



May 24, 2018

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

Re: The investigation into the officer-involved shooting of Garron Torgerson, dob 5/27/1997, occurring on January 21, 2018

Dear Sheriff McIntosh,

The investigation and legal analysis of the officer-involved shooting of Garron Torgerson is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Westminster Police Detectives David Galbraith and Matt Calhoun. 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 April 5, 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 officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to 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 officers involved in this incident.

The Incident

On January 21, 2018, at approximately 12:15 a.m., Adams County Sheriff's Deputy Lonni Trail and his fellow officers responded in their marked patrol vehicles to North County Village, a mobile home park, on a report of suspected trespassers entering into vehicles. Deputy Trail spotted a male walking away from a white Honda parked in a driveway between two mobile homes and contacted him for information. Finding nothing out of the ordinary, Deputy Trail returned to his police vehicle. As he drove away, he entered the license plate of the Honda into his computer database and learned that the vehicle was reported stolen.

Deputy Trail announced the stolen car over the radio and he and Deputy Benjamin Mainero turned around and went back to where the Honda was located. Deputy Trail drove into the driveway at 5276 Riverdale Way with his emergency lights activated. He pulled up to the front bumper of the Honda. Deputy Mainero parked in the street and got out of his car. The Honda drove forward and crashed into the bumper of Deputy Trail's patrol vehicle. The Honda then reversed back up the driveway. Deputy Trail drove forward in an effort to pin the Honda against the front porch of a mobile home. The Honda drove forward and rammed into Deputy Trail's vehicle again. The Honda repeatedly backed up to create space and then drove forward into the patrol vehicle.

At one point, Deputy Trail opened the driver's side door and stood out on the running board of his patrol vehicle. He aimed his handgun between the windshield and the open front door and yelled at the driver of the Honda to stop and turn off the engine. Deputy Trail heard the Honda's engine stall and he got out of his vehicle. Believing that the Honda was immobilized, Deputy Trail ran up to the passenger side of his patrol vehicle and stood in front of the Honda. He pointed his gun at the driver and ordered him out of the car. The driver of the Honda was able to start the engine and the Honda drove directly at Deputy Trail.

Deputy Trail had no cover. He fired his weapon at the driver of the Honda, believing that the Honda was about to run him over. Deputy Mainero was positioned at the front passenger side of Deputy Trail's vehicle and he also fired his weapon at the driver of the Honda, thinking that it was going to run him over as well as fearing for the life of Deputy Trail who was standing nearby. The Honda struck Deputy Trail as it drove away. Deputy Trail was transported to North Suburban Medical Center where he was treated for minor injuries.

Police pursued the Honda out of the mobile home park until it lost control and crashed on Thornton Parkway. The male driver was subsequently arrested and identified as Garron Kelly Torgerson.

Witness Interviews

Investigators from various law enforcement agencies including the Westminster Police Department, Thornton Police Department, Broomfield Police Department, and the District Attorney's Office conducted interviews of the necessary witnesses. The following are summaries of the interviews pertinent to this review.

Deputy Lonnn Trail: Deputy Lonnn Trail is a patrol officer with the Adams County Sheriff's Office. Westminster Detectives Galbraith and Calhoun conducted his interview hours after the incident with his attorney present.

Deputy Trail was working patrol as a K9 handler on January 21, 2018. He drove a Ford Expedition patrol vehicle conspicuously marked with "Adams County Sheriff's Office" on both sides. He wore a standard blue Sheriff's Office police uniform with a badge affixed to his breast.

Deputy Trail responded to a dispatch call to North County Village mobile home park on a report of two male suspects breaking into vehicles in the area. The report included information about a silver SUV that appeared to have been associated with the suspects. Deputy Trail recalled Deputy Elisardo Lopez, Deputy Benjamin Mainero, Deputy Jesse Jenson, and Commander Alex Kondos all responding to the same area for the call. Deputy Trail and Deputy Lopez, who is also a K9 handler, drove into the south side of the community at the same time. Deputy Jenson reported seeing an SUV matching the description of the suspect vehicle drive out of the west side the community. Other deputies followed the vehicle through the neighborhood but lost sight of it.

Deputy Trail stayed in the trailer park to continue to look for suspects. He turned his vehicle lights off and drove through the northeast portion of the trailer park. He noticed that a white Honda backed into a driveway with its doors open. Deputy Trail contacted a male who he saw getting out of the Honda and asked him if he had seen anything suspicious. The male advised Deputy Trail that he chased off a person in a blue shirt who he thought was getting into his car. The male suggested that Deputy Trail search for the suspect in the opposite direction. There were mobile homes on either side of the driveway, and this male appeared to be a resident of one of them. As Deputy Trail walked away, he believed he saw a person move inside the Honda. He memorized the license plate number and returned to his patrol vehicle. He entered the plate number into a law enforcement information database and learned that the license plate was associated with a stolen vehicle.

Deputy Trail got on the radio and reported his location and contact with a suspected stolen vehicle. He activated his headlights and red and blue emergency lights. He went back to the location and pulled into the driveway to block the vehicle from leaving the area. Deputy Mainero pulled and parked in the street behind him. As Deputy Trail pulled in the driveway, the person in the driver's seat of the Honda looked up and immediately drove forward, crashing into the front of Deputy Trail's patrol vehicle. The driver then placed the Honda in reverse and backed up. Deputy Trail drove forward to "close the gap" between the two vehicles. The Honda suddenly drove forward and collided into the front of Deputy Trail's patrol vehicle a second time. The Honda struck Deputy Trail's patrol vehicle three to four times. Deputy Trail described the Honda as "aggressively" striking his vehicle in an attempt to make room to get away.

Deputy Trail opened the driver's side door to his patrol vehicle and stood out on the running board. Deputy Trail drew his handgun and held it out between the open door and the windshield, pointed in the direction of the Honda. He ordered the driver to stop and turn off the vehicle. He could see the driver of the Honda with one hand on the steering wheel looking

forward and backward as he maneuvered the vehicle. The Honda backed up and Deputy Trail's patrol vehicle moved forward against the front of the Honda. Believing he had the vehicle immobilized, Deputy Trail left his patrol car in drive and got out of the vehicle. He ran behind his patrol vehicle and saw Deputy Mainero standing nearby. Deputy Trail decided to move around the passenger side of his vehicle and take cover near the mobile home to the right of the driveway. He repositioned himself expecting that the driver of the Honda would get out and run.

Deputy Trail saw the rear bumper of the Honda pinned against a deck or porch and heard the Honda's engine stall. At that point, Deputy Trail approached the Honda yelling, "Shut the car off! Get on the ground! Exit the vehicle!" As he got closer to the Honda, Deputy Trail heard the engine start up. He saw the wheels spin and turn toward his direction. He stood an estimated couple of feet away from the Honda when the vehicle "dislodged" from the front bumper of the patrol car. The Honda "began speeding aggressively" toward him.

Deputy Trail had no cover. He tried to retreat, but could not move laterally. His patrol car was to his left and a mobile home was to his right. Deputy Trail believed that the driver of the Honda saw him as the headlights from both the Honda and his patrol vehicle illuminated the area. As the Honda drove toward him, Deputy Trail felt that his life was in danger. He fired his handgun into the windshield of the Honda as the bumper to the Honda was approximately a foot from him. Deputy Trail recalled aiming at the driver's seat in an effort to stop the threat of being run over by the Honda. He estimated that he fired between five and nine shots. He continued to back up and the Honda struck his left leg as it drove past him. He raised his handgun again and noticed that it had a malfunction. He removed the magazine from the weapon and reloaded with a new magazine. He did not pull the trigger again. He explained that he stopped shooting because the vehicle was not in front of him anymore and he no longer perceived a threat to his safety.

As the vehicle continued down the street, Deputy Trail ran after it and reported its direction of travel over the radio. At this point, Deputy Trail felt pain in his leg from being hit by the vehicle. Other deputies pursued the vehicle while Deputy Trail and Deputy Mainero returned to the mobile home. They ordered the occupants outside and detained four people, including the male that Deputy Trail initially contacted. Deputy Trail was later transported to the hospital for treatment of his injury.

Deputy Benjamin Mainero: Deputy Benjamin Mainero is a patrol officer with the Adams County Sheriff's Office. Westminster Detectives Galbraith and Calhoun conducted his interview hours after the incident with his attorney present.

On January 21, 2018, Deputy Mainero was working as a patrol officer. He drove a Ford Interceptor patrol vehicle conspicuously marked with "Adams County Sheriff's Office" on both sides. He wore a standard blue Sheriff's Office police uniform with a badge affixed to his breast area.

At approximately 12:15 a.m., Deputy Mainero received a dispatch call reporting two suspects trespassing inside vehicles in the area of 97th Avenue and Riverdale Road. A vehicle

reportedly followed the suspects as they walked around the area looking into cars. As dispatch continued to provide suspect information, officers searched for the suspects and tried to set up a perimeter around the neighborhood. Deputy Jensen reported that the suspect vehicle drove out of the west side of the community.

Deputy Mainero continued to search for the suspects within the community when he noticed Deputy Trail out of his car talking to someone near one of the trailer homes. Deputy Mainero got out to check on Deputy Trail. After speaking with the individual, the two deputies got back in their separate vehicles and drove away. Shortly thereafter, Deputy Mainero heard Deputy Trail give a radio report that the car parked at the residence was stolen. Deputy Mainero followed Deputy Trail as they turned around and drove back to the same address they were previously at. Both deputies activated their emergency lights. Deputy Trail drove in the driveway and parked front bumper to front bumper with the white Honda parked in the driveway.

Deputy Mainero saw a person sitting in the Honda. He heard the engine revving and the sound of the Honda "slam" into Deputy Trail's patrol vehicle. Deputy Trail got on the radio and reported that the Honda was ramming his patrol car. Deputy Mainero ran up the passenger side of Deputy Trail's patrol car with his gun drawn. He repeatedly yelled "Police! Turn off your car!" He could also hear Deputy Trail yelling. The Honda continued to drive back and forth, ramming into Deputy Trail's vehicle an estimated fifteen to twenty times.

Suddenly, the Honda broke loose and drove through the grass directly toward Deputy Mainero at an estimated distance of less than five feet. Deputy Mainero made eye contact with the driver. Deputy Mainero was scared, as he thought he was about to get run over and die. The Honda then veered toward Deputy Trail, who was also standing nearby. At that point, Deputy Mainero believed that the driver was trying to run over Deputy Trail. Deputy Mainero feared for Deputy Trail's life, so he fired his handgun at the driver of the Honda. Deputy Mainero estimated that he fired his gun four to five times. He stopped shooting because he did not want to endanger Deputy Trail, who appeared within the range of gunfire as the Honda moved. The Honda continued driving through the yard, onto the street, and out of sight.

Deputy Mainero remained on scene and waited for more deputies to arrive. He checked on Deputy Trail. Deputy Trail was limping and stated that he was "run over" by the Honda.

Jodi Soltero: Thornton Police Detective Scott Hendrickson interviewed Jodi Soltero hours after the incident. Ms. Soltero owns and lives at the mobile home located at 5276 Riverdale Way. At approximately 12:30 a.m., she heard a vehicle engine "revving," as if it were stuck on ice. She then heard a sound she believed to be someone "ramming" her mobile home. About a minute after the engine revving noise, Ms. Soltero heard gunshots. She then saw the police lights flashing outside her window and heard police shouting, "come out with your hands up." She did not see the incident.

Lorenzo Perez: Thornton Police Detective Scott Hendrickson interviewed Lorenzo Perez hours after the incident. Mr. Perez claimed to have known Garron Torgerson for about

three weeks. On January 21, 2018, Mr. Torgerson picked him up in a white Honda that he'd never seen before and the two drove to the mobile home where they planned to meet up with a woman by the name of Tierney Creason. Mr. Perez stated that once they drove into the area, he saw someone looking into cars and the person ran off.

Mr. Torgerson pulled into the driveway of Tierney Creason's residence and he got out of the car to go inside, where he planned to stay the rest of the night. Mr. Torgerson stayed in the driver's seat of the Honda. A deputy stopped Mr. Perez at the door to the mobile home and asked if he had seen any kids trespassing in cars. He told the deputy what he saw previously. After a brief conversation, the deputy left and Mr. Perez went inside the mobile home. Mr. Perez estimated that ten to fifteen minutes later, he heard an engine revving outside. He heard and felt cars crashing and heard six to seven gunshots. He could feel the crashing on the floor of the mobile home. After the shooting, he heard people yelling, "Get down!" He did not see the incident, as he claimed to be too afraid to look outside.

Elizabeth Quintana: Thornton Police Detective Scott Spurr interviewed Elizabeth Quintana hours after the incident. Ms. Quintana explained that she is friends with Ms. Soltero and was spending the night at Ms. Soltero's mobile home at 5276 Riverdale Way the night of the incident. She explained that another female named "Tierney" lived there as well.

Ms. Quintana was laying on a mattress on the floor of the main room when she noticed flashing lights on a surveillance television. She saw an SUV police car with its emergency lights pull into the driveway to the mobile home. She saw the police car and the car in the driveway hit one another. She could hear policemen yelling at the car, but could not make out what was said. She also heard tires spinning on the pavement. Ms. Quintana got up and went to the back bedroom to check on Ms. Soltero. She heard several gunshots and ran back to the front room, where she noticed a male standing in the hallway next to Ms. Tierney's bedroom.

Tierney Creason: Thornton Police Detective Scott Spurr interviewed Tierney Creason hours after the incident. Ms. Creason was living in one of the bedrooms at the mobile home located at 5276 Riverdale Way. On the evening of the incident, she recalled that her friend "Lorenzo" came over. She could not recall the time. She heard a car outside and looked to the driveway to see a white car parked. Suddenly, she saw a police car "flying" into the driveway and hit the white car. The cars kept "ramming one another" and Ms. Creason heard police screaming, "Get out and get your hands on the ground!" She heard several gunshots and ran to the front bedroom. She later heard police order everyone out of the home.

Other Witnesses: Investigators canvassed the neighborhood in an effort to identify additional witnesses. None of the individuals contacted had any further information beyond what is summarized herein. These witnesses claimed to have either been asleep or not home during the incident. In addition, a number of law enforcement officers completed reports in connection with the investigation of this incident. In summation, these officers either were near the scene and overheard the radio dispatch reports or assisted with the pursuit and investigation after the shooting. These officers' interviews are not summarized here because their interviews did not add significant details to the investigation of the shooting incident.

Crime Scene Investigation

Criminalist Doug Young from the Thornton Police Department and Criminalist Dave Yocum from the Colorado Bureau of Investigation processed the scene and the evidence. There were two scenes associated with the investigation—the scene of the shooting and the scene where the stolen Honda crashed.

The scene of the shooting was identified as 5276 Riverdale Way, a mobile home located within North County Village mobile home park. The mobile home park is located near northeast corner of the intersection of 97th Avenue and Riverdale Road in Unincorporated Adams County, Colorado. An Adams County Sheriff's Office SUV was in the driveway of 5276 Riverdale Way. The SUV appeared to have front-end damage to the passenger headlight. The vehicle also appeared to have collided with the handrail of the front porch steps located at the top of the driveway.

The onset of heavy snowfall in the area made it difficult to gather evidence and take accurate measurements before the snow accumulated. Criminalists identified one live .40 caliber round, six .40 caliber shell casings, a Glock .40 caliber magazine containing six live .40 caliber rounds, and two 9 millimeter shell casings. In addition, criminalists identified tire tracks running from the trailer driveway, across the yard, and onto the street. Due to the weather conditions, the criminalists took measurements and departed the scene with the intent to return later to gather additional evidence. On January 31, 2018, after most of the snow melted from the front yard, Criminalist Young returned to the scene to conduct a further search for evidence. He discovered three additional .40 caliber shell casings and two additional 9 millimeter shell casings.

The Honda crash scene was located on Thornton Parkway, just west of the intersection of Civic Center Drive, near the Thornton Police Department. Criminalist Young observed a white 1998 Honda Civic facing north blocking the eastbound lanes of Thornton Parkway. Initial observations of the vehicle revealed significant damage from a collision with the guardrail on the south side of Thornton Parkway heading westbound. In addition, bullet defects appeared in the hood and in the windshield. Bullet defects were discovered in the blue jeans identified as having been worn by Garron Torgerson at the time of his arrest.

The Honda was impounded and transported to the Thornton Police Department. Further examination revealed several bullet defects in both the exterior and interior surfaces of the Honda. Additionally, both the driver and passenger side windows were missing. With the assistance of laser technology, Criminalist Young was able to ascertain the probable bullet trajectory associated with the bullet defects. The bullet trajectories were all front to back, with entry points in the hood, driver's and passenger's side fenders, and windshield. The angle of origination of the majority of the bullet entry points appeared to be from the driver's side. A couple of the bullet entry points appeared to be from the passenger's side. Two projectiles, along with several pieces of copper jacketing and lead material associated with the discharge of firearms were recovered from the Honda.

Investigators discovered surveillance cameras mounted on the mobile home located at 5276 Riverdale Drive. Inside the residence, investigators discovered a television that appeared to be connected to one of the cameras. However, there was no hard drive or other device associated with the television that could contain any recordings. As such, investigators were unable to identify whether the surveillance cameras recorded this incident.

Criminalist Young collected Deputy Trail's and Deputy Mainero's firearms and examined them. Deputy Trail's weapon is described as a Glock model 22, .40 caliber semi-automatic pistol. At the time of examination, the weapon contained one live round in the chamber and fourteen rounds in the magazine, for a total of fifteen rounds of live ammunition. The magazine is at full capacity with fifteen rounds. Deputy Trail reported that he started his shift with a full magazine and one round in the chamber, totaling sixteen rounds in the fully-loaded weapon. However, he further reported that he dropped the magazine that was originally in the weapon while doing a "tactical reload," meaning he exchanged magazines before the magazine was completely discharged. The magazine recovered from the scene contained six live rounds. Additionally, one live round was recovered on the ground.

Deputy Trail stated that he did not fire the weapon after the tactical reload. Therefore, considering the evidence, Deputy Trail fired nine rounds from his weapon and then dropped the magazine that contained six live rounds. Deputy Trail also reported a malfunction. Given the functionality of the Glock 22, it is likely that one live round either dropped or was ejected when Deputy Trail reloaded the new magazine containing fifteen rounds. When Deputy Trail then charged the newly loaded weapon by chambering a round, the magazine was left with fourteen live rounds. Nine .40 caliber shell casings were recovered from the scene consistent with the round accountability. Deputy Trail fired his weapon nine times.

Deputy Mainero's weapon is described as a Glock model 17, 9-millimeter caliber semi-automatic pistol. At the time of examination, the weapon contained one live round in the chamber and twelve rounds in the magazine, for a total of thirteen rounds of live ammunition. The magazine is at full capacity with seventeen rounds. Deputy Mainero reported that he started his shift with a full magazine and one round in the chamber, totaling eighteen rounds in the fully-loaded weapon. As such, the round accountability was consistent with five rounds fired from Deputy Mainero's weapon. However, there were only four 9 millimeter shell casings recovered from the scene.

Suspect Information

Adams County Sheriff's Deputies chased the stolen 1998 white Honda Civic from North County Village until it lost control and crashed into the median of Thornton Parkway near the I-25 overpass. The driver of the Honda was identified as Garron Kelly Torgerson, date of birth, May 27, 1997. At the time of the incident, Mr. Torgerson was serving a three-year sentence to probation for felony eluding and misdemeanor convictions of drug possession and motor vehicle theft. He had an active warrant for his arrest for failing to comply with probation.

As Mr. Torgerson was taken into custody, he kept repeating, "I'm sorry I fucked up, I fucked up, I didn't mean to hurt anybody." Mr. Torgerson appeared to sustain gunshot wounds to his hand and right upper leg. While waiting for medical to respond, Mr. Torgerson asked, "Did anybody get hurt?"

Mr. Torgerson was transported by ambulance to Denver Health Medical Center. He received medical treatment for a closed head injury, transverse process (spinal) fractures, and several gunshot wounds: one to the left index finger, one to the right leg, one to the left thigh, and three to the buttocks. He was released to the Adams County Detention Facility later on that day.

On the afternoon of January 21, 2018, Adams County Sheriff's Detective Mark Faulhaber and Westminster Detective Dave Galbraith interviewed Mr. Torgerson at the Adams County Detention Facility. Mr. Torgerson waived his Miranda rights and agreed to give a statement concerning this incident.

At the very beginning of the interview, Mr. Torgerson stated that he picked up a car for his "buddy" and that Adams County "was hot on our trail" and "caught me before I was pulling out a driveway." He admitted seeing two officers "off towards the back of the vehicles." He also admitted seeing the "SUV squad car" in front of his vehicle and "pushing the squad car out of [his] way." He confessed that if there was a police officer there he "potentially" hit, he was "just scared for [his] life and [he] was trying to get out of the way" because he believed he had a warrant for his arrest.

Mr. Torgerson recalled the timeline of events. Around 3:00 in the morning, a friend he claimed he knew only as "Derek," picked him up and drove him to a mobile home belonging to someone he didn't know. They parked the Honda in the driveway, and Mr. Torgerson was planning to leave in it. He initially claimed to be uncertain whether the Honda was actually stolen, but later admitted that he was scared because he was in a stolen car and was going to get arrested.

Mr. Torgerson was inside the Honda at the time a Sheriff's Deputy walked by and talked to some people at the mobile home. The deputy asked if they'd seen anyone breaking into cars. Mr. Torgerson stayed in the vehicle and the police drove away. Shortly thereafter, the deputy returned in his SUV with the red and blue lights on. The police vehicle blocked the Honda in the driveway. He claimed that he did not hear the police give any verbal commands. He was aware that the police intended to stop him from leaving, but he knew he had warrants and didn't want another criminal charge. Consequently, he "proceeded to get away" by ramming the police vehicle backward. He stated that he "finally got the SUV to open up a little bit of leeway" and saw two deputies in uniforms standing off to the passenger side of his vehicle. He claimed that the deputies were standing behind the SUV he was crashing. Once he was able to create enough of a gap, he decided to drive through it and that is when the deputies shot at him. He believed most of the bullets went through the windshield and passenger side of the Honda. Bullets struck his leg and hand. Mr. Torgerson proceeded to drive away with police cars chasing him. He ended up crashing into a median.

Throughout the interview, Mr. Torgerson denied hitting a police officer. However, he admitted that if there was a police officer in front of his vehicle, he would have run him over but it would not have been intentional. He repeatedly emphasized the “over-excessive” use of force and asked “if you don’t want to get hit why would you jump in front of a vehicle?” He also asked, “Why would you stop a vehicle that you know that’s not trying to stop?” Mr. Torgerson admitted using marijuana and methamphetamine prior to the incident.

As a result of the incident, Mr. Torgerson was charged with two counts of criminal attempt to commit murder in the first degree, two counts of assault in the first degree, criminal mischief, vehicular eluding, and motor vehicle theft. The case was docketed in Adams County District Court, case number 18CR301. On April 26, 2018, Mr. Torgerson pleaded guilty to assault in the first degree, a class 3 felony. He is scheduled to be sentenced to the Department of Corrections on June 21, 2018.

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 any of 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 Trail and Deputy Mainero fired their handguns at Garron Torgerson. Likewise, there is no dispute that some of the injuries to Mr. Torgerson resulted from multiple gunshot wounds. The issue of which of the involved officers actually caused the injuries is complicated, as the interior of the Honda was penetrated by bullets from both the driver’s and passenger’s sides. The investigation does not reveal forensic evidence that would conclusively distinguish the location of each of the gunshots. Therefore, for purposes of this review, it is assumed that any one of the two shooting officers actually caused injuries to Mr. Torgerson.

At the time of the shooting, Deputies Trail and Mainero were engaged in the course of their duties as law enforcement officers seeking to apprehend a suspect in the driver’s seat of a stolen car. The legal question presented to the Office of the District Attorney is whether, at the time the deputies fired their weapons, the prosecution can prove beyond a reasonable doubt that their actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (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

(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.

...

(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. (2017). Since the deputies' use of force in this instance did not, in fact, cause death, the appropriate standard to apply is §18-1-707(1). It should be noted, however, that an argument could be made that the provisions of §18-1-707(2) should apply. In this regard, the legal analysis is similar to that set forth herein.

Here, Deputy Trail received information regarding a stolen vehicle in the driveway of a residence. Deputy Trail drove his conspicuously marked patrol vehicle into the driveway directly in front of the stolen Honda for the purpose of making contact with the individual in the driver's seat. The emergency lights were activated and the driver looked at Deputy Trail as their vehicles were bumper to bumper in the driveway. Deputy Mainero parked in the street behind Deputy Trail's vehicle. Deputy Mainero also drove a marked patrol car with its emergency lights activated.

Mr. Torgerson recognized the police presence. However, considering he was in a stolen car and had a warrant for his arrest, Mr. Torgerson decided to try to escape at any cost. He crashed into the patrol car a number of times before breaking free and drove directly towards Deputies Trail and Mainero who stood in close proximity to his vehicle. Mr. Torgerson's claims of ignorance as to the presence of the officers carries no weight. In fact, his own overconfident rhetorical questioning of the officers' conduct in trying to stop his vehicle demonstrate his awareness that he intended to use his vehicle as a deadly weapon against the officers.

Legal analysis as to Deputy Lonnn Trail

Deputy Trail explained that his objective was to prevent the escape of the suspect in the driver's seat of the stolen Honda. Believing the vehicle to be immobilized and turned off, Deputy Trail proceeded toward the driver's side of the Honda to arrest the driver. As he approached, Deputy Trail observed the Honda veer toward him in an aggressive manner. Having no room to retreat or find cover, and believing that he was about to be run over, Deputy Trail fired his weapon at the driver of the vehicle.

The evidence corroborates Deputy Trail's explanation of events. Tire marks are evident across the driveway near the trailer where Deputy Trail stood. Under the circumstances, there was little to no room for Deputy Trail to get out of the way of the oncoming vehicle. Mr. Torgerson's statements acknowledging the presence of law enforcement and his blatant disregard for their safety further lend credibility to Deputy Trail's belief that he had to use appropriate force to defend himself. Accordingly, there is substantial evidence to support Deputy Trail's reasonable belief that Mr. Torgerson was about to use unlawful physical force upon him.

Additionally, the amount of force used was reasonable. Deputy Trail stated that he fired his weapon because the vehicle came directly at him. There is no basis for which to conclude that a lesser degree of force was necessary. Mr. Torgerson's actions dictated Deputy Trail's response of firing his weapon.

Given all the facts and circumstances, the prosecution cannot prove that Deputy Trail's action of pulling the trigger intending to shoot Mr. Torgerson was not justified as applied to §18-1-707(1).

Legal analysis as to Deputy Benjamin Mainero

Deputy Mainero was also engaged in the effort of apprehending the suspect driver of the stolen Honda. Deputy Mainero observed the suspect try to escape arrest by ramming the patrol SUV. Deputy Mainero walked up to the passenger's side of the patrol SUV with his gun drawn, commanding the driver to stop and shut off the engine.

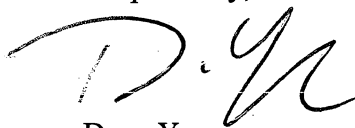
The Honda continued to crash into the patrol SUV in the driveway and then suddenly broke loose and drove directly at him. From Deputy Mainero's vantage point, he was initially concerned that the Honda was coming for him. However, it appeared to veer and drive in the direction of Deputy Trail, who stood on the driver's side. Believing the Honda was trying to run over Deputy Trail, Deputy Mainero fired his weapon at the driver of the vehicle. This evidence supports a reasonable belief in the necessity to use his firearm to defend himself and Deputy Trail from Mr. Torgerson's threat to run them over. The vehicle posed a clear threat to the officers and, as such, there is no basis for which to conclude that a lesser degree of force was necessary.

Under these facts, the prosecution cannot prove that Deputy Mainero's action of pulling the trigger intending to shoot Mr. Torgerson was not justified as applied to §18-1-707(1).

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Deputy Lonn Trail or Deputy Benjamin Mainero for the shooting of Garron Torgerson on January 21, 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 a horizontal line.

Dave Young
District Attorney