



April 30, 2020

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

Re: The investigation into the officer-involved shooting of Anthony Pena, dob 5/23/1973, occurring on November 1, 2019

Dear Sheriff Reigenborn:

The investigation and legal analysis of the officer-involved shooting of Anthony Pena is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Westminster Police Detectives Zeb Smeester and Steve Sanders. 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 February 13, 2020. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officer. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt. In this instance, 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 does not evaluate the appropriateness of the actions of the involved officer, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the agency that employs the involved officer.

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 to a jury. Therefore, no criminal charges will be filed against the law enforcement officer involved in this incident.

Overview of the Incident

During the afternoon hours of November 1, 2019, the Adams County Sheriff's Office Special Crime Attack Team (SCAT) received a call from Denver FBI Rocky Mountain Safe Streets Task Force (SSTF) for assistance apprehending Anthony Pena, an individual sought in connection with the crimes of eluding police officers and possessing a weapon. Mr. Pena was driving a Pontiac Firebird with his girlfriend, Megan Stout, riding in the front passenger seat.

Deputy Adam Kingsley, in a plain-clothes assignment with the SCAT, responded to the call driving an unmarked Ford F-150. He spotted Mr. Pena driving the Firebird and followed him into the parking lot of a residential housing complex located near 84th Avenue and Fox Street. As Mr. Pena slowed the Firebird to a stop, Deputy Kingsley pulled in behind it bumper to bumper in an effort to immobilize the Firebird and take Mr. Pena into custody. Deputy Kingsley activated the emergency lights on his Ford F-150. As Mr. Pena started to get out of the car, another deputy on the SCAT deployed a "flash bang" device intended to distract Mr. Pena so officers could safely arrest him. The Firebird drove in reverse, pushing against the Ford F-150. Deputy Kingsley pinned the Firebird against a retaining wall as other deputies surrounded the vehicle at gunpoint.

Ms. Stout remained inside the Firebird as Mr. Pena held a handgun out of the driver side window and threatened to kill her. The officers held a perimeter around the Firebird identifying themselves as police and shouting arrest commands. They also attempted to negotiate with Mr. Pena to drop the gun and release Ms. Stout, who they heard screaming inside the vehicle.

Deputy Kingsley took a position at a distance of approximately forty feet away to the rear of the Firebird on the driver side. Deputy Kingsley armed himself with a .223 Colt M4 rifle and set his sight on Mr. Pena sitting in the driver seat. Fearing that Mr. Pena would kill Ms. Stout, Deputy Kingsley fired a single shot striking Mr. Pena in the head, killing him.

Witness Interviews

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

Deputy Adam Kingsley: Adam Kingsley is a patrol deputy with the Adams County Sheriff's Office assigned to the SCAT. Westminster Police Detectives Zeb Smeester and Steve Sanders interviewed him hours after the incident. Deputy Kingsley's attorney was also present.

Deputy Kingsley described his assignment as focusing on the prevention of street crimes that affect the quality of life within the community. He wore plain clothes and a tactical vest labeled with "SHERIFF" insignia and a badge. He also wore a badge on his hip. He drove an unmarked Ford F-150, equipped with red and blue emergency lights in the upper windshield and grill, as well as in the back window. Deputy Kingsley is also a member of the ACSO SWAT team as the designated sniper. He was armed with a .223 Colt M4 rifle.

Other officers contacted Deputy Kingsley and notified him that the SSTF was requesting assistance with the location and apprehension of Mr. Pena. According to the information relayed over the radio, Mr. Pena was involved in a traffic stop a few weeks earlier when he displayed a weapon and eluded officers in a vehicle at a high rate of speed. The information included the identification of Mr. Pena's vehicle as a silver Pontiac Firebird. The radio detail included multiple warnings that Mr. Pena was armed and dangerous. Deputy Kingsley viewed a wanted poster that included Mr. Pena's DMV photo and information that Mr. Pena was a felon and was wanted for a weapons offense. Deputy Kingsley drove his Ford F-150 to the area 84th Avenue and Fox Street, where officers saw Mr. Pena drive the Firebird into the driveway of a residential housing complex.

While looking for Mr. Pena, Deputy Kingsley received a call from ACSO Deputies Travis Wilson and Sean Allegar. The deputies discussed an arrest plan that involved Deputies Wilson and Allegar contacting Mr. Pena on foot and Deputy Kingsley pinning Mr. Pena's vehicle with his Ford F-150.

Deputy Kingsley saw Mr. Pena's vehicle and followed it as it drove into the parking lot of the complex. Mr. Pena opened the driver's door and started to get out of the vehicle. Deputy Kingsley pulled in directly behind the Firebird and pushed the front bumper of his truck against the rear bumper of the Firebird. Deputy Wilson released a "flashbang" device on the hood of the Firebird. A "flashbang" is an auditory and visual distraction device that emits a bright light and loud sound upon deployment. Deputy Kingsley explained that the purpose of using this device was to gain a tactical advantage given the threat that Mr. Pena was known to be armed and dangerous. Deputy Wilson ordered, "Get on the ground, you're under arrest." Mr. Pena ignored the command, got back inside the Firebird and attempted to reverse. The deputies continued to command Mr. Pena to get out and repeatedly identified themselves as police. Deputy Kingsley put his truck into four-wheel drive and pushed the Firebird forward a few feet against a retaining wall. With the Firebird immobilized, Deputy Kingsley put his truck in park and got out. The Firebird continued to reverse, spinning its tires creating plumes of white smoke. Deputy Kingsley was concerned that Mr. Pena would come out of the smoke screen shooting at officers.

Deputy Kingsley ran to take cover at the rear of his truck. Deputies Allegar and Wilson were near him giving verbal commands and trying to see through the smoke screen. He heard Deputy Allegar yelling at Mr. Pena in the vehicle, "Police!" "Step out of the vehicle!" and "You're under arrest!" Deputy Kingsley quickly walked back toward the front of his truck to retrieve his rifle and keys from inside the truck. As he got closer to Mr. Pena's vehicle, the smoke dissipated and he saw Mr. Pena hold a gun out the driver side window. He believed he heard Mr. Pena yell, "I'm gonna shoot her!" He also heard a female screaming inside the vehicle. From the passenger side of the Firebird, Deputy Allegar advised, "He's got a hostage." At that point, Deputy Kingsley feared the "worst case scenario"—that Mr. Pena would kill the hostage. He ran from the truck and repositioned himself at an angle from Mr. Pena's vehicle so that he could see inside it. The deputies continued to identify themselves and give verbal commands to Mr. Pena to drop the gun and get out of the vehicle.

From a vantage point to the rear driver's side of the Firebird, Deputy Kingsley tried to see into the vehicle. Deputy Kingsley aimed his rifle through the driver side window that remained open. Using the red dot sight on his rifle, he aimed at Mr. Pena's head. According to Deputy Kingsley, he knew that he had to shoot Mr. Pena to save the woman's life. Through his line of sight, he saw Mr. Pena looking around at the officers surrounding the vehicle. He heard Mr. Pena shouting, "I'll kill her!" and "You guys better let me go!" Deputy Kingsley saw a physical struggle inside the Firebird and believed that Mr. Pena and his hostage were fighting over the gun. He also heard the horn honking and a lot of shouting. Through the open window, Deputy Kingsley could see the side of Mr. Pena's head but was concerned that if he fired his rifle, the woman would be within the line of fire.

As soon as Deputy Kingsley was certain that the woman would not get hit, he fired his rifle one time, aimed at Mr. Pena's head. Immediately after the shot, the woman hostage ran from the passenger side of the Firebird. Deputies Kingsley and Wilson advanced on the driver side of the vehicle, and Deputy Allegar went to the passenger side. Mr. Pena was not moving and appeared to have a gunshot wound to the head. Another officer took the handgun from Mr. Pena and put it on the roof of the vehicle.

Deputy Travis Wilson: Travis Wilson is a patrol deputy with the Adams County Sheriff's Office assigned to the SCAT. Thornton Police Detective Doug Parker conducted Deputy Wilson's interview in the presence of his attorney shortly after the incident.

Deputy Wilson, Deputy Kingsley, Deputy Sean Allegar are the three deputies that make up the SCAT. On November 1, 2019, the team wore plain clothes with a tactical vests displaying "SHERIFF" identifiers and a badge on the front. Deputy Wilson partnered with Deputy Allegar in an unmarked Toyota Camry equipped with undercover lights and a siren. The Sergeant for the SCAT requested the pair to assist SSTF track a wanted party described to be armed and dangerous. The SSTF identified the suspect at a location near 84th Avenue and Fox Street.

Deputy Wilson called Deputy Kingsley to assist. Deputy Kingsley drove an unmarked Ford F-150. While in route, the deputies received information that included a photograph of Mr. Pena and his vehicle, a silver Firebird. The information included the fact that he was wanted for a weapons offense, eluding police, and resisting arrest. There were also identifiers that Mr. Pena was a known gang member.

Deputy Wilson spotted Mr. Pena vehicle drive through a fast food restaurant in the area. He recognized the suspect in the driver's seat and noticed a second person sitting in the front passenger seat. Deputy Wilson and Deputy Allegar parked their vehicle at the housing complex where Mr. Pena was initially seen driving the Firebird, expecting Mr. Pena would return to that address. They got out on foot in an undercover capacity and developed an arrest plan. Deputy Wilson notified Deputy Kingsley that if Mr. Pena drove his vehicle into the parking lot, Deputy Kingsley would pull behind the vehicle and pin it so it could not back out.

Deputy Kingsley called Deputy Wilson and notified him that Mr. Pena's vehicle appeared to be driving back to the complex. Deputy Wilson prepared a "flashbang" device to deploy upon contact with Mr. Pena, as they believed him to be armed and dangerous. The

Firebird pulled into the parking lot and Deputy Kingsley's truck pulled in behind and contacted it. As Mr. Pena started to get out, Deputy Wilson came around to the driver side and deployed the flashbang on the hood of the Firebird. Mr. Pena got back inside the car and shut the door. Deputy Wilson then gave loud verbal commands: "This is the police, Anthony! Come out with your hands up!" He and Deputy Kingsley repeated these commands from the driver side of the Firebird, while Deputy Allegar gave similar commands from the passenger side.

Mr. Pena drove the Firebird in reverse against Deputy Kingsley's truck. Deputy Kingsley put the truck into four-wheel drive and pushed the front of the Firebird against a tree. The tires on the Firebird spun on the pavement, causing a large amount of white smoke in the area. Deputy Wilson feared Mr. Pena would come out of the smoke firing his gun at officers, so he and Deputy Kingsley retreated to a carport structure behind the Firebird on the driver side. Deputy Allegar took cover behind a vehicle on the passenger side of the Firebird. The deputies continued to give loud commands from their respective locations. Deputy Wilson also heard Deputy Allegar continue to give verbal police commands. He heard Deputy Allegar say, "He's got her as a hostage!" three or four times. The Firebird tires stopped spinning.

Deputy Wilson saw the driver window of the Firebird roll down halfway. He heard Mr. Pena repeatedly yell, "Fuck you! I'm gonna kill her! Get the fuck away!" The deputies continued with their commands identifying themselves as police, trying to negotiate with Mr. Pena for a safe release of the woman. Mr. Pena held a handgun out of the window and waved it in the air. The suspect yelled, "Get the fuck back or I'm gonna start shooting!"

Deputy Wilson held cover while Deputy Kingsley went to his truck to get his rifle. Deputy Kingsley and Deputy Wilson returned to the carport area, where Deputy Kingsley took a kneeling shooting position near some storage boxes. The deputies discussed their concern that Mr. Pena was going to shoot the hostage. Deputy Wilson stood directly behind where Deputy Kingsley knelt. He estimated their distance from Mr. Pena to be approximately fifteen yards. He explained that he could see Mr. Pena's head bobbing around through the open driver window. He advised Deputy Kingsley to take the shot if he could safely do so without harming the hostage. He heard Deputy Kingsley fire one shot and saw Mr. Pena stop moving. The passenger door of the Firebird opened and the woman ran out.

Deputy Wilson approached the driver side window, where he saw a gunshot wound to Mr. Pena's head. No life-saving measures were taken; Mr. Pena was unresponsive and it was evident he was deceased. Deputy Wilson also observed that Mr. Pena still held the handgun as it rested on his left thigh. Mr. Pena's index finger was on the trigger. Deputy Wilson opened the door and slowly removed the weapon from Mr. Pena's hand. He placed it on the roof of the Firebird.

Due to the number of residences surrounding the scene, Deputy Wilson and the other deputies transitioned to a security role while other police units arrived. A woman inside one of the homes repeatedly screamed, "Did you kill my dad?" The officers identified her as Mr. Pena's daughter and conducted a safety sweep of her home due to a concern that someone inside her residence could pose a threat to the officers. The woman hostage was also located and secured.

Deputy Sean Allegar: Sean Allegar is a patrol deputy with the Adams County Sheriff's Office assigned to the SCAT. Thornton Police Detective Brad Barkley interviewed him hours after the incident in the presence of his attorney.

On November 1, 2019, Deputy Allegar was working with SCAT to locate a wanted fugitive by tracking a cellular telephone. Officers with SSTF located the phone in the area of 84th Avenue and Fox Street. Deputy Allegar and Deputy Wilson responded to the location in an unmarked Toyota Camry. Deputy Allegar wore plain clothes. Deputy Allegar saw a photograph of Mr. Pena and confirmed the presence of active arrest warrants for Mr. Pena. Officers with SSTF advised that Mr. Pena was observed driving a Pontiac Firebird out of a housing complex in the vicinity. Deputies Allegar, Wilson, and Kingsley positioned themselves at the complex in case Mr. Pena returned.

Deputy Allegar and Deputy Wilson observed the Firebird return to the parking lot of the housing complex. Deputy Kingsley followed in his unmarked pickup truck, pulling close behind the Firebird in an effort to block it in. As Mr. Pena started to get out of the driver side of the Firebird, Deputy Wilson deployed a "flashbang" device. Mr. Pena got back in and closed the door. The Firebird reversed, pushing against the truck. Deputy Kingsley's truck pushed the Firebird into a retaining wall. The tires on the Firebird spun causing a large amount of smoke in the area. Deputy Allegar described the smoke as being so thick that the officers could not see the car. He expressed concern that Mr. Pena would come out of the smoke shooting at the officers.

Deputy Allegar covered the passenger side of the Firebird. Deputy Wilson was on the other side of the parking lot. Deputy Allegar saw Deputy Kingsley get out and move to the back of the truck with Deputy Wilson. From his position, Deputy Allegar saw a woman open the passenger door of the Firebird and try to get out. He told her to get out. He saw Mr. Pena in the driver seat reach across the woman and pull her back into the car. Mr. Pena yelled, "I'll fucking kill her!" Deputy Allegar saw Mr. Pena's right arm held around the woman's neck and his left hand holding a gun to her head. He described Mr. Pena pulling her head closer to him putting the woman in a "hostage position." The door closed. Deputy Allegar advised the other officers that Mr. Pena had the woman in a hostage position.

The officers could not see what was happening inside the Firebird because the window tint was too dark. From his vantage point, Deputy Allegar saw Mr. Pena display a semi-automatic handgun up in the air from the driver side of the vehicle. Mr. Pena pulled the gun back inside the car and continued to yell, "I'll kill her!" The officers yelled back at Mr. Pena, giving him commands to let the woman go. Mr. Pena yelled, "If I let her go, you're gonna hurt me!" Mr. Pena continued to threaten that he was going to kill the woman.

Deputy Allegar heard one gunshot and thought Mr. Pena shot himself. The woman immediately ran from the passenger side of the Firebird and into a nearby residence. Deputy Allegar walked over to the other side of the parking lot where Deputy Wilson and Deputy Kingsley were located. Deputy Allegar asked if Mr. Pena shot himself and Deputy Kingsley responded, "No, I took the shot."

All three deputies approached Mr. Pena inside the vehicle and observed that he was not moving. Mr. Pena still held the handgun in his left hand on his chest area. Deputy Wilson removed the gun from Mr. Pena's hand and safely placed it on the roof of the car. Deputy Allegar went to the residence where the woman ran and identified her as Megan Stout. He identified the resident of the home as Jessica Martinez, Mr. Pena's daughter.

Jessica Martinez: Thornton Police Detective Brad Barkley interviewed Jessica Martinez on the day of the incident. Ms. Martinez lived in the residential housing complex where the incident occurred. Anthony Pena is her father.

On November 1, 2019, Ms. Martinez expected Mr. Pena to come to her home but did not know what time. Ms. Martinez was inside her home when she heard a loud "boom" that sounded like someone crashed into the dumpster. The rear door of the residence backs up to the parking lot. Ms. Martinez looked out the window and saw her father's vehicle. She saw a pickup truck behind it blocking it in. The tires of her father's car were spinning, causing a large amount of white smoke. There were police cars behind the truck. She saw several police officers with guns standing around the vehicle. The officers were yelling, "Police! Hands up! Get out of the car!" She was scared and asked them not to shoot. She was hoping her dad would get out of the car.

From her vantage point, Ms. Martinez saw the passenger side door open. She saw the woman she knew as "Megan" start to get out of the car. She heard her dad shout, "Close the door!" and "knew it wasn't good." Megan stayed inside the car with the door partially open. Subsequently, Ms. Martinez heard a "boom" she recognized as a gunshot. She did not see anyone fire a gun, but at the time of the interview, she believed that her father shot himself. "Megan" ran out of the car and into Ms. Martinez's home. Ms. Martinez could see her father slouched in the driver seat and believed he shot himself. Megan came inside Ms. Martinez's home. She was hysterical and crying, but did not say anything.

Megan Stout: Westminster Police Detectives Zeb Smeester and Steve Sanders interviewed Megan Stout hours after the incident. Ms. Stout identified herself as Mr. Pena's girlfriend.

Ms. Stout rode in the passenger seat of Mr. Pena's Firebird to Jessica Martinez's home. When they pulled into the driveway, Ms. Stout described a truck pull behind the Firebird and "cop people" with their guns pointing at Mr. Pena. Initially, Ms. Stout claimed that she did not pay attention to what was happening at the time because she was focused on Ms. Martinez, who was looking out of the window of her home. She did not recall what anyone said or why shots were fired. She initially claimed that she did not know if Mr. Pena had a gun on him at the time.

Later in the interview, Ms. Stout clarified that she recalled the truck pushing the Firebird, hearing gunshots, and seeing a lot of smoke in the area. She thought she heard a gunshot when they pulled into the parking lot. Ms. Stout admitted that Mr. Pena had a gun in his hand, but would not admit that he pointed it at her. She claimed that Mr. Pena held the gun down by his legs. Ms. Stout was adamant that Mr. Pena did not hold her hostage. Ms. Stout stated several times that she wanted to get out of the car, but that Mr. Pena and the police were telling her to stay inside the car. According to her, Mr. Pena simply hugged her and tried to calm her down.

She reported that he said, "Please don't do this," and "Stay in the car." After hearing more gunshots, Ms. Stout ran from the car into Ms. Martinez's home.

Cassandra Gomez: Westminster Police Detective Matt Calhoun interviewed Cassandra Gomez hours after the incident. Ms. Gomez lived at 8325 Fox Street, and was home when the incident occurred. Her residence is the easternmost home in the building situated southeast of the Firebird. Her rear door opens to the parking lot of the housing complex.

During the afternoon of November 1, 2019, Ms. Gomez saw the silver Firebird parked facing the west end of the parking lot, with the F-150 parked directly behind it. She saw a man walk toward the Firebird and heard what she thought was a gunshot. She ran inside her house thinking that her neighbors were shooting at one another. Ms. Gomez started recording the incident on Facebook Live. She saw the front bumper of the truck push against the rear bumper of the Firebird. The Firebird spun its tires, causing a significant amount of smoke to fill the area.

While the tires spun, Ms. Gomez heard people in the parking lot yell, "Police! Anthony, get out of the car! You're surrounded!" She also heard, "Roll down your window, let the girl go, let the hostage out!" As the incident continued, Ms. Gomez recalled hearing an officer yell, "Gun! Gun! Gun!" She saw a deputy carrying what she described as a "sniper rifle" and saw that deputy fire one shot into the Firebird.

Other Witnesses: Interviews of other law enforcement officers and neighborhood witnesses did not reveal any additional relevant detail of the shooting incident beyond what is summarized herein.

Crime Scene Investigation

Criminalists from the Westminster Police Department gathered evidence and processed the scene. The scene was a parking lot of a row home complex located on the west side of the 8300 block of Fox Street. The scene consisted of a driveway into a small parking lot situated between two row homes, each housing four individual units. The homes are situated to the north and south of the parking lot. Carport structures covering approximately three parking spaces that lined either side of the driveway. A small parking lot is on the west end of the driveway. There are approximately four parking spaces to the north and to the south of the parking lot.

A silver 1999 Pontiac Firebird was identified as Mr. Pena's vehicle. It was parked with its front bumper against a landscape retaining wall at the west end of the driveway in the middle of the parking lot. A grey Ford F-150 pickup identified as an undercover police vehicle was parked immediately behind the Firebird, also facing west. The front bumper of the F-150 was up against the Firebird's rear bumper. A .40 caliber pistol was on the roof of the Firebird. The Firebird was towed for later examination.

A storage shed was situated at the west end of the southern carport structure. A small storage box was located just south of the storage shed. Criminalists located a spent .223 caliber shell casing near the storage box. The storage box was measured at a distance of approximately forty-two feet southeast of the driver side door of the Firebird.

The criminalists collected and examined Deputy Kingsley's rifle reported to have been fired during the incident. Deputy Kingsley's weapon was a Colt M4 Commando 5.56 rifle. The weapon was equipped with a laser scope with an end-point dot. The magazine capacity is thirty rounds. Deputy Kingsley reported to carry the magazine with a capacity of twenty-eight rounds. Upon examination, the weapon contained one live round in the chamber and twenty-six rounds in the magazine, for a total of twenty-seven rounds. The round accountability was consistent with one round being fired.

A subsequent search of the interior of the Firebird revealed ten semi-automatic handguns of varying caliber and two rifles. In addition, during the autopsy, a .22 caliber semi-automatic handgun was found in Mr. Pena's right front pocket of his pants he was wearing at the time of the incident.

Investigators collected Cassandra Gomez's video recording of this incident through her Facebook account. The video is approximately four minutes long and is taken from the doorway of a residence southeast of the parking lot. From this vantage point, only the rear of the F-150 can be seen. The carport structure obstructs any view of the Firebird or of the suspect. The recording captures law enforcement officers walking around the parking lot. The audio records the officers identifying themselves and giving multiple commands to Mr. Pena to release the hostage. Subsequently, the officers are heard yelling "Gun!" multiple times. Deputy Kingsley is observed kneeling down with a rifle to the southeast of the Firebird. One gunshot is heard on the recording. The shooting was not captured on the video due to the obstructions in the carport area.

Background Investigation

On September 10, 2019, uniformed Denver Police officers initiated a traffic stop of Anthony Pena driving a maroon sport utility vehicle. During the course of the stop, the officers observed a handgun on the center console of the vehicle. As officers held Mr. Pena at gunpoint, he sped away, successfully eluding officers. A subsequent surveillance operation revealed Mr. Pena with Megan Stout at her residence. Based upon this information, investigators obtained a search warrant to track the location of Ms. Stout's cellular telephone.

A background investigation of Mr. Pena's criminal history revealed entries for weapons offenses, drugs, assault, defacing a weapon, and prohibited use of a weapon along with other violent charges. He was also designated as an active gang member. This information was placed on a flyer for distribution to law enforcement agencies assisting with locating Mr. Pena.

Medical Examination Analysis

On November 4, 2019, Dr. Stephen Cina conducted an autopsy of the male identified as Anthony Pena, date of birth, 5/23/1973. The examination revealed one fatal gunshot wound to the head. The entrance wound was located on the right side of the back of the head. The exit wound was located behind the upper portion of the left ear. The bullet pathway was back to front, right to left, and downward. There was no bullet projectile discovered. The x-ray imaging

revealed “lead snowstorm” indicative of irregular particles of lead fragment within the tissue surrounding the wound track. This appearance is characteristic to an injury caused by a high velocity rifle bullet. The gunshot wound revealed no evidence of close-range firing.

The decedent’s toxicology report revealed positive levels of cocaine, amphetamines, cannabinoids, and fentanyl. Dr. Cina determined the cause of death to be a gunshot wound to the head; the manner of death to be homicide.

Legal Analysis

As was previously noted, this review is limited to a determination of whether criminal charges should be filed 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 to a jury. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justifications or defenses 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 Colorado law.

In this case, there is no dispute that Deputy Kingsley fired his weapon at Anthony Pena. Likewise, there is no dispute that Mr. Pena died as a result of a gunshot wound. At the time of the shooting, Deputy Kingsley was engaged in the course of his duty as a peace officer to contact a wanted suspect known to be armed and dangerous. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Deputy Kingsley fired his weapon, the prosecution can prove beyond a reasonable doubt that the officer’s actions were criminal and 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. (2019), 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. (2019).

Here, the police initiated an attempt to effect an arrest of a wanted man known to be armed and dangerous. When contacted by police, Mr. Pena showed a great amount of force in resisting arrest. He ignored the officers’ commands and drove the vehicle in reverse against the unmarked police vehicle. Based upon Mr. Pena’s known criminal history and access to weapons, the officers were initially concerned that Mr. Pena would shoot at them. These concerns were elevated when officers observed Mr. Pena display a handgun out his window and take Ms. Stout hostage. Deputy Allegar saw Mr. Pena wrap one arm around Ms. Stout’s neck and hold a gun pointed at her with the other. Mr. Pena repeatedly threatened that he was going to kill Ms. Stout.

Deputy Kingsley and his fellow deputies tried to negotiate with Mr. Pena to avoid further escalation of violence. Deputy Kingsley believed that if he did not act, Mr. Pena would kill the hostage. Deputy Kingsley took a position to the rear of the Firebird on the driver side where he could see into the Firebird. He aimed his weapon at Mr. Pena and waited until he could safely end the threat to Ms. Stout by shooting Mr. Pena. Deputy Kingsley fired one time, striking Mr. Pena in the head. Ms. Stout ran out of the car immediately after the gunshot.

The video recording corroborates the officers' statements that they perceived Mr. Pena to present an imminent threat to Ms. Stout. It further demonstrates the officers' efforts to deescalate the situation before using deadly physical force. Given this evidence, there is no disputing the officers' reasonable belief that Mr. Pena was armed with a deadly weapon and was likely to endanger the life of Ms. Stout. Further, there is no evidence to dispute that the officers used a reasonable amount of force against this threat. Mr. Pena's action of creating a hostage situation, displaying a handgun to officers, and threatening to kill the hostage justifies the use of deadly physical force necessary to defend Ms. Stout. Under these circumstances, there is no basis to conclude that any lesser degree of force was necessary.

Therefore, given all the facts and circumstances, the prosecution cannot prove that Deputy Kingsley was not justified in using reasonable force to protect Ms. Stout from what he reasonably perceived to be the imminent use of deadly physical force under §18-1-707(1), CRS (2019).

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Deputy Kingsley for firing his weapon and causing the death of Mr. Pena. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,



Dave Young
District Attorney