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District Attorney

OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO

December 21, 2007

James Billings
Chief of Police
Pueblo Police Department
130 Central Main
Pueblo, CO 81003

Re: Decision Letter
Officer-Involved Incident Concerning Jonathan Lee Valdez and
Officers Raymond Purvis & Richard Romero

Dear Chief Billings:

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 Police Department 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 State Patrol. 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 the CIT agreement recognizes that "[A]long with an open investigation for public

¹ Prior to its effective date of January 1, 2006, the original CIT agreement was revised on December 21, 2005. The definition of the term "serious bodily injury" was modified. *Officer-Involved Incident Protocol of the Tenth Judicial District, Definitions*, paragraph C at page 7.



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 Police Department Chief of Police 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 Department, the Colorado State Patrol and District Attorney’s Office.² Reports were received from agencies involved in the investigation as well as diagrams of the accident scene, accident reconstruction data and photographs.³

Facts

Overview of Facts

At approximately 9:20 p.m. on October 18, 2007, two Pueblo police officers, Raymond Purvis and Richard Romero (police officers) were driving and occupying a marked police vehicle when they sustained injuries after they were involved in a three vehicle collision at Elizabeth and W. 17th Streets within the Pueblo city limits and the County of Pueblo, Colorado. Jonathan Lee Valdez (Valdez), a 19-year-old male, was determined to be driving the second vehicle described as a 1995 Kia Sportage (Kia). Two other persons occupied the Kia at the time of the collision — an 18-year-old female, Angela Bullplume (Bullplume), who was sitting in the front passenger seat, and Kenneth Herrera (Herrera), a 20-year-old male, who was sitting in the rear seat. The police officers, Bullplume and Herrera were transported to the hospital from the scene of the collision. Bullplume received serious bodily injuries as a result of the collision. Valdez, who fled the scene, was later apprehended by Pueblo police and taken to the hospital.

² This was the third investigation involving the CIT agreement.

³ 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.

The Collision

Examination of the “pre” and “post” collision tire marks evidenced that the police vehicle was southbound on Elizabeth Street, a one-way street, and the Kia was westbound on W. 17th Street, a two-way street. Facing a circular green signal, the police vehicle proceeded into the intersection. The Kia facing a steady circular red signal alone did not stop at a required spot, but proceeded through the intersection and struck the police vehicle. Point of impact occurred in the intersection and after point of impact the police vehicle rotated clockwise and came to rest on W. 17th Street. After impact the Kia ran off the southwest corner of the intersection and collided with a “retaining wall.” The Kia had extensive front-end damage while the police vehicle had extensive damage between the left front wheel and the driver side door.

The collision was witnessed by Nicholas Maestas (Maestas) who was driving the third vehicle involved in the incident, a Toyota truck. Maestas “was about to stop completely” in the eastbound lane of W. 17th Street for the steady circular red signal. He observed the Kia proceed into the intersection against a steady circular red signal and impact the police vehicle on the driver side. Following that impact, the police vehicle was forced into the eastbound lane of W. 17th Street where it struck the Toyota truck being driven by Maestas.

The Apprehension of Valdez

Apparently Valdez panicked after the collision, jumped out of the Kia and ran “because he was scared.” Shortly after the collision, Pueblo police found him at his home (2004 W. 15th Street), which was in the vicinity of where the collision took place, noting that he had a strong odor of an unknown alcohol beverage on his breath, his eyes were blood shot and glassy, and his speech was mumbled and it was “difficult to understand him at times.” Valdez admitted to drinking several shots of whiskey “before driving” that evening. Pueblo police arrested him and he agreed to provide a breath sample, blood test and urine sample. His BAC (breath sample) registered as 0.077 grams of alcohol per two hundred ten liters of breath.

The Kia Passengers

Both Bullplume and Herrera had a strong odor of alcohol beverage on their breaths as they were questioned by police at the hospital. Notably, a marijuana pipe was found inside the Kia at the scene of the collision. At the scene Bullplume and Herrera told police that Herrera was the actual driver of the Kia at the time of the collision instead of Valdez. Moreover, it was determined that an active restraining order prohibited Valdez from being near Bullplume.

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 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

Traffic Control and Right of Way

Statutory Law

Colorado law is clear that generally vehicular traffic facing a circular green signal may proceed straight through the intersection. Section 42-4-604(1)(a)(I), C.R.S. Equally clear is that generally vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, before entering the crosswalk on the near side of the intersection, or before entering the intersection as the case may be, and "shall remain standing until an indication to proceed is shown." Section 42-4-604(1)(c)(I), C.R.S.

If a person drives a motor vehicle in a reckless⁴ manner, and such conduct is the proximate cause of serious bodily injury⁵ to another, he commits vehicular assault. Section 18-3-205 (1)(a), C.R.S. If a person drives a motor vehicle while under the influence of alcohol⁶, and this conduct is the proximate cause of a serious bodily injury to another, he commits the strict liability crime of vehicular assault. Section 18-3-205(1)(b)(I), C.R.S.

⁴ Any person who drives a motor vehicle in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property commits reckless driving. Section 42-4-1401, C.R.S.

⁵ "Serious bodily injury" is defined as "... injury that involves, either at the time of the actual injury or at a later time, a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree." Section 42-4-1601(4)(b), C.R.S.

⁶ "Driving under the influence" means driving a vehicle when a person has consumed alcohol which affects the person to a degree that he is substantially incapable, either mentally or physically, or both, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle. Section 18-3-205(1)(b)(IV), C.R.S.; and Section 42-4-1301(1)(a) and (f), C.R.S.

Often termed "BAC," normally a person's blood alcohol content is expressed in grams of alcohol per one hundred milliliters of blood, while a person's breath alcohol content is expressed in grams of alcohol per two hundred ten liters of breath. Section 42-4-1300.3(1)(a) and (b), C.R.S. In fact, the amount of alcohol in a person's blood or breath at the time of the commission of the alleged offense (e.g., vehicular assault), or within a reasonable time thereafter, as shown by analysis of his blood or breath, shall give rise to a presumption if there was at such time in excess of 0.05 grams but less than 0.08 grams of alcohol per one hundred milliliters of blood, or per two hundred ten liters of breath. That fact may be considered with other competent evidence in determining whether or not the person was under the influence of alcohol. Section 18-3-205(1) and (2)(b), C.R.S.

Conclusions

Police Officers

Officers Raymond Purvis and Richard Romero were facing a circular green signal on Elizabeth Street as they proceeded southbound into the intersection of Elizabeth and W. 17th Streets.

Valdez, Bullplume and Herrera

Valdez was driving the Kia westbound on W. 17th Street and faced a steady circular red signal alone, but did not stop at a required spot as he entered the intersection of Elizabeth Street and W. 17th Street. As he proceeded through the intersection he struck the police vehicle causing extensive damage between the left front wheel and the driver side door, causing injury to the police officers, Herrera and Maestas, and serious bodily injury to Bullplume.

Valdez, who left the scene of the collision, along with Bullplume, age 18, and Herrera, age 20, had strong odor of an alcohol beverage on their breaths shortly after the collision (within a reasonable time). Notably, the 19-year-old Valdez admitted to drinking several shots of whiskey "before driving" that evening, and registered a BAC (breath sample) of 0.077 when arrested by police at his home.

Decision⁷

Taking into consideration the quantity, quality, admissibility and credibility of available evidence I conclude:

⁷ 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.

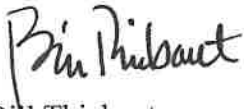
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1. That Officers Raymond Purvis and Richard Romero complied with statutory law in driving the police vehicle at the intersection of Elizabeth and W. 17th Streets. Therefore, there is not a reasonable likelihood or probability that they committed a chargeable offense that can be proven beyond a reasonable doubt, unanimously, to a jury. Accordingly, no charges have been or will be filed against either officer.

2. That Jonathan Lee Valdez has committed chargeable offenses. It is, therefore, my opinion that there is a reasonable likelihood or probability that he committed the felony crimes of: a) vehicular assault-reckless; and b) vehicular assault-DUI. Sections 18-3-205(1)(a) and 18-3-205(1)(b), C.R.S., respectively. Additionally, he has committed chargeable offenses other than felonies [i.e., Driving While Under the Influence, Section 42-4-1301(1)(a), C.R.S.], which can be proven beyond a reasonable doubt, unanimously, to a jury. These charges have been filed with the appropriate court.⁸

3. That Angela Bullplume and Kenneth Herrera have not committed chargeable offenses. It is, therefore, my opinion that there is not a reasonable likelihood or probability that each has committed felony crimes or chargeable offenses other than felonies⁹ which can be proven beyond a reasonable doubt, unanimously, to a jury. Accordingly, no charges will be filed.

Sincerely,



Bill Thiebaut
District Attorney

cc: Kirk Taylor, Pueblo County Sheriff
Capt. Scott Copley, Colorado State Patrol

⁸ Mr. Valdez has pled guilty to Vehicular Assault-DUI, a class four felony, and to the unclassified misdemeanor crime of Driving Under the Influence. Sentencing is scheduled for February 7, 2008.

⁹ For example, illegal possession or consumption of ethyl alcohol by an underage person. Section 18-13-122(2)(a), C.R.S.