



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

December 17, 2015

Chief Terry Krelle
Central City Police Department
141 Nevada Street
Central City CO 80427

Re: CIRT 2015-01
Officer Involved Shooting by Central City Police Sergeant Patric Stanton on October 25, 2015

Dear Chief Krelle,

My office has reviewed the 1st Judicial District Critical Incident Response Team's submitted reports regarding the October 25, 2015 non-fatal shooting by Sergeant Patric Stanton in Golden, Colorado. Senior Chief Deputy District Attorney Charles Tingle responded to this incident and observed interviews of witnesses and the involved officers. Members of my staff and I were also present for a briefing presented by members of the CIRT at the Jefferson County District Attorney's Office on December 1, 2015.

APPLICABLE LAW

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

§ 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) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.
- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
 - (a) The actor has reasonable ground 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.

§18-12-106, C.R.S. Prohibited Use of Weapons

- (1) A person commits a class 2 misdemeanor if:
 - (b) Recklessly or with criminal negligence he discharges a firearm.

§18-3-204, C.R.S Assault in the Third Degree

- (1) A person commits the crime of assault in the third degree if:
 - (a) The person knowingly or recklessly causes bodily injury to another person or with criminal negligence causes bodily injury to another person by means of a deadly weapon.

SUMMARY OF OPINION

Applying these legal standards to the facts presented through this investigation, I find that Central City Police Sergeant Stanton is not subject to criminal liability for his actions in discharging his weapon into the gas tank of a citizen's motorcycle on October 25, 2015. Considering the facts and circumstances of this incident, there does not appear to be a reasonable likelihood of conviction at trial for a charge of "Prohibited Use of Weapons". While Jeremy Golden sustained a slight injury to his hand from the debris which flew off the gas tank, there also is not a reasonable likelihood at trial for a conviction on a count of Third Degree Assault.

RELEVANT FACTS

On October 25, 2015, off-duty Central City Police Department (CCPD) Sergeant Patric Stanton, his wife, Angela Stanton, and his mother in law, Judith Hudspeth, were travelling eastbound on U.S. Highway 6, at about mile marker 265, when they noticed a potential road rage incident occurring behind them. A blue motorcycle, being ridden by Jeremy Golden, was tailgating a white Nissan Altima, being driven by Gregory Czarnecki, as they both also travelled eastbound on U.S. Highway 6. Czarnecki's vehicle was directly behind the Stanton's vehicle.

As they continued eastbound on U.S. Highway 6, Czarnecki passed the Stantons and another vehicle in a passing zone. A short time later, Golden passed the Stantons and another vehicle on the right shoulder of the road. Golden ultimately pulled ahead of Czarnecki, at which point, he made attempts to get Czarnecki to stop his vehicle. At one point, Golden pulled beside Czarnecki in the opposing lane of traffic, yelled at him, and made gestures with his hands. Czarnecki did not appear to respond to Jeremy's provocations.

At the intersection of U.S. Highway 6 and Highway 93, Czarnecki and Golden turned onto eastbound West 6th Avenue, with Czarnecki in the number one lane and Golden in the number two lane. Golden pulled beside Czarnecki and made gestures toward him simulating a gun with his hand and blowing smoke off his simulated barrel. Sgt. Stanton called 911 to report this ongoing road rage incident.

At a red light at the intersection of eastbound West 6th Avenue and 19th Street, Golden dismounted his motorcycle with his fists clenched and his chest puffed out, and began walking toward Czarnecki, who was behind him. Angela, who was driving the Stanton's vehicle at the time, pulled between Jeremy's motorcycle and Czarnecki's vehicle while Sgt. Stanton, who was in the front passenger seat, armed himself with his off duty pistol and exited the vehicle. When interviewed, Sgt. Stanton indicated that he believed that Czarnecki was at risk of being assaulted or possibly shot by Golden.

Sgt. Stanton approached Golden, with his pistol at the "low ready" position, identified himself as a police officer, and ordered Golden to the ground. Golden expressed his belief that Sgt. Stanton was not who he

claimed to be, and demanded to see his badge or credentials. Golden later reported that he had, in the past, fallen victim to a kidnapping wherein the perpetrators had impersonated police officers.

Sgt. Stanton obtained his CCPD badge from the passenger door pocket of his vehicle and displayed it for Jeremy, who still did not believe that he was a law enforcement officer. Golden began walking back to his motorcycle to leave the scene, with Sgt. Stanton following him. Sgt. Stanton initially took a position at the front of Jeremy's motorcycle, but moved to an offset position to the right of the motorcycle when Golden started it. Sgt. Stanton continued to give Golden commands to get on the ground.

Upon seeing that Golden was not complying with his commands, Sgt. Stanton attempted to grab him by the shoulder of his leather jacket. The smooth texture of the jacket prevented him from grasping it, and Golden brushed his hand away. Sgt. Stanton then grabbed the facemask portion of Golden's helmet, and Golden grabbed Sgt. Stanton's left wrist. When being interviewed by CIRT, Sgt. Stanton indicated that he had, in the past, been dragged down a main street in Central City by a DUI motorcyclist. As a result, he feared that he was about to be dragged down the road by Golden. Sgt. Stanton twisted his left wrist to break Jeremy's grasp while simultaneously pulling his pistol, which was in his right hand, into a "close combat" or "hip tuck" position. When he did this, his pistol discharged into the plastic gas tank faring of Jeremy's motorcycle. The bullet fired from Sgt. Stanton's pistol lodged into the left handle grip control module of Jeremy's motorcycle.

When interviewed by CIRT, it was observed that Golden had superficial scrapes at the base of his left thumb. While he could not say how the injury specifically occurred, he was sure that the injury was not present prior to his confrontation with Sgt. Stanton. Golden had originally stated on scene that he was shot in the leg. An ambulance came to the scene and while Golden was initially uncooperative with paramedics, he eventually did cooperate. No further injuries were sustained by Golden other than the aforementioned injury to his hand.

Sgt. Stanton advised that his decision to arm himself and confront Golden was based on a totality of Jeremy's behavior, to include his driving actions and the simulated gun hand gestures that he displayed toward Czarnecki. Sgt. Stanton indicated that his initial fear was for Czarnecki's welfare which is why he got out of his vehicle at the scene and armed himself with his service revolver. When the confrontation became physical between him and Golden and Golden grabbed Stanton's left wrist, however, he indicated that he feared for his own welfare.

When asked how the gunshot occurred, Sgt. Stanton indicated that he was twisting away from Golden after his wrist was grabbed and that he was "consciously bringing my gun closer to me so it's away and as I do this that's when it discharges." He indicated that his finger was on the rail of the gun and that he did not know if it was instinct but that when the gun discharged, his finger was on the trigger. Sgt. Stanton stated that he did not plan to shoot his weapon but that he was trying to protect his gun and to get the guy away from him. He did not make a conscious decision to shoot the motorcycle or the driver.

When interviewed by CIRT, Jeremy Golden indicated that the initial confrontation between him and the Nissan Altima began when he pulled out in front of the Altima when the Altima's turn-signal was on but it did not turn. He said that they then started passing each other and that he was on the wrong side of the highway at one time. He indicated that, at one point, the Altima bumped him from the back and so he started chasing the Altima. He indicated that he "lost it" and started screaming for the vehicle to pull over and that he would slam on his brakes when he got in front of the car in order to make it stop. The vehicle did not pull over so when they approached 6th Avenue and the vehicle turned, he said that he followed the Altima onto 6th Avenue in order to stop and get a picture of the driver and also of the license plate. His plan was to make a report and to also "blast him" by posting this information on social media.

He got off his bike and he then saw the guy from the Durango jump out with the gun. He said the guy had his gun pointed at him, was screaming and telling him to get down. He also told him that he was going to shoot him. The guy said "Police" but he did not say "I'm a police officer." Golden said they were screaming at each

other and that told the guy to show him his badge. The person went to the car and pulled out a badge but when it was shown to him, Golden could not see the full badge because it was obscured by the person's thumb so he still did not believe the man was a cop. He described that he told the officer it was fake and that he was leaving. He then walked over to his bike and put the bike in gear to pull away. He stated that he man kept grabbing his jacket and then grabbed his helmet. Golden said he threw the man's hand down and that was when the man "just fired one off". He said he screamed that he had been shot and that a police officer arrived at the scene almost immediately after that.

Gregory Czarnecki, the driver of the Altima was interviewed by CIRT and he confirmed the aggressive driving behavior of Jeremy Golden down the mountain road. He described Golden was tailgating and swerving back and forth behind him and that he would pass him and then fall back. He also stated that Golden passed cars on the shoulder to get behind him. He denied at any time bumping his car into Golden's motorcycle. He indicated that Golden made a hand gesture towards him as if he was pointing a gun at him. He indicated that he was in fear of Golden and was trying to get away from him as they drove down the mountain. When they reached the light at 19th and 6th Avenue, his plan was to roll through the light and not stop because he was afraid the man would get off his motorcycle and start an altercation. He said that Golden was yelling and "seemed a little crazy". He described that as he was stopped for the light that an SUV pulled up between him and the motorcycle and that a male got out of the SUV with a gun. He saw the man show a badge to the motorcyclist and that his impression was that the man was a police officer. He said that he was relieved that this person intervened in this situation. He stated that the two individuals then went behind the SUV towards the motorcycle and his view of them was blocked by the SUV. He then heard the gun go off less than a minute later.

The other occupants of Sgt. Stanton's vehicle were his wife, Angela who was driving and his mother-in-law, Judith Hudspeth, who was in the back seat. When interviewed by CIRT, they both confirmed the driving behavior of the motorcyclist and both also indicated that Sgt. Stanton identified himself numerous times as a police officer and that he did not verbally threaten to shoot the motorcyclist but that he ordered him multiple times to get on the ground. Angela Stanton did not see the gun being fired but Judith Hudspeth said that the motorcyclist raised his right arm to prevent Sgt. Stanton from grabbing him and that she saw his gun was pointed down. She said that he was not aiming at the motorcyclist and she did not know if it was a warning shot, if it was accidental or if it was deliberate. Neither of these women had spoken to Sgt. Stanton after the incident and prior to the time of their CIRT interviews.

LEGAL ANALYSIS

This incident involved the use of a deadly weapon by a local law enforcement officer who was off-duty and outside his jurisdiction. He and his family were first-hand witnesses to reckless driving behavior involving two separate vehicles. Jeremy Golden, the motorcyclist, appeared to be the primary aggressor, based upon the observations of Sgt. Stanton, his family members and Mr. Czarnecki. Sgt. Stanton was concerned enough about the dangerousness of the driving behavior to attempt to contact 911 on a number of occasions as the vehicles progressed down the canyon towards Golden. Unfortunately, those calls were not successful and by the time contact was made with Golden PD, the situation appeared to be escalating into a physical conflict.

Sgt. Stanton took it upon himself to intervene based upon his concerns that Mr. Golden was going to attack the driver of the white Nissan Altima. These concerns were not unreasonable based upon the aggressive driving behavior of Mt. Golden which were focused on the Nissan, Mr. Golden's gestures of simulating a weapon towards the Nissan and Mr. Golden's posture and demeanor (clenched fists, chest puffed out) as he got off his motorcycle to approach the Nissan. Although his wife was on the phone with Golden Police Dispatch reporting the incident and their location, Sgt. Stanton determined that it was immediately necessary to intervene and to

arm himself with his firearm in order to attempt to protect the driver of the Altima Nissan. Unfortunately, the resulting interaction he had with Mr. Golden did not immediately defuse the situation.

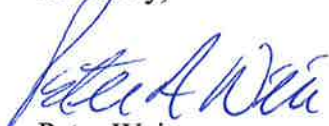
Based upon the evidence from this investigation, the shooting of the motorcycle by this officer does not appear deliberate or intentional and was an apparent accident. Sgt. Stanton's initial encounter with Golden was in an effort to defend Czarnecki from being assaulted by Golden. When Golden ignored Sgt. Stanton's commands to get on the ground, challenged Sgt. Stanton's police authority and returned to his motorcycle to leave the area, Sgt. Stanton attempted to keep Golden at the scene for the local authorities to handle. His efforts to physically restrain Golden were unsuccessful and when Golden grabbed his wrist, his concerns shifted to protecting himself and specifically attempted to prevent Golden from being in a position close to his weapon. The manner in which he was twisting and pulling away which resulted in his finger being on the trigger which caused his gun to fire may indicate some negligence on his part. However, based upon the experience of this office and the totality of these circumstances, this conduct does not rise to the level of being charged criminally.

It is my belief that our office does not have a reasonable likelihood of conviction for any charge involving negligence by this officer based upon the aggressiveness of Mr. Golden on that day and Sgt. Stanton's well-meaning attempts to protect the public from a very angry and physically aggressive person. Additionally, Sgt. Stanton's actions to protect Czarnecki and then himself raise the legitimate issues of defense of others and self defense. Sgt. Stanton's handling of his weapon which resulted in a shot being fired into the motorcycle can be appropriately analyzed as to whether it specifically complied with the police procedures adopted by his law enforcement agency. The investigation by the 1st JD CIRT does not review procedural compliance.

The decisions by Sgt. Stanton to intervene in this road rage incident, while off-duty, and to do so armed with his weapon outside his jurisdiction are also police procedural matters that are appropriately addressed by his employing agency, the Central City Police Department. None of that conduct implicates any criminal statutes and therefore the CIRT investigation does not evaluate those decisions of Sgt. Stanton.

Based upon the investigation of this incident, it is the final conclusion of my office that no criminal charges are appropriate to file against Sgt. Patric Stanton.

Sincerely,



Peter Weir

First Judicial District Attorney

cc: 1st Judicial District CIRT Coordinator/Commander Bud Baumgartner