

Dave Young
District Attorney



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

November 13, 2018

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

Re: *The investigation of the officer involved shooting of Isaiah Nathaniel Leyva, DOB: 10/1/1998, occurring on July 28, 2018.*

Dear Chief Metz,

The investigation and legal analysis of the officer involved shooting of Isaiah Nathaniel Leyva is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Richard Brookman and Dylan Lussier of the Adams County Sheriff's Office. 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 October 4, 2018. The CIIT presented police reports, videos, recorded interviews of witnesses, photographs, diagrams of the scene and bodycam footage from officers who were wearing body cameras. 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 at trial. Therefore, no criminal charges will be filed against the officer involved in this incident.

OVERVIEW OF THE INCIDENT

On Saturday, July 28, 2018, Officer Benjamin Petering of the Aurora Police Department received an alert that a stolen vehicle had driven through the intersection of Colfax Avenue and Peoria Street. An automated picture of the stolen vehicle was sent to Officer Petering, which he later identified as a 2005 Dodge pick-up truck bearing license plate CO 656-UVQ. The truck had been reported stolen out of Denver that same day. Officer Petering intercepted the truck and, once other police vehicles had joined him, attempted to make a stop. The driver of the truck failed to stop and eluded Aurora Police officers, engaging in dangerous maneuvers in the process. Aurora Police ended the chase for public safety reasons. Before doing so, Officer Petering successfully deployed a Star-Chase dart onto the back of the Dodge pick-up truck, which activated a GPS tracking system that monitored the whereabouts of the stolen truck.

For approximately an hour, the suspect drove the stolen truck through Aurora, Denver and unincorporated Adams County. Denver Police officers joined Aurora Police officers in following the stolen truck from a safe distance, getting the GPS updates from the Star-Chase system. The suspect eventually drove to the area of 65th Avenue and Clay Street in unincorporated Adams County, going east on 65th Avenue, which is a dead end street. Several marked and unmarked police vehicles, who had been following the suspect, made their way down 65th Avenue and parked, anticipating that the suspect would get out and attempt to flee on foot. The suspect did not get out of the truck and turned the stolen truck around towards the parked police vehicles. The truck drove directly at the police vehicles ramming into a marked Denver police vehicle, an unmarked Denver police vehicle, a marked Aurora K9 police vehicle, before crashing head on into an Aurora marked police vehicle.

Officer Christopher Yarborough had just exited this vehicle and, upon seeing the suspect truck driving straight towards him, took refuge behind his patrol vehicle. When the suspect, later identified as Isaiah Leyva, continued to push the police vehicle forward and rev the trucks engine, Officer Yarborough rushed to the passenger side of his vehicle. Seeing other officers heading in their direction and fearing that Mr. Leyva would attempt to hurt or kill him or one of the other officers, Officer Yarborough deployed his weapon and shot five rounds into the driver's side door of the Dodge truck, striking Mr. Leyva. Medical attention was immediately given to Mr. Leyva on scene, but he was pronounced dead at the hospital shortly thereafter.

SYNOPSIS OF WITNESS AND OFFICER INTERVIEWS

All of the involved officer witnesses were identified and contacted within a short time of the incident. There were no lay witnesses to the incident. Investigators from multiple police departments, including Thornton, Westminster, Commerce City, Adams County Sheriff's Office and the District Attorney's Office, conducted the witness interviews. All witnesses were interviewed within hours of the incident at the Adams County Sheriff's office, with the exception of Officer Yarborough, the officer who had deployed his weapon, who was interviewed on August 1, 2018. The following are summaries of the interviews of the involved officers.

Officer Christopher Yarborough

Detectives Richard Brookman and Dylan Lussier of the Adams County Sheriff's Office interviewed Officer Christopher Yarborough on August 1, 2018 with his attorney present. Officer Yarborough has approximately eighteen years of experience, including fifteen and a half years with the Shreveport Police Department in Louisiana. He joined the Aurora Police Department in February of 2016 and worked the swing shift from 3:00 p.m. to 3:00 a.m.

While on routine patrol on July 28, 2018, Officer Yarborough heard radio traffic airing that a stolen vehicle had been located on Colfax Avenue. Shortly thereafter, Officer Petering aired that he had identified the stolen vehicle and had successfully lodged a Star-Chase dart onto the back of the vehicle, which is a GPS tracking system. Officer Yarborough joined the pursuit, though he drove in parallel to the vehicle on nearby Peoria Street until hearing that the suspect had eluded police after Officer Petering attempted a traffic stop. Officer Yarborough then followed the vehicle from a safe distance with the rest of the Aurora patrol cars, keeping track of the stolen truck through the GPS coordinates. Officer Yarborough tracked the truck all the way to 65th Avenue and Clay Street in Adams County when the suspect drove down a dead end street. Officer Yarborough was one of the last cars in the line of patrol vehicles that then ascended onto the dead end street to intercept the stolen truck. Officer Yarborough assumed that the suspect would likely get out of the stolen truck and run on foot once hitting the dead end.

As Officer Yarborough slowly drove up the street, he listened to radio traffic from the police cars ahead of him describing how the stolen truck was near the end of the block. Officer Yarborough noted that there were Denver patrol cars ahead of him, an Aurora Sergeant's vehicle, as well as a K9 police vehicle. Officer Yarborough is a former K9 officer and he planned on getting out of his car and joining the K9 officer to potentially chase the suspect on foot. As he was contemplating this course of action, he noticed headlights coming back in his direction and immediately thought that they were too big to be coming from a police vehicle. He observed the stolen truck veer to his right and saw the Aurora K9 police vehicle pull over to the side of the road at the same time.

Officer Yarborough stopped his police vehicle planning to get out and run over to the K9 unit to assist in getting the dog out to potentially pursue the suspect on foot. He saw the truck's headlights coming straight at him. He watched the suspect driving straight at Officer Green's car and then watched the suspect hit Officer Green's car. Officer Yarborough was physically outside of his car and the suspect was now coming straight at him. Officer Yarborough feared for his life and immediately took steps to protect himself. Officer Yarborough felt there was no reason for the stolen truck to strike Officer Green's car as it was parked on the side of the road and the truck had plenty of room to pass by Officer Green's car. This heightened his sense that the truck was determined to strike him. He ran towards the back of his marked patrol car to take cover. The truck then violently crashed head-on into the front of Officer Yarborough's patrol car, pushing the car back into Officer Yarborough and nearly knocking him to the ground.

Officer Yarborough thought he might get trapped under his car and be killed. However, he caught himself against his vehicle, stumbled, then steadied himself and ran around his car to get out from behind it. The suspect was still pushing Officer Yarborough's vehicle with the stolen truck. Officer Yarborough realized that the suspect had hit Officer Green's vehicle, had now hit his vehicle and

feared the driver of the truck was trying to hit him because the suspect had plenty of room in the roadway to get past both patrol vehicles without striking them. From his peripheral vision he could see other police officers on foot moving in his direction and also sensed that Officer Green was out of his police car as well. The suspect revved the truck's engine loudly and showed no sign of de-escalation. This caused Officer Yarborough to fear that the suspect would put the truck in reverse and come at him again, or that he would try to hit or kill another officer who was nearby on foot. Officer Yarborough stated "all I could think was this guy's gonna kill somebody. He's, he's either gonna kill me or he's gonna throw it in reverse and kill somebody."

Officer Yarborough felt that the situation required him to prevent the suspect from driving the truck and putting the lives of himself or other officers in danger. He un-holstered his service weapon, a Glock 17 nine millimeter, and fired several rounds through the driver's side door of the stolen truck where the suspect driver should have been sitting. Officer Yarborough estimated that he was ten to fifteen feet away from the truck when he fired. He could not see who he was shooting at until after he fired, at which time he noted a Hispanic male in the driver's seat. Officer Yarborough immediately radioed that shots had been fired and requested emergent medical attention. The revving of the truck's engine started going up and down and the truck was still pushing Officer Yarborough's patrol vehicle forward. Officer Yarborough moved up on the stolen truck with his gun drawn and attempted to open the driver's side door, but it was locked. Other police officers then went around the vehicle to the passenger side where they could see that the suspect was injured. The suspect was then taken out of the truck and given aid until emergency medical arrived on scene.

Officer Yarborough was wearing a body camera on his person that night, but he did not have it activated during the incident. Officer Yarborough realized immediately after the incident that his bodycam was not activated and he turned it on. It was Officer Yarborough's understanding that the bodycam records and backs up thirty seconds before turning it on, so he believed that the body camera would have recorded the entire shooting incident. Unfortunately, the bodycam in this case only begins after the shooting has occurred. It does show other officers arriving near the suspect vehicle and communicating with Officer Yarborough, who appears to still have his gun drawn and pointed at the truck's driver side door. Otherwise, the bodycam footage does not show any of the shooting in this incident.

Officer Yarborough stated at the time he fired his service weapon that he had no idea if anyone else was behind his patrol vehicle and when the suspect was revving the truck's engine that the suspect was trying to "kill somebody."

Officer Benjamin Petering

Thornton Police Detective Doug Parker interviewed Officer Benjamin Petering. Officer Petering is a seven year veteran of the Aurora Police Department and works the swing shift from 3:00 p.m.– 1:00 a.m.

Officer Petering was on routine patrol when he was alerted to a hit on a stolen truck going westbound on Colfax Avenue at Peoria Street. A picture of the truck was sent to Officer Petering's car. Officer Petering ran the license plate through his system, which confirmed that the truck was stolen. Officer Petering situated himself at the intersection of Colfax Avenue and Oswego to potentially

intercept the truck, which he did. He began to follow the truck. Officer Petering pulled behind the suspect and deployed a Star-Chase dart onto the back of the truck which then tracked the stolen truck and communicated the trucks whereabouts to law enforcement via the GPS tracking system. Officer Petering followed the stolen truck without lights and sirens for a few miles while other patrol officers joined the pursuit, then activated his emergency lights in an attempt to stop the suspect at Colfax Avenue near Interstate 225. The suspect did not stop and began to elude police officers. The suspect engaged in some dangerous maneuvers causing officers call off the chase due to public safety reasons. Officer Petering never got a view of the suspect, nor did he know how many people were in the stolen truck.

Officer Petering then followed the suspect from a safe distance, while monitoring his position on the GPS tracking system that was relayed from the Star-Chase dart. The suspect drove onto I-225, I-25, and I-70 at different times throughout this time, then eventually got off at Federal Boulevard. Eventually, the suspect turned at 65th Avenue and Clay Street on what was a dead end street. Officer Petering aired this to the other officers that were attempting to follow the suspect. Through the GPS monitoring he could see the truck drive to the end of the dead end, then make a U-turn and drive back away from the dead end on 65th Avenue. Shortly thereafter, Officer Petering heard on his police radio that the suspect had hit one of the patrol cars and then heard that shots had been fired. Officer Petering did not hear the shots himself, nor did he witness the incident personally. Once he arrived on scene, he saw that the suspect vehicle had crashed into an Aurora Police vehicle. Several officers had the suspect in the driver's seat of the truck at gunpoint at this time. The suspect was brought out of the truck and was immediately given medical attention. Officer Petering assisted in giving the suspect CPR until medical technicians arrived on scene.

Officer Ronald Espinosa

Thornton Police Detective Robin Danni interviewed Officer Ronald Espinosa. Officer Espinosa has worked for the Denver Police Department for three years and has twelve years of experience with the Adams County Sheriff's Office prior to joining the Denver Police Department.

Officer Espinosa was on routine duty when the Aurora Police Department aired over the police radio that they were following a stolen vehicle and were requesting assistance. Officer Espinosa joined the pursuit and followed the vehicle, a Dodge Ram truck, from a distance through portions of Denver and Adams County. Eventually, the suspect vehicle turned eastbound on 65th Avenue off of Federal Boulevard, which is a dead end street. Officer Espinosa was several cars back and, once having turned onto 65th Avenue himself, pulled his patrol car over onto a grassy area near a fence. He could not see the suspect vehicle at that time, but knew it was ahead of him and could see a Denver police car approximately ten feet ahead of him. A short time later, the suspect vehicle came back westbound on 65th Avenue and came onto the grass area where Officer Espinosa was sitting in his parked patrol car. Officer Espinosa stated that the vehicle was coming right at him, then brushed the side of his patrol car, pushing it backward, and got around him. The truck then continued westbound on 65th Avenue. Officer Espinosa could not see what happened next, but shortly thereafter, he heard gunshots and immediately got out of his vehicle and ran to the scene of the shooting. He then saw the suspect in the truck unconscious but with his foot on the gas pedal. The truck had also collided with an Aurora Police Department vehicle. Officer Espinosa did not see the shooting itself.

Officer Christopher Mejia

Thornton Police Detective Robin Danni interviewed Officer Edward Mejia. Officer Mejia has eleven years of police experience, including nine years with the New York Police Department and two years with the Denver Police Department.

Officer Mejia was on routine patrol in Denver when he was alerted that the Aurora Police Department had “darted” a stolen vehicle which was traveling into Denver and were requesting assistance from the Denver Police Department. Officer Mejia is a member of the gang unit and was driving an unmarked police Crown Victoria. He first saw the suspect vehicle at about Pecos Street and 56th Avenue and, because he was in an unmarked vehicle, took the lead in following the stolen truck, though he did not get very close to avoid detection. At some point, the suspect vehicle made a U-turn and Officer Mejia lost him, not wanting to make the same U-turn and alert the suspect.

Officer Mejia stayed involved in the pursuit, however, by listening to the GPS tracking calls from Aurora police officers. Eventually the stolen truck turned onto a dead end street. Officer Mejia was behind marked Aurora police cars as well as two Denver police vehicles in a line of cars that were following the truck. Officer Mejia pulled over and stopped at this point. He then heard radio traffic stating that the suspect was turning around and could start to see headlights, so Officer Mejia pulled over further onto a grassy area behind another Denver police car that was in front of him. Officer Mejia said that he pulled over further to give the suspect a clear lane to get through without hitting anyone. Officer Mejia's headlights were off at this time.

Officer Mejia saw the stolen truck's headlights coming towards him and heard it hit the Denver police vehicle in front of him. The suspect appeared to be driving straight at Officer Mejia and he feared a head-on collision was about to happen, so Officer Mejia pulled his car up further to be right behind the Denver police car to get out of the truck's path. The suspect vehicle then hit the back of Officer Mejia's car which made a “crunching sound” as the collision occurred. Officer Mejia then attempted to maneuver his vehicle around in order to go after the suspect vehicle. At this time, he could see that the suspect had rammed another police vehicle head on and he heard gunshots, though he could not see the gunfire from his position. Officer Mejia radioed that shots had been fired, then exited his vehicle and ran towards the scene of the shooting.

As Officer Mejia arrived, he saw two officers, one of whom had a K9, who stated that the suspect was injured. The stolen truck was still running and Officer Mejia described it as “revving and un-revving, revving and un-revving” and was continuing to hit the Aurora Police car in front of it. Officer Mejia then went around to the passenger side of the suspect vehicle. He tapped on the broken glass of the passenger side window, which broke completely, and then unlocked the door to get access to the driver. The suspect was then pulled out of the car through the driver's side door and given medical assistance.

Officer Matthew Green

Thornton Police Detective Doug Parker interviewed Officer Matt Green. Officer Green is an eight year veteran of the Aurora Police Department. He is a canine officer for Aurora and had his dog, Draco, in his K9 patrol vehicle on the night of this incident.

Officer Green was leaving the Aurora Police Department District One headquarters when it was aired on the police radio that a fellow officer was following a stolen vehicle eastbound on Colfax Avenue, which was in the direction of Officer Green's location. Officer Green joined the pursuit and was present when fellow officers attempted a traffic stop of the suspect vehicle. The suspect failed to yield and made a U-turn, getting onto I-225 North. Officer Green and his fellow Aurora Police officers discontinued their pursuit, but followed the suspect vehicle at a safe distance as they were able to track the suspect with GPS. He followed the suspect for several miles from a safe distance until the suspect turned onto what he believed to be Clay Street, off of Federal Boulevard, in Adams County.

Officer Green, who was viewing a GPS map on a computer screen in his car, could see that this street was a dead end street. He was the fourth police car behind the suspect vehicle at that time and decided to park on the side of the road in anticipation of the suspect parking and perhaps fleeing on foot. While on the side of the road, Officer Green noticed the trucks headlights coming in his direction. He watched as the suspect vehicle hit one of the Denver patrol cars ahead of him. Officer Green then moved his vehicle closer to the curb, so that he wouldn't block the suspect in, fearing that the defendant was going to hit him head on. He then watched as the suspect vehicle very nearly did hit him head on, clipping the front driver side of his patrol car, then tearing the mirror off the driver's side of his patrol vehicle as well as damaging that side of the vehicle.

Officer Green opened his door to get out and immediately heard the air seeping out of two of his tires. He then heard another large crash and decided to get his dog. Before he could do so, however, he heard gunshots. After he got his dog out of his vehicle, he saw Officer Yarborough standing at the passenger side of his patrol vehicle, which had also been hit by the stolen truck, with his gun drawn. Officer Yarborough told Officer Green that the suspect had hit him. Officer Green then began to give the suspect orders but heard nothing in response. The engine of the stolen truck was still revving at this time. Denver police officers then approached the passenger side of the truck and reported that the suspect was no longer moving. The suspect was then removed from the vehicle and given CPR and medical attention.

Officer Jesse Tapsfield

Adams County Sheriff Detective Jai Rogers interviewed Denver Police Officer Jesse Tapsfield. Officer Tapsfield has worked for the Denver Police Department since 2014 and, prior to that, worked for the Jefferson County Sheriff's Office and the United States Secret Service.

On July 28th, Officer Tapsfield heard radio traffic from the Aurora Police Department saying they were following a stolen vehicle and that they would be passing through Denver's District 5, which is where he was working at the time. Officer Tapsfield was working what is known as the "TAC Unit" and all TAC units were requested to assist in following this stolen vehicle. Officer Tapsfield was

driving a marked Denver Police patrol vehicle. Once hearing the call, he listened to Aurora's descriptions of where the suspect was and eventually caught up to other police vehicles that were following the suspect. Eventually the suspect turned down 65th Avenue near Clay Street. Officer Tapsfield was behind an Aurora Patrol SUV and followed the Aurora car down 65th Avenue. Upon learning the street was a dead end, Officer Tapsfield pulled off the road onto a grassy area. Officer Tapsfield's view was partially blocked by a fence, so he could not see the stolen truck at this time. Officer Tapsfield did not see the truck turn around and pass him, but he did hear several sounds consistent with vehicles colliding behind him, one after another. He then heard what sounded like another collision and heard over the radio that shots had been fired. Officer Tapsfield then got out of his vehicle and ran on foot to the scene, where he assisted in getting the suspect out of the truck.

CRIME SCENE INVESTIGATION

Adams County Sheriff's Office Crime Scene Investigator Jennifer Mitchell as well as investigators from the Colorado State Patrol processed the scene of the shooting. The evidence at the scene and the scene itself were consistent with the narrative of what had been reported to have occurred that night. Investigators found evidence that the suspect, after turning around at the dead end on West 65th Avenue, proceeded to hit a marked Denver Police Ford Explorer, then hit a dark blue undercover Denver Police Ford Crown Victoria, side swiped an Aurora K9 unit vehicle and crashed into an Aurora police Ford Explorer head on. CSI Mitchell observed frontend damage to the push bar of the Denver Police Ford Explorer; severe damage to the rear bumper and tail light of the Denver undercover Crown Victoria; severe damage to the driver front bumper, quarter panel and down the entire driver side of the Aurora K9 unit; and significant damage to the front of the Aurora police vehicle driven by Officer Yarborough. CSI Mitchell observed five spent shell casings in the area where the shooting occurred, all of which were marked as "9mm Lugar WIN." Two shell casings were found near the gutter on the south side of the street in front of the residence located at 2530 W. 65th Ave. A third shell casing was found at the junction of the sidewalk gutter and street asphalt slight north of the second shell casing. A fourth and fifth shell casing were found north east of the third shell casing.

The suspect vehicle was impounded and taken to the Adams County Sheriff's Office vehicle bay, where it was examined further. The Dodge Ram bore Colorado License Plate 656-UVQ and was reported stolen by its registered owner. The vehicle is a four door extended cab truck with a standard sized truck bed. The driver's door window and rear passenger door window were shattered. The glass shards were located inside the truck, indicating that the windows had shattered inward.

CSI Mitchell observed paint transfer of a blue color from the rear tire well to the passenger front tire well on the passenger side of the vehicle. She also noted several impacts or dents within this paint transfer. She found a blue piece of plastic between the tire bead and rim which matched the blue paint from the unmarked Crown Victoria police vehicle. She observed a large impact dent from the bottom of the tire well to the top of the truck bed on the driver side of the vehicle. She also observed four round defects to the driver's side door consistent with bullet holes. All four holes were in a tight grouping of six inches by six inches. She recovered a projectile from the driver seat and from the inside panel of the driver door. A silver projectile was found in the interior metal panels of the driver's side door.

Officer Yarborough's gun was collected and a round accountability was performed. Officer Yarborough stated his service weapon had a seventeen round magazine plus one round in the chamber. Five rounds were missing. This is consistent with the number of spent casings that were found on scene.

SUSPECT INFORMATION

Mr. Isaiah Nathaniel Leyva was a convicted felon per NCIC/CCIC. His criminal history includes arrests for trespassing, possession of drugs, and a conviction for Aggravated Robbery.

AUTOPSY AND ANALYSIS

Dr. James Caruso conducted an autopsy of the male identified as Isaiah Leyva, DOB: October 1, 1998, at the Adams County Coroner's Office. Mr. Leyva sustained a gunshot wound to his chest that injured the heart and both of his lungs, ultimately leading to his death. Additional gunshot wound paths were present in the left upper and left extremities and there were gaze wounds to the chest and left thigh.

Mr. Leyva's toxicology report and urine screens revealed the presence of methamphetamine, metabolite, caffeine, cannabinoids and amphetamines. Dr. Caruso determined the cause of death to be a gunshot wound to the chest and the manner of death to be homicide.

LEGAL ANALYSIS

As previously noted above, this review is limited to a determination of whether criminal charges should be filed against Officer Christopher Yarborough for the shooting that took place on July 28, 2018. 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 Officer Yarborough's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Yarborough fired five rounds into the vehicle where Isaiah Nathaniel Leyva was seated and that Mr. Leyva died from the ensuing gunshot wounds. At the time of the shooting, Officer Yarborough was lawfully engaged in the course of his duties to follow Mr. Leyva, who was driving a known stolen vehicle. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Officer Yarborough fired his weapon, the prosecution can prove beyond a reasonable doubt that Officer Yarborough's 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. (2018), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

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

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

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

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

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

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If 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. (2018).

Officer Yarborough was engaged in pursuit of a suspect who was driving a stolen vehicle and who had eluded police in an earlier attempt to apprehend him. When Mr. Leyva entered a dead end street, he turned the stolen truck he was driving around and aggressively drove through a line of police cars, hitting several of them in his path. These officers did not try to block the suspect and he could have avoided hitting most, if not all, of the patrol cars that he collided with, leading to the natural conclusion that he intentionally chose to hit those vehicles.

Officer Yarborough had just gotten out of his vehicle when he saw the suspect intentionally strike Officer Matt Green’s K9 police vehicle and then head straight towards Officer Yarborough himself. Fearing for his life, Officer Yarborough took safety behind his patrol car. The investigation supports the conclusion that Mr. Leyva could have avoided Officer Yarborough altogether by simply driving around his parked patrol car. Mr. Leyva instead chose to violently crash into Officer Yarborough’s patrol car head on and pushing the patrol car into Officer Yarborough. Officer Yarborough ran around his vehicle to prevent himself from being run over or hurt. He could see through his peripheral vision that Officer Green had gotten out of his nearby patrol car and that there were other officers moving towards them on foot. Mr. Leyva showed no signs of deescalating his behavior.

On the contrary, despite having just caused a head-on collision with Officer Yarborough’s vehicle, he continued to aggressively rev the motor on the stolen Dodge truck he was driving. Officer Yarborough feared that Mr. Leyva would put his car in reverse, then actively seek to hit and kill Officer Yarborough or one of the other officers who was on foot nearby. Officer Yarborough came to a reasonable conclusion that based on Mr. Leyva’s actions that Mr. Leyva intended to kill somebody. It was at that time that Officer Yarborough fired his weapon at the driver’s side door striking Mr. Leyva. Mr. Leyva’s actions dictated Officer Yarborough’s response.

Under these facts, the prosecution cannot prove beyond a reasonable doubt that Officer Yarborough’s action of firing five rounds at Isiah Leyva was not justified in protecting himself and other officers from what he perceived to be the use of deadly physical force under §18-1-707, C.R.S. (2018).

CONCLUSION

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Christopher Yarborough for discharging his weapon in the fatal shooting incident involving Isiah Nathaniel Leyva on July 28, 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", is written over a horizontal line.

Dave Young
District Attorney