



July 27, 2018

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

Re: *Investigation of the officer-involved shooting of David Dwayne Navarro (DOB 6/15/1971) on April 28, 2018 in Northglenn, Colorado.*

Dear Chief Carlson,

The investigation and legal analysis of the officer-involved shooting of David Navarro is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Thornton Police Detectives Brad Barkley and Scott Hendrickson. 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 June 28, 2018. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation was thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the involved agency.

As further set forth herein, based upon the evidence presented and applicable law, there is no reasonable likelihood of success of proving beyond a reasonable doubt that the involved officers committed any crime during this incident. Therefore, no criminal charges will be filed against the involved officers.

The Incident

The Rocky Mountain Safe Streets Task Force (Safe Streets) distributed a bulletin seeking the arrest of Mr. David Navarro to the Denver metropolitan area law enforcement agencies. Safe Streets is a group of federal and state investigators that assist in the location and arrest of wanted fugitives in Colorado. Mr. Navarro had several active warrants including both state and federal criminal charges pertaining to violent crimes and the use of weapons. The bulletin advised that Mr. Navarro was known to be armed and dangerous and had made statements that he would engage in a shoot-out with law enforcement officers if contacted. The members of Safe Streets were working to apprehend Mr. Navarro on his warrants in April of 2018.

Members of Safe Streets were conducting surveillance on Mr. Navarro on April 27, 2018 and April 28, 2018. Safe Streets requested the assistance of the Westminster Police Department Special Enforcement Team (SET) to assist with surveillance and apprehension of Mr. Navarro. Officer Janay Hall with SET was involved with the surveillance of Mr. Navarro on April 27, 2018. Officer Hall, in an undercover capacity, followed Mr. Navarro into a gas station and was able to positively identify him. Officer Hall also recognized the outline of a handgun under his clothing at that time. Officer Hall advised the members of Safe Streets and SET about her observations of Mr. Navarro.

Ms. Melissa Barmann, a friend of Mr. Navarro, was driving Mr. Navarro around the North Denver area in her car. On April 27, 2018, a vehicle tracker was placed on Ms. Barmann's vehicle to assist with tracking and locating Mr. Navarro. On April 28, 2018, Ms. Barmann's vehicle was tracked to the Metro PCS Store located at 530 Malley Drive, Northglenn, Colorado. Mr. Navarro and Ms. Barmann entered the store. Members of the Westminster SET developed a tactical plan to apprehend Mr. Navarro when he came out of the Metro PCS store. Members of Safe Streets were positioned in the area conducting surveillance of Mr. Navarro while he was in the business and relayed that information to SET.

Westminster Police Officers Josh Verver, Chris Neal, Mark Cressman, Janay Hall and Scott Hopkins were in an unmarked van parked behind the Metro PCS store waiting for Mr. Navarro to leave. Members of Safe Streets advised SET that Mr. Navarro and Ms. Barmann were leaving the business. Members of SET drove up toward the front of the business in their unmarked van. Officer Neal deployed a loud flashbang to distract Mr. Navarro, as other SET members got out of the van to apprehend him. As the officers approached, Mr. Navarro moved his hand towards his right waistband in an apparent effort to remove a handgun. Officers Verver, Neal, Cressman and Hall all fired their service weapons at Mr. Navarro, striking him. Mr. Navarro fell to the ground and attempted to move back towards the business. Medical rescue arrived and provided medical treatment to Mr. Navarro who was later pronounced deceased on scene.

Witness Interviews

Investigators with the 17th Judicial District Critical Incident Team conducted interviews of all necessary witnesses at the Westminster Police Department. Though there were many witnesses interviewed, only the involved officers and material witnesses are specifically summarized herein.

Officer Josh Verver: Officer Josh Verver is a police officer with the Westminster Police Department for the last fourteen years and is currently assigned to the Westminster SET unit. Detective Barkley and Detective Spresser interviewed Officer Verver on April 28, 2018 shortly after this incident with his attorney present. Officer Verver has seven years of prior law enforcement experience with the Northglenn Police Department. Officer Verver was wearing plain clothes with a police issued tactical vest, affixed with "police" across the front and back with a sewn badge. Officer Verver was armed with a BCM 5.56, semi-automatic rifle.

On April 28, 2018, Officer Verver was assisting Safe Streets with locating and apprehending Mr. Navarro. Officer Verver received a bulletin advising that Mr. Navarro had eight warrants and was armed and dangerous. A metro wide BOLO was also issued for Mr. Navarro. Officer Verver was aware of a previous robbery that occurred where Mr. Navarro displayed a handgun. Officer Verver assisted in the surveillance of Mr. Navarro on April 27, 2018, when members from Safe Streets and SET were working to get a positive identification of Mr. Navarro prior to his arrest. Identification of Mr. Navarro was eventually made based on his tattoos and Officer Hall's observations following him into a gas station. A tracker was then placed on a vehicle that was associated with Mr. Navarro.

On April 28, 2018, officers observed Mr. Navarro on surveillance at a Metro PCS store located in the area of Washington Street and Malley Drive. Members of Safe Streets observed Mr. Navarro and Ms. Melissa Barmann going into the store. Officers Verver, Neal, Cressman, Hopkins and Hall were in an undercover van parked behind the Metro PCS store. Officer Hopkins was driving, Officer Neal was the front passenger seat and Officers Verver, Cressman and Hall were in the back. The plan was to use a sound bomb, also referred to as a "flashbang" to distract Mr. Navarro and then take him into custody without further incident.

Ms. Barmann walked out of the store first. Mr. Navarro walked out behind her using a cane in his left hand. The unmarked van came around from the back of the store towards the entrance of the business. Officer Neal deployed a flashbang in an attempt to distract Mr. Navarro. Officer Verver got out of the van and observed Mr. Navarro turn in a clockwise motion back towards the entrance of the store. Officer Verver observed Mr. Navarro reach with his right hand towards his right waistband, the precise location that Officer Hall previously saw Mr. Navarro's holster. Officer Verver yelled, "Police! Drop the gun!" Mr. Navarro did not comply with Officer Verver's instructions. Officer Verver believed that it was very clear that Mr. Navarro knew the police were approaching him. Mr. Navarro's right side turned towards Officer Verver and Officer Verver observed a black object on Mr. Navarro's right side. Officer Verver was concerned that if Mr. Navarro pulled his handgun out, he could have easily extended his arm to shoot at the officers.

Officer Verver stated that he was concerned for his safety, the safety of the other officers, and the community. Mr. Navarro did not stop in response to their commands and continued moving. Officer Verver then began to shoot his rifle at Mr. Navarro. Mr. Navarro fell to the ground and continued to try and move into the doorway of the business. Officer Verver continued to shoot until he felt the threat was gone and Mr. Navarro was no longer reaching for his handgun. Officer Verver believed he fired approximately ten rounds. Officer Verver said that there was a short pause in his rounds after Mr. Navarro went down to the ground, but then he began to fire again as Mr. Navarro continued to move and was still trying to get his handgun from his waistband. Officer Verver never saw the handgun come out of Mr. Navarro's waistband. Officer Verver estimated he was ten to fifteen yards away when he started shooting and then moved closer to within five yards of Mr. Navarro. When Mr. Navarro was on the ground, Officer Verver approached and observed a handgun in a holster in his waistband. Officer Verver removed Mr. Navarro's handgun so Mr. Navarro would no longer have access to it. The K9 was deployed to assist getting Mr. Navarro into custody. The officers called for medical services to render aid to Mr. Navarro.

Officer Chris Neal: Officer Neal is a police officer with the Westminster Police Department and has been an officer for the last ten years. Detective Barkley and Detective Spresser interviewed Officer Neal on April 28, 2018 shortly after this incident with his attorney present at the Westminster Police Department. Officer Neal has been assigned to SET for sixteen months. Officer Neal was wearing plain clothes with a police issued tactical vest, affixed with "police" on the front and back. Officer Neal was armed with a Springfield Armory XDM 9mm handgun.

Officer Neal was familiar with Mr. Navarro. A few months ago, Mr. Navarro rammed police officers in patrol vehicle with a stolen vehicle. Officer Neal at that time assisted with trying to locate Mr. Navarro, but was unsuccessful. Officer Neal advised that over the last few months, bulletins referencing Mr. Navarro were distributed throughout the metro area. Officer Neal assisted Safe Streets in an attempt to apprehend Mr. Navarro. Safe Streets conducted surveillance and placed a tracker on Ms. Melissa Barmann's vehicle in an effort to positively identify Mr. Navarro. Officer Neal received information that Mr. Navarro was carrying a handgun on his right hip.

On April 28, 2018, Officer Neal was briefed again about Mr. Navarro and was advised he was involved in armed robberies, a shooting and had eight warrants for his arrest. Safe Streets and SET were working that day again to locate and apprehend Mr. Navarro. Members of Safe Streets and SET were notified that he was at a Metro PCS store in the area of Malley Drive and Washington Street. Officer Neal was advised over the radio that a member of Safe Streets had positively identified Mr. Navarro. Officer Neal was assigned to the apprehension team in an undercover van with Officers Verver, Cressman, Hopkins and Hall. Officer Neal was seated in the front passenger seat.

While Mr. Navarro and Ms. Barmann were inside the Metro PCS store, the undercover van was positioned behind the store. The plan was for the van to drive around to the front entrance of the Metro PCS store and come up behind Mr. Navarro when he came out. Officer

Neal was tasked with deploying a flashbang to distract Mr. Navarro. Officer Verver was tasked to provide cover for Officer Cressman.

As Mr. Navarro and Ms. Barmann came out of the front entrance of the store, the undercover van drove around and contacted Mr. Navarro near the entrance. When the van stopped, Officer Neal threw the flashbang that made a loud noise and Mr. Navarro looked down to the ground and appeared to be startled for a moment. Mr. Navarro then started to turn towards the front entrance. As he did so, he was reaching for his waistband. Officer Verver was out of the van after the flashbang went off. Officer Neal got out of the van after Officer Verver. He took a position on the side of Officer Verver, announcing "Police!"

Mr. Navarro tried to pull a gun out and was jerking at his waistband, Officer Neal observed a black handle in Mr. Navarro's waistband. Officer Neal heard Officer Verver shoot at Mr. Navarro. Officer Neal immediately perceived Mr. Navarro attempting to draw a handgun. Officer Neal then shot at Mr. Navarro and believed he fired two to three rounds. Officer Neal estimated he was fifteen feet away when he fired at Mr. Navarro. Officer Neal stopped firing when he saw Officer Verver approaching Mr. Navarro. Mr. Navarro was on the ground and SET members secured Mr. Navarro's weapon and put him in handcuffs. At the time he fired his weapon, Officer Neal expressed being in fear that Mr. Navarro was trying to get his handgun out and would start shooting at him as well as the other officers nearby.

Officer Mark Cressman: Officer Mark Cressman is a police officer with the Westminster Police Department for the last fourteen years. He has been a K9 Officer for the last eight years. Detective Williams and Detective Hendrickson interviewed Officer Mark Cressman on April 28, 2018 shortly after this incident at the Westminster Police Department. Officer Cressman is currently assigned to the Westminster SET unit. Officer Cressman was wearing a Westminster Police Department issued K9 uniform with a sewn badge affixed on the left chest. Officer Cressman was armed with a Glock model 17 9mm handgun.

On April 27, 2018, the day prior to the incident, Officer Cressman assisted in conducting surveillance of Mr. Navarro. Officers were trying to positively identify him prior to his apprehension, but identification was difficult due to Mr. Navarro's clothing. Officer Cressman was aware that Mr. Navarro had multiple outstanding warrants for his arrest and was likely armed.

On April 28, 2018, Officer Cressman and his K9 were in an unmarked police van with Officers Hopkins, Verver, Neal, and Hall. They followed Mr. Navarro in a vehicle to a 7-11 in the area of Malley Drive and Washington St. An officer with Safe Streets made a positive identification of Mr. Navarro as he came out of the 7-11 store. A female driver drove Mr. Navarro in the vehicle across the street to the Metro PCS store and parked in the front parking lot. The female driver and Mr. Navarro entered the store where they remained for approximately twenty minutes.

Officer Cressman was in the van that was parked behind the Metro PCS store. He received updates from members of Safe Streets who observed the front entrance of the store.

Officer Hopkins was the driver, Officer Neal was in the front passenger seat and Officers Hall, Verver and Cressman were in the back. A takedown plan was developed to approach the business and use a flashbang as a distraction when Mr. Navarro left the store. Officer Cressman was to deploy his K9 to apprehend Mr. Navarro and Officer Verver and Officer Hall were to provide cover for all officers involved.

As Mr. Navarro left the store, the undercover van approached the front entrance of the Metro PCS store. Officer Neal promptly deployed a flashbang and Officer Cressman exited from the driver's side and came around to the front of the van. The smoke from the flashbang traveled back towards Officer Cressman and briefly obstructed his view. Officer Cressman heard Officer Verver yelling at Mr. Navarro, "Police! Drop the gun!" Officer Cressman focused his K9 in the direction of Mr. Navarro to target him.

Officer Cressman heard Officer Verver fire several rounds from his rifle. He also heard Officer Neal and Officer Hall shoot their firearms. Officer Cressman then closed the distance between his K9 and Mr. Navarro. Mr. Navarro's hands were down by his waistband in the location where he is known to carry a weapon. Mr. Navarro turned his body towards the front door of the business. Mr. Navarro reached and pulled up as he was turning towards the entrance of the store. Based on Officer Cressman's training, Mr. Navarro's behavior was consistent with an individual going for a weapon. Officer Cressman did not want to allow Mr. Navarro back into the store; as he was concerned for the safety of the employees, potential customers and wanted to avoid a hostage situation.

As Mr. Navarro moved closer to the business entrance, Officer Cressman began to close the distance between himself and Mr. Navarro. He estimated he was five to seven yards from Mr. Navarro when he drew his duty weapon and fired two or three rounds at Mr. Navarro. Mr. Navarro was heading towards the door and then fell to the ground. Officer Cressman stopped firing his weapon when Mr. Navarro was on the ground. Officer Cressman said he fired his weapon because he was in fear for his safety and the safety of the other officers in the area. Officer Verver approached Mr. Navarro and Officer Cressman commanded his K9 to gain control of Mr. Navarro because he could not see Mr. Navarro's hands. The K9 engaged Mr. Navarro on the left side of his abdomen. Officer Verver approached Mr. Navarro and moved Mr. Navarro's handgun out of his reach. Officer Cressman then released his K9 from the bite and backed away from Mr. Navarro.

Officer Janay Hall: Officer Hall is a police officer employed by the Westminster Police Department for the last eight years. She has prior law enforcement experience with the Broomfield Police Department in their detention facility. Detective Williams and Detective Hendrickson interviewed her on April 28, 2018, shortly after this incident. Officer Hall is currently assigned to the Westminster SET unit. Officer Hall was wearing plain clothes with a police issued tactical vest, affixed with "police" across the front and back. Officer Hall was armed with a Glock model 26 9mm handgun.

Officer Hall was working with Safe Streets to apprehend Mr. Navarro. There were bulletins about him throughout the metro area involving incidents of stalking, robbery and carjacking. Through those bulletins Officer Hall was aware that during the carjacking incident,

Mr. Navarro fired a gun several times. Safe Streets officers were tracking the location of Mr. Navarro's associate through a tracker device on the vehicle he was in. Members of Safe Streets were in unmarked police vehicles following the vehicle in an effort to make contact with Mr. Navarro.

On April 27, 2018, Officer Hall was in an undercover capacity. She followed Mr. Navarro into a gas station to make a positive identification of him. Officer Hall stood in line behind Mr. Navarro and identified him based on his hand tattoos. While Mr. Navarro was standing at the counter, Officer Hall observed a holster under Mr. Navarro's clothing on the right side waistband. Mr. Navarro then bent down and she was able to observe a portion of the black holster hanging out. Officer Hall shared this information with other officers.

On April 28, 2018, the tracker device notified officers that the vehicle was in the area of a Metro PCS store. A plan was developed to apprehend Mr. Navarro while keeping officers and members of the public safe. The unmarked Westminster SET van was positioned behind the Metro PCS store and the team was waiting for Mr. Navarro to leave the business to arrest him. Officer Hopkins was driving the van, Officer Hall was seated in the rear of the van and her role was to provide cover.

Officers advised SET that Mr. Navarro was leaving the store and Officer Hopkins drove the van around to the front of the business. Officer Neal deployed a flashbang from the van. Officer Hall observed Mr. Navarro look down and reach towards his waistband in the same area she had seen him with a holster the night before. Officer Hall and other officers yelled, "Police!" Officer Hall then immediately heard gunfire, and moved towards Officer Cressman to receive coverage from the van. Officer Hall explained that Mr. Navarro was continuing to reach towards his gun and she saw something black, either the gun or the holster. Officer Hall believed that Mr. Navarro was retrieving his handgun from his waistband.

Officer Hall then fired one shot at Mr. Navarro and he went down to the ground. Officer Hall said that she fired her weapon because she feared for her life and the life of the other officers involved. Officer Hall approached Mr. Navarro with Officer Verver, who pushed Mr. Navarro's gun away while Mr. Navarro was handcuffed.

Officer Scott Hopkins: Officer Scott Hopkins was assigned to SET on April 28, 2018. Officer Hopkins was tasked with driving the unmarked van and parked the van behind the Metro PCS store. When surveillance units advised SET that Mr. Navarro was leaving the store, he drove the van around towards the front entrance. Officer Hopkins observed Mr. Navarro fifteen to twenty feet away from the front entrance of the business. Officer Hopkins stopped the van and Officer Neal opened the front passenger door and deployed a flashbang in the area of Mr. Navarro. Mr. Navarro leaned back towards the store and immediately started reaching for his waistband. Mr. Navarro had a black object that Officer Hopkins believed was a handgun. Officer Hopkins then heard gunfire from the passenger side of the van as Mr. Navarro continued towards the front of the business. Officer Hopkins exited the driver's side and drew his duty weapon as he started to walk around the front of the van. Officer Hopkins knew several officers

were firing, so he did not discharge his firearm. Officer Hopkins observed Mr. Navarro fall to the ground with his head towards the front of the business.

Ms. Melissa Barmann: Detective Cano and Detective Pylar interviewed Ms. Melissa Barmann on April 28, 2018. Ms. Barmann was a friend of Mr. Navarro and knew that Mr. Navarro had warrants for his arrest. Ms. Barmann posted a bond for him on one of his cases and knew that he had failed to appear for a court appearance. Mr. Navarro made statements to her in the past that he was on a suicide mission. Mr. Navarro told her that he would not return to jail and he would make sure the cops killed him. Ms. Barmann indicated that Mr. Navarro became more adamant about his suicide mission after a contact with law enforcement back in March. Mr. Navarro began to carry an air soft gun that had been painted to appear real after the March contact with police. Ms. Barmann noted that she had also seen him with a real gun before.

On April 28, 2018, Ms. Barmann and Mr. Navarro went to the Metro PCS store to get a new phone for Mr. Navarro. Mr. Navarro was using a cane to walk as he had recently been involved in a motorcycle accident. Ms. Barmann was at the Metro PCS store with Mr. Navarro. She began to walk out the front of the store with Mr. Navarro ten to twenty feet behind her. Ms. Barmann described seeing officers run in front of them and throw something on the ground that was loud and flashed. Ms. Barmann recognized the law enforcement officers because of their badges, vests, and shields. Ms. Barmann turned around and looked at Mr. Navarro. She described seeing police officers already surrounding Mr. Navarro. Ms. Barmann heard many gunshots and observed Mr. Navarro getting shot. Ms. Barmann saw several officers with guns. As Ms. Barmann heard shots, she was ordered to the ground. Ms. Barmann described being shoved to the ground and had an abrasion on her elbow. Ms. Barmann was charged with an accessory to a crime. Her case is pending in Adams County District Court, case number 18CR1660.

Ms. Fatima Duron: Ms. Fatima Duron works at the Metro PCS store. She was working on April 28, 2018 and was in the backroom which has live security footage of the inside and outside of the business. Ms. Duron was watching the security footage and observed a male in the front of the store pull a gun out of his pants and point the firearm toward the police. Ms. Duron advised once she saw a gun come out, she ran and hid.

The 17th Judicial Critical Incident team detectives interviewed additional parties that were in the area, none of whom saw the incident.

Video Surveillance

Detective Robin Danni responded to the Metro PCS store and collected a copy of the store surveillance video that captured this incident. The video camera is located inside the business displaying the glass front doors outside to the front parking lot. The video has no audio. The video displays Ms. Barmann and Mr. Navarro inside the store at the counter for several minutes. At one point, Ms. Barmann walks outside and looks around the parking lot before returning to the counter with Mr. Navarro. After completing the transaction with the Metro PCS employee, Ms. Barmann and Mr. Navarro begin to walk towards the front door of the business.

Ms. Barmann is walking in front of Mr. Navarro. Mr. Navarro is walking with the assistance of a cane that he is holding in his right hand and has a Metro PCS bag in his left hand.

Ms. Barmann walks out of the business ahead of Mr. Navarro and stands in the parking lot looking around as he makes his way through the front door. Mr. Navarro is stepping off of the sidewalk, as a van appears to enter the frame and a black cartridge is thrown to the ground near Mr. Navarro. A cloud of smoke then develops around Mr. Navarro and he immediately moves his cane from his right hand to his left hand, reaches into his right waistband with his right hand, turns and goes towards the front door of the store. Ms. Barmann moves out of the view of the camera. Mr. Navarro appears to be struggling to pull his handgun out of his waistband. Members of the Westminster SET appear to approach Mr. Navarro, but are partially obscured on the surveillance due to a blue canopy outside of the business.

As Mr. Navarro's right hand is in his waistband, he makes his way closer to the front door and then falls to the ground. Officer Verver then appears in the video and advances toward Mr. Navarro while firing his rifle. Mr. Navarro is seen on the ground, his left hand is near his waistband area and his right hand is near his head. SET members approach Mr. Navarro as the K9 engages him. Officer Verver is seen locating and removing Mr. Navarro's handgun. Several other law enforcement officers arrive to the scene. Mr. Navarro is then handcuffed with his hands behind his back. Seven seconds elapses between the time the flashbang is deployed and Mr. Navarro hits the ground.

Scene Investigation

On April 28, 2018, Crime Scene Investigator (CSI) Dennis Davenport and CSI Siobain Callahan responded to the scene of the shooting. The scene consisted of the Metro PCS business and the front parking lot. In front of the store, on the sidewalk, was a blue canopy labeled Metro PCS. A silver unmarked Westminster SET unit van was parked on the corner of the store. Ms. Barmann's silver Honda was parked near the business in the parking lot. A flashbang cartridge was in the parking lot in front of the store. Thirteen (13) .223 cartridge casings were collected from the parking lot and sidewalk area in front of the store. Six (6) 9mm cartridge casings were collected from the parking lot and sidewalk in front of the store. A 9mm handgun was observed and collected next to Mr. Navarro just outside of the front doors to the store. The firearm was loaded with twelve (12) live 9mm rounds in the magazine and one in the chamber. There is no evidence to suggest that rounds were discharged from this firearm. Several projectiles were located in the parking lot, near the front door and inside the Metro PCS store. CSI Davenport observed several rounds which struck the front glass door and the front window of the business.

CSI Davenport conducted round accountability for all the involved officers. An examination of Officer Verver's BCM .556 caliber semi-automatic rifle revealed that the rifle was loaded with one (1) live round in the chamber and fourteen (14) live rounds in the magazine, for a total of fifteen (15) rounds. Officer Verver advised that he loaded the magazine with twenty-eight live rounds, leading to the conclusion that Officer Verver fired thirteen (13) rounds from his rifle during this incident. This is consistent with thirteen (13) .223 cartridge casings located in the Metro PCS parking lot and sidewalk.

An examination of Officer Cressman's Glock 9mm pistol was conducted. The pistol was loaded with fourteen (14) live 9mm rounds in the magazine and one (1) live round in the chamber. Officer Cressman advised that he loaded his magazine with seventeen (17) rounds with one (1) round in the chamber. The round count thus reveals that Officer Cressman fired three (3) 9mm rounds during this incident.

An examination of Officer Neal's Springfield Armory, 9mm semi-auto pistol was conducted. The pistol was loaded with seventeen (17) live 9mm rounds in the magazine and one (1) live round in the chamber. Officer Neal advised that he loaded his magazine with nineteen (19) rounds with one (1) round in the chamber, leading to the conclusion that Officer Neal fired two (2) 9mm rounds during this incident.

An examination of Officer Hall's Glock 9mm pistol was conducted. The Glock pistol was loaded with nine (9) live 9mm rounds in the magazine and one live round in the chamber. Officer Neal advised that she loaded the magazine with ten (10) rounds and one (1) round in the chamber, suggesting that Officer Neal fired one (1) 9 mm round during this incident.

Medical Examination Analysis

On April 28, 2018, North Metro Fire responded to the scene and attempted to revive Mr. Navarro for approximately thirty minutes. The paramedics were unable to obtain a pulse and contacted Dr. Case at St. Anthony North Hospital who pronounced Mr. Navarro deceased.

On May 1, 2018, Dr. Stephen Cina, a Forensic Pathologist with the Adams County Coroner's Office, conducted a forensic autopsy of the body of Mr. Navarro. A bag of methamphetamine was collected in Mr. Navarro's clothing prior to autopsy. Dr. Cina found seventeen gunshot wounds to Mr. Navarro. Seven projectiles of varying sizes and one projectile fragment were recovered from his body. None of the entrance sites showed evidence of close range firing. The majority of the wounds were received on the posterior surfaces of the body and were directed back-to-front and upward. The most lethal gunshot wound was to the left side of the upper back which resulted in injuries to the ribs, aorta and upper lobe of the left lung with associated massive internal bleeding. The toxicology report revealed positive levels of opiates, benzodiazepines, methamphetamines, oxycodone, and fentanyl/metabolite. Dr. Cina determined the cause of death to be multiple gunshot wounds and the manner of death to be homicide.

Suspect Information

Mr. David Navarro had several active warrants out of Adams County for felony menacing, possession of a weapon by a previous offender, criminal mischief, third degree assault, violation of a protection order (18CR981), stalking (18CR576), obstruction of a peace officer (17M4225), harassment (17M4320) and third degree assault (17M4319). Mr. Navarro also had a federal warrant for interference with commerce by use of threats or violence. Mr. Navarro's criminal history includes convictions for attempted escape, forgery, second degree assault, aggravated motor vehicle theft, aggravated robbery and burglary.

Legal Analysis

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. In this instance, in order to file a criminal charge the District Attorney's office must prove beyond a reasonable doubt that any of the involved officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Verver, Officer Neal, Officer Cressman and Officer Hall fired their weapons at Mr. David Navarro. Likewise, there is no dispute that the death of Mr. Navarro resulted from multiple gunshot wounds. The issue of which involved officer actually caused the death is complicated, as four officers fired their weapons resulting in the death of Mr. Navarro. The forensic evidence cannot conclusively distinguish which firearm caused the fatal shots. In addition, the handguns used by three of the officers were of the same caliber. Therefore, for the purposes of this review, it is assumed that any one of the shooting officers actually caused the death of Mr. Navarro.

All of the involved officers were engaged in their duties as peace officers to arrest a suspect with active warrants for his arrest at the time of the shooting. Therefore, the legal question presented to the Office of the District Attorney is whether the prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law at the time the officers fired their weapons.

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 immanent 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 the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

"Deadly physical force" is defined as "force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death." §18-1-901(3)(d), C.R.S. (2017).

Officer Josh Verver

Officer Verver was engaged in the performance of his duties as a peace officer to affect an arrest of Mr. David Navarro. Officer Verver was aware of Mr. Navarro's outstanding warrants and that he was known to be armed and dangerous. Officer Verver, along with Officer Neal, Officer Cressman and Officer Hall worked to apprehend Mr. Navarro as Mr. Navarro left the Metro PCS store. As Mr. Navarro exited the store, all four officers approached in an unmarked van and Officer Verver exited the van announcing, "Police! Drop the gun!" Mr. Navarro did not comply with any of Officer Verver's instructions and immediately reached for his handgun from his waistband. Officer Verver felt it was very clear that Mr. Navarro knew the police were approaching him. Mr. Navarro did not stop in response to their commands and continued moving. Officer Verver began to shoot at Mr. Navarro who fell to the ground and

continued to reach for his gun as he moved into the doorway of the business. Officer Verver continued to shoot until he felt the threat was gone when Mr. Navarro was no longer reaching for his handgun. Officer Verver stated that he was concerned for his safety, the safety of the other officers and members of the community at the time he fired his rifle.

Under these facts, the Office of the District Attorney cannot prove that Officer Verver was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. (2017).

Officer Chris Neal

Officer Neal was engaged in the performance of his duties as a peace officer to affect an arrest of Mr. David Navarro. Officer Neal was aware of Mr. Navarro's outstanding warrants and that he was known to be armed and dangerous. As Mr. Navarro exited the business, the undercover van drove to the front and contacted Mr. Navarro near the entrance. When the van stopped, Officer Neal threw a flashbang that made a loud noise and Mr. Navarro looked down to the ground. Mr. Navarro then started to turn, towards the front entrance, reaching for his waistband. Officer Neal was out of the van after Officer Verver, announced, "Police!" Officer Neal saw a black handle protruding out of Mr. Navarro's waistband. Officer Neal immediately perceived Mr. Navarro was attempting to draw a handgun. Officer Neal then fired his duty weapon two times. Officer Neal stopped firing when he saw Officer Verver approaching Mr. Navarro. Officer Neal expressed being in fear that Mr. Navarro was trying to get his gun out and would start shooting at him and the other officers.

Under these facts, the Office of the District Attorney cannot prove that Officer Neal was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. (2017).

Officer Mark Cressman

Officer Cressman was engaged in the performance of his duties as a peace officer to affect an arrest of Mr. David Navarro. Officer Cressman was aware of Mr. Navarro's outstanding warrants and that he was known to be armed and dangerous. As Mr. Navarro left the store, the undercover van approached the front entrance of the Metro PCS store. Officer Cressman heard Officer Verver challenging Mr. Navarro by yelling, "Police! Drop the gun!" Officer Cressman observed Mr. Navarro with his hand at his waistband trying to pull something out. Officer Cressman knew that Mr. Navarro is known to carry a handgun in his waistband. Mr. Navarro continued to reach for his waistband and pulling his hand up as he was turning towards the entrance of the store. This action is consistent with an individual going for a weapon. Officer Cressman did not want to allow Mr. Navarro back into the store as he was concerned for the safety of the employees and potential customers and wanted to avoid a hostage situation. As Mr. Navarro moved closer to the store entrance, Officer Cressman drew his duty weapon and fired three rounds. Officer Cressman stopped firing his weapon when Mr. Navarro was on the ground. Officer Cressman stated that he fired his weapon as he was in fear for his safety and the safety of the other officers in the area.

Under these facts, the Office of the District Attorney cannot prove that Officer Cressman was not justified in protecting himself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. (2017).

Officer Janay Hall

Officer Hall was engaged in the performance of her duties as a peace officer to affect the arrest of Mr. David Navarro. Officer Hall was aware of Mr. Navarro's outstanding warrants and that he was known to be armed and dangerous. Officer Hall actually saw Mr. Navarro with a handgun on his right waistband at a gas station the prior night. SET worked to apprehend Mr. Navarro as he left the Metro PCS store. As Mr. Navarro left the store, the undercover van approached the business and a flashbang was deployed. Officer Hall observed Mr. Navarro look down and reach towards his waistband in the same area she had seen him with a holster the night before. Officer Hall and other officers were yelling, "Police!" Officer Hall then immediately heard gunfire. Mr. Navarro was continuing to reach towards his gun and she saw something black, either the gun or the holster. Officer Hall believed he was retrieving his handgun from his waistband. Officer Hall fired one shot and Mr. Navarro went down to the ground. Officer Hall stated that she fired her weapon because she feared for her life and the life of the other officers involved.

Under these facts, the Office of the District Attorney cannot prove that Officer Hall was not justified in protecting herself and the other officers from what he perceived to be the imminent use of deadly physical force under § 18-1-701, C.R.S. (2017).

Conclusion

The evidence demonstrates that Mr. David Navarro was aware of the police presence and began to draw a firearm when he was contacted. The officers each explained that at the time they fired their weapons, they were in fear for their own lives, as well as the lives of their fellow officers. Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Verver, Officer Neal, Officer Cressman or Officer Hall who all discharged their weapons in the fatal shooting of Mr. David Navarro on April 28, 2018.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that no criminal charges will be filed against the involved officers. 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