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Travis County District Attorney Rosemary Lehmburg issued the following statement:

After a lengthy investigation, a Travis County Grand Jury today decided that Austin Police Department (APD) officer Nathan Wagner will not be indicted for the fatal shooting of Byron Carter, Jr. The incident occurred shortly after 11 p.m. on May 30th of last year on East 8th Street here in Austin.

The Grand Jury that investigated the incident met regularly, starting in late January, and heard from 30 witnesses over ten Grand Jury sessions before returning their decision today. This Grand Jury reflected the diversity of our community, consisting of five African Americans, three Hispanics, three Asian Americans and one Caucasian. Both APD officers involved in the incident testified before the Grand Jury. The juvenile driver of the car was given immunity to obtain his testimony before the Grand Jury. The Grand Jury also heard from a ballistics expert and several nationally recognized experts in the field of police shootings and the use of force. Other witnesses included two residents of the apartment building where the shooting occurred, APD Chief Art Acevedo, the parents of Byron Carter, Jr. and the mother of the juvenile driver.

The Grand Jury considered a range of charges against Officer Wagner, including murder, manslaughter, criminally negligent homicide and official oppression for the shooting of Byron Carter, Jr., and aggravated assault for the wounding of the 16 year old driver.

Two APD officers, Nathan Wagner and Jeffrey Rodriguez, were taking part in an initiative designed to curtail car burglaries on the east side of I-35 when the shooting occurred. Byron Carter, Jr. was a passenger in a car driven by a 16 year old friend that struck Officer Rodriguez as it fled the scene of the shooting.

The facts developed during the investigation are as follows:

Because of an increase in car burglaries in the area just east of downtown, APD officers had set up a spotter operation which consisted of two APD officers being stationed on the rooftop of a condominium on 6th Street, looking for suspicious activity. Officers Wagner and Rodriguez were on bicycles and were positioned in the alley behind Uncorked, at 900 East 7th Street, waiting for radio calls from the officers on the rooftop.

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Officer Rodriguez saw two males walking along the frontage road of I-35. He saw one of the males look over at him and officer Wagner, the males said something to each other, then looked back at the officers again and then sped up their pace. The officers decided to make contact with the two males and hurried down to the edge of the building. When they got there the two were not in sight so the officers walked up toward 8th Street and looked around in a brushy area to see if they had hidden in the brush at the north end of the empty lot.

After finding nothing, the two officers decided to walk up 8th Street to check on the cars parked there for any unusual activity. All the vehicles parked on 8th Street were parked on the wrong side of the street, facing west toward I-35. As the officers approached the cars parked in front of the apartments at 813 East 8th Street, they noticed that one of the cars had its lights on. They decided to approach that vehicle and possibly make contact with the occupants of the car. Because of lighting coming from the apartment building, both officers approached the front of the vehicle from the street side. Officer Wagner approached and stopped at the rear portion of the car parked directly in front of the car occupied by the two people. Officer Rodriguez approached the vehicle to the left of Officer Wagner and closer to the middle of the street.

Officer Wagner shined his flashlight into the windshield of the car and saw that the occupants were dressed the same as the two people they had just seen. Officer Rodriguez was about to get on his radio when he saw the driver look directly at him, grab the steering wheel and turn it directly toward him. Wagner yelled, "Hey, police" as the car's engine revved and bolted from the parking space, hitting the car in front of it and forcing its way out, in the direction of the officers. Wagner jumped back and saw the driver looking in the direction of Officer Rodriguez. The vehicle then struck Officer Rodriguez.

According to the juvenile driver, he and Carter had returned from a downtown club and were sitting in their car preparing to leave when Carter yelled out "go." The driver described Carter's voice as "like a danger type go, just go." The driver admitted he saw a person standing outside the vehicle wearing a dark shirt but did not identify the person as a police officer. Upon hearing Carter say "go" he accelerated, hit the vehicle in front of him and forced his way out of the parking space.

Officer Wagner heard Rodriguez scream and saw him fall on the other side of the fleeing vehicle. Thinking that his partner was being run over by the car or was being dragged, Wagner pulled his weapon and fired five times in the direction of where he believed the driver to be. The investigation later revealed that the driver's seat was in the reclined position, almost to the point of resting on the back seat. After hitting Officer Rodriguez the car sped away and made a right turn onto the frontage road of I-35.

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The officers called out on the radio and other police units and EMS responded to the scene. The car was found several blocks away, in the 900 block of Olive Street. The driver had abandoned the car. When officers arrived they found Carter's body still in the passenger seat. The driver, who had fled on foot, was later found in the parking lot of Disch-Falk Field. He had been shot once in the forearm. He was taken to Brackenridge Hospital, where he underwent surgery. Officer Rodriguez was also taken to Brackenridge Hospital where he was examined and found to have suffered a strained Achilles tendon.

A ballistics expert testified that Officer Wagner fired his weapon five times. Byron Carter, Jr. was struck four times and the driver was struck once in the right forearm. All projectiles were recovered and were matched to Officer Wagner's duty weapon, a Glock .40 caliber handgun.

The expert was also able to recreate the direction of travel and probable sequence of the fired rounds. He determined that the first shot entered the windshield on the driver's side penetrating the inspection sticker and was most likely the round that struck Byron Carter, Jr. in the abdomen. The second and third shots entered the driver's side window, one of which struck the driver in the forearm, passed through his arm and lodged in Byron Carter's left shoulder and the other lodged in Carter's left thigh. The fourth shot was through the driver's side window and struck Byron Carter, Jr. in the head before exiting out the passenger side window. This projectile was recovered outside the vehicle. The fifth shot went through the driver's side window, hit the inside of the windshield and was recovered in the dashboard. He determined all shots were fired within 1.5 seconds of each other.

An autopsy was performed on 20 year old Byron Carter, Jr. wherein four gunshot wounds were identified on his body. Toxicology tests done at the time of the autopsy showed that cocaine and marijuana were found in his system.

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