

Dave Young
District Attorney



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

May 17, 2018

Chief Paul Southard
Brighton Police Department
3401 E. Bromley Ln
Brighton, CO 80601

Re: The investigation into the officer-involved shooting of Carlos Candelaria, DOB 10/26/1985, occurring on February 7, 2018

Dear Chief Southard:

The investigation and legal analysis of the officer-involved shooting of Carlos Candelaria is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Thornton Police Detective Doug Parker. 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 25, 2018. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officer 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 officer involved in this incident.

The Incident

On February 7, 2018, at approximately 10:23 p.m., Brighton police officers were dispatched to a domestic disturbance. The reporting party advised that she heard a possible gunshot at 744 Mockingbird St. in Brighton, Colorado. Officer Mark Kubic was the first officer to arrive. He immediately contacted a Vanessa Duran, who appeared to be walking from an apartment building to a vehicle that was parked in the roadway. A male identified as Carlos Candelaria was sitting in the front passenger seat of the vehicle.

While Officer Kubic spoke with Ms. Duran, Officer Nate Esquibel arrived and contacted Mr. Candelaria, who was still sitting in the vehicle. Ms. Duran told Officer Kubic there was no domestic situation. She told Officer Kubic that she was the only person yelling. She further advised that she was yelling at Mr. Candelaria to stay with the vehicle while she went to her apartment to retrieve jumper cables.

Officer Esquibel obtained Mr. Candelaria's identification to see if he had any outstanding warrants. During this conversation, Mr. Candelaria picked up a purse that was inside the vehicle and put on the ground just outside the open passenger door where Officer Esquibel was standing. Officer Esquibel noticed what appeared to be a handgun in the open purse as it hit the ground. At this point, Officer Esquibel asked Mr. Candelaria to step out of the vehicle. Mr. Candelaria initially resisted, but eventually complied. Officer Esquibel patted down Mr. Candelaria for weapons and then attempted to place handcuffs on him. Mr. Candelaria pulled away and turned around towards Officer Esquibel. Officer Esquibel tried to gain control of Mr. Candelaria but could not do so on his own.

Sergeant Nicholas Struck had just arrived on scene. When he observed Officer Esquibel involved in the struggle, he ran to assist with getting Mr. Candelaria under control. While they struggled in the grass area off to the side of the street, Mr. Candelaria was able to get on top of Officer Esquibel. He then grabbed Officer Esquibel's holster and started pulling on it. He pulled on the holster with enough force to pull it around to the front of Officer Esquibel's duty belt.

As the officers grabbed for Mr. Candelaria's arms and tried to get him to the ground, Mr. Candelaria said, "Shoot me." When all three fell down to the ground, Officer Esquibel said, "Stop, stop man." Mr. Candelaria then stated, "I'm ready to die, I'm ready to die." As Mr. Candelaria started to stand up during the struggle, Officer Esquibel said, "He's grabbing my gun, He's grabbing my gun!" As the officers were getting Mr. Candelaria to the ground, Officer Kubic inserted himself in the struggle to assist with controlling Mr. Candelaria. Officer Esquibel yelled, "Shoot him, Shoot him, He's grabbing my gun!" Sergeant Struck reached into his holster with his left hand, removed his firearm, and fired one round into the right hip area of Mr. Candelaria. Mr. Candelaria stopped resisting at that point, and fell to the ground. Mr. Candelaria was treated for a gunshot wound and later released from the hospital.

Witness Interviews

Officer Nathan Esquibel: Detective Doug Parker of the Thornton Police Department interviewed Officer Nathan Esquibel on February 8, 2018, at 5:13 a.m. Officer Esquibel has been a patrol officer with the Brighton Police Department for the past two years. Prior to his employment with the Brighton Police Department, Officer Esquibel spent six years as a patrol officer with the Ault Police Department.

On February 7, 2018, Officer Esquibel was working a shift from 7 p.m. to 7 a.m. At approximately 10:23 p.m., Officer Esquibel received a dispatch call referencing a domestic disturbance in progress. Officer Esquibel heard on the police radio Officer Kubic's request for back up at 744 Mockingbird Lane. Officer Esquibel initially proceeded to the location without his lights and sirens. However, while in route, dispatch aired a report of a gunshot in the area, as well as a male chasing a female on foot in the location. At this point, Officer Esquibel activated his overhead lights and proceeded emergent to the location.

Upon arrival, Officer Esquibel observed Officer Kubic's patrol vehicle positioned to the rear of another vehicle. Officer Esquibel observed Officer Kubic speaking with a female party, later identified as Vanessa Duran. Officer Kubic informed Officer Esquibel that there was a male passenger in the vehicle. Officer Esquibel approached the passenger side of the vehicle and initiated a conversation with the passenger, later identified as Carlos Candelaria. Mr. Candelaria was alone inside the vehicle. Officer Esquibel informed Mr. Candelaria of the purpose for the police response to the location. He informed Mr. Candelaria that he was identified as being involved in a domestic disturbance.

According to Officer Esquibel, Mr. Candelaria became "confrontational off the bat" and repeatedly stated, "it's not me, it's her." Officer Esquibel then requested Mr. Candelaria to provide him with identification. Mr. Candelaria appeared hesitant to turn over his identification. Based on his experience, Officer Esquibel felt that Mr. Candelaria did not want to disclose his identity to law enforcement. When Mr. Candelaria finally handed Officer Esquibel his identification card, he appeared to be listening carefully to Officer Esquibel's conversation with dispatch on the police radio. During this process, Mr. Candelaria became more agitated, and began searching through the vehicle's center storage compartment.

Mr. Candelaria then produced what appeared to be a flask style container from the storage compartment and contemporaneously stated "see, she's drunk, this is all her fault and problem." Immediately afterwards, Mr. Candelaria reached into the back seat area of the vehicle and produced a purse. Mr. Candelaria dropped the purse on the ground outside the passenger door of the vehicle. Officer Esquibel looked inside the purse and saw what appeared to be a black handgun.

Officer Esquibel requested that Mr. Candelaria step out of the vehicle. Officer Esquibel initiated a pat-down search for weapons. Mr. Candelaria became increasingly agitated during the pat down, asking "why am I going to jail?" Concerned for his own safety, Officer Esquibel attempted to place handcuffs on Mr. Candelaria. Mr. Candelaria became rigid and tense during this encounter and placed his arms in an outward motion. Officer Esquibel told Mr. Candelaria "to relax." Mr. Candelaria then turned towards Officer Esquibel and they "began to scuffle." Officer Esquibel attempted to grab Mr.

Candelaria's wrist to take him to the ground to gain control of him, but Mr. Candelaria "overpowered" him and broke away.

Sergeant Struck was on scene in a backup capacity. Sergeant Struck attempted to assist Officer Esquibel in gaining control over Mr. Candelaria. Officer Esquibel explained that this encounter escalated into a fight, with Officer Esquibel landing on both his side and back. During the struggle, Officer Esquibel heard Mr. Candelaria state "I'm ready to die, just kill me, just kill me." Officer Esquibel felt Mr. Candelaria trying to grab his service weapon located on his utility belt, stating "he pulled at my gun three times." Once Officer Esquibel realized that Mr. Candelaria was trying to disarm him, he shouted out "he's trying to grab my gun, he's trying to grab my gun, shoot him!"

Officer Esquibel stated that when he shouted, "Shoot him!" he was in fear for his life, as well as the lives of his fellow officers. It was at this point that Sergeant Struck fired one round into Mr. Candelaria's hip area. Officers were then immediately able to gain control of Mr. Candelaria. He was taken into police custody without further incident. Once Officer Esquibel stood up following this confrontation, he noticed that his gun on his duty belt was rotated from the side to the front and he had to forcefully "yank" it back to its normal position.

Officer Esquibel believed that Mr. Candelaria's main goal was to get his gun and shoot him. He further stated his belief that Sergeant Struck's actions of shooting Mr. Candelaria and stopping him from getting his gun saved his life.

Officer Mark Kubic: Thornton Police Detective Doug Parker interviewed Officer Mark Kubic on February 8, 2018. Officer Kubic has been employed as a patrol officer with the Brighton Police Department since July, 2017. Officer Kubic has a total of approximately four years' experience as a patrol officer.

On February 7, 2018, Officer Kubic was working routine patrol. His shift began at 7 p.m. to 7 a.m. Officer Kubic was dispatched to the area of 744 Mockingbird referencing a domestic violence in progress. When Officer Kubic arrived at the Mockingbird apartment complex, he observed a vehicle that matched the description the reporting party stated was involved in the disturbance. Officer Kubic was the first officer to arrive on scene and called for a cover officer, later determined to be Officer Esquibel.

While waiting for backup to arrive, Officer Kubic observed a female, later identified as Vanessa Duran, running towards the vehicle with what appeared to be a lanyard keychain in her hand. Officer Kubic contacted Ms. Duran and asked her if the vehicle belonged to her. Ms. Duran responded in the affirmative. Ms. Duran told Officer Kubic that the car "broke down." Officer Kubic asked Ms. Duran if there was anyone in the vehicle. Ms. Duran responded, "my husband." While Officer Kubic was trying to discuss the reason for the contact with Ms. Duran, he observed Officer Esquibel approach the passenger side of the vehicle.

Officer Kubic described Officer Esquibel as being "polite" to the passenger of the vehicle. Officer Kubic also stated that Officer Esquibel aired the name Carlos Candelaria over the radio to determine whether Mr. Candelaria had warrants. Officer Kubic heard Officer Esquibel request Mr.

Candelaria to step out of the car. While Mr. Candelaria got out of the car, Officer Esquibel turned towards Officer Kubic and stated, "there's a gun in the purse." Ms. Duran overheard the comment and told Officer Kubic, "that's a BB gun, my kids were playing with it earlier and I put it in my purse."

Once he was alerted to the presence of a gun, Officer Kubic placed Ms. Duran in handcuffs for officer safety. At the same time, he saw Mr. Candelaria becoming combative and pull away from Officer Esquibel. When Officer Kubic saw the encounter between Officer Esquibel and Mr. Candelaria become physical, he got on the radio and requested additional officers to respond.

Sergeant Struck arrived and immediately began to assist Officer Esquibel gain control of Mr. Candelaria. Officer Kubic left Ms. Duran to assist with the arrest. Officer Kubic recalled the two officers "wrestled and tussled" while trying to take Mr. Candelaria to the ground. Mr. Candelaria ignored the officers' verbal commands to stop resisting. While Officer Esquibel and Sergeant Struck were trying to place Mr. Candelaria into handcuffs, he heard Officer Esquibel "urgently" shout "he's grabbing my gun, he's grabbing my gun, shoot him!"

Officer Kubic felt that he did not have a clear shot because of the proximity to other officers. He described the men "on top of one another." He described the struggle as being violent until he heard a "pop." Mr. Candelaria immediately stopped struggling and was placed under arrest. Officer Kubic stated that he was not immediately certain who fired the weapon, or whether or not either of the officers were injured. He later knew it was Sergeant Struck who had fired when Sergeant Struck gave instructions to check for injuries and apply pressure to Mr. Candelaria's wound.

Sergeant Nicholas Struck: Thornton Police Detective Doug Parker interviewed Sergeant Nicholas Struck on February 8, 2018. Sergeant Struck has been employed with the Brighton Police Department since August, 2010. He spent eight years as a patrol officer and was recently promoted to the position of patrol Sergeant.

On February 7, 2018, Sergeant Struck was working a shift from 7 p.m. to 7 a.m. At 10:23 p.m., he was at the Brighton Police Department when he heard a dispatch call for a "domestic in progress." Sergeant Struck then went to 744 Mockingbird Lane. On his way to the location, Sergeant Struck received a radio request for an additional officer on scene and that a gunshot may have been fired. Upon his arrival, Officer Kubic was talking to a female and Officer Esquibel was talking to a male in the vehicle that was parked in the roadway. As Sergeant Struck got out of his vehicle, he saw that the male party was now outside of the vehicle.

Sergeant Struck described the male as "noticeably taller and bigger than Officer Esquibel." As Sergeant Struck approached, he saw Officer Esquibel grab the male's jacket and the male pulled away. Sergeant Struck observed Officer Esquibel attempt to grab ahold of the male's arm. At this point, Sergeant Struck ran towards them. He saw the male trying to get away from Officer Esquibel yelling out "Just shoot me, just shoot me!" Sergeant Struck and Officer Esquibel tried to regain control of the male suspect.

Once they reengaged the suspect, he was actively resisting their efforts to control him. Sergeant Struck and Officer Esquibel attempted to take the suspect to the ground to gain his compliance. While doing so, the suspect was twisting and wresting away from the officers. During the struggle, Officer Kubic assisted the officers to get control of the suspect. While Sergeant Struck held on to the suspect's lower legs and the other two officers were trying to gain control over the suspect, Sergeant Struck heard Officer Esquibel shout, "He's got my gun, he's got my gun, shoot him, shoot him!" Sergeant Struck has worked with Officer Esquibel for several years, and described Officer Esquibel's voice during this incident as being "stressed and panicked."

Sergeant Struck held the suspect legs around his hip area at this point of the struggle and felt that the suspect had Officer Esquibel's gun and was getting ready to kill Officer Esquibel. Sergeant Struck then raised up enough to reach into his utility belt and remove his service weapon with his left hand. He felt that the "hip and butt area" of the suspect was the only area where he could shoot without risking the safety of the other officers. He then placed the muzzle of his gun on the suspect's right hip and fired his service weapon one time, striking the suspect.

Sergeant Struck said at the time he fired his weapon he felt that Officer Esquibel's life was in danger based on the tone of Officer Esquibel's voice and the nature of the suspect's actions. The suspect immediately stopped fighting with the officers after the shot was fired and Sergeant Struck was able to get handcuffs on the suspect very quickly. Officers treated the gunshot wound until medical personnel arrived on scene.

Vanessa Duran: On February 8, 2018, Westminster Police Detective Russ Johnson interviewed Vanessa Duran at the Brighton Police Department. Ms. Duran and Carlos Candelaria, have two children together. On the evening of February 7, 2018, Mr. Candelaria was visiting Ms. Duran and the children. Mr. Candelaria was not currently living with them because he was an inmate serving a community corrections sentence. Ms. Duran stated that Mr. Candelaria was sentenced for a burglary charge in Adams County approximately four months prior.

Ms. Duran stated that on this evening, the family was together getting food when her car died in front of her apartment. She stated that Mr. Candelaria intended to come up to the apartment to find jumper cables and she started yelling at him to stay with the car. She said that she previously had issues with items being stolen from her car, so she yelled for Mr. Candelaria to "stay here." Ms. Duran believes that her yelling is what brought the attention from the neighbors who then called the police on them.

Ms. Duran went to her apartment to look for jumper cables and when she returned the police were already on scene. She said that Mr. Candelaria began "resisting arrest" as soon as she got back to the car. Ms. Duran stated that while resisting, Mr. Candelaria began shouting "kill me, just shoot me." Ms. Duran observed Mr. Candelaria pull away from the officer once the officer shouted, "Gun! Gun!" She believed that the officer was referencing a BB gun that belonged to her nephew that was in her purse from earlier in the day. Ms. Duran thought that Mr. Candelaria was shouting "kill me" to the officers because he was supposed to be at the halfway house at that time and believed he would be going back to prison.

When officers were trying to arrest Mr. Candelaria, Ms. Duran heard an officer state, "Gun! He's grabbing my gun!" Ms. Duran did not believe that Mr. Candelaria would do such a thing, but admitted she did not have a clear vantage point of the struggle. She did not know whether officers shot or tased Mr. Candelaria. Once this happened, Mr. Candelaria groaned and stopped struggling. She remembers shouting to Mr. Candelaria, "Why are you even doing this? You don't have to do this."

Ms. Duran stated that Mr. Candelaria shouldn't have resisted the officers but they did not have to shoot him. Ms. Duran stated that while she has previously been the victim of domestic violence by Mr. Candelaria, she denied being involved in a domestic dispute that evening. Ms. Duran described Mr. Candelaria's anger as being an "uncontrollable rage."

Review of Dash Camera and Recording Device

Brighton Police vehicles are equipped with dashboard cameras. On February 9, 2018, dashboard camera video footage was collected from Officers Kubic and Esquibel's police vehicles. Officer Kubic's dashboard camera was the only camera positioned that had an unobstructed view of the incident. None of the dashboard cameras recorded audio. However, Officer Esquibel was fitted with a body worn audio recording device. This device was in operation at the time of the incident. Detective Parker enhanced the video by increasing the brightness of the objects in view. Detective Parker also synchronized the video from Officer Kubic's dashboard camera with Officer Esquibel's audio recording of the incident.

The audio from Officer Esquibel recording device begins when he starts having a conversation with Mr. Candelaria. The tone of the conversation appears to be conversational until Officer Esquibel requested Mr. Candelaria's identification. That is when Mr. Candelaria says, "man I was just coming to see my kids" and Officer Esquibel responds by saying, "I understand dude, but I still got to know who you are." There is a long pause and then Officer Esquibel says, "Thanks." Officer Esquibel asked Mr. Candelaria if there were guns in the car and Mr. Candelaria replied, "No."

Officer Esquibel is then heard speaking on the radio with dispatch to clear the name Carlos Candelaria. Mr. Candelaria said, "I mean I didn't commit no crime did I." Officer Esquibel replied, "I don't know yet." Mr. Candelaria said, "I didn't do anything" and Officer Esquibel said, "You guys were in a disturbance." Mr. Candelaria said, "I didn't disturb nothing, she's the one disturbing" and he later says "come on look."

You can hear the sound of an object dropping on the street. Officer Esquibel immediately reacts by saying, "Yeah dude throw a gun right at me" and Mr. Candelaria says, "It's not a gun," Officer Esquibel says. "What is that?" Mr. Candelaria responds, "I don't know what the fuck it is, that is her shit, that's her purse." Officer Esquibel then said, "step out," Mr. Candelaria then says, "why do I have to step out man, I didn't do shit." Officer Esquibel said, "don't give me a hard time, just step out." Mr. Candelaria then said, "Are you going to arrest me?" Officer Esquibel responds, "no, I want you to just step out" and then states, "gun in the purse, step out." Mr. Candelaria asked again if he was going to be arrested and Officer Esquibel replied, "I am going to ask you one more time to step out and then I am going to arrest you." The remainder of the audio recording is incorporated into the enhanced video recording.

The enhanced video recording of this incident is approximately one minute and twenty-four seconds long. The video begins with Mr. Candelaria getting out of the car and Officer Esquibel patting him down for weapons. During the pat-down, Officer Esquibel pauses and asks Mr. Candelaria, "phone?" As Officer Esquibel is pulling Mr. Candelaria's arms back to place handcuffs on him, Mr. Candelaria asks "what am I going to jail for?" and Officer Esquibel responds "you're not, relax." In the video, you can see Mr. Candelaria straighten his arms and tense up. Mr. Candelaria again asked, "what I am going to jail for?" and Officer Esquibel says, "relax your arms man."

Mr. Candelaria then yells "I didn't do shit man" and spins around pulling away from Officer Esquibel. Mr. Candelaria then says to Officer Esquibel "why don't you just shoot me man, get it over with and shoot me." Officer Esquibel says, "I'm not going to shoot you man." Mr. Candelaria breaks free from Officer Esquibel and starts to move away from the officer. As Mr. Candelaria is walking away from Officer Esquibel, Sergeant Struck runs into the frame and, along with Officer Esquibel, attempts to place Mr. Candelaria into custody.

As the officers grab Mr. Candelaria's arms attempting to get him to the ground, Mr. Candelaria once again states, "Shoot me." When all three go down to the ground, Officer Esquibel says, "Stop, stop man." Mr. Candelaria then states "I'm ready to die, I'm ready to die." As Mr. Candelaria starts to stand up during the struggle, Officer Esquibel says, "He's grabbing my gun! He's grabbing my gun!" As the officers are struggling to get Mr. Candelaria back on the ground, Officer Kubic inserts himself in the struggle to assist with controlling Mr. Candelaria. Officer Esquibel then says "Shoot him! Shoot him! He's grabbing my gun!"

Sergeant Struck is observed in the video reaching into his holster with his left hand, removing his firearm, and firing one round into Mr. Candelaria's hip area. Officers are able to gain control of Mr. Candelaria immediately after the gunshot. Officer Esquibel is seen standing up and adjusting his utility belt, which had rotated halfway around his waist. Sergeant Struck then appears to place handcuffs on Mr. Candelaria as the video ends.

Suspect Information

Detective Doug Parker met with Mr. Candelaria on February 20, 2018 at the Adams County Jail to interview him and Mr. Candelaria requested to have an attorney present before he discussed this incident with Detective Parker. Detective Parker requested that Mr. Candelaria let his attorney know to contact him if he would like to give his version of the events to Detective Parker. As of the writing of this letter, no one has contacted Detective Parker with regards to Mr. Candelaria giving a statement.

As a result of this incident, Mr. Candelaria was charged with attempt to disarm a police officer, third degree assault on an emergency responder, and two counts of resisting arrest. The case is pending in Adams County, docketed as case number 18CR822. The matter is set for arraignment on June 5, 2018. At the time of this incident, Mr. Candelaria was serving a six-year community corrections sentence for a felony conviction for first degree burglary. As a result of this incident, his community corrections sentence was converted to a department of corrections sentence of six years on March 6, 2018. Mr. Candelaria was also previously twice convicted of misdemeanor domestic violence with Vanessa Duran as the victim.

Medical Analysis

On February 7, 2018, an ambulance transported Mr. Candelaria to Good Samaritan Hospital in Lafayette, Colorado. Dr. David Verbunkher, diagnosed Mr. Candelaria with a gunshot wound to his right torso. Dr. Kelly Knudsen performed abdominal surgery on Mr. Candelaria. During this surgery, Dr. Knudsen treated the injury, repaired Mr. Candelaria's internal injuries, removed a bullet fragment, and closed the wound. Mr. Candelaria's toxicology screen came back negative for drugs and alcohol. Mr. Candelaria was discharged from Good Samaritan Hospital into the custody of the Adams County Detention Center on February 18, 2018.

Scene Investigation

Criminalist Von Bailey from the Adams County Sheriff's Office and Criminalist Heather Hatfield from the Thornton Police Department processed the scene and the evidence in this investigation. Criminalist Bailey began his investigation by meeting with Sergeant Struck, Officer Kubic, and Officer Esquibel at the Brighton Police Department.

Officer Esquibel and Officer Kubic were each wearing a standard blue Brighton Police Department uniform, with a badge over their left breast and black leather gear. They both wore a right-handed holster and had a Taser in a holster on the left side of their duty belt. While photographing Officer Esquibel, Criminalist Bailey noticed the left pant knee had dirt on it consistent with kneeling on the ground. After documenting the pant, Officer Esquibel lifted his left pant leg revealing a small superficial scrape to his left knee. Criminalist Bailey examined both Officer Esquibel and Officer Kubic's service handguns and determined that all rounds were accounted for which led to the conclusion that Officer Esquibel and Officer Kubic did not discharge their weapons.

Sergeant Struck also wore a standard Brighton Police Department uniform, with a badge over the left breast and black leather gear. Sergeant Struck carried his handgun on the left side of his duty gear. Officer Struck carried a Glock model 22, .40 caliber semiautomatic handgun. Sergeant Struck loaded his weapon with fifteen live cartridges in the magazine and one round in the chamber of the weapon. Examination of the handgun revealed fourteen cartridges in the magazine and one cartridge in the chamber of the handgun. As such, the round accountability was consistent with one round fired from the weapon.

Criminalist Bailey then proceeded to the location of the shooting at 744 Mockingbird St. Criminalist Hatfield was already on scene when Criminalist Bailey arrived. The scene was contained to a small area near the entrance to the clubhouse parking lot. On the corner of Mockingbird St, at the entrance to the clubhouse parking lot was a silver four door Nissan Versa. The vehicle faced in a northeast direction with the front tires of the vehicle about three feet from the curb and rear tires about five feet from the curb of the street. The passenger side front door was in the open position while the rest of the doors were closed. On the top of the passenger side of the trunk was a brown wallet stuffed with numerous documents. Inside, Criminalist Bailey located two State of Texas drivers licenses each bearing the name Carlos Daniel Candelaria, date of birth 10/26/1985. On the ground, next to the passenger side rear tire of the subject vehicle was a dark colored purse. The top of the purse was open and a black handgun appeared in plain view. The handgun was later found to be a "Powerline 201" pellet gun.

A pair of shoes lay about ten feet southeast of the pellet gun in the grass. South of the shoes was an "Office Depot" employee badge, bearing the name Carlos Candelaria. East of the ID badge was a pile of clothing. The clothing appeared to have been cut and was consistent with medical removing the clothing to assess and treat a patient. East of the clothing was an Apple iPhone. This phone was later determined to belong to Sergeant Struck. About one foot southwest of the iPhone was a small black canvass medical kit. Numerous medical supplies were located in and around the kit itself. West of the medical supplies was an orange box cutter type razor knife. About six feet southeast of the medical supplies was one .40 caliber bullet shell casing labeled, "Win 40 S&W". This was consistent with the ammunition in Sergeant Struck's service weapon.

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 Sergeant Struck fired his handgun at Carlos Candelaria, causing an injury. At the time of the shooting, Sergeant Struck was engaged in the course of his duties as a law enforcement officer seeking to assist other officers in placing Mr. Candelaria into custody. Based on the statements made by Officer Esquibel prior to the shooting, Sergeant Struck believed Mr. Candelaria to be threatening the safety and well-being of Officer Esquibel. The legal question presented to the Office of the District Attorney is whether, at the time Sergeant Struck 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).

The legal analysis that applies in this incident is whether or not the District Attorney’s Office can prove beyond a reasonable doubt that the physical force used in this incident was not reasonable and appropriate under the circumstances. In this instance, Sergeant Struck went to the location in reference to a possible domestic disturbance. Upon arrival, he observed Officer Esquibel conducting a pat-down search of Mr. Candelaria, who appeared to be uncooperative and agitated. This agitation quickly escalated into Mr. Candelaria becoming combative with Officer Esquibel. Sergeant Struck observed Mr. Candelaria break free from Officer Esquibel and Sergeant Struck ran to assist the lawful arrest of Mr. Candelaria.

The audio and video of this entire police citizen encounter was preserved in Officer Kubic’s dashboard camera and Officer Esquibel’s body-worn audio recorder. The recording is consistent with Sergeant Struck’s recollection of events and clearly demonstrates the aggressive behavior initiated by Carlos Candelaria. Even after the observation of what appeared to be a handgun in plain view, Officer Esquibel remained calm and courteous in his request for Mr. Candelaria’s compliance. As Mr. Candelaria became increasingly aggressive, it took two uniformed officers to try to gain his compliance. As Mr. Candelaria stood up during this struggle to place him into custody, Officer Esquibel yells, “He’s grabbing my gun, He’s grabbing my gun!” As the officers are getting Mr. Candelaria back on the ground, Officer Kubic inserts himself in the struggle to assist with controlling Mr. Candelaria. Officer Esquibel then yells, “Shoot him! Shoot him! He’s grabbing my gun!” Sergeant Struck is observed in the video reaching into his holster with his left hand, removing his firearm, and discharging one round into the hip area of Mr. Candelaria.

Sergeant Struck stated that Mr. Candelaria's conduct and the tone of Officer Esquibel's voice caused him to believe that Officer Esquibel was in immediate danger of being shot. Sergeant Struck further stated that at the time he fired his weapon, Sergeant Struck stated that he felt that Officer Esquibel's life was in danger.

Under these circumstances, there is no evidence to dispute that Sergeant Struck fired his weapon at Mr. Candelaria because he reasonably believed it was necessary to defend Officers Esquibel and Kubic, as well as himself, from what he perceived to be the imminent use of force. Accordingly, the prosecution cannot prove that Sergeant Struck'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 Sergeant Nicholas Struck for the shooting of Mr. Carlos Candelaria on February 7, 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', with a stylized flourish at the end.

Dave Young
District Attorney