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Pete Burg
Lead Investigator
Mesa County Sheriff's Office
215 Rice Street
Grand Junction, CO 81501

Investigator Burg,

This letter is notification to the Critical Incident Response Team (CIRT), and the involved party, Colorado State Patrol Trooper Jason Wade of the decision not to file charges against Trooper Wade in the matter of the officer involved shooting of Jayson Thompson, DOB 12/31/1986, on May 9, 2020. Mr. Thompson was killed during the shooting, thus no charges will be filed against him. However, felony assault, attempted assault and menacing charges would have been filed against him, as detailed below, had he survived.

On 05/09/2020 the 21st Judicial District Critical Incident Response Team was activated at the request of the Colorado State Patrol to investigate an Officer Involved Shooting which occurred at about 0909 hrs. on 05/09/2020. The following agencies were represented: Mesa County Sheriff's Office, Grand Junction Police Department, Fruita Police Department, Colorado Bureau of Investigations and the 21st Judicial District DA's office. Sgt Byrne assigned GJPD Detective Frasier and MCSO Investigator Pete Burg as the lead investigators.

The contact was captured on video from four separate sources, as well as the audio from the dash camera located in Trooper Wade's patrol vehicle. Trooper Wade was also interviewed, along with other witnesses. The interviews, along with a review of interviews with other witnesses, store surveillance video, a citizen's cell phone video and video of the dash camera cameras leads me to the following findings of fact and conclusions of law:

Trooper Wade said he had driven by the same subject (later identified as Jayson Thompson) earlier in the morning and noted him appearing to possibly being a mannequin. He said Mr. Thompson was standing motionless and had a stick draped across his arm. Trooper Wade at the time did not stop as he had heard of a recent incident in California where people set up a mannequin to try to get law enforcement to stop so they could be videoed, and if not a mannequin, it did not appear Mr. Thompson was doing anything illegal. Trooper Wade continued east on Highway 50 and was that direction for one or one and half-hours.

After the hour or more on Highway 50, Trooper Wade drove back to the area of 29 Road and Highway 50, then turned on 29 Road, travelling north on his way to Fruita. During this trip he did not pay attention to know if Mr. Thompson was still there. When Trooper Wade was at about 29 Road and the bridge at the Colorado River, dispatch advised a person called about Mr. Thompson. The caller said there was a lady with a veil over her face who had been standing at 29 Road and Highway 50 for two hours. The caller had said it may be a mannequin and Trooper Wade advised dispatch, he had seen the subject earlier and also thought it may be a mannequin. Trooper Wade turned around and saw an update on the dispatch computer system (CAD) that the caller had stopped and tried to talk to the person and the person just stared. Trooper Wade reflected that in his career he does not believe he has ever called for a "cover car" before he arrived at a scene, but given he had also seen this person and the circumstances, decided to request a second unit.

Trooper Wade turned west onto Highway 50 from 29 Road and then turned around driving east on Highway 50, to pull up behind the subject to make the contact. He said he did this, as it was not advantageous to drive across from 29 Road straight to the subject. When Trooper Wade arrived, Mr. Thompson was still standing in exactly the same position as Trooper Wade had seen over an hour earlier. Trooper Wade said the only difference he noted was that the stick on Mr. Thompson's arm appeared to be at a different angle.

Trooper Wade pulled onto the shoulder of Highway 50, activated his rear deck lights and his vehicle dash camera. As Trooper Wade was getting out of his car, he saw the stick move, so knew this was a real person not a mannequin. Trooper walked around Mr. Thompson wide, so he could approach from the front. Trooper Wade said, at that point his concern was the stick, which appeared to be four or five feet long. As Trooper Wade walked around to the front, he could tell the subject was a white male, thin build and had shaggy looking beard growth. Trooper Wade introduced himself as "Trooper Wade, Colorado State Patrol" and asked what was going on. Trooper Wade said there was a slight pause after he introduced himself, then Mr. Thompson reached down to his waistband.

Trooper Wade reported that at first he thought Mr. Thompson was pulling out a gun. Trooper Wade stepped back. He reported that, at first he had been reaching for his Taser, but then when believing Mr. Thompson may be reaching for a gun, Trooper Wade drew his handgun. Trooper Wade then realized Mr. Thompson had pulled out a knife. At this point Mr. Thompson lunged, but stayed in about the same spot. Trooper Wade believed he was at a relatively safe distance so did not fire at that point. Trooper Wade said he yelled at Mr. Thompson several times to "drop the knife." This was heard on the dash camera audio track. Mr. Thompson appeared to think about it for a second, then dropped the knife.

Trooper Wade radioed to dispatch that he needed code 3 backup and that the subject had pulled a knife on him. Trooper Wade ordered Mr. Thompson to the ground several times. Trooper Wade said, after what seemed like a couple seconds, Mr. Thompson reached down and grabbed the knife. Trooper Wade said he could see Mr. Thompson was then not running directly at Trooper Wade, but was more running towards the road. Mr. Thompson had the knife in his right hand and the stick in his left hand. Trooper Wade "followed him around, tracing him with

my firearm.” Trooper Wade said he did not believe Mr. Thompson ever made it into the actual lane of travel but made an arc around Trooper Wade.

He thought they maintained about the same distance apart as Mr. Thompson ran around the arc to the other side of Trooper Wade. Trooper Wade said Mr. Thompson stopped running in the arc pattern when he would have been to Trooper Wade’s back side, if Trooper Wade had not pivoted around as Mr. Thompson ran around him.



It is evident from the video footage (still’s above) that Mr. Thompson ran in an arc-like pattern around Trooper Wade, then got to a point where he stopped. During the encounter Trooper Wade repeated yelled “get on the ground.”



When Mr. Thompson got to the other side of Trooper Wade, he “planted, turned and took several steps towards me with the knife extended out, at which point I shot him, um say three, possibly four times.” “[Mr. Thompson] immediately collapsed to the ground.” Trooper Wade backed up a little bit and notified dispatch to send EMS. During that time, Trooper Wade kept his firearm pointed at Mr. Thompson and Trooper Wade noticed Mr. Thompson was still holding the knife up by his face. Trooper Wade held his position until other officers arrived.

Other officers formulated a plan to remove the weapon from Mr. Thompson’s hand. They, including Trooper Wade, circled to Mr. Thompson’s back side where a 40 mm less lethal impact round was deployed, striking Mr. Thompson in the leg not by Trooper Wade. Mr. Thompson gave no reaction to the 40 mm. Another officer used the stick to remove the knife and CPR was started and maintained until EMS arrived. Trooper Wade stood by his car until another trooper arrived and he was transported to the GJPD. He said he did not reload or make any changes to his firearm between the shooting and the GJPD.

Trooper Wade said, up until the knife being pulled out by Mr. Thompson, he had “a 1000 yard stare, blank face.” When he pulled out the knife, Trooper Wade said he thought he saw a “flash of frustration or anger on his face”, but then it went back to the blank expression. Trooper Wade said (Mr. Thompson) never said anything during the entire incident.

Trooper Wade said he made the decision to shoot Mr. Thompson as Mr. Thompson planted and began to run toward Trooper Wade with the knife. Trooper Wade estimated Mr.

Thompson was less than ten feet from him when he fired his handgun. “He had failed to respond to any of the commands I had given him, which I had given him several, I had no other place to retreat, and the distance between us was to the point where I...didn’t want to go hands on with him with him having a knife and I... he didn’t seem to be reacting to anything else.” Trooper Wade was asked what he thought would have happened if he had not shot. Trooper Wade said, “I thought I would get stabbed with a big ass knife.” Trooper Wade said the knife looked like a bayonet and he estimated the blade was 10 or 12 inches.



Trooper Wade said he believed if he did not shoot, he would die. Trooper Wade said, when he shot his point of aim was “center mass.” He said he stopped shooting because Mr. Thompson “fell to the ground and was no longer an active threat.”

Application of the law

Colorado law permits deadly physical force to be used if a person reasonably believes that a lesser degree of force is inadequate, and the actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. § 18-1-704(2). There is no special exception or permission under this statutory justification for law enforcement officers to utilize deadly force, although the nature of the job puts them in situations more likely to present the decision process of using appropriate and justifiable use of force at varying levels.

Here, Trooper Wade’s use of deadly physical force against Mr. Thompson was authorized, as described above under the theory of self-defense. In Colorado, deadly physical force used in self-defense has two equally important components. The first is a subjective component requiring that the actor himself, here Trooper Wade, actually believed that he was in imminent danger of death or great bodily injury, and that deadly force was required. The second component is an objective component; that the actor’s actual belief was also a reasonable belief.

The quoted portion from Trooper Wade's interview, above, provides ample support that he personally believed this. His subjective belief is also evident from the reaction he had, which is contained in the camera footage. The knife was produced, and Trooper Wade drew his gun, and began loudly yelling commands to Mr. Thompson to drop the knife and get on the ground. He is seen backing up on video, trying to create distance, and he was careful and thoughtful not to fire during the time that Mr. Thompson was running around him in the arc-like manner. It was only when Mr. Thompson stopped, squared up and began running directly towards Trooper Wade that Trooper Wade fired.

Turning now to the objective reasonableness of this belief, it is readily apparent that any jury would conclude that it is reasonable to believe that a person is in imminent danger of being killed by another when the other produces a knife upon contact, and then runs at the person with the knife out. This coupled with the lack of any other communication, would lead the reasonable person to form the belief of imminent danger of being killed.

Finally, it is appropriate to consider whether an officer has specialized training that would allow him to make decisions more calmly, or otherwise be able to assess threats properly, without mental distortion due to stress. In the present instance, the investigation revealed that Trooper Wade spent 13 years in the Marine Corps, has been a trooper for 9 years, and has been trained in crisis intervention (CIT).

My assessment of Mr. Thompson's actions lead me to believe that had he survived this encounter, we would have filed charges of first degree assault on a peace officer (F3), C.R.S. §18-3-202(1)(e), criminal attempt to commit first degree assault (F4), C.R.S. § 18-3-202(1)(a), and menacing (F5), C.R.S. § 18-3-206.

For the reasons stated, I believe that the actions of Trooper Wade fall squarely within the use of deadly force in self-defense justification. Accordingly, this matter is not appropriate for criminal prosecution against Trooper Wade.

Respectfully,



Daniel P. Rubinstein
District Attorney