

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

May 2, 2018

Sheriff Michael McIntosh
Adams County Sheriff's Office
332 N. 19th Avenue
Brighton, CO 80601

Re: The investigation into the death of Bailey Turner, DOB 5/1/1990, occurring on January 16, 2018

Dear Sheriff McIntosh:

The investigation and legal analysis of the officer-involved shooting death of Bailey Turner is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Westminster Police Detective Sarah Jourdan and Thornton Police Detective Fred Longobricco. 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 our office on March 22, 2018. 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 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 the involved agency.

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

The Incident

On January 16, 2018, dispatch received calls from various individuals reporting a possible domestic disturbance or physical altercation at the Pine Tree Village Apartments located at 7520 Broadway, Denver, Colorado. Adams County Sheriff's Deputy Walter Berlinski was the first officer to arrive on scene. Upon arrival, Deputy Berlinski entered the complex, went downstairs to a stairwell door and entered a hallway within the complex. Deputy Berlinski was wearing a department-issued police uniform, complete with a badge affixed to his breast. He made contact with a male party who he identified as the suspect of the dispatch call in the hallway. The suspect was the only person inside the apartment hallway. The suspect was banging on apartment doors and screaming in an aggressive manner. The suspect advanced towards Deputy Berlinski with clinched fists and a flexed chest as soon as he saw him enter the hallway. Deputy Berlinski had his Taser in his hand and gave the suspect verbal commands to stop. The suspect failed to obey the verbal commands, and charged towards Deputy Berlinski. Deputy Berlinski deployed his Taser. The Taser struck the suspect, but had no impact on him. The suspect continued to approach Deputy Berlinski and punched him in the head.

Deputy Berlinski and the suspect engaged in a physical altercation as Deputy Berlinski attempted to separate and disengage. Deputy Berlinski was able to separate himself from the suspect and backed away. He gave more verbal commands for the suspect to stop. Deputy Berlinski attempted to deploy his Taser a second time, but it did not connect. Deputy Berlinski drew his firearm and gave the suspect verbal commands to stop or he would shoot. The suspect refused commands to stop and continued advancing toward Deputy Berlinski. As the suspect continued to advance, Deputy Berlinski felt that his life was in danger. Deputy Berlinski fired his handgun several times at the suspect, hitting him in the chest. The suspect continued to advance on Deputy Berlinski and grabbed him. The suspect fell to the ground, on his back, and wrapped his legs around Deputy Berlinski's waist in an attempt to pull Deputy Berlinski to the ground on top of him. Deputy Berlinski felt his life was in danger and fired additional rounds into the suspect, killing him. The suspect was later identified as Bailey Turner.

Witness Interviews

Eduardo Ben Castorena: Detective Ken Hampshire of the Westminster Police Department interviewed Mr. Castorena on January 16, 2018, hours after the incident. Mr. Castorena resides at the Pine Tree Village Apartments located at 7520 Broadway #104, Denver, Colorado, with his wife and daughter. On the evening of January 16, 2018, Mr. Castorena returned home from the grocery store with his wife and daughter and, as they carried groceries into their apartment, they heard a male down the hall screaming, growling, and acting belligerent. Mr. Castorena saw the male down the hall and described him as "Caucasian." Mr. Castorena lived in the apartment complex for one year and had never seen this male before. The male, later identified as Mr. Turner, saw Mr. Castorena and walked towards him screaming, "LSD is great!" Mr. Castorena put the last of the groceries inside his apartment, shut the door and told his wife to call the police.

As Mr. Turner approached, Mr. Castorena advised him that his family was inside, at which point Mr. Turner grabbed Mr. Castorena's jacket with his right hand. Mr. Castorena saw Mr. Turner reach back with his left arm to throw a punch and they began to fight. Mr. Castorena ducked in an attempt to avoid the punch, but Mr. Turner's fist connected with the upper left side of Mr. Castorena's head. Mr. Castorena attempted to push Mr. Turner off, but Mr. Turner grabbed him with his right arm and put Mr. Castorena in a headlock, with Mr. Castorena's head facing downward. As Mr. Castorena was in a headlock, Mr. Turner used his left arm and hand to punch Mr. Castorena. Mr. Castorena pushed on Mr. Turner in an attempt to break free. However, Mr. Castorena was choking and couldn't breathe. Mr. Castorena grabbed Mr. Turner's right hand fingers to escape the headlock.

Mr. Castorena broke free and pushed himself backwards to create distance, but Mr. Turner continued to charge and advance towards Mr. Castorena. Mr. Castorena described Mr. Turner as "evil and angry," like he was "ready to bite." Mr. Castorena swung his arms as Mr. Turner approached. Mr. Castorena fought Mr. Turner and knocked him unconscious. Mr. Turner fell to the floor on his right side and began to shake. Mr. Castorena estimated this incident lasted approximately fifteen seconds. Once Mr. Turner was on the floor, Mr. Castorena went in his apartment, #104, and waited for the police to arrive.

The police arrived shortly thereafter and Mr. Castorena heard several verbal commands like "Just don't move" and "Stay on the ground." Mr. Castorena then heard a zap and a pop, then he heard Mr. Turner growl and scream again. Mr. Castorena then heard gunshots. Mr. Castorena estimated that he heard three or four gunshots. After hearing the gunshots, Mr. Castorena ran to the front room where his daughter was located, laid on the ground, and protected her from the apartment door. Mr. Castorena waited inside of his apartment until he was contacted by law enforcement.

Deputy Walter Berlinski: Westminster Police Detective Sarah Jourdan and Thornton Police Detective Fred Longobricco interviewed Deputy Walter Berlinski on January 17, 2018 with his attorney present. Deputy Berlinski is a fifteen year veteran of the Adams County Sheriff's Office. Deputy Berlinski worked for several years at the Adams County Detention Facility and currently works as a patrol Deputy, where he has been assigned for ten years. He was a member of the K-9 patrol unit for four years. He is trained to respond to service calls, including domestic violence disturbances and medical calls. Deputy Berlinski has received firearms training and use of force training, which is a defensive tactics training.

On Tuesday, January 16, 2018, Deputy Berlinski was assigned to the swing shift, which was from 3:00 p.m. until 1:00 a.m., Sunday through Wednesday. On this date, Deputy Berlinski was wearing a department-issued Adams County Sheriff's uniform, complete with a badge affixed to his breast. Deputy Berlinski's duty weapon is a Smith & Wesson .45 caliber MP45 semi-automatic pistol. He carries it in a holster on his belt. The magazine of the weapon carries fourteen rounds. Deputy Berlinski carries a fully loaded magazine and one additional round in the chamber, for a total of fifteen rounds in his weapon. Deputy Berlinski has carried this weapon for four years and his last qualification with this weapon was in January 2018. Deputy Berlinski also carried two knives, one in his pocket and one on his vest. He was also armed with a Taser.

Deputy Berlinski was dispatched to 7520 Broadway #108 on a report of a disturbance between apartments #105 and #107. He responded to the location and parked his patrol vehicle in the northwest corner of the parking lot. He approached the complex on foot. The dispatch information included a report of a group disturbance, so he held his Taser as he approached the apartment complex. Deputy Berlinski entered the complex from an exterior door and walked down a stairwell to another door which led to a hallway. As Deputy Berlinski approached the hallway, he heard a male voice yelling "come out bitch" and knocking and banging on a door. Deputy Berlinski opened the stairwell door, entered the hallway, and saw a male suspect in a white t-shirt and jeans banging on an apartment door. Deputy Berlinski estimated the suspect was approximately 5'10" or 6' and weighed in excess of 200 pounds. The suspect was later identified as Bailey Turner.

Deputy Berlinski entered the hallway, which he described as a "fatal funnel." Deputy Berlinski recalled the hallway being so narrow that it would only fit two or two and a half people across. As Deputy Berlinski entered the hallway, Mr. Turner saw him and made eye contact. Deputy Berlinski saw Mr. Turner flex his muscles like the "Hulk" and clench his fist. At this point, Mr. Turner was approximately five to ten feet from Deputy Berlinski. Deputy Berlinski raised his Taser and gave a verbal command for Mr. Turner to stop or he would "Tase" him. Mr. Turner proceeded towards Deputy Berlinski. As Mr. Turner approached closer, Deputy Berlinski walked backwards down the hallway. Because Mr. Turner continued to ignore commands and approach, Deputy Berlinski deployed his Taser striking Mr. Turner in the chest. Deputy Berlinski activated the Taser and it did not appear to have any effect on Mr. Turner. This seemed to make Mr. Turner angrier as Mr. Turner clinched his fists and flexed his chest while he continued to advance towards Deputy Berlinski reaching Deputy Berlinski within five to ten seconds. Mr. Turner punched Deputy Berlinski in the head with his right fist, causing Deputy Berlinski to become dizzy. Deputy Berlinski and Mr. Turner engaged in an altercation at the end of the hallway. Deputy Berlinski had a hold of Mr. Turner with his left hand while he held the Taser in his right hand. Deputy Berlinski repeated verbal commands to stop. He also advised Mr. Turner that he would "Tase" him again if he continued to fight. Mr. Turner responded with clinched fists, a blank stare, and did not disengage from Deputy Berlinski. Deputy Berlinski attempted to activate the Taser again, but the second attempt failed.

Mr. Turner backed Deputy Berlinski into the corner at the end of the hallway. Deputy Berlinski's back was in the corner, but during the altercation they eventually turned 180 degrees together. Deputy Berlinski was then able to walk backwards down the hallway. As he did so, he continued to give verbal commands to Mr. Turner to stop or he would shoot. Deputy Berlinski drew his gun from his holster with his right hand while continuing to hold his Taser in his left hand. He retreated backwards as Mr. Turner continued to approach. Mr. Turner came at Deputy Berlinski with clinched fists and a blank stare, which Deputy Berlinski interpreted as "wanting to kill" somebody. Deputy Berlinski believed he would not make it home if he did not stop Mr. Turner with his weapon. Deputy Berlinski fired multiple rounds at Mr. Turner. Deputy Berlinski saw the chest area of his shirt fill with blood. Mr. Turner continued to walk towards Deputy Berlinski and the two engaged in another struggle. They proceeded to turn together and Mr. Turner fell to the ground on his back. Mr. Turner then attempted to wrap his legs around Deputy Berlinski's waist and tried to pull Deputy Berlinski down to the ground on top of him.

Deputy Berlinski had the Taser in one hand and the gun in the other and was fearful if he dropped either of them Mr. Turner would attempt to retrieve it and use it against him.

Deputy Berlinski fought to stay upright and not fall onto Mr. Turner. Mr. Turner continued to use his legs, which were wrapped around Deputy Berlinski, to try to pull Deputy Berlinski to the ground. As Deputy Berlinski was hunched over Mr. Turner, he fired multiple rounds into the suspect's chest. Deputy Berlinski heard a sound he described as "pshh," and felt blood spatter hit his face. At that point, Deputy Berlinski stopped firing because Mr. Turner disengaged. Deputy Berlinski found his radio and called for assistance. Mr. Turner lie unresponsive on his back. Deputy Berlinski estimated the entire incident took approximately one minute. Deputy Gramm and Deputy Scollie arrived on scene as backup and Deputy Gramm handcuffed Mr. Turner. Deputy Carbajal and Deputy Brooks arrived on scene and escorted Deputy Berlinski back to the Adams County Substation.

Other Witnesses: There were a number of other law enforcement officers who were interviewed in connection with the investigation of this incident. In summation, these officers arrived on scene after the shooting occurred. These deputies provided backup upon arrival, provided medical to Mr. Turner and transported Deputy Berlinski back to the Substation. The deputies' interviews are not summarized here because their statements did not add significant details to the investigation of the incident.

In addition, deputies contacted witnesses at Pine Tree Village Apartments located at 7520 Broadway, as well as additional witnesses that knew Mr. Turner in an effort to obtain additional relevant information pertinent to the investigation. None of the individuals contacted had any information pertinent to the issues to be decided here.

Medical Examination Analysis

On January 17, 2018, Dr. Stephen Cina conducted an autopsy of the male identified as Bailey Turner. Mr. Turner was measured at a height of 6'1", weight of 201 lbs.

Dr. Cina identified a total of ten gunshot wounds—four to the chest, two to the abdomen, one above the right clavicle, one to the upper right arm, and two graze wounds to the chin and left wrist. A total of four bullet projectiles along with associated metallic fragments were located and collected. The trajectory of all penetrating and perforating gunshot wounds was front to back. The directionality of the paths was downward, with the exception of one of the wounds to the chest and lower abdomen which appeared to be upward. The bullet pathways lacerated arteries, fractured ribs, and perforated multiple internal organs. Black charred abrasions surrounding a number of the bullet entrance wounds led Dr. Cina to conclude that the barrel to wound distance was within what he termed "loose contact" range. This conclusion is further supported by the appearance of black soot embedded around the wound to the front of the chest. Dr. Cina concluded that while none of the gunshot wounds were "immediately incapacitating," when considered collectively, they were lethal.

The graze wounds revealed evidence of stippling, characteristic of unburned powder emitted from the barrel of the firearm. The same projectile may have caused these two wounds, but directionality could not be determined. There were also a number of minor blunt force injuries to the head, chest and extremities, as well as evidence of electronic control device barb wounds on the front of the decedent's chest.

The decedent's toxicology report revealed positive levels of LSD (2.8 ng/ml) and methamphetamine (1400 ng/ml). Dr. Cina opined that Mr. Turner had used LSD and methamphetamine prior to his death. Dr. Cina determined the cause of death to be multiple gunshot wounds; the manner of death to be homicide.

Crime Scene Investigation

Criminalist Chris Pardo from the Westminster Police Department and Criminalist Shobian Callahan from the Thornton Police Department processed the scene and the evidence.

Deputy Berlinski was wearing a standard police-issue uniform. The uniform appeared dirty and revealed what appeared to be scuffmarks on the backside. Criminalist Pardo observed swipe and spatter bloodstains on Deputy Berlinski's shirt, pants, and hands. He also observed swipe bloodstain transfer on Deputy Berlinski's portable radio and handgun. The clip of the radio was broken and Deputy Berlinski's nameplate was dangling from one pin. Deputy Berlinski had light abrasions to his head, face, left arm, upper back, and right elbow.

The criminalists collected Deputy Berlinski's firearm and examined it. The weapon is described as a Smith & Wesson .45 caliber MP45 semi-automatic pistol. At the time of examination, the weapon contained one live round in the chamber and five rounds in the magazine, for a total of six .45 caliber "Winchester" brand ammunition. The magazine is at full capacity with fourteen rounds. Deputy Berlinski reported that he started his shift with a full magazine with one round in the chamber, totaling fifteen rounds in the fully-loaded weapon. As such, the round accountability was consistent with nine rounds fired from the weapon.

The scene of the shooting was a three-story apartment building called Pine Tree Village Apartments, located at 7520 Broadway, Denver, CO 80221. The shooting occurred in the apartment building situated on the southeast corner of the complex. The hallway where the shooting occurred is on the garden level, below grade. The hallway is positioned in a west/east direction and is approximately 100' long and 4'9" wide. The ceiling height is 7'7.5". There are five interior apartment doors on the north side of the hallway, labeled #100, #102, #104, #106, #108, west to east, respectively. There are also five interior apartment doors on the south side of the hallway, labeled #101, #103, #105, #107, #109, west to east, respectively. At both ends of the hallway, a flight of interior stairs extends to a landing, where there is an exterior door to ground level. This interior stairway also extends to the third floor of the building, where there the structure has a similar hallway and apartment access. Access into the garden level hallway is at either end through the exterior door and short flight of stairs downward. Four equally spaced florescent lights affixed to the ceiling light the hallway.

There was evidence of nine shots fired at the crime scene, as there were nine .45 caliber spent bullet shell casings found on the floor of the hallway. The casings were identified as "Winchester" brand and appeared to exist in two groupings. One group consisted of three spent casings which were found on the floor near the north wall of the westerly portion of the hallway between apartments #102 and #104. The other group of six spent casings were found more loosely scattered on the floor toward the south side of the hall, further east between apartments #104 and #106. One of these casings was found underneath an open trash bag near the middle of the hallway floor.

There was evidence of a Taser deployment at the west end of the hallway, near the north wall, between the north entrance and apartment #102. Two Taser "blast door pieces" were identified on the floor near the north wall between the west entrance and apartment #102. Additionally, two Taser wire pieces were found on the floor further to the east, near the north wall just west of apartment #104. Another Taser wire and a Taser were found on the floor near the north wall between apartments #104 and #106. The Taser reflected what appeared to be bloodstains consistent with a "swipe transfer," a bloodstained object contacting a surface not already contaminated with blood.

There were a number of apparent bullet impacts in the wall consistent with four shots fired. Criminalist Pardo concluded that four of the impact points were caused from shots fired east to west. The impact site of one of these shots was "direct," meaning that it did not hit anything other than the wall. The projectile of this bullet penetrated the south wall and was located inside a closet of apartment #103. The impact site was "direct," meaning that it did not hit anything other than the wall. Another impact site was located nearby and the bullet projectile from this shot was recovered in wooden trim of the door to apartment #103. The shape of this impact site led to the conclusion that it was "indirect," meaning that it struck something before entering the wall. Criminalist Pardo also identified two ricochet bullet impacts consistent with a single shot, one in the north wall and one in the south wall. The bullet was recovered laying on the floor, but no determination could be made as to whether the shot was direct or indirect. In total, three bullet projectiles were recovered near apartment #103.

A final impact site was located in the carpeted floor near the north wall between apartments #104 and #106. This impact site appeared to be a downward shot from an unknown angle. The expended bullet from this impact site was located a few inches from the impact site. Criminalist Pardo observed reddish stains inside the nose of the bullet which later tested presumptively positive for blood, indicating that it struck a blood bearing object.

There were marks on the lower half of the north wall between apartments #104 and #106. Criminalist Pardo described the marks as three parallel scuff marks in the whitish paint that arc downward and pass through apparent bloodstains on the wall. According to Criminalist Pardo, the scuff marks appeared to correspond with the whitish and dirt colored debris on the back of Deputy Berlinski's uniform shirt.

Criminalist Pardo identified a total of fourteen apparent bloodstain patterns on both sides of the hallway, summarized as follows:

South wall: The south wall between apartments #103 and #105 revealed “forward spatter” resulting from blood drops produced from a projectile exiting a wound, as well as “back spatter” produced when a projectile creates an entrance wound. The patterns on the south wall between apartments #105 and #107 were identified as either an “expiration pattern,” resulting from blood forced by airflow out of the nose, mouth, or a wound, or a “projected pattern,” resulting from the ejection of blood under hydraulic pressure, typically from a breach in the circulatory system. Additionally, there were a number of “impact patterns” associated from an object striking liquid blood found on the south wall, as well as the ceiling above the south wall between apartments #105 and #107. Criminalist Pardo observed “swipe transfer” patterns on the south wall just to the east of the impact patterns between apartments #105 and #107. This pattern results from contact between a blood-bearing surface and another surface. Another expiration pattern was found just west of the door to apartment #107. A void pattern on the west side of the door frame led Criminalist Pardo to conclude that the directionality of the expiration pattern was from the northwest.

North wall: Impact pattern was identified on the north wall between apartments #104 and #106, in the same area as the arcing scuff marks. Slightly east, but within the same vicinity, Criminalist Pardo observed several irregular smear patterns identified as swipe transfer that run down to the base of the wall. Expiration patterns were found on the north wall further east, but still between #104 and #106. A “pool” pattern, resulting from accumulation of liquid blood on the floor south of the expiration pattern near the door to apartment #107.

Criminalist Pardo evaluated the evidence of the crime scene and the autopsy report in an attempt to provide an explanation of what occurred at the crime scene. Obviously, the criminalists’ opinions at such an early stage are without the benefit of DNA testing, scientific, or other investigative reports and are therefore not to be considered an actual representation of what occurred. Rather, his opinions are personal conclusions based on his evaluation of the available physical evidence. Given the nature of the evidence and the circumstances, Criminalist Pardo reached the following conclusions:

Mr. Turner is the most likely source of all apparent bloodstain patterns on scene. A Taser deployment occurred at the west end of the hallway, near the north entrance, outside of apartment #103. The grouping of three spent casings found near the north wall, across from apartment #105, are consistent with the three shots that impacted the south wall near apartment #103. Criminalist Pardo concluded that these shots originated from the east near apartment #105, and were fired in a westerly direction. At least one shot was a complete miss, indicated by the nature of the impact site and bullet. Two shots are consistent with Mr. Turner standing upright, facing west, and hit with two shots. One shot appeared to perforate the right arm, causing forward spatter, and then ricocheted off the south wall and north wall. One shot perforated the right lower chest, causing forward spatter. The trajectory angle of both shots that hit the suspect have about the same trajectory so it is possible that one shot caused both injuries and another shot is a complete miss.

The apparent bloodstains on the south wall, located between apartments #103 and #105, make it likely that Mr. Turner was in this area when he sustained at least one of the gunshot wounds. The bloodstains on the south wall east of apartment #105 also place Mr. Turner around this area. The bloodstains on the south wall between apartments #105 and #107 place Mr. Turner falling forward in this area with his apparent bloodstained clothing contacting the wall in an arcing, downward motion. The bloodstains on the north wall between apartments #104 and #106 place Mr. Turner going down in this area with his apparent bloodstained clothing contacting the wall in a downward motion. This is also the area of the scuff mark on the wall that appears consistent with the debris on Deputy Berlinski's uniform, thus placing him against the wall in this area. At least one shot was fired downward in this area causing the impact in the carpet and the corresponding flattened bullet. The nose of the bullet tested presumptively positive for blood and appears that this is the bullet that caused the only "shored" gunshot wound that exits Mr. Turner's back, placing Mr. Turner on or near the ground in this area causing the pooled bloodstains on the floor. The remaining six fired bullet casings were scattered in this area. The apparent expiration pattern bloodstains on the north wall, located between apartments #104 and #106, as well as the apparent expiration pattern bloodstains near the door to #107, are consistent with Mr. Turner being on the ground when this shot occurred and the apparent bloodstains projecting or spraying out of the wounds.

Legal Analysis

As was previously noted, this review is limited to a determination of whether to file criminal charges 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 the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Deputy Berlinski fired his handgun at Bailey Turner causing his death. At the time of the shooting, Deputy Berlinski was engaged in the course of his duties as a law enforcement officer seeking to apprehend a suspect who he believed to be an individual threatening the well-being of the individuals located within the apartment complex. The legal question presented to the Office of the District Attorney is whether, at the time Deputy Berlinski 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

...

(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 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. (2016).

Here, Deputy Berlinski was dispatched to the location in reference to a possible domestic disturbance. Upon arrival, he identified the suspect of the call, later identified as Bailey Turner, who appeared angry, aggressive, violent and uncooperative. Deputy Berlinski gave several verbal commands for Mr. Turner to stop approaching and obey his orders. Deputy Berlinski tried various non-lethal means of apprehending Mr. Turner such as his verbal commands and utilizing his Taser. None of these non-lethal attempts were successful, as Mr. Turner actively resisted and continued to fight with Deputy Berlinski. Mr. Turner not only ignored the commands and physically resisted arrest; he actively fought Deputy Berlinski. Mr. Turner punched Deputy Berlinski in the head causing dizziness. Deputy Berlinski’s use of non-lethal force failed to subdue Mr. Turner.

Once Deputy Berlinski disengaged from the hand-to-hand combat with Mr. Turner, he backed away. Deputy Berlinski drew his weapon and threatened to shoot Mr. Turner if Mr. Turner did not stop. Mr. Turner continued advancing toward Deputy Berlinski in a threatening manner. Deputy Berlinski explained that at the time he fired his weapon, he was fearful that he could not continue to fight with Mr. Turner and that if he did not use deadly physical force, he would not make it home. Mr. Turner continued to attack Deputy Berlinski after being shot in the chest in the first series of shots and it was the last series of shots that finally stopped Mr. Turner's assault on Deputy Berlinski.

The crime scene investigation conducted by Criminalist Chris Pardo from the Westminster Police Department and Criminalist Shobian Callahan from the Thornton Police Department corroborate Deputy Berlinski's version of events. The earlier attack on Mr. Castorena is also consistent with Deputy Berlinski's description of Mr. Turner's demeanor and determination in assaulting whoever came in his path.

There is no evidence to dispute that Deputy Berlinski fired his weapon at Mr. Turner because he reasonably believed it was necessary to defend himself from what he perceived to be the imminent use of deadly physical force. Under the circumstances of this case, the prosecution cannot prove that Deputy Berlinski's actions were not justified as applied to §18-1-707.

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Deputy Berlinski for the killing of Mr. Turner on January 16, 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'.

Dave Young
District Attorney