



March 23, 2018

Chief Randy Nelson
Thornton Police Department
9551 Civic Center Dr.
Thornton, CO 80229

Re: *The investigation of the officer involved shooting of James Warnock, occurring on January 11, 2018.*

Dear Chief Nelson:

The investigation and legal analysis of the officer involved shooting of Mr. James Warnock is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Derick Aragon of the Commerce City Police Department and Dale Hammell of the Broomfield 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. The factual findings of the investigation were presented to my office on March 1, 2018. The CIIT presented police reports, transcripts and videos of the interviews of witnesses, along with photographs and diagrams of the 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 officer. 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 officer committed any crimes beyond a reasonable doubt. Therefore, no criminal charges will be filed against the officer involved in this incident.

SUMMARY OF THE INCIDENT

On January 11, 2018 at approximately 1:14 p.m., Thornton Police Officer Adriana Rouillard contacted dispatch stating that she received a Lo-Jack alert on a 2008 Red Kia that was reported stolen out of Adams County. Officer Rouillard followed the Lo-Jack signal to the parking lot of Home Depot located at 10003 Grant Street in the city of Thornton. Officer Rouillard located the stolen vehicle and observed the driver to be a white male with eyeglasses as he passed her patrol vehicle. Officer Rouillard turned on her emergency lights and sirens attempting to stop the vehicle. The vehicle drove at a high rate of speed through the parking lot of the Home Depot. The vehicle appeared to have heavy front-end damage. The vehicle weaved through the parking lot almost colliding with parked cars and other vehicles that were in motion. She did not pursue the red Kia through the parking lot due to the amount of traffic at that time. Officer Rouillard saw the Kia leave the parking lot and head south on Grant Street.

Thornton Police Officer Oscar Hernandez was also looking for the stolen vehicle when he heard Officer Rouillard air over the radio that she located the vehicle. Officer Hernandez observed the red Kia drive past the shopping center exit on 100th Avenue and Grant Street. Officer Hernandez saw the Kia head towards the parking lot exit. There were several cars in the turn lane in front of Officer Hernandez. As he waited to turn into the parking lot, the red Kia drove out of the shopping center and headed south on Grant Street. Officer Hernandez caught up to the red Kia and observed it crash into the bushes in the median as it attempted to turn right on 98th Avenue from Grant Street.

Officer Hernandez activated his emergency lights and immediately got behind the red Kia. As he got out of his patrol car, the male driver got out of the Kia and looked right at Officer Hernandez. Officer Hernandez immediately yelled, "Stop, you're under arrest!" Officer Hernandez stated the male turned around and started running away from him. The male ran to the sidewalk. Officer Hernandez yelled again, "Stop, you're under arrest!" The male never looked back and kept running away from him. Officer Hernandez yelled again, "Stop you're under arrest." As Officer Hernandez engaged in a foot chase with the male, he observed the male reaching into his back pocket, front pocket and his side pocket. The male kept running up the hill just past the Golden Corral restaurant and it appeared to Officer Hernandez that the male was reaching into his pockets.

The male then suddenly stopped moving for couple of seconds. Officer Hernandez again yelled, "Stop, you're under arrest!" The male started moving his hands in his pockets again. The male quickly turned his body to the right and pulled his hands out of his pockets, extending his arms towards Officer Hernandez. Officer Hernandez described the male's stance as if he were performing a "shooting platform." Officer Hernandez drew his service weapon, took a step to the right and fired four rounds towards the male suspect. One of these rounds struck the suspect, later identified as Mr. James Warnock, in the right flank area of his body. He was treated for his injuries and released from Good Samaritan Medical Center in Lafayette, Colorado.

SYNOPSIS OF WITNESS AND OFFICER INTERVIEWS

Officer Adriana Rouillard

Detective Aragon and Detective Hammell interviewed Officer Adriana Rouillard on January 11, 2018. She has been with the Thornton Police Department for two years and is assigned to the Patrol Unit. She has previous law enforcement experience of approximately one year with the Denver County Sheriff's Office.

As Officer Rouillard was preparing for her shift in the parking lot of the Thornton Police Department, she received a "hit" on the Lo-Jack. The Lo-Jack application provides information concerning the location of a stolen vehicle. She obtained additional information about the vehicle and learned that it was reported stolen by the Adams County Sheriff's Office and that the vehicle, a 2008 red Kia sedan with heavy front-end damage, was stolen earlier in the day.

Officer Rouillard followed the Lo-Jack tracking to an area near Home Depot on Grant Street. She located the red Kia with a lone male occupant in the driver seat in a parking space at the Home Depot. She advised dispatch that she located the vehicle and was waiting for backup when the vehicle began moving. She reported that the male driver saw her marked patrol vehicle and appeared to know that he was being followed. The red Kia then sped up in the lot and actively evaded her pursuit. She turned on her emergency lights, but the red Kia did not stop and she got stuck behind some vehicles trying to exit the parking lot. Officer Rouillard continued to update her status and the movement of the stolen vehicle on the radio. She saw the suspect vehicle travel southbound on Grant Street with Officer Hernandez's patrol vehicle behind it until the suspect vehicle struck the center median at 98th Avenue.

Officer Rouillard heard Officer Hernandez air on the radio that the suspect had crashed his car and was attempting to run away from the scene. Officer Rouillard got to the area where the red Kia crashed into the center median. Officer Ashby arrived in his marked patrol vehicle about the same time. Officer Rouillard advised she could see Officer Hernandez running along a concrete pathway with the suspect running approximately thirty feet in front of him. She and Officer Ashby drove onto the pathway and remained in their patrol vehicles. She observed the suspect turn and face Officer Hernandez. She saw Officer Hernandez point his weapon at the suspect. She saw the suspect fall to the ground. Officer Rouillard was still in her patrol vehicle at the time shots were fired and neither saw nor heard Officer Hernandez fire his weapon. However, she saw what she believed to be shots striking the ground causing "dust" to fly up near the suspect.

Officer Rouillard got out of her vehicle and, along with Officer Ashby, began to approach the suspect who down on his back. She advised that Officer Hernandez gave the suspect loud verbal commands to show his hands but advised the suspect failed to comply. She advised that Officer Hernandez stated that he could not see the suspect's hands

Officer Rouillard said that Officer Ashby suggested that they fall back behind the patrol vehicles and approach with a shield as they could not see the suspect's right hand and the suspect was moving his leg. She advised she and other officers later approached the suspect with a shield and that upon contact they were able to secure his hands and see that he was shot. She advised the suspect did not make any statements and she remained and assisted until medical personnel took the suspect away.

Officer Rouillard did not see a weapon on or near the suspect. Officer Rouillard heard Officer Hernandez state that he believed he saw something in the suspect's hands.

Officer Mark Ashby

Detective Aragon and Detective Hammell interviewed Officer Mark Ashby on January 11, 2018. Officer Ashby has been with the Thornton Police Department for twenty three years, and is currently assigned to the traffic investigations unit.

Officer Ashby was on his way to an unrelated service call when he heard over the radio that Officers Rouillard and Hernandez were looking for a red car that was heading south on Grant Street. Since Officer Ashby was in that general area heading north on Grant Street, he began to look for the vehicle when he heard Officer Hernandez report, "He's going by you right now." At that moment, Officer Ashby looked over and saw the red Kia going southbound on Grant Street at a high rate of speed. He estimated that the Kia was going around sixty miles an hour.

As Officer Ashby turned his marked patrol vehicle around, he saw Officer Hernandez in his patrol vehicle heading south on Grant Street pursuing the red Kia. Officer Ashby saw the red Kia attempting to make the turn onto 98th Avenue and saw a cloud of smoke, dust and debris as it crashed into the median at the intersection. When Officer Ashby arrived at the intersection of 98th Avenue and Grant Street, he saw a white male running away in a south-westerly direction on the concrete pathway. He also saw Officer Hernandez pursuing the male on foot. Officer Ashby drove his patrol vehicle over the curb onto the bike path to follow the male suspect and Officer Hernandez.

Officer Ashby described the male suspect running with one arm free and his other arm down, "like he's in his pocket getting something out." Officer Ashby reported over the radio, "watch that left hand." Officer Ashby said that the male's actions of having his hand buried into his pocket made him "extremely nervous." According to Officer Ashby, it appeared that the male suspect wasn't putting a lot of effort into getting away from Officer Hernandez, but was trying to grab something out of his pocket. Officer Ashby stated that "all of a sudden, I see that hand come out from the [suspect's] pocket, and I see it get directionally pointed, right at Officer Hernandez." He estimated that Officer Hernandez was approximately thirty feet in front of him and that the male suspect was another thirty feet in front of Officer Hernandez.

Officer Ashby said that he didn't see anything in the male suspect's hand and described that the suspect's hand came out clinched in a fist with a "direct motion" straight at Officer Hernandez. Officer Ashby said at that moment he thought the suspect was going to shoot at us because of the "suspect's directed aggressive behavior" that he observed from his patrol vehicle. Officer Ashby then saw Officer Hernandez fire his weapon in the direction of the suspect. Officer Ashby thought that Officer Hernandez fired two rounds and immediately reported "shots fired" over the radio.

Officer Ashby stopped his patrol vehicle, got out and drew his weapon as he began to approach the suspect on foot. Officer Ashby saw that the suspect was hit as he was on the ground with his right hand under his leg. The suspect did not respond to Officer Ashby's commands to "Show me your hands." Since Officer Ashby could not see his right hand, he commanded other officers to stay back until they got shields in case the suspect was armed.

Officer Oscar Hernandez

The Critical Incident Team requested to interview Officer Oscar Hernandez on January 11, 2018 immediately after this incident. However, Officer Hernandez through his attorney requested to delay the interview to have an opportunity to go through a series of sleep cycles. Detective Aragon and Detective Hammell interviewed Officer Hernandez with his attorney present on January 16, 2018. Officer Hernandez has been with the Thornton Police Department for three years and is currently assigned to the patrol unit.

On January 11, 2018, Officer Hernandez was working patrol in his marked Ford Expedition when he received a Lo-jack hit on a 2008 Kia Spectra. He learned that Officer Rouillard was in the process of looking for the stolen Kia and joined her in attempting to locate the stolen vehicle. While in route, he learned that Officer Rouillard located the vehicle in the Home Depot's parking lot. Officer Hernandez was waiting to turn into the Home Depot's parking lot when he saw the Kia "spin out" and exit the parking lot heading south on Grant Street. Officer Hernandez backed up and began to pursue the Kia south on Grant Street. He observed Officer Ashby heading north on Grant Street and reported over the radio that the suspect Kia was about to pass Officer Ashby's marked patrol vehicle.

As Officer Hernandez pursued the Kia, he saw it attempt to turn into the Walmart parking lot on 98th Avenue. The Kia crashed into the bushes in the center median of the roadway. Officer Hernandez turned on his emergency lights. As he got out of his patrol car, a white male driver simultaneously exited the crashed Kia. The white male suspect looked directly at Officer Hernandez and Officer Hernandez said, "Stop, you are under arrest!" Officer Hernandez was wearing a department-issued police uniform. The suspect immediately ran away toward a concrete pathway. Officer Hernandez pursued him on foot. When the suspect got to the pathway, Officer Hernandez again yelled, "Stop, you are under arrest!" The suspect did not look back as he continued to run away from Officer Hernandez.

As the suspect ran away, Officer Hernandez saw him digging into his pockets with his hand. When the suspect got to the crest of a hill just off of the sidewalk he suddenly stopped, turned around and faced Officer Hernandez. Officer Hernandez could not see the suspect's hands at this time and once again yelled, "Stop, you are under arrest!" The suspect then extended both of his hands up in front of him. Officer Hernandez described the suspect's posture as a "shooting platform." Officer Hernandez then moved to his right, drew his weapon and fired what he believed to be two to three rounds at the suspect. He estimated the suspect was approximately twenty-five feet away at the time he fired the shots. The suspect went down to the ground and Officer Ashby appeared on the scene. Officer Hernandez could not see the suspect's right hand and both officers gave commands to the suspect to show his hands.

Officer Hernandez stated that while he pursued the male suspect, he could not see the suspect's hands. Officer Hernandez stated a concern that the suspect was armed with a weapon based on his training that individuals commonly conceal a weapon in the waistband area. The suspect's behavior reaching into his pockets and disobeying commands to stop caused Officer Hernandez to believe that the suspect was reaching for a weapon. When the male stopped and turned so quickly with his arms raised further caused Officer Hernandez to fear for his life that the suspect was armed with a weapon. Officer Hernandez said the suspect's actions caused him to fire his weapon at the suspect.

James Warnock

Detective Aragon and Thornton Police Detective Fred Longobricco interviewed James Warnock at the Adams County Detention facility on January 13, 2018. Mr. Warnock waived his Miranda rights and agreed to speak with the detectives about his involvement in this incident.

Mr. Warnock said that he didn't remember much because he was under the influence of methamphetamine at the time of the incident. Mr. Warnock said that he did not know that the car he was driving was stolen and that someone had let him borrow the car that day. He stated that he remembered seeing the police at the Home Depot and he knew he was in trouble because he had an active warrant for violating his parole. The next thing he remembers is that the car got "stuck" and he ran away from the car. Mr. Warnock said that he must have done something wrong because he heard a police officer tell him to stop. He stopped, turned around and did not remember if he put his hands up or not right before the officer fired shots at him. He said that it is possible that he was digging into his pockets as he was running away from the officer because he was probably making sure he did not have anything illegal on him due to the fact that he knew he was going to be arrested.

Mr. Warnock said that he must of had his arm up in some kind of "threatening way" when he turned around and stated that he could understand why the officer thought he might have a weapon. He also said that he knows police are trained not to shoot unless they feel threatened. Mr. Warnock recalled three shots fired at him, and the last one hit him in the abdomen causing him to go down to the ground. He said that he understood that the officer was protecting his life and the people around him when he fired his weapon.

SCENE INVESTIGATION

Crime scene investigators Dennis Davenport of the Commerce City Police Department and Brenda Harris of the Broomfield Police Department processed the scene and collected evidence in this incident. Before going to the scene, CSI Davenport and Harris processed the three officers that were present during the shooting. During this process, they took photographs, did a round accountability of the officer's firearms, and collected Officer Hernandez's weapon. Officers Ashby and Rouillard's service weapons were still fully loaded, confirming that they did not discharge their firearms during this incident.

Officer Hernandez carries a .40 caliber Glock handgun. Officer Hernandez reported that he loaded his weapon with fifteen rounds in the magazine and one in the chamber of the weapon, for a total of sixteen live rounds. Officer Hernandez's weapon had twelve live rounds in it, eleven in the magazine and one in the chamber, leading to the conclusion that he fired his weapon four times.

CSI Harris and Davenport processed the scene of the shooting located in the area of 98th Avenue and Grant Street. The scene was secured with crime scene tape upon their arrival. The 2008 red Kia Spectra was facing west on the west side of the intersection in the left eastbound lanes of 98th Avenue. The vehicle appeared to have front-end damage and a shrub attached to it. It was apparent that the Kia had gone through the median and the bushes on 98th Avenue at the entrance of the shopping center. The shooting scene was on the north side of the Golden Corral Restaurant in the area of the concrete pathway on the north side of the business.

The concrete pathway inclines from east to west with the Golden Corral Restaurant sitting up on a hill to the south of the path. Officers Ashby's and Rouillard's patrol vehicles were parked next to each other on and near the pathway below the Golden Corral Restaurant. There were four fired .40 caliber shell casings consistent with Officer Hernandez's ammunition located to the south of the patrol vehicles on the embankment leading up to the Golden Corral Restaurant.

Mr. Warnock's clothing items were located further to the west from the shell casings on the south side of the pathway on the embankment next to a small tree. The four shell casings were spread out approximately eighteen to thirty feet from Mr. Warnock's clothing.

SUSPECT INFORMATION

On January 11, 2018, Mr. James Warnock was treated and released at Good Samaritan's Hospital for a gunshot wound to the abdomen. He has several misdemeanor and felony criminal convictions in his background including felony assault, felony eluding, felony theft and parole violations. As a result of Mr. Warnock's conduct in this incident, he pled guilty to eluding, a felony, and obstructing a peace officer, a misdemeanor. On February 9, 2018, he was sentenced to three years in the department of corrections.

LEGAL ANALYSIS

As previously noted above, this review is limited to a determination of 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 criminal charges, 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.

In this case, there is no dispute that Officer Hernandez fired his weapon at Mr. Warnock and that Mr. Warnock sustained a gunshot injury from this incident. At the time of the shooting, Officer Hernandez was engaged in the course of his duties to investigate a stolen motor vehicle that led to a felony eluding. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Officer Hernandez fired his weapon, the prosecution 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 §18-1-707, C.R.S. (2017), 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 that 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. (2017).

On January 11, 2018, Officer Hernandez located and lawfully pursued a stolen red Kia motor vehicle to the intersection of 98th Avenue and Grant Street, where the Kia crashed over the median, which led to a foot pursuit of the suspect, James Warnock. Mr. Warnock disobeyed uniformed officers’ lawful commands to stop and gave chase. While being pursued by the officers, Mr. Warnock made several movements as if he was trying to retrieve something from his pockets. Both Officers Hernandez and Ashby observed these movements as threatening, confirmed by Officer Ashby’s radio report during the pursuit to watch out for the suspect’s left hand.

Mr. Warnock suddenly stopped and abruptly turned around to face Officer Hernandez. As described by officers, Mr. Warnock either pulled both hands up into a shooting stance toward Officer Hernandez, or one hand came out of his pocket pointed directly at Officer Hernandez. Although there is a discrepancy between the two officer's observations, there is no evidence to prove that it was not reasonable for Officer Hernandez to believe that Mr. Warnock was armed with a weapon at the moment that Officer Hernandez discharged his firearm under either scenario. Even though Mr. Warnock could not recall all of the details of the incident, he believed that he had to have done something to put the officer in fear for his own safety and the safety of the public.

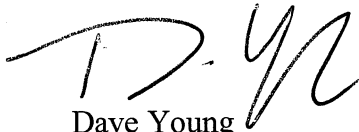
At the time Officer Hernandez fired his weapon, he stated that he did not know if Mr. Warnock had a weapon but when Mr. Warnock stopped and quickly turned toward the officers with both of his hands raised, he was in fear for his life and that is why he fired his service weapon. In addition, Officer Ashby also stated that Mr. Warnock's aggressive behavior led him to believe that Mr. Warnock was going to shoot at the officers just prior to the shooting.

Consequently, the prosecution cannot prove beyond a reasonable doubt that Officer Hernandez was not justified in protecting himself from what he reasonably believed to be the use or imminent use of deadly physical force under §18-1-707, C.R.S. (2017).

CONCLUSION

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Oscar Hernandez for discharging his service weapon in the shooting of Mr. James Warnock on January 11, 2018. 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 over the printed name.

Dave Young
District Attorney