

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

August 18, 2017

Chief Randy Nelson
Thornton Police Department
9551 Civic Center Drive
Thornton, CO 80229

Chief Karl Wilmes
Federal Heights Police Department
2370 West 90th Avenue
Federal Heights, CO 80260

Re: The investigation of the in-custody death of Alejandro Gutierrez, dob 11/19/1972, occurring on March 16, 2017

Dear Chiefs Nelson and Wilmes:

The investigation and legal analysis of the in-custody death of Alejandro Gutierrez is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Richard Brookman and Dylan Lussier of the Adams County Sheriff's Office. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to our office on June 13, 2017. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to each individual agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against the law enforcement officers involved in this incident.

The Incident

On March 16, 2017, at approximately 10:45 p.m., a civilian called 911 to report suspected drug activity near the intersection of 91st Avenue and Huron Street in the City of Thornton. The caller described individuals associated with pickup trucks getting into one of the vehicles and possibly doing drugs. The person making the call identified himself only as "Dwayne," and provided a telephone number by which he could be contacted.

Thornton Police Officer Jacob Beigler responded to the dispatch call and drove through the parking lot of the Western Convenience gas station located at 9191 Huron Street. He observed a male standing outside a black Chevrolet Silverado pickup truck appear to try and attempt to conceal himself from view. Officer Biegler drove his marked patrol car behind the truck. As he did so, the male got out of the vehicle and ran. Officer Beigler chased the male westbound across Huron Street into the parking lot of the Rocky Mountain Health Center at the southwest corner of Thornton Parkway and Huron Street.

Officer Beigler caught up to the male and struggled to place him under arrest. The two fought each other to the ground, at which point a number of other officers arrived to assist. Fellow Thornton Police Department Officers Bob Peterson, Hank Rowland, Kas Gettman, and Josh Parker, as well as Federal Heights Police Department Officers John Hess and Tom Tritz all helped get the male suspect into custody. The suspect fought with officers and refused orders to show his hands. The officers continued to struggle with the male in an effort to gain control over him. At some point during the struggle, Sergeant John Hess deployed his Taser to subdue the male in an effort to get him into handcuffs.

At some point during the struggle, the male stated that he could not breathe. He eventually became unresponsive and stopped breathing. Officers began resuscitative efforts until emergency medical arrived. The male was declared deceased at 12:32 a.m. The male was later identified as Alejandro Gutierrez, date of birth, 11/19/1972.

Timeline

A review of the City of Thornton Police dispatch records from March 16, 2017 reveals the sequence of events as reported through the dispatch center. At **10:46:58 p.m.**, a civilian identified as "Dwayne" reported seeing drug activity at the intersection of 91st Avenue and Huron Street. Within two minutes, the location of the incident was updated to the Western Convenience gas station at that intersection. Officer Jacob Beigler was the first officer to respond. According to the dispatch entry, he arrived at the Western Convenience Store at **10:51:00 p.m.**

At **10:52:10 p.m.**, dispatch notes “foot pursuit crossing Huron.” At **10:53:06 p.m.**, the note reads “[Officer Beigler’s call sign]—out with combative.” Approximately thirty-five seconds later, at **10:53:41 p.m.**, the note reads “[Officer Beigler’s call sign]—across street at med center.” A notation is made at **10:53:57 p.m.**, “Fed Heights en route.” At **10:54:25 p.m.** Officer Beigler’s location is updated to “west side of street—SW of Huron and pkwy.”

The event comment at **10:56:27 p.m.** reads “1 detained.” Three seconds later, the entry reads “[Officer Hank Rowland’s call sign]—start med.” At **10:58:47 p.m.**, the entry is “[Sergeant Robert Holt’s call sign]—male is unresponsive.” Three minutes later, at **11:01:52 p.m.**, the note reads “[Sergeant Robert Holt’s call sign]—CPR in progress.”

According to Thornton Fire Department records, emergency medical providers arrived at the patient at **11:02 p.m.**, and the patient arrived at the hospital at **11:22 p.m.** Following a series of cardiac arrest interventions, the patient was declared deceased at **12:32 a.m.**

Witness Interviews

All of the involved witnesses were identified and contacted within a short time of the incident. The two officers with the City of Federal Heights gave interviews within hours of the commencement of the investigation.

Unfortunately, the interviews of the Thornton PD officers did not take place during the initial stages of the investigation. This included the officers most directly involved in the physical struggle, as well as their supervisors who were present immediately following the event. These officers, through advice of their attorney, initially communicated that they refused to make a statement. Additionally, these officers, through their legal counsel, demanded an opportunity to view all available evidence of the incident as a condition precedent to an interview about the facts of the case. This evidence included the results of the autopsy conducted on the decedent. Obviously, because providing access to such information would frustrate the integrity of the investigation, we denied their request for such information. Subsequently, the Thornton Police Department commenced an internal investigation relative to this incident and, ultimately, on March 29, 2017 and April 14, 2017, the involved officers made themselves available for interviews.

Detectives from the Adams County Sheriff’s Office and the Westminster Police Department conducted interviews of the necessary witnesses. The following are summaries of the interviews of the involved officers and material witnesses.

Officer Jacob Beigler: Officer Jacob Beigler is a patrol officer for the Thornton Police Department. Adams County Sheriff’s Office Detectives Richard Brookman and Dylan Lussier conducted his interview on April 14, 2017 with his attorney present.

On March 16, 2017, Officer Beigler was driving a marked patrol vehicle when he noticed a dispatch call regarding a drug distribution involving two pickup trucks in the area of 91st Avenue and Huron Street. While en route to the location, he recognized that the location was updated to the Western Convenience Store located at the intersection of Thornton Parkway and

Huron Street. This location is approximately one block north of 91st Avenue and Huron Street. Officer Beigler drove around the parking lot and noticed a black pickup truck parked on the north side of the convenience store. As he drove by, he observed an Hispanic male standing outside the open driver door of the black pickup. The male behaved as if he were trying to conceal himself, which caused Officer Beigler to think that the male might be the suspect of the call. Officer Beigler parked his vehicle at the gas pump west of the black truck and called dispatch to confirm the location of the suspect vehicle. Once he received confirmation that the suspect pickup truck was indeed parked at the gas station, Officer Beigler decided to contact the male. He drove his patrol car behind the truck, got out, and advised the male that he wanted to talk to him. He was wearing the official Thornton Police Department uniform. The male immediately ran away from him, initially heading southbound, and then westbound across Huron Street.

Officer Beigler chased the male to the other side of Huron Street, advising dispatch of the foot pursuit. When he caught up to the male, he two-hand shoved him in the back, causing him to fall forward to the ground. The male rolled onto his back and Officer Beigler got on top of the male in an effort to pin him to the ground. The male reached down to his waist area, at which point Officer Beigler believed that the male was trying to reach for a weapon. Officer Beigler drew his handgun and pointed it at the male, ordering him to show his hands. After multiple commands, the male put his arms out to his side. As Officer Beigler placed his gun back in the holster, the male rolled into Officer Beigler causing Officer Beigler to lose his control. The male was able to flip over and Officer Beigler tried to stay in a dominant position by lying on top of the male's back. Officer Beigler repeatedly yelled "stop fighting!" during the incident.

Officer Beigler was finally able to get the male's left arm out and place a handcuff on his wrist. The struggle continued on the ground as Officer Beigler tried to gain control of the male's arms. During the struggle, Officer Beigler heard the male yell, "I can't breathe" a couple of times. Because of this statement, Officer Beigler then placed a hand on the ground and lifted his weight off of the male. However, once Officer Beigler lifted his weight, the male immediately tensed up, drew his arms and legs beneath him and got up off the ground onto his knees. Officer Beigler perceived the male to be extremely strong and tireless. He also found him to be a knowledgeable fighter who was using his weight and leverage to gain a dominant position. The fight carried on with the male continuing to get up and Officer Beigler trying to maintain his advantage on top of the male. At some point, the male turned over to his back and Officer Beigler used his right fist to strike the male in the face. Officer Beigler became fatigued and feared that he would not be able to continue to fight with the male on his own, particularly if the male got on top of him.

Officer Beigler heard the sound of a vehicle approaching at a high rate of speed and subsequently heard Officer Bob Peterson yell at the male. As soon as Officer Peterson arrived, he took over fighting with the male, at which time Officer Beigler rolled over to his back to catch his breath. Shortly thereafter, Officer Beigler heard the sirens of other patrol cars arriving on the scene as he lay there exhausted from the fight. As other officers continued to struggle with the male, he heard the sound of a Taser but did not know who deployed it. At some point after the fight was over, Officer Beigler saw the officers performing CPR on the male.

Officer Bob Peterson: Officer Bob Peterson is a patrol officer for the Thornton Police Department. Adams County Sheriff's Office Detectives Richard Brookman and Dylan Lussier conducted his interview on April 14, 2017 with his attorney present.

Officer Peterson was working a patrol shift on March 16, 2017 as a field training officer. His shift assignment was to "shadow" his trainee, Officer Rob Lowe. Officer Peterson was wearing plain clothes business attire with a badge affixed to his hip. He had a blue shirt and khaki pants. During the course of doing some paperwork at the police department, Officer Peterson heard a fellow officer on the radio try to report something through the sound of what he believed to be a foot pursuit. Officer Peterson continued to listen to the radio as he ran outside to his patrol car. By the time he started driving, Officer Peterson realized that Officer Beigler was involved in an altercation with a suspect near the location of 91st Avenue and Huron Street. However, all he could make out from Officer Beigler's comments over the radio was, "medical center" or "medical building." Being familiar with the area, Officer Peterson knew that there was a medical building on the southwest corner of the intersection of Thornton Parkway and Huron Street, just north of 91st Avenue, so he drove to that location.

As Officer Peterson turned into the parking lot of the medical center, he observed Officer Beigler and a male engaged in a scuffle. Both men fell to the ground as they were "locked up on each other" and "swinging at each other." Officer Peterson described the men actively fighting as they tried to stand up and gain advantage over the other. He recalled the male trying to "roll into" Officer Beigler. He perceived Officer Beigler losing control and did not know if Officer Beigler was injured or simply tired from fighting. Officer Peterson knew other officers were coming because he could see headlights and heard sirens. He ran up to assist Officer Beigler and struck the male in the head with a closed fist. The three men then fell to the ground and Officer Peterson took over trying to get the male into custody. Officer Peterson recalled his position being on the right side of the male's back with the male's stomach to the ground. He placed his left knee on the male's lower back as he tried to keep the male pinned to the ground. He struggled to get the male's left arm out and gain control of the male while the male was trying to roll into him. He wanted to see the male's hands to make sure there was no weapon. Officer Peterson yelled, "Give me your hands!" several times and the male refused. Officer Peterson struck the male in the head with a closed fist approximately five times, but the male appeared to be equally unresponsive to such use of force. At this point in the struggle, Officer Beigler was no longer involved in the struggle.

Officer Peterson noticed another officer come up from behind and deliver a knee or foot strike to the male's head. Officer Peterson then recognized the assisting officer was Officer Kenneth (Hank) Rowland. Officer Peterson remained on the male's right side while Officer Rowland positioned himself on the left side. With the male continuing to struggle, the two officers were able to gain control of the male's left arm to keep him from rolling. Soon thereafter, other uniformed officers arrive to assist. Officer Peterson saw two Tasers in his peripheral vision, both in the male's lower back. He heard someone mention a "Taser" and then heard the sound of a Taser deployed, but did not know which of the officers used it. The male continued to resist, but Officer Peterson was ultimately able to get the male's right arm behind his back into a handcuff position. He felt the male's arm pop as he pulled it back. As Officer

Rowland brought the male's left arm around, Officer Peterson noticed that it was already in a handcuff and presumed it was placed there by Officer Beigler.

Officer Peterson estimated that at least two other officers were present on scene by the time he and Officer Rowland got the male into handcuffs—Thornton Police Officer Kas Gettman and a Federal Heights Officer he did not know. The male continued to kick and yell as he lay face down in handcuffs. Officer Peterson heard officers discuss calling for medical assistance and commented that they should take a look at the male's right arm because he thought he might have broken it. He left the male with the other officers and went to check on Officer Beigler some twenty feet away. After talking to Officer Beigler for a moment, he walked across Huron Street to purchase bottled water from the gas station. As he came back, he noticed a lot of additional officers on scene near the male. He overheard officers having a conversation about whether the male was breathing. There was also a discussion about getting the male out of handcuffs and performing CPR. He saw other officers rendering aid to the male, but was not directly involved and did not see what happened.

Officer Kenneth (Hank) Rowland: Officer Hank Rowland is a patrol officer for the Thornton Police Department. Adams County Sheriff's Office Detectives Richard Brookman and Dylan Lussier conducted his interview on April 14, 2017 with his attorney present.

On March 16, 2017, Officer Rowland was working as a patrol officer when he was dispatched to a "drug call" near 91st Avenue and Huron Street. He was wearing the official Thornton police uniform and driving a marked patrol car. He routinely works alongside Officer Jacob Beigler. When this particular dispatch came through, Officer Rowland was busy handling another call for service. He heard Officer Beigler take the call. Shortly after the call, Officer Rowland heard Officer Beigler's voice on the radio and, though he could not make out what was said, he could tell Officer Beigler was in a foot pursuit. Officer Rowland immediately left his assignment and drove away to assist Officer Beigler. Dispatch confirmed that Officer Beigler was engaged with a combative party. As Officer Rowland arrived at the location of 91st Avenue and Huron Street, he could not find Officer Beigler or his patrol car. He started calling him on the radio, but got no response. After a couple of minutes, Officer Beigler stated that he was at the medical center on Thornton Parkway and Huron Street and needed help. Officer Rowland drove to that location and followed Officer Bob Peterson's patrol car driving into the parking lot. Officer Rowland observed Officer Beigler on the ground—either on his knees or backside—trying to fight a male on top of him. Officer Beigler appeared exhausted as he tried to get up off the ground.

Officer Rowland parked his car and ran to assist Officer Beigler. The last thing he saw as he approached was Officer Beigler falling down trying to swing at the male. Officer Rowland ran up and kicked the male in the head to get him off of Officer Beigler. He then shoved Officer Beigler to the side and worked with Officer Bob Peterson to get control of the male. Officer Beigler just collapsed to the ground and did not move, causing Officer Rowland to believe that Officer Beigler was shot or stabbed during the confrontation.

Officer Peterson was on the right side of the male and Officer Rowland on the left side. Officer Rowland tried to put his knee into the male's back and tried to get ahold of the male's

left arm. He heard Officer Peterson ordering the male to give up his arms. The male appeared tireless and continued to kick and fight with the officers. Officer Rowland saw a black handcuff attached to the male's left wrist that he identified as Officer Beigler's. While struggling to get control of the male's arm, Officer Rowland saw a Taser. He asked the officers standing by to deploy the Taser because he and Officer Peterson could not get the male under control. He saw an officer give the male a "drive stun" with the Taser in the middle back area. He was then finally able to get the male's arm behind his back and into handcuffs.

With the male in custody, Officer Rowland took a position down by the male's legs to hold him from kicking other officers. Officer Beigler commented that he saw the male reach for his waistband during the struggle, so Officer Rowland had Officer Kas Gettman help him roll the man over to check him for weapons. The male continued to kick at the officers, so they turned him back onto his stomach. During the process of trying to control the male's legs, Officer Rowland found wads of hundred dollar bills in the male's socks.

After approximately ten to fifteen seconds of kicking, the male stopped. Officer Rowland asked other officers to check to see if the male was breathing. The officers rolled the male on his side and Officer Rowland stood over him. He described the male "agonal breathing," gasping for air, as he lay on his side. The officers took the male out of handcuffs and rolled him onto his back. The male appeared to have no pulse and stopped breathing. Officer Rowland began chest compressions until he was relieved by a paramedic. Officer Peterson later stated that he thought he may have broken the male's arm.

Officer Kas Gettman: Officer Kas Gettman is a patrol officer for the Thornton Police Department. Westminster Police Detective Joe Hastings and Adams County Sheriff's Office Detective Dylan Lussier conducted his interview on March 29, 2017 with his attorney present.

Officer Gettman was working a patrol shift on March 16, 2017. He was wearing the official Thornton police uniform and driving a marked patrol car. He was finishing up a traffic stop when he heard over the radio Officer Beigler in an apparent foot pursuit. By the time he arrived at the medical center, he saw a few patrol cars and a number of officers on scene. When Officer Gettman got out, he heard someone say "Taser." He drew his Taser from his holster because he thought maybe someone was calling out for assistance. As he ran up to the group, he realized that a Federal Heights Police Sergeant had already Tased the male suspect on his lower back. The suspect was laying, stomach down, on the ground with other officers around him. The male was fighting and yelling at the officers around him. Officer Bob Peterson was on one side of the male and Officer Hank Rowland was on the other. Later, Officer Gettman saw that Officer Josh Parker was also helping handle the male suspect. The officers were trying to get the male into handcuffs. Officer Gettman placed his knee on the suspect's back left shoulder to assist them get control of his arm. Once the handcuffs were secured, the male continued to kick and yell. The officers were trying to control the male's legs when he eventually calmed down and stopped. Officer Gettman did not see any officers punch or kick the male. He observed the officers try to control the male to get him into the handcuffs.

The officers turned the male over onto his side and searched him for weapons. Wads of cash was found in his socks. The male was moaning and making noises. Officer Gettman was

monitoring the male and observed him breathing and opening his eyes, but he slowly became unresponsive. Officer Gettman was not sure if the male was pretending, so he checked for a pulse. He began to rub the male's sternum and it was apparent that the male was not breathing. The officers removed the male from handcuffs, rolled him onto his back, and began to perform CPR. Officer Gettman stood by during the resuscitative efforts until the Fire Department arrived and made him move.

Officer Josh Parker: Officer Josh Parker is a patrol officer for the Thornton Police Department. Adams County Sheriff's Office Detectives Richard Brookman and Dylan Lussier conducted his interview on April 14, 2017 with his attorney present.

On March 16, 2017, Officer Josh Parker was working a patrol shift. He was wearing the official Thornton police uniform. He was driving his marked patrol car when he heard Officer Beigler cover the initial dispatch call. A short time after the call, Officer Parker heard Officer Beigler report a foot pursuit and drove to the vicinity of the initial call. While in route to the location, Officer Parker saw Officer Rowland's patrol car and followed it into the parking lot of the medical center. He saw Officer Beigler down on the ground fighting with a male suspect. As he got closer, he realized that Officer Beigler was on top of the suspect, who lay face down with his arms drawn in beneath his body. Several other officers surrounded the male and tried to gain control of his hands. Officer Parker heard officers shouting "Give me your hands!" Officer Parker tried to control the male suspect's legs to stop him from kicking. He did not hear the suspect say anything. Officer Parker heard Officer Beigler trying to catch his breath, as if "he'd been in the fight for his life."

A Federal Heights officer warned the male, "If you don't give us your hands, I will Tase you." The officer subsequently deployed his Taser on the male. Following the Taser, the officers were able to get the male under control and into handcuffs. The officers rolled the male over and searched him for weapons. Officer Parker heard another officer comment that the male was not breathing, at which point officers removed the handcuffs and started CPR. Officer Parker stood by until the Fire Department arrived, and he then maintained scene security.

Sergeant John Hess: Sergeant John Hess is a patrol sergeant for the Federal Heights Police Department. Adams County Sheriff's Office Detectives Richard Brookman and Dylan Lussier conducted his interview hours after the incident with his attorney present.

Sergeant Hess was on patrol in the City of Federal Heights when he heard over his police scanner that a Thornton PD officer was engaged in a foot pursuit near 91st Avenue and Huron Street. It sounded to Sergeant Hess like the officer was involved in a fight and dispatch did not know the officer's precise location. It also sounded like the officer was alone. Sergeant Hess drove his marked patrol car toward the intersection of 91st Avenue and Huron Street to see if he could assist. Sergeant Hess advised his dispatch of the situation and requested they contact dispatch for the City of Thornton to see if they could get more specific details on the location. He subsequently learned that the officer was at the medical center at the intersection of Thornton Parkway and Huron Street. He proceeded to drive to that location, followed by Officer Tritz. It took approximately three to four minutes to travel there.

As Sergeant Hess pulled into the parking lot of the medical center, he observed a uniformed officer on the ground fighting with a male suspect. He saw both men throwing punches at each other. It looked to Sergeant Hess as if the officer was trying to protect himself. Sergeant Hess parked about fifteen to twenty feet away and ran toward the fight. About the same time, he saw a marked patrol car pull into the lot. He saw another man wearing a blue shirt and tan pants also running toward the fight. Sergeant Hess believed the man to be a police officer dressed in plain clothes.

Sergeant Hess grabbed the male suspect's legs in an effort to try to keep him from getting up. He identified himself as a Federal Heights Police Officer and the Thornton PD officer immediately rolled off to the side of the suspect. Sergeant Hess described the suspect "thrashing" side to side and punching at the officers as they struggled for control. He recalled three or four officers struggling with the suspect, trying to get his hands under control. He knew Officer Tritz ran up behind him, but did not see where he went. He only saw the plain-clothed officer struggling with the suspect. Sergeant Hess decided to use his Taser in an effort to subdue the male so the officers could get him into custody. He yelled, "Taser!" three times, and then deployed the Taser so that the probes lodged in the lower portion of the male's back. The Taser activated a full five-second cycle, but had no effect on the male, as he continued to resist and ignore verbal commands. During the duration of his contact with the male, Sergeant Hess was commanding him, "Stop resisting!" and "Put your hands behind your back!" He heard other officers giving commands as well. He then decided to deploy the Taser a second time by use of the "drive stun" method—directly applying the Taser to the suspect's back. The Taser activated at least five to eight seconds. This time the Taser contacted a little higher toward the suspect's middle back. Sergeant Hess felt the male tense up and heard an officer state that he had the suspect in handcuffs. He saw that the male's hands were secured in handcuffs behind his back. He heard another officer state that the suspect's arm might be broken.

Sergeant Hess stood up and saw the male continue to thrash around and try to get up. There were three to five other officers nearby trying to control the male and keep him from getting up. No one was laying on the male or striking him at this point. There was blood on the male's face. The male appeared to be responsive, as he was moving and had his eyes open. He backed away from the male and stood by as other officers tended to the male. He heard a female officer request to place the male on his side and another ask whether to remove the handcuffs. A question was raised amongst the officers whether they should start CPR.

Sergeant Hess was equipped with a body camera, but forgot to activate it until he stood up and backed away from the incident. He advised Officer Tritz to activate his body camera.

Officer Tom Tritz: Officer Tom Tritz is a patrol officer for the Federal Heights Police Department. Adams County Sheriff's Office Detectives Richard Brookman and Dylan Lussier conducted his interview hours after the incident with his attorney present.

Officer Tritz was working as a patrol officer on March 16, 2017. He was wearing the official Federal Heights police uniform. He was in the area of 96th Avenue and Elm Street when Sergeant John Hess pulled up and advised that he heard over the police scanner that a Thornton Police officer was involved in a foot pursuit at 91st Avenue and Huron Street. From the sound of

the report, the Thornton officer was alone and needed cover so Officer Tritz drove toward the area. He did not have a specific location, other than west of Thornton Parkway and Huron Street. As he approached the intersection, he followed Sergeant Hess and a Thornton patrol car into a parking lot.

As Officer Tritz parked his car, he saw a uniformed officer on the ground fighting with a male suspect. Officer Tritz and Sergeant Hess ran over to the officer. About the same time, a man in a light blue shirt and khaki pants ran to the officer from the opposite direction and grabbed the male suspect's right arm. Officer Tritz later learned that this man was with the Thornton Police. A Thornton uniformed police officer was trying to get ahold of the male's left arm. Officer Tritz was holding the male's head trying to control him from getting up. The male was face-down and fought with the officers, refusing their commands to put his hands behind his back. He did not see any officers strike the male. Officer Tritz tried to apply pressure points to the male's jaw, but was unsuccessful because the male was wearing a hooded sweatshirt. Sergeant Hess was down by the male's legs and advised that he had a Taser. Officer Tritz described the male as "unbelievably strong." He continued fighting and resisted officers' commands to stop. Approximately thirty seconds later, Sergeant Hess yelled, "Taser, Taser, Taser!" and deployed the Taser. The male suspect remained face-down and continued to fight as officers tried to gain control of him. Seeing no effect of the initial Taser stun, Sergeant Hess then used the Taser to perform a drive stun to the male's leg. Officer Tritz was able to grab the male's left arm that was already handcuffed and give it to one of the Thornton officers who was then able to get the male into custody. Officer Tritz then stood up and backed away.

After the male was handcuffed, he continued to fight by kicking at the officers. The officers on either side of the male had one knee on his back trying to control him. Another officer grabbed the male's legs to keep him from kicking. Once the male's legs were controlled, Officer Tritz heard the male say that he could not breathe. He heard the male say this two times. The officers immediately got off of the male and turned him to his side. They searched the male and pulled out large amounts of cash. Officer Tritz ran to his patrol car to get a plastic bag to secure the money. In less than a minute he returned and observed officers performing CPR on the male because he stopped breathing. At that point, the male was out of handcuffs. Evidently, medical was in route, having already been requested by one of the other officers due to the Taser deployment. Officer Tritz noticed the male's face was bleeding. He heard the plain clothed officer state that medical should check the male's right arm because it might be broken from the struggle to get him into custody.

Officer Tritz was equipped with a body camera, but did not activate it until after the incident occurred.

Sergeant Jena Husk: Sergeant Jena Husk is a patrol sergeant for the Thornton Police Department. Westminster Police Detective Joe Hastings and Adams County Sheriff's Office Detective Dylan Lussier conducted her interview on March 29, 2017 with her attorney present.

On March 16, 2017, Sergeant Husk was at the Thornton Police Department when dispatch reported that Officer Beigler was in a foot pursuit near Thornton Parkway and Huron Street. By the time Sergeant Husk arrived on the scene, there were several patrol cars and

officers standing by a male laying on the ground. The male lay face-down with his hands secured in handcuffs behind his back. Officer Kas Gettman was kneeling near the male's head and Officer Hank Rowland was standing at the male's feet. The male was kicking his feet and moving around. Sergeant Husk heard the male grunting as if he were out of breath. Sergeant Husk observed Taser probes in the small of the male's back. Officer Beigler was about six to eight feet away, hunched over on his knees trying to catch his breath.

The male appeared to have trouble breathing. He stopped kicking at the officers. Sergeant Husk yelled for someone to call medical, but they were already in route. Sergeant Husk advised the officers to place the male on his side and asked Officer Gettman to monitor the male's breathing. Another officer removed the male from handcuffs. Once the male stopped breathing, the male was turned onto his back and the officers began resuscitative efforts.

Sergeant Robert Holt: Sergeant Robert Holt is a patrol sergeant for the Thornton Police Department. Westminster Police Detective Joe Hastings and Adams County Sheriff's Office Detective Dylan Lussier conducted his interview on March 29, 2017 with his attorney present.

Sergeant Holt was at the Thornton PD when he heard a dispatch call of a foot pursuit involving an officer in the area of Thornton Parkway and Huron Street. He drove to the location of the incident, where there were six to seven patrol cars already on scene. He saw the male suspect laying face-down on the ground in handcuffs. The male was kicking and yelling at officers. There were several uniformed officers standing by, including a Federal Heights officer holding a Taser. Other officers searched the male. During this process, Officer Josh Parker was trying to restrain the male's legs and Officer Kas Gettman was keeping control of the male's head and shoulders. Sergeant Holt did not see any officer laying on the suspect or applying pressure to the suspect, nor did he see any officer strike the suspect. He walked away from the suspect to check on Officer Jacob Beigler. He also talked to Officer Peterson. Officer Peterson advised that he may have broken the suspect's arm trying to get it out from under the suspect during the struggle.

When Sergeant Holt returned to the location of the suspect, things were a lot calmer. At that point, the suspect had stopped kicking and was laying on his stomach. While he was standing by, he heard Sergeant Husk comment that the male was not breathing. Officers turned the male over on his side and his handcuffs were removed. Sergeant Holt recognized what he called "agonal breathing." According to him, the male took a deep breath, but appeared strained. Emergency medical services had already been called at that point, as per the protocol when a Taser is deployed. The male was turned on his back and officers began CPR.

Vernell Anderson: On March 17, 2017, Westminster Detective Joe Hastings called a number associated with the 911 caller, "Dwayne." The person who answered identified himself as Vernell Anderson and admitted that his phone was used to call the police the evening prior. Mr. Anderson stated that he worked at the Western Convenience gas station at the southeast corner of Thornton Parkway and Huron Street. He said that "Dwayne" is his father with whom he recently got reacquainted. He claimed that Dwayne dropped him off for work on March 16, 2017, and used his phone to make the 911 call at that time. Mr. Anderson claimed that he had no information on how to get in contact with "Dwayne."

Following the phone call, Detective Hastings visited Mr. Anderson at the Western Convenience store where he was working. In person, Mr. Anderson admitted that he made up the story about "Dwayne" and that it was he who called 911. He claimed to have done so to avoid getting involved in the "chaos," which would involve police interviews.

Mr. Anderson went on to explain that he arrived at work around 9:30 p.m. He advised that an unknown female customer came into the store to get the restroom key and when she returned, she stated that there were people parked on the side of the building smoking drugs. He claimed that he did not see any of the drug activity, but reported it because he is required to by his employer.

Mr. Anderson also completed a handwritten statement consistent with his interview.

Crime Scene Investigation

Criminalist Dennis Davenport from the Commerce City Police Department and Criminalist Shallon Beckman from the Broomfield Police Department processed the evidence. Criminalist Davenport first went to North Suburban Hospital, where he assessed the injuries to Officers Jacob Beigler, Bob Peterson, and Hank Rowland. Each of these officers had scratches, abrasions, and contusions to the extremities: arms, hands and knees. Each received medical treatment for their injuries. Neither Federal Heights Sergeant Hess, Officer Tritz, nor Thornton Police Officers Parker and Gettman had any injuries.

The body of Mr. Gutierrez was also examined and photographed. Two Taser probes were located in the lower portion of his back. He documented various injuries that will be further detailed in the section of this letter titled, "Medical Examination Analysis."

Criminalist Davenport collected all of the involved-officers' firearms, Tasers, boots, and various items on the officers' duty belts. Items on the duty belts included radios, handcuffs, flashlights, OC spray, mace, OPNs, and magazines. All of the firearms were examined and were confirmed to have no rounds missing. The various duty belt items were visually examined and none revealed obvious signs of biological evidence or damage. Sergeant Hess's Taser was examined and tested and appeared to be in good working condition.

The scene of the Western Convenience gas station was located on the southeast corner of Thornton Parkway and Huron Street. The Western Convenience gas station consists of a convenience store and gas pumps located to the west of the store. Surveillance footage from the interior and exterior of the gas station was reviewed, but did not depict any portions of the incident. The exterior camera only captures activities to the east side of the building.

To the west of the gas station, across Huron Street, was the scene of the Rocky Mountain Health Center. The parking lot extended to the and south of the medical center. There were multiple marked patrol cars in the west parking lot. Criminalist Davenport collected various items near the scene of where Mr. Gutierrez was located: broken dentures, Taser cartridge, a sweatshirt, and blood swabs.

The suspect vehicle was identified as a black Chevrolet Silverado pickup. The pickup was parked at the gas station. Through the windows of the vehicle, Criminalist Davenport observed several Tupperware containers on the front passenger side floorboard that appeared to have some crystalline material in them. There was also a pair of binoculars on the floorboard and a suitcase on the rear seat. The vehicle was towed to the evidence bay where it was later searched and processed.

The search of the interior revealed nine Tupperware containers wrapped in plastic wrap on the front passenger side floorboard. Each of these containers was full of large crystalline material that appeared to be methamphetamine. Each weighed approximately one pound. There was a suitcase with some clothing items in it on the rear seat of the truck. Notebook pages with hand written notes were in the suitcase. These notes appeared to contain names and money amounts paid and/or owed to various people. In addition, the suitcase contained a bag with marijuana in it, a large bag of suspected methamphetamine, a large bag of suspected heroin, a digital drug scale, and various new plastic bags. All of the suspected drugs were weighed and field tested positive—methamphetamine, heroin, and marijuana. The Colorado Bureau of Investigation further tested and confirmed the identity of the substances.

The console area was full of items of significance. Drug paraphernalia (glass pipes, lighters, baggies of suspected drugs) were discovered. In addition, there was a blue and black work glove that held two glass pipes and a baggie with suspected methamphetamine and a baggie of suspect heroin. There was also a black 9mm Smith and Wesson handgun, as well as a black stocking cap which held a 45 caliber Springfield XD handgun. Both weapons were loaded, the Smith and Wesson contained 9 live rounds and the Springfield held 5 live rounds.

Criminalist Davenport examined the wallet and other various items that was taken from Mr. Gutierrez upon his arrest. The cash inside the wallet totaled \$3,731. The total amount of cash that was recovered on scene and placed into a Ziploc bag was \$24,350.00. This money was located in bundles of varying amounts and tied with rubber bands, but appeared to be with no discernible pattern or consistency. There was also a notebook paper that appeared to be a pay/owe sheet with names and phone numbers.

Body-Worn Cameras

Only two of the involved officers in this incident were equipped with body-worn cameras—Sergeant Hess and Officer Tritz—per the City of Federal Heights Police Department policy applicable to all patrol officers. These cameras are affixed to the breast area. According to Sergeant Hess, the equipment has been in use for four to five years and protocols exist for when the cameras should be activated. However, neither of the officers' cameras were activated prior to the incident. As such, the recorded footage available is of minimal assistance to the analysis.

The recording downloaded from Sergeant Hess's body camera is a total of six minutes twelve seconds. It begins recording when Mr. Gutierrez is on his side and officers are searching his person. The vantage point of the recording is approximately ten feet away, where Sergeant

Hess stood by while other officers tended to Mr. Gutierrez and the scene. The officers obstruct a clear view of Mr. Gutierrez. However, at no point during the recording does Mr. Gutierrez appear to make any voluntary movement. Approximately a minute and twenty seconds into the recording, a female officer states, "unresponsive, get medical here, somebody." Around two minutes into the recording, another officer begins to remove the handcuffs. Officers start to perform CPR at four minutes into the recording.

Officer Tritz's body worn camera was fourteen minutes, thirty-six seconds. It begins recording when officers are performing CPR on Mr. Gutierrez.

Medical Examination Analysis

On March 20, 2017, Dr. Stephen Cina conducted an autopsy of the male identified as Alejandro Gutierrez, date of birth, 11/19/1972.

The external examination of the body revealed multiple non-fatal injuries. There were multiple abrasions, lacerations, and contusions to the head. There were various other abrasions, lacerations, and contusions to the decedent's chest, shoulders, arms, elbows, wrists, and knees. Taser barbs with attached wires were located on the decedent's lower back.

The internal examination revealed additional injuries. However, again, none of these wounds proved to be fatal. There was muscular hemorrhage on the upper and middle portion of the decedent's back. The right elbow was fractured or dislocated. There were bilateral rib fractures associated with extensive CPR efforts.

The absence of internal injury lead Dr. Cina to conclude that blunt force injuries were not the cause of death. There were no skull fractures, nor intracranial bleeding or injury to the brain. Nor was there significant internal bleeding. Additionally, Dr. Cina further concluded that there is no evidence of positional asphyxia or pressure to the structures of the neck. A dissection of the neck demonstrated no hemorrhage to the ligaments or muscles. Also, the hyoid bone and larynx were intact. Finally, there was no ocular petechiae, commonly associated with strangulation.

The medical examination revealed significant factors other than restraint that contributed to the decedent's death. In particular, the decedent's toxicology report revealed positive levels of amphetamine and methamphetamine. In addition, examination of the cardiovascular system revealed severe coronary artery disease. According to Dr. Cina, the likely mechanism of death was cardiac arrhythmia with respiratory arrest. The sequence of events prior to death lead Dr. Cina to conclude that in the absence of any evidence of asphyxia, the primary contributing factors to death were the intense physical exertion and coronary artery disease. He further concluded that the role that police restraint played in the fatality is unclear. Consequently, Dr. Cina determined the cause of death to be methamphetamine-induced excited delirium; the manner of death to be undetermined.

Legal Analysis

Suspicion naturally surrounds a situation involving injury or death to a citizen who is in police custody. And, as we have seen on a broader national level, the community is apt to lose trust in their law enforcement officers who refuse to cooperate with an investigation into the incident. Of course, we must recognize the constitutional principles that presume one's innocence and prohibit one from making statements against oneself. Indeed, these are fundamental rights that serve as the framework for our criminal justice system.

However, the public has high expectations of its law enforcement officers, particularly when it comes to officer-involved incidents. The community demands not only a thorough and independent investigation, but also that members of law enforcement participate with the investigation into the truth of what occurred. Through hundreds of investigations over decades, our CIIT has proven its commitment to justice by conducting complete and thorough inquiries, treating involved officers with dignity and fairness, and maintaining transparency with the public by sharing the information it discovers. While the Thornton PD officers eventually cooperated in this case, their initial refusal to do so threatens to diminish the trust and respect of those citizens that we are privileged and honored to serve. Moreover, the Federal Heights PD officers' failure to activate their body-worn cameras is inexcusable. Such blunders tend to fuel the public's skepticism of law enforcement.

Despite the suspicion that surrounds a custodial death, the fact that a law enforcement officer or officers applied physical force to the individual is not, in and of itself, the sole factor in determining criminal liability. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. In this instance, in order to file a criminal charge, the District Attorney's Office must prove beyond a reasonable doubt that any of the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Mr. Gutierrez suffered injury and became unresponsive while being restrained by police officers. However, the medical examination calls into question whether the physical force applied by officers was the cause of Mr. Gutierrez's death. As stated in the autopsy report, there is no evidence of positional asphyxia or compression to the structures of the neck to support a conclusion that there was blunt force trauma to the neck causing death. Nor was there any evidence to suggest that blunt force trauma to the head resulted in death. Further, the abrasions, contusions, and lacerations about the body of Mr. Gutierrez were nonlethal injuries. This finding includes the use of the Taser. While Mr. Gutierrez's back revealed muscle bruises consistent with pressure applied to his back while he was face-down, the evidence that Mr. Gutierrez continued to kick his legs and two times state "I can't breathe" suggests that he had sufficient airflow. There was no other scientific evidence to reveal restriction of the airway during the restraint. Perhaps most significantly, the bruising around both of Mr. Gutierrez's wrists is consistent with the tight application of handcuffs. The

presence of hemorrhage in the tissues of the wrists necessarily requires blood pressure circulating oxygen to those extremities. As such, Mr. Gutierrez had a pulse and was breathing at the point the handcuffs were applied.

The forensic pathologist's report concludes that given all of the medical evidence, the most likely cause of death was cardiac arrhythmia with respiratory arrest. Though restraint may have been a factor, intense physical exertion and severe coronary disease were significant factors that contributed to the death. For these reasons, it cannot be said that the actions of any one or more officers caused the death of Mr. Gutierrez. Furthermore, taking into account the timeline from dispatch records and number of officers involved, this was a chaotic incident that occurred within a period of two to three minutes. Given the nature of the evidence, it is practically impossible to attribute any particular action of an officer or officers to any particular injury—except for the dislocated or fractured elbow. Officer Peterson admitted that when he was able to force the right arm back, he heard a “pop.” Additionally, other officers heard Officer Peterson comment that he may have broken the arm. This evidence, however, does not end the analysis.

At the time of the incident, all of the law enforcement officers were engaged in the course of their official duties. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time any of the officers applied physical force, the prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (2016), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

- (1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
 - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
 - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

...

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If they believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

Here, Officer Jacob Beigler responded to a dispatch call of suspected drug activity. Upon responding to the location, he observed a male near a vehicle consistent with the description given by dispatch. The male tried to conceal himself and, as Officer Beigler came closer, the male ran away. Under the circumstances, Officer Beigler suspected that the male was involved in criminal activity and chose to use physical force necessary to detain the male suspect. Once he caught up to the suspect, he tried to detain him, but was unable given the male's refusal to obey commands and the male's physical resistance. As a result, he engaged in a physical struggle to get control of the male. Officer Beigler stated that the male acted as if he might be armed with a weapon, and that he became concerned for his safety as the struggle continued.

Our Colorado Supreme Court has made clear that an officer may use an amount of force that is reasonable and necessary to ensure their safety during the period of a lawful detention. The facts of this case are that Mr. Gutierrez fled from a law enforcement officer making a justified contact, refused to obey orders, and physically resisted the officer's attempts to detain him. The fact that Officer Beigler perceived Mr. Gutierrez to reach for a weapon further supports Officer Beigler's actions in using physical force to trying to restrain Mr. Gutierrez. Given this evidence, the prosecution cannot prove that Officer Beigler's actions were not justified under the law.

The other officers, and in particular Officer Bob Peterson, responded to a situation of an officer engaged with a combative suspect of criminal activity. Each officer explained that they originally perceived Officer Beigler to be in a position of danger and were concerned for his safety. The evidence reveals that the officers employed various forms of force on Mr. Gutierrez such as open hand control tactics, closed-fist control tactics including hand and foot strikes, and the use of a Taser. However, as described by the officers, all of these actions were related to getting Mr. Gutierrez to stop fighting and place his arms behind his back. Mr. Gutierrez resisted the application of force and, during the course of the struggle, likely suffered injuries including the dislocated or fractured right elbow as a consequence of his struggle to resist.

The evidence supports a conclusion that when Mr. Gutierrez stopped using force, the officers stopped employing force. There is no evidence to suggest that the officers' use of force was not reasonably related to the scope and purpose of getting Mr. Gutierrez into custody. As such, the evidence supports a conclusion that their actions were focused on (1) effecting the arrest or escape of an arrested person, and (2) defending themselves or other officers from the use of physical force while attempting to make the arrest of a person. Under these facts, the prosecution cannot prove that any of the officers' actions were not justified as applied to §18-1-707.

Conclusion

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against any of the law enforcement officers who applied physical force to Mr. Gutierrez on March 16, 2017. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young
District Attorney