



## OFFICE OF THE DISTRICT ATTORNEY

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

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TO: Detective Joe Petrucelli, Aurora Police Department  
FROM: Brian Sugioka, Chief Deputy District Attorney, 18<sup>th</sup> Judicial District  
DATE: 4/12/19

Re: Jeremiah Hartzel, APD case 19-3545

Dear Detective Petrucelli,

You submitted this case to our office on February 19, 2019, with a request for a number of felony charges to be filed. I am writing to inform you that, for the reasons set forth below, the Office of the District Attorney declines to file any criminal charges in connection with this incident based upon the investigation and filing. Nothing in this letter should be considered in any way as negative commentary on you, your department, or the work you and your colleagues did in preparing the case.

In deciding whether to initiate the prosecution of a criminal case, prosecutors are generally guided by standards enunciated by the American Bar Association (“ABA”) and the National District Attorneys Association (“NDAA”). The ABA has published a document called the “Criminal Justice Standards for the Prosecution Function.” These Standards are often utilized by prosecutors in guiding their exercise of discretion in pursuing criminal charges. Standard 3-4.3 (a) provides that a prosecutor shall only bring charges where “the admissible evidence will be sufficient to support conviction beyond a reasonable doubt.” NDAA Prosecution Standard 4-2.2 provides similar guidance to the ABA Standard but references whether the prosecutor “believes that [the charges] can be sustained by admissible evidence at trial.” It is within this framework that we must evaluate every case submitted to us by law enforcement agencies.

Our job is to assess whether there is sufficient evidence to file criminal charges and potentially proceed to trial, not to render judgments on whether anyone’s actions may have been improper or negligent under another standard, such as in civil cases. I have limited my analysis to that question, and that question only.

The police reports in the case filing, as well as subsequent investigation, present the following facts:

On the morning of January 28, 2019, Jeremiah Hartzel operated an RTD light rail train, consisting of a single train car made up of two connected segments, traveling southbound on the “R” line in Aurora, Colorado. Hartzel operated the “R” line train since coming on duty early that morning. Based on the available evidence, there is no indication that Mr. Hartzel was intoxicated, ill, or in any other way impaired in his ability to safely operate the train at the time he went on duty or at any other point while on duty.

The weather that day was snowy, icy and cold. RTD operators are trained that under those circumstances moisture or ice may exist on the tracks, which may negatively affect the train's ability to decelerate and accelerate, although the trains are designed for, and are fully capable of, operating in those conditions.

Hartzel had been employed with RTD since December 2017, and had passed RTD's light rail operator training course, which lasted approximately 8 weeks. Hartzel had a valid driver's license and had a commercial operator's permit. A commercial driver's license is not required to operate an RTD train, but many operators either have a CDL or work towards it while working for RTD, as Hartzel was. On February 11, 2019, Hartzel had provided his two-week notice that he intended to leave RTD, due to school scheduling conflicts. The "R" line was not Hartzel's regularly assigned route, but he had been assigned to this route once before, on January 22, 2019.

The undersigned went to the RTD operations facility in Englewood and both observed a train being operated from the cab and participated in a simulator training. I personally observed the manner in which trains are controlled by the operator. Light rail trains are controlled by a single operator in the cab portion of the train. A throttle-type device located at the operator's left hand controls both the acceleration and braking of the train. A number of other controls and readouts allow the operator to assess the condition of various signals and traffic gates along the route. There are no devices that automatically accelerate or decelerate the train based on its location or its proximity to a curve or a stop. Rather, the operator is responsible for accelerating or decelerating the train based on the posted speed limit signs and traffic control devices located along the tracks, as well as the operator's knowledge of the route and general training concerning safe operating speeds. There is an "overspeed" device that will automatically decelerate the train if it goes over 55 mph, however that speed was not approached in this particular case and thus the overspeed device did not come in to play.

The train in question departed the Aurora Metro Center Station, proceeding southbound, at approximately 7:13 a.m. on January 28<sup>th</sup>. The train was on schedule and the next stop was to be the Florida station. In order to reach the Florida station, the train was to proceed briefly southbound along the tracks paralleling Sable, then make a 90-degree turn proceeding briefly eastbound on the tracks paralleling Exposition Ave, then make another 90-degree turn proceeding southbound on tracks paralleling Abilene Street, to the Florida station.

The computer generated records provided by APD and RTD indicate that Hartzel initially applied moderate acceleration upon leaving the Metro station, causing the train to reach a speed of 17 mph at approximately 316 feet after leaving the Metro station. Hartzel then applied full acceleration, causing the train to accelerate to 38.5 MPH within approximately 19 seconds, reaching that speed at 1,213 feet south of the Metro station. The speed limit for trains on that stretch of track is 35 mph, and a 35 mph speed limit sign is posted just south of the Metro station between the tracks, visible to southbound train operators. Within less than a second of reaching the speed of 38.5 mph, Hartzel applied full brakes with the throttle control, resulting in a rapid deceleration of the train. Within a second of the full brakes being applied, a second braking system known as the "track brakes" was also applied, resulting in further rapid deceleration. This second set of brakes is operated through a so-called "deadman" switch, whereby Hartzel removed his foot from a switch on the floor, causing the "track brakes" to automatically be engaged. Within a

second of that occurring, the train's sensors detected that the wheels were sliding on the track, and deployed sand to the tracks from containers on the train's undercarriage, in order to supply additional traction. Within two seconds of that occurring, Hartzel pulled the throttle mechanism further back, past the "full brake" position, to "emergency braking". By the time the emergency brake was applied, the train had arrived at the 90-degree eastbound turn at Exposition Avenue, and was still traveling 30 mph. The speed limit for all 90-degree turns on RTD tracks of this type is 10 mph. A 10 mph speed limit sign is posted, visible to southbound train operators, on a post approximately 50 feet before the start of the turn. Thus, the train was traveling at approximately triple the posted speed when it entered the curve. Because of the train's excessive speed, it was unable to normally negotiate the 90-degree turn, and instead the right, inside train wheels derailed from the track, tilting the train significantly to its left, outside side. The below diagram illustrates the location of the train at the point each of the above actions occurred:



The wheels on RTD trains have a flange that is designed to prevent the wheels from detaching from the track in most situations. However, given the extreme angle at which the train tilted, the flange was unable to keep the wheel on the track, and it instead lifted off of the track. The below still picture, taken from a traffic camera located at the corner of Exposition Ave and

looking to the northeast across Exposition towards Sable, captured the appearance of the train as it attempted to negotiate the curve:



The train ultimately did not turn over on its left side. This appears to be due to the train cab striking a pole shortly after the right wheels had derailed and the train had begun to lean to the left, prior to the above image being captured. The impact with the pole was sufficient to knock the train back towards its center and avoid a complete derailment.

The detachment of the inside tracks coupled, with the southeasterly momentum of the train as it entered the curve, caused the right (inside) side of the train to lift substantially. This same action also caused the left (outward) side of the train to tilt downward towards the road surface. This substantial downward tilt caused portions of the train's underside surfaces, known as stepwells, to make forceful contact with the road surface. The stepwells are the portions of the train's bottom surface above which the doors are seated, and that passengers use as steps to enter and exit the train. These stepwells are lower than the other parts of the train's bottom surface, and thus were the first portions of the underside to make contact with the road surface. The force of the stepwells striking the road surface caused the train's frame to deform upward in the vicinity of the stepwell. Because the doors are seated in that same location, this upward deformation caused the door frames themselves to deform. The doors on RTD trains are secured by multiple roller devices that are designed to withstand 600 pounds of outward pressure. However, the amount of pressure generated by the stepwells striking the road, coupled with that pressure being channeled in an upward direction, caused those roller devices to fail and the doors to open.

A passenger on the train, identified as K. M., was standing in the train, in the second segment of the car. Video evidence from inside the train show K.M. losing her footing as the train

“whipped” to its left, and falling out of the train through the doors. Video evidence from a camera at the intersection of Sable and Exposition capture the moment at which K.M. fell out of the train, resulting in her lying on the ground a very short distance away from the train as it continued its southeasterly course.

The train car was equipped with a wedge-shaped guard at the end of the car that projected downward from the train’s end, commonly referred to as a “brush catcher” or plow, designed to remove any obstructions from the tracks and railway bed. The left corner of this device also impacted the ground and scraped along the street due to the tilt of the train, and unfortunately the left corner of this device contacted K.M.’s leg below her knee, severing her lower leg and foot. This aspect of the incident was captured via video footage. The train then continued a short distance, returning to its wheels, and came to rest facing eastbound on Exposition.

Hartzel had operated the same train through the same area a little over one hour earlier, at 6:03 a.m. on January 28. That run was completed in a safe and normal manner. Computer records of that earlier run, showing speeds and operator actions, were also supplied to our office. The below map provides information about how Hartzel’s actions differed between the first, safe run and the derailment run, and how Hartzel’s actions in the second run caused the derailment. On the right side of the map are references to speeds and driver actions taken in the earlier, safe run. On the left side are references to actions and speeds taken in the derailment run. The Aurora Metro Center Station is at the top center of the map, with the location where the derailment occurred being at the bottom center:



Thus, as reflected in this map, on the derailment run Hartzel accelerated the train to a higher top speed while southbound along Sable than in the safe run, 38.5 mph versus 35.2 mph. Hartzel also began to decelerate later on the derailment run than on the safe run, at 1,280 feet from the Metro station versus at 1,110 feet on the safe run. It is apparent that the combination of a higher speed and a later initiation of braking resulted in the train not having sufficient time to decelerate to a safe speed before entering the turn at Exposition, thus causing the derailment.

APD officers responded emergently to the scene, arriving within 2 minutes of the incident. Officers and emergency personnel tended to K.M. while other officers assessed the wellbeing of the other passengers and contacted Hartzel. Three other passengers suffered minor injuries from the train's violent motions, and only K.M. was seriously injured.

Officers contacted Hartzel still in the cab of the train. Hartzel stated that he approached the Exposition turn at approximately 30 mph, at which point he attempted to apply the brakes in order to decelerate to 10-15 mph as he entered the corner. Hartzel stated the braking system failed to slow the train, causing it to derail. Hartzel opined that the snow must have led to a failure of the brakes. The emergency braking system that Hartzel initiated as the train entered the curve does take a brief period of time to begin slowing the train, so it is possible Hartzel mistook that delay for a brake failure. An in-depth mechanical inspection of the train was conducted after the incident. All of the braking, signaling, door mechanisms, and other systems of the train were found to have been in working order at the time of the incident.

The officers who spoke to Hartzel observed no signs of drug or alcohol use or impairment. Per RTD policy, a sample of Hartzel's blood was taken for analysis, and that analysis revealed no alcohol or drugs in his system. It does not appear drug or alcohol impairment was a factor in this incident.

As mentioned above, there were video cameras monitoring and recording the inside of the passenger areas of the train. There was no video camera in the cab of the train, and thus there is no video footage of Hartzel's actions or behaviors in the cab.

From all of the available evidence, it appears this incident was caused by Mr. Hartzel accelerating the train to a higher than normal speed after leaving the Metro station, and subsequently not reducing the train's speed sufficiently prior to the curve. From the available evidence, it appears that once the train entered the curve at a high rate of speed, a derailment was essentially inevitable.

The charges requested in the case filing are:

1. First Degree Assault by Extreme Indifference, a class three felony, pursuant to 18-3-202(1)(c).
2. Second Degree Assault, a class four felony, pursuant to 18-3-203(1)(d).
3. Multiple counts of Third Degree Assault, a class 1 misdemeanor, pursuant to 18-3-204(1)(a).

First Degree Assault

First Degree Assault by Extreme Indifference requires the People to prove beyond a reasonable doubt that Hartzel:

1. Under circumstances manifesting extreme indifference to the value of human life,
2. knowingly engaged in conduct which created a grave risk of death to another person,
3. and thereby caused serious bodily injury to that person.

The first element, “extreme indifference”, is not further defined in the statute. However courts that have had occasion to consider the meaning of the phrase have determined that “extreme indifference is a greater level of culpability than recklessness (and thus a substantially higher level of culpability than negligence as well), that suggests a heightened awareness and disregard of the risk, rather than mere failure to identify and act on a risk. *See People v. Marcy*, 628 P.2d 69 (Colo.1981). “Extreme indifference” has also been interpreted as meaning a “total lack of concern or caring” about the risk of death to another. *People v. Esparza-Treto*, 282 P.3d 471 (Colo.App.2011) As applied to this case, Hartzel’s conduct does not rise to the level of “extreme indifference”. There is no indication that Hartzel was consciously aware of, and then declined to act, on an awareness that the train was going too fast as it entered the curve. Nor is there evidence to support a conclusion that Hartzel was indifferent to the potential consequences of his actions and inactions. Rather, the evidence supports a conclusion that due to inattention or misjudgment, Hartzel failed to recognize that he had accelerated to too high a speed and failed to brake sufficiently in advance of the curve.

The second element of First Degree Assault is also not established in this case. There is insufficient evidence to support a conclusion that Mr. Hartzel knowingly failed to maintain a safe speed or to brake sufficiently in advance of the curve. To the contrary, the evidence supports a conclusion that Mr. Hartzel became aware of his excessive speed and attempted to slow down the train, but simply did not recognize that problem sufficiently in advance to prevent the incident.

The third element, serious bodily injury to another, is clearly satisfied. However, given that elements one and two cannot be proven, that charge cannot be filed.

### Second Degree Assault

Second Degree Assault requires the People to prove beyond a reasonable doubt that Hartzel:

1. recklessly,
2. caused serious bodily injury to another
3. with a deadly weapon.

As to the first element, recklessness is defined in the Colorado Revised Statutes as consciously disregarding a substantial and unjustifiable risk that a result (in this case serious bodily injury to another) would occur, or that a circumstance (leading to serious bodily injury) existed. C.R.S. 18-1-501(8). Recklessness is distinguished from the lesser culpable mental state of negligence in that negligence refers to failing to perceive a substantial risk that the result would occur, while recklessness refers to perceiving, but then disregarding, that risk. Although this is sometimes a difficult distinction to make, the evidence in this case is insufficient to establish recklessness beyond a reasonable doubt. All indications are that Mr. Hartzel did not recognize, and then disregard, the fact that he was traveling too fast. Rather, it appears that he failed to recognize that fact at all until it was too late, at which point he attempted to slow the train but was unsuccessful.

The second element, serious bodily injury, is again clearly satisfied. However, both element 1 and element 3, discussed below, cannot be established beyond a reasonable doubt.

The third element, that the injury was caused by a deadly weapon, is not established by the evidence. The term “deadly weapon” is defined as “(I) A firearm, whether loaded or unloaded; or (II) A knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.” C.R.S. 18-1-901(3)(e). Cases that have interpreted this term have determined that there are two general categories of deadly weapons. The first are those items that are by their very design and intended use deadly weapons, such as guns, explosives, and knives. The second category includes those items that are not designed to be deadly weapons, but that nonetheless can cause serious bodily injury or death. In order for an item or object in the second category to be a deadly weapon, the actor must have used or intended to use that object specifically as a weapon. For example, in the context of the driver of a vehicle causing serious injury or death to another, it is insufficient for the driver to simply have been operating the vehicle in a reckless, or even an “extremely indifferent” manner, rather the driver must have purposefully used that vehicle as a means of seriously injuring or killing another. *See People v. Esparza-Treto*, 282 P.3d 471 (Colo.App.2011). As applied to this case, there is no evidence that Hartzel intended to deploy the train as a weapon to injure or kill others, thus this element is not satisfied.

### Third Degree Assault

Third degree assault would require the People to prove beyond a reasonable doubt that Hartzel:

1. knowingly or recklessly,
  2. caused bodily injury to another,
- or,
1. with criminal negligence,
  2. caused serious bodily injury to another,
  3. by means of a deadly weapon.

As to the first type of third degree assault, as explained in detail above the evidence is insufficient to establish beyond a reasonable doubt that Hartzel acted knowingly or recklessly as those terms are defined in the Colorado Revised Statutes.

As to the second type of third degree assault, as explained above the evidence is insufficient to establish that Hartzel purposefully used or intended to use the train as a deadly weapon, thus the third element cannot be established.

#### Other offenses

In addition to the specific charges requested by your agency, our office considered whether other offenses contained in the Colorado Revised Statutes may be appropriate. Initially, it should be noted that a light rail train of this type does not constitute a “motor vehicle” or a “vehicle” as those terms are defined for purposes of Title 42 traffic offenses. “Motor vehicle” is defined in relevant part as:

“any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways...” C.R.S. 42-1-102(58).

The broader term “vehicle” is defined in relevant part as:

“a device that is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks. “Vehicle” includes, without limitation, a bicycle, electrical assisted bicycle, or EPAMD, but does not include...any device moved exclusively over stationary rails or tracks...”. C.R.S. 42-2-102(112)

Since the train is not intended to travel on the highway, it is not a “motor vehicle”, and because it operates on tracks it is not a “vehicle”. Since essentially all Title 42 traffic offenses are contingent on the involvement of a vehicle or motor vehicle, this excludes from consideration a large number of charges that might otherwise be considered, such as careless or reckless driving.

Also of significance is the fact that the Colorado Revised Statutes contain no criminal laws specific to the operation of light rail trains. For example, there is no offense of “careless (or reckless) operation of a train”, or “operating a train at excessive speed”. Again, the absence of any such statutes means that there are no state laws specific to Hartzel’s conduct as a light rail operator.

Our office considered a charge of Reckless Endangerment. However, Reckless Endangerment would again require the People to establish beyond a reasonable doubt that Hartzel’s conduct was not merely negligent, but reckless, and the evidence is insufficient to establish that.

Other than the third degree assault charge discussed above, which cannot be filed because of insufficiency of evidence as to the “deadly weapon” element, there are no other criminal charges that generally cover “negligent” as opposed to “reckless” conduct. Therefore, no criminal charge based upon negligent conduct can be filed.

In summary, the evidence tends to establish that Mr. Hartzel's actions, and inactions, as the operator of this train was the cause of the derailment, and thus of K.M. and the other passenger's injuries. However, no state criminal statute directly addresses and punishes Hartzel's conduct. Therefore, no criminal charges ethically can be filed by our office against Mr. Hartzel in connection with this incident.

We have spoken to K.M. and informed her of our decision and the reasons for it. Please feel free to contact me should you have any questions.

Sincerely,

*Brian Sugioka #30856*

Brian Sugioka  
Chief Deputy District Attorney  
18<sup>th</sup> Judicial District