

DATE FILED: July 26, 2021 4:58 PM

**AFFIDAVIT OF PROBABLE CAUSE FOR ARREST WARRANT**

I, Detective Ethan Snow, being of lawful age and being first duly sworn upon his/her oath, depose and state that I have probable cause for believing that:

**Martinez, Francine Ann (09/04/1980)** did commit the crime(s) of:  
Height: 5'04" Weight: 170lbs Eyes: Bro Hair: Bro



**18-8-802(1)(a) Duty to report use of force by peace officers – duty to intervene [M1]**

**18-8-802(1.5)(a) Duty to report use of force by peace officers – duty to intervene [M1]**

on/between:

**July 23, 2021 at approximately 2:16 p.m.**

at the location of:

**3138 South Parker Road**

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

**Affiant Background and Experience**

Your Affiant, Ethan Snow, is a Police Detective with the City of Aurora Police Department and has been so employed since October 2014. Your affiant has authored numerous search and arrest warrants while participating in both individual and organized crime related investigations. Your affiant has conducted and supervised hundreds of investigations in both an overt and covert capacity.

Your affiant is currently assigned as a Detective with the Aurora Police Department Major Crime Homicide Unit (MCHU). Your affiant is responsible for investigating significant incidents of violent crime which the focus being on homicides, attempt homicides, officer involved shootings, and critical use of force incidents. Your affiant has conducted numerous investigations in this capacity and routinely utilizes search warrants (for residences, vehicles, cellular call detail records, social media accounts, pen register/trap and trace, etc.) as an investigative tool, when appropriate.

As a Police Detective, your affiant is authorized to carry firearms, execute warrants, make arrests for offenses against the State of Colorado, as well as performing other duties as authorized by State and Federal law. Your affiant has completed over a thousand hours of training over his career, beginning with a basic police academy. Your affiant has received a bachelor's degree in Criminology and Criminal Justice from the Metropolitan State University of Denver.

Your affiant states the facts below are based on personal knowledge and/or interviews with witnesses and fellow officers and /or review of official law enforcement reports associated with Aurora Police Department Case Number 2021-28304.

### **Statement of Probable Cause**

On July 23, 2021 at approximately 4:11 p.m., your affiant received a phone call from Major Crimes Homicide Unit (MCHU) Sergeant Longnecker and was directed to respond to APD Headquarters (HQ) to assist with a "Critical Incident" – Use of Force (UOF) Investigation. Sgt. Longnecker advised patrol officers were involved in a Tier 3 use of force while attempting to arrest a suspect.

Your affiant informs the court that a "Tier 3" use of force is defined by APD as force applied using a deadly weapon, or deadly force, or potentially deadly force. A Tier 3 use of force is also defined as any force which results in hospitalization or death.

Your affiant arrived at APD Headquarters at approximately 5:05 p.m. Sergeant Longnecker and MCHU Detective Chris Fanning responded as well.

Your affiant was assigned as the lead investigator for the UOF investigation by Sgt. Longnecker.

At approximately 5:45 p.m., Sergeant Paul Jerothe conducted a briefing on the events that took place (facts and circumstances known at the time without any investigation). Your affiant learned the following from the briefing:

On July 23, 2021, at approximately 2:16 p.m., Officer John Haubert #315886 and Officer Francine Martinez #313126 were dispatched to 3138 S Parker Rd, which was in the City of Aurora, County of Arapahoe, State of Colorado, on a report of a trespass.

At approximately 2:32 p.m., Officer Martinez aired over the radio that people were running. At approximately 2:33 p.m., Officer Martinez aired over the radio for a "CODE 1". Your affiant informs the court that a "CODE 1" is an officer requesting emergent help.

The suspect had been identified as Kyle Maurice Vinson (04/14/1992). Mr. Vinson was found to have an active felony warrant stemming from a domestic violence related incident. Mr. Vinson was

currently at The Medical Center of Aurora (TMCA) south campus and was being treated for injuries he had sustained while being taken into custody. Mr. Vinson had visible injuries to his head which consisted of lumps and cuts. Mr. Vinson's attending doctor did not find that Mr. Vinson had suffered from serious bodily injury (SBI).

Mr. Vinson's injuries were a result of Officer Haubert using his duty pistol to strike Mr. Vinson. Officer Martinez was involved in the use of force, but there was no knowledge of her using any weapons. Officer Edward Brooks #308197 and Officer Michael Dieck #308199 had arrived near the end of the arrest. Officer Dieck had used his Taser on Mr. Vinson. Officer Brooks was involved with physically placing Mr. Vinson into handcuffs.

Two other suspects had run from the scene who also had felony warrants. They were identified as Calvin Stevenson (05/10/1976) and Anthony Sano (10/07/1979).

Four witnesses had been contacted by additional responding officers. The witnesses were Jamie Bouknight (10/29/1986), Omar Albayati (01/28/2002), Nasim Survine (03/30/2001), and Miranda Hunter (09/15/1993), who was also the reporting party. All four witnesses described the suspect as wearing a neon green shirt.

Miranda observed two officers had detained three people. The officers were later identified as Ofc. Haubert and Ofc. Martinez. Miranda observed Ofc. Haubert and Ofc. Martinez in a fight with the suspect in the neon green shirt who was later identified as Mr. Vinson. Miranda observed Mr. Vinson flailing his arms during the fight and trying to get up from the ground. She heard the male officer state, "Stop fighting or I'll have to shoot you". Miranda observed Mr. Vinson was still jerking his arms and legs towards the officers and fighting with them. Miranda observed the male officer had a taser, but she could have been mistaken if it was a taser. Miranda observed the male officer strike Mr. Vinson in the head with the taser. Mr. Vinson was on his back when being struck by the male officer. Miranda observed a blue truck arrive, and two officers got out of the truck (later identified as Ofc. Dieck and Ofc. Brooks). The officers surrounded Mr. Vinson and Miranda could not see anything else.

Jamie Bouknight observed "The suspect was kicking the shit out of the officers". Jamie observed the male officer grab Mr. Vinson's leg and dump the suspect on the ground. Jamie observed Mr. Vinson punch the male officer in the head.

Omar Albayati observed the fight between the police and the suspect. He took cellphone video of the fight. Your affiant later reviewed the video which showed Officer Haubert holding down Mr. Vinson with one arm and pointing his duty pistol at Mr. Vinson with his other. The video was a short clip and not of the entire incident. Omar observed the suspect on his back trying to get up. Omar did not observe any kicks or punches. Omar heard the male officer state something to the effect of "Stop fighting or I'll shoot". The officer had a gun in his hand.

Nasim Survine observed three people had been detained by police. Nasim walked away and came back a short time later. Nasim then saw the suspect in the neon green shirt resisting arrest. One of

the officers was saying, "Stop resisting". Nasim walked away again and then returned a short time later and observed the suspect was in custody.

The briefing concluded and your affiant then reviewed body camera video for Officer Martinez and Officer Haubert. The purpose of the video review was to obtain a better understanding of the use of force prior to conducting interviews with the involved officers and Mr. Vinson.

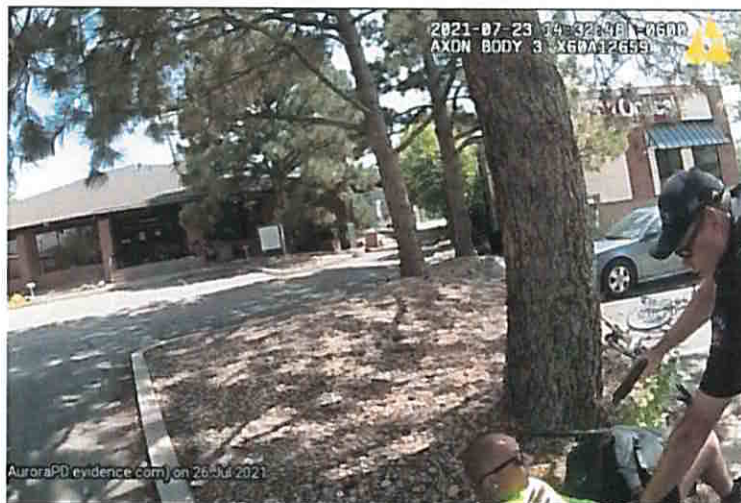
Your affiant watched the body camera footage and found the following:

Ofc. Martinez and Ofc. Haubert were conversing with three people (later identified as Kyle Vinson, Calvin Stevenson, and Anthony Sano). Mr. Vinson, Calvin, and Anthony were seated on the ground under a tree. Officer Martinez went to a patrol vehicle and appeared to be attempting to positively identify Mr. Vinson, Calvin, and Anthony, as well as determine if they had any warrants. Officer Martinez found all three had warrants and approached Mr. Vinson, Calvin, and Anthony.

Officer Martinez then attempted to place Calvin Stevenson into custody by grabbing on to his left arm. Calvin immediately pulled away from Ofc. Martinez and ran away. Anthony got up from the ground and also ran away. At this time, Officer Haubert immediately placed his left hand on Mr. Vinson's chest area and pushed Mr. Vinson to the ground who was originally in a seated position. Officer Haubert told Mr. Vinson, "Get down, get down".

Officer Haubert then drew his duty pistol from his holster and told Mr. Vinson to roll over on his stomach multiple times.

Officer Haubert told Mr. Vinson to roll over on his stomach again while pointing his duty pistol at Mr. Vinson. Mr. Vinson's hands were up with his palms facing Officer Haubert. Your affiant did not observe that Mr. Vinson had shown any signs of physical resistance up to this point in the interaction. Mr. Vinson told Officer Haubert not to shoot him as Officer Haubert told Mr. Vinson again to get on his stomach.



Officer Martinez and Officer Haubert told Mr. Vinson to roll over to his stomach and Mr. Vinson complied without physical force being applied. Officer Haubert continued to point his gun at Mr. Vinson. Officer Haubert told Mr. Vinson to put his hands out in front of him several times.

Officer Haubert positioned himself near Mr. Vinson's head. Neither Officer Martinez nor Officer Haubert attempted to gain control of Mr. Vinson's hands. Officer Haubert continued to give orders to Mr. Vinson to place his hands out in front of him. Officer Haubert then grabbed onto the back of Mr. Vinson's neck and pointed his duty pistol at Mr. Vinson's head.



Officer Haubert told Mr. Vinson to put his hands all the way out while pushing Mr. Vinson's head into the ground and pressing the muzzle of his duty pistol into the back of Mr. Vinson's head.

Mr. Vinson complied with Officer Haubert's orders and placed his hands out. It does not appear to your affiant from the body camera video that Mr. Vinson had used any force against Officer Haubert or Officer Martinez. Officer Haubert continued to press his duty pistol against Mr. Vinson's head despite Mr. Vinson's compliance.

Officer Martinez grabbed onto Mr. Vinson's left hand and arm. Your affiant knows from APD training, that the positioning of Mr. Vinson and Officer Martinez suggested Officer Martinez was attempting to place Mr. Vinson into handcuffs. Mr. Vinson then pulled his hand and arm away from Officer Martinez, resisting her attempts to arrest him. Officer Martinez told Mr. Vinson to "Stop".

As Officer Martinez was trying to arrest Mr. Vinson, who was actively resisting, Officer Haubert continued to push his gun into Mr. Vinson's head. Officer Haubert told Mr. Vinson to "Stop fighting".

Mr. Vinson told Officer Haubert and Officer Martinez that he did not have a warrant and then shrugged his body backwards and away from Officer Haubert and Officer Martinez. Mr. Vinson was now on his left side, while still on the ground. Officer Haubert then pressed the muzzle of his

gun into Mr. Vinson's right neck area. Officer Haubert was in a mounted position on top of Mr. Vinson's waist area.



Mr. Vinson continued to state he did not have a warrant while squirming his body. Officer Haubert told Mr. Vinson to get on his face and to roll over to his face all while situated on top of Mr. Vinson in a mounted position. Officer Haubert continued to point his gun at Mr. Vinson who swatted at Officer Haubert's gun twice with an open hand (palm facing Officer Haubert). Officer Haubert had grabbed the side of Mr. Vinson's neck with his left hand when this was occurring. Officer Haubert's thumb was positioned against Mr. Vinson's throat.



Officer Haubert continued to tell Mr. Vinson to get on his face and began to strike Mr. Vinson on the head with his duty pistol (appeared to be 4 times). The striking action and sound of the strikes could be heard on the body worn cameras by your affiant.

After being struck by Officer Haubert's duty pistol Mr. Vinson stated, "Okay, okay" and "I'm trying" as Officer Haubert continued to tell Mr. Vinson to get on his face. Officer Haubert then struck Mr. Vinson again on the back of his head twice with his duty pistol.



Officer Haubert continued to tell Mr. Vinson to get on his face. Mr. Vinson repeatedly told Officer Haubert "You're killing me". Visible injuries and blood could be seen on Mr. Vinson's head.



As Mr. Vinson continued to yell, "You're killing me", Officer Haubert continued to tell Mr. Vinson, "On your face". Officer Haubert then struck Mr. Vinson again with the butt of his duty pistol on the top of Mr. Vinson's head.

Officer Martinez then grabbed onto Mr. Vinson's shirt and told Mr. Vinson to turn over. Officer Haubert continued to tell Mr. Vinson to get over on his face.

Officer Haubert then struck Mr. Vinson in his chest area with his duty pistol. Officer Haubert's gun was pointed at Mr. Vinson just prior to the strike.



Mr. Vinson told Officer Haubert that he couldn't go to jail for something he didn't do. Officer Haubert told Mr. Vinson again to get on his face and Officer Martinez told Mr. Vinson to turn over.

At 14:34:36 hours on Officer Haubert's body camera, your affiant observed Officer Haubert grab Mr. Vinson by the neck and force Mr. Vinson backwards to the ground. Officer Haubert's body camera was dislodged in the process.





Officer Haubert pushed Mr. Vinson down so quickly, that within the same second, Officer Martinez's body worn camera recorded Mr. Vinson on his back with Officer Haubert's hand around Mr. Vinson's throat.



Officer Haubert, while squeezing Mr. Vinson's throat (Mr. Vinson's voice is heard at a high pitch squealing, suggesting his throat is being squeezed) told Mr. Vinson, "If you move I will shoot you". Officer Martinez then grabbed Mr. Vinson's hand which was partially grabbing Officer Haubert's hand.



Officer Haubert again told Mr. Vinson that if he moved, he would shoot him. Officer Haubert was still strangling Mr. Vinson at this time.

Officer Haubert told Mr. Vinson not to move again and Mr. Vinson stated he hadn't done anything. Mr. Vinson's left hand could be seen trying to remove Officer Haubert's hand from his neck. Mr. Vinson was not striking, punching, or kicking Officer Haubert. It did not appear to your affiant that Mr. Vinson made any life-threatening actions towards Officer Haubert or Officer Martinez.

Mr. Vinson's voice was becoming hoarse and appeared he was having trouble speaking. Officer Haubert told Mr. Vinson not to move and to stop fighting. Mr. Vinson was grabbing onto Officer Haubert's hand that was strangling Mr. Vinson.



From your affiant's perspective, Mr. Vinson appeared to be losing consciousness. His mouth was open, and his eyes began to close. Mr. Vinson made a labored groaning sound and then stated, "I didn't even run". Mr. Vinson's voice during this statement was hoarse and labored indicating it was difficult for him to make out the words in a normal tone.



Mr. Vinson began to cry while he was being strangled by Officer Haubert. His voice was still labored and almost muffled. Mr. Vinson was stating that he had not run away which was in the same labored and muffled tone of voice. Officer Haubert told Mr. Vinson to stop fighting again.

From your affiant's perspective, it did not appear that Mr. Vinson had made any attempts to fight Officer Haubert.

At 14:35:15 hours in the body worn camera footage, approximately 39 seconds from when Officer Haubert's first began to strangle Mr. Vinson, Officer Haubert began to remove his hand from Mr. Vinson's throat/neck area. Mr. Vinson then told Officer Haubert, "Don't shoot me please".

Mr. Vinson then told Officer Haubert, "Don't hurt me" twice. Officer Haubert told Mr. Vinson to stop fighting. Mr. Vinson then lifted his body (waist up) upwards towards Officer Haubert. At this time Officer Haubert is observed pushing Mr. Vinson back down to the ground and telling Mr. Vinson to "Stop fighting".

Mr. Vinson rolled over to his left side which appeared to be from the assistance of Officer Martinez and Officer Haubert. Officer Haubert then told Mr. Vinson, "Stop fighting now". Mr. Vinson responded to Officer Haubert that he had not done anything and "Don't hurt me, bro" and "Don't shoot me please". Officer Haubert then made the statement of "Grab my gun again I will shoot you".

Mr. Vinson began to writhe his body on the ground and managed to get up to his feet. During this time there was a physical struggle between Mr. Vinson, Officer Martinez and Officer Haubert. Your affiant did not observe any punches, kicks or strikes being made by anyone.

Officer Haubert then wrapped his arms underneath Mr. Vinson's leg as Mr. Vinson was stating, "Don't hurt me". Officer Haubert still had his duty pistol in his hand during this time. Officer Haubert then flipped Mr. Vinson back down to the ground.



As Mr. Vinson was being thrown back down to the ground, Officer Martinez appeared to be assisting by grabbing on to Mr. Vinson's shoulder and upper torso area and pushing Mr. Vinson down.

Mr. Vinson was again on the ground. Officer Haubert positioned himself on top of Mr. Vinson's waist area in another mount position. Officer Haubert then holstered his duty pistol as Officer Brooks and Officer Dieck arrived on scene.

Officer Dieck, now on scene, announced that he was coming towards Officer Martinez and Officer Haubert. Officer Martinez and Officer Haubert rolled Mr. Vinson onto his left side exposing his right thigh area. Officer Dieck then stated, "Taser out" and deployed his Taser. The Taser barbs were visibly observed striking Mr. Vinson's right thigh area.

After being struck by the Taser, Mr. Vinson immediately stated, "Ow, Ow, Okay, Okay" and rolled over to his stomach.

Officer Brooks positioned himself to Mr. Vinson's left side and took control of Mr. Vinson's left arm and hand.

Mr. Vinson stated over and over again that he can't breathe during this time. Officer Brooks told Mr. Vinson to stop fighting and to stop grabbing his hand as he placed handcuffs on Mr. Vinson's wrists. Mr. Vinson was placed into handcuffs and rolled over to his side. The use of force ended, and medical treatment was requested for Mr. Vinson.

After reviewing the body camera video, your affiant attempted to interview Officer Haubert and Officer Martinez. Your affiant was advised by Lieutenant Wesner, that Officer Haubert and Officer Martinez were not going to make any statements until they had consulted with their respective attorney's.

Your affiant reviewed other on scene officer body cameras in an effort to obtain statements made by Officer Haubert or Officer Martinez. Your affiant found on Sergeant Marziano's body camera, Officer Haubert made the following statements after the use of force incident:

Sergeant Marziano asked Officer Haubert who's blood was on his (Officer Haubert's) gun. Officer Haubert responded with, "Should be his, all that blood on him is from me fuckin pistol whippin him".

Sergeant Marziano asked Officer Haubert if Mr. Vinson tried to go for Officer Haubert's gun. Officer Haubert stated, "At the end he was grabbing for it" and "I was going to shoot him but I didn't know if I had a round in it or not".

Your affiant found on Sergeant Timothy Holt's body camera, Officer Haubert had made the following statement:

An APD sergeant asked who had done the "Tier 3", while Officer Haubert was present. Officer Haubert stated, "Me, I was wailing the fuck out of him".

Your affiant and Sergeant Longnecker were able to interview Officer Dieck and Officer Brooks. During their respective interviews, it was learned that they had arrived on scene at the time depicted on body camera's and took the actions as depicted on body camera's. Your affiant reiterates, that after the review of Officer Haubert and Officer Martinez's body cameras, Officer Dieck and Officer Brooks, were not present while Officer Haubert was striking and strangling Mr. Vinson.

On July 24, 2021, at approximately 12:47 p.m., Sergeant Longnecker and your affiant, attempted to interview Mr. Vinson who was being held at the Aurora Detention Center for his felony warrant. Mr. Vinson advised he wanted an attorney before being questioned and his request was honored. Mr. Vinson did make the following statements without being asked any questions:

Mr. Vinson believed your affiant was trying to speak with him because he (Mr. Vinson) “was beat up for no reason”.

Mr. Vinson stated, “They didn’t even tell me I had a warrant and they just attacked me because the other guys ran away and then I’m getting beat up”.

Mr. Vinson advised he didn’t do anything wrong and that he “just saw them get up and run and then he tackled me” and “I didn’t do anything and then he starts punching me”.

Mr. Vinson was asked if he had any injuries on his body so they could be photographed. Mr. Vinson advised that he had injuries on his chest. Mr. Vinson stated, “he poked me with the gun like that” and that his injuries were “all from a pistol”.

Sgt. Longnecker advised Mr. Vinson that APD CSI Kelsey was present to take pictures of any injuries Mr. Vinson had. Mr. Vinson agreed to have pictures taken.

While pictures were being taken of Mr. Vinson, your affiant observed his right eye was half swollen shut and bruised. Your affiant observed Mr. Vinson had had a bruise and cut on his right forehead area above his eye. Your affiant observed Mr. Vinson had a small bruise and cut at or near the top middle area of his forehead. I observed another bruise and cut in Mr. Vinson’s hairline near his right forehead. Your affiant observed Mr. Vinson had a bruise on the lower left rear side of his head with a small cut. Your affiant observed Mr. Vinson had a bruise with cuts on the right temple area of his face. Your affiant observed Mr. Vinson had approximately 5 stitches on the top of his head which had closed a wound that was approximately 2 inches in length. Your affiant observed what appeared to be bruising on Mr. Vinson’s upper left chest area near, but not on his neck. Your affiant did not observe bruising on Mr. Vinson’s neck, but it was difficult to discern if any existed due to Mr. Vinson’s neck being covered with black ink tattoos.

While Mr. Vinson had his pictures taken, he asked the Aurora Detention Center nurse for a “Suboxone” because he was withdrawing. The nurse told Mr. Vinson that he had tested positive for drugs and couldn’t take a suboxone if he tested positive. Mr. Vinson did not say what drug he had consumed to have a positive test. Your affiant knows from training and experience with drug investigations that Suboxone is a prescription drug used to treat individuals who are or have been addicted to opioid drugs.

At this time, Officer Haubert and Officer Martinez have not been interviewed, nor is there any guarantee that they will consent to an interview.

Your affiant has not found during his investigation, any mention by witnesses or in reports, that Mr. Vinson was armed with a weapon.

Based upon the foregoing facts and circumstances, your affiant does have probable cause to believe that the offense of 18-8-802(1)(a) Duty to report use of force by peace officers – duty to intervene and 18-8-802(1.5)(a) Duty to report use of force by peace officers – duty to intervene have been committed and that Francine Ann Martinez, date of birth September 4, 1980 (the defendant) did commit these offenses.

Your affiant, therefore, requests that a warrant be issued for the arrest of the Defendant above named.

Ethan Snow #312364  
Affiant

SUBSCRIBED AND SWORN/AFFIRMED to before me this 26 day of July A.D., 2021.

Carrie Wollberg  
Notary Public

CARRIE WOLLBERG  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174045664  
MY COMMISSION EXPIRES NOVEMBER 3, 2021

This Court, having reviewed the affidavit and application for arrest warrant, finds probable cause for the arrest of this Defendant.

\_\_\_\_\_  
JUDGE/MAGISTRATE

\_\_\_\_\_  
DATE