



COPY

BILL THEBAUT  
District Attorney

OFFICE OF THE DISTRICT ATTORNEY  
TENTH JUDICIAL DISTRICT, COLORADO

November 22, 2006

VIA: HAND DELIVERY

Captain Timothy Nawrocki  
Colorado State Patrol  
902 Erie Ave.  
Pueblo, CO 81001

Re: Decision Letter  
Officer-Involved Incident Concerning  
Trooper Larry Brooks

Dear Captain Nawrocki:

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 Colorado State Patrol 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<sup>1</sup> 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 Colorado State Patrol, the Pueblo Police Department and the Pueblo County Sheriff's Office. The CIT agreement establishes a team approach to the investigation of certain critical incidents involving peace officers. Such a team provides 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

---

<sup>1</sup> 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.

Captain Timothy Nawrocki  
November 22, 2006  
Page Two

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 Colorado State Patrol invoked the agreement’s investigative protocols for this incident. The investigation was conducted by investigators from the Colorado State Patrol, the Pueblo Police Department, the Pueblo County Sheriff’s Department, and the District Attorney’s Office.<sup>2</sup> Reports were received from agencies involved in the investigation as well as diagrams of the accident scene and accident reconstruction data.<sup>3</sup>

### ***Facts***

Shortly after 12:00 a.m. on October 13, 2006, Colorado Springs Police Department (CSPD) received a report to locate a stolen vehicle. Allegedly, Ricky Allen Acre, age 15, a resident of Hudson Group Home in Colorado Springs, had stolen a 1991 Dodge Ram passenger van (van) from the Home. CSPD located the van traveling southbound on Interstate 25 through the City of Colorado Springs. Several officers were in pursuit of the van as it reached speeds of 65-90 m.p.h. The pursuit was terminated at about Circle Drive as the van approached a nearby construction zone on southbound Interstate 25.

While at the construction site at mile marker 135 on Interstate 25 in El Paso County, Colorado, Colorado State Patrol (CSP) Trooper J.C. Wolff, Jr., overheard a call about the stolen van. He observed a large white van at his location traveling south on the interstate at a high rate of speed. After confirming with dispatch that the suspected stolen vehicle was indeed a “Dodge van,” the trooper proceeded after the vehicle southbound on Interstate 25 to verify if this white van was the suspected stolen vehicle. Trooper Wolff caught up to the van at mile marker 131. The van was in the right, southbound lane traveling at 100 m.p.h. in a posted 75 m.p.h. zone. He radioed dispatch to ascertain the registration on the van in order to determine if the van was the alleged stolen vehicle. After dispatch verified the van was stolen, Trooper Wolff activated his emergency audible or visual signals, and gave chase. Notably, Trooper Wolff, and the suspect

---

<sup>2</sup> This was the second investigation involving the CIT agreement.

<sup>3</sup> The CIT agreement provides that: “Vehicular collisions...shall be investigated with the assistance of accident investigation specialists from any of the participating agencies.” *Officer-Involved Incident Protocol of the Tenth Judicial District, Venue Determination*, at page 11.

Captain Timothy Nawrocki  
November 22, 2006  
Page Three

driving the van, had to pass approximately 12 vehicles traveling southbound on Interstate 25 between mile marker 129 and 106.

Trooper Wolff was joined in his pursuit efforts by state patrol troopers from Pueblo County. At mile marker 106 in Pueblo County stop strips were deployed at the request of Trooper Wolff. When the van hit the spikes the van's speed slowed drastically as the passenger side wheels slowly deflated. The pursuit slowed to about 60 m.p.h. as the passenger side wheels came apart at mile marker 104. Three CSP cruisers joined the pursuit behind Trooper Wolff at mile marker 103. Trooper Wolff radioed his intention to perform a rolling roadblock. At about mile marker 101, he passed the van on the right and maintained the right lane of southbound Interstate 25—another CSP cruiser was on his left and two others were following closely behind him. The CSP cruisers slowed to approximately 30 m.p.h. when the driver of the van brought it very close to the rear bumper of Trooper Wolff's cruiser. As the CSP cruisers slowed down, the driver of the van accelerated quickly and rammed the left rear of Trooper Wolff's cruiser, whereupon the cruiser lost power. Trooper Wolff started to coast to the right shoulder of the road when the driver of the van came along the side of the cruiser and rammed it on the driver's side. Although Trooper Wolff was forced to the shoulder of the interstate, the pursuit continued on southbound Interstate 25.

Despite the fact that the passenger side wheels were on rims, the van again picked up speed reaching speeds of nearly 70 m.p.h. As the pursuit continued through the City of Pueblo the van was switching from lane to lane and came close to striking several vehicles. Pueblo Police Department had all the exits closed and the van continued to pick up speed reaching 90 m.p.h.

The pursuit had been joined by Trooper Larry Brooks who was driving his cruiser with emergency audible or visual signals operational. He requested permission to utilize a Tactical Vehicle Intervention technique (TVI). While he was not given permission to do so by the CSP communications officer, CSP Sergeant K.L. Crider radioed that utilizing TVI was at Trooper Brooks' discretion. At mile marker 94, Trooper Brooks got in close to the van to attempt a TVI. When the trooper would close in on the van it swerved to block him, nearly striking him on several occasions, at speeds of about 80 m.p.h. By mile marker 90, Trooper Brooks was able to get next to the van and perform the TVI. The trooper's cruiser pushed the left rear of the van with his right front bumper—the van began to rotate counterclockwise, turned broadside and went into the median where it rolled approximately 2½ times coming to rest on its top facing Northeast, fatally ejecting the driver who was identified as Ricky Allen Acre.

## **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 agency's "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 strategic 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 have determined 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 driver whose car hits another car and 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**

### ***Pursuit Law & Pursuit Policy***

#### **Statutory Law Privileges and Conditions**

Colorado law is clear that the driver of an authorized emergency vehicle, when in pursuit of an actual or suspected violator of the law, and when making use of audible or visual signals: 1) may exceed the lawful speeds or exceed the maximum lawful speed limits so long as he does not endanger life or property, or 2) may disregard regulations governing directions of movement. Section 42-4-108 (2)(c) and (d), C.R.S.<sup>4</sup> The statute goes on to clearly state that a driver of an authorized emergency vehicle is not relieved from the duty to drive with due regard for the safety of all persons. Section 42-4-108 (4), C.R.S.

#### **Case Law Inquiries**

*Corsentino v. Cordova*, Colo., 4 P.3d 1082 (2000), dealt with a circumstance where a Pueblo County deputy sheriff received a dispatch to a home burglary alarm. The deputy responded to the dispatch as an emergency call, activating the sirens and lights of his sheriff cruiser. In route to the home burglary alarm, the deputy was driving at a speed of 50-60 m.p.h. in a 35 m.p.h. speed zone. While driving at this speed, the deputy approached an intersection at the same time as another person was making a left turn in her car. The two cars collided. Notably, before the impact, the deputy still had his emergency sirens and lights activated, but did not slow down as he approached the intersection. The resulting collision caused the death of the person making the left turn.

---

<sup>4</sup> Under very narrow instances an authorized emergency vehicle being operated as a police vehicle while in actual pursuit of a suspected violator may not need to display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator. Section 42-4-108 (3), C.R.S. *But cf. Tidwell v. City & County of Denver*, Colo., 83 P.3d 75 (2003).

Captain Timothy Nawrocki  
November 22, 2006  
Page Six

Among other things, *Corsentino* addressed: 1) the legal standard under the Colorado Governmental Immunity Act (GIA) for determining when an emergency vehicle operator faces an exigency that calls for immediate action; and 2) whether an emergency vehicle operator exceeding the legal speed limit must comply with the condition of section 42-4-108(2), C.R.S., which allows an emergency vehicle operator to speed “so long as said operator does not endanger life or property,” in order to fall within the provisions of the GIA that grant immunity to emergency vehicle operators.

In establishing the proper standard for determining whether an emergency vehicle operator was responding to an emergency call<sup>5</sup> under section 42-4-108 (2), C.R.S., the court reasoned that: “... it is an objective standard from the perspective of a reasonable emergency vehicle operator.” *Corsentino*, at p. 1088. And the court further reasoned in *Corsentino* that: “... whether an emergency vehicle operator endangered life or property while speeding ...” can be answered by an “... inquiry to the relationship between the conduct of the emergency operator prior to the accident and the circumstances surrounding the conduct.” *Corsentino*, at pp. 1092 and 1093.

The *Corsentino* case is instructive in analyzing this critical incident. Even though the case dealt with a civil action and the interplay between the conduct of a deputy sheriff and the GIA, its reasoning gives clarity to the standards imposed upon authorized emergency vehicle operators who are facing the possibility of criminal culpability for their conduct.

#### **Pursuit Policy Requirements**

Moreover, courts give substantial weight to a department’s pursuit policy governing the proper response action for certain circumstances. *Corsentino, supra*. The CSP had an individual department pursuit policy in force at the time of the incident which specifically addressed terminating a pursuit by use of a TVI technique and complying with “any multi-jurisdictional agreement to which the Colorado State Patrol is a party.” This was made available to the District Attorney’s office. In 1999 CSP entered into an agreement with other Pueblo County law enforcement entities entitled “Multi-Jurisdictional Police

---

<sup>5</sup> Presumably the objective standard established in *Corsentino* applies “... when in pursuit of an actual or suspected violator of the law ...” Section 42-4-108 (2), C.R.S.; and *Corsentino, supra*, citing with approval *Fiser v. City of Ann Arbor*, 417 Mich. 461, 339 N. W.2d 413 (1983): objective standard proper for determining whether a law enforcement officer properly responded to a car chase as an emergency.

Pursuit Policy, Pueblo County” (Pursuit Policy). That policy requires that an officer in pursuit:

- “A. Give warning to other motorists that a pursuit is in progress by using emergency lights and sirens on authorized emergency vehicles involved in a pursuit.
- B. Give due consideration to the nature of the offense which gives cause to initiate the pursuit. Officers are encouraged to weigh the nature of the offense, such as serious felony vs. a misdemeanor, when opting to participate in a pursuit.
- C. Consider alternative methods of apprehending the suspect(s).
- D. Consider the danger to the public if the suspect(s) is not immediately apprehended.
- E. Weigh the risk to the public and others involved due to the continued participation of agencies involved in the pursuit. For example, the speed of a pursuit should be reasonable under the conditions.
- F. Give due consideration to existing driving conditions, including road conditions, traffic congestion, weather conditions, and vehicle conditions if known at the time.” *Pursuit Policy*, II. A-F, p. 1-2.

## Conclusions

The facts clearly disclose that CSP troopers, including Trooper Brooks, were in pursuit of an actual or suspected violator of the law and made use of audible or visual signals while in pursuit. For example, the driver of the van was suspected of aggravated motor vehicle theft in violation of section 18-4-409, C.R.S. And during the pursuit he assaulted at least one peace officer contrary to section 18-3-203 (1) (c), C.R.S., as well as attempting vehicular assault, section 18-3-205, C.R.S. Moreover, Trooper Brooks pursued the suspect by driving his cruiser with due regard for the safety of all persons, even though he exceeded the lawful speeds or exceeded the maximum lawful speed limits, and disregarded regulations governing directions of movement at the time of employing the TVI technique.

In an attempt to apprehend the suspect, several safe, less intrusive alternative methods to terminate the CSP pursuit were undertaken—stop strips north of Pueblo, a rolling roadblock just as the suspect entered Pueblo, interstate exits within Pueblo were blocked off with the assistance of the Pueblo Police Department. There was a danger to the public if the pursuit had not been terminated in an attempt to apprehend the suspect. The TVI technique was utilized only at a time and place on the interstate that was safe under all

Captain Timothy Nawrocki  
November 22, 2006  
Page Eight

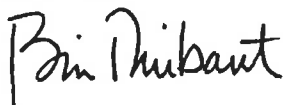
the attendant circumstances (mile marker 90, which is a remote area of Pueblo County nearly five miles from the Pueblo city limits). Moreover, Trooper Brooks followed appropriate pursuit policy in employing the maneuver—he requested permission from command staff to utilize TVI, and then reported to them his decision to use it. When it was forced off the road, the van had been disabled in such a fashion that it could not be driven safely at the speeds that it was being driven (despite the fact that the passenger side wheels were on rims, the van's speed reached nearly 70 m.p.h.). Trooper Brooks' speed and actions were reasonable under the conditions as he had to weigh the risk to the public and others involved in the pursuit should the pursuit not be terminated by the TVI technique.

In summary, Trooper Brooks was operating his cruiser in response to an emergency pursuit with sirens or lights activated. Considering all surrounding circumstances known to him, his conduct in employing the TVI technique at the location chosen demonstrated reasonable judgment to terminate the pursuit so that life and property of the public and others involved in the pursuit would no longer be at risk or endangered because of the actions of the van driver.

#### **Decision<sup>6</sup>**

Taking in to consideration the quantity, quality, and credibility of available evidence I conclude that Trooper Larry Brooks drove his cruiser during the pursuit of the suspect in as careful and prudent manner as he could considering all other attendant circumstances and exercised reasonable judgment in terminating the pursuit. He complied with statutory law, case law, and pursuit policy guidelines. Therefore, there is not a reasonable likelihood or probability that Trooper Brooks 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: James Billings, Chief of Police, City of Pueblo  
Dan Corsentino, Pueblo County Sheriff

---

<sup>6</sup> 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.