



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY 18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

Jan. 7, 2021

From: Clinton McKinzie, Chief Deputy District Attorney
To: Chief of Police Vanessa Wilson, Aurora Police Department
Re: APD General Offense Report 2020-26380 (involving a traffic stop by Aurora Police Department Officers Darian Dasko and Madisen Moen)

INTRODUCTION

Our office undertook a review of the conduct of officers in Aurora Police Department (APD) case 2020-26380 for any potential violations of Colorado criminal law. Your office cooperated completely with our requests. The incident was a “high-risk traffic contact” or “high-risk stop” made by APD police officers on Aug. 2, 2020, at South Chambers Road and East Illiff Avenue, in the City of Aurora, County of Arapahoe, State of Colorado.

Officers Darian Dasko and Madisen Moen contacted a Dodge car, initially believed to be stolen. The officers withdrew their service weapons and ordered the occupants to lay face down on the pavement at gunpoint. Upon emerging from behind the car’s tinted windows, the occupants were revealed to be an adult female and four juvenile females, the youngest of whom was approximately 5 years of age. As the adult and two of the older juveniles were handcuffed, and other officers and a crowd of onlookers arrived on the scene, officers determined the car was not stolen after all. The adult and the juvenile occupants of the car were released.

In conducting our criminal review, we examined all relevant police reports, body-worn camera videos, the radio traffic of responding officers, as well as the relevant training materials provided by APD. We also sought an expert opinion (see attached) from Professor Paul Taylor, Ph.D., as to whether the conduct of the officers was objectively reasonable in light of the circumstances.

There is no evidence that anyone inside the vehicle in question committed any violation of the law or did anything to warrant being contacted by APD. Neither did they do anything during the law enforcement contact to justify being removed from the car at gunpoint. Based upon the review of the available information, they are blameless in occasioning this encounter with APD.

However, despite the disturbing fact that terrified children were ordered out of a vehicle at gunpoint and placed face-down on the ground, our conclusion is that there is not evidence beyond a reasonable doubt that the APD officers involved unlawfully, intentionally, knowingly, or negligently violated any Colorado criminal law. It is our hope, however, that APD will immediately undertake a review of their policies to try and ensure that nothing of this sort ever happens again.

What happened to the innocent occupants is unacceptable and preventable, but that alone is an insufficient basis to affix criminal culpability to the two officers involved in the initial contact.

LEGAL STANDARD

Below are the Colorado Revised Statutes (CRS) potentially applicable to the conduct of the officers involved (these are excerpted to provide the relevant statutory language):

§ 18-8-803. Use of excessive force

- (1) Subject to the provisions of section 18-1-707, a peace officer who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen, including the provisions of part 1 of article 3 of this title concerning homicide and related offenses and the provisions of part 2 of said article 3 concerning assaults.
- (2) As used in this section, "excessive force" means physical force which exceeds the degree of physical force permitted pursuant to section 18-1-707. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by section 18-1-707 to a person who has been rendered incapable of resisting arrest.

§ 18-1-707. Use of force by peace officers

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
 - (b) Use only a degree of force consistent with the minimization of injury to others ...

CRS § 24-31-901, enacted on June 19, 2020, as part of a police accountability bill, defines "physical force" when used by police officers.

- (4) "Physical force" means the application of physical techniques or tactics, chemical agents, or weapons to another person.

FACTUAL OVERVIEW OF THE EVIDENCE

Body-worn cameras used by the involved officers, their radio traffic and their own written reports reveal the following:

On Sunday, Aug. 2, 2020, Aurora Police Department (APD) officers Darian Dasko and Madisen Moen were riding together in a marked police vehicle while on routine patrol in a marked patrol car. Officer Dasko was acting as a Field Training Officer for Officer Moen, who only two days before had graduated from the Aurora Police Academy and been sworn in as a probationary police officer. Both were dressed in their standard police uniforms and carried standard equipment, including handguns, Tasers, radios and handcuffs. The temperature at the time of this incident was 74 degrees with “broken clouds,” according to historical records.

At approximately 10:55 a.m., while near East Illiff Avenue and South Chambers Road, Officer Dasko saw on his in-car computer that a stolen vehicle had been reported in the area through a stationary License Plate Reader (LPR) camera system. The system reported the stolen car to be a blue Dodge Journey sport utility vehicle with license plate CNK-737. Officer Dasko kept the digitally transmitted photograph of the SUV on his screen to verify that it was indeed a blue Dodge and that the license plate was correct. In prior weeks, Officer Dasko had seen LPR reports of this same stolen car with the same license plate driving in the area.

Officers Dasko and Moen began looking for the blue Dodge. Officer Moen spotted it in a parking lot just north of East Illiff Avenue near a McDonald’s restaurant and an ARC Thrift Store. They drove close to the car and confirmed that the license plate read CNK-737. Officer Dasko used his radio to inform the Aurora Police Communication Center (Dispatch) that he had located the stolen car. He stopped his patrol car directly behind the blue Dodge in the parking lot.

In part due to the Dodge’s tinted windows, the officers could not see well who was inside the vehicle. Officer Dasko radioed to the APD dispatcher that he could see two people inside the Dodge, and that he and Officer Moen would be conducting a “high-risk” stop. Officer Dasko requested “cover,” meaning that he was requesting other officers to arrive as back-up.

Officers Dasko and Moen got out of their patrol car with their duty handguns drawn and pointed at the Dodge. Both officers stood behind the open patrol car’s doors on either side of the patrol car. The officers intended to each control one side of the Dodge, as they had been trained, with Officer Dasko on the driver’s side and Officer Moen on the passenger side.

Officer Dasko told Moen to make sure her body-worn camera was turned on. Dasko called for the driver to roll down the window and to put his or her hands outside the window. The driver complied with these commands. Officer Moen called for the passenger to do the same. Officer Dasko radioed that they were holding two people at gunpoint. At this point, the officers realized there was someone else in the car and radioed that there were now three suspects in the stolen Dodge being held at gunpoint. Officer Moen then stated that there were four.

While keeping their guns trained on the vehicle, Officer Dasko ordered the driver – a Black female – to put her car keys on the roof. Officer Moen ordered the front-seat passenger to get out of the car with hands in the air. A young Black female wearing a COVID mask emerged from the front seat on the passenger side. Officer Moen ordered her to step away from the vehicle and lay on the ground with her hands outstretched, crossing her ankles and looking away. Officer Dasko continued to order the driver to put the keys on the roof of the car. Both officers kept their handguns pointed at the suspects and/or the vehicle.

Next, Officer Dasko ordered the “backseat driver/passenger” to step out of the car on the passenger side. The driver began to get out of the car. Officer Dasko called out that she is not the backseat passenger and ordered her to get back in the car. The driver stayed in the car and re-closed the door and responded that Dasko’s order was confusing. The driver added, “I’ve got a car full of kids! Are you kidding me?”

A fourth set of hands appeared out the window of the backseat on the driver’s side as Officer Dasko attempted to explain, “You’re in a stolen vehicle.” The driver responded again, “This is a car full of kids!” Another young Black female got out of the car on the passenger side at Officer Moen’s direction and lay on her stomach on the pavement.

Officer Dasko reported to dispatch on his radio, “We have four. We are just ordering them out.” He told the driver, “Just cooperate and this will all go smoothly. This is a stolen vehicle.” The driver attempted to explain that it is not a stolen vehicle, that it had been stolen once long ago but was recovered and returned, and that she can prove Officer Dasko wrong.

Another young Black female climbed out of the backseat of the Dodge when ordered by Officer Dasko. The driver objected angrily, incredulous that a “14-year-old girl” was now being ordered out of the car with a gun pointed at her. Officer Dasko directed the girl to join the other two passengers on the opposite side of the Dodge, where Officer Moen continued to hold them at gunpoint. Officer Moen then told Officer Dasko, “I’ve got a kid over here.”

As Officer Dasko ordered the driver to get out of the car and lie down on the pavement facing him, a passenger emerged from the Dodge. This was a small girl, approximately 5 years-old, wearing a pink crown. She joined the other apparent juveniles on the ground on Officer Moen’s side of the car.

The driver, now on the ground herself, continued to argue with Officer Dasko, stating that the car was not stolen. Officer Dasko argued back that the car shows up in the “system” as stolen. He told her that they will confirm it once they find out what’s going on. The driver shouted that the officers “Don’t have to do all this,” and objected that they were unnecessarily putting kids on the ground at gunpoint. Officer Dasko responded, “It’s okay.” The driver, slapping the ground, shouted, “It’s not okay!” At this point the four children on Officer Moen’s side of the car began to sob.

Officer Dasko then told Officer Moen, “Let’s go hands on,” and holstered his handgun. As he approached the driver to handcuff her, she told him that he could have just walked up the vehicle and talked to her. Officer Dasko responded that they cannot just walk up on a stolen vehicle without knowing who or what is inside. He tried to reassure her that they would find out what is going on, as he placed her wrists in handcuffs and helped her to her feet.

As he was doing this, Officer Dasko asked the APD dispatcher via his radio for a confirmation that the Dodge was stolen. There was a lot of background noise as the driver protested and the children sobbed. He was told by Aurora Dispatch, “That plate comes back stolen on a 2009 blue Dodge.” Dasko asked, “Is the plate or the vehicle stolen?” Dispatch responded, “It’s gonna be on the vehicle.” Dasko acknowledged that, but another officer stated over the radio, “The stolen hit is coming back to a motorcycle, Honda.” Dispatch then said, “That’s affirm ... Disregard. The plate

comes back clear in Colorado, it's coming back as stolen for a Montana plate for a different vehicle.”

Officer Dasko told the handcuffed driver that she needed to sit in the back of his patrol car while he figured this out. The driver angrily objected to him touching her, but complied and sat in the back of the patrol car.

As this was occurring, Officer Moen approached the juveniles on the passenger side of the car while holstering her handgun. She handcuffed two of the older girls as other officers arrived and stood by. Two officers had their Tasers in their hands, pointed at the ground, but ready. One officer had a handgun at a “low-ready” position, pointed at the ground. The girls cried and called for their mother and/or aunt. One wailed that she did not want to go to jail. The two smallest girls were not handcuffed. One officer told the other officers not to touch anyone else. An officer attempted to comfort the girls, and told them they would get this all figured out. One of the older girls begged to have her sister next to her. The officers then helped the handcuffed girls to sit up.

The officers told some objecting onlookers that they could record the situation, but they needed to step back. There were now eight patrol cars present at the scene, as well as roughly one dozen onlookers. The girls with handcuffs cried that the handcuffs hurt. Shortly thereafter, at roughly nine minutes into the encounter, Officer Moen removed their handcuffs and the girls were allowed to get up and move freely.

Officer Dasko sat in the driver's seat of his patrol car and tried to calm the driver in the back seat, while working on his in-car computer to sort out what had happened. He also called his sergeant on his cell phone and asked him to come to the scene. As the driver continued to protest, Officer Dasko acknowledged that “It's wrong.” He also told her that he was sorry and they would “make it right.” He acknowledged that there appeared to be a mistake in their “system.” As the driver continued to protest and demand he take her handcuffs off, Officer Dasko told her that she needed to calm down and stay to talk to his sergeant.

Approximately nine minutes into the encounter, the driver and the passengers were all released from their handcuffs and allowed back into the Dodge.

The body-worn camera footage indicates that the driver and the children were handcuffed for approximately 8½ minutes.

In this case, APD did not submit a criminal case filing to our office. We undertook this review to determine whether the officers committed any potential crimes. APD cooperated with our office throughout this investigation.

LEGAL ANALYSIS

The ethical obligation of prosecutors and our office is to prosecute individuals, whether they be law enforcement or otherwise, only when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime charged, and 2) there is a reasonable likelihood of

conviction at trial. This is a higher standard than the probable cause standard used by police officers making initial charging and arrest decisions.

Criminal liability is established when there is sufficient evidence to prove all of the elements of a crime beyond a reasonable doubt. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt. (See above section, titled, LEGAL STANDARD, for the elements of Excessive Force and statutory justifications for police officers).

As part of our office's review, we consulted with Paul Taylor, Ph.D., of the Force Review Group. Professor Taylor's doctoral dissertation and subsequent research have focused on police decision-making, human performance and system safety in the context of police interactions with the public. In addition to being an expert in police conduct and the use of force by law enforcement officers, Professor Taylor is an Assistant Professor of Criminal Justice at the University of Colorado Denver who studies, teaches and regularly publishes on topics related to police decision-making and human factors in the context of use-of-force encounters, investigations and training.

Professor Taylor reviewed the evidence provided by APD. His report and findings are attached. Based upon the totality of the available information, we conclude:

On Aug 2, 2020, Officer Dasko was acting as a field training officer for Officer Moen, a newly sworn probationary officer. The fact that Officer Moen is a trainee required to follow instructions does not excuse any potential criminal misconduct but must be considered when weighing the reasonableness of her actions and intentions.

It is evident that Officer Dasko believed the vehicle was stolen. The License Plate Reader had indicated to him that the vehicle was stolen. He had been aware that it had been traveling in the neighborhood for weeks. On Aug 2, he kept an image of the blue Dodge on his computer and checked to make sure that the LPR had recorded the plate properly. He did not attempt to confirm with APD Dispatch that the vehicle was stolen until after he had handcuffed the driver. When he did, APD Dispatch confirmed that the vehicle was stolen. It was only after another officer radioed that the actual stolen vehicle was a motorcycle that APD Dispatch first announced that the stolen plate was for a Montana – not Colorado – vehicle. Despite the ultimate inaccuracy of the information provided to Officer Dasko, he had no reasonable way to know that at the time he initiated his stop of the vehicle. Officer Dasko had probable cause to believe the vehicle was stolen at the time he stopped it.

The training material from the Aurora Police Academy that was provided for this review indicates that “high-risk stops” are taught and practiced by all police department trainees. According to the material, officers are taught (in summary) to position their police vehicle behind the suspect vehicle, have one officer on each side of their vehicle, draw their sidearms, order the driver of the suspected vehicle to place the keys on the roof, order all the occupants out one at a time, have the suspects lay prone on the ground away from the suspect vehicle, have them lay with their hands outstretched and their ankles crossed and their faces turned away, and handcuff them. Sample instructions are given in the training material. The purpose of the “high-risk stop” is to protect both officers and suspects from physical danger. While officers are trained to escalate a low-risk stop to a high-risk stop, there does not appear to be any training on de-escalation in this sort of traffic stop. Officers are taught, however, to consider such things as the temperature of the street and

whether a suspect is pregnant or obese. There is no special training regarding children in these situations.

It appears from the body-worn camera videos that Officers Dasko and Moen strictly adhered to their training, even giving verbatim commands from that training. While acting in accordance with an officer's training is not a justification for any potential criminal behavior, it does affect the consideration of the officer's general intent, which in an excessive force case must be knowing and unlawful.

It should be noted that, according to the training and policy material reviewed, APD does not mandate that officers perform a "high-risk stop" every time they encounter a stolen vehicle. A "high-risk stop," however, appears to be the preferred method when encountering any vehicle believed to have been involved in a felony (which, in Colorado, is any stolen vehicle with a value of more than \$1,000). This approach is the policy with other Denver metro-area departments; it is generally endorsed by the International Association of Chiefs of Police. In APD's training material, one slide summarizes the "high-risk stop" training by stating: "Consciously disregarding these tactics and ignoring contact officer/cover officer principles place officers at a greater risk. How will you explain your actions in the event a fellow officer is harmed during a vehicle contact should you decide to ignore these principles?"

APD's training on vehicle stops includes several real-life videos of officers being shot during traffic encounters. It includes stories of APD officers who were killed or wounded during traffic stops.

Professor Taylor states in his opinion:

Based on my training and experience, traffic stops involving occupied stolen vehicles present a high level of risk to officers. People who have stolen a vehicle will often attempt to elude and/or resist the police and stolen vehicles are often associated with the commission of other crimes including violent crimes. Officers who have reason to believe a vehicle has been stolen are trained to treat these types of traffic stops as 'high risk'. Using 'high-risk' tactics during a vehicle stop when officers have reason to suspect an occupied vehicle is stolen aligns with my training and experience with these types of stops. Additionally, it aligns with law enforcement policy and practice at both the national and local levels.

The body-worn camera videos and the radio traffic indicate that Officers Dasko and Moen were not aware that the occupants of the blue Dodge they believed to be stolen were a mother and four children. Initially, the officers radioed that there were two occupants, then three, then four. Ultimately, there were five, including a young girl. The officers stopped the car in a very public parking lot in broad daylight, with many civilian witnesses. They called for "cover" officers to arrive and assist. Both officers followed their training and drew their handguns while ordering the occupants out of the blue Dodge. The videos indicate that they had their handguns drawn and pointed for approximately 3½ minutes, while they ordered the occupants out and onto the ground. They holstered their handguns before approaching and handcuffing three of the five occupants. Other officers arrived during these 3½ minutes – two with drawn Tasers and one with an

unholstered handgun – but it does not appear that any of these cover officers ever pointed their weapons at the occupants of the blue Dodge

Both Officer Dasko and Officer Moen used a commanding tone when ordering the occupants out of the car. This was consistent with their training in a situation such as this one. Their tone was not derogatory or offensive. Uncertainty seems to come into both officers' voice and tone as they realize the occupants are an outraged mother and four children. Nevertheless, they continue to follow the steps of a high-risk stop pursuant to their training. Officer Dasko, although increasingly apologetic and uncertain, released the driver her from her handcuffs only after he verified on his in-car computer the mistake. Officer Moen released the two children from handcuffs when another officer tells her, "Let's de-escalate the situation. Okay? We're not going to touch anybody else. Okay?" and then tells one of the handcuffed children, "You're going to be with your momma. You're going to be okay. Alright? Alright? We'll get you out in a second, sweetheart. It's for our safety." The officer then unhandcuffed the children and tried to comfort and assist them. The two children were in handcuffs for approximately 4½ minutes. The driver was in handcuffs for approximately 8½ half minutes.

In reviewing all the evidence of this incident, Professor Taylor noted that "high-risk vehicle stops" are safer – from the standpoint of physical safety – for both officers and the occupants of the suspect vehicle. The officers in this case had no way of knowing that this vehicle they believed was stolen was occupied by four children and their mother/aunt. The officers were trained to remove at gunpoint and handcuff the occupants. They did deviate from this training after two of the children were handcuffed and it was evident that no one was a threat to them.

Professor Taylor concludes:

It is my opinion that, given the information they were relying on and the training they had received, the officers involved in this incident were reasonable, prudent, and safe in their choice and use of tactics, weapons, and restraints. All of the officers involved in the incident acted in a professional, safe, and respectful manner in all their interactions with the driver and the other occupants of the vehicle during the encounter. The officers' actions were consistent with the high-risk stop training they had received. In addition, using high-risk tactics to stop an occupied vehicle when there was reason to believe the vehicle was stolen was consistent with APD training and practice along with other local and national law enforcement policies and practices. The officers reasonably modified their tactics when they discovered that a very young juvenile was in car and quickly removed restraints from everyone involved when they determined that an error had been made. While there were certainly areas in which performance could have been improved and additional training should be considered, I am not convinced that they would have substantially altered the outcome of the encounter.

Based on the available evidence, and applying the "reasonable probability of conviction" standard, there is no crime committed by the officers that can be proven beyond a reasonable doubt. A prosecution in this case would require proof of a voluntary act prohibited by statute, together with a culpable state of mind. Although the incident was very concerning, there is not sufficient evidence to conclude that Officers Dasko and Moen intentionally, unlawfully, recklessly or

negligently used excessive force in detaining the occupants of a car they reasonably believed to be stolen.

This is not to say that what happened to the occupants of the vehicle is okay or tolerable. It is not. The errors in information-sharing, training, and procedure that led to these innocent people being subjected to this police encounter must be investigated further and prevented from happening again. Those are issues that do not appear to rise to the level of criminal culpability and are outside the jurisdiction of our office.

CONCLUSION

Considering all of the available evidence from this investigation and applicable Colorado law, there is insufficient evidence to support the filing of any criminal charges against Officers Dasko and Moen. The evidence that exists would not support a reasonable likelihood of a criminal conviction at trial.

Respectfully submitted,

Clinton McKinzie
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Chief Deputy District Attorney