Reginald Amundson at the Broomfield Police Department. Ms. Stanley stated that she had been home at her apartment, which overlooks the parking lot area where the incident occurred. She indicated that her boyfriend of several years, Reginald, had been in another room when he told her there was police activity in the parking lot area just north of their apartment. She said that Reginald had gone out onto the deck of their third floor apartment to watch the activity, and she began filming the incident from her cellular phone from the window in the living room.

Ms. Stanley said that she saw two or three police vehicles, all with their emergency lights on, focused on a smaller white or silver sedan. She stated that she believed the vehicle was trying to get away. She described the vehicle as trying to leave the parking area in a curve from north to east. Ms. Stanley said an officer in a marked vehicle appeared as if he was going to "pit" the sedan. Both vehicles hit, and that at some point the vehicles came to rest side by side. She advised the suspect vehicle was facing east, and the rear of the vehicle was facing west. Ms. Stanley said that an officer, who was on foot, came from the west and was behind the suspect vehicle. She thinks the reverse lights came on for a short time, and after that she heard what she thought was six shots, followed by a pause, then another six shots.

Ms. Stanley said that the parking lot was completely dark and had no lighting and indicated the only lights visible were from the flashing lights and headlights of the vehicles involved. She did not believe the officer in the patrol vehicle ever got out of his vehicle. She believes the officer on foot was the only one who fired. She estimated the distance from where the officer was standing to the vehicle to be approximately five feet.

Ms. Stanley said that after the shooting she kept recording for a short time. She advised the fire department had arrived, and at that point she stopped recording. She contacted an officer who was in the area and let him know that she had video of the incident. She later provided her phone to the Northglenn Police Department for a download of the video. She believes the suspect was not going to stop, and that the officer's actions were justified. She advised the officer behind the vehicle was in danger.

Ms. Stanley could not hear what was being said because she was filming from behind a closed window. She estimated the distance from her apartment to where the shooting occurred was approximately two hundred feet.

After speaking with Ms. Stanley, Detective Hammell met with Reginald Amundson. He said that sometime around 6:00 p.m., he was sitting in a room with his cat when he noticed emergency lights. He looked outside to investigate and later walked out on to his deck, which faces to the west with a clear view of the parking lot for the park. He saw two officers in the area, who were focused on a silver Mercedes sedan. He could see clearly and could clearly hear the officers shouting commands to shut the vehicle off and to keep hands where they could see them.

Mr. Amundson said that one officer approached the driver side of the vehicle and was continuing to give commands. He thought the suspect vehicle was not running, but indicated the suspect then "floors" it and the tires begin spinning on the snowpack. Mr. Amundson believes the officer on the driver side was "knocked down," or hit, and ended up on the ground. He said the other officer got into his vehicle and, as the suspect vehicle was trying to flee, they hit head on. Somehow the vehicles ended up side by side as the officer who was knocked down approached the rear of the suspect vehicle. Mr. Amundson stated that it appeared as if the suspect was going to back up and run over the officer. He said the officer was forced to fire and after the officer fired, the officer in the patrol vehicle got out and asked the other officer if he was "okay." He could hear the officers calling for additional cover and medics, and could hear them discussing approaching the vehicle.

Mr. Amundson said the officers gave loud clear commands on several occasions throughout the incident, and that the suspect was not complying. He said he was approximately fifty three feet from the incident and could clearly see the entire incident. He said that all officers had their emergency lights on and it was clear they were police. He estimated the officer who fired was approximately ten feet from the suspect when he fired. Mr. Amundson said that the officer appeared to fire through the back window of the vehicle. He confirmed that the reverse lights came on prior to the officer firing, and advised the officer made "the only decision he could make." Mr. Amundson opined about how this may have been a suicide by cop, but could not clearly demonstrate why he thought this was a suicide by cop.

Jose Gomez:

Detective Hammell interviewed Jose Gomez on July 10, 2017, at the Broomfield Police Department. Mr. Gomez said that he, his wife, and child were driving home to their residence, located at 10701 Pecos St., when they noticed a Mercedes being followed by two Northglenn Police units. The vehicle traveled into the parking lot area of the soccer fields directly north of his apartment unit. Mr. Gomez indicated he was very close and could hear the officers telling the driver to stop and "get out of the car." He said that the police cars all had their emergency lights on and he could see the vehicle trying to go forward and backward, and could see and hear the tires spinning on the snow. He advised that he began filming with his cellular phone just before the vehicle was able to gain some traction and drive northeast through the lot.

Mr. Gomez said he saw one of the patrol units hit the vehicle in the front. He could see the suspect vehicle being moved backward. At some point the suspect vehicle spun around and was side by side with the police vehicle. He noticed an officer approach from the rear of the vehicle and noticed the reverse lights come on. He indicated by demonstrating how the officer

was close to the suspect vehicle, and he believes the vehicle was preparing to back up toward the officer. He said that the officer on foot, who was behind the suspect vehicle, began shooting. Mr. Gomez was afraid and decided to move his family into his apartment. He said that paramedics arrived very quickly. He indicated that initially he did not want to be involved. He later spoke with his family and contacted the police to tell them about the video. He advised that the Northglenn Police Department has a copy of the video.

VIDEO EVIDENCE

The parking lot is very dark in the video with the exception of the police emergency lights and head lights illuminating the parking lot. The cell phone video provided from Ms. Stanley depicts a grey Mercedes accelerating in the parking lot and spinning around with Officer Guzman's police vehicle pursuing it. Ms. Stanley immediately says, "that person is trying to get away" on the audio of the video. As the Mercedes spins around it hits the front end of Officer Guzman's police vehicle and the Mercedes spins around with the driver's side door of the Mercedes up next to the passenger side of Officer Guzman's patrol vehicle. A figure (Officer Burke) appears from behind the Mercedes and approximately six gunshots can be heard on the video. Ms. Stanley says, "shots fired, shots fired" and as she is saying this approximately nine more shots can be heard on the video.

SUSPECT INFORMATION:

The suspect was identified as Hector Navarrette, DOB 5/26/1985. Hector Navarrette is a convicted felon per NCIC/CCIC. Mr. Navarrette had a pending Complaint for Revocation of Probation and Request for Warrant out of Denver County at the time of this incident. His criminal history includes arrests for multiple felonies as well as misdemeanors, both as a juvenile and as an adult.

AUTOPSY AND ANALYSIS:

Dr. Stephen J. Cina performed a forensic autopsy on Hector Navarrette on January 9, 2017, and concluded that Mr. Navarrette died as a result of multiple gunshot wounds. Dr. Cina found that Mr. Navarrette had fourteen gunshot wounds to the back of the head, back of the neck, upper back and left arm, and identified them in his autopsy report. Dr. Cina is not able to determine the sequence of the gunshot wounds, but was able to identify the locations of the entry wounds. Mr. Navarrette also had injuries to the skull, brain, brainstem, cervical spinal column, spinal cord, ribs and bilateral lungs. There was no evidence of close range firing on the skin. Dr. Cina noted one graze wound, thirteen entrance sites, seven exit sites and six bullets were recovered. Toxicology from Mr. Navarrette's blood obtained at the autopsy revealed that he had a BAC of 0.195 and had amphetamines, methamphetamine and marijuana in his blood.

SCENE INVESTIGATION

Broomfield Police Department CSI Brenda Harris processed the scene and collected evidence from Officer Burke and Officer Guzman. CSI Harris retrieved Officer Guzman's service weapon which was a Glock 17, 9 mm semiautomatic handgun. In addition to the magazine in his duty weapon, Officer Guzman carried two extra magazines on his duty belt. Each magazine had seventeen cartridges and Officer Guzman stated that he carries his magazines full with one cartridge in the chamber. CSI Harris removed the magazine from the handgun and found fourteen cartridges and one live cartridge from the chamber indicating that Officer Guzman fired his service weapon three times.

CSI Harris also collected Officer Burke's service weapon, which is a Glock 17, 9 mm semiautomatic handgun. Officer Burke indicated he carries seventeen rounds in the magazine, plus one in the chamber. He reported that one magazine was left on scene. The magazine removed from his gun had seventeen rounds in the magazine and one in the chamber. Officer Burke's magazine that was recovered at the scene contained five live rounds indicating that he fired his service weapon twelve times.

CSI Harris went to the scene where she met with Criminalist Siobain Callahan, with the Thornton Police Department. The weather conditions were cold with several inches of snow covering the parking lot scene and it was dark. The parking lot is near a ball field. On the south side is an apartment complex. On the west side are storage trailers. To the north is a playground. To the east is a grassy open space area. Several patrol cars were in this area, however, only two patrol cars were in the original scene. Officer Burke's patrol car was on the south side of the parking area. Officer Guzman's patrol vehicle was directly next to and north of the stolen Mercedes, where contact had been made between the two vehicles. Both of these vehicles were facing to the east in the northeast area of the parking lot.

During the examination of the scene, the initial contact between Officer Burke and the Mercedes was determined to have occurred in the southwest corner of the parking area. There was a mark in the snow where Officer Burke stated he had fallen when he shattered the driver side window of the suspect vehicle. The Mercedes appeared to travel in a northeastern direction to the opposite end of the parking area.

Once CSI Harris photographed the scene, cones were put in place to document pertinent evidence, as follows:

- Cone #1 was placed in the area where Officer Burke fell, followed by the remaining cones near the silver Mercedes.
- Cone #2 was Officer Burke's asp, which he indicated he had dropped on scene.
- Cone #3 was a 9mm shell casing.
- Cone #4 was a 9mm shell casing.
- Cone #5 was Officer Burke's magazine.
- Cone #6 was a 9mm shell casing.
- Cone #7 was a 9mm shell casing.
- Cone #8 was a 9mm shell casing.

The silver Mercedes was processed at the Thornton Police Department sally port bay. There was a large knife in a sheath on the front passenger seat, and a Sig Sauer .40 caliber handgun on the floorboard on the front passenger side. There were nine .40 caliber rounds in the magazine, one round in the chamber, and the hammer back in a firing position. A cup containing white crystals, which tested presumptive positive for Methamphetamine was also found in the center console of the vehicle.

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 law.

There is no dispute that Officer Burke and Officer Guzman intentionally fired their weapons and caused the death of Hector Navarrette on January 7, 2017. The legal question presented to the Office of the District Attorney is whether it can be proved beyond a reasonable doubt that at the time the officers fired their weapons 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. (2016), 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 they 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 affecting 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. (2016).

LEGAL ANALYSIS AS TO OFFICER JOSHUA BURKE AND OFFICER JARROD GUZMAN

Officer Burke located and pursued with his emergency lights on a suspect of an assault and attempted kidnapping driving a stolen vehicle. When the suspect vehicle got stuck in the snow, Officer Burke approached the vehicle on foot in an attempt to apprehend a person that he reasonably believed had just committed a felony. Mr. Navarrette did not comply with both officers commands to stop and show them his hands. As Officer Burke was at the driver's side window of the Mercedes, Mr. Navarrette accelerated away causing Officer Burke to fall right next to the driver's side rear tire. As this is happening it is reasonable for Officer Guzman to believe that a suspect of a felony investigation had just hit Officer Burke with this vehicle in attempt to flee the area.

As Officer Guzman pursues the Mercedes and the vehicles collide, it is reasonable for Officer Burke to conclude that a suspect of a felony investigation had just hit Officer Guzman's vehicle with his vehicle in an attempt to flee the area. It is also very relevant that both officers observed Mr. Navarrette attempt to reach for something that they both felt could be a handgun in the passenger area of the Mercedes as this incident is taking place.

Mr. Navarrette posed a risk to both Officer Burke and Officer Guzman. In addition, both officers had reason to believe that the other officers life was in danger prior to firing their service weapon. Additionally, the amount of force used was reasonable because Mr. Navarrette was in a vehicle capable of striking both officers and was potentially armed with a handgun while in close proximity to the officers. Officer Burke and Officer Guzman stated that they fired their service weapons because, based on the totality of circumstances, they were in fear for their lives.

Under these facts, the Office of the District Attorney cannot prove that Officer Burke's and Guzman's actions were not justified as applied to CRS §18-1-707. Therefore, the prosecution is unable to prove beyond a reasonable doubt that Officer Burke or Officer Guzman committed the elements of any crime.

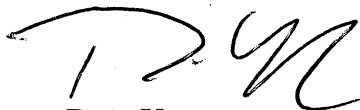
CONCLUSION

Based on Officer Burke's and Officer Guzman's observations at the time of the shooting, they had a reasonable belief that Mr. Navarette had committed a felony. Additionally, Mr. Navarette was non-compliant with officer commands, and the officers had a reasonable belief that he may have had a gun in his vehicle, that he was a danger to both officers and that he was trying to escape.

Given all the facts and circumstances of this incident, the prosecution cannot prove that Officer Burke and Officer Guzman's actions of shooting Mr. Navarette were not justified under CRS §18-1-707. Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Officer Burke or Officer Guzman for shooting Hector Navarette on January 7, 2017.

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

Respectfully,

A handwritten signature in dark ink, appearing to be 'D. Young', written over a horizontal line.

Dave Young
17th Judicial District Attorney