



OFFICE OF THE DISTRICT ATTORNEY
21ST JUDICIAL DISTRICT OF COLORADO

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May 7, 2008

Stan Hilkey
Mesa County Sheriff
215 Rice Street
Grand Junction, CO 81502

RE: April 6, 2008 incident involving possible use of excessive force investigated by
Fruita Police Department

Dear Sheriff Hilkey:

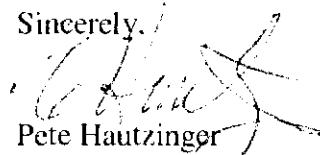
My understanding is that you requested that the Fruita Police Department undertake an investigation into an incident which took place at Rum Bay, 2993 North Avenue, during the early morning hours of April 6, 2008. Lieutenant Judy Macy of the Fruita Police Department has now completed said investigation and it has been submitted to me for my consideration.

I have now completed my review of Lieutenant Macy's investigation. In doing so I have read all the reports which have been written concerning the incident, I have watched the interviews of all parties who were involved and I have further discussed the entire investigation directly with Lieutenant Macy.

My ultimate conclusion is that the filing of any criminal charges is not justified in this case. I believe that all of the officers involved were entirely correct in reporting the incident and that the incident has been thoroughly and professionally investigated. My decision to decline to file any criminal charges is based on my conclusion that the officer involved did not have a culpable mental state. I do not believe it is possible to prove beyond a reasonable doubt that the officer intentionally, knowingly or recklessly committed any criminal act.

Beyond making this decision as to criminal charges, I do not believe it is appropriate for me to make any additional suggestions regarding potential administrative sanctions, corrective actions, education or internal discipline. Whatever additional steps you take from here are obviously entirely up to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Hautzinger", written over the typed name.

Pete Hautzinger
District Attorney
21st Judicial District

CC: Lieutenant Judy Macy, Fruita Police Department

148. ---- Use of force, investigatory stop, warrantless seizures of persons

Officer was justified in grabbing defendant's wrist while conducting stop and frisk of defendant, who had his hand in his pocket upon entering residence; defendant refused to remove his hand from his pocket, officers were confronted with a stressful arrest and search situation in which the occupants of the residence had already lied to the police, officers had already found drugs in residence and encountered resistance, and officers had discovered a suspect hiding in a small utility room of residence. People v. Hardrick, 2002, 60 P.3d 264. Arrest (63.5(9))

Officers' use of force and shows of force typically associated with arrest, such as the drawing of weapons, physical restraint, and the use of handcuffs, does not always preclude the legal characterization of a given encounter as an investigatory stop; use of such force does, however, increase the degree of intrusion on an individual's privacy and liberty and heighten court's concern as to whether the action taken exceeds what is reasonably necessary. People v. King, 2001, 16 P.3d 807.

For a forceful encounter to be characterized as an investigatory stop, the existence of specific facts or circumstances that render the degree of force used a reasonable precaution for the protection and safety of the investigating officers must be established. People v. King, 2001, 16 P.3d 807.

While it is not normally proper to characterize an encounter in which force such as the drawing of weapons, physical restraint, and use of handcuffs is used as an investigatory stop, such characterization may be proper when the specific facts or circumstances of the case indicate that such use of force was a reasonable precaution for the protection and safety of the investigating officers. People v. King, 2001, 16 P.3d 807.

When officers use force typically associated with an arrest, such as the drawing of weapons, physical restraint, and the use of handcuffs, encounter may not be characterized as an investigatory stop unless specific facts or circumstances exist that render the use of such force a reasonable precaution for the protection and safety of the officers. People v. King, 2001, 16 P.3d 807.

A police officer may use force in detaining a suspect, and the fact that some force is used does not necessarily convert the police-citizen encounter into an arrest. People v. Smith, 2000, 13 P.3d 300, certiorari denied 121 S.Ct. 1088, 531 U.S. 1148, 148 L.Ed.2d 963. Arrest (68(2))

The use of physical restraint, handcuffs, and weapons in the same investigatory stop is only justified when the circumstances indicate that such force constitutes a reasonable precaution for the protection and safety of the investigating officers. People v. Smith, 2000, 13 P.3d 300, certiorari denied 121 S.Ct. 1088, 531 U.S. 1148, 148 L.Ed.2d 963. Arrest (63.5(9))

Amount of force used by police officers in investigatory stop of defendant, who pulled up behind officer's patrol car while officer was conducting traffic stop of suspect, was reasonable, such as would support validity of stop; officers were investigating a felony at nearly 3:00 a.m., the initial suspect in stop appeared to have reacted to police by calling defendant, and at time of stop it was dark and officers did not know how many people were in defendant's vehicle. People v. Smith, 2000, 13 P.3d 300, certiorari denied 121 S.Ct. 1088, 531 U.S. 1148, 148 L.Ed.2d 963. Automobiles (349(14.1))

For purposes of determining whether scope and character of intrusion are reasonably related to purpose of investigatory stop, and whether stop is thus proper under Fourth

Amendment, officers may use amount of force which is reasonably related to ensuring their safety during period of detention, and may even effectuate stop with guns drawn if it reasonable under circumstances. People v. Breidenbach, 1994, 875 P.2d 879. Arrest C-63.5(9)

In order to use **force** or implied threat of **use of force** in course of investigatory **detention**, absent probable cause, state bears burden of demonstrating that officers had reasonable suspicion to expand scope of seizure. People v. Perez, App.1992, 852 P.2d 1297, certiorari denied. Arrest C-68(2)

Officers conducting an investigatory stop may use that amount of force which is reasonably related in scope and character to ensuring their safety during the period of detention. People v. Weeams, 1983, 665 P.2d 619. Arrest C-63.5(7)