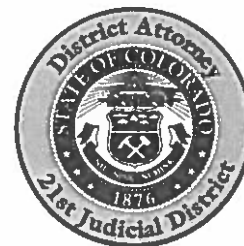


DANIEL P. RUBINSTEIN
DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE
Mesa County Justice Center – P.O.Box 20,000 - Dept. 5031 Grand Junction, CO 81502-5001 (970) 244-1730

April 4, 2019

Joe Chavira
Grand Junction Police Department
555 Ute Ave
Grand Junction, CO 81501

RE: Critical Incident Response Team involving use of force by Deputy Donald Love

Dear Detective Chavira,

I have completed my review of the case sent up for potential prosecution involving the use of force by Deputy Donald Love on November 24, 2018. At this time, I am declining prosecution. Below are my findings of fact and conclusions of applicable law relevant to the case. If any new or different information comes to light, please re-submit the case for review.

FINDINGS OF FACT

On November 24, 2018, Mesa County Sheriff's Deputy Donald Love was on duty as the acting supervisor. He came on duty at approximately 5:00 am and his patrol vehicle was low on fuel. At the beginning of his shift he went to the Maverik gas station at 29 ½ Rd and Patterson. There, he observed a bluish tinted Ford F150 which was parked in the lot with a subject he described as suspicious getting out of the vehicle.

Deputy Love described the male as being tall, wearing black baggy clothing and a hat that was on backwards. He also had a red bandana hanging from his pocket which Deputy Love associated with gang colors. Deputy Love described the male as fidgety and a little "stumblish" as he entered the store. Deputy Love said that the male entered the store and headed toward the bathroom area, and appeared to be noticing the deputy.

Deputy Love fueled up his vehicle and noted that the male was not out of the bathroom yet, and had been there for a long time, which made him "a little hinked up." He described the area as a high crime area, and stated that he was concerned about what the male may be planning to do. He moved his patrol vehicle to an area west of the truck where he could see the hall leading to the bathrooms, and ran the vehicle plates. There was an associated warrant on the plate for Alex Vargas. At this point, Deputy Love believed the male could be Alex Vargas and began

researching him. He advised dispatch that he would be on a “code 6” at the gas station¹ and requested Deputy Lemoine respond to assist.

At this time, the male came out of the hallway and was doing something in the store. He came out to the truck, carrying a Mountain Dew and something else (unidentified) and put it inside the truck. The male then walked to the southeast corner of the store, around the corner and out of Deputy Love’s sight. It appeared that he was headed north. Deputy Love continued to communicate over the phone with Deputy Lemoine. Deputy Love then walked around the west end of the store, towards the back and cleared the backside of the store where he met up with Deputy Lemoine. Deputy Love then advised dispatch that the male had run, but that they were not pursuing. Deputies Harper and Blackmon arrived and the four deputies searched for the male, unsuccessfully.

Deputy Love went inside the Maverik and spoke to the clerk. The clerk advised that the male, along with his girlfriend were regulars there. Deputy Love left his business card with the clerk and asked the clerk to call if the male returned. Deputy Love did more research on the vehicle and learned that the vehicle had a history of contact with law enforcement, including suspicious vehicles, fleeing from law enforcement and drug activity. Deputy Love also researched the warrant for Alex Vargas and found it was a \$500 traffic warrant. At some point during this time, deputies believed that the male was Michael Blacksher, a subject with a history of burglaries and running from law enforcement, who also had warrants for his arrest. The deputies, at this point did not believe that the subject was Alex Vargas.

Deputy Love then returned to the substation and met up with Deputy Lemoine. The manager at the Maverik called Deputy Love and informed him that the male had returned. Deputies Love and Lemoine returned to the Maverik but were unable to locate the male. Deputy Love went inside and spoke to the manager and clerk, who informed him that the male just left in a black Mustang. They watched the security video and observed the male he saw earlier go to the truck, then get in and leave in the Mustang. Deputy Love aired a description of the Mustang. It was also aired that the vehicle left westbound on Patterson (although Deputy Love did not recall if he or Deputy Lemoine aired that information).

A short time later, Deputy Blackmon aired that he was on I70 and observed the Mustang going over the bridge at 29 Road and heading towards the desert. Deputies Lemoine and Harper located the vehicle northbound on 29 Road. Deputy Love, hearing this information also located the vehicle. He did not recall exactly where he first saw it, but generally north of 29 and G Road. Deputy Lemoine aired that the vehicle was fleeing, and Deputy Love heard this, as well as the sound sirens and of the Mustang accelerating. Deputy Love observed the vehicle coming over the overpass bridge, positioned his vehicle and observed the Mustang nearly crash three times. Deputy Love described the Mustang as traveling fast but could not estimate a speed. Upon making the determination that the Mustang was approaching quickly, Deputy Love parked his patrol vehicle on the canal bridge. He reported that he initially intended to cross the canal bridge and activate his overhead lights, but the vehicle was approaching too quickly to do so.

Deputy Love parked his patrol vehicle with enough room for another vehicle to pass safely. As he was getting out of his vehicle, he observed the Mustang drive towards him and brake hard, causing the front of it to dip down. He believed that the Mustang was going to strike the front side of his patrol vehicle. The Mustang did not come to a complete stop and instead accelerated towards him. At this moment, he was standing on the driver’s side of his patrol vehicle with the driver’s door partially open behind him. He backpedaled into the open door,

¹ Code 6 is the code for a wanted person.

which caused it to close. He was out in the open, and remembers drawing his firearm up, removing the slack from the trigger as the vehicle was coming towards him and remembers having his sights on the driver as the vehicle was passing him and then firing his shot. When interviewed, Deputy Love's statement was: "I remember taking the slack off because I thought they were gonna hit me with their vehicle. I was aiming at the driver and then he accelerated and I was backpedaling and I hit my door. As they came by I took my shot."

The crime scene investigation of the vehicle disclosed that the bullet hole actually entered in the back of the vehicle approximately a third of the way from the center, on the left side of the vehicle. When confronted with the photograph in the interview, Deputy Love did not dispute that his shot came from the behind, rather than the side of the vehicle.

Deputy Love then describes that he had pulled the gun up to full draw and had his sights on the driver as the vehicle was leaving. He did not take the shot because he was unsure if there were more people or vehicles in the area. He also described a fear of hitting the passenger. Deputy Love described that "what was going through [his] mind was this guy almost killed me, and I need to stop him, and that's what's going through my mind."

The vehicle continued out of the desert at that point. Deputy Love indicated that there were skid marks which were left after his shot. Officers processing the scene located a cardboard box that appeared to have been thrown from the passenger side of the vehicle. The contents of the box spilled on the roadway and contained more than a gram of suspected methamphetamine, hypodermic needles and a digital scale.

Later that afternoon, Timothy Pearce and his girlfriend were arrested on outstanding warrants. Pearce waived Miranda and gave a statement. In it, he denied any knowledge of Rocky Cannett trying to hit a deputy. Rocky Cannett was subsequently arrested and charged with Attempted First Degree Assault on a Peace Officer with a Deadly Weapon (identifying the vehicle as a deadly weapon).² He was interviewed by investigators in the presence of his counsel, Marna Lake.

Rocky stated early that morning, he got a phone call from Tim asking for a ride. Rocky said it was a call via Facebook Messenger. Rocky said Tim was at the Maverick on Patterson and 29 ½ Road. Rocky assumed Tim's truck had broken down. When Rocky arrived, he described Tim being at the exterior back side of the store and did think it was odd. Rocky said Tim gave him "A few bucks" for gasoline and Rocky entered the gas station to pay. Rocky said Tim went to the truck, got his stuff out, and walked over to his car and got in. Rocky said Tim was acting "Sketchy".

As Tim was getting in, he told Rocky to "Hurry up". Rocky said Tim appeared to be high on methamphetamine as he was acting paranoid. Rocky said he glanced toward the store and saw an employee come out and appeared to be surveilling the parking lot. Rocky said Tim was frantic and was not making sense.

Rocky stated Tim didn't say anything to him and claimed he had no idea why the police would want to contact him. Rocky said he encountered the first Deputy car on 29 Road near the I-70 bridge. Rocky said the Deputy car "Rolled up on them fast" and flashed its overhead lights on and off. Rocky said he planned on pulling over to the side, but Timothy freaked out, pulled out a revolver, and told him to "Go, go, go!"

² The correct charge should be First Degree Assault, rather than Attempted First Degree Assault, as the complete crime involves the element of threatening the officer with a deadly weapon, and does not require that the serious bodily injury actually occur.

When asked what happened next, Rocky said, "I ran". Rocky said he drove around the deputy's car and headed south on 29 Road. Rocky said down the road, he encountered a second deputy car and he went around it at about 15 to 20 mph. He said the second deputy's lights were off. After this Rocky said he approached the bridge that goes over the canal and that's where he encountered the third deputy sheriff. Rocky said he could not remember if the third deputies lights were on or off. Rocky said he slowed down (did not fully stop) and described the Mustangs front wheels coming to a skid.

Rocky said Deputy Love's car stopped on the north part of the bridge and was canted over into his lane. Rocky said he drove past Love's car (on the right side) at approximately 15 mph, stating the car was in second gear. Rocky explained as his driver door lined up with Love's driver side door, Love opened the door and got out. Rocky said the left side of his car came within inches of hitting Love's car door but didn't hit it nor Love. At the same time this happened, Rocky said he turned his front wheels to the right (toward the guard rail) to avoid hitting Love's car.

As they drove past Love's car he heard a loud pop and initially thought a rear tire had popped. Rocky said he heard flapping on the right rear of the car and thought it was a flat tire. As he heard this, he looked in his rear-view mirror and described the deputy as being squared up on his car, arms extended forward, with his gun at eye level. Rocky said the deputy was standing in between the open car door and the driver seat facing his car. I asked Rocky to approximately the distance between Love and his car and he estimated it to be between 8 to 10 feet.

There were several inconsistencies in Rocky Cannett's version of events as compared to Deputy Love's version. While Deputy Love's version involves his initial shot occurring while the car is passing him rather than afterwards, the differences are largely irrelevant to the analysis required for this determination. Most of the differences between the two versions appear to be differences in perception of the events. Regardless of any inconsistencies between the two versions, the District Attorney's Office concluded that charges against Mr. Cannett for threatening a peace officer with a deadly weapon were appropriate, and at this time those charges have been filed.

APPLICATION AND CONCLUSIONS OF LAW

A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent he reasonably believes that it is necessary to affect an arrest. C.R.S. § 18-1-707(1)(a). The use of deadly physical force is further justified, to accomplish the arrest, only when he reasonably believes it is necessary to affect the arrest, and that he has reason to believe that the person committed, or attempted to commit a felony involving the use of a deadly weapon. C.R.S. § 18-1-707(2)(b).

Here, deadly physical force was not used, rather, it was attempted. Had Deputy Love caused the death of Mr. Cannett through his use of force, Colorado law is clear that Deputy Love would have been justified in doing so in such a situation if it meets the standard articulated above. Deputy Love was trying to effect the arrest of Mr. Cannett. As long as Deputy Love reasonably believed Mr. Cannett had committed a felony, or attempted to commit a felony involving the use of a deadly weapon, Deputy Love's use of deadly force would be lawful. Such a belief, however, requires both a subjective, and an objective component.

The subjective component is that Deputy Love personally believed that a felony involving the use a deadly weapon occurred. Here, Deputy Love described that he believed that

“they were gonna hit me with their vehicle” and that “they almost killed me.” This articulation of his subjective belief is what has formed the basis of the charges against Mr. Cannett. Additionally, he had the personal knowledge of the action, as he was both the observer and the named victim in Mr. Cannett’s case.

The objective component involves the question of whether Deputy Love’s belief that Mr. Cannett committed a felony involving the use of a deadly weapon was a reasonable belief. Given that the 21st Judicial District Attorney’s Office has filed criminal charges against Mr. Cannett for Attempted First Degree Assault of a Peace Officer with a Deadly Weapon, involving using the vehicle as a deadly weapon, it would contradict reason to come any other conclusion than that Deputy Love’s belief was a reasonable one.

Accordingly, I find that the actions of Deputy Love firing a single shot at Mr. Cannett were justified under C.R.S. § 18-1-707, Use of Physical Force in Making an Arrest or Preventing an Escape. As such, the People are declining charges against Deputy Love.

Thank you for your prompt and thorough investigation.

Respectfully,

A handwritten signature in blue ink, appearing to read "Daniel P. Rubinstein".

Daniel P. Rubinstein