

IN THE MATTER OF THE FRANCIS M. HERNANDEZ INVESTIGATION

REPORT: FINDINGS OF FACT AND RECOMMENDATIONS

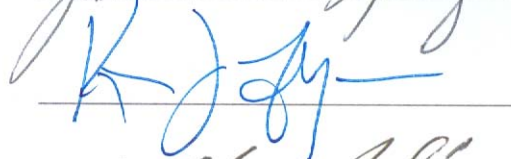
**TACTICAL REVIEW BOARD
AURORA POLICE DEPARTMENT
15001 EAST ALAMEDA PARKWAY
AURORA, CO 80012**

TRB Members:

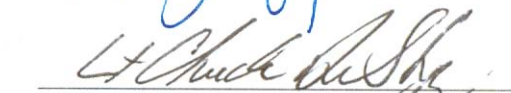
Commander John DaLuz, Chairperson



Commander Kevin Flynn, Cmd'r Dist.-II



Lieutenant Chuck Deshazer, Traffic Section



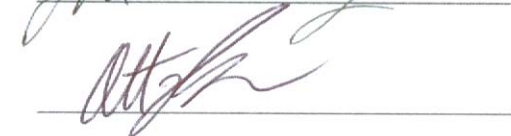
Lieutenant Eric Stewart, Executive Officer, D-3



Sergeant James Lesnansky, Patrol Sgt.



Officer Albert Graham, DART



Signed and dated this 23rd day of June, 2011

TABLE OF CONTENTS

	Page
I Introduction	3
II Executive Summary	4
III Officer Notes in Criminal Investigations	7
IV Recentralization of Traffic Unit	9
V Vehicle Evidence Handling & Processing Procedures	13
VI Conclusion	14

ADDENDUMS

A TRB 7.9	
B Resumes	
C SO 10-02: Officer Notes in Criminal Investigations	
D SO 11-04: Type A Crash	
E SO 11-05: Vehicle Evidence Handling & Procedures	
F Chief Oates TRB Formation Announcement	
G Internal Traffic memos	
H Traffic On-call Schedules	
I Agent Hardin and Agent Lee Affidavits	
J Photographs	
K On-Scene Personnel	
L News Articles	
M Case Law Citations	
N Recommended Equipment	

I. INTRODUCTION

On March 8th, 2010, Chief of Police Daniel J. Oates directed that a tactical review of the Francis Hernandez Case (2008-38038) be conducted. A Tactical Review Board (TRB) was impaneled as provided by Departmental Directive 7.9 (revised 03/01/2010).

Directive 7.9 states in part:

The TRB will review any incident that, in the opinion of the Chief, triggers the need for an inquiry into whether the Department's training, policies, tactics and/or procedures need to be modified....

The purpose of the Tactical Review Board is not to investigate misconduct or to impose discipline, as these functions are provided for in other Department processes. The Board's focus will be on training, policy, tactics and procedural issues and needs. However, when a TRB inquiry uncovers evidence of possible misconduct not previously known to the Department, that evidence will be subject to further investigation by the appropriate entity, consistent with existing Department policy.

(See Directive 7.9 attached as Addendum A)

On March 29th, the Board was convened to begin a discussion of the investigation and to set forth primary goals and objectives. The TRB for the Francis Hernandez case consists of the following sworn members:

- Commander Jack DaLuz, Investigations Bureau: Chairman of the TRB
- Commander Kevin Flynn, District-2 Commander
- Lieutenant Chuck Deshazer, Traffic Section
- Lieutenant Eric Stewart, Executive Officer, District-3
- Sergeant Jim Lesnansky, Patrol Supervisor
- Officer Al Graham, D.A.R.T. Team

(See Profile / Resume of the TRB members attached as Addendum B.)

The TRB was expected to complete its review of the incident and subsequent management / case assignment strategies employed by Department personnel involved in the investigation by March, 2011. The report is to contain an Executive Summary, a Statement of Facts, and Incident Analysis along with recommendations aimed at establishing “*Best Practices*” for the investigation of future fatality-involved crashes.

II. EXECUTIVE SUMMARY

On 09/04/2008 at about 8:02 P.M., multiple units of the Aurora Police Department were dispatched on a report of an unknown injury accident that occurred in the southbound lanes of South Havana Street, south of the intersection of East Mississippi Avenue and South Havana Street in the City of Aurora, Arapahoe County, CO.

The resulting investigation revealed that a 2004 Chevrolet Suburban, travelling southbound in the 1100 block of South Havana Street, later determined to be driven by Francis Maudaniel Hernandez (03/20/1985), struck a 1998 Mazda truck travelling northbound and attempting to turn left (west) into the driveway of Good Time Burgers at 1105 South Havana Street. As a result of this collision, an Xcel Energy box was struck and the box cover was projected through the east facing plate glass window of Baskin Robbins at 1155 South Havana St. The cover struck 3-year-old *Martin Kudlis* (08/22/2005), who was eating ice cream inside Baskin Robbins, killing him. The driver of the 1998 Mazda truck, *Patricia Guntharp* (12/06/1958) and her passenger *Debra Serecky* (09/01/1957) were pronounced dead at the scene as a result of the collision.

At about 9:00 P.M., on-call Traffic Operations Detective, Agent Johnny Lee, was summoned to the scene to begin an investigation of this fatal traffic crash. Other Traffic Unit officers responding to assist Agent Lee included Officer Brian Kelly, Officer Javen Harper and Officer Bill Collom, who later in the investigation constructed complex speed determination calculations.

Francis Maudaniel Hernandez fled the scene of the crash and was later located at 9600 E. Girard Avenue, #-5E, in Denver by Aurora Officer Erick Ortiz and Officer Marc Paolino. A “show-up” was conducted and witnesses to the fatal collision positively identified Hernandez as the driver of the Suburban and the person who earlier unlawfully fled the scene on foot.

On February 24th, 2010, Francis Maudaniel Hernandez was convicted and found guilty on 19-counts, including Vehicular Homicide, Child Abuse Resulting in Death, a Class-2 Felony by an Arapahoe County Jury. However, during the trial, questions/allegations were made regarding the assignment of the case and how it was managed by the Lead Detective Johnny Lee and other members of the Aurora Police Department. Agent Lee was continuously characterized as being “dishonest and deceptive” by the defense team. Additionally, during the trial, Officer Erick Ortiz made reference to notebook entries made by him the night of the crash. The trial was stopped, and the officer was ordered by Judge Wheeler to retrieve his written notes. It was subsequently discovered that a notebook entry made by Ortiz, “*I’ll take blame*” was not transcribed into the final report. Ortiz explained that he was uncertain who to attribute the statement to, as the reason why he had not included the statement in his final report. This late discovery resulted in

defense attorneys challenging the completeness of the investigation and then alleging that exculpatory statements were intentionally left out.

Ortiz later testified that the only reason he could think of to explain why he did not include the statement in his police report was because he was not sure who to attribute the comment to or what the context was. The defense asked, “*Could it refer to the defendant taking the blame for his cousin?*”. Ortiz answered in the affirmative.

Upon review of the entire incident, the Tactical Review Board determined several areas of inquiry, and a study of the same resulted in operational changes that led to a “*Best Practice*” recommendation on how future collision investigations that result in death or serious bodily injury should be conducted. Additionally, the TRB developed a standardized method for the collection and preservation of officer notes collected during felony type investigations, as well as a procedure to reasonably preserve crash-related evidence.

Other issues / questions / concerns considered by the TRB included:

Paperwork Issues

1. Affidavit preparation, training, and timely review/approval by supervisor.
2. Completion of all required officer reports before end of shift.
3. Officers not transcribing all pertinent information from on-scene written notes into their final report. This matter created great anxiety at trial and garnered extreme media attention.

Assignment of On-scene Personnel

1. The necessity to have a Traffic Sergeant on duty or on call.
2. Patrol Sergeants with previous Traffic Investigation experience were not utilized.
3. Why was the most junior and inexperienced traffic detective the only detective called out to the scene? What were his qualifications at the time? (*Addendum B*)

On-call Resources

1. The TRB questioned why additional Detectives were not called to assist.
2. The TRB questioned why the on-scene commander failed to recognize the magnitude of this triple death investigation and not request appropriate resources.

3. Should the Department assemble specialty crash response teams for future crashes?
4. Should an on-call Department PIO respond to death crashes if needed, relieving the duty from the supervising lieutenant / sergeant on scene?
5. Should Traffic Detectives and officers be physically recentralized?

Supervision / Leadership Issues

1. Fractured management of the incident.
2. Why was there not an assigned Traffic Sergeant on duty the night of the crash or called to the scene to provide supervision and/or expertise?
3. Concern that the Traffic Lieutenant was regularly scheduled to perform Traffic Sergeant duties in addition to his command function? Conversely, that the Traffic Sergeant would regularly have command duties when the lieutenant was off-duty.
4. Concern that by design, future failure in such investigations might be inevitable.
5. The TRB questioned why the on-scene commander failed to initiate use of the Incident Command System (ICS)?
6. Why did the on-scene commander not recognize that there were multiple scenes requiring direct supervision and leadership? These include:
 - a. Primary accident scene at 1155 So. Havana Street
 - b. Children's Hospital
 - c. Medical Center of Aurora South
 - d. Hernandez's residence
 - e. Hernandez's escape route from crash scene

Evidence Handling

1. What practice led to the failure to reasonably preserve the involved vehicles at the City Impound Lot? The vehicles were left to the outside elements as shown in addendum photos.

(See Addendum E, Proposed SO 11-05)

The TRB studied the following areas and developed best practices to be followed at future fatality and Serious Bodily Injury (SBI) collisions, to include:

1. Handling of officer notes in criminal investigations.
2. Recentralization of Traffic Investigations.
3. Establishment of a Crash Reconstruction Team.
4. Vehicle Handling and Processing procedures.
5. Acquisition of additional technology to assist investigators with the accurate and accelerated documentation of crash/crime scenes, improving quality and saving both time and money.

The first matter considered by the TRB concerned the processing of officer notes and retention of same in death and other criminal investigations.

III. OFFICER NOTES IN CRIMINAL INVESTIGATIONS:

On February 12th, 2010, Officer Erick Ortiz testified in the Hernandez Trial and made reference to “notes” he had personally written and retained but not included in the Discovery process. The trial was temporarily suspended and Officer Ortiz ordered to retrieve his notes and present them to the court and defense for judicial review. It was discovered in the assessment process that a statement therein, *“I’ll take blame”* was recorded and not included in the final police report. When questioned under oath, Officer Ortiz stated he couldn’t remember if the statement was made by Hernandez or Hernandez’s girlfriend, Brenda Aleman. Officer Ortiz stated that he probably failed to include the handwritten note in his official police report because he was confused concerning the proper attribution and its exact context.

Defense Attorney Chris Baumann claimed to Judge Wheeler that the notes contained *“exculpatory information”* that could clear defendant Hernandez of responsibility for the deadly crash. Baumann called it a particularly “egregious violation” because Officer Ortiz had twice been questioned about Hernandez and Aleman’s statements in pretrial hearings, but the officer never mentioned he had written notes that were not turned over until questioned about them on February 11, 2010. Baumann asked the judge to consider a range of sanctions, including: dismissal of all charges against Hernandez; dropping the most serious charge, Child Abuse Resulting in Death; or striking Ortiz’s entire testimony, requesting that it be ignored by the jury.

Prosecutor Karen Pearson argued that no sanction was warranted because Officer Ortiz made a mistake – “a technical violation” – but there was no “willful misconduct.” Judge Wheeler agreed and said the violation could be corrected by putting Officer Ortiz back on the stand for cross-examination so defense attorneys *“can have at Officer Ortiz”* about his failure to include the information from his handwritten notes in his typed police report.

However, Judge Wheeler instructed the jury that Officer Ortiz had *“failed”* to comply with legal rules and police department policy requiring Ortiz to turn over all witness statements to prosecutors for release to the defense team. *“You may view Officer Erick Ortiz’s failure to provide this information as additional evidence of the credibility of his testimony,”* the judge told the jury.

The testimony of Officer Erick Ortiz regarding the possession of officer-scribed notes not provided to prosecutors and the defense through the Discovery process highlighted a potential problem regarding how an investigating officer’s written notes should be processed and how those notes should be retained as evidence.

The practice of the majority of officers in the Department involves transcribing their written notes into their final report and then destroying the hand-written notes. In the matter of Homicide Investigations, it has been the practice of those detectives to retain all notes and to place same into their case filing through transcription, scanning and then placing the original notes into Property as evidence. Until the Hernandez trial, this practice served this agency, as well as other metro agencies, in a satisfactory manner. In fact, there is significant case law supporting the existing Department practice of note handling.ⁱ

The cited endnote cases concern an investigating officer's destruction of handwritten notes used to compile formal reports. Pursuant to standard operating procedures of the police agency, it did not require judgment of acquittal on the theory that the agent(s) intentionally destroyed material evidence which was particularly useful to the defendant. Additionally, there was no basis of record from which a reviewing court could conclude that loss of notes materially affected the defendant's ability to present a defense.ⁱⁱ

In the case of *Killian v. United States* involving a claim by the defendant that F.B.I. agents' destruction of their investigatory notes did not rise to the level of a constitutional violation. "*If the agents' notes...were made only for the purpose of transferring the data thereon..., and if, having served that purpose, they were destroyed by the agents in good faith and in accord with their normal practices, it would be clear that their destruction did not constitute an impermissible destruction of evidence nor deprive the petitioner of any right.*" *Id.*, at 242, 82 S.Ct., at 308.ⁱⁱⁱ

Based on a thorough review of all police reports, statements and numerous detailed media accounts of the Francis Hernandez Trial, *the Tactical Review Board developed and implemented on October 21st, 2010 Special Order SO 10-1* regarding the preservation of officer notes in criminal investigations.

(See Addendum C)

IV. RECENTRALIZATION OF TRAFFIC INVESTIGATIONS

Historically, the Traffic Section was a centralized entity. Under the recommendation of the Strategic Planning Committee, the Traffic Section was decentralized and components moved into separate Districts. The premise was that each District would have traffic assets to address localized traffic-related issues. For logistical reasons, the collision investigators were divided and reallocated with eight officers, two detectives and one sergeant assigned to District One and the remainder assigned to District Three. The Motorcycle Enforcement Team and Motor Carrier Safety Unit remained housed at District Two and continued to function as a specialized unit.

This deployment severely limited communication between the now separate teams of collision investigators and detectives. The collective amount of experience was limited to the eight officers and detectives on each individual team. The two traffic teams began to compete against each other for limited resources. Business practices became inconsistent between the two teams as each had a different chain of command with differing philosophical approaches to their mission.

As time passed, a strong sense of independence developed between the two teams. Each became reluctant to collaborate with the other and each functioned autonomously. Some officers from each team began to resent the other group and in some instances verbally degraded other team members. As it relates to this incident, Agent Johnny Lee was assigned as a District One collision investigator and subsequently moved to a District Three Traffic Detective position.

In 2007, the Aurora Police Department was identified for an efficiency study conducted by the Matrix Consulting Group. The study looked at a wide range of issues to include staffing, deployment, response times, workloads and organizational structure.

The Matrix Report, dated February 20, 2008, identified four recommendations surrounding traffic enforcement:^{iv}

1. Increase the number of hazardous citations issued by APD Officers with a goal of reducing the number of fatal and injury accidents.
2. Establish a greater emphasis on DUI enforcement in Aurora (for Patrol Officers and Traffic Units) and increase the number of DUI arrests with a goal of reducing the number of fatal and injury accidents. This includes training for Officers, communication as an organizational priority and establishing a Department goal.
3. Track the number of selective traffic enforcement contacts and establish a goal of at least one citizen driver contact per hour.

4. ***Reorganize the Traffic Section*** so that it would be responsible for all traffic safety services in Aurora, including investigation of major injury traffic accidents, follow-up investigations and selective traffic enforcement. Additionally, the Traffic Section should also have the initial responsibility for coordination of special event planning. Reassign the Traffic Units in Districts 1 and 3 to report to the Traffic Section Lieutenant.

Most importantly, the Matrix Study pointed out that the investigation of major injury and fatal accidents should be organized under one command structure, just as homicide investigations are currently managed. The study stated:

“The effective management of accident investigation function includes training of investigators, procuring necessary equipment, oversight of investigations, ensuring adequate evidence collection, managing civil liability issues and coordinated collection of necessary statistics.”^v

These steps work toward a goal of providing more efficient and effective delivery of services. The Matrix Study stopped short of recommending a physical recentralization of the traffic section. The TRB respectfully disagrees.

The TRB believes serious bodily injury (SBI) and fatal crashes should be coordinated and logistically managed to a similar degree as a homicide investigation. To facilitate the type of communication upon which detectives in the Major Crime Unit successfully rely, requires those charged with solving the crime to be in frequent face-to-face contact. This is best handled by having the investigators physically located in the same facility.

While understanding there are many forms of communication in the 21st Century, nothing compares to face-to-face contact allowing experienced investigators to exchange ideas, draw on each other as sounding boards and reach a consensus on the investigation. This type of idea exchange is invaluable to collision investigators, giving them insight and access to the cognitive processes of other seasoned examiners. Additionally, investigators sent to specialized collision investigation training are able to return to their duties and share with other team members what was learned.

Physical recentralization would also eliminate unnecessary competition for equipment. Each investigator would have access to all combined assets of the centralized traffic section. Currently, assets that were purchased by each District continue to be housed and maintained by the Traffic team at each District, limiting access by investigators. The procurement of needed equipment often adds unnecessary time delays in gathering and preserving critical evidence, thus hindering the complex investigative process.

An additional benefit of physical recentralization would likely result in a positive collaboration of the investigators' and their counterparts who would likely "team manage" significant accidents instead of unconstructively critiquing each others' work. The ability to round-table these collisions allows for open exchange of discussion and ideas and significantly increases the efficiency and effectiveness of services provided by the Centralized Traffic Section. This would replicate a proven practice already in effect in the Major Crime Unit and would result in numerous investigative efficiencies.

Previously, when a vehicular crash occurred that resulted in death or serious bodily injury, the investigation was handled by an on-duty traffic officer or the on-call investigator and/or Accident Reconstructionist. On-scene first responders assisted as needed with traffic control and CSI responded to photograph and collect evidence as necessary. The on-scene investigator independently determined filing charges and seldom, if ever, did so in immediate consultation with a district attorney.

In the Hernandez Case, Agent Lee acted independently in determining a singular charge of "*Hit and Run resulting in Death*" and establishing a minor \$10,000 bond. Had a defect in the original affidavit not been noted, Hernandez likely would have bonded out and become a fugitive of justice. Evidence presented at trial revealed that while in jail, Hernandez was scheming how to raise the money by putting his girlfriend's parents property up for bail (His apparent plan to leave the country to avoid prosecution.)

Hernandez was returned to Aurora from Arapahoe County and placed in the City Detention Center. The following day, a team of Agents assigned to Traffic rewrote the original arrest affidavit and determined appropriate charges for Hernandez who on February 24th, 2010, was convicted in Arapahoe County on 19-counts including Vehicular Homicide...Child Abuse Resulting in Death, a Class-2 Felony.

The Tactical Review Board Proposes Two Recommendations:

1. **Recentralize Traffic** As previously described, the Traffic Section should be physically recentralized into one facility or dedicated area appropriate to completing the variety of investigative tasks related to the functioning of a comprehensive Traffic Section. At a minimum, the TRB recommends the physical relocation of the current Reconstruction Investigators (15), Traffic Agents (6) and supervisors (2). The Motorcycle Enforcement Team (MET), Motor Carrier Safety Unit, Photo Red Light Unit and Administrative Support can be housed elsewhere if space is an issue.
2. **Establish a Crash Reconstruction Team (CRT)** When a homicide occurs, the Department's Major Crime Homicide Unit (MCHU) responds as a team to conduct the on-scene homicide investigation. The team studies the crime scene, identifies evidence, attempts to identify and arrest the suspect(s) and works in

concert with laboratory Crime Scene Investigators to collect and preserve evidence. The MCHU works collectively, in consultation with the appropriate judicial district attorney, to obtain search warrants as needed and determine appropriate charges.

The TRB proposes that the Crash Reconstruction Team be assembled and follow protocols similar to those followed in the MCHU. A CRT should be developed by the Bureau Captain/Commander and Traffic Lieutenant to respond as a team to fatality, SBI / horrific crashes. A CRT van should be deployed and /or the Department Command Post. Filing Agents are a crucial part of the team and should communicate from the incident with the On-call Assistant District Attorney (ADA). In some cases, the ADA should respond to the scene to consult with Traffic Detectives regarding charges to file.

(See Proposed Special Order 11-04 attached as Addendum D)

V. VEHICLE EVIDENCE HANDLING AND PROCESSING PROCEDURES

When a collision occurs resulting in either SBI or a fatality, and the driver of the vehicle is known, it is the lead investigator's responsibility to evaluate and preserve the vehicles for evidentiary purposes. This may include placing the vehicle(s) in the evidence bay(s), or if the evidence bay(s) are not available, to preserve any evidence by tarping the vehicle(s) as described above. In the event a vehicle is placed into the evidence bay(s) the vehicle(s) should be removed as soon as practicable and after consultation with the assigned Assistant District Attorney.

Note

Due to limited storage capacity and ever increasing need, it is necessary that the Department maintain an efficient process regarding the preservation and collection of forensic evidence related to crashes where charges are brought against a driver.

Therefore, once a case is filed, the prosecution and defense will be notified by the assigned investigator that the vehicle will remain available for inspection for a period not longer than 60 days from date of notification. At the end of 60-days, the involved vehicles, already processed for evidence by CSI, will be moved to general storage at the impound lot.

(See Proposed Special Order 11-05, attached as Addendum E)

VI. CONCLUSION

As a result of concerning issues raised during the Hernandez trial, Chief of Police Daniel Oates on March 08, 2010 announced to the Department the appointment of a Tactical Review Board to evaluate the entire case, what business practices were employed and determine what lessons could be learned. The Chief noted that the conviction of Francis Hernandez for the triple homicide “*was an important success for the Department.*” The evidence at trial raised questions about aspects of the traffic investigation process and served as the impetus for the TRB appointment.

The TRB examined many facets of the Hernandez investigation and a major portion of the review centered on the media attention that it garnered and in particular, the pointed inquiries and allegations concerning the manner in which the Department handled the investigation. The Hernandez Trial became a media event wherein the Department and its members were publically criticized for internal actions that took place before, during and after the investigation was completed. The TRB examined the most critical of these concerns. Specifically, comments attributed to detectives who testified during the trial alleged that Traffic Section detectives were at odds with each other and that this internal disruption was long standing.

The Denver Post reported (March 25, 2010, Sec. B, pg 1B) that:

“As Francis Hernandez was being tried for killing three people at an Aurora ice cream shop, police and prosecutors squabbled in e-mails and memos as the odds of winning the case appeared to be reversing”.^{vi}

The Post through an open-records request, obtained internal e-mails that revealed “*Aurora police higher-ups*” had questioned their own Department’s investigation. The Post also obtained e-mail sent to DA Carol Chambers from prosecutor Karen Pearson wherein Pearson stated her belief that Agent Pat Hardin “*was on a vendetta against Agent Johnny Lee.*” She also stated her belief that Agent Hardin was “*unstable*” when she took the stand to testify.^{vii}

An issue at trial focused on Agent Johnny Lee’s preparation of the initial affidavit, including deleting the original document from the police Records Management System. Agent Lee did reconstruct the affidavit but failed to include potentially exculpatory information regarding how an on-scene witness had reported two people inside the Chevy Suburban. The Hernandez defense team pounced on these procedural and evidentiary errors and then painted a sepia-like portrait of a Department in turmoil. Lost in the nearly non-stop reporting of the trial was the fact that three innocents lost their lives the evening of September 4th, 2008.

(The original Lee affidavit and Hardin affidavits are attached as Addendum I)

Case Assignment Concern

Past allotment practices of the Traffic Section led to a perceived disproportionate assignment of cases to investigators. Significant disagreements among on-call traffic detectives regarding who received overtime coupled with inconsistency in how cases were assigned contributed to unrest. In an e-mail dated March 21, 2008, authored by Sergeant M. Woodyard, the sergeant noted changes in the way On-call would be handled. He noted that:

“The purpose of these changes is to ensure the load is carried by all in the unit, that junior officers gain experience and skills, and that all officers can be evaluated in their performance at major accident scenes. I have been tasked with making an on-call roster that spreads out the wealth and ensures that all participate in the process.”

Department members were already aware of the budget crisis in the City of Aurora, and managers were tasked in proposing potential reductions in vehicles or programs to include the Traffic Section. In a memo dated June 25th, 2008 from Lt. Sopranuk to his Bureau Captain Jerry Hinkle, Lt. Sopranuk advised that the Hit and Run Unit needed one additional detective to handle the increasing case load. He further stated that *“Traffic Officers are not trained to complete the DA’s investigative steps necessary for successful prosecution.”* The TRB interpreted this to mean that traffic officers have several functions and responsibilities and likely, would be not available to do follow-up investigations and case filings. Clearly, this was a compelling fact amplified when Agent Johnny Lee, the least experienced investigator in the Unit, was assigned this high-profile triple homicide investigation.

In reviewing the many documents and public reports related to the Hernandez case, the TRB became concerned regarding the performance of Agent Johnny Lee and that of his Section Lieutenant. These concerns were shared with the Chief’s Office at the start of the TRB. However, per Directive 7.9, (*Addendum A*) *“the purpose of the TRB is not to review misconduct or impose discipline, as these functions are provided for in other Department processes”*. As a result of accusations made by Agent Hardin and other concerns related to Agent Johnny Lee stemming from the trial, the Chief of Police ordered an Internal Affairs investigation. Matters related to command level management/leadership issues at the crash scene, and subsequent faulty affidavit preparation and approval, were handled internally. These internal investigations are not a part of the TRB process. The IA investigation and any discipline imposed or recommended by the Chief of Police concerning this matter remain a personnel-related issue.

There was much excellent work completed the night of the incident and, in the days, weeks and months following this horrific event. At least 49 Department members participated in the crash investigation, location and preservation of multiple crime scenes,

evidence gathering and eventually locating and arresting Francis Hernandez in a timely fashion.

(See Addendum K for On-scene Personnel)

Agent Johnny Lee, clearly the most inexperienced investigator, made several errors while working this extremely complex case. However, expertly aided by other experienced detectives, including commendable work performed by Agent Pat Hardin and Officer Bill Collom, he also did an exceptional job in putting the case together. Following relentless questioning by the defense team, unprecedented media attention during the trial and strained testimony therein, an Arapahoe County jury returned a verdict of guilty against Francis Hernandez.

On February 24th, 2010, Francis Maudaniel Hernandez was convicted and found guilty on all 19-counts, including Child Abuse Resulting in Death, a Class-2 Felony, and Vehicular Homicide...by an Arapahoe County Jury. The Huffington Post reported on April 5th, 2010 that “*The case sparked calls for immigration reform after it became known Hernandez had avoided deportation despite a dozen prior arrests in Colorado*”.^{viii}

Hernandez is currently serving a 60-year prison sentence.

Policy and Procedure Change:

In addition to the already adopted Special Order (SO-10-02) (Officer Notes in Criminal Investigations) (*Addendum C*), the Tactical Review Board recommends the adoption of proposed Special Orders SO-11-04 (Type A Crash), (*Addendum D*) and SO-11-05 (Vehicle Evidence Handling and Procedures), (*Addendum E*).

Equipment Acquisition:

As part of the TRB review, members identified equipment and other options available to increase the efficiency of the Traffic Section and Crime Scene Investigation Unit. The TRB strongly recommends that following items be purchased by the Department likely acquired with future seizure board awards:

1. FARO 3-D Laser Scanner
2. iWitness Pro Photogrammetry Software
3. Olympus E-620 Digital SLR cameras
4. Tru-Angle Encoders

The above equipment and associated costs are described in detail in Addendum N.

Accident Reconstruction Ability:

The TRB believes that the technical accident investigation and reconstruction was thorough and complete. It is our finding, that current training standards are sufficient.

VII. CITATIONS / FOOTNOTES

ⁱ United States v. Harris, 543 F.2nd 1247 (9th Cir. 1976) See also Ortega v. People, 162 Colo. 358, 426, P.2d 180 (1967)
People v. Harms, Colo.App., 560 P.2d 470 (1976); See Brady v. Maryland, 373 U.S.83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

ⁱⁱ 40 Colo.App, 507, 580 P.2d 1263

ⁱⁱⁱ Killian v. United States, 368 U.S. 231, 82 S.Ct. 302, 7 L.Ed.2d 256 (1961)

^{iv} Report on the Organizational Study for the Police Department and Detention Center, Matrix Consulting Group, 20, February, 2008

^v Ibid above, Pg-130

^{vi} The Denver Post, Denver Post West, March 25th, 2010, Pg 1B-4B

^{vii} Ibid above, Pg 4B

^{viii} http://www.huffingtonpost.com/2010/04/05/francis-hernandez-gets-60_n_526324.html?vie...

**AURORA POLICE DEPARTMENT
DIRECTIVES MANUAL**

7.9	EFFECTIVE: January 24, 2006	_____ Daniel J. Oates, Chief of Police
	REVISED: March 1, 2010	
SUBJECT: TACTICAL REVIEW BOARD		
REFERENCES:		
CALEA:	PAGE: 1 of 4	

7.9 TACTICAL REVIEW BOARD

7.9.1 Purpose

The Tactical Review Board (TRB) is hereby established for the purpose of providing an internal administrative review process for the Department so that it may examine and learn from certain incidents and tactical situations.

The TRB will review any incident that, in the opinion of the Chief, triggers the need for an inquiry into whether the Department’s training, policies, tactics and/or procedures need to be modified.

The Board’s scope may include:

- Reviewing the potential need for changes in policies, procedures, tactics and/or training
- Reviewing whether APD practices are in conformance with nationally recognized/accepted practices
- Reviewing management planning, actions and decision making prior to and during the incident
- Reviewing other elements of the event as requested by the Chief.

The purpose of the Tactical Review Board is not to investigate misconduct or to impose discipline, as these functions are provided for in other Department processes. The Board’s focus will be on training, policy, tactics and procedural issues and needs. However, when a TRB inquiry uncovers evidence of possible misconduct not previously known to the Department, that evidence will be subject to further investigation by the appropriate entity, consistent with existing Department policy.

7.9.2. Definition

For the purposes of this Directive, the term “tactics” shall be defined as the strategies, equipment, procedures, resources and techniques employed by officers and their

supervisors during an incident to reduce risk to themselves or others and to achieve a satisfactory resolution of the event.

7.9.3. Board Protocols

Board Members: The Board will be comprised of a minimum of three members. All members will be selected and appointed by the Chief of Police. The Board may be expanded if necessary at the direction of the Chief of Police. The TRB will consist of:

- A Commander or higher ranking member (serving as Chairperson)
- Other senior commanders in the rank of Captain or above.
- Training Academy Lieutenant
- Department experts as deemed appropriate by the Chief and the Board Chair, including at least one member in the rank of police officer

Officers and supervisors whose conduct or decisions are under review will be permitted to request or suggest that specific experts be consulted or areas of expertise be considered by the Board.

Department Experts: The executive staff will recommend Department experts for Board positions. The Chief of Police will select Board members, on a case-by-case basis, depending upon the circumstances of the event being examined. All members of the Department are eligible for the Department Expert positions. The following criterion will be considered:

- Demonstrated experience in tactics and officer safety
- Instructor status or training expertise
- Work history involving relevant assignments
- Specialized areas of expertise
- Weapons expertise
- Other relevant career experience

Involved Officer(s): The TRB will rely on all available information and evidence existing at the time it convenes to review an incident. The TRB may require that officers involved in the incident attend a TRB hearing and answer questions. However, the TRB will be expected to first evaluate whether the existing information and evidence is sufficient to forego live testimony by an individual witness, and if it is, the individual witness will not be called.

If an individual officer is called before the TRB, all Garrity rules and protections will apply during his/her appearance. The involved officer may have an observer present during his appearance, and the rules for the Discipline Review Board regarding observers apply.

Additional Participants/Consultation:

- a) If an involved officer is asked to appear before the TRB, his/her supervisor and Bureau or District Commander may be present to observe but will not be a voting member.
- b) Advisory witnesses may be called as determined by the Board Chair.
- c) Any additional persons may be present at the discretion of the Chief of Police.
- d) The Board Chair may solicit additional consultation from outside the Department with approval of or direction from the Chief of Police.

7.9.4 Tactical Review Board Process

Case Selection: The Chief of Police will determine which incidents the Board will review.

Procedure: The Board is authorized to take all appropriate steps in its review, under the authority of the Chief of Police.

- a) The Board will convene following notification from the Chief.
- b) The Chairperson will coordinate and facilitate the meeting and provide administrative oversight for the entire process.
- c) The Board shall review all reports, photographs, videotapes, statements and other documents relating to the incident.
- d) The Board may invite any civilian witnesses as needed for clarification.

Board Decisions: The findings and recommendations of the Board will be provided in writing to the Chief. The final determination will include whether the actions taken

in the incident were in compliance with Department policy and training, and if the policy and training were sufficient and proper.

Recording: No actions during a Tactical Review Board will be recorded.

Confidentiality: All records and actions of the Board are to be considered confidential and will not be disclosed to anyone without permission of the Chief of Police. This confidentiality will extend to everyone involved in the proceedings.

The Chief of Police may release all or portions of the Board's findings and recommendations when the Chief determines that the release of such information is in the best interest of the Department. If the final report of the TRB includes Garrity statements by an individual member, those statements will not be released.

Conflict of Interest: Should any Board member be found to have a conflict of interest, the member will be excused and the Chief of Police will select a replacement.

John T. DaLuz, MA
Aurora Police Department
Investigations Bureau: Commander
Jdaluz@Auroragov.org

Executive Summary: The Aurora Police Department has approximately 628 commissioned officers and 130 civilian personnel. Presently assigned as the Commander responsible for the management of the Major Investigations Bureau: The Investigations Bureau is responsible for the investigation of felony/specialty crimes requiring time and expertise beyond the capacity of the preliminary or generalized District Detective investigations.

EDUCATION:

FBI National Academy: 227th Session, 2006

-University of Virginia, Quantico, VA

Master of Arts in Management, 2001

-Webster University, St. Louis MO (Denver Campus)

Bachelor of Science, Individualized Studies, 1998

-Charter Oak State College, Newington, CT

Associate of Arts, Pre-Professional Studies

-Bristol Community College, Fall River, MA

PROFESSIONAL EXPERIENCE: Aurora Police Department, Aurora, CO

08/08 to Present: Commander: Investigations Bureau: Major Crimes, Crime Lab Section

02/08 – 08/09: Commander: District-I: Command of largest District, 150 Officers and Detectives

03/06 - 02/08: Captain: Technical Services Bureau: Training Academy, Recruiting, Records, Property

01/03 – 03/06: Police Lieutenant: Patrol Commander; Detective Commander

10/00 – 01/03: Police Sergeant: Patrol Division

09/99 – 10/00: Police Recruiter

01/99 – 09/99: Police Agent (Detective): Economic Crimes, Crimes Against Children

10/92 – 01/99: Patrol Officer & Traffic Accident Investigator (Level-III).

PREVIOUS POLICE EXPERIENCE:

1983-1992: *Denver Police Department:* Level-I Reserve Officer assigned to Patrol and Traffic Operations.

COMMUNITY INVOLVEMENT

Democratic National Convention, Denver, CO: 2008 Division Commander

Leadership Cherry Creek: School District Leadership Development Program

2007 Civil Rights Training Conference: Keynote speaker

FBI National Academy Associates: Member, Rocky Mountain Chapter

POST Regional Governing Board: 2006 to present...Board of Directors for Police Department training funds.

Denver Regional Training Academy: Member of Advisory Board to design a new regional training academy

Leadership Aurora: Chamber of Commerce, a one-year long leadership training and development program.

Aurora Mental Health: Board of Directors, 1998-2001.

Key Community Response Team: Community members concerned about police activity.

AWARDS

Medal of Honor: The Department's highest award for demonstrated valor in line of duty

Life Saving Award: Successfully performed CPR on a drowned infant

Officer of the Year Award: Optimist Club, 2002

Departmental Commendation from Aurora Fire Department: Rescued a firefighter

Departmental Commendation from Aurora Fire Department: Rescued a drowning victim

Commander's Commendation: Awarded for work in L.E.A.F. program.

Campaign Ribbon: Awarded for participating in Pope John Paul's Papal visit to Denver

Chief's Commendation: Redesign of Department Badge in celebration of 100-year anniversary

Campaign Ribbon: Awarded for work during the 2008 Democratic National Convention in Denver, CO

Kevin J. Flynn, MA
Aurora Police Department
District 2 Bureau Commander
kflynn@Auroragov.org

Executive Summary: The Aurora Police Department has approximately 628 commissioned officers and 130 civilian personnel. Commander Flynn is presently responsible for the management of the District 2 Operations. The Operations Bureau is responsible for crime suppression and community concerns within the District. These tasks are accomplished through a multi faceted approach involving specialty units, investigative teams and patrol operations.

EDUCATION:

FBI National Academy: 239th Session, 2009 -University of Virginia, Quantico, VA
DEA Drug Unit Commanders Academy 2002 Fredericksburg VA
Master of Arts in Political Science, 2006-University of Colorado, Boulder CO
Bachelor of Science, Business Administration, (Human Resource Management), 2001
 -Regis University, Denver CO

PROFESSIONAL EXPERIENCE: *Aurora Police Department, Aurora, CO*

08/09 to Present:	Commander District 2 Operations
02/08 - 08/09:	Captain: Technical Services Bureau: Training Academy, Recruiting, Records, Property
03/06 - 02/08:	Lieutenant: Investigations Bureau Major Crimes, Homicide, Economic Crimes
07/04- 00/06:	Police Lieutenant: Administrative Lieutenant District 2
03/02- 07/04:	Police Lieutenant: Commander Narcotics Section
01/00 - 03/02:	Police Sergeant: Front Range Drug Task Force
05/95 - 01/00:	Detective Sergeant: Larceny, Crimes Against Persons, and Homicide Units
12/94 - 05/95:	Police Sergeant: Patrol Division
05/91- 12/94:	Investigator: Narcotics Bureau
09/86 - 05/91:	Patrol Officer & Field Training Officer.

COMMUNITY INVOLVEMENT

Democratic National Convention, Denver, CO: 2008 Division Commander
FBI National Academy Associates: Member, Rocky Mountain Chapter
Denver Regional Training Academy: Member of Advisory Board to design a new regional training academy
Leadership Aurora: Chamber of Commerce, a one-year long leadership training and development program.
Key Community Response Team: Community members concerned about police activity.
Colorado Police and Fire Athletic Association: Board member, promoting physical fitness through competition

AWARDS

Medal of Honor: The Department's highest award for demonstrated valor in line of duty
Officer of the Year Award: Adams County Bar Association,
Member of the Year: Colorado Narcotic Investigators Association
Departmental Commendation: Arrest of Pattern Robbery suspect
Departmental Commendation: Arrest of Pattern Larceny from Vehicle suspect
Departmental Commendation: Evacuated 20 people from an active apartment fire
Departmental Commendation: Arrest of Pattern Burglary suspect
Certificate of Commendation: T-III Drug Investigation & seizure of 100,000 lbs of marijuana
Campaign Ribbon: Awarded for participating in monitoring KKK Rally
Campaign Ribbon: Awarded for participating in Pope John Paul's Papal visit to Denver
Campaign Ribbon: Awarded for work during the 2008 Democratic National Convention in Denver, CO
Chief's Commendation: Supervising Task Force on a Pattern Rapist investigation

Chuck DeShazer

Formal Education

University of Phoenix
10004 Park Meadows Drive
Lone Tree, CO 80124
Master of Science
Marriage and Family Therapy

Colorado Christian University
180 South Garrison Street
Lakewood, CO 80226
Bachelor of Science
Organizational Management

Red Rocks Community College
13300 West 6th Avenue
Golden, CO 80228
Associate of Applied Science
Criminal Justice

Professional Experience

Jan, 2009 – Present **Lieutenant; Traffic Operations Bureau**
Management of the traffic bureau which consists of 38 personnel spread over accident investigation, traffic detectives, motorcycle enforcement, motor carrier safety and photo red light program. The bureau has an annual budget of \$ 6.8 million.

Jul, 2008 – Jan, 2009 **Lieutenant; District Three Sector Commander**
Tasked with management of two integral teams in the district, Police Area Representative and the Directed Activity Response Teams. This position challenged me to create innovative solutions to positively address crime and quality of life issues within the District. The District Commander allowed the position to be creative and solution based without paradigm constraints. The end result was an increase in Neighborhood Watch participation, reduction of crime and reports of neighborhood conflicts.

Apr, 2007 – Jul, 2008 **Lieutenant; District Two Graveyard Watch Commander**
Responsible for oversight of the City during the night shift to include managing call volume over three districts. Oversight of tactical situations, training of sergeants and officers and promoting a positive work environment creating positive morale on the shift.

Jan, 2006 – Apr, 2007 **Sergeant; Police Area Representative/Foot Patrol**
Tasked with maintaining and creating programs to increase public involvement in community problems, reducing crime, positively impacting the quality of life and facilitating partnerships between citizens, businesses and the police department. The assignment involves seeking innovative solutions to unique problems associated with a large immigrant population. These programs include Spanish business outreach, educational programs and community meetings conducted in Spanish. The effort is in conjunction with other municipal organizations to facilitate trust and transparency of the police department and the City to the Spanish speaking public. Additionally, the oversight, application and financial management of the “Weed and Seed” Federal Grant distributed to the Police Area Representative unit.

Chuck DeShazer

Mar, 2004 – Jan, 2006 Sergeant; Patrol Operations

Responsibilities included the daily patrol functions of scheduling, organizing and training patrol officers on a night shift; planning operations to address specific community problems and crime; supervision of critical incidents and the application of fair and appropriate discipline; creating a positive environment allowing the officers to try innovative and unique problem solving tasks. Selected by the Lieutenant to perform the duties of Watch Commander in his absence.

Mar, 2001 – Mar, 2004 Selective Traffic Enforcement Program

Assignment included working identified traffic problem areas to promote safety of the public. Utilized police motorcycles for dignitary escorts and public safety at special events.

May, 1998 - Mar, 2001 Traffic Accident Investigator; Traffic Bureau

Responsible for technical accident investigation and reconstruction of accidents involving hit and run, serious bodily injury and death. The cases were then presented to the DA's office for filing.

Work Experience (continued)

Dec, 1996 - May, 1998 Patrol Officer

Solved beat problems by sharing ownership of community issues while developing partnerships with citizens to address concerns of crime and traffic to enhance their quality of life.

Jan, 1990 - May, 1995 Commerce City PD Patrol Officer

Gang Intervention Unit, Assistant Coordinator:

Field Training Officer: Responsible for the recruitment and training of new police officers.

SWAT Officer: Responsibilities included scouting target locations, planning and implementing dynamic entries and training patrol officers.

Firearms Instructor/Range Officer: Supervised range activities and instructed firearms handling and high risk tactics.

May, 1987 to December, 1989 Federal Heights PD: Patrol Officer

Additional Duties/Responsibilities

Jan, 2006 – Present Aurora PD Instructor Citizens' Police Academy

The opportunity to be an instructor in APD's Citizens' Police Academy and Senior Citizens' Police Academy was presented in early 2006. Since then I have presented Community Policing and Traffic Modules to the two different groups twice per year.

Feb, 2010 – Present IACP Instructor Leadership in Police Organizations

I was selected to attend Leadership in Police Organizations training and be developed as a faculty member of the International Association of Chiefs of Police to teach the Leadership in Police Organizations throughout Colorado.

Eric R. Stewart, MA
Aurora Police Department
Training Section: Lieutenant
 estewart@auroragov.org

Executive Summary: The Aurora Police Department has approximately 628 commissioned officers and 130 civilian personnel. This candidate is presently the Lieutenant responsible for the management of the Training Section, specifically the police training academy, the firing range, and the Field Training and Evaluation Program (FTEP).

EDUCATION:

Master of Arts in Leadership, 2001
 -Bellevue University, Bellevue, Nebraska
Bachelor of Science, Applied Management, 1998
 -National American University, Denver, CO.

PROFESSIONAL EXPERIENCE: *Aurora Police Department, Aurora, CO*

03/09 to Present: Lieutenant: Technical Services Bureau: Training Academy, Range, FTEP
 03/08 – 03/09: Lieutenant: Technical Services Bureau: Recruiting and Background Units, FTEP
 03/06 – 03/08: Lieutenant: Patrol Commander
 01/04 – 03/06: Sergeant: Gang Intervention Unit
 02/03 – 01/04: Sergeant: Patrol Division
 05/02 – 02/03: Agent (Detective): Fraud Unit, Crimes Against Persons Unit
 03/95 – 05/02: Officer/Investigator: Gang Intervention Unit, Metro Gang Task Force
 01/95 – 03/95: Field Training Officer
 01/94 – 01/95: Officer: Academy and Patrol

PREVIOUS POLICE EXPERIENCE:

05/85 – 01/94: Los Angeles County Sheriff's Department: Deputy Sheriff assigned to Patrol and Gang Unit.

TEACHING EXPERIENCE:

Adjunct Professor: Regis University, Criminology and Communication Departments, 01/2008 - Present
Adjunct Professor: University of Phoenix, Criminal Justice Department, 01/2008 - Present
Adjunct Professor: Community College of Aurora, Criminal Justice Department, 2003 - Present
Adjunct Professor: ITT Technical Institute, Criminal Justice Department, 11/2006 – 12/2008
Academy Instructor: Aurora Police Department, Community College of Aurora Police Academy, Highlands Ranch Public Safety Institute. **Colorado POST certified instructor.**
Lead Instructor: Rocky Mountain High Intensity Drug Trafficking Area Gang School

ADDITIONAL INFORMATION:

Recognized gang expert in the State of Colorado

Guest Lecturer: 2006, 2007, 2009 Regis University CSI Conference
Guest Lecturer: 2008 Annual Northwest Shuttle Conference
Guest Lecturer: 2006, 2008 Colorado Parole/Corrections Statewide Training Conference
Guest Lecturer: 2006, 2008 Colorado Springs Police Department Gang Symposium
Guest Lecturer: 2003 Utah State Gang Conference

Have received numerous Federal, local, and Aurora Police Department commendations for involvement in gang crime investigations/prosecutions.

James M. Lesnansky
Aurora Police Department
Operations Division: Police Sergeant Specialist
Email to: jlesnans@auroragov.org

Executive Summary

A proud member of the Aurora Police Department since September 1986, working a variety of shifts and assignments that enhance my work as a police officer. Currently assigned as a Police Sergeant Specialist, a function of the Field Training Officer program (FTO) where I am responsible for a team of six Specialist Training Officers and one Police Officer.

Education

Bachelor of Science in Business Management, 2001, University of Phoenix, Phoenix, AZ

Professional Experience

Aurora Police Department, Aurora, CO

May 04 to Present:	Police Sergeant Specialist of Field Training Officers (FTO)
Aug 09 to Present:	Hostage Negotiation Supervisor
Feb 04 – 08/07:	Emergency Response Team (ERT) Sergeant
Jan 05 – Apr 05:	Acting Lieutenant / Patrol Commander District 1, Watch 1
Jan 01 – Jan 05:	Patrol Officer, District 2.
Jan 93 – Jan 01:	Traffic Investigator (Level II) / S.T.E P. Officer
Sept 86 Jan 93:	Police Officer, District 1; Field Training Officer (FTO)

Committees

- RFP Committee for the selection of Health Insurance of city employees.
- Strategic Planning Committee participant
- Committee member on redesign of the Promotional Candidate Profile book.
- Contract Negotiation committee participant in 1997 and 1999.
- Radio Committee participant to select and examine 800 MHz radio system for city.

Awards

2009 Medal of Honor

2008 Life Saving Award

1997 Victim Witness Officer of the Year

Campaign Ribbon: Awarded for participating in Pope John Paul's Papal visit to Denver, CO

Campaign Ribbon: Awarded for work during the 2008 Democratic National Convention in Denver

CURRICULUM VITAE
Officer Albert (Al) D. Graham
Aurora Police Department

Summary: During the past 2 years I have been a member of the District #2 Direct Action Response Team (D.A.R.T.). Prior to my assignment to the D.A.R.T. unit, I was assigned to the Traffic Collision Investigation Unit. During that time I investigated and reconstructed collisions. Have investigated multiple fatal, and serious bodily injury collisions, and hundreds of minor injury/non-injury collisions. Instructor in the area of collision investigation for Colorado Accident Reconstruction Training Standards, the Community College of Aurora, Colorado State Patrol, and Arapahoe Community College

Professional Work Experience

2008-Present Direct Action Response Team Officer- Aurora Police Dept.
 2005-2008 Traffic Officer - Aurora Police Dept.
 2003-2005 Patrol Officer - Aurora Police Dept.
 1999-2003 Patrol Officer - Rockwood Borough Police Department, Pa.
 1997-1998 Patrol Officer - Somerset Borough Police Department, Pa.

Education

Indiana University of Pa.: 608 hours of Police Science Instruction
 Aurora Police Academy: 1048 hours of Fundamentals of Law Enforcement.
 Waynesburg College/Allegany College of Maryland: 93 credits in Criminal Justice.

Certifications

Certified Intoxilyzer 5000 EN Operator 5-5-05, Colorado Department of Health
 Certified Standardized Field Sobriety Test Battery Instructor – Colorado Department of Transportation September 13-16, 2005
 Certified Laser Operator – Laser Technology Inc. 7-15-04
 Certified Radar Operator – Aurora Police Department 3-9-04
 Colorado State Certified Peace Officer – Certificate # B-10084
 Certified Vascar Plus Operator 6-20-98
 Certified Police Cyclist – International Police Mountain Bike Association May 1998

Training

Basic Drug Investigators School- D.E.A. and Rocky Mountain HIDTA March 8-19, 2010
Crash Data Retrieval System Technician – CDR/National Law Enforcement and Corrections Technology Center 10-4-07
Traffic Crash Reconstruction Update – University of North Florida Institute of Police Technology and Management March 5-9, 2007
Level 4 Computer Aided Technical Accident Reconstruction – CO.SP 11-17-06 (40 hours)
Level 3 Technical Traffic Collision Reconstruction – C.A.R.T Standards 10-28-05 (95 hours)
Advanced Auto Pedestrian Crash Investigation – Colorado State Patrol 9-22-05 (30 hours)
Level 2 Advanced Technical Traffic Collision Investigation – APD 4-29-05 (80 hours)
Crash Zone Basic CAD Program – Aurora Police Department January 12-13, 2005
Level 1 Basic Traffic Collision Investigation – APD 1-7-05 (40 hours)

Detective Johnny Lee
1 of 5

CURRICULUM VITAE

Detective Johnny Lee, FET

Aurora Police Department, Detailed To:
Rocky Mountain Regional Computer Forensics Lab (RMRCFL)
Federal Bureau of Investigation
Computer Analysis Response Team (CART) Lab
9195 E. Mineral Ave, Suite 300
Centennial, CO 80112
Phone: 303-649-7900
Fax: 303-649-7901

PROFESSIONAL EXPERIENCE

February 2009 - present	<p>Detective/Computer Forensic Examiner (FE) Rocky Mountain Regional Computer Forensics Lab Federal Bureau of Investigation Computer Analysis Response Team Lab 9195 E. Mineral Ave, Suite 300 Centennial, CO 80112</p> <p>As a forensic computer examiner in an FBI Certified laboratory; examine physical evidence under a documented quality assurance program that includes annual proficiency testing, technical/peer and administrative reviews and adherence to standard operating procedures.</p> <p>Conduct forensic examinations on computer evidence and perform search and seizure operations.</p>
June 2007 to February 2009	<p>Detective Aurora Police Department, Aurora, Colorado Economic Crimes Unit / June 2007 to March 2008 Public Information Office/ March 2008 to June 2008 Traffic Unit/ June 2008 to February 2009</p> <p>Assigned to the Economic Crimes Unit for nine (9) months. Responsible for: Investigation, filing, and subsequent assistance in the prosecution of theft, fraud and white collar crimes.</p> <p>Detailed to the Public Information Office. Assigned to redesign the website for the Aurora Police Department.</p> <p>Assigned to the Traffic Unit for six (6) months. Responsible for: Investigation, filing and subsequent assistance in the prosecution of Felony Hit and Run, and Vehicular Homicide cases.</p>
November 2001 - June 2007	<p>Police Officer Aurora Police Department, Aurora, CO</p> <p>Patrol Officer - November 2001 to June 2004</p> <p>Traffic Officer - June 2004 to June 2007</p>

Detective Johnny Lee
2 of 5

June 1998- March 2001 Missouri Department of Corrections; Corrections Officer 1; certified as Defensive Tactics Instructor, Firearms Instructor, Verbal Judo

November 1994 – September 2003 United States Army National Guard; jobs included Field Artillery Cannon Crewman, Ammunition Officer, Fire Direction Officer, Platoon Leader, Air Assault Qualified; Last Rank held: First Lieutenant

January 1993-May 1995 Firefighter Horry County, SC Volunteer Fire Department Firefighter I Certified

EDUCATION

1997 - 2000 **Columbia College**
Columbia, MO
Degree: Bachelors of Arts

1995 - 1997 **Kemper Military Academy**
Booneville, MO
Degree: Associates of Arts

PROFESSIONAL TRAINING

November 2009 FBI CART Practicals. FBI CART - Stafford, VA. (32 hour course)

September 2009 Internet Forensics. AccessData – CART - BWI
Linthicum, MD San. (24 hour course)

August 2009 Windows Forensics. AccessData - Western New York Regional Computer Forensic Lab (WNYRCFL), Buffalo, NY. (24 hour course)

June 2009 FBI CART 101. FBI CART - Stafford, VA. (32 hour course)

April 2009 FTK Boot Camp. AccessData Silicon Valley Regional Computer Forensic Lab (SVRCFL), San Francisco, CA. (24 hour course)

February 2009 A + Certification. Total Seminars, Centennial, CO. (2 week course)

May 2008 Managing Civil Actions in Threat Incident, Denver, CO (16 hour course)

September 2007 New Investigator Academy, 18th Judicial District, Arapahoe County, CO (16 hour course)

August 2007 The Reid Technique of Interviewing & Interrogation, John E. Reid and Associates Inc
Boulder, CO (20 hour course)

August 2007 Financial Records Examination & Analysis (FREA) Course, National White Collar Crime Center, Thornton, CO (36 hour course)

March 2007 Traffic Crash Reconstruction Update, IPTM, Golden, CO (40 hour course)

Detective Johnny Lee
3 of 5

February 2007	Intoxilyzer 5000EN Operator/Instructor Update Training Course, Colorado Department of Health, Denver, CO (8 hour course)
September 2006	Investigation of Motorcycle Crashes, IPTM Eugene, OR (40 hour course)
July 2006	Highway-Rail Grade Crossing Collision Investigation, Aurora, CO (8 hour course)
December 2005	Introduction to the Incident Command System IS-00100, Aurora, CO
December 2005	Advance Crashzone, The Cad Zone, Arapahoe County, SO (8 hour course)
October 2005	Technical Traffic Collision Reconstruction Level III, Aurora, CO (95 hour course)
September 2005	Advanced Auto Pedestrian Crash Investigation, Colorado State Patrol, Golden, CO (40 hour course)
July 2005	In-House Koga SD-1 User Certification Course IS-00700, Aurora, CO
May 2005	FEMA National Incident Management System Introduction Aurora, CO
May 2005	Introduction to the Incident Command System for Federal Disaster Workers I-100 Aurora, CO
April 2005	Traffic Collision Investigation Level II Aurora, CO (80 hour course)
April 2006	Certified Standardized Field Sobriety Test Battery Instructor Colorado Department of Transportation
March 2005	Certified Instructor LTI 20/20 Ultralyte Laser Detection System, Aurora, CO
March 2005	Certified Instructor LTI 20/20 Marksman Laser Detection System, Aurora, CO
February 2005	Intoxilyzer 5000EN Operator/Instructor Training Course, Colorado Department of Health Denver, CO (20 hour course)
January 2005	"Crash Zone" Basic Computer Aided Drawing Program Course, Aurora, CO (20 hour course)
January 2005	Traffic Collision Investigation Level I , Aurora, CO (40 hour course)
July 2004	LTI 20/20 Ultralyte Laser Detection System Operator Course, Aurora, CO
June 2003	Intoxilyzer 5000EN Operator Training Course Aurora, CO (10 hour course)
November 2002	Basic Radar Operators Course, Aurora, CO
November 2001	City of Aurora Police Academy Aurora, CO Police training Academy: A comprehensive law enforcement training program which consisted of 1064 hours of training followed by a fourteen week field-training program. Commission and POST Certification received May 24, 2002.

CERTIFICATIONS

Detective Johnny Lee
4 of 5

August 2009	AccessData Certified Examiner (ACE)/ AccessData
April 2009	A+ Certified Professional IT Technician / Comp TIA (COMP001008565053)
September 2006	Accreditation Commission for Traffic Accident Reconstruction (ACTAR) certification (Registration #1712)
	Instructor on LTI 20/20 Ultralyte Laser Detection System, Laser Technologies Institute, Englewood, CO.
February 2006	Instructor for "Crashzone" Computer aided Drawing program, The Cad Zone, Beaverton, OR
April 2006	Instructor for Colorado Accident Reconstruction Training Standards (Level I, II, III accident reconstruction)
April 2006	Instructor in Standard Field Sobriety Test, Colorado Department of Transportation
February 2005	Instructor on Intoxilyzer 5000EN, Colorado Department of Health and Environment, Denver, CO.
August 2004	Instructor on LTI 20/20 Marksman Laser Detection System, Laser Technologies Institute, Englewood, CO.

PROFESSIONAL AFFILIATIONS

2009 – Present	Member: Colorado Association Computer Crimes Investigators (CACCI)
2006 – Present	Fraternal Order of Police
2006 – 2007	Colorado Accident Reconstruction Training Standards
2006 – Present	Accreditation Commission for Traffic Accident Reconstruction (ACTAR)

TEACHING EXPERIENCE

Intoxilyzer 5000EN Operator Training Class
May 04, 2005; Oct 14, 2005; Feb 6, 2006; Feb 7, 2006; Jun 13-14, 2006; Jun 28, 2006, Dec 6, 2007

Traffic Collision Investigation Level I
Mar 6-17, 2006

Traffic Collision Investigation Level II
May 16, 2006

Detective Johnny Lee
5 of 5

Traffic Collision Investigation Level III
Sep 11-22 2006

Basic Crashzone/Laser Mapping System
Mar 27-30, 2006; Feb 20-23, 2007

Standard Field Sobriety Tests
Aug 17-18, 2006; Feb 31-Mar 2, 2007

Officer Notes in Criminal Investigations:

The following proposed SO 10-02 will provide guidance to members of the Department

SO 10-02	EFFECTIVE: October 21 st , 2010	<hr/> Daniel J. Oates, Chief of Police
	REVIEW: May 21 st , 2011	
References:	DM 5.8	
Subject:	NOTES IN CRIMINAL INVESTIGATIONS	Initiated By: TRB
Resulting Action:		PAGE: 1 of 1

The purpose of this proposed Special Order is to clarify the Aurora Police Department’s expectations concerning investigatory notes taken by all members of the Department involved in conducting criminal investigations. Based on concerns of the courts, challenges by defense attorneys, prosecuting attorneys and current case law, effective immediately, members will handle notes connected with criminal investigations as follows:

For officer notes related to Homicide Investigations / Officer Involved Shootings / Felony Assaults / Vehicular Homicide / Vehicular Assault or where serious bodily injury is likely, the member will ensure that the original notes are scanned by the Records Unit into the appropriate case.

When the member has completed his/her report he/she will make a copy of all notes connected to the referenced case/investigation, legibly print the case number, officer name and ID number on each copied page in the upper right hand corner and then submit the copies to the Records Unit to be scanned into the Versadex Records Management System. After the copies are scanned, the copies will then be destroyed by the Records Unit personnel. The member will place the original notes into property.

Members taking notes in misdemeanor and felony cases not listed above should accurately transcribe their handwritten notes into their official report and state in the report that any hand written / typed notes were accurately transcribed into the final police report. The original notes should not be placed into Property except in extenuating circumstances. Officers in *any court proceeding or administrative hearing* will testify only from their submitted and supervisor approved final written report. Nothing in this Special Order will preclude the preservation of notes as deemed necessary by members, supervisors or command personnel based on the circumstances surrounding an event.

This Special Order will remain in effect indefinitely and is subject to cancellation at the discretion of the Chief of Police.

Type "A" Crash Investigations:

The following proposed SO 11- will provide guidance to members of the Department

SO 11-04	EFFECTIVE: TBA	Daniel J. Oates, Chief of Police
	REVIEW: TBA	
References: DM		
Subject:	Initiated By: TRB	
Resulting Action:	PAGE: 1 of 1	

Because of inconsistent past practices that resulted in several concerns for the TRB, the board recommends the following Special Order be adopted for all future, serious vehicular crashes (Type-A- Crash):

PROPOSED SPECIAL ORDER 11-04...Type "A" Crash

Vehicular homicides should be investigated very much like other homicide events. That is, a *Crash Reconstruction Team (CRT)* should be assembled and available to respond 24/7 to crashes resulting in death or serious bodily injury. The mission of this team is to apply collective expertise, in the form of training and experience, to determine the cause of fatal and serious personal injury auto collisions. The members of this team have advanced/expert knowledge in the field of motor vehicle collision, investigation and reconstruction. A "team concept" is applied to investigating crashes by responding on an "on call" basis, which increases their proficiency.

A complete CRT investigation should consider the following:

- Roadway and environmental conditions
- Driver profiles to include driving and criminal records
- Physical evidence description / location
- Physical evidence analysis
- Vehicle damage description/analysis
- Computer aided drawings and animations
- Causation analysis
- Print photographs / digital photographs
- Autopsy and injury analysis / description
- Physical evidence / scene diagram
- Speed/energy calculations
- Vehicle systems analysis ("*Black-box data*")
- Time / distance analysis / diagram
- Conclusions and recommendations

Other responsibilities of the CRT include assistance to other investigation units in criminal investigations and crime scene responders.

Suggested Protocol for a Type -A –Crash:

1. These events will be referred to as a “Type-A Crash”...meaning, any motor vehicle crash that results in, or is likely to result in, a fatality or SBI to a Department member or public citizen in the capacity of a driver, passenger or pedestrian and/or likely to attract significant media attention and/or impose potential liability to the City of Aurora. These types of accidents usually involve lengthy litigation in criminal and civil courts and investigator reports and findings are critical in these proceedings.
2. The CRT may respond to any accident that involves a City owned/leased vehicle operated by any City employee and that crash results in serious bodily injury to another and/or where there is credible evidence of a violation of law or policy, concerning the City Employee’s operation of a vehicle.
3. The CRT will be composed, at a minimum, of one (1) Traffic Supervisor (on-duty or on-call), one (1) Traffic Agent who will be responsible for filing the case, and at least two (2) Specialty Reconstructionists.
4. The Patrol Commander/Duty Lieutenant or Duty Captain will in a Type-A-Crash respond as a resource to the CRT and will make immediate notifications as necessary to Department command officers.
5. CSI will respond to assist the CRT (On-duty or on-call)
6. A Department PIO will respond as needed to handle on-scene media inquiries; media handling *should not* be the responsibility of the Traffic Unit Lieutenant.
7. In horrific crashes with resulting death to an innocent, the on-call Assistant District Attorney may be requested to respond directly to the crash scene to consult/advise the CRT Agent on the appropriate filing charges.
8. The Department command post or Traffic reconstruction van may be brought to some scenes to act as a base of operations while the crash investigation is underway and its deployment is strongly encouraged.
9. The CRT investigators will ensure that vehicles towed to the Impound Lot are reasonably protected from the weather and/or unauthorized access until such time as a warrant is obtained and evidence, to include the Crash Data Retrieval Device, has been recovered by a qualified technician able to retrieve the stored data. All vehicles will be processed for evidence by CSI.

This Special Order will remain in effect indefinitely and is subject to cancellation at the discretion of the Chief of Police.

SO 11-05	EFFECTIVE: TBA	Daniel J. Oates, Chief of Police
	REVIEW: TBA	
References: DM		
Subject:	Initiated By: TRB	
Resulting Action:	PAGE: 1 of 1	

**PROPOSED SPECIAL ORDER 11-05:
Vehicle Evidence Handling and Processing**

The purpose of this special order/policy is to guide members in the preservation of evidence in the course of investigating a collision resulting in Serious Body Injury, (SBI) or fatality. The preservation of evidence for these types of investigations is paramount and compliance assurance rests with the lead investigator.

When investigating a collision involving an SBI or fatality, the Lead Investigator (or designee) will evaluate what evidence needs to be extracted from the vehicle(s) involved. Serious Bodily Injury or fatal crashes where the driver of a vehicle is known / unknown requires the investigator to preserve any evidence needed to successfully identify and prosecute the person in control of the vehicle at the time of the collision. Evidence includes, but is not limited to, DNA, blood, hair follicles or any other physical characteristics that could isolate the driver.

When investigating an SBI or fatal collision and the driver is known / unknown, the lead investigator should ensure that the following evidence preservation process is followed and may include:

- Securing the vehicle(s) involved in one of the secured evidence bays at the Central Shops.
- If the evidence bay at the Central Shops is not available, the investigator will have the vehicle(s) transported to the Impound Lot and protected in one of the secured evidence bays.
- If all secure evidence bays are in use, then the investigator may contact the on call sergeant of the unit(s) currently storing evidence in those bays to determine if one of the bays may be emptied so the subject vehicle(s) can be stored in one of the occupied bays.
- If a secured evidence bay cannot be obtained, then the investigator will have CSI process the vehicle(s) at that time, if practicable, in order to retrieve any forensic evidence that could potentially be lost to the elements.
- If CSI cannot process the vehicle and secure evidence bays are not available, the investigator will minimally place the vehicle(s) at the Impound Lot in the “Hold” portion, protecting the vehicle as best possible for future evidence retrieval.

The effort to preserve evidence from the weather elements may include the following procedures:

- The closing of all windows on the vehicle if possible.
- If this is not possible the investigator may use plastic, a plastic tarp, or other suitable material to prevent the elements from getting inside the vehicle.
- Placing evidence tape on the doors to reasonably ensure unauthorized entry into the vehicle has not been made.
- Securing the tarps with the necessary means to ensure the wind does not blow the tarps off. This may include bungee cords, tape placed on the tarps themselves or stakes into the ground and securing the ropes to the tarp(s).
- If it is necessary to use tarps in an attempt to preserve evidence, the lead investigator will ensure that CSI processes the vehicle as soon as practicable.
- If tarps are used it is the responsibility of Impound Lot personnel to check on the tarps from time-to-time to make sure they are not destroyed and the vehicle remains reasonably protected.

Summary:

When a collision occurs resulting in either SBI or a fatality, and the driver of the vehicle is known, it is the lead investigators responsibility to evaluate and preserve the vehicles for evidentiary purposes. This may include placing the vehicle(s) in the evidence bay(s) or if the evidence bay(s) are not available to preserve any evidence by tarping the vehicle(s) as described above. In the event a vehicle is placed into the evidence bay(s) the vehicle(s) should be removed as soon as practicable and after consultation with the assigned Assistant District Attorney.

Note:

Due to limited storage capacity and ever increasing need, it is necessary that the Department maintain an efficient process regarding the preservation and collection of forensic evidence related to crashes where charges are brought against a driver.

Therefore, once a case is filed, the prosecution and defense will be notified by the assigned investigator that the vehicle will remain available for inspection for a period not longer than 60 days from date of notification. At the end of 60-days the involved vehicles, already processed for evidence by CSI, will be moved to general storage at the impound lot.

Daluz, John

From: Oates, Daniel
Sent: Monday, March 08, 2010 7:36 AM
To: APD
Subject: Appointment of Tactical Review Board

To All Members of the Department:

The recent trial of Francis Hernandez for a triple vehicular homicide was an important success for the Department. It is also a case that garnered a great deal of public and media attention. The evidence at trial raised questions about aspects of our traffic investigation process. For this reason, I have decided to appoint a Tactical Review Board to evaluate the entire case and to determine what lessons we can learn from it.

The Tactical Review Board will consist of the following personnel:

Commander Jack Daluz, chairperson
Commander Kevin Flynn
Lieutenant Chuck DeShazer
Lieutenant Eric Stewart
Sergeant Jim Lesnansky
Officer Al Graham

Please provide this board your every assistance as they go about their duties for the Tactical Review Board. The TRB will provide a report to the Department when their work is completed.

Chief Oates

Daniel J. Oates
Chief
Aurora Police Department
15001 E. Alameda Parkway
Aurora, Co. 80012
303-739-6021
doates@auroraqov.org

From: Woodyard, Michael

Sent: Friday, March 21, 2008 1:52 PM

To: Gomez, Rolando; Collom, William; Snyder, Robert; Lafrance, Michael; Trap, Eric; Falco, John; Williams, Everett; Moore, Gary; Smukler, Robert; Amen, Brad; Camacho, Anthony; Yates, John; Harper, Javen; Hardin, Patricia; Deichsel, Kevin; Kelly, Brian; Rollins, Kevin

Cc: Sopranuk, John; Blanton, James; Woodyard, Michael

Subject: On call procedures

With the centralization of traffic, there have been some changes in the way we will work on call. The purpose of these changes are to ensure that the load is carried by all in the unit, that junior officers gain experience and skills, and that all officers can be evaluated in their performance at major accident scenes.

In short, on call duties will be assigned and rotated among all officers. I have been tasked with making an on call roster that spreads out the wealth and ensures that all participate in the process. For the most part, officers should only be on call 1 week out 6, and if you reply to me promptly enough, I should be able to accommodate major vacations etc.

When I return from vacation on April 1st, I will start making out a roster for the remainder of 2008. Please send me an e-mail prior to that date, including your ID number, cash or comp time preferred, the phone or pager number you can be reached at while on call, and any dates that you know you will be on vacation and unavailable.

In the interim, the following on call schedule will be in effect, based on the earlier sign up:

Week of March 21, 2008 Yates/Falco

Week of March 28, 2008 Hardin/Kelly

Week of April 4, 2008 Snyder/Falco

I hope to have the on call schedule for the remainder of the year completed in the first week of April, with a start time for the week of April 11.

Thanks for your help and understanding during this transition.

Woody

From: Sopranuk, John

Sent: Friday, June 20, 2008 1:44 PM

To: Amen, Brad; Blanton, James; Brook, Mark; Brukbacher, Matthew; Bumberger, Joseph; Camacho, Anthony; Cherry, Eric; Collom, William; Deichsel, Kevin; Falco, John; Gomez, Rolando; Hardin, Patricia; Harper, Javen; Hartman, Mark; Kelly, Brian; Lee, Johnny; Mihane, Mike; Moody, Travis; Neely, Matthew; Nolte, Ed; Pray, Jason; Price, Brandon; Roberson, Alfred; Rogers, Gary; Rogers, Karen; Rogers, Tracy; Rollins, Kevin; Sangi, John; Smukler, Robert; Snyder, Robert; Trap, Eric; Williams, Everett; Woodyard, Michael; Yates, John; Zius, Jonathan

Subject: General Information and updates

Good morning,

This email is to simply provide information as I know it – Sorry it is so long.....

Welcome to the section:

Eric Cherry

Alfred Roberson

Johnny Lee

Rolando Gomez

Mark Hartman (Should be off-light duty in July and back to Traffic)

Centralization:

Your guess is as good as mine.....

Training:

As most of you know, there is no remaining monies at this time for training. I have passed onto the sergeants that if a school presents itself, and you wish to attend – on a case by case basis, I will attempt to provide and support admin time. All other associated costs must be picked-up by you. In-house classes (no cost) will be approved based on your respective sergeants staffing needs.

OT:

Same as training – no money. At least the presumption is not without the appropriate approvals. Hopefully the OT situation will correct itself with the economy. I would highly encourage you to participate in the remaining DUI checkpoints for OT – Karen will work with you in trying to keep it in-house before we ship it department wide.

PIO:

In a meeting with Chief Oates, Sam McGhee and myself, we changed the past practice of "traffic PIO."

For SBI and below traffic concerns, the media is to contact the Duty Lt. for Media releases.

Traffic Sgt's and myself only provide Media intervention on traffic fatalities or any traffic issue that will take on a significant time period – as in Photo red-light.

Below is the policy Directed to the patrol commanders as it relates to the media – Per Chief Cloyd:

"Based on evolving dynamics with the media and recent re-centralization in the Traffic Section, the Traffic Section and the Media Relations Unit are reviewing the processes by which we deal with major accidents and the media. Prior to the decentralization of Traffic

in 2002, The Traffic Section Commander was the PIO for fatal traffic accidents and only responded to the media on fatals or probable fatals. Since then the inquiries have grown to the point that there are frequently calls on property damage accidents with an expectation that the Traffic Section will take the lead. Due to this current expectation by the media that the Traffic Section Lieutenant will respond either in person or by phone to any accident inquiry and the impact it is having, we are returning to the posture that he will only respond to media based inquiries when the accident is a fatality or imminent fatality.

Media inquiries about other accidents will be responded to by the Duty Lieutenant or designee. This is due in large part to the on-duty command officer or designee having the best and most recent information. These types of responses should only require basic information to augment any video that may have been shot at the scene by a media outlet. If someone from the media is demanding of PIO involvement, it is ok for you to tell them "no" and provide the basics. If you have a traffic accident/incident that garners significant media attention, the Duty Captain should be contacted and he will determine the proper PIO involvement. The bottom line is that you are being asked to use your best judgment in handling these inquiries and are empowered to do so."

What I would tell you if a media rep is simply shooting film and you wish to provided basic detail on the accident – in effect saving the patrol commander or duty Lt some brain damage – please do so, otherwise other than near/fatals – it goes to the Duty Lt and or the designee (patrol sergeant).

On-Call:

You can access the APD on-call (G: drive) Traffic folder to find out who is the supervisor on-call for any particular work period. Some of you might have access issues – please contact IT directly for them to correct the access authorization.

As a section I am encouraging the utilization of G: drive to provide needed information.

Equipment:

As in training and OT – the budget is slim to none for additional equipment. I am always looking for grant monies to off-set our needs. Sgt. Rollins did an incredible job in obtaining 50 cones for traffic – with grant money.

Ed Nolte worked his contacts with traffic engineering to obtain a light display for motor training.

Please be creative in your thoughts in obtaining equipment..

Communication:

Some of you have come to me with issues, rumors and stuff since "centralization." I believe I have provided back to you the information to clarify issues of your respective concern. I intend to answer as many of the questions you may have in a straight forward manner. There are still some concerns trickling in..... For those of you that have come forward thank you – for the others, come in, lets talk –

Closing: Thank you for the job you do:

1. Adopting SFST as a policy for the department – and to the officers who pushed for and having the task of training SFST

2. Working through the on-call rotations – and doing your jobs very well
3. Working with Karen in attempting to bring 3 units together with the administrative details necessary to do her job
4. Working through the radio issues of “centralization,” call signs and running from one end of the city to the other end
5. DUI enforcement as a targeted objective for Traffic
6. The Agents in progressing in their respective levels of training in accident investigation and reconstruction
7. The MET officers who get redirected to everything – but traffic enforcement, but still hammer out those tickets
8. Putting up with Telestaff and the “paperless system.”
9. and many more issues that you do every day.....

Respectfully,

Lt. John Sopranuk
Special Operations Bureau
Traffic Section Commanding Officer
15001 E. Alameda Pkwy,
Aurora, CO 80012
303-739-6326
www.jsopranu@ci.aurora.co.us



Traffic Section · 15001 E. Alameda Parkway · Aurora, Colorado 80012 -1547 · 303-739-6326

June 25, 2008

To: Capt. Jerry Hinkle

From: Lt. John Sopranuk

Re: Potential Vehicle and Program Cuts

Sir:

Per your request from June 19, to identify potential reductions in vehicles or programs for the Traffic Section.

Met:

The motorcycle unit has a total of (8) BMW motorcycles that are properly functioning. (4) Kawasaki motorcycles are in dire need of replacement to fully out-fit the unit with BMW's. The maintenance costs for the Kawasaki's is continual and parts are increasingly hard to find as Kawasaki stopped making the police bike.

As you know the sergeant currently does not have a vehicle assigned to him – so in inclement weather, snow days etc., the sergeant can not supervise his unit. The cars assigned to the traffic officers at this time, currently does not facilitate full deployment of officers. It only works when officers are on vacation, sick, injured or a vehicle is down for maintenance etc. But ultimately then, the SRO officers utilize the cars everyday.

Reduction:

None without a direct relationship in the reduction in volume in ticket production.

Traffic Officers – Accident inv. cars:

The fleet of traffic cars for the "district" contingent is currently inadequate. At times the officers must wait for a vehicle to be turned over to the on-coming next shift. Responding to the patrol commanders' office for a patrol car very rarely produces an "extra" car. On overlapping days between the day shift and swing shift, officers in court, vacation, and sick *mitigate* the potential catastrophe of minimal cars to full detail of officers' ratio. Doubling up of traffic officers will reduce the efficiency of handling traffic accidents by a single car and an immediate 50% reduction in total tickets per two-officer cars. Lastly, the doubling up of traffic officers in cars will add additional calls for service to patrol. At peak volume times – this alone will negatively impact patrol in mission critical events.

Potential Vehicle and Program Cuts
Page 2.

Reduction:

None without a direct relationship in the reduction in volume in ticket production, traffic accident investigations and an increase to patrol calls for service.

Photo Red-light:

This vehicle and program is fully funded by the vender.

Hit and Run Investigators:

The (5) detectives have survived with (3) cars for sometime. The unit actually needs 1 more detective to fully handle the increasing case load. Additionally, the detectives (Agents) complete all case fillings for serious bodily injury accident and fatal traffic investigations. Traffic officers are not trained to complete the DA's investigative steps necessary for successful prosecutions.

Reduction:

None

Recommended Reduction:

Motor Carrier Safety Unit

This unit is staffed with two officers and two vehicles. The unit in 2007 generated \$277,452.00 in fines, placed 313 commercial vehicles out of service. For a total of 2,227 safety violations. This is the only unit which could be taken down – but it should be strongly emphasized a direct relationship to unsafe commercial vehicles – and accidents will increase.

The state is currently not providing mobility ports in the Denver metro area and the Limon fixed port is staffed with just one investigator. Ultimately, Aurora is the only enforcement arm east of I-225 as it relates to commercial vehicle inspections in the metro area,

Attachment A is the everyday vehicle fleet for the Traffic Section.

Attachment B is the total fleet inventory and the respective mileage.

Attachment C is the statistics for the Motor carrier safety Unit for 2007.

Respectfully,

Lt. John Sopranuk
Traffic Section

Traffic Section Fleet Inventory
Attachment A

Motorcycles:

- (4) 2004 BMW's
- (4) 2007 BMW's
- (6) 2000 Kawasaki's
- (4) 1995 Kawasaki's

Traffic Cars:

- (1) 2007 Crown Victoria
- (1) 2007 Charger
- (1) 2007 Expedition
- (2) 2006 Crown Victoria's
- (1) 2006 Charger
- (3) 2005 Crown Victoria's
- (2) 2004 Crown Victoria's
- (3) 2003 Crown Victoria's
- (1) 2002 Crown Victoria's
- (4) 2001 Crown Victoria's
- (2) 2000 Crown Victoria's

Detective/Lt. Vehicles:

- (1) 2001 Jeep
- (1) 1998 Taurus
- (1) 1997 Taurus
- (1) 1995 Suburban

Photo Red-light:

- (1) 2005 Taurus

Specialty Vehicles:

- (1) 1997 Van – scheduled to be rotated out in 2009
- (1) 1991 Step-side Van, DUI/Cone truck
- (2) 2002 Trailers (transport scales for MCSU)



Traffic Section · 15001 E. Alameda Parkway · Aurora, Colorado 80012 -1547 · 303-739-6326

October 3, 2008

To: Chief Dan Oates

From: Lt. John Sopranuk

Re: Hernandez ICE notifications
Fatal Accident of S. Havana Street (08-38038)

Sir:

In reference to your inquiry of the sequence of events in the notification of ICE during the fatal traffic accident investigation, the follow occurred:

The accident occurred on September 4th at approximately 8:02 p.m. at 1155 S. Havana Street. Witnesses provided to the first responding officers that a black Hispanic male had run from the scene. I arrived on the scene at approximately 9:15 hours. The template to the Suburban was too high to list – but an insurance card in the vehicle identified a Hispanic surnamed individual as the potential owner.

The Lead Detective Agt. Johnny Lee was advised by me on scene at approximately 10:00 p.m. that if we have indications of a foreign born status we were to notify the Mexican consulate and ICE.

The first notification to ICE was made on September 5th at 10:58 a.m. Detective Pat Hardin instructed Officer Deichsel to make the notification to ICE through the records section. The request from records is known as an Immigration Alien Inquiry (IAQ), identifying foreign born status. Normally the detention facility completes this inquiry. Several verifications of information transpired between APD records and ICE. The first response time was 11:13 a.m. At this point in time, APD had no knowledge or indication of foreign born status on Mr. Hernandez.

On September 5th, working with Agt. Friel, it was decided to conduct a news conference for the incident. I responded to the records section to initiate an IAQ on Mr. Hernandez. Records advised and produced a second response from ICE to APD with a terminal time of 11:37 a.m.

The document from the IAQ is attached.

Traffic Section 2008 On Call Schedule

On call duties run from 1700 Friday to 1700 the following Friday

- *(indicates preference for Comp Time—all others cash)

•
Revision Date October 8, 2008

Week Of:	Supervisor/ID	Officer/ID	Officer/ID
May 23	Rollins/7215	Snyder/24189	Falco/300129
May 30	Woodyard/10828	Amen/16824	Harper/25650
June 6	Sopranuk/7887	*Hardin/8138	Moore/8189
June 13	Sopranuk/7887	*Hardin/8138	Kelly/26774
June 20	Rollins/7215	Yates/24205	Amen/16824
June 27	Rollins/7215	*Camacho/23277	Kelly/26774
July 4	Woodyard/10828	*Hardin/8138	Trap/300145
July 11	Woodyard/10828	Deichsel/300125	Harper/25650
July 18	Sopranuk/7887	*Camacho/23277	Amen/16824
July 25	Woodyard/10828	Collom/7215	Lee/25336
August 1	Rollins/7215	Kelly/26774	Trap/300145
August 8	Sopranuk/7887	Lee/25336	Kelly/26774
August 15	Woodyard/10828	Collom/7215	Amen/16824
August 22	Rollins/7215	*Hardin/8138	Harper/25650
August 29	Sopranuk/7887	Kelly/26774	Harper/25650
September 5	Woodyard/10828	Lee/25336	Amen/16824
September 12	Rollins	*Hardin/8138	Deichsel/300125
September 19	Sopranuk/7887	Collom/7215	*Trap/300145
September 26	Woodyard/10828	Lee/25336	Collom/7215
October 3	Sopranuk/7887	Deichsel/300125	Harper/25650
October 10	Sopranuk/7887	Amen/16824	*Trap/300145
October 17	Rollins/7215	*Casey Williams	Kelly/26774
October 24	Rollins/7215	*Hardin/8138	Amen/16824
October 31	Sopranuk/7887	*Joe Petrucelli	Collom/7215
November 7	Rollins/7215	*Trap/300145	*Camacho/23277
November 14		Lee/25336	*Casey Williams
November 21		Kelly/26774	*Joe Petrucelli
November 28		*Hardin/8138	*Camacho/23277
December 5		Deichsel/300125	Harper/25650
December 12		*Trap/300145	*Terry Allen
December 19		*Hardin/8138	Collom/7215
December 26		Lee/25336	Kelly/26774

Page 30

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

WARRANTLESS ARREST

STATE OF COLORADO
 EIGHTEENTH JUDICIAL DISTRICT
 COUNTY OF [Arapahoe]

Court Case # _____

STATEMENT IN SUPPORT OF WARRANTLESS ARREST

[Hernandez, Francis Maudaniel] [03/20/85] [08-38038]
 Suspect (Last, First Middle) D.O.B. Agency Case #

Aurora Police Department (303)739-6000 [09/04/08] [11:00] []am [X]pm
 Arresting Agency Phone Date of Arrest Time of Arrest

Charge	Statute/Ordinance	Class	Bond
Charge 1:[Vehicular Homicide (X-3)]	[18-3-106][F4]	[100,000]
Charge 2:[Hit & Run (Death X-3)]	[42-4-1601(2) (c)]][]	[]
Charge 3:[Reckless Driving]	[42-4-1401]][]	[]

[Det. Pat Hardin #8138], a Police office with the AURORA POLICE DEPT. states that there exists probable cause for the warrantless arrest of the above named suspect for the charges stated above. The Officer further states that the facts below are based on personal knowledge and/or interviews with witness(s) and fellow peace officers and/or review of official law enforcement reports.

1. The crime(s) alleged occurred on [09/04/08], at {S. Havana St. & E. Mississippi Ave. },

City of Aurora, County of [Arapahoe], State of Colorado.

2. The suspect was arrested at [11:00][]am [X]pm on the [4] day of [September 2008]

Month/Day/Year Location
 Time
 Month/Year
 3. The facts in support of the probable cause for the warrantless arrest of the above named suspect are as follows:

{On September 4, 2008, at approximately 8:02 p.m., officers from the Aurora Police Department responded to a report of an injury accident at S. Havana St. & E. Mississippi Ave., Aurora, Arapahoe, Colorado.

The following witnesses were contacted at the scene of the accident: Alvin Grier, dob: 04/03/87, Joan Pulliam-Hill, dob: 06/26/59, Jeane M. Tippet, dob: 11/11/59, Robert Moore, dob: 08/04/88, Mike Kelly, dob: 02/04/60, Brandon Hickerson, 03/16/80, and Walter Sanchez (dob: unknown) .

Ms. Pulliam-Hill and Ms. Tippet, observed a dark colored 2004, Chevrolet Suburban, Colorado temporary license #263314G, traveling southbound on S. Havana St. from E. Alameda Ave. , at a high rate of speed. The Suburban was weaving in and out of traffic, passing other traffic present. Ms. Pulliam-Hill and Ms. Tippet observed the Suburban fail to stop for the red

Page 31

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

WARRANTLESS ARREST

traffic light at E. Mississippi Ave.

Ms. Pulliam-Hill stated from the driving behavior of the driver of the Suburban, something was wrong with the driver, or the vehicle was stolen.

Mr. Kelly was stopped for traffic on westbound E. Mississippi Ave. at S. Havana St. and observed the Suburban fail to stop for the red traffic light.

The Suburban continued southbound on S. Havana St. and collided with a white 1998 Mazda, truck, Colorado license , which was making a left turn from northbound S. Havana St. into the drive-way of Good Times Burgers (1105 S. Havana St.)

As a result of this collision the direction of travel of both vehicles was re-directed to the southwest, onto west sidewalk, shearing off an Excel Energy power box . A second Excel power box was struck , and the cover was torn off and projected through the plate glass windows of Baskin Robbins (1155 S. Havana St.). This cover then struck Martin Kudlis, dob: 08/22/05, ejecting him from the interior of the store onto the west sidewalk.

Nimra Bulhari, dob: 11/11/97, Haley Tepe, dob: 05/07/65, and Margaret Rains, dob: 06/07/67, also inside Baskin Robbins, were struck from flying debris and sustained injuries.

Dr. Rowland from the Medical Center of Aurora, treated Ms. Tepe and determined she sustained serious bodily injury as a result of this accident, reference the laceration to her leg.

Martin was transported to Children's Hospital and died on September 4, 2008, at 8:38 p.m. as a result of injuries sustained in this accident. Dr. Vu of Children's Hospital made the pronouncement.

Patricia Guntharp, dob: 12/06/58, the driver of the Mazda, and Deborah Serecky, dob: 09/01/57, the right front passenger of the Mazda, died at the scene of the accident as a result of this accident. Dr. Henwood of the Medical Center of Aurora made the pronouncement on September 4, 2008, at 8:18 hrs. via land-line.

Ms. Tippett, Mr. Grier, Ms. Pulliam-Hill, Mr. Kelly, Mr. Moore, Mr. Hickerson, and Mr. Sanchez, observed the only occupant of the Suburban, later identified as Francis Hernandez, dob: 03/20/85, via Aurora Police Department arrest records/photographs, climb out of the Suburban and flee the scene of the accident on foot.

The driver of the Suburban was described as a black or Hispanic male, wearing dark clothing, 5'8"-5'9" tall, approximately 180 pounds, with

Page 32

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

WARRANTLESS ARREST

facial hair .

The insurance documents from the Suburban listed an address for the owner of the Suburban as Rosa and Elifonso Avelar 2332 N. Iola St., Aurora, Adams, Colorado.

Officers Eric Ortiz, and Marc Paolino, Commissioned Officers with the Aurora Police Department, responded to the aforementioned address and contacted Nancy Aleman, dob: 01/16/92, who stated she received a telephone call from her sister, Brenda Aleman, dob: 11/18/88, stating the Suburban had been stolen.

Nancy directed the officers to Brenda's residence (9600 E. Girard Ave. #5E, Denver, Colorado. The officers made contact with Brenda and Mr. Hernandez at that residence.

Brenda told Officer Ortiz that she had driven by the accident scene earlier and recognized the Suburban as possibly being Mr. Hernandez's vehicle.

On September 4, 2008, at approximately 9:00 p.m., she (Brenda) received a telephone call from Mr. Hernandez requesting Brenda pick him up from Hooters (2610 S. Parker Rd.) While on the telephone, Brenda asked Mr. Hernandez if he had crashed the Suburban, he stated he had. Mr. Hernandez stated after the accident he was scared and fled the scene, he was afraid he would be taken to jail because he had no insurance, no driver's license, and that would prevent him from seeing his kids.

When Brenda picked Mr. Hernandez up, he (Hernandez) began to cry, stating he believed he had just killed four people. Mr. Hernandez stated the Mazda caused the accident by turning in front of him.

Brenda drove Mr. Hernandez back to 9600 E. Girard Ave. #5E..

Officers Ortiz asked Mr. Hernandez if he (Ortiz) could check Mr. Hernandez for any injuries, Mr. Hernandez complied. Officer Ortiz noted the following injuries: multiple scratches on Mr. Hernandez's stomach, face, hands, a cut on his left ear, along with a contusion on the left cheek, and an abrasion on his left shoulder.

A subsequent drive-by "line-up" was conducted with the only available witnesses: Mr. Hickerson and Mr. Sanchez. Both Mr. Hickerson and Mr. Sanchez identified Mr. Hernandez as the driver of the Suburban at the time of this accident. }

[x] Reports/additional pages stapled to this statement are incorporate into the statement.

Page 33

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

WARRANTLESS ARREST

Executed on the [5] day of [Sept. 2008] at [1:00] []am [X] pm

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Original:	Court File	
Copy 1:	Arrestee Copy	Arresting Officer Signature & ID#
Copy 2:	Detention Copy	
Copy 3:	District Attorney Copy	[Sgt. C. Cernich]
		Arresting Agency Supervisor's Name

Author:HARDIN, PAT
Related Date:Fri, Sep-05-2008

Page 25

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

Hernandez, Francis
NARRATIVE/REMARKS

COUNTY/DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO
AFFIDAVIT OF PROBABLE CAUSE FOR ARREST WARRANT

I, Detective Johnny Lee, of lawful age and being first duly sworn upon his oath, depose and state that I have probable cause for believing that:

Hernandez, Francis Maudaniel

did commit the crime(s) of:

C.R.S 42-4-1601; Hit and Run involving Death; F3; 5406

on/between 09/04/2008 8:02 PM

WITHIN THE County of Arapahoe, State of Colorado, and as grounds therefore state as follows:

This affiant is a Commissioned Police Officer with the Aurora Police Department, and that the following information was obtained by me personally and from the official records of the aforementioned department.

On 9/04/08 approximately 8:02 PM Aurora Police Officers were dispatched to the report of an unknown injury accident. The location of occurrence was reported to be S. Havana St and E. Mississippi Ave. The location is in the City of Aurora, County of Arapahoe, and state of Colorado.

At approximately 9:00 PM I was call out to the scene. Upon arrival on the scene at approximately 9:20 PM I opserved that there was a dark blue Suburban bearing Colorado temporary tag 263314G rolled ocer on the driver side on the south west sidewalk. Just south of the Suburban was a white Nissan B2500 with heavy damage also on the sidewalk.

I was advised by Officers on the scene that the occupants of the Nissan (Debra Serecky 09/01/1957 and Patricia, Gunt 12/06/1958) were pronounced deceased on the scene at 8:18 PM. I was also advised that a third party Marten Kudlis 8/22/2005 was transported to Children's Hospital and was latter pronounced deceased. I was also informed that the driver of the Suburban fled the scene immediately after the collision.

While working the scene I was contacted by witness Walter Sanchez who

Page 26

AURORA POLICE DEPARTMENT

Case: FU 2008-38038

Hernandez, Francis
NARRATIVE/REMARKS

stated that as he was driving in the area he saw the party who fled the scene. walter described the party as a Hispanic male, approximately 5'6" - 5' 7". stocky build, with a bald round head. Walter stated that as he sped up the party "freaked". As I was talking to Walter I was advised that officers had the suspect in custody. This party was later identified as Hernandez, Francis 03/20/1985. We conducted a showing of the suspect to Walter. Walter stated that he was approximately 75% sure that Hernandez was the party that he saw running from the area of the scene.

While conducting the showing a second witness Brandon Hickerson conducted police dispatch and advised that he saw the party that ran from the scene and that he could identify him. hickerson advised that he was 100% positive that the party in custody was the same party he saw run from the vehicle.

I interviewed Aleman, Brenda 11/18/1988 who stated that she was hernandez's girlfriend. aleman stated that she was out with her friend "Victoria" when Hernandez called her and asked her to pick him up at hooter's restaurant located at S. Havana St and S. Parker Rd. Aleman stated that Hernandez told her that he had just crashed the truck and ran from the scene because he was scared he would be arrested.

Based on the foregoing facts and circumstances, your affiant feels that there is probable cause to believe that the crime(s) of C.R.S. has/have been committed and that committed that/those offense(s).

Affiant

SUBSCRIBED AND SWORN/AFFIRMED to before me this ____ day of _____ A.D.,
2008.

Notary Public

My Commission Expires

Page 27

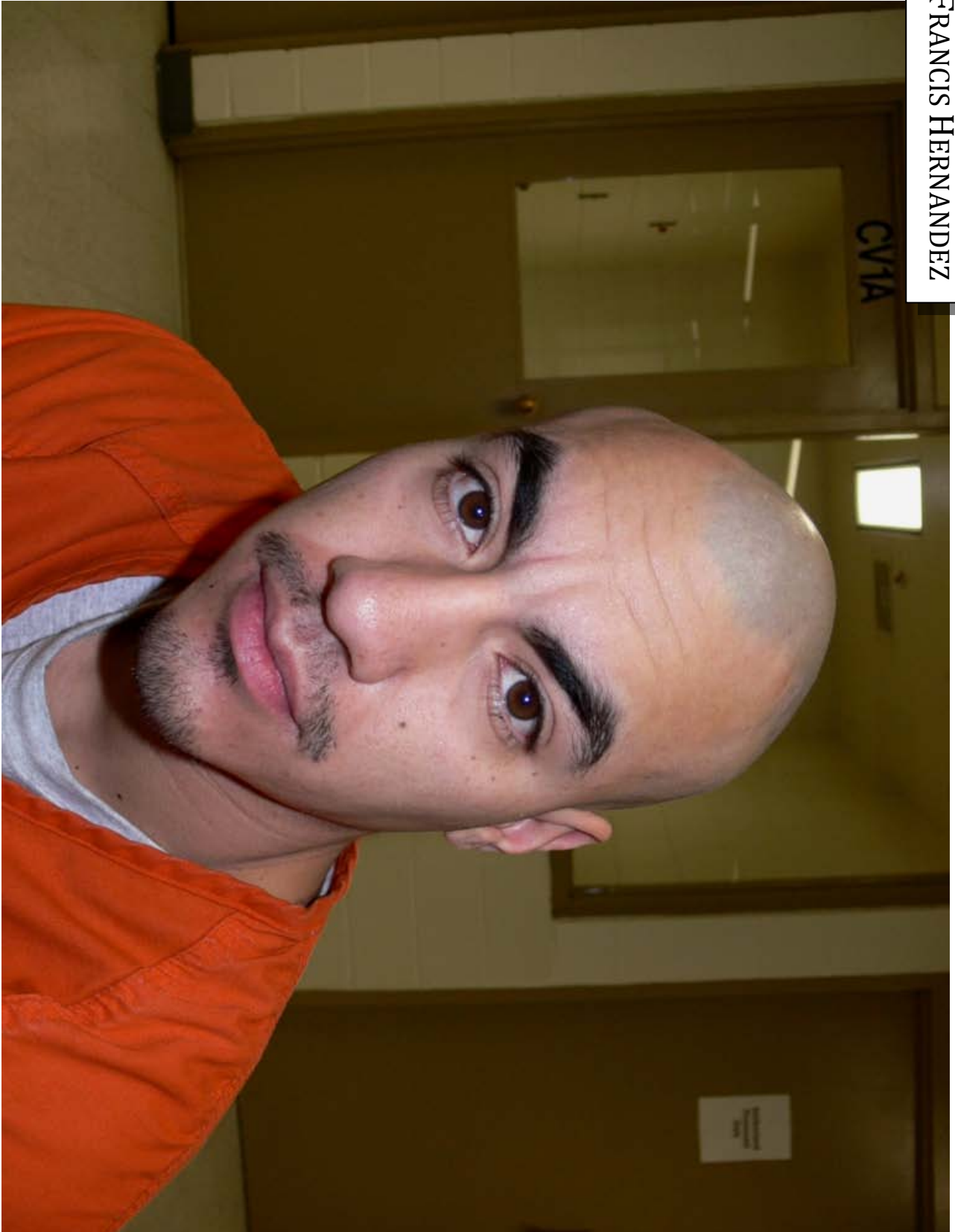
AURORA POLICE DEPARTMENT

Case: FU 2008-38038

Hernandez, Francis
NARRATIVE/REMARKS

Author: LEE, JOHNNY
Related Date: Fri, Sep-05-2008

FRANCIS HERNANDEZ



HERNANDEZ NOTICE OF D/L CANCELLATION

COLORADO DEPARTMENT OF REVENUE
Division of Motor Vehicles

STATE OF COLORADO

BUSINESS LOCATION
1881 Pierce Street, Lakewood Colorado
(303) 205-5613 FAX (303) 205-5990

MAILING ADDRESS
Division of Motor Vehicles
Driver Control, Room 164
Denver, Colorado 80261-0016

July 9, 2008

20080709 1854218 08-239171 RR CDJD
FRANCIS M HERNANDEZ
2332 IOLA ST
AURORA CO 80012

Ticket Number: 08M9245
Court:
DENVER CO
1437 BANNOCK ST ROOM 111AA
DENVER CO 80202
(720)865-7820

Case Number: 08-239171
License Number: 05-031-0286
Date of Birth: 03/20/1985

ORDER OF CANCELLATION AND DENIAL-effective 08/27/2008

Please read the following information carefully.

The records of this department indicate that an outstanding judgment, or default violation has been entered against you in the court listed above.

If this office receives confirmation from the court that the outstanding judgment or default has been satisfied prior to the effective date of this order, your license will not be canceled.

In conformity with 42-2-122 CRS if you fail to satisfy the court requirements and provide acceptable proof of such by the above effective date, your privilege to operate a motor vehicle in this state is hereby canceled and denied indefinitely. This cancellation is a final agency action for purposes of judicial review. No departmental hearing will be granted.

This order will remain in effect until the following reinstatement requirements are met: 1) Payment of a reinstatement fee. 2) Evidence of liability insurance in your name. 3) Confirmation from the court listed that the above referenced judgements/defaults have been satisfied. Once reinstated, you will be required to apply for a new license and/or permit. ANY OTHER OUTSTANDING JUDGMENTS, WARRANTS, OR DEFAULT VIOLATIONS WILL ALSO NEED TO BE CLEARED PRIOR TO LICENSING.

Acceptable proof of compliance will include the following information:
1) Your full name and date of birth. 2) Citation number as listed above.
3) Court name as listed above. 4) The date of compliance or clearance of judgment. 5) An identifying court seal or stamp with the signature of a court clerk or judge.

A cancellation pursuant to 42-2-122 CRS does not permit the consideration of any type of driving privileges during the cancellation period.

This order does not effect any other order you may have or receive.

Director
Driver Services Division

DR 2642 (01

P44217LM



Bill Ritter, Jr.
Governor

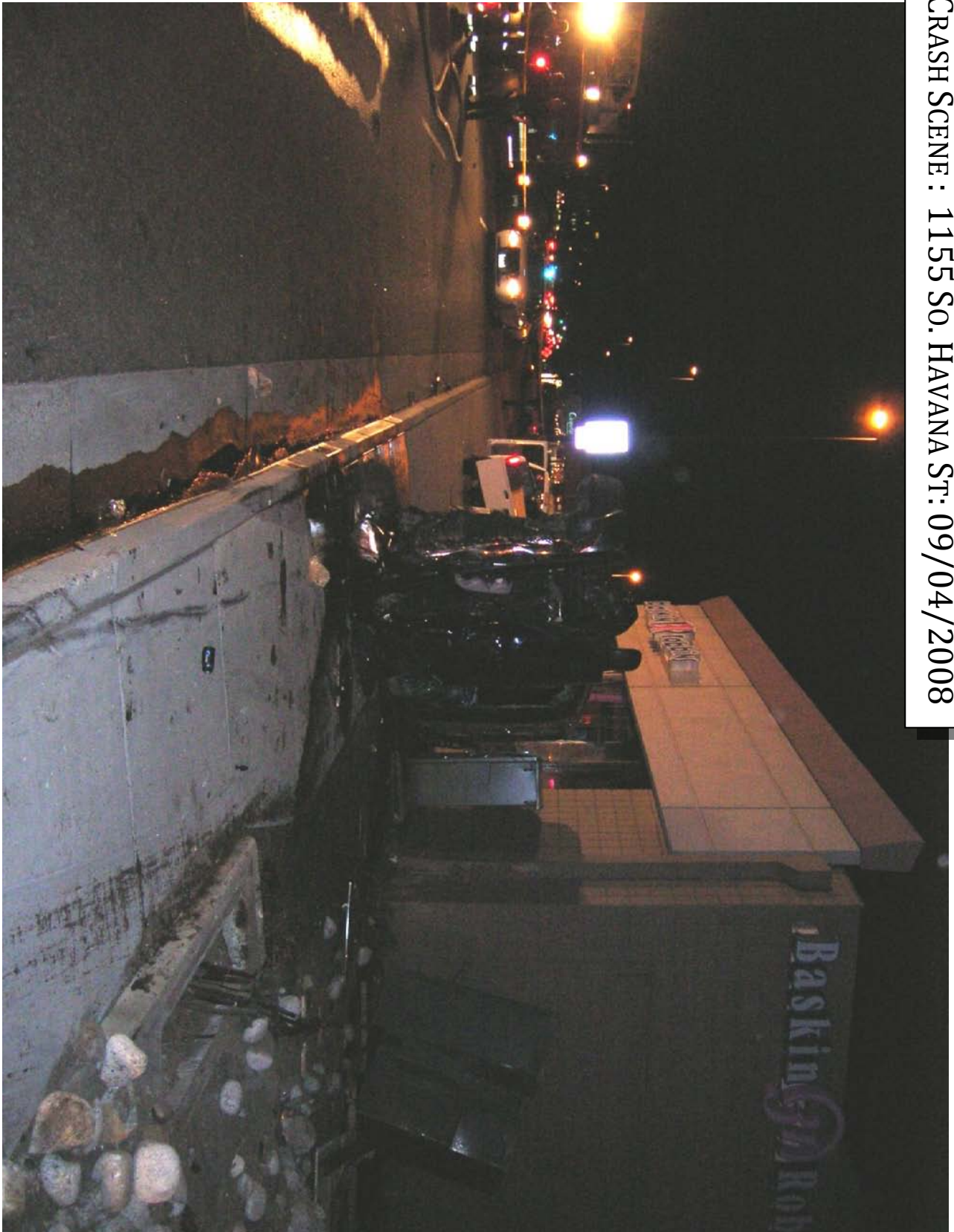
Rosanne Huber
Executive Director

Joan Vecchi
Senior Director

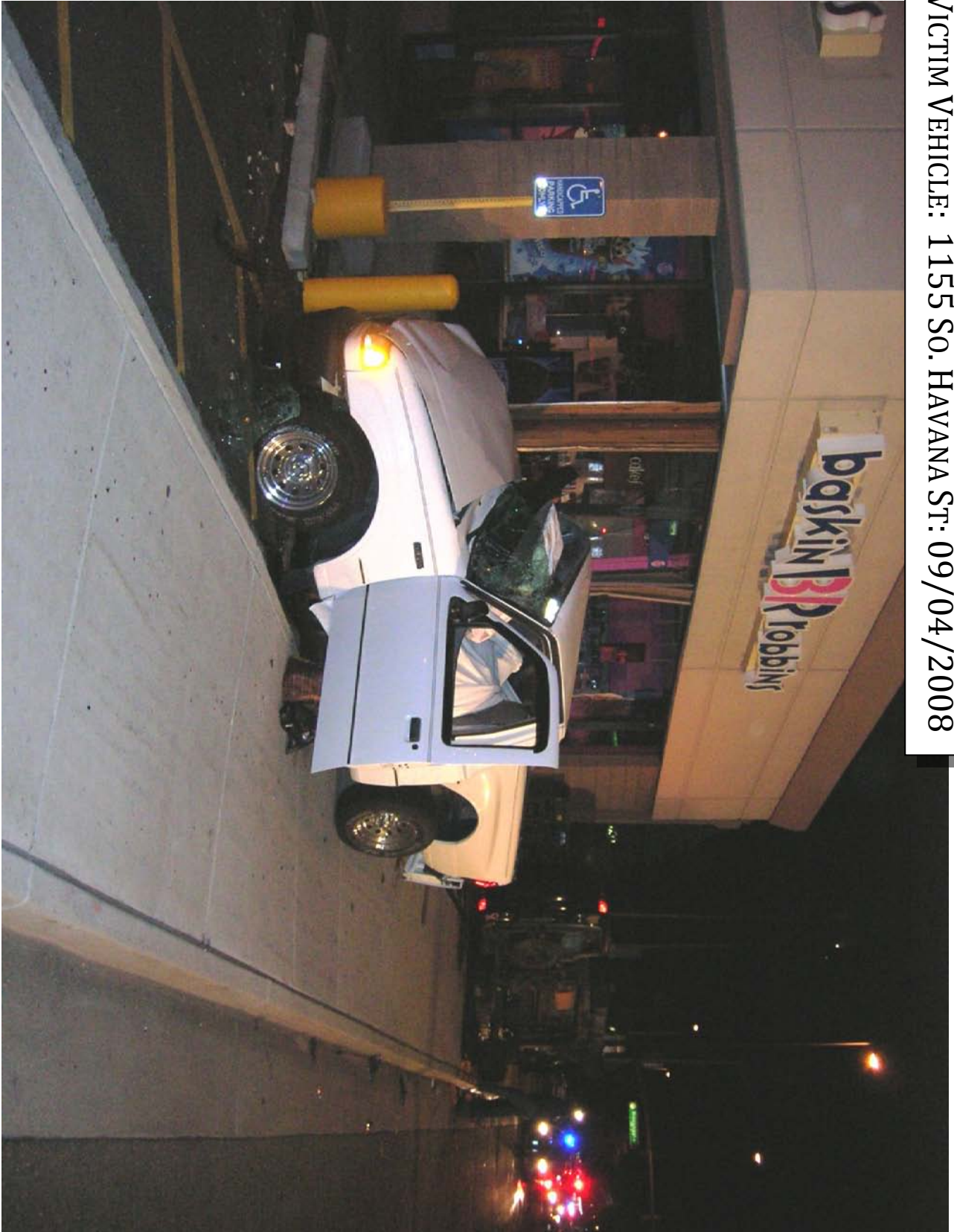
CRASH SCENE: 1155 SO. HAVANA STREET, 09/04/2008



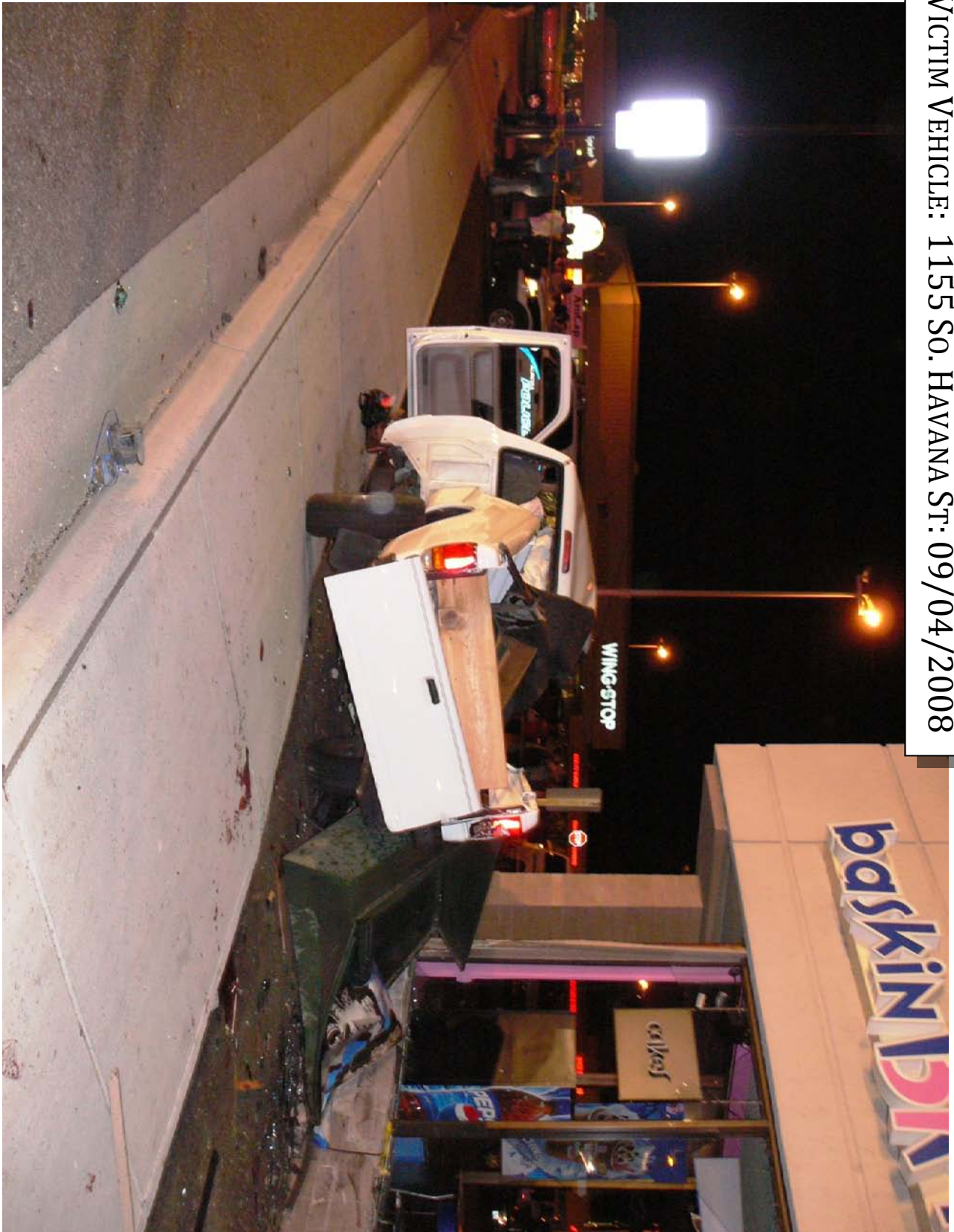
CRASH SCENE : 1155 SO. HAVANA ST: 09/04/2008



VICTIM VEHICLE: 1155 SO. HAVANA ST: 09/04/2008



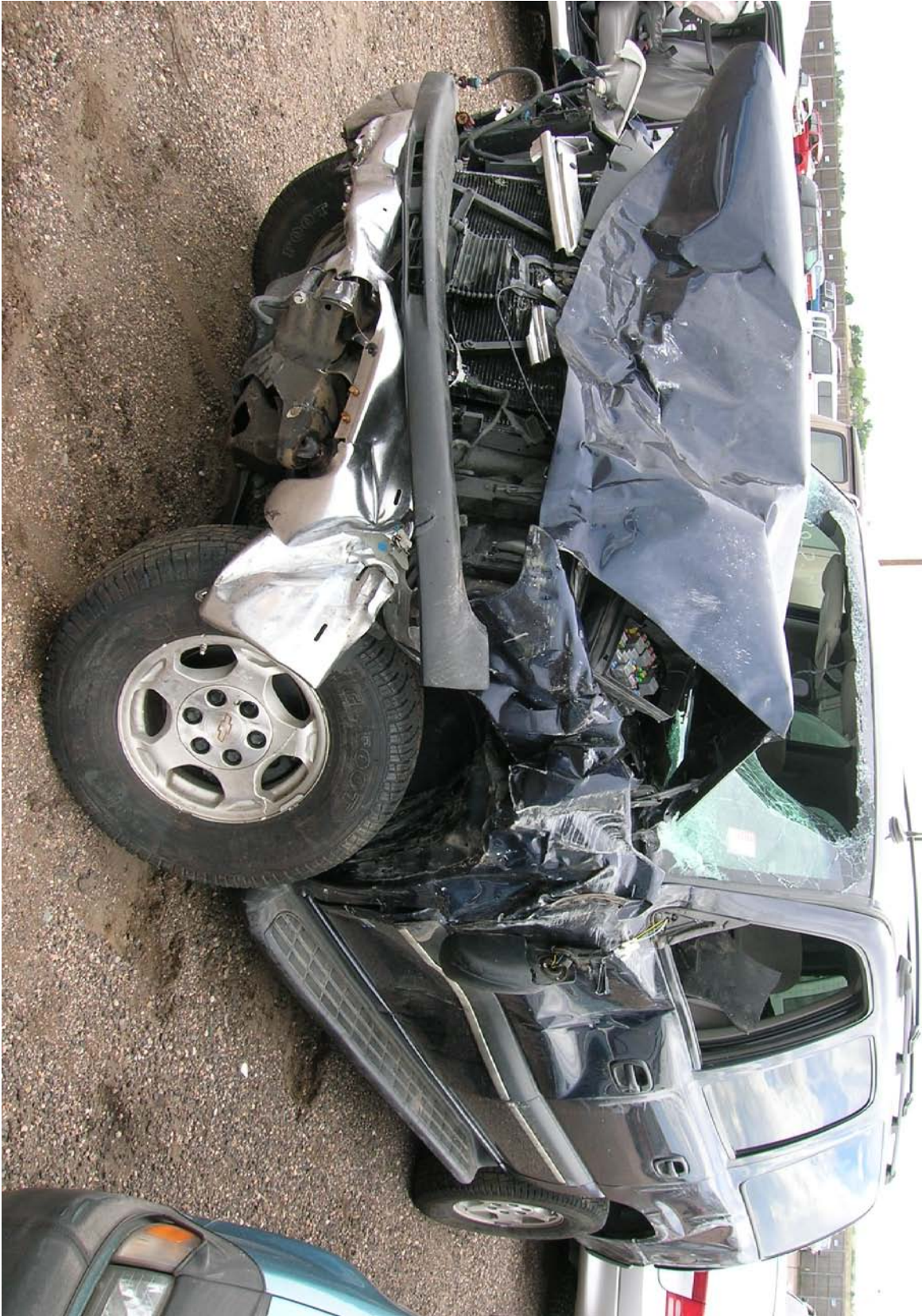
VICTIM VEHICLE: 1155 SO. HAVANA ST: 09/04/2008



VICTIM VEHICLE: 1155 SO. HAVANA ST.: 09/04/2008



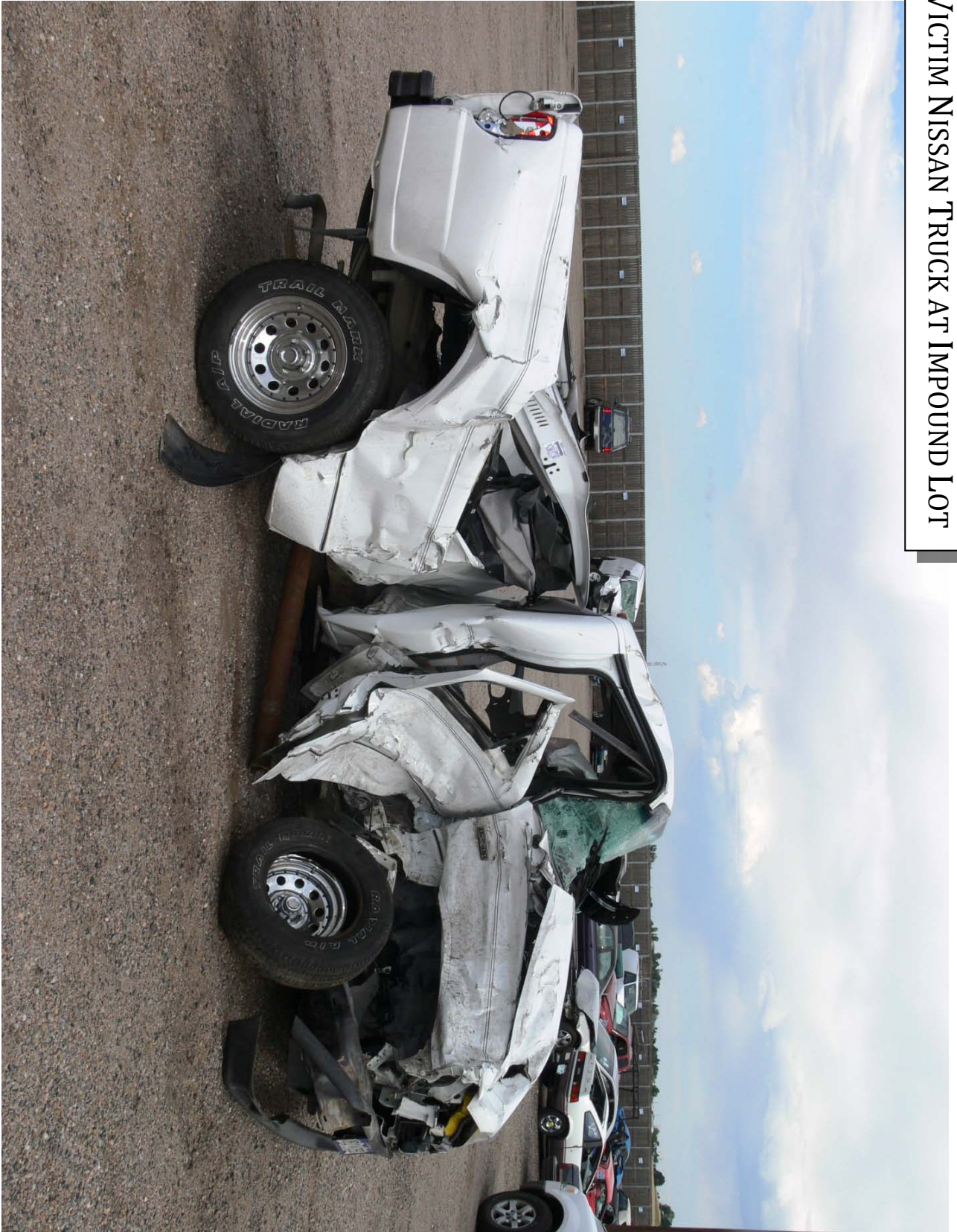
HERNANDEZ SUBURBAN AT IMPOUND LOT



HERNANDEZ SUBURBAN AT IMPOUND LOT



VICTIM NISSAN TRUCK AT IMPOUND LOT



VICTIM NISSAN TRUCK AT IMPOUND LOT



VICTIM NISSAN AT IMPOUND LOT



Case #2008-38038
Francis Hernandez Fatal Collision (09/04/08)
APD Personnel

Last Name	First Name	ID#	Rank	Testify To / Role
Gomez	Fran	15677	Lieutenant	Aurora Police Department Record Custodian.
Sopranuk	John	7887	Lieutenant	Traffic lieutenant - On-scene supervisor - PIO.
Cernich	Chad	15680	Sergeant	Supervisor.
Conderay	Lee	19967	Sergeant	Supervisor.
Lanigan	Jad	19977	Sergeant	Supervisor. Assisted Lieutenant Sopranuk with crime scene security.
McKinney	Rex	14764	Sergeant	Listed by Officer Lippert as his cover officer. Not on witness list
Selden	Harold	14768	Sergeant	Assisting officer.
Smith	Patrick	14769	Sergeant	Aurora Police Department Property Custodian.
Hardin	Pat	8138	Detective	Warrantless arrest affidavit.
Lee	Johnny	25336	Detective	Preparation of case filing. Evidence - Follow-up investigation.
Petrucelli	Joseph	10017	Detective	Executed Search warrant at Impound lot with Det. Hardin.
Williams	Casey	10013	Detective	Autopsy.
Baker	Scott	19582	Officer	Assisting officer - Traffic direction.
Burke	Eric	25632	Officer	Assisting officer.
Camacho	Anthony	23277	Officer	Reported on scene. Not on witness list.
Clark	Daniel	27276	Officer	
Collom	William	7215	Officer	Diagram - Accident reconstruction.
Cornell	Joseph	18563	Officer	Per Officer Riessland's report - Contacted and ID'd residents at 10722 E. Exposition. Not on witness list.
Cruser	Christopher	27239	Officer	Assisting officer.
Deishel	Kevin	300125	Officer	Custody report.
Elliott	Chad	301363	Officer	Assisting officer.
Graham	Aleksan	300379	Officer	Contact with owner of Baskin Robbins.
Hanifin	Mike	21707	Officer	Assisting officer.
Hanson	Candice	303686	Officer	Written statement from Brenda Aleman; injuries to defendant; statements of Tobar.
Harper	Javen	25650	Officer	Accident scene investigation.

Case #2008-38038
Francis Hernandez Fatal Collision (09/04/08)
APD Personnel

Jokerst	Stephen	24202	Officer	K9 search of area.
Kelly	Brian	26774	Officer	Accident scene measurements.
Knox	Bryan	18158	Officer	Assisting officer - Traffic direction.
Lippert	Christopher	16827	Officer	Assisting officer.
Martin	Barry	15275	Officer	Contacted Pulliam Tippet.
McNalley	Ryan	25668	Officer	Assisting officer.
Musgrave	David	23297	Officer	Assisting officer.
Neiman	Christopher	26232	Officer	Assisting officer.
Neiman	Christopher	26232	Officer	Assisting officer.
Ortiz	Erik	26749	Officer	Interview of Aleman, Brenda (defendant's girlfriend); defendant's injuries.
Paolino	Marc	26732	Officer	Written statement from Brenda Aleman; injuries to defendant; statements of Tobar.
Pearson	David	25549	Officer	Interview of Enely Kudlis.
Riessland	Tyler	26229	Officer	Search of area for defendant.
Rutter	Scott	24194	Officer	Assisting officer. Per reports dated 09/04/08 - diverted from call. Did not arrive at, or assist on this call.
Scherr	Eric	24191	Officer	Assisting officer. Per reports dated 09/04/08 - diverted from call. Did not arrive at, or assist on this call.
Speer	Lee	300604	Officer	Interview of the Cox family.
Waselkow	James	27279	Officer	Information in her report.
Zepeda	Arturo	300376	Officer	Statements by Tobar.
Benford	Angela	17688	CSI	Photos.
Harrell	Darvin	22942	CSI	Photos.
Neri	Randy	16290	CSI	Assisted Detective Hardin in removing air bags from vehicle.
Borquez	Faye	14607	CSI	Processed suburban at Impound Lot.
McKernan	Wendy	8474	CSI	Processed suburban at Impound Lot.
Smukler	Robert	8437	Officer	Present during photography of vehicles at Impound Lot with Wendy McKernan.

Case #2008-38038
Francis Hernandez Fatal Collision (09/04/08)
APD Personnel

NEWS RELEASE

AURORA POLICE DEPARTMENT



Traffic Section

15001 E. Alameda Pkwy.
Aurora, Colorado 80012

CONTACT: Lieutenant John Sopranuk
NATURE: Fatal Traffic Accident
CASE NUMBER: 08-38038

DATE: September 5, 2008
PHONE: (W) 303 739-6326

On September 4, 2008 at approximately 8:02p.m., Aurora Police responded to a call of a rollover accident in the area of South Havana Street and East Mississippi Avenue. Upon arrival, officers observed two vehicles had left the roadway and were positioned up against the Baskin and Robbins store located at 1155 South Havana Street, unit 63.

A preliminary investigation revealed a 2004 Blue Chevrolet Suburban was traveling southbound on South Havana Street approaching East Mississippi Avenue. Witnesses contacted believed the Suburban was traveling at a high rate of speed, possibly running the red light as the Suburban continued southbound across East Mississippi Avenue. Witnesses identified the Suburban as having one occupant.

A second vehicle involved, a 1998 White Mazda B2500 was traveling northbound on South Havana Street. The Mazda was completing a left-hand turn into a hamburger restaurant when the Suburban broadsided the Mazda. The Mazda had two occupants.

After impact, the Suburban rolled and came to rest at the ice cream store. The Mazda traveled along the store's fascia, dragging debris from a utility box. At this time, the debris is believed to have snared a 2 year old child sitting inside of the Baskin and Robbins store. It is believed both parents of the child were present inside the store at the time of the accident. Both the occupants of the Mazda were pronounced deceased at the scene. The child was transported to an area hospital and was later pronounced deceased. Two other patrons of the store were also injured, one with minor injuries the other patron with a severe cut to her hand.

The driver of the Suburban was witnessed to have run from the scene of the accident. Aurora Police officers arrested the driver a short time later in southeast Denver. The driver of the Suburban is identified as Francis Hernandez (23) of Denver. He is currently being held in Aurora city jail for Felony Hit and Run charges. The bond is \$10,000.00.

This accident investigation will be reconstructed and additional charges may apply pending the complete analysis of the accident. Names of the deceased will be released pending notification of next of kin. Lastly, at this time, it is unknown if alcohol is a factor in the accident.

MAR 25, 2010 ** SECTION B

WEST

ny Parker » 5B

**BILLS
INNESS**

leaders » 5B

Wall Street

DOW JONES
↓ 52.68
10,836.15

NASDAQ
↓ 16.48
2,398.76

S&P 500
↓ 6.45
1,167.72

Details » 6B, 8B
denverpost.com/business

TRIBULATIONS AWAY FROM TRIAL

Police, DA had war of words

In e-mails and memos, the agencies squabbled as the chance of winning a fatal-crash case appeared to dim.

By Carlos Illescas *The Denver Post*

AURORA» As Francis Hernandez was being tried for killing three people at an Aurora ice cream shop, police and prosecutors squabbled in e-mails and memos as the odds of winning the case appeared to be reversing.

At one point, things got so heated that an Aurora police detective called an Arapahoe County assistant district attorney a "troll" after she was critical of a detective who took the stand.

That information was among e-mails and memos obtained this week by *The Denver Post* through an open-records request.

The documents also showed that Aurora police higher-ups criticized their own department's investigation. They questioned why such an inexperienced detective, Johnny Lee, was the point man in such a high-profile case and asked how supervisors could have let that happen.

HERNANDEZ » 4B

Learn more about this case.» Read previous coverage online.

denverpost.com/extra

4B) DENVER & T /EST THURSDAY, MARCH 25, 2010 • THE DENVER POST • DENVERPOST.COM



National parks, forest land on new quarters from U.S. Mint

The U.S. Mint has unveiled the designs of new quarters featuring four national parks and a national forest.

Interior Secretary Ken Salazar and Mint director Ed Moy on Wednesday unveiled designs for quarters featuring the four oldest national parks — Hot Springs, Yellowstone, Yosemite and Grand Canyon — as well as Mount Hood National Forest.

Coin commemorating the five public lands will be issued starting in April as part of the "America the Beautiful" quarters program.

Mint officials say the program will feature 56 national parks and sites, issued in the order the areas first came under federal protection. The Hot Springs quarter, which depicts the park headquarters behind a fountain, will be the first issued, on April 10.

Colorado will be represented by Great Sand Dunes National Park. That quarter will be issued in 2014.

The Associated Press

Coin featuring the 66 parks and sites will be issued in the order the areas first came under federal protection. U.S. Mint

HERNANDEZ: Probe into actions of detective underway

◀◀ FROM 1B

"The fallout could be significant, from the detectives to the bosses," said Division Chief Ken Murphy in an e-mail to District 1 Cmdr. Rob McGregor.

During the trial last month, Lee testified that he provided inaccurate evidence in the investigation and a fellow detective, Pat Hardin, testified that she believed Lee tried to cover it up.

The Arapahoe County district attorney's office worried that Hardin's testimony could damage its case. Police worried that Lee's work would make the department look bad.

Their fears were for naught. The jury returned a guilty verdict Feb. 23, after less than four hours of deliberation. Hernandez was convicted on 19 counts related to the Sept. 4, 2008, crash that killed three people at a Bashin-Robbins store.

Francis Hernandez was convicted on 19 counts related to the Sept. 4, 2008, crash in Aurora that left three people dead.

prosecutor Karen Pearson sent an e-mail to District Attorney Carol Chambers, saying Hardin appeared "emotionally unstable" when she took the stand and she "may have done us some damage."

"We will set up on cross-examination that she was on a vendetta against Johnny Lee," Pearson continued in the e-mail. "She felt slighted she didn't get this case given her experience."

When Aurora Detective Cliff Hunter read an online news account that contained some of Pearson's com-



ments, Hunter defended his colleague. He sent an e-mail to Pearson, calling her a "troll" for saying Hardin had it in for Lee.

"I understand you might (have) felt you had to say those things about ... Hardin, in a judicial sense, but you should be deeply ashamed, and I can only hope you don't feel that way in private," he wrote. "Somebody you will have to answer for these words, and I frankly hope the taste is extremely bitter."

The documents obtained by The Post also show that some high-ranking officers questioned why Lee, the most "inexperienced agent," was assigned to lead the investigation.

"I keep asking where were the supervisors and who knew," Murphy wrote in an e-mail to investigators bureau Cmdr. John "Jack" Daluz. "I don't think it is just Lee in trouble."

Correspondence between Chambers and Police Chief Dan Oates was

cordial, although Chambers, just hours before jurors returned with a verdict, did write that Hardin had compromised the case.

Chambers declined to comment Wednesday. "Through a spokeswoman, Oates noted that Hernandez was convicted on all the charges.

There is currently an internal investigation into Lee's actions as well as a review of the entire Hernandez case.

"If there were any actual problems in the investigation, the senior management review of the case, which is currently underway, will determine what occurred and what lessons we can learn from here," Oates said.

Testimony during Hernandez's trial revealed that Lee made several mistakes, including deleting the original arrest affidavit from a police computer. He then re-entered it but failed to include how one witness said he saw two people inside Hernandez's Chevy Suburban after the accident.

That point was key to Hernandez's defense team, as his attorneys suggested Hernandez's cousin, who was murdered months after the crash, was also in the Suburban.

Marten Kudlis, 3, Patricia Guntharp, 49, and Debra Serecky, 51, were killed in the crash.

Hernandez will be sentenced April 5. He faces more than 100 years in prison.

"The reputation of the department and our officers has been publicly sullied," Daluz wrote in an e-mail to other high-ranking officers, shortly after Hernandez was convicted.

Daluz is in charge of the review of the Hernandez case.

"Sadly, lost in the process was the fact that 3 people died," he continued. "Those innocents were our highest priority; the internal bickering damaged the case."

Carlos Illasca: 303-954-4125
or cillescas@denverpost.com

★★

Francis Hernandez Gets 60 Years For 3 Deaths In Colorado Crash

Page 1 of 1

February 7, 2011



Francis Hernandez Gets 60 Years For 3 Deaths In Colorado Crash [This is the print preview: Back to normal view »](#)

| 04/ 5/10 09:08 PM |

CENTENNIAL, Colo. — An illegal immigrant was sentenced Monday to 60 years in prison for a crash that killed three people, including a 3-year-old boy inside a Colorado ice cream shop.

Francis Hernandez, 26, of Guatemala was sentenced for the deaths of Marten Kudlis, Deborah Serecky and Patricia Guntharp.

Marten's father, Murat Kudlis, said during sentencing that he wanted Hernandez to receive the maximum sentence.

"We miss (Marten) very much," the father said. "My wife is pregnant with a little girl and she will never know her big brother."

A jury convicted Hernandez of vehicular homicide and other charges in February.

Prosecutors said Hernandez was driving an SUV at twice the speed limit when it crashed into a pickup truck carrying the two women. The truck then crashed into an ice cream store in the east-Denver suburb of Aurora in September 2008.

The case sparked calls for immigration reform after it became known that Hernandez had avoided deportation despite a dozen prior arrests in Colorado. Authorities said he used 12 aliases and two dates of birth to slip under the radar of immigration officials.

Before he was sentenced by District Judge John Wheeler, Hernandez took the stand and read a letter begging for mercy and apologizing to the victims' families. He also said he has two little girls who need him.

Westlaw

580 P.2d 1263
 40 Colo.App. 507, 580 P.2d 1263
 (Cite as: 40 Colo.App. 507, 580 P.2d 1263)

Page 1



Colorado Court of Appeals, Div. I.
 The PEOPLE of the State of Colorado, Plain-
 tiff-Appellee,
 v.
 Jack ALONZI, Defendant-Appellant.
 No. 77-356.

March 30, 1978.
 Rehearing Denied April 20, 1978.
 Certiorari Granted July 10, 1978.

Defendant was convicted in the District Court, City and County of Denver, George M. McNamara, J., of felony theft and of conspiracy to commit that theft, and he appealed. The Court of Appeals, Ruland, J., held that: (1) evidence supported defendant's conviction; (2) the trial court did not abuse its discretion in admitting into evidence a tape recording made by an investigating agent of several telephone conversations he had with defendant and one of defendant's co-conspirators; (3) the agent's destruction of his handwritten notes which he used to compile a formal report did not require judgment of acquittal on the theory that the agent intentionally destroyed material evidence which was potentially useful to defendant, and (4) the prosecuting attorney's remarks during his opening statement and in his closing arguments, to the effect that defendant was part of an "auto theft ring," were a fair comment upon the evidence presented at trial.

Affirmed.

West Headnotes

[\[1\]](#) [Larceny 234](#) [55](#)

[234](#) Larceny

[234II](#) Prosecution and Punishment

[234II\(B\)](#) Evidence

[234k54](#) Weight and Sufficiency

[234k55](#) k. In General. [Most Cited Cases](#)

Evidence showing that defendant agreed to provide undercover agent with two stolen vehicles, secured services of another man to steal vehicles, made arrangements for delivery of and payment for vehicles,

and accepted \$5,000 for stolen vehicles upon their delivery established defendant's responsibility as principal in felony theft.

[\[2\]](#) [Conspiracy 91](#) [47\(11\)](#)

[91](#) Conspiracy

[91II](#) Criminal Responsibility

[91II\(B\)](#) Prosecution

[91k44](#) Evidence

[91k47](#) Weight and Sufficiency

[91k47\(3\)](#) Particular Conspiracies

[91k47\(11\)](#) k. Larceny, Embez-

zement, Burglary, and Robbery; Stolen Property.

[Most Cited Cases](#)

Evidence supported conviction for conspiracy to commit felony theft.

[\[3\]](#) [Criminal Law 110](#) [438.1](#)

[110](#) Criminal Law

[110XVII](#) Evidence

[110XVII\(P\)](#) Documentary Evidence

[110k431](#) Private Writings and Publications

[110k438.1](#) k. Sound Recordings. [Most](#)

[Cited Cases](#)

Trial court did not abuse discretion in admitting into evidence tape recording of telephone conversations between undercover agent and defendant and one of defendant's coconspirators, even though substantial portions of two of conversations were inaudible, where prior and subsequent conversations were comprehensible, of good quality, and reliably demonstrated defendant's knowing participation in offenses; inaudible portions were not so substantial, in view of purpose for which recording was offered, as to render recording untrustworthy.

[\[4\]](#) [Criminal Law 110](#) [444.20](#)

[110](#) Criminal Law

[110XVII](#) Evidence

[110XVII\(P\)](#) Documentary Evidence

[110k444](#) Authentication and Foundation

[110k444.20](#) k. Telecommunications.

[Most Cited Cases](#)

(Formerly 110k444, 110k444.15, 110k444)

580 P.2d 1263
40 Colo.App. 507, 580 P.2d 1263
(Cite as: 40 Colo.App. 507, 580 P.2d 1263)

Page 2

Where speakers were identified, and where defendant conceded that conversation was voluntary on his part, scope of trial court's inquiry prior to admission of tape recording of telephone conversations between defendant and undercover agent was properly limited to whether foundation evidence demonstrated that recording was sufficiently audible and whether recording was accurate reproduction of audible conversation.

[5] Criminal Law 110 ↪438.1

110 Criminal Law
110XVII Evidence
110XVII(P) Documentary Evidence
110k431 Private Writings and Publications
110k438.1 k. Sound Recordings. **Most**

Cited Cases

Tape recording of telephone conversations between undercover agent and defendant and one of defendant's coconspirators was shown to be sufficiently accurate to be admitted into evidence, even though no recording of initial conversation between agent and defendant was available either because it had been lost or because of some unexplained malfunction in recording machine, where 16 subsequent conversations were recorded and where agent testified that tape recording accurately reflected other audible conversations.

[6] Criminal Law 110 ↪2010

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)3 Destruction or Loss of Information
110k2010 k. In General. **Most Cited**

Cases

(Formerly 110k700(9), 110k700)
Focus of court's analysis, on claim that investigating agent's destruction of notes resulted in intentional destruction of material evidence which was potentially useful to defendant, is not upon culpability of agent who destroyed notes, but rather upon effect that loss of particular item of evidence had on defendant's ability to defend against criminal charges.

[7] Criminal Law 110 ↪2011

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)3 Destruction or Loss of Information
110k2011 k. Excuse or Justification for Destruction or Loss. **Most Cited Cases**
(Formerly 110k700(9), 110k700)

Investigating agent's intentional destruction of various handwritten notes used to compile formal report, pursuant to standard operating procedure of police agency, did not require judgment of acquittal on theory that agent intentionally destroyed material evidence which was potentially useful to defendant, where there was no basis in record from which reviewing court could conclude that loss of notes materially affected defendant's ability to present defense.

[8] Criminal Law 110 ↪2011

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)3 Destruction or Loss of Information
110k2011 k. Excuse or Justification for Destruction or Loss. **Most Cited Cases**
(Formerly 110k700(9), 110k700)

Destruction of written notes made by investigating agent during taping of phone conversation with criminal defendant was not violation of rule governing disclosure to defendants before trial when substance of that conversation was set forth in agent's formal report. Colo.R.Crim.P. rule 16, pt. I(a), (a)(1)(II).

[9] Criminal Law 110 ↪2069

110 Criminal Law
110XXXI Counsel
110XXXI(F) Arguments and Statements by Counsel
110k2067 Scope and Effect of Opening Statement
110k2069 k. For Prosecution. **Most Cited Cases**
(Formerly 110k703)

580 P.2d 1263
40 Colo.App. 507, 580 P.2d 1263
(Cite as: 40 Colo.App. 507, 580 P.2d 1263)

Page 3

Criminal Law 110  **2109**


110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2102 Inferences from and Effect of Evidence

110k2109 k. Conspiracy, Racketeering, and Money Laundering. [Most Cited Cases](#) (Formerly 110k720(8))

Criminal Law 110  **2120**

110 Criminal Law

110XXXI Counsel

110XXXI(F) Arguments and Statements by Counsel

110k2102 Inferences from and Effect of Evidence

110k2120 k. Larceny, Embezzlement, and Receiving Stolen Property. [Most Cited Cases](#) (Formerly 110k720(8))

In prosecution for felony theft and conspiracy to commit that theft, prosecuting attorney's remarks in opening statement and in closing arguments, to effect that defendant was part of "auto theft ring," were fair comment upon evidence presented at trial, which included tape recordings of telephone conversations between defendant and investigating agent in which defendant indicated that he had just disposed of four stolen vehicles, that source was available for "repa-pering" the vehicles, and that defendant could obtain up to 24 vehicles to be delivered to agent at rate of two each night.

*508 **1265 J. D. MacFarlane, Atty. Gen., David W. Robbins, Deputy Atty. Gen., Edward G. Donovan, Sol. Gen., Robert C. Lehnert, Asst. Atty. Gen., App. Section, Denver, for plaintiff-appellee.

*509 Walter L. Gerash, P. C., Walter L. Gerash, Jeffrey A. Springer, Denver, for defendant-appellant.

RULAND, Judge.

The defendant, Jack Alonzi, appeals his conviction by a jury of felony theft and of conspiracy to commit that theft. We affirm.

The People's evidence reflects that Alonzi was con-

tacted by an undercover agent on September 15, 1975, for the purpose of arranging a purchase of stolen vehicles. Over the next few days they had numerous telephone conversations which, with the exception of the first call, the agent tape recorded. There were also several personal meetings between the two men. During the course of these conversations Alonzi indicated that he would secure at least two stolen Continental Mark IV's for the agent to purchase for \$2,500 apiece. At Alonzi's direction, the agent met him at a Denver motel on the evening of September 19. About 1:00 a. m. two stolen Lincoln Continentals were driven into the parking lot. At that point Alonzi stated, "Here comes my guy." The agent then paid Alonzi \$5,000 for the cars, whereupon Alonzi was arrested.

At trial another witness, who was granted immunity from prosecution, testified that he had been approached by Alonzi and, at Alonzi's urging, had arranged for and participated in the theft. Alonzi did not, however, pick out the Mark IV's which were stolen or instruct the witness on how to steal them.

Alonzi first asserts that the evidence demonstrated only that he had "encouraged" the crime. He argues that such conduct is insufficient to establish that he aided, abetted, or advised the other participants in planning or committing the theft and that, therefore, the evidence was insufficient to support either his conviction as a principal under the complicity statute, [s. 18-1-603, C.R.S. 1973](#), or his conviction for conspiracy. We find no merit in this contention.

[1][2] Viewed in a light most favorable to the verdict, See [People v. Lankford, 185 Colo. 445, 524 P.2d 1382 \(1974\)](#), the evidence showed that Alonzi agreed to provide the agent with two stolen vehicles, secured the services of another man to steal the vehicles, made arrangements for delivery of and payment for the vehicles, and accepted \$5,000 for the stolen vehicles upon their delivery. Assuming, Arguendo, that the complicity statute is not applicable where one merely "encourages" commission of a crime, Alonzi's involvement establishes him as a central figure in this *510 criminal activity. Thus, he was responsible as a principal. See [People v. Lamirato, 180 Colo. 250, 504 P.2d 661 \(1972\)](#). Similarly, this evidence also establishes an agreement between Alonzi and others to commit theft, and thus, it **1266 was sufficient to sustain the conspiracy conviction. See [People v. Shannon, Colo., 539 P.2d 480 \(1975\)](#).

580 P.2d 1263
 40 Colo.App. 507, 580 P.2d 1263
 (Cite as: 40 Colo.App. 507, 580 P.2d 1263)

Page 4

Next, Alonzi contends that the trial court improperly admitted into evidence a tape recording which consisted of six telephone conversations, of which five were between Alonzi and the agent, and one between the agent and one of Alonzi's co-conspirators. Alonzi urges that admission of the tape recording constituted reversible error because it was so inaudible as to be unreliable, and because no proper foundation was laid. We disagree with both contentions.

[3] Review of the tape recording does show that substantial portions of two of the conversations are inaudible. However, the prior and subsequent conversations are comprehensible, of good quality, and reliably demonstrate Alonzi's knowing participation in the thefts. Thus, the inaudible portions were not so substantial, in view of the purpose for which the tape recording was offered, as to render the recording untrustworthy. See [People v. Odneal, Colo., 559 P.2d 230 \(1977\)](#). Hence, the trial court did not abuse its discretion in admitting the tape recording into evidence. See [People v. Quintana, Colo., 540 P.2d 1097 \(1975\)](#); [People v. Coca, Colo.App., 580 P.2d 1258 \(announced March 9, 1978\)](#).

Relying upon such cases as [Durns v. United States, 562 F.2d 542 \(8th Cir. 1977\)](#) and [United States v. McMillan, 508 F.2d 101 \(8th Cir. 1974\)](#), Alonzi contends that, prior to introduction of the tape recording into evidence, it must appear that:

- (1) the recording device was capable of taping the conversation offered into evidence;
- (2) the operator was competent to operate the recording device;
- (3) the tape recording was authentic and correct;
- (4) there were no changes, additions, or deletions made in the tape recording;
- (5) the tape recording was properly preserved;
- (6) the speakers were identified; and
- (7) the conversation elicited was made voluntarily and in good faith without any kind of inducement.

Alonzi asserts that the People's evidence demonstrated compliance with only the sixth and seventh requirements. Specifically, Alonzi argues that because the recording machine failed to record the first conversation which the agent attempted to tape, the record demonstrates a failure to comply with the first and second requirements. As to the third, fourth and fifth criteria, Alonzi argues that the People failed to show a chain of custody for the tape recording from the time the agent placed it in an evidence safe. Under these circumstances, Alonzi concludes that the trial *511 court should not have admitted the tape recording.

[4] Initially, we decline to adhere to the formalistic analysis urged by Alonzi in determining whether the tape recording was admissible. We conclude that because the criteria overlap, to apply them all simultaneously would lead to confusion. Further, we do not view formal "chain of custody" requirements as applicable. See [United States v. Biggins, 551 F.2d 64 \(5th Cir. 1977\)](#). Rather, we hold that because the speakers were identified and because Alonzi, in effect, concedes that the conversation was voluntary on his part, the scope of the trial court's inquiry prior to admission of the tape recording was properly limited to: (1) whether foundation evidence demonstrated that the tape recording was sufficiently audible under the test of [People v. Odneal, supra](#) ; and (2) whether the tape recording was an accurate reproduction of the audible conversation. See [Biggins, supra](#). For the reasons stated above, the tape recording was sufficiently audible.

[5] We further conclude that the tape recording was sufficiently accurate to be admitted into evidence. We recognize that no tape recording of the initial conversation between the agent and Alonzi was available, either because it had been lost or because of some unexplained malfunction in the recording machine. However, this evidence fails to demonstrate that the recording device was incapable of making a tape **1267 recording because sixteen subsequent conversations were recorded. Further, the agent testified that the tape recording accurately reflected the other audible conversations. Under these circumstances, the trial court's ruling was correct. See [People v. Quintana, supra](#).

Alonzi next contends that the agent intentionally destroyed material evidence which was potentially useful to him, and that the trial court erred in denying his

580 P.2d 1263
 40 Colo.App. 507, 580 P.2d 1263
 (Cite as: 40 Colo.App. 507, 580 P.2d 1263)

Page 5

motion for judgment of acquittal based thereon. We conclude that the trial court's ruling was correct.

During the course of the phone conversations the agent made various handwritten notes. Soon thereafter he used the notes to compile a formal report. The agent thereafter destroyed the notes pursuant to a standard operating procedure of the police agency. Because the recording machine failed to record the first telephone conversation with Alonzi and the agent's notes relative thereto were destroyed, the only information available pertaining to the initial conversation was the formal report and the agent's memory of that conversation.

[6] We recognize that preliminary notes taken during the course of an interview or conversation might prove useful to a defendant. Conceivably, outright falsification might be revealed, and more frequently, discrepancies and unwarranted inferences later included in the formal report might appear. See United States v. Harris, 543 F.2d 1247 (9th Cir. 1976). See also Ortega v. People, 162 Colo. 358, 426 P.2d 180 (1967). However, under the circumstances of this case, we cannot agree with Alonzi that the *512 focus of our analysis must be upon the "culpability of the agent who destroyed the notes." Rather, resolution of Alonzi's contention depends upon "the effect that the loss of the particular item of evidence has on the defendant's ability to defend against criminal charges." People v. Harmes, Colo.App., 560 P.2d 470 (1976); See Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

[7][8] Here, with the exception of the first conversation, accurate recordings of the substance of the oral statements were available to verify the agent's version. See United States v. Harris, supra; People v. Norwood, Colo.App., 547 P.2d 273 (1975); Crim.P. 16 Part I(a). Further, the agent's recollection of the initial conversation was that a meeting was arranged with Alonzi, but few details of any transactions were discussed. Thus, there is no basis in the record before us from which we can conclude that the loss of the notes materially affected Alonzi's ability to present a defense to the charges. And, contrary to Alonzi's contention, we do not deem destruction of the written notes made during the taping of the one phone conversation as a violation of Crim.P. 16 Part I(a)(1)(II) when the substance of that conversation was set forth in the agent's formal report.

Alonzi contends that reversal of his conviction is required because of comments made by the prosecutor in his opening statement and in his closing arguments to the effect that Alonzi was part of an "auto theft ring." Alonzi's objection to those statements was overruled, and the trial court refused to grant his motion for mistrial. This contention also lacks merit.

[9] We view the prosecuting attorney's remarks as fair comment upon the evidence presented at trial. See People v. Todd, Colo., 538 P.2d 433 (1975). In one conversation with the agent Alonzi indicated that he had just disposed of four Mark IV vehicles. In a conversation with a co-conspirator, the agent was informed that a source was available for "repapering the vehicles." In still another conversation Alonzi indicated that he could obtain up to twenty-four Mark IV's to be delivered to the agent at the rate of two each night.

We have considered the other contentions asserted by Alonzi on this appeal and find them to be without merit.

Judgment affirmed.

COYTE and STERNBERG, JJ., concur.
 Colo.App., 1978.
 People v. Alonzi
 40 Colo.App. 507, 580 P.2d 1263

END OF DOCUMENT

Defendant contends that the failure of the police to preserve material evidence deprived him of a fair trial. Specifically, he alleges that the police officers failed to take or preserve notes of critical investigative interviews. Accordingly, he argues, his due process rights were violated. We disagree. The constitutional duty imposed on the state to preserve evidence is limited to that which is "constitutionally material." To be constitutionally material, the evidence must have an exculpatory value that was apparent before the evidence was lost or destroyed and the defendant must be unable to obtain comparable evidence through other available means. *People v. Wyman*, 788 P.2d 1278 (Colo.1990). *People v. Anderson*, 837 P.2d 293, 298 (Colo.App. 1992).

Defendant argues that the failure of the police to include this information in their narrative report or to take notes on this part of their investigation was a failure to preserve constitutionally material evidence. We disagree. Whether defendant was or was not a member of the gym in Arizona or took a flight to Denver from Arizona was not only easily ascertainable by defendant, but within defendant's actual knowledge. Moreover, this information was not "lost or destroyed." *People v. Rivers*, 727 P.2d 394 (Colo.App.1986). *People v. Anderson*, 837 P.2d 293, 298 (Colo.App. 1992).

Defendant first contends that he was denied due process and that all charges should have been dismissed because of the prosecution's negligent suppression and destruction of evidence consisting of a T-shirt allegedly worn by defendant, the clothes worn by the officer, and the pink notes of a police investigator. We disagree. The trial court found, on supporting evidence, that the defendant was not wearing a T-shirt at the time of the altercation. The officer's shirt and pants were not preserved, but there was no showing that, had they been produced, they would have been exculpatory or relevant to defendant's case. See *Garcia v. District Court*, 197 Colo. 38, 589 P.2d 924 (1979). And, the record shows that the notes were on yellow and not on pink paper, and that defense counsel received the yellow sheets. *People v. Reedy*, 705 P.2d 1032, 1033-1034 (Colo.App.) 1985.

In *People v. Greathouse*, 742 P.2d 334 (Colo.1987), this court adopted the standard for determining the value of exculpatory evidence in a due process claim that was articulated by the United States Supreme Court in *California v. Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984). The constitutional duty imposed upon the state to preserve evidence is limited to that evidence that is "constitutionally material." 467 U.S. at 488, 104 S.Ct. at 2533. For evidence to be constitutionally material, the evidence (1) must have an exculpatory value that was apparent before the evidence was lost or destroyed; and (2) the defendant must be unable to obtain comparable evidence through other available means. *Id.* at 489, 104 S.Ct. at 2534. *People v. Wyman*, 788 P.2d 1278, 1279-1280 (Colo. 1990).

State must employ regular procedures to preserve evidence when it is reasonably foreseeable and such evidence might be favorable to accused. *People v. Greathouse*, 742 P.2d 334, 337 (Colo. 1987).

Trombetta standard for determining exculpatory value of evidence provides more realistic way to evaluate due process claim predicated on State's duty to preserve evidence during investigatory stage of case than does unduly expansive "not merely incidental" test; to satisfy test of constitutional materiality under Trombetta, evidence must both possess an exculpatory value that was apparent before evidence was destroyed, and be of such nature that defendant would be unable to obtain comparable evidence by other reasonably available means. *People v. Greathouse*, 742 P.2d 334, 338 (Colo. 1987).

Samples of victim's body fluids did not satisfy test of "constitutional materiality," and their unavailability did not violate due process rights of defendant, who defended against murder charge on theory that victim had ingested alcohol and drugs shortly before her death and that she fell or jumped from cliff to her death; presence of small concentrations of alcohol in victim's blood as of date of autopsy was consistent with decomposed state of body prior to autopsy, and sheriff's officers at that time may have had some suspicion but did not have sufficient knowledge to attribute victim's death to criminal conduct of another, and thus could not have been expected to anticipate that victim's body fluids might be of exculpatory value in future prosecution. *People v. Greathouse*, 742 P.2d 334, 338-339 (Colo. 1987).

One case in which we have discussed due process constraints on the Government's failure to preserve potentially exculpatory evidence is *Killian v. United States*, 368 U.S. 231, 82 S.Ct. 302, 7 L.Ed.2d 256 (1961). In *Killian*, the petitioner had been convicted of giving false testimony in violation of 18 U.S.C. § 1001. A key element of the Government's case was an investigatory report prepared by the Federal Bureau of Investigation. The Solicitor General conceded that, prior to petitioner's trial, the F.B.I. agents who prepared the investigatory report destroyed the preliminary notes they had made while interviewing witnesses. The petitioner argued that these notes would have been helpful to his defense and that the agents had violated the Due Process Clause by destroying this exculpatory evidence. While not denying that the notes might have contributed to the petitioner's defense, the Court ruled that their destruction did not rise to the level of constitutional violation: "If the agents' notes ... were made only for the purpose of transferring the data thereon ..., and if, having served that purpose, they were destroyed by the agents in good faith and in accord with their normal practices, it would be clear that their destruction did not constitute an impermissible destruction of evidence nor deprive petitioner of any right." *Id.*, at 242, 82 S.Ct., at 308. In many respects the instant case is reminiscent of *Killian v. United States*. To the extent that respondents' breath samples came into the possession of California authorities, it was for the limited purpose of providing raw data to the Intoxilyzer. The evidence to be presented at trial was not the breath itself but rather the Intoxilyzer results obtained from the breath samples. As the petitioner in *Killian* wanted the agents' notes in order to impeach their final reports, respondents here seek the breath samples in order to challenge incriminating tests results produced with the Intoxilyzer. *California v. Trombetta*, 467 U.S. 479, 487-488 (1984).

As to petitioner's contention that the claimed destruction of the agents' notes admits the destruction of evidence, deprives him of legal rights and requires reversal of the judgment, it seems appropriate to observe that almost everything is evidence of something, but that does not mean that nothing can ever safely be destroyed. If the agents' notes of Ondrejka's oral reports of expenses were made only for the purpose of transferring the data thereon to the receipts to be signed by Ondrejka, and if, after having served that purpose, they were destroyed by the agents in good faith and in accord with their normal practice, it would be clear that their destruction did not constitute an impermissible destruction of evidence nor deprive petitioner of any right. Those are the factual representations made by the Solicitor General. Whether they are true can be determined only upon a hearing in the District Court. *Killian v. U.S.*, 368 U.S. 231, 242 (1961).

EQUIPMENT RECOMMENDATION

As part of the TRB review, members identified equipment and other options available to increase the efficiency of the Traffic Section and Crime Scene Unit. To that end, the TRB recommends that the following equipment and software purchases be considered by the Department likely acquired with seizure board award funds.

RECOMMENDATIONS

FARO Laser Scanner

The TRB recommends that the Department consider the purchase of additional technology to assist investigators with the accurate and accelerated documentation of crash/crime scenes. One such item would be a 3 Dimensional Laser Scanner.

The 3D laser scanner would be a great technological advancement for the department versus equipment/methods currently used by crash investigators and crime scene investigators to document scenes. The scanner would allow for a detailed and accurate scale diagram of the scene produced in a fraction of the time it currently expended. Most scanners on the market today provide a level of accuracy of +/- 2mm at a distance of 25m and some of the available units have the ability to produce color scans. The scanner would allow investigators to produce extremely detailed diagrams of the deformation of vehicles in a crash, which is helpful when aligning vehicles in the diagram for accurate reconstruction measurements. The scanner also allows investigators to document and examine things such as line of sight concerns, blood spatter, and projectile trajectories. An investigator can use the scanner to determine the exact height and general build of an unknown suspect if the suspect was captured on video, by scanning the area captured on the video, and then taking measurements on the scanner produced diagram.

Cost Savings

Employing laser scanning technology has the potential to provide the Department with considerable cost savings. A laser scanner requires only one person to operate, which would be an automatic 50% reduction in the personnel required to operate our current scale diagramming equipment. The laser scanner is also much faster than the present equipment/methods used by the department. *A laser scanner can measure over 950,000 points a second in 3D using only one operator. The current method only allows investigators to measure 1 point per minute at best in 2D with two investigators.*

Using a scanner would greatly reduce the amount of time that personnel resources are being dedicated to the at-scene investigation. This reduction in time, and dedication of resources could save the Department substantial overtime dollars. The current Visual Statement crash reconstruction and diagramming software used by the department supports the use of diagrams produced by 3D laser scanners, as a benefit there should be minimal costs involved with integrating the two systems.

Case Filings

Other benefits of using a 3D laser scanner would be a much more complete and professional looking case filing being presented to the District Attorneys in serious felony cases, not just limited to crash scenes. The scanner would be very valuable in diagramming both indoor and outdoor major crime scenes to scale with great detail. Another benefit of the system would be our ability to get roadways back open faster, and restore normal traffic flow which would reduce the inconvenience to the general public, citizen complaints and increase traffic safety. If the crime occurred to an occupied building, the investigators could also return custody of a home or business back to the rightful owner/occupants in less time than we currently can. This would allow the business to return to productivity faster, or the occupants of the home would be inconvenienced less and allowed to return to their normal lifestyles expeditiously.

Investment required \$ 40,000.00

iWitness Pro Photogrammetry Software

Photogrammetry uses digital scene photography to make both 2-D and 3-D scale images for reconstruction efforts. The software provides the ability to create a scale scene from photographs taken by officers or CSI technicians; Traffic investigators would not have to be on scene. This provides a fail-safe plan when it is later determined that a to scale diagram is necessary for prosecution purposes or other reasons a reconstruction of an accident or crime scene is needed.

Investment Required \$ 1,995.00

Cameras

iWitness recommends the Olympus E-620 Digital SLR camera to optimize performance.

Investment Required \$ 1,398.00

Tru-Angle Encoders

Encoders are used to collect data at accident/crime scenes and are necessary for reconstruction purposes. The current Department encoders are aged well past the manufacturer's useful life (7-9) years. The repair and maintenance costs steadily increase. The Tru-Angle is the updated version of equipment currently in service.

Benefits

The benefits of this investment in new technology include, but not limited to, an easier learning curve and use, less expensive to operate and increased productivity.

Investment Required \$ 5,970.00

Cases for Encoders Above

Investment Required \$ 540.00

TOTAL EQUIPMENT INVESTMENT \$ 49,903.00



FARO Laser Scanner **Focus** 3D



Real World Applications — Accident Reconstruction

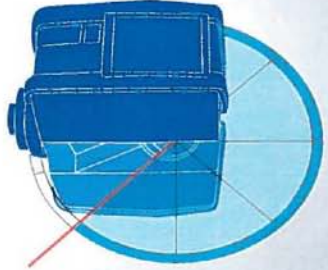
Accident Reconstruction is the determination of the sequence of events which resulted in an accident or failure through analysis, observation and study.

Applying the Laser Scanner Focus^{3D} will allow you to:

- Gather vast amounts of data quickly and bring the virtual scene back to the office
- Easily share data with clients over the web with one-click publishing
- Perform virtual surveying to support legacy workflows
- Create true-to-life visual recreations
- Analyze line of sight and environmental factors from various vantage points
- Compare scan data with OEM CAD files for vehicle deformation analysis
- Save time and produce superior deliverables

Industries Served: Accident Investigation, Biomechanics Research, Fire Investigation, Forensic Engineering, Law Enforcement





"We knew how fast the FARO Laser Scanner worked and its extreme detail of the images that it produced. It seemed like a natural fit for reconstructing crime or accident scenes."

Doug Urseel, Operations Manager – Pine Fall Technical Services

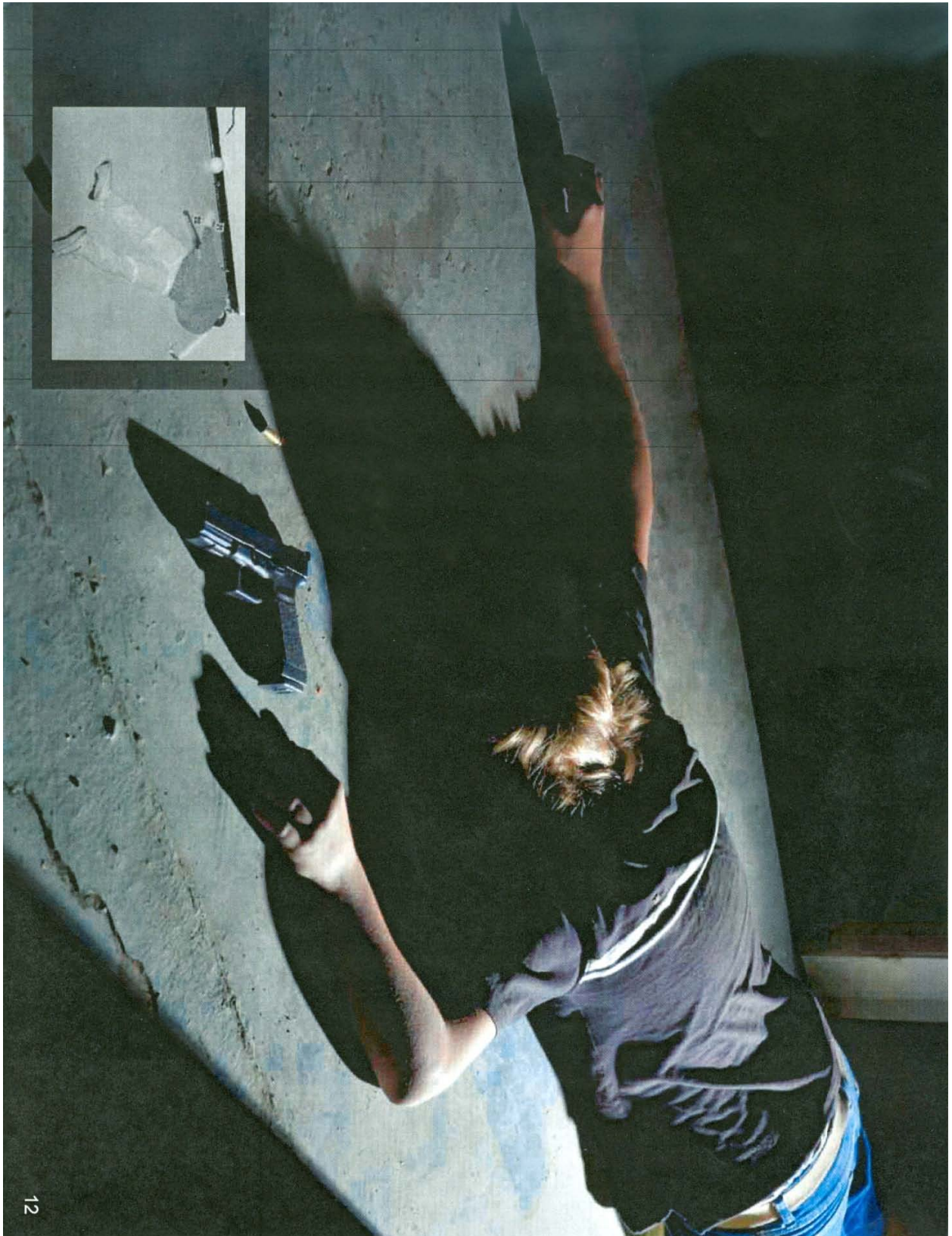
Real World Applications — Crime Scene & Forensic

Crime Scene & Forensic Investigation involves the use of scientific methods, physical evidence, deductive reasoning, and their inter-relationships to gain explicit knowledge of the series of events that surround the crime.

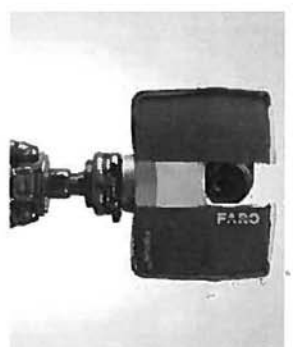
Applying the Laser Scanner Focus^{3D} will allow you to:

- Quickly and thoroughly document a crime scene in color
- Virtually visit a crime scene again and again to verify witness testimony or evaluate hypotheses
- Work with the diagramming tools you are already familiar with
- Easily create annotated fly-through videos for court presentation
- Analyze line of sight, blood spatter, bullet trajectories, and offender's height (from video surveillance)
- Return scene to civilian use quickly
- Save time and produce superior deliverables

Industries Served: Crime Investigation, Insurance, Law Enforcement, Legal, Military



12



Real World Applications — As-Built Documentation

As-Built Documentation is the process of describing an object or structure as it appears in its current state in the real world through the use of manual or digital documentation.

Applying the Laser Scanner Focus^{3D} will allow you to:

- Bring the facility or object back to the office to avoid return site trips
- Create conceptual fly through videos blending existing and proposed structures to "sell" projects
- Extract as much or little information as you need, when you need it
- Create accurate 2D and 3D documentation for architects or engineers to facilitate renovations, additions, or repurposing
- Create a Building Information Model (BIM) for contractor collaboration, energy studies, facility management, and more
- Monitor construction for accuracy and create "close out" as-built documentation after each trade or phase is finished
- Perform off-site pre-fabrication of building components
- Monitor structures over time for attrition and settling
- Save time and produce superior deliverables

Industries Served: Architecture, Civil Engineering, Construction, Facility Management, Heritage, Real Estate



Small and compact
The Focus^{3D} is the smallest and most compact laser scanner ever built

Intuitive touch-screen display
With its brilliant color display for intuitive touch-operation, FARO sets a completely new standard in user friendliness

Integrated color camera
Photo-realistic 3D scans with up to 70 megapixel of parallax-free color overlay

Storage on SD card
SD cards allow you to securely manage and transfer scan data to your PC in seconds

Data processing and interfaces
Data is automatically processed using auto-registration and transferred to industry standard softwares

Built-in powerful battery
Enables up to five hours operation without a main power supply, charges quickly and can be charged while in operation