



COPY

BILL THIEBAUT
District Attorney

OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO

August 31, 2008

Kirk Taylor
Pueblo County Sheriff
909 Court Street
Pueblo, CO 81003

Re: Decision Letter
Officer-Involved Incident Concerning
Sheriff Deputy Michael Hargrove

Dear Sheriff Taylor:

The investigation and legal analysis regarding the above matter have been completed. My decision, based on criminal law standards, does not limit administrative action by the Pueblo County Sheriff's Office where non-criminal issues can be reviewed, or a civil action where less stringent laws, rules, and legal levels of proof apply.

Background

Effective January 1, 2006,¹ several law enforcement agencies in Pueblo County entered into a revised "Officer-Involved Incident Protocol of The Tenth Judicial District" (CIT agreement). Among those who are signatories to the CIT agreement include the Pueblo Police Department, the Pueblo County Sheriff's Office and the Colorado Bureau of Investigation (CBI). The CIT agreement establishes a team approach to the investigation of certain critical incidents involving peace officers. Such a team provides

¹ Prior to its effective date of January 1, 2006, the original CIT agreement was revised on December 21, 2005. The revisions are not material or relevant to this inquiry.

any participating law enforcement agency requesting assistance proficient investigators to assist in the investigation of a critical incident to enable a “thorough, unbiased investigation of any critical incident involving a law enforcement officer.” Notably, the protocol adopted in the CIT agreement recognizes that “[A]long with an open investigation for public evaluation, the incident investigators and agency managers must understand the legal rights, obligations and authority of the agencies and individuals involved.” *Officer-Involved Incident Protocol of the Tenth Judicial District, Statement of Pueblo County Law Enforcement Agencies.*

Statement of Investigation and Facts

Triggering the CIT Agreement

The Pueblo County Sheriff’s Office invoked the agreement’s investigative protocols for this incident. The investigation was conducted by investigators from the Pueblo Police Department, the Pueblo County Sheriff’s Office, the Colorado Bureau of Investigation and District Attorney’s Office.² Reports were received from agencies involved in the investigation as well as autopsy reports and opinions from experts, including a forensic pathologist.

Facts

Overview of Facts

On January 15, 2008, at approximately 5:40 a.m. Sheriff Deputy Rick Rhodes (Deputy Rhodes) responded to a 911 call stating that there was an unconscious female located at 127 W. Sterling Place in Pueblo West, Colorado. American Medical Response also responded to the scene. Sheriff Deputy Michael Hargrove (Hargrove) met Deputy Rhodes and medical personnel at the front door of the residential address.

Hargrove directed Deputy Rhodes and the medical personnel to the bathroom of the house, which is adjacent to the master bedroom. Wearing only a sports bra and no other clothing, the female, identified as the wife of Hargrove, was lying on a towel in the bathroom. Attempts to revive Julia Hargrove (Mrs. Hargrove) by a paramedic failed.

Hargrove told Deputy Rhodes that on the evening of January 14, 2008, he and Mrs. Hargrove had gone to a late Christmas party at “Showtime” (Showtime Entertainment & Dining Complex) in Pueblo where she was employed. Hargrove wanted

² This was the fourth investigation involving the CIT agreement.

to leave the party around 10:00 p.m. Mrs. Hargrove did not want to leave. An argument ensued. Ultimately, Hargrove left the party. He took Mrs. Hargrove's phone and camera with him.

According to Hargrove, around 2:30 a.m. on January 15, Mrs. Hargrove returned home and was very intoxicated. He told Deputy Rhodes that another argument ensued. Following the argument, Mrs. Hargrove went to the spare bedroom, while Hargrove went to sleep in the master bedroom.

Hargrove recounted that when he woke up in the morning he noticed that Mrs. Hargrove was lying unconscious in a fetal position on the floor next to the master bedroom bed that he was sleeping in. He said that he picked up Mrs. Hargrove, and when he did so a large quantity of liquid came out of her mouth. Hargrove indicated that he thought Mrs. Hargrove had just passed out, so he took her clothes off and put her in the shower. However, when she could not be awakened he called 911 around 5:30 a.m. and started CPR.

Notably, in subsequent interviews Hargrove indicated that Mrs. Hargrove woke him up around 3:00 a.m. by trying to climb over him while he was in bed. He pushed her away from the bed and she scratched him. She then left the room. At the scene, Deputy Rhodes did notice some scratches on Hargrove's neck. The scratches were consistent with fingernail scratches.

During the evening of January 14 and the morning of January 15, the Hargroves' children, Devin, age 11, and Dylan, age 7, were present in the home. They were asleep in a bedroom located across the hall from the master bedroom. The children were interviewed. Devin said that he woke up when he heard his mother say, "Stop messing with me." He said he then fell back asleep. Apparently, Dylan did not wake up.

After Mrs. Hargrove was pronounced dead, Hargrove was transported to the Pueblo County Sheriff Department Annex in Pueblo West. CBI and the Pueblo County Sheriff's Department analyzed the crime scene.

CBI

CBI indicated that there was no presence of spermatozoa on Mrs. Hargrove's vaginal, oral or rectal swabs. Hargrove's DNA was found under Mrs. Hargrove's fingernails. A stain on Mrs. Hargrove's dress and swabs from her inner crotch revealed the DNA of an individual named Gary Dionese (Dionese).

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Gary Dionese

Dionese was at the Christmas party on January 14. When interviewed, he stated that he and Mrs. Hargrove left the party around 1:45 a.m. on January 15 with the intent to drive her home. Dionese said that en route to her home Mrs. Hargrove put her head in his lap because she was cold. According to Dionese, Mrs. Hargrove made a pass at him but he declined. Dionese was directed by Mrs. Hargrove to her correct address as he was not able to find it alone. As he drove closer to Mrs. Hargrove's home she became more upset. Dionese indicated that Mrs. Hargrove exited his vehicle, a pickup truck, around 2:30 a.m. January 15 to gain entry into her home. He observed her attempt to enter the front door. Apparently finding it locked, Mrs. Hargrove walked around the right side of the house. She came back around the left side of her home and waved at him. Dionese took this wave as a signal that he could leave. He watched Mrs. Hargrove until she stepped into the home.

The truck used by Dionese was examined by CBI. Stains in the truck did not have blood or semen located in them.

Polygraph

Hargrove and Dionese consented to take polygraph examinations which were conducted by Agent Marc Micciche of the CBI.

While Dionese, in the opinion of Agent Micciche, truthfully answered questions, Agent Micciche could not render an opinion as to the truthfulness of Hargrove's responses. During the examination, Hargrove took deep breaths, sneezed, sniffed and cleared his throat which left the examiner unable to render an opinion regarding the truthfulness of Hargrove's responses.

The results of the polygraph examinations were reviewed by Bruce Isaacson, a polygraph examiner from Arapahoe County, Colorado. Mr. Isaacson agreed with the conclusions and opinions of Agent Micciche.

Review by Steven A. Rhoads, PH.D

Steven A. Rhoads, Ph.D. (Dr. Rhoads), a reserve officer with the Pueblo Police Department, was asked to review the case. Dr. Rhoads reviewed the file and spoke to the CIT team.

Initially, Dr. Rhoads was of the opinion that Hargrove's description of the events was incredible in nature and his behavior and actions were inconsistent with somebody who had no involvement with the demise of his wife, Mrs. Hargrove.

Dr. Rhoads was asked to view the polygraph examination of Hargrove administered by CBI. Subsequent to the polygraph examination, Dr. Rhoads met with Hargrove. During his discussion with Hargrove, Dr. Rhoads inquired of Hargrove about the events leading up to the death of Mrs. Hargrove. At the conclusion of the discussion, Dr. Rhoads was of the opinion that Hargrove's answers and behaviors were consistent with a person being truthful in the recitation of the events. Although there remained some inconsistencies in his story, Dr. Rhoads found his responses to be credible.

Other Witness Interviews

Numerous interviews were conducted with relatives, neighbors, friends of Mr. and Mrs. Hargrove, and individuals who attended the Christmas party.

Vera Allen, Hargrove's mother, had a close relationship with Mrs. Hargrove and spoke with her daily. She had spoken with Mrs. Hargrove the afternoon preceding her death. Vera Allen indicated that she lived with the couple from February through November 2007, and said she only witnessed an argument between them now and then. She stated that she never witnessed Hargrove being physically abusive with Mrs. Hargrove.

One of Mrs. Hargrove's sisters, Aurelia Lafebres, stated that she and Mrs. Hargrove spoke about two days prior to her death and that she appeared happy. She indicated, as did Mrs. Hargrove's other sister, Anna Hernandez, that the couple had a good relationship.

Kelly Hart, a neighbor of the Hargrove family, indicated that at times she noticed bruises on Mrs. Hargrove. Mrs. Hargrove would comment to her that "Oh, Mike is at it again." Ms. Hart was of the opinion that Hargrove was very controlling in the relationship with his wife.

Melissa Jones was a friend of Mrs. Hargrove. She saw Mrs. Hargrove the day before her death. Ms. Jones took her to Wal-Mart in the afternoon because Hargrove had taken the keys to Mrs. Hargrove's vehicle leaving her without access to any transportation. Ms. Jones stated that Mrs. Hargrove had told her that Hargrove was physically abusive and very controlling. On one occasion, as recounted by Ms. Jones, Hargrove was angry at his wife because she had gone out drinking with his mother, Vera

Allen. When Mrs. Hargrove arrived home after being with his mother, he placed his wife into handcuffs and threw her into the shower.

Ms. Jones indicated that she had seen several bruises on Mrs. Hargrove over the past two years. According to Ms. Jones, Mrs. Hargrove indicated that the bruises were a result of Hargrove's physical abuse. Ms. Jones stated that Mrs. Hargrove had told her that if anything ever happened to her it was him (Hargrove) who would be responsible.

Notably, on January 15 Ms. Jones spoke with Hargrove about Mrs. Hargrove's death. Ms. Jones stated that he told her that his wife drank too much, threw up in her sleep and died.

Scott Valentine, who is a co-worker with Hargrove, related that he never saw Mr. and Mrs. Hargrove argue and that he thought their relationship was fine. Mr. Valentine's wife also said that the Hargroves appeared to be a happy couple.

Several people who were in attendance at the party were interviewed. Most of the people at the party saw Mrs. Hargrove smiling and having a good time. A few people witnessed an argument between the couple. Mrs. Hargrove was apparently crying when Hargrove left the party. One witness indicated that she saw Mrs. Hargrove crying outside. Mrs. Hargrove told her that Hargrove was angry because she was talking to other people, so he left the party.

Another witness at the party stated that Mrs. Hargrove had asked her if she could spend the night at her house because of the argument. At the end of the night, the witness could not find Mrs. Hargrove. She assumed that Mrs. Hargrove had gone home.

Two witnesses who were in attendance at the party revealed that Mrs. Hargrove hit her head while dancing at the party. These witnesses indicated that Mrs. Hargrove was seated at the edge of a chair when she fell off of it. She fell to the ground and landed on her butt. The chair came forward and hit her in the back of the head. Mrs. Hargrove did not complain of any injuries at that time. Notably, these are the only two individuals out of about forty-five people at the party who said they saw Ms. Hargrove fall. Video of the dancing did not reveal that Mrs. Hargrove fell.

Autopsy

Dr. Kelly Lear-Kaul (forensic pathologist), an expert forensic pathologist from Arapahoe County, Colorado, performed the autopsy upon Mrs. Hargrove. In her opinion, the cause of death was "severe craniocerebral injury due to blunt force head trauma."

The "autopsy examination revealed a right-sided subdural hematoma with an impact site noted with hemorrhage into her left temporalis muscle. There was evidence of mass effect with right to left axial herniation of her brain." The forensic pathologist noted multiple bruises on Mrs. Hargrove's extremities. However no other significant injuries were noted. Other findings of the forensic pathologist included the fact that there was no indication of significant natural disease; the toxicology report indicated that Mrs. Hargrove had a peripheral blood alcohol level of .188 mg/dl and a subdural blood alcohol level of .184 mg/dl; and Mrs. Hargrove tested positive for Tetrahydrocannabinol (THC), the main psychoactive substance found in a cannabis plant.

Dr. Kenneth Koons, a medical neurologist, reviewed the autopsy photos on January 25, 2008. He observed the contusion and opined it was a result of blunt force trauma. In his opinion the injury was caused by a traumatic event — something hit Mrs. Hargrove's head or she hit something with her head. Dr. Koons indicated that "it could take hours for someone who had sustained an injury like this to die."

In a follow-up discussion with Deputy District Attorneys Steve Jones and Atrelle Jones, the forensic pathologist was of the opinion that Mrs. Hargrove would have died within an hour of the impact.

Discussion with Dr. Kelly Lear-Kaul

Deputy District Attorneys Steve and Atrelle Jones discussed the autopsy, and the forensic pathologist's findings and conclusions with her.

At the outset, the forensic pathologist identified the fact that while there was no external evidence of impact, there was subcutaneous (beneath the skin) evidence of impact. In her opinion the point of impact was the left temple area.

The forensic pathologist was of the opinion that it was not unusual to not see evidence of trauma on the outside surface of the skin. She stated that not all blunt objects leave such marks. Additionally, she noted that Mrs. Hargrove's hair was very thick and could have provided some protection to the surface of the exterior scalp. It was the opinion of the forensic pathologist that most likely the victim's head came in contact with something large, hard and flat. In her opinion a hand most likely would not be the source of such an injury, and that the amount of force necessary to cause such an injury, would at a minimum cause injury to the hand.

The forensic pathologist opined that considering the level of Mrs. Hargrove's intoxication the injury could have been produced by a trip and fall into a hard flat object.

Notably, Mrs. Hargrove could have also been pushed and have fallen into a hard flat object. Or she could have been hit in the head with a flat hard object. Ultimately, the expert forensic pathologist found it impossible to provide an opinion to a reasonable degree of medical certainty as to exactly what occurred.

It was her opinion that the time line of events as recounted by Hargrove could have occurred. In her opinion, death would not have occurred instantly, nor would Mrs. Hargrove have become unconscious immediately. Most likely, according to the forensic pathologist, Mrs. Hargrove died within an hour of impact.

In summary, the expert forensic pathologist could not say with any certainty that this incident was an act of homicide.

Procedural Considerations

Administrative Actions

An administrative review is controlled by less stringent legal levels of proof and rules than a *criminal review* and can provide both positive remedial options and punitive sanctions. This process can be said to result from an agencies' "internal affairs" investigation and provides significantly broader latitude in accessing and using information concerning the background, history and job performance (prior conduct) of the involved officer. Issues related to the strategical decisions made by the involved officer leading up to the critical incident are most effectively addressed by the department's administrative review. This type of information may have limited or no applicability to *criminal reviews*, but is very important in making administrative decisions.

There are a variety of actions that can be taken administratively by the department in response to its' review. On the one hand, the department's review may reveal that no action is required. On the other hand, the department may determine that rules were violated and that formal discipline may be appropriate. Or, the department may make findings that support additional training for all officers on the force, or the need for changes in departmental policies, procedures and rules. In summary, departmental action can be taken for the benefit of the community, department, its' officers or the involved officer.

Civil Law versus Criminal Law

The civil law provides remedies for essentially private wrongs — actions in which the state may not have an interest. Monetary damages can be sought under a civil suit for a wrongful act that violates a legal right of an injured party. Plaintiffs in civil litigation are required to prove their case by a preponderance of the evidence or some lesser standard of proof; although some cases have indicated that “clear and convincing evidence” may be the required standard of proof.

A crime normally involves a wrongful act specifically prohibited by the criminal law. In most cases the law requires the wrongful act be accompanied by criminal intent. In other words, a person intentionally commits a prohibited act. Of course, a criminal action requires that the prosecutor prove its case “beyond a reasonable doubt” — the highest standard of proof. Notably, the criminal law and civil law can overlap. Conduct by a person that constitutes a crime can also involve a tort (a wrongful act that violates a legal right of an injured party). For example, a person who kills another person can be guilty of a crime and have a verdict of guilty rendered against him or her in a civil suit for damages.

It is the general responsibility of a district attorney to review cases prior to placing them into the judicial branch’s court system. Put simply, a district attorney has a criminal “charging” responsibility. Charging may be through the complaint/information process or the grand jury presentment process. The charging “discretion” reposed in a district attorney is an awesome power to be used judiciously. If ever justice is to be established in a community, it will first come from a local district attorney’s charging practices. This is the area of discretionary power that best defines a prosecutor’s personal criminal justice philosophy. Accordingly, if there is reasonable likelihood or probability of conviction, a district attorney may conclude that one has committed a chargeable offense. Among other things, this standard takes into account the quantity, quality, admissibility and credibility of available evidence.

Legal Analysis – Criminal Law

Homicide in General

Homicide is the killing of one human being by another. Section 18-3-101 (1) and (2), C.R.S. Criminal homicide encompasses a wide variety of acts. The acts and the intent with which they are committed determine whether the homicide is intentional or unintentional. The penalties are more severe when the killing is intentional rather than as a result of recklessness, negligence, or carelessness.

The Corpus Delicti Requirement

Corpus delicti means the body or substance of the crime (proof that a crime has been committed). The prosecution must prove in all criminal cases that the crime charged has been committed. For example, if the prosecution cannot prove the death of a person was not accidental, it cannot prove murder.

One way to understand the concept of *corpus delicti* is to realize that a person cannot be tried for a crime unless it can be first shown that the offense has occurred. In other words, to establish the *corpus delicti* of a crime, the state has to demonstrate that a criminal law has been violated and that someone violated it. As one court said, "*corpus delicti* consists of a showing of: 1) the occurrence of the specific kind of injury and 2) someone's criminal act as the cause of the injury." *Willoughby v. State, Ind.*, 552 N.E.2d 462 (1990).

Another court described the concept this way: "The rule in criminal cases is that the coincidence of circumstances tending to indicate guilt, however strong and numerous they may be, avails nothing unless the *corpus delicti*, the fact that the crime has been actually perpetrated, be first established. So long as the least doubt exists as to the act there can be no certainty as to the criminal agent." *Poulos v. Commonwealth*, 174 Va. 495, 6 S.E.2d 666 (1940).

In a prosecution for murder the essential elements of the *corpus delicti* are establishing, by direct or circumstantial evidence, the death of a human being and the fact that the death was caused by a criminal act of another person. Included within this definition is the requirement that the victim's death was the natural and probable consequence of another person's unlawful conduct. That is, the prosecution must establish the cause of death and show that death was caused by the criminal act of another. As a general rule, *corpus delicti* must be established beyond a reasonable doubt.

Body Without Proof of the Cause of Death Cases

The body of the deceased is available in most criminal homicide cases. But if doctors are not able to testify specifically that the cause of death was an unlawful act, *corpus delicti* has not been proved. Unexplained deaths are unusual but not rare in medical history. If doctors are unable to determine the cause of death, or if they are uncertain and unable to state whether the death results from a criminal act or natural causes, then reasonable doubt may have been created.

The testimony of doctors that they suspected or had a hunch that a criminal act was the cause of death is not sufficient to prove *corpus delicti*. *Herren v. People*, 28

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Colo. 23, 62 P. 833 (1900), a long standing Colorado Supreme Court case, illustrates the *corpus delicti* requirement.

In *Herren*, it was alleged that Mrs. Herren was murdered by her husband on January 23, 1899. The prosecution's theory of the case "... was that it resulted from a blow on the head inflicted by her husband on the preceding day." *Herren*, at p. 833.

The morning preceding Mrs. Herren's death, she and her husband argued, which was observed by their 12-year-old son. Arguments between the couple intermittently occurred during their marriage of approximately fourteen years. No evidence existed that Mrs. Herren's husband used any force or physical violence against her during their argument that morning. In fact, after the argument and during that day, Mrs. Herren spoke with several individuals in Denver, including a brief conversation with one person who testified that she told him that her husband knocked her down cold. Nothing was said about the time when she was struck. Notably, she appeared in a dazed condition, but did not complain of pain nor did she request a physician. As she interacted with other people that day, she did not speak about a blow. Mrs. Herren went to her daughter's house, made no complaint about an injury, and remained there during that night. The next day she ordered an express wagon to take her home. On her way home she collapsed in the wagon and died.

Based upon these facts, the court found that there was not sufficient proof of the *corpus delicti* by competent and legitimate evidence. The court emphasized that two surgeons who performed the autopsy differed in their conclusion as to the cause of death.

A Prosecutor Must Act Within the Bounds of Professional Ethics

A district attorney is not an ordinary litigant. He represents the People of the State of Colorado. Section 20-1-102 C.R.S. "In representing citizens, the prosecutor is vested with broad discretionary authority to investigate and charge criminal conduct." See: *People in Interest of J.A.L.*, 761 P.2d 1137 (Colo. 1988). Put simply, the role of a prosecutor is to seek the truth and for justice to be done, not merely to convict. ABA Standards for Prosecution and Defense Standards, 3-1.2(c) (1993).

A prosecutor's duty is to "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Rule 3.8(a), Colo. RPC [Colorado Rules of Professional Conduct].

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Conclusions

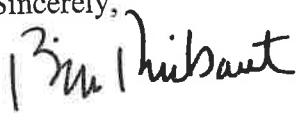
The prosecution cannot prove the death of Mrs. Hargrove was not accidental. That is, the prosecution cannot establish the cause of death *and* show that death was caused by the criminal act of Hargrove. The *Herren* case is instructive. Competent and legitimate evidence does not exist at this time which would allow prosecutors to establish proof of the *corpus delicti*.

It is the unequivocal opinion of the expert forensic pathologist that the medical evidence is such that she cannot render an opinion to a reasonable degree of medical certainty as to how the injury to Mrs. Hargrove occurred. In other words, the forensic pathologist cannot say with any certainty that this incident was an act of homicide. If a medical doctor is unable to state whether the death of a person results from a criminal act or natural causes, then there is reasonable doubt that the *corpus delicti* has been established.

Decision³

Taking into consideration the quantity, quality, admissibility and credibility of available evidence I conclude that there is not a reasonable likelihood or probability that Deputy Michael Hargrove committed a chargeable offense that can be proven beyond a reasonable doubt, unanimously, to a jury. Accordingly, no charges will be filed against him.

Sincerely,



Bill Thiebaut
District Attorney

cc: Chief James Billings, City of Pueblo Police Department
Capt. Scott Copley, Colorado State Patrol

³ According to the CIT agreement, as soon as practical after the critical incident and receipt of the investigative report, the District Attorney "...shall determine whether anyone committed a crime. The District Attorney shall communicate his findings, conclusions of law and decision via a decision letter to the chief law enforcement officer of the venue and employer agencies involved." *Officer-Involved Incident Protocol of the Tenth Judicial District, District Attorney Responsibilities*, at page 37.