



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

November 12, 2018

Chief Tim Carlson

Westminster Police Department

9100 Yates Street

Westminster CO 80031

Re: 17th JD CIRT, Westminster Police CR#18-11319

Dear Chief Carlson,

My office has reviewed the 17th Judicial District Critical Incident Team's submitted reports regarding THE fatal shooting of Ronald Romero, DOB 3/15/96 on June 26, 2018. This occurred in the area of 92nd Avenue and Fenton Street which is located in the city of Westminster in Jefferson County, Colorado. This shooting involved a Westminster Motorcycle Officer, hereinafter referred to as "WPD Officer A"¹. Senior Chief Deputy District Attorney Eva Wilson responded to the Westminster Police Department on the date of the shooting and visited various scenes of importance to this review. Members of my staff and I attended a briefing presented by members of the 17th Judicial District Critical Incident Team on August 21, 2018. Senior Chief Deputy District Attorney Eva Wilson reviewed the investigatory file presented by the 17th JD Critical Incident Team. My office has completed the review of WPD Officer A's use of deadly physical force in this incident for possible criminal charges.

APPLICABLE LAW

The legal framework for our analysis in this case is found in the following sections of the Colorado Revised Statutes.

¹ Westminster Police Department has requested that the officer's name not be revealed due to concerns for this officer's safety.

§ 18-1-407, C.R.S. Affirmative defense

- (1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.
- (2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

§ 18-1-710, C.R.S. Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

§ 18-1-704, C.R.S. Use of physical force in defense of a person

- (1) ...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.
- (2) Deadly force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
 - (a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

§18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

- (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 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 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 the 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 that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

SUMMARY OF OPINION

Applying these legal standards to the facts presented through this investigation, I find that WPD Officer A is not subject to criminal liability for his actions on June 26, 2018. The District Attorney's Office could not prove beyond a reasonable doubt that it was unreasonable for WPD Officer A to perceive that the conduct of Ronald Romero posed an imminent threat to him of serious bodily injury or death. Based upon the totality of the circumstances which included Romero fleeing from a burglary upon the arrival of law enforcement, the traffic violations he committed while being followed by law enforcement and his final effort to avoid being arrested which involved steering his motor vehicle directly towards a parked motorcycle officer who was right next to the path he could have taken to flee from law enforcement, it was reasonable for WPD Officer A to perceive that Romero was trying to run over him. The conduct of Ronald Romero posed an imminent threat to WPD Officer A of serious bodily injury or death. The facts of this incident would not support the filing or prosecution of any criminal charges against WPD Officer A.

BRIEF SUMMARY OF RELEVANT FACTS

The information contained in this summary is derived from Westminster Police Department reports and the investigation done by the 17th JD Critical Incident Team. Officer A's and Officer DiGiovanni's statements were made during interviews done by members of the Critical Incident Team as were all statements provided by lay witnesses.

On June 26, 2018, at 1:50pm, Westminster Police Officers were dispatched to Sofi Westminster Apartments at 10305 Dover Street on a burglary in progress. Dispatch aired that a male suspect was leaving the scene in a red Jeep, license plate 417ZBJ and that a female suspect was on foot.

At 1:52pm, WPD Officer A, who was assigned to the Westminster traffic unit as a motorcycle officer, was on duty that day and his shift was from 11am to 9pm. WPD Officer A was wearing a blue police uniform and he was riding his marked police black and white Harley-Davidson motorcycle that is also equipped with emergency lighting. WPD Officer A heard an alert tone signifying that a burglary was in progress. He heard dispatch air the description of the involved vehicle that was fleeing the scene as being a red Jeep and he also heard the vehicle plate number. When dispatch aired the last location of the vehicle, Officer A noted that the location was just south of the intersection where he was parked. He then saw a red Jeep Liberty driving at a speed

somewhat higher than surrounding traffic. Officer A noted the license plate number and confirmed with dispatch that this plate matched the vehicle involved in the burglary. The Jeep was approaching from the south to the north and came up beside Officer A and the driver made eye contact with Officer A and turned east. Officer A switched lanes to also turn east and he began to follow the vehicle but he did not activate his emergency lights. He followed the Jeep through a construction area where the Jeep continued to drive quickly. Throughout this time, Officer A was on the police radio, airing the progress of the Jeep and his actions.

At 1:55pm, WPD Motorcycle Officer DiGiovanni approached, coming from the opposite direction, and he made a U-turn to join Officer A as he followed the Jeep. Officer DiGiovanni passed Officer A and Officer DiGiovanni became the primary officer following the Jeep. Officer A noticed that the Jeep appeared to pick up speed as they went southbound. The posted speed limit was 40 mph and the Jeep appeared to be going approximately 60 mph. He also saw the Jeep pass two vehicles going over the double-yellow line on the roadway. Officer DiGiovanni requested on his radio that other non-motorcycle patrol officers stop or disable the Jeep. Officer A learned from radio traffic that an officer was setting up stop sticks in the roadway ahead (stop sticks are devices used to quickly deflate tires on a moving vehicle). Officer A aired over the radio that they needed to hurry up and get the stop sticks in place. However, as they went through the intersection at 94th Avenue, Officer A saw an officer putting the stop sticks back into the trunk of his vehicle.

The Jeep continued southbound and ran the red light at 92nd Avenue. Officer DiGiovanni activated his emergency lights and followed the Jeep as it then turned east-bound at 91st Place. The only business in the area of 91st Place is a Brunswick Bowling Alley which is surrounded by vacant fields. Officer A turned east-bound on 92nd Avenue as he watched the Jeep followed by Officer DiGiovanni continue south on Harlan. He saw the Jeep turn east-bound on 91st Place and he also turned east-bound to parallel the Jeep's travel path. He stopped his motorcycle facing east, directly next to 92nd Avenue in the southbound lane of Fenton Street. Officer A was parked broadside looking to see where the Jeep was going to go since the vacant fields on either side of Fenton afforded the Jeep driver an opportunity to leave the roadway and drive in several different directions to get away from the police officers in front of him and behind him. Officer A then saw the Jeep make a wide turn to go north on Fenton Street, towards the intersection where Officer A was parked.

He stated that he saw the driver of the Jeep staring directly at him as he swerved into the south bound lanes of Fenton Street and accelerated towards his position. Officer A was sitting on his motorcycle with his left hand on the clutch and the motorcycle was still in gear. In interviews with the Critical Incident Team, Officer A said that the Jeep was in such close proximity and closing the distance between them so quickly, that he had no time to get off the bike or attempt to move it out of the way. As the vehicle accelerated towards his position, Officer A stated that he knew that if he was hit by the Jeep as he was sitting on his motorcycle which provided no protection around him, that he would die. He indicated that his only alternative to not be killed was to use deadly force on the driver. He felt that the driver's intent was to run him over to not be caught by the police. He drew his weapon with his right hand and fired three shots into the driver's side of the vehicle. Officer A stated that after he fired his weapon, the vehicle swerved back to the northbound lane and passed by him. He felt the threat was gone at that point in time so he stopped shooting. The vehicle then crossed onto 92nd Ave and jumped the median, where the vehicle stopped in the westbound lanes. Other officers arriving on scene ran across the street to where the suspect's vehicle had come to rest. Officer A took a position of cover behind the driver's side rear quarter panel of the vehicle

while other officers contacted the driver. Officer A was then escorted away from the scene by Sgt. Poppinger.

Officer DiGiovanni was interviewed by Critical Incident Team Investigators and he described what occurred right before the shooting. He was behind the Jeep when it turned right onto 91st Place towards the bowling alley. He then saw the Jeep make a left turn onto the street (Fenton) that goes north to 92nd Ave. He estimated the Jeep's speed to be approximately 25-35 mph and he saw the Jeep swing wide as he made the turn which caused him to drive over some parking spaces on the east side of Fenton. Officer DiGiovanni described the road as a two-lane road with a double yellow line dividing the lanes with four or five parking spaces on each side of the road. Officer DiGiovanni saw WPD Officer A just rolling in on his motorcycle in the south-bound lane of Fenton. Officer DiGiovanni saw the Jeep cross over the double yellow lines from the north-bound lane into the south-bound lane and drive toward WPD Officer A who was in that lane. Officer DiGiovanni described thinking that the Jeep was going to run over WPD Officer A. Officer DiGiovanni could partially see WPD Officer A in front of the car and to the left. He said the Jeep kept going and he heard what he believed to be three shots in rapid succession. The Jeep then suddenly swerved to the right, back into the north-bound lanes where it drove onto 92nd Ave. The Jeep hit the median to the left of a tree and it then crossed the westbound lanes of 92nd Ave., hitting the curb and rocking back where it came to a rest. Officer DiGiovanni saw many vehicles stopped on 9nd Ave. Officer DiGiovanni parked his motorcycle in the area where Officer A was located on his motorcycle and he ran across the street to where the Jeep had stopped.

Officer DiGiovanni was asked if WPD Officer A had enough time to move his bike to avoid being struck by the Jeep. Officer DiGiovanni indicated that there was not enough time for him to back-pedal the bike or to pull the bike forward. Additionally, Officer DiGiovanni stated that if WPD Officer A had pulled forward, the driver of the Jeep could have easily still hit him by just following him. He stated that it appeared to him that the driver was intentionally trying to run over and kill WPD Officer A and that the driver's actions appeared to be "deliberate and in control." Officer DiGiovanni also stated that he did not have time to air for WPD Officer A to watch out before he heard the shots.

- Route taken by the red Jeep Liberty
- ★ 10305 Dove St. Sofi Apartments
- Direction of travel by red Jeep
- ☀ Termination point
- ✦ Officer A



The driver of the Jeep was taken to Good Samaritan Hospital where he was identified by an ankle monitor to be Ronald Romero. Mr. Romero died from his injuries on July 1. An autopsy was performed by Dr. Carver on July 2 and the cause of his death was due to complications from a gunshot wound to the head. The trajectory appeared to have been from the back of the head to the front and from the right to left when looking at the body from the front. There was no exit wound.

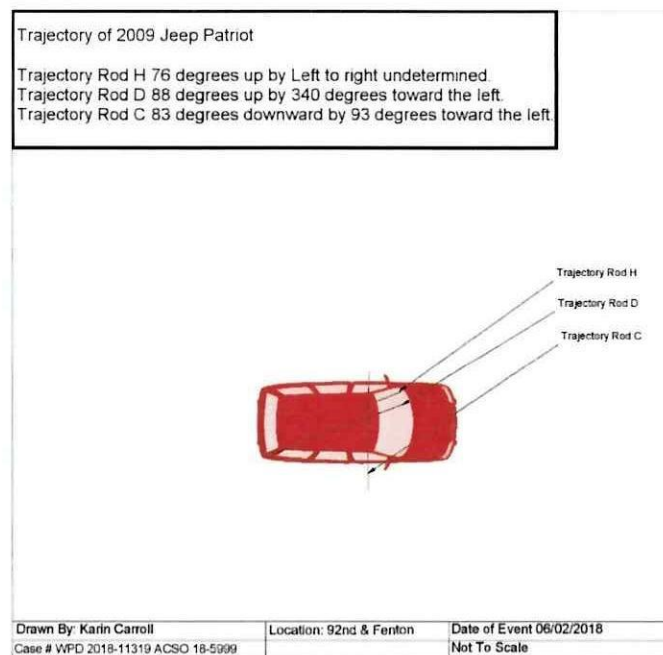
There were citizens driving or working in the area of this incident and interviews were conducted of various individuals. Witness statements of those who observed the shooting are briefly summarized below:

1. Eric Cummings was driving a work truck and was stopped at a red light at Westminster Parkway and 9th Avenue. Jonathan Brown was a passenger in his truck. Eric saw an officer pull into the area of Brunswick Bowling alley and he saw two officers pull up on the road way and draw guns. He estimated he was about forty yards from the officers. He described an officer on the west side firing at a red Jeep when it was approximately ten feet from the officers. He estimated the Jeep was going about 30 mph and it was speeding up as it approached the officers. He was asked if the motorcycle officer had time to get out of the way of the car and he indicated "no, no way." He said the Jeep hit the median and then hit an electrical box.
2. Jonathan Brown saw a red SUV traveling in the opposite direction and he saw a "ton of cops". He heard gunshots coming from the area of the police motorcycles. He did not see who shot but he saw the rd SUV hit a median and stop near the fence line. He estimated the speed of the SUV to be 45 – 50 mph. He said the motorcycle police were closest to the SUV and looked like they had pulled over to block the SUV. He saw the SUV swerve and then there was gun fire.
3. Addelene Tryon was westbound on 92nd Avenue stopped at a red light. She saw two motorcycle officers going at an "abnormal" speed. She saw one of them going east on 92nd and he stopped on a side street. She saw one go past the bowling alley and then go north on the side street. She then saw a red SUV swerving, narrowly missing the cop on the motorcycle. She heard two to three shots fired by the officer that was almost hit. She then saw the SUV go over the median, hit the fence and stop. She said she was approximately ten feet to the east of where the SUV stopped. There was one car between her and the SUV.
4. Austin Berg works at the Westminster Liquor store which is on Harlan south of 92nd Avenue. He saw the red Jeep go south on Harlan and then go west with one motorcycle officer following the Jeep. He saw the Jeep go north on the next street and saw some officers go east on 92nd Avenue. He saw the Jeep jump the median on 92nd Avenue. He saw the officers draw their guns. He did not hear any shots fired.
5. Justin Schaffer was going west-bound and was stopped at the red light on 92nd Avenue. He saw two motorcycle officers. He saw a maroon Jeep and he believed the officers were trying to stop the Jeep. He saw the maroon Jeep go north-bound from the Brunswick Bowling Alley and he was followed by a motorcycle officer. As the Jeep reached 92nd Avenue, the other motorcycle officer crossed in front of the Jeep firing two shots into the front window of the Jeep. The Jeep jumped the median and crossed in front of cars who were in front of him. He saw officers approach the Jeep with guns. He was four cars back from where the maroon Jeep came to rest.

6. Lindsay Sugano was on her phone when she saw a motorcycle officer turn into the intersection in front of her. She was approximately seven cars back from the intersection. There were also several other slow-moving police cars accompanying the motorcycle officer. She saw a motorcycle officer stop on adjacent street and heard four to five gunshots. She looked over her right shoulder and saw a red-orange Jeep “plastered” up against the fence. She estimated that this car was three to five cars behind her and she thought she saw two people in the front seat moving around.

That afternoon, the area of the shooting was photographed, videotaped and measured for criminal processing. Three 9mm casings were located in the general area of WPD Officer A’s motorcycle. On Fenton St. between 91st Pl. and 92nd Ave., Criminalist Karin Carroll observed a dark single tire mark extending on the street south of the motorcycle. The tire marks appeared to have started from the north bound lane then veering across the center lane marker into the south bound lane and ending about where the two police motorcycles (Officer A and Officer DiGiovanni’s motorcycles) were parked. The tire marks extend south to north and are approximately sixty feet four inches long (60’4”).

The Jeep was sealed on scene and towed after the shooting. The Adams County Critical Incident Team photographed, processed and searched the vehicle. Protrusion rods were used to obtain the trajectory of the projectile holes located in the vehicle. The results are documented in the visual image below:



Additional analysis was done by Critical Incident Team members to attempt to determine the speed of the Jeep as it drove north on Fenton Street. Surveillance footage was located at Westminster Liquors which assisted in this analysis. Adams County Sgt. Coffee and Colorado State Patrol Trooper Waters did the analysis which resulted in a speed calculation for the Jeep. It was determined that the Jeep was traveling at a speed of between 31 and 33 mph where it entered onto

Fenton Street until it impacted the median on the south side of 92nd Avenue. There was no indication of any braking by the Jeep during the time it proceeded north on Fenton.

The Jeep's license plate belonged to a different vehicle and it should have been displaying a temporary tag which had been issued to the legal owner. The owner of the Jeep had reported it stolen to Thornton Police Department on June 17, 2018. The owner indicated that on June 14th, she had loaned the Jeep to a friend by the name of "Yvonne Martinez" who wanted to borrow it for an hour. Ms. Martinez had not returned the vehicle since that time and the owner had been attempting to contact her by the only known method which was via Facebook. The owner indicated that Ms. Martinez's boyfriend, Ronnie Romero, was with Ms. Martinez when she borrowed the Jeep. After the burglary and shooting incident, the owner of the vehicle was shown a photo line-up and she identified a photo of Jovan Martinez, DOB 6/24/88 as being the person who had not returned her red Jeep.

Jovan Martinez has also been positively identified as the female involved in the burglary at Sofi Westminster Apartments on June 26th with Ronald Romero. When the police arrived at the scene of the burglary, Ronald Romero escaped police by driving away in the Jeep. Jovan Martinez was not able to reach the Jeep and she ran away on foot. She was later apprehended in the area of Stanley Lake High School. Based upon her involvement in the burglary at Sofi Westminster Apartments, Westminster Police Department charged Jovan Martinez with 2nd Degree Burglary, False Reporting, Possession of Burglary Tools and Criminal Mischief.

At the time of this incident, Ronald Romero was on bond out of Jefferson County District Court for felony charges of Aggravated Robbery and Menacing. A condition of this bond was GPS monitoring which is why he had the monitor affixed to his ankle. He had a criminal history dating back to 2011 which included drug charges, criminal mischief, possession of a weapon by a previous offender, felony theft and in 2017 a parole violation.

Items located by the Critical Incident Team in the Jeep included many pieces of opened and unopened mail addressed to over 75 separate individuals located in Broomfield and Westminster. Also located in the vehicle were social security cards, check books, credit cards, social security cards, ski passes, tax returns and driver's licenses belonging to many different individuals. There were also a number of laptops, tablets and other miscellaneous electronic devices in the Jeep.

LEGAL ANALYSIS

We find in our review of this shooting that the conduct of WPD Officer A was not criminal.

It is the conclusion of my office, based upon the applicable law and the facts and circumstances of this case, that the shooting by WPD Officer A of Ronald Romero during this incident meets the legal requirements of the affirmative defense of self-defense as contained in §18-1-704 (1)(2)(a).

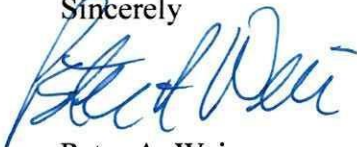
Pursuant to C.R.S. 18-1-704 and C.R.S. 18-1-707, this analysis considers whether WPD Officer A was justified in using reasonable and appropriate physical force to defend himself from the imminent use of deadly physical force by the suspect. Based on the investigation, WPD Officer A learned that a driver of a red Jeep had been involved with and left the scene of a burglary at an apartment complex in Westminster. Two minutes after learning this information, WPD Officer A came across this exact vehicle and began following it. As he followed the vehicle, he noted it to

speed and to illegally pass vehicles. He did not attempt to pull the vehicle over as he was waiting for assistance from other non-motorcycle patrol officers. He also sought assistance for stop sticks to be placed on the road as another method to stop the driver. When the driver who was later identified as Ronald Romero ignored a red light at a busy intersection and turned into an area with vacant lots, WPD Officer A attempted to calculate what direction the vehicle would head so he pulled over to be ready to pursue him if he chose to go off the roadway. Instead, Romero turned directly north on the road where WPD Officer A was sitting on his motorcycle, sped up and aimed his vehicle at WPD Officer A, looking directly at him. Based on the vehicle speeding up and coming at him, WPD Officer A was in fear of being killed. WPD Officer A believed that he was going to be run over so to protect himself, he drew his service weapon and fired three times at the front of the Jeep as it sped towards him. The Jeep veered back to the east, missing WPD Officer A and crashed across the street. Fortunately, despite the amount of traffic in that area, no other vehicles were hit by the Jeep.

Based upon the driving behavior of Ronald Romero, WPD Officer A had a legitimate fear that he was about to be killed. The utilization of deadly physical force by WPD Officer A was reasonable under these specific facts and circumstances and it is likely that the use of that force saved WPD Officer A's life. The People would be unable to disprove the affirmative defense of self-defense beyond a reasonable doubt.

Based upon the investigation of this incident and the information provided to this office by the 17th Judicial District Critical Incident Team, it is the conclusion of my office that the legal requirements of the affirmative defense of self-defense were satisfied by law enforcement actions on June 26, 2018, that law enforcement was justified in the use of deadly physical force and that the conduct of WPD Officer A did not violate any criminal statutes.

Sincerely



Peter A. Weir
District Attorney
1st Judicial District Attorney's Office