



April 5, 2019

Chief Tim Carlson
Westminster Police Department
9110 Yates Street
Westminster, CO 80031

Re: Investigation of the officer-involved shooting of Mauricio Garcia, DOB 10/20/1997,
on January 10, 2019, in Westminster, Colorado, by Westminster Police Officer Evan King

Dear Chief Carlson:

The investigation and legal analysis of the officer-involved shooting of Mauricio Garcia occurring on January 10, 2019, is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted this investigation. 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. On February 26, 2019, Thornton Police Department Detective Doug Parker presented the CIIT factual findings of the investigation. The CIIT presented police reports, videos, audio interviews, and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation.

This review is strictly limited to determining whether criminal charges are warranted against the involved officer or other involved parties based on the CIIT investigation. 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 unanimous jury. Here, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified under Colorado law. This review expressly 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 are sufficient. That evaluation is left to each individual involved agency.

Based upon the evidence presented and 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.

STATEMENT OF FACTS¹

In the early evening hours of January 10, 2019, Mauricio Garcia met his estranged former girlfriend, G. R.-E.² at a restaurant for dinner. After dinner, the two returned to Mr. Garcia's truck, parked in The Orchard Town Center near West 146th Avenue and Orchard Parkway in Westminster, Colorado. They sat in G. R.-E.'s Hummer vehicle and talked for about thirty minutes. The conversation turned into an argument and Mr. Garcia became "aggressive" with G. R.-E.³ G. R.-E. said that she "asked [Mr. Garcia] to calm down and get out of her car." Mr. Garcia refused to leave her car and continued to argue with her. Eventually, G.R.-E. got out of her vehicle, and recognizing his "anger issues," told Mr. Garcia that she did not feel safe with him, and that she was going to contact The Orchard security officers for assistance. Mr. Garcia challenged G. R.-E. to call for help. While she was trying to "negotiate" with Mr. Garcia, "he pulled [G.R.-E] and took [her] phone and purse," taking her items in an effort to control her and make it difficult for her to leave. After forcefully⁴ taking G. R.-E.'s purse and phone, Mr. Garcia left her vehicle, ran to his nearby truck, and locked his doors.

G. R.-E. then went to Mr. Garcia's truck and tried to recover her property. Mr. Garcia laughed at her and started his truck. G. R.-E. attempted to stop him from leaving by getting on the hood and front bumper of Mr. Garcia's truck. Mr. Garcia backed his truck over a parking median, while G. R.-E. was standing on the front bumper hanging on to the hood of the truck. After G.R.-E got off of the bumper, Mr. Garcia and G. R.-E. continued to argue and Mr. Garcia was "pushing and grabbing [G. R.-E.]" G. R.-E. reported that she "freaked out" and started calling for help in the parking lot, "because he was pushing me around and stuff."

At this time, approximately 7:30 p.m., J.S. and his girlfriend, C.G., were nearby in The Orchard parking lot, when J.S. "heard a lady screaming." J.S. heard the unknown woman yelling, "Stop," and "Somebody please help me." J.S. reported, he thought a serious crime was in progress. J.S. concluded the screaming woman "really needed help," and he approached the truck as G.R.-E. was on the truck, and then she got off. Also nearby was K.M., her husband J.M., and their two young children. K.M. reported that the altercation appeared to be a domestic violence situation in progress.

In the nearby Starbucks parking lot, off-duty Westminster police officers Evan King and Kevin Flores were also present during this altercation.⁵ Officer King would later report⁶ he heard a woman screaming, "Just yelling at the top her lungs, like, she's in dire need of help...." Officer Flores would later report⁷ he heard a female "screaming for help." Officer Flores said that he looked and saw a male

¹ The Statement of Facts are culled from the overall CIIT investigation and is presented here in summary fashion largely in chronological order.

² Initials are used to maintain the privacy of the victim and citizen-witnesses.

³ G R-E reported that in the past she has experienced multiple incidents of domestic violence from Mr. Garcia. Although she had not previously reported the prior incidents, these experiences apparently shaped her reactions in this situation.

⁴ G R-E suffered a slight injury when Mr. Garcia took her items. Consequently, Mr. Garcia was charged with robbery, §18-4-301, a class 4 felony, and third degree assault, §18-3-204, a class one misdemeanor. The case, 19CR180, is still pending with a status hearing scheduled for April 12, 2019.

⁵ Although off-duty at the time, Colorado law confers on off-duty police officers the same status as if they are actually on-duty. Section 16-3-109, C.R.S. (2018). Since both officers were off-duty, neither officer was in a police uniform. Officer Flores was wearing a black jacket. Officer King was wearing a red hoodie.

⁶ Officer Evan King did not make a statement on the night of the incident. He elected to wait five days after the incident and was eventually interviewed on January 15, 2019. He reported that he did not review any police reports or talk to any witnesses before he gave his videotaped statement.

⁷ On the night of this incident, Officer Flores provided only a written police report. For unknown reasons he elected to wait to submit to an interview and he was interviewed on January 15, 2019. He reported that he did not review any police reports or talk to any witnesses before he gave his videotaped statement.

“with his hands on her and him and her in some kind of physical altercation.” Officer King said he saw the male and female struggling, and thought the male was trying to pull the female into the truck as in an “armed kidnapping.” Officer Flores said based on his observations, this was possibly “either a kidnapping, child abduction, something major, possible robbery, [or] carjacking....” Eyewitness J.S. also “thought somebody was like getting abducted.” Officers King and Flores attempted to intervene.

Officer Flores was first to the altercation.⁸ As Officer Flores approached, he could hear the truck tires “chirping” and he saw the female, later identified as G.R.-E., on the hood of the truck, as the driver, later identified as Mauricio Garcia, was backing over the parking median. At this time, G.R.-E. was “still screaming frantically for help.” Officer Flores concluded he had “to do something...with the way she [was] screaming.” Mr. Garcia said at this time, “all hell broke loose.” As Officer Flores approached, he could see G.R.-E. still struggling with Mr. Garcia and he announced that he was a police officer.⁹

Officer Flores arrived at the truck as G.R.-E was standing at the open driver’s door with Mr. Garcia seated in the driver’s seat. Mr. Garcia was pushing G.R.-E away from his truck. Officer Flores ordered G. R.-E. to step away from the truck, and ordered Mr. Garcia out of the truck. Mr. Garcia ignored the commands. Officer Flores approached Mr. Garcia and he was standing in the open driver’s door, in an attempt to remove Mr. Garcia from the truck. Officer Flores reported that he had not drawn his gun at this point, but Mr. Garcia nevertheless said, “Don’t point your gun at me,” and he swatted away Officer Flores’ hands.

As Officer Flores and G.R.-E were standing in or near the open truck drivers door, G.R.-E. made a statement that Mr. Garcia was possibly armed with a gun.¹⁰ Officer Flores then saw Mr. Garcia move towards the center console of the truck, and he thought Mr. Garcia was going to retrieve a gun. Instead, Mr. Garcia admitted that he “threw [his truck] in reverse” and sped quickly in reverse.¹¹ The eyewitness, J.S., reported the truck was going in reverse at “full throttle” and “burning out.”¹² J.S. further reported that both G.R.-E. and Officer Flores were in the open truck drivers door when Mr. Garcia accelerated in reverse. J.S. said that the open truck door “pulled both of them with the [truck].” The eyewitness accounts were that G.R.-E. was knocked down by the truck and the eyewitnesses thought that G.R.-E. was run over by Mr. Garcia’s truck. J.S. said that G.R.-E. “went down completely backwards as the truck went over her.”

⁸ After hearing the screams, Officer King returned to his truck to lock it and get his phone. Additionally, Officer King stopped and took a photograph of the license plate on Mr. Garcia’s truck.

⁹ Officer King also said both he and Officer Flores identified themselves as police officers. The eyewitness did not recall hearing the officers identify themselves as police officers. However, Mr. Garcia reported that Officer Flores did identify himself as a police officer; although Mr. Garcia said given Officer Flores’ attire, he did not believe Officer Flores was indeed a police officer.

¹⁰ G.R.-E. reported that it was Mr. Garcia who told Officer Flores that he “would take my gun out on you” or “pull my gun on you.” G.R.-E. reported she was aware that the defendant had previously possessed firearms. None of the witnesses reported seeing Mr. Garcia with a firearm on evening of this incident.

¹¹ Colorado State Patrol also assisted in this investigation and Trooper Moden investigated the crime scene. He reported, “[s]ince the Dodge was being driven in reverse, and there was no other evidence created by the Dodge, an accurate speed calculation was not feasible.”

¹² Significantly, Mr. Garcia’s truck, a Dodge Ram 1500, had a “lift kit and large tires.”



Acceleration scuffmarks left by Mr. Garcia's truck as it sped in reverse

Much of the events – although not all events – were captured by The Orchard security video. When G.R.-E. was knocked to the ground¹³, Officer Flores ran with the truck as he was trapped and pushed by the open door. Eyewitness J.S. said that it appeared Officer Flores “could not get out of the way.” Officer Flores described the quickly emerging situation as:

I'm thinking, 'Oh shit' um car's in reverse, I get hit. I start stumbling but then I just start running as fast as I can because now I'm kind of stuck in here. The door's pushing me along its way and what I'm thinking about is – is I'm gonna get sucked under this truck because it's lifted and I'm – I'm screwed.

Officer Flores further explained:

I had to keep up with that thing and I didn't want to be close. So I don't know if I ducked it and I went under the door. I don't know if I rolled off the side of the door. I don't know how I got out from under the [truck door].

¹³ At some point in this altercation, most likely when Mr. Garcia knocked G.R.-E. to the ground with his truck, G.R.-E. suffered a laceration to her head.



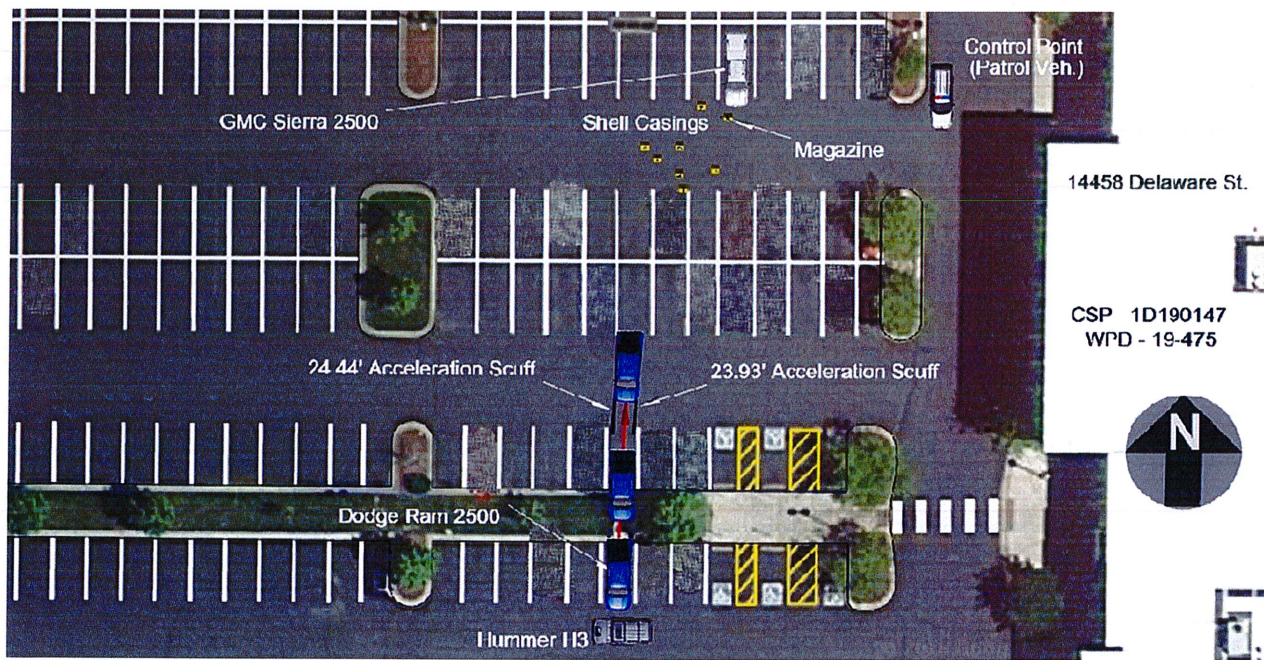
Mr. Garcia's blue Dodge truck as it sped in reverse; the driver's door is open (video still photo)

Officer King said that Mr. Garcia had put the truck in reverse and “had to have put...the pedal to the floor.” Officer King observed that Officer Flores was trapped in the open door as the truck sped in reverse and that Officer Flores’ “life [was] in jeopardy, he [was] gonna die, [if] he gets run over.” Moreover, Officer King concluded at that moment if he did not fire his weapon, in an effort to stop Mr. Garcia from pulling Officer Flores, that Officer Flores would be killed. The eyewitnesses also thought Officer Flores (“the man in the black jacket”) was about to be run over and killed or seriously injured. J.S estimated that as Mr. Garcia sped in reverse, Officer Flores was drug along by the open door for approximately fifty feet.

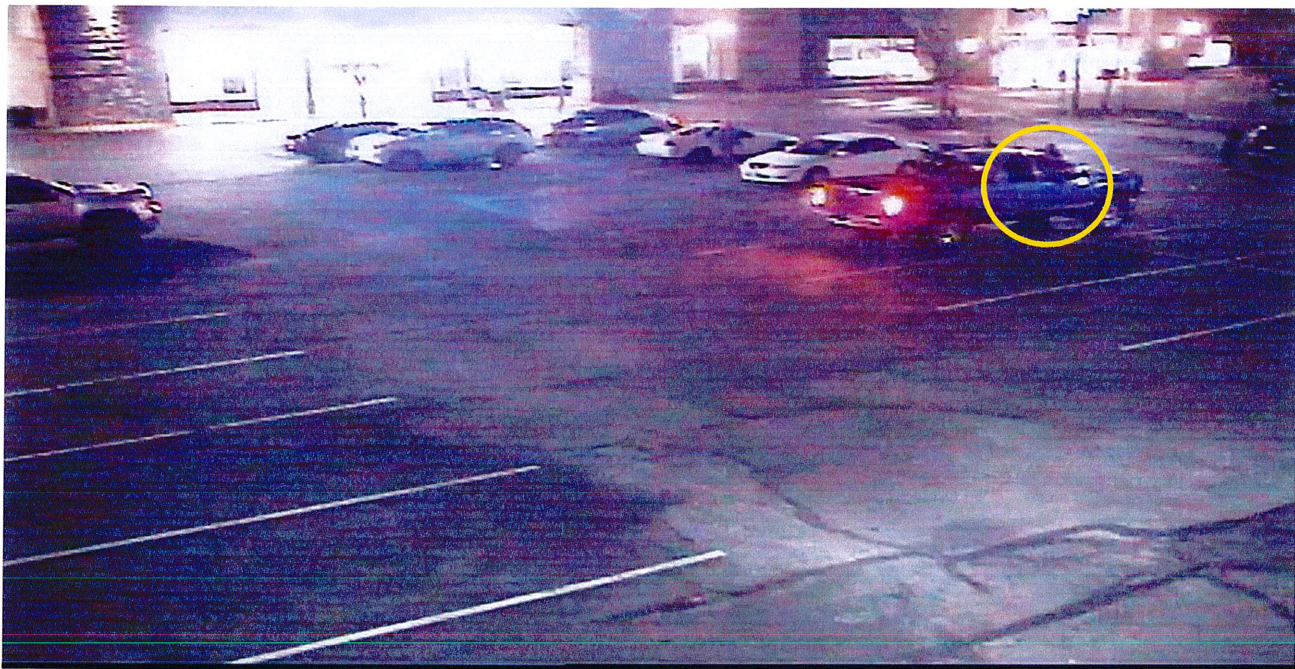
Officer King ran after the reversing truck as it pulled Officer Flores along. Officer King concluded that Officer Flores could not “keep up with the speed of the truck” and he feared Officer Flores was about to be run over. Officer King explained:

[I] think I ran after the truck I...I don't remember running um, but I know I saw like a s—[Officer Flores] started going down and I know at that point he's about to get run over. And I mean, it's a big truck if that wheel goes over his head, his torso, I mean he's about to get run over and if it does, he's, I thinking he's gonna die. And so I remember, the next thing I remember shooting into the glass of that, this window right here.

Officer King reported he saw Officer Flores’ “head go down” and he could no longer see Officer Flores when he fired his weapon.



Crime Scene diagram

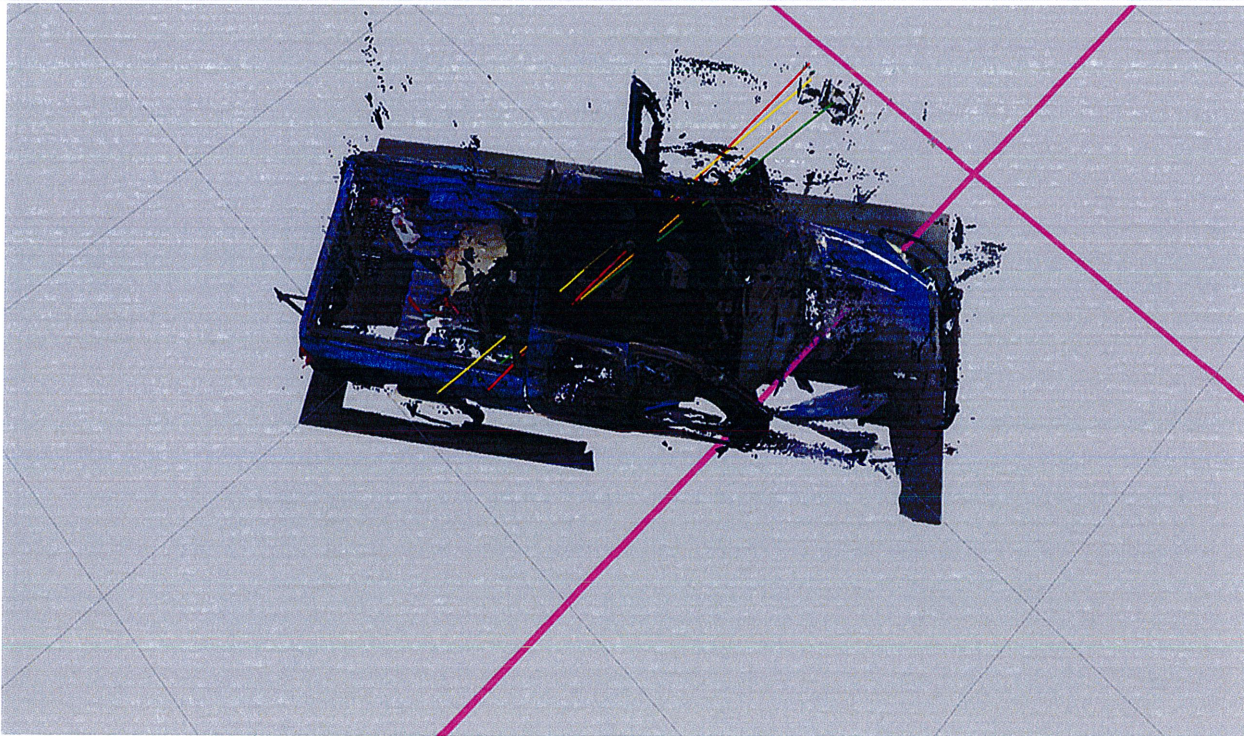


Officer Flores, seen disengaging from the speeding truck (video still photo)

Officer King was the only person that shot a weapon during this incident. It appears that Officer King began firing at the truck after Mr. Garcia had sped in reverse. Officer King fired his 9mm handgun seven times. All seven shell casing recovered from the scene, were forensically matched to Officer King's service weapon. Mr. Garcia's truck was struck four times. Mauricio Garcia had one gunshot wound to his left cheek.



Officers approximate locations at time of Officer King shooting (video still photo)



Digital enhancement of trajectory of the four shots that stuck Mr. Garcia's truck

Although shot in the face, Mr. Garcia did not lose consciousness, and he immediately fled the scene in his truck. The circumstances of Mr. Garcia's flight and arrival initially at Platte Valley Hospital are not entirely clear. It appears that shortly after the shooting, Mr. Garcia contacted his friend, J.F. and J.F. then drove him to Platte Valley Hospital in Brighton, Colorado. Later, Mr. Garcia was transferred to Denver Health Medical Center (DHMC). No weapon was found in Mr. Garcia's truck when it was ultimately searched. However, twenty seven various rounds of ammunition and two

shotgun shells were recovered in Mr. Garcia's truck.¹⁴

Mr. Garcia was treated at DHMC, and the attending doctor reported that Mr. Garcia suffered a gunshot to the left check and the projectile lodged in his left neck. Although a significant injury, no bones were broken and the injury required only sutures.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved beyond a reasonable doubt that the offense was committed without legal justification, as set forth in Colorado statutes.

The justification for a peace officer's use of physical force¹⁵ while attempting to make an arrest or preventing an escape is set forth in §18-1-707, C.R.S. (2018). As pertinent to this case, §18-1-707(1), C.R.S. provides:

[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** 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 effecting or attempting to effect such an arrest.

When a police officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using extreme physical force. Tennessee v. Garner, 471 U.S. 1 (1985). This constitutional law is codified in Colorado by §16-3-101(2), C.R.S. (2018), which further authorizes police officers to use force when making an arrest, "all necessary and reasonable force may be used in making an arrest."

Additionally, police officers – and applicable to all people in Colorado – may justifiably rely on the Colorado law of self-defense. Section 18-1-704, C.R.S. (2018), sets forth when any person may lawfully use force in defense of him or herself or in defense of another person. It provides:

- (1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order **to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person**, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

¹⁴ Mr. Garcia speculated that any such evidence may have been left in his truck by his friends who earlier borrowed his truck to go hunting.

¹⁵ Under Colorado law, "*deadly* physical force" requires a resulting death. Although a gunshot wound was inflicted, since it did not cause death, the legal analysis turns on the use of "physical force."

In the context of defense of others, under Colorado law all people are lawfully entitled to rely on the doctrine of “apparent necessity,” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. See People v. La Voie, 155 Colo. 551, 395 P.2d 1001 (1964); People v. Silva, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officer or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

These principles are well-settled in Colorado law.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded, and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity.

Young v. People, 107 P. 274, (Colo. 1910).

Here, the issue in this incident is whether we can prove beyond a reasonable doubt that Officer King’s use of physical force was not justified and whether the force used was not reasonable. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989). Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to effect an arrest and/or to defend another (Officer Flores and/or G.R.-E.) and stop the threat that Mauricio Garcia presented.

CONCLUSION

Under the particular facts of this investigation, it would be very difficult if not impossible to prove beyond a reasonable doubt that the actions of Officer Evan King were not justified under Sections 18-1-707(1)(a), and 18-1-707(1)(b) and 18-704(1), C.R.S. In other words, Colorado law concerning a police officer’s ability to use force in making an arrest of a fleeing felon, and/or the law of defense of others, provides Officer King a sufficient legal justification(s) for his actions. My conclusion is only concerned with my ability to legally and ethically file criminal charges. Whether this shooting was imperative or advisable, is beyond the scope of my legal assessment.

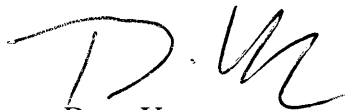
Officer King was confronted with a quickly evolving situation, in which all persons present – two police officers and five independent eyewitnesses – concluded that a dangerous felony offense was occurring. All of these witnesses concluded that G.R.-E. was in danger and she needed immediate help. Consequently, we would have to prove beyond a reasonable doubt it was objectively not reasonable for Officer King to use physical force in attempting to arrest Mr. Garcia. Under the totality of the circumstances, factors that support that the physical force was reasonable include: G.R.-E. was by all accounts screaming for help; the officers and witnesses saw Mr. Garcia assault G.R.-E., and the officers and witnesses thought this may have been an abduction; Mr. Garcia ignored Officers Flores’

commands, which if followed could have quickly and safely ended this event; both Officers reasonably believed Mr. Garcia may have been armed with a gun; and, Mr. Garcia elected to engage his truck at high speed endangering both Officer Flores and G.R.-E.

In addition to the legal justification of attempting to effect an arrest, Officer King had probable cause to believe that Officer Flores was in danger of great bodily harm or death. Therefore, we cannot prove beyond a reasonable doubt that Officer King was not legally justified to act in apparent necessity in the defense of Officer Flores, who appeared to be pulled at a relatively high speed by Mr. Garcia's truck.

In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing affirmative defenses. Under the facts presented here, I conclude that criminal charges are not warranted. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young
District Attorney
17th Judicial District
Adams and Broomfield Counties