

Dave Young
District Attorney



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

February 18, 2016

Public Safety Chief Mike Butler
City of Longmont Police Department
Safety and Justice Center
225 Kimbark Street
Longmont, CO 80501

Sheriff Michael McIntosh
Adams County Sheriff's Office
332 N. 19th Avenue
Brighton, CO 80601

Chief Scott Hernandez
Colorado State Patrol
700 Kipling Street
Lakewood, CO 802015

Re: The investigation of the officer-involved shooting of Jason Mesaros, dob 5/22/1979,
occurring on November 10, 2015

Dear Chief Butler, Sheriff McIntosh, and Chief Hernandez:

The investigation and legal analysis of the officer involved shooting of Jason Mesaros is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives John Maldonado of the Thornton Police Department and Jessica Beren of the Westminster Police Department. 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 my office on January 20, 2016. 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.

Overview of the Incident

On November 10, 2015, the Boulder County Sheriff's Office was engaged in the investigation and apprehension of two individuals alleged to have committed an aggravated robbery of a victim who was pistol-whipped and tied up with duct tape. During the course of this investigation, the suspect in his vehicle successfully evaded police in a pursuit through the City of Boulder. The investigation later led officers to believe that one of the suspects, Jason Mesaros, was associated with two different locations, one in Adams County and one in Boulder County. A search warrant executed on the Adams County address revealed that Mr. Mesaros was driving a green Ford F-350 pickup truck that he borrowed from a friend.

Surveillance of the Boulder County address led Longmont Police to pursue the Ford F-350, suspected to be driven by Jason Mesaros. At around 9:00 p.m., the suspect vehicle evaded a traffic stop outside of the City of Longmont, leading to a police pursuit that continued for nearly forty minutes across many public highways from Weld County to Adams County. Law enforcement officers utilized various strategies to safely end the chase. Mr. Mesaros resisted efforts to stop by ignoring police lights and sirens, driving at speeds well in excess of the posted limits, weaving around traffic, changing lanes and his direction of travel, and driving with tires flattened by deflation devices known as "stop sticks." The pursuit resulted in a convoy of approximately ten marked patrol vehicles from several police agencies along Highway 85 into the City of Brighton. Ultimately, the Colorado State Patrol executed a TVI maneuver, which caused the driver of the truck to lose control and spin out on Highway 85. Mr. Mesaros drove the truck into the median, nearly striking an officer and collided with an unmarked Longmont PD vehicle before his truck finally came to rest.

Marked patrol vehicles immediately surrounded the truck as it parked in the depressed median of the divided highway. In close proximity with their weapons drawn, officers could see the male driver of the truck with a silver handgun pointed at his chin. As the driver moved around in the vehicle, the muzzle of the handgun appeared to drop and point in the officers' direction. Perceiving a danger to individual safety and that of fellow officers, four officers fired their weapons at the driver, killing him. The deceased male was confirmed to be Jason Mesaros, the suspect of the Boulder County armed robbery.

Background Investigation

At approximately 9:33 a.m. on November 10, 2015, the Boulder County Sheriff's Office received a dispatch call to 5220 Sunshine Canyon Road, Boulder County, on a report of an armed robbery and assault. The homeowner and victim, Perry Elder, advised that two males knocked on his door and he invited them inside, believing them to be friends of Donna, a woman

he employed as his trimmer for his marijuana grow operation. The males identified themselves as "Alex" and "Rob" and asked him if he had any marijuana for sale. Mr. Elder described the males to be white, thin with beards, one 6'0" to 6'4" tall and the other 5'8" to 5'11" tall, both wearing "hoodie" sweatshirts.

When Mr. Elder advised the males he did not have any marijuana for sale, "Rob," the shorter of the two men, drew a handgun and pointed it at him saying, "Give me your weed." Mr. Elder ran downstairs and locked himself in a bedroom. The men kicked open the door and dragged Mr. Elder upstairs where they duct taped his wrists and ankles and pistol-whipped him in the face. "Rob" stated, "I'm fuckin' serious. I'll shoot you," and fired one round from the handgun into the couch. He then handed the gun to "Alex" and proceeded to dump approximately two pounds of marijuana into a blanket, along with approximately ten to fifteen pounds of trimmings from marijuana plants. Mr. Elder was able to stand up and see the men get into a white-colored Sport Utility Vehicle and drive away, hitting his gate on the way out.

Shortly after the incident, the Boulder Police Department officers identified the vehicle as a white 2012 Chevy Tahoe registered to Jason Mesaros and Alishia Pitcher. Officers engaged the suspect vehicle in a pursuit through the City of Boulder, but lost contact with it traveling east on Highway 128 at an estimated speed of 100 miles per hour.

Boulder County Detectives executed a search warrant for location information from the On-Star system associated with the Tahoe. Representatives from On-Star confirmed the Tahoe was equipped with the system and that the account was registered to Alisha Pitcher. The emergency tracking for the On-Star system reported the vehicle's location at 14560 Yosemite Street, Brighton, Colorado.

Using information from the vehicle registry, detectives identified Jason Mesaros's cellular telephone number. Information gathered from this number revealed the telephone's location in the north Boulder County at approximately 8:30 a.m. At approximately 9:57 a.m., the telephone activity showed it traveling east of Boulder along Highway 36. Around 10:00 a.m., Boulder County Sheriff's Deputies were transporting inmates westbound on Highway 7 near I-25. The deputies reported that they observed a white Chevy Tahoe with extensive front-end body damage traveling at a high rate of speed cross I-25 eastbound on Highway 7. At 11:16 a.m., the positioning data placed the phone near an area east of I-25 and south of Highway 7, a location within the general vicinity of 14560 Yosemite Street. Detectives also learned that Jason Mesaros's telephone made multiple calls to individuals associated with the 14560 Yosemite Street.

Investigators at the scene of the robbery discovered a .9 mm projectile from the couch and a .9 mm Luger casing adjacent to the couch. In addition, detectives interviewed the victim's neighbor who reported that she talked to the suspects just prior to the robbery. The neighbor selected Jason Mesaros out of a photographic lineup as being "most familiar" to her. She was 60% certain he was the male driver of the white vehicle who said he was lost and asked her where Elder lived.

Once detectives visually confirmed that the Tahoe was located in an open garage at

14560 Yosemite Street, a search warrant was prepared and signed by Boulder County District Court. Due to the belief that the suspect was armed and dangerous, the warrant was executed with the assistance of the Adams County SWAT Team. During the search, detectives observed the white Tahoe with extensive body damage and a large amount of suspected marijuana just outside the vehicle. At approximately 8:00 p.m., detectives interviewed Aaron Billiett, one of the individuals who lived at the residence. Mr. Billiett admitted that he received phone calls and text messages from Jason Mesaros that morning and had loaned Mesaros his 1991 green Ford F-350 pickup truck. A couple of the text messages from Mr. Mesaros read, "Make the Tahoe disappear for me," and "You don't know me if anyone asks." Mr. Billiett was expecting Mr. Mesaros to return later in the evening, as Mr. Mesaros stated that he would return the vehicle after dark. Mr. Billiett identified the white Tahoe as belonging to Mr. Mesaros and Mr. Mesaros's wife. Further detailed information from Mr. Billiett, along with the text messages on his phone, made evident that he was not part of the Boulder incident or Mr. Mesaros's subsequent plans.

Based on the information gathered by Boulder County Sheriff's Office, the Boulder County Court issued an arrest warrant for Jason Mesaros for the crimes of aggravated robbery and second degree assault with a bond set in the amount of \$250,000.

The Boulder County Drug Task Force learned of an association between Jason Mesaros and a residence located at 6005 Fox Hill Drive in the City of Longmont. Officers engaged in surveillance near that location observed a green Ford F-350 pickup truck parked in the driveway of the residence. At approximately 8:45 p.m., a blue Honda Prelude arrived with a male and female inside. The male got out of the Prelude and entered the Ford F-350. The male then drove the Ford F-350 out of the driveway and away from the residence with the female driving the Prelude behind. Detectives stationed nearby followed the two vehicles.

Both vehicles headed eastbound on Highway 119 followed by Longmont Police officers in marked patrol vehicles. At approximately 8:55 p.m., the officers attempted to conduct simultaneous traffic stops near the area of eastbound Highway 119 and Weld County Road 5 ½. The Prelude pulled to the side of the road, where officers identified the driver as Alishia Pitcher. Ms. Pitcher advised that she had just dropped off a man she just met and only knew as "Jas." She claimed to not know his full last name, only that it started with "Mes."

The green Ford F-350 failed to yield and continued on Highway 119. Longmont Police Officers continued to pursue the suspect vehicle as it entered I-25 southbound until it exited onto Highway 7 eastbound. The pursuit continued toward the City of Brighton, where the suspect vehicle took the exit for Highway 85 northbound. At this point, marked patrol vehicles from the Adams County Sheriff's Office, Brighton Police Department, and Colorado State Patrol engaged in the pursuit. With a convoy of an estimated ten police vehicles pursuing with lights and sirens, the Ford F-350 entered the median at Weld CR 14 ½, where it made a u-turn and continued southbound down Highway 85.

The Incident

Two marked Colorado State Patrol vehicles led the pursuit of the Ford F-350 as it continued to elude officers heading southbound on Highway 85. Stop stick deployments caused the vehicle tires to deflate and the vehicle decreased its speed. As the suspect vehicle passed the Highway 7 interchange, the first State Patrol unit, driven by Sergeant Michael Hill, began to assess a safe opportunity to perform a tactical vehicle intervention (TVI). A TVI is a technique often used by law enforcement officers to bring car chases to a safe conclusion. The maneuver is performed by striking the rear quarter panel of the fleeing vehicle to force an abrupt turn sideways, causing the driver to lose control and stop.

As the Ford F-350 continued southbound Highway 85 and crossed through the intersection at Bromley Lane, Sergeant Hill performed the TVI maneuver. Though the suspect vehicle was significantly deteriorated and was only traveling at an estimated 30 miles per hour, the driver was able to steer out of the maneuver for several hundred yards before it spun around facing northbound on the shoulder of the southbound lanes. As Sergeant Hill continued on southbound, the truck started to drive in an easterly direction. Trooper Nathan Parks, driving the second State Patrol unit, struck the vehicle again, pushing it into the depressed median. As the truck drove into the median, it appeared headed toward a Longmont Police Officer on foot and then crashed into the front of the officer's unmarked patrol vehicle. A marked patrol vehicle from the Longmont Police Department struck the driver's side of the truck, finally bringing it to rest facing southbound in the median of the divided highway.

The Ford F-350 was immediately surrounded by a number of marked patrol vehicles with emergency lights and sirens activated. Adams County Sheriff's Deputy Walter Berlinski positioned his patrol car facing northbound in the depressed median, head to head with the truck. Colorado State Trooper Nathan Parks parked his patrol vehicle behind the truck in the median. The front passenger side bumper of Longmont Police Officer Daniel Kilian's unmarked Ford Explorer was touching the driver's side front quarter panel of the truck. Longmont Police Officer Robert Buswold's marked patrol vehicle was crashed against the driver's side rear quarter panel of the truck. Adams County Sheriff's Deputy Gilbert Abdullah parked his marked patrol car in the northbound lane of Highway 85. A number of other marked patrol vehicles positioned along the highway and in the median.

Multiple uniformed officers positioned themselves around the suspect vehicle with weapons drawn, ordering the driver to show his hands. The male suspect had his side window down and was observed holding a silver semi-automatic handgun pointed under his chin. The suspect was looking around at the officers and refused orders to drop the weapon and show his hands. As the suspect moved around inside the vehicle, the muzzle of the handgun dropped from his chin and pointed toward the officers standing nearby. In fear for their safety and that of their fellow officers, four officers fired their weapons at the driver. The driver slumped over toward the passenger's side of the vehicle and the shooting stopped. The driver did not respond to further commands, and because the driver could not be seen inside the vehicle, a K9 officer was deployed to enter the driver's side window to assist. The male in the vehicle was taken into custody and confirmed to be Jason Mesaros, the suspect of the Boulder County robbery. He was

declared deceased at the scene.

Five law enforcement officers reported firing their weapons during the incident: Deputy Gilbert Abdullah, Deputy Walter Berlinski, Trooper Nathan Parks, Officer Buswold, and Officer Kilian. The investigation revealed that one of the officers, Officer Kilian, did not actually fire his weapon.

Timeline

According to the Longmont Police dispatch records, officers first encountered the Ford F-350 pickup truck and the Honda Prelude in City of Longmont at 8:49 p.m. The chronology reveals officers' attempts to stop the vehicles at 119 and Weld County Road 5 ½ at 8:55 p.m. The next several minutes show Officer Daniel Kilian's pursuit of the Ford F-350 eastbound on Highway 119 to I-25 southbound. At 9:05, dispatch shows the pursuit continuing off the exit ramp from I-25 through a red light and turning onto Highway 7 eastbound. At 9:14, the dispatch report shows Officer Kilian's continued pursuit of the pickup into the City of Brighton through the roundabout and northbound on Highway 85.

The dispatch notes also show references to the Adams County Sheriff and Colorado State Patrol taking over the lead in the pursuit. At 9:15 p.m. the entry, "Adcom K9 trying to take lead" can be understood to be Deputy Gilbert Abdullah engaging in the pursuit. At 9:16 p.m., it is noted that "CSP and Adcom will take primary on stop." An entry at 9:22 p.m. shows the truck heading southbound Highway 85 and picking up speed. At 9:23 p.m., the comment reads "everyone else in right lane and CSP moving up."

The minute between 9:32 and 9:33 p.m. show the sequence of events between the stop of the vehicle and the shooting. Sergeant Hill completed his TVI maneuver at 9:32:26 p.m. An entry at 9:32:45 p.m. reads, "thru the median," and one at 9:32:55 reads, "rammed a patrol veh." The dispatch record reveals "shots fired" at 9:33:33 p.m.

The Boulder County investigation recovered a cellular telephone belonging to Alishia Pitcher. A subsequent search of the phone revealed a voicemail from Jason Mesaros at 9:32 p.m., in which he told Alishia that he loved her, that he was sorry that he can't do "all this jail time," and that he was "checking out." A friend of Ms. Pitcher advised police that she heard the voicemail and that Mr. Mesaros's comment that he was "checking out" was familiar to her as a suicide threat because she previously heard Mr. Mesaros threaten to kill himself using those terms.

Witness Interviews

Investigators from various police departments including Thornton, Westminster, Broomfield, and the District Attorney's Office conducted interviews of the necessary witnesses. The interviews of the officers who fired their weapons were conducted at the Adams County Sheriff's Office substation located in Commerce City. Though there were many witnesses interviewed, only the involved officers are specifically summarized herein.

Deputy Gilbert Abdullah Deputy Abdullah is a patrol officer for the Adams County Sheriff's Office equipped with a K9 unit. Detectives John Maldonado and Kent Hampshire conducted his interview hours after the incident with his attorney present.

During the afternoon of November 10, 2015, Deputy Abdullah assisted with the execution of a search warrant for Boulder County, as the residence was located in unincorporated Adams County. He described the situation involving the need for Adams County S.W.A.T. to execute a "high risk warrant" based on the fact that the underlying crime involved the discharge of a firearm during an armed robbery. During the execution of the search or shortly thereafter, he learned that the suspect was armed with a .9 millimeter handgun and observed to be driving a green Ford F-350 pickup truck that was associated with the Adams County address they searched. He maintained the perimeter of the residence and assisted with scene security to see if the suspect returned the truck to the residence.

During the evening hours, Deputy Abdullah received a report that Longmont PD officers were pursuing the truck southbound on I-25. Deputy Abdullah engaged in the chase behind the two Longmont PD cars as they progressed eastbound on Highway 7. Deputy Abdullah activated his lights and sirens and maintained radio communication with Adams County dispatch during the pursuit. As the pursuit continued northbound Highway 85 and entered Weld County, Longmont PD backed off and allowed Deputy Abdullah take the lead. When the truck approached Weld CR 14, the driver made a U-turn. As the car turned, Deputy Abdullah saw the driver's side window roll down and the driver begin to wave his hand. Not being able to see, but fearing that there may be a gun in the driver's hand, Deputy Abdullah backed off to create some distance between he and the suspect vehicle. He continued to follow the truck southbound on Highway 85 and called out for more police cars along the route due to his concern for the safety of civilians who were parked along the side of the road. As the pursuit approached the City of Brighton, two marked State Patrol cars took over the lead.

Once the truck passed through the intersection at Bromley Lane, Deputy Abdullah could see the truck tires deflating and the speed slowing. He observed the State Patrol vehicles getting in a position to execute the TVI maneuver and tried to anticipate where the vehicle would come to rest so that he could stop on the driver's side in case he needed to release his K9 to stop the driver. He observed two separate TVI maneuvers, which caused the truck to go through the median and head back northbound. Deputy Abdullah crossed the median and started to pursue the truck northbound, when he saw the truck spin again, heading southbound. Deputy Abdullah then pulled over on the shoulder of the northbound lanes of traffic to avoid a collision. The truck drove southbound in the northbound lanes of traffic and struck an unmarked Longmont PD vehicle head-on, bringing both vehicles into the median. The truck finally stopped and police officers jumped out yelling commands, "show me your hands, show me your hands."

Deputy Abdullah got out of his vehicle and positioned himself in between the unmarked Longmont PD vehicle at the front of the truck and a marked Longmont PD vehicle at the back of the truck. He observed law enforcement officers spread out around the truck. Deputy Abdullah stood directly across from the driver's door and estimated his distance from the suspect to be about a car-length. He focused on the suspect in the driver's seat and described seeing the

suspect immediately raise a silver handgun, at which point he yelled, "gun, gun." He recalled other officers simultaneously yelling, "drop the gun, drop the gun." He drew his handgun on the suspect and activated the light. Based on intensity of light on the suspect, Deputy Abdullah assumed other officers also activated their gun-mounted flashlights.

As the suspect held the handgun with the muzzle pointed up at his chin, he looked at officers and said he needed to call his wife. Deputy Abdullah and the other officers continued to give commands to "drop the gun." Deputy Abdullah described the suspect "fidgeting" around while he held the gun at his chin. Deputy Abdullah explained that when the suspect turned around to look at officers, he thought the gun was about to turn on them. He heard a "pop" and fired his weapon because he believed that the suspect was moving to shoot at the officers. After hearing the first "pop" several officers fired their weapons simultaneously until the suspect fell to the side and the gun was out of view. Deputy Abdullah stated that he fired his weapon because he thought the suspect fired the first shot and he feared for his life and for the safety of the other officers nearby. He thought he fired four or five rounds at the suspect.

After the shooting, Deputy Abdullah exchanged the magazine on his handgun with a fully loaded magazine so that he had a full round of ammunition in case the suspect was armed and still alive. With a shield and the assistance of the K9, Deputy Abdullah and other officers were able to get into the truck to ascertain that the suspect was deceased and no longer a danger.

Deputy Walter Berlinski Deputy Berlinski is a patrol officer for the Adams County Sheriff's Office equipped with a K9 unit. Detectives John Maldonado and Kent Hampshire conducted his interview hours after the incident with his attorney present.

Deputy Berlinski participated in the execution of the search warrant at an Adams County address. Deputy Berlinski explained that Adams County S.W.A.T. became involved due to the fact that the basis for the search warrant was an armed robbery. After the search was completed, he returned to the substation for a debriefing. Later, Deputy Berlinski heard dispatch report that Longmont PD officers were pursuing the suspect of the robbery in a Ford F-350. Deputy Berlinski left the substation in the City of Commerce City and caught up with the active pursuit heading northbound on Highway 85 in Weld County. He was aware that based on the suspect's behavior, any police contact with him was likely to be an armed encounter.

Deputy Berlinski described being several police cars back in the pursuit as it turned and proceeded back southbound Highway 85. He described the TVI maneuver performed by the first State Patrol vehicle just south of the Bromley Lane intersection. The truck spun out and started heading northbound, when State Patrol performed another TVI, causing the truck to spin out in the median. Deputy Berlinski described the truck driving through the median as if it were trying to run over a Longmont PD officer. The officer was running backwards to get out of the way and fell down as the truck crashed into an unmarked Ford Explorer.

With the truck stopped facing south in the median, Deputy Berlinski parked his patrol vehicle facing northwest "cattycorner" to the front of the truck so he could get out of the driver's side and use the engine block as his cover. There was a lot of smoke from the engine, but he

could see the silhouette of the driver through the windshield. While he was positioned there, he heard other officers on the driver's side of the truck yell at him to move due to the potential for crossfire. Understanding that he may be in the line of fire from other officers, Deputy Berlinski ran around the backside of his vehicle and took cover on the driver's side of the Ford Explorer that was perpendicular to the suspect truck.

As Deputy Berlinski stood near other officers, he heard officers yelling commands at the suspect to show his hands. Although Deputy Berlinski moved and took new cover, he was still closest to the suspect and his line of vision was still through the truck's windshield. He estimated that he stood about five feet away from the suspect. There were a number of officers to his right. He stated that he felt threatened by the suspects behavior because the suspect nearly ran over an officer and was not complying with officer commands. As he had his sight aimed on the windshield, he heard a gunshot that sounded like it was coming from directly in front of him. He thought the suspect was shooting at him and the other officers. Out of fear for his life and that of the officers around him, he fired his weapon at the suspect until he heard officers yell "ceasefire." He initially believed that he fired about six times, but later learned that it was eleven. Deputy Berlinski could not differentiate the sequence of shots fired by other officers. He thought it sounded like the other officers started and stopped shooting at the same time.

After the shooting, Deputy Berlinski assisted with taking the suspect into custody. He approached the truck holding the shield and gave commands to the suspect while the K9 was deployed inside the truck to confirm that the suspect was no longer a danger to officers.

Officer Robert Buswold Officer Buswold is a patrol officer for the Longmont Police Department. Detectives John Maldonado and Kent Hampshire conducted his interview hours after the incident with his attorney present.

Officer Buswold was at the Longmont Police Department when he overheard on the radio dispatch that the narcotics investigators were trying to stop an armed robbery suspect. He got in his patrol car to assist based on the fact that the dispatch report that the suspect was considered armed and dangerous. He caught up to the officers engaged in the traffic stop of the Honda Prelude on eastbound 119 and continued on to catch up to the pursuit of the other suspect vehicle. Near Highway 119 and I-25, Officer Buswold caught up to Officer Kilian's undercover Ford Explorer chasing the pickup truck. Officer Buswold took over the lead as the pursuit entered southbound I-25. He stayed in front of the pursuit onto eastbound Highway 7, all the way into the City of Brighton and then northbound on Highway 85 until the Adams County Sheriff's Department took over the lead.

Officer Buswold described the various traffic interventions attempted on the fleeing pickup, such as stop sticks and TVI maneuvers. When the pursuit was southbound Highway 85, he backed off to third in the line of patrol cars behind the pickup. When he saw the suspect vehicle come across the median and crash into Officer Kilian's SUV, he tried to drive his patrol car into the driver's door in an effort to pin the suspect inside. Officer Buswold struck the driver's side just beyond the driver's door and got out of his patrol car. Standing just inside his driver's door, Officer Buswold pointed his handgun at the suspect and yelled repeated

commands, "Let me see your hands." He could see the suspect through the downed window of the driver's door from a slight angle backward. The suspect appeared to be saying something as he looked at Officer Buswold, but the sirens prevented Officer Buswold from hearing what he was saying.

At a distance of seven to eight feet, Officer Buswold activated the light on his handgun to illuminate the interior of the driver's cab of the truck. He saw the suspect reach down, pull up a stainless steel "1911"-styled handgun and point the muzzle under his chin. At this point, Officer Buswold yelled commands to "Drop the gun" over and over. The suspect ignored the orders and kept the handgun pointed at his chin. Officer Buswold had his gun trained on the suspect's upper torso area and described seeing the gun move around as the suspect moved his head and looked around at other officers. Officer Buswold knew that there were a number of other officers surrounding the truck, but he believed that he was positioned closest to the suspect. The suspect had his finger on the trigger and looked directly at Officer Buswold. After ten to fifteen seconds of the suspect ignoring commands and continuing to move the gun around, Officer Buswold fired his weapon at the suspect. In Officer Buswold's words, the suspect was "an imminent threat to myself and other officers."

Officer Buswold explained that he fired his weapon at the suspect out of fear that the suspect would try to point the gun at him or another officer nearby. Given his positioning, he believed that he was the "easiest target." Specifically, Officer Buswold stated that as the suspect was looking around, he was moving the gun and, under the circumstances, "it doesn't take much to bring it down and point it directly at me." He recalled firing his gun two times and hearing a rash of gunfire for two to three seconds. He believed his first shot was between the driver's door and windshield pillar. His second shot went through the driver's side window of his patrol car. He stopped firing when the suspect slumped over and he couldn't see the gun anymore. He also thought the suspect may have fired a round at approximately the same time, as he saw the suspect's head go back and the suspect slump over inside the truck. Officer Buswold explained his impression that the suspect appeared "committed to his course of action," meaning that his behavior suggested that he wanted to commit "suicide by cop" and possibly "take one of us out with him."

Trooper Nathan Parks Trooper Parks is a patrol officer for the Colorado State Patrol. He was interviewed by Detective Dale Hammel and Investigator Angela Gallegos. He provided an interview hours after the incident with his attorney present.

Trooper Parks started his shift in the afternoon and when he started working, he was aware of the armed robbery and pursuit that occurred that morning. Later that evening, he was in the office located near the City of Longmont when dispatch reported that Longmont PD officers identified and were in active pursuit of the robbery suspect. He left his office and headed east on Highway 52 through Weld County toward the location of the pursuit as it progressed northbound on Highway 85. While en route, he learned that Trooper Sergeant Michael Hill was heading toward the pursuit from a location in Adams County. Trooper Parks described the various unsuccessful efforts employed by law enforcement officers to stop the chase. He also explained the radio traffic between he and other officers that resulted in the several patrol cars pulling over

to the right lane, allowing him to join Sergeant Hill in the front of the pursuit as it continued southbound on Highway 85. Trooper Parks and Sergeant Hill were side-by-side behind the Ford F-350, Trooper Parks in the right lane and Sergeant Hill in the left lane.

As Trooper Parks took over the lead in the pursuit, he heard dispatch remind officers that the suspect was armed with a handgun. From his position, he described seeing the truck run over stop sticks and the tires deflate. The truck then slowed down. With the number of civilian cars pulled over to the side of the highway, Trooper Parks and Sergeant Hill discussed the possibility that the suspect would stop his truck to get out and enter one of the vehicles on the side of the road. The two troopers decided to execute a TVI maneuver at the first possible opportunity to bring the chase to a safe conclusion and avoid the possible danger to other civilians on the highway.

Sergeant Hill executed the TVI maneuver that was not immediately successful, as the driver of the truck turned his wheels to avoid spinning out. Once the truck spun out, it started to head eastbound through the median of the divided highway. At that point, Trooper Parks turned around and went into the median where he struck the right rear fender of the truck, spinning it in the opposite direction, causing it to face westbound. Trooper Parks saw an officer in the median holding a long rifle. As the truck proceeded west through the median, Trooper Parks lost sight of the officer and initially believed that the truck hit him. He also heard a voice over the radio report "he just hit an officer." The truck turned southbound in the median and he saw the officer doing what he described as a "crabwalk" in the median. About this same time, he saw a patrol car hit the driver's side of the truck and another vehicle on the front driver's side of the truck.

Trooper Parks positioned his patrol car directly behind the truck and got out with his handgun drawn and pointed at the driver's door. He repeatedly yelled commands, "show us your hands." To get a better vantage point, he moved over to the passenger's side of the Longmont PD patrol car that had collided into the rear wheel well of the truck. From this angle, Trooper Parks could see the suspect from slightly behind the open driver's side window. The suspect had a silver semi-automatic handgun up to his chin and was yelling "I'm gonna shoot. I'm gonna shoot. I'm gonna call my wife." Many officers were repeating commands to "put down the gun, show us your hands." Trooper Parks believed the suspect's statements were made because he decided "this is it" and Parks was hoping the suspect would just listen to the commands and put the gun down.

Trooper Parks described what he observed as the suspect "fumbling" around in the cab of the truck as if he were reaching for something, possibly another gun. As the suspect was "fumbling" around, he saw the gun move sideways to the suspect's left in the direction of other officers. He described seeing one officer on his side of the patrol car and several officers on the opposite side, closer to the suspect. The suspect's finger was on the trigger of the gun and Trooper Parks was afraid that the suspect might shoot. At that moment, Trooper Parks fired his weapon based on his belief that the suspect would shoot him or other officers. He fired at the suspect two times. He described hearing other officers fire their weapons at the same time he did, but did not know who fired or the sequence of shots. He saw the suspect fall out of his line of vision and everyone stopped firing their weapons. At that same time, he heard someone shout, "cease fire, cease fire."

After the shooting, Trooper Parks repositioned himself from the passenger side of the patrol vehicle around the back to the driver's side, where he could see directly into the vehicle. During this time, he and the other officers repeated commands, "show us your hands." Trooper Parks stood by while the K9 officer was deployed to take custody of the suspect. He explained the officers' use of a shield and a K9 due to their concern that they could not see whether the suspect was alive and still in possession of the handgun.

Officer Daniel Kilian Officer Kilian is an officer assigned to the "Gang Crime Suppression Unit" for the Longmont Police Department. Detectives John Maldonado and Kent Hampshire conducted his interview hours after the incident with his attorney present.

Officer Kilian was working in an undercover capacity driving an unmarked Ford Explorer when he received a call requesting assistance with a takedown of a suspect involved in an armed robbery in Boulder. Investigators conducting surveillance advised that the suspect was identified leaving a Longmont residence driving a green pickup truck followed by another sedan, possibly an Acura or Honda. Officer Kilian caught up to the two vehicles heading eastbound on Highway 119, just outside of the City of Longmont. He attempted a traffic stop with his emergency lights. The driver of the truck did not pull over and Officer Kilian engaged in the pursuit of the truck toward I-25 southbound. Officer Kilian described the erratic driving of the truck and could see the driver using his phone while he was driving. Officer Buswold caught up and took over the lead in the pursuit as Officer Kilian maintained communication with dispatch during the chase. The Adams County Sheriff's Deputies and Colorado State Patrol took over on northbound Highway 85. Officer Kilian dropped back to allow the other officers to take control of trying to end the pursuit.

Immediately after the TVI maneuver, Officer Kilian parked his vehicle in the median across the highway from where the suspect's truck spun out on the shoulder. Officer Kilian then got out of his vehicle and armed himself with his .223 caliber rifle, intending to take a position on the opposite side of his vehicle so he could take cover and aim across the hood. As he did so, he noticed the suspect vehicle heading directly toward him. He ran away as the suspect vehicle collided with the passenger side front quarter panel of his patrol car. As he was running backward to get on the other side of the suspect vehicle, he fell down onto his back. Officer Buswold then crashed into the suspect vehicle, sliding it sideways toward Officer Kilian, who put his feet up against the passenger side of the truck as it was moving toward him. The truck pushed Officer Kilian back about a foot before it stopped moving. Officer Kilian then got up and ran around the back of the truck where he could take a position of safety on the passenger side of Officer Buswold's patrol car.

Officer Kilian stood approximately eight feet from the suspect, at a backward left angle from the driver's door. From that vantage point, Officer Kilian could see the suspect in the driver's seat with a chrome semi-automatic handgun pointed up at his chin. Officer Kilian saw several other officers around him. He described seeing the suspect lean down into the cab of the truck as if he were reaching for something and his head moved away from the gun. It appeared to Officer Kilian that the suspect was about to extend his arm holding the gun and point it at the officers. Based on Officer Kilian's belief that he and other officers were in danger of being shot,

he fired one round from his rifle. Still perceiving the suspect to be holding the gun, Officer Kilian fired a second time. Officer Kilian believed the second shot misfired, as he heard a "click" sound and noticed that the magazine had fallen out. Officer Kilian then drew his handgun and looked back at the driver's seat, but did not see the suspect anymore. He then holstered his weapon and stood by as other officers deployed the K9 to make contact with the suspect.

Officer Kilian estimated twenty seconds passed with the suspect looking around with the gun pointed at his chin while he and other officers were shouting commands to "drop the gun" and "don't move." He did not know whether he fired first and could not decipher the sequence or number of shots fired other than the "click" sound of his second shot. Officer Kilian believed that other officers had a more direct view into the cab of the truck and probably perceived the same threat that he did based on the suspect's actions with the gun.

Crime Scene Investigation

Criminalists from the Adams County Sheriff's Office, Broomfield Police Department, Westminster Police Department, Thornton Police Department, and the Colorado Bureau of Investigation gathered evidence and processed the scene at Highway 85. During the early morning hours of November 11, 2016, it began to snow rather heavily, making it impossible to locate the skid and scuff marks for any kind of accident reconstruction. Therefore, because the highway would have to remain closed for an unknown and extended period of time to allow for a full reconstruction, it was determined to obtain measurements of the final rest position of the vehicles involved in the collision, along with other items of evidentiary significance.

There were a total of sixteen police cars within the controlled scene area across the northbound and southbound lanes of Highway 85. The patrol cars were from Brighton PD, Longmont PD, Adams County Sheriff's Office, and Colorado State Patrol. The suspect vehicle, a green Ford F-350 pickup truck with dual wheels on the rear axle, was located in the middle of the depressed median of the divided highway, with the front of the vehicle facing south. The tires on the truck were shredded away from the rims of the wheels. There were silver gouge marks on the black asphalt consistent with the suspect driving the truck on nothing but the rims.

The body of a deceased male, later identified as Jason Mesaros, was on the ground near the open driver's door to the truck. Immediate to the east of the truck were two Longmont PD vehicles, one marked patrol car and one unmarked SUV. The front bumper of the marked patrol car was up against the rear wheel well of the truck and the front bumper of the unmarked SUV was touching the front driver's side bumper of the truck. There were bullet holes and body damage evident on all three vehicles. The truck was boxed in the front by a marked Adams County Sheriff's Office K9 Unit facing north and from behind by a marked Colorado State Patrol vehicle facing south.

A silver .9 millimeter Ruger semi-automatic handgun was discovered on the driver's side floorboard of the truck. The weapon contained a magazine loaded with eight cartridges and one in the chamber. The gun appeared to have blood on it. Investigators found one Luger .9

millimeter shell casing just outside the driver's door of the truck.

Examination of the Ford F-350 revealed a number of bullet holes passing through the vehicle from different directions. Trajectory rods placed in the vehicle support the conclusion that bullets penetrated into the driver's compartment from the following angles: the windshield, the driver's side rear view mirror, the "B" pillar, the driver's side door under the window opening, and the doorframe behind the driver's door.

Investigators collected and examined the firearms reported to have been fired by officers during the incident. Officer Buswold used a .45 caliber Glock model 21. The magazine holds a maximum thirteen cartridges. Officer Buswold reported to carry a full magazine and one in the chamber of the gun. Examination of the weapon revealed eleven rounds in the magazine and one in the chamber, suggesting that Officer Buswold fired two times.

Deputy Abdullah carries a .45 caliber Kimber model Custom TLE/RL II, with a standard magazine load of eight cartridges. Deputy Abdullah reported carrying a full magazine and one in the chamber of the weapon. When collected, the weapon contained a full magazine and one in the chamber, consistent with Deputy Abdullah's report that he reloaded his weapon. Deputy Abdullah provided investigators with the magazine involved during the incident which contained three cartridges. The five missing rounds from the magazine and one in the chamber leads to the conclusion that Deputy Abdullah shot six rounds.

Deputy Berlinski uses a .45 caliber Smith and Wesson model M&P. He reported to carry a full load of fourteen cartridges in the magazine and one in the chamber. The magazine contained three rounds and there was one in the chamber, leading to the conclusion that Deputy Berlinski shot eleven times.

Trooper Parks's weapon is a .40 caliber Smith and Wesson model M&P. Trooper Parks reported to carry the maximum load on this weapon, fifteen in the magazine and one in the chamber. The weapon was discovered to have one round in the chamber and thirteen in the magazine, suggesting that Trooper Parks fired two times.

Officer Kilian reported to have used his .223 caliber Sig Sauer. While he believed he fired one round from his rifle before noticing the magazine drop out, he also reported to carry a total of twenty-eight rounds in a thirty-round capacity magazine. Upon examination of this weapon, the chamber was empty and the magazine was loaded with twenty-eight cartridges. In addition, there were no .223 caliber casings discovered on scene. Therefore, the evidence suggests that Officer Kalian's weapon did not discharge a round.

Based on the overall round accountability, there were a total of twenty-one rounds fired by law enforcement officers. However, due to poor weather conditions and the location, only seventeen shell casings were located within the immediate scene. The majority of shell casings were observed to be gathered primarily in two clusters. The first group consisted of ten .45 caliber casings located between the driver's side of the unmarked Longmont PD SUV and the marked Adams County Sheriff's Office K9 Unit to the south. The second group of shell casings was found between the passenger's side of the marked Longmont PD patrol car and the marked

Colorado State Patrol vehicle to the north. A total of five .45 caliber casings and one .40 caliber casing were located in this particular area. One .45 caliber casing was found between the marked and unmarked Longmont PD cars.

Medical Examination Analysis

On November 12, 2015, Dr. Dawn Holmes conducted an autopsy of the male identified as Jason Mesaros, date of birth, 5/22/1979. The decedent had a total of ten penetrating gunshot wounds to the left upper torso and left arm areas. The wounds to the torso were considered to be fatal wounds, as they compromised the heart and lungs. Six projectiles were located in the thoracic area. There was also one penetrating gunshot wound into the decedent's chin that appeared to be self-inflicted but not fatal. One projectile was discovered in the sinus area of the decedent's head.

The decedent's toxicology report revealed positive levels of opiates, cocaine and oxycodone. Dr. Holmes determined the cause of death to be multiple gunshot wounds; the manner of death to be homicide.

Legal Analysis

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. 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 several officers fired their weapons at Jason Mesaros. Likewise, there is no dispute that the death of Jason Mesaros resulted from multiple gunshot wounds. The issue of which of the involved officers actually caused the death is complicated, as the driver's compartment of the Ford F-350 was penetrated by bullets from the front, side and rear angles. In addition, three of the shooting officers used a .45 caliber rounds. Because there were a total of ten penetrating gunshot wounds to the upper torso area, any of which could be deemed fatal, the investigation does not reveal forensic evidence that would conclusively distinguish the fatal shot. Therefore, for purposes of this review, it is assumed that any one of the shooting officers actually caused the death of Jason Mesaros.

At the time of the shooting, all of the law enforcement officers were engaged in the course of their duties to execute an arrest warrant on a wanted suspect. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time the officers fired

their weapons, 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. (2015), 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.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(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.

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” §18-1-901(3)(d), C.R.S. (2015).

Officer Daniel Kilian

The physical evidence collected from the scene leads to the conclusion that Officer Daniel Kilian never discharged his firearm. Nevertheless, this review evaluates whether Officer Kilian’s action of pulling the trigger intending to fire at the suspect constitutes a crime.

Officer Kilian was engaged in the pursuit of the wanted robbery suspect who was considered to be armed and dangerous based upon his use of a firearm during the incident. The suspect fled a traffic stop and gave chase on a forty-minute long pursuit that posed a significant risk to the safety of other highway drivers and the community at large. At the conclusion of the pursuit, Officer Kilian observed the suspect try to escape arrest by attempting to drive out of a TVI maneuver, drive directly at him, and then collide into his police vehicle.

From Officer Kilian’s vantage point, he could see the suspect holding a gun at his chin and refusing orders to drop the weapon. Officer Kilian described the suspect’s action of “fumbling” around in the vehicle and, in doing so, Officer Kilian believed that the suspect was about to point the gun and shoot at officers. Officer Kilian explained that he fired his weapon out of fear for the safety of himself and other officers.

Under these facts, the prosecution cannot prove that Officer Kilian’s action of pulling the trigger intending to shoot the suspect was not justified as applied to §18-1-707, C.R.S. (2015).

Deputy Walter Berlinski

Deputy Walter Berlinski was engaged in the pursuit of a suspect he knew to be involved in an armed robbery. He stated that based on his knowledge of the incident, he believed any contact with this suspect to be an armed encounter. Deputy Berlinski observed the extensive efforts that the suspect made to evade arrest during the pursuit. He also perceived the truck steer directly into an officer on foot and then crash into a police vehicle. When the suspect vehicle stopped moving, Deputy Berlinski staged himself at the front of the truck and, while he could not see inside the truck, he heard the other officers yelling commands at the suspect and warn him of the potential for crossfire. Therefore, even without being able to see the suspect’s actions inside the truck, the circumstances of the overall encounter made Deputy Berlinski aware that the suspect was armed and there was a danger to officers nearby.

After Deputy Berlinski repositioned to avoid the risk of crossfire, he stated that he

continued to perceive a threat of danger based on the suspect's behavior and refusal to comply with commands. Deputy Berlinski thought he heard a shot come from in front of him during this standoff. Believing the suspect was firing a gun, Deputy Berlinski fired his weapon stating that he was in fear for his life and the officers around him.

The physical evidence supports a conclusion that the suspect fired a gun from inside the truck while he was still alive. Immediately after the pursuit ended, all of the officers who saw the suspect described him to be moving his head around while holding a silver or chrome semi-automatic pointed up at his chin. After the shooting incident, a quick examination of the body revealed a penetrating gunshot wound to the underside of the chin in an upward direction. A bloody silver .9 millimeter semi-automatic handgun was recovered from the truck and a spent .9 millimeter shell casing was found nearby. No other officers discharged a .9 millimeter handgun.

Consequently, despite the lack of evidence to conclusively prove the sequence of shots, the prosecution cannot prove that Deputy Berlinski was not justified in protecting himself and other officers from what he perceived to be the use of deadly physical force under §18-1-707, C.R.S. (2015).

Deputy Gilbert Abdullah, Officer Robert Buswold, and Trooper Nathan Parks

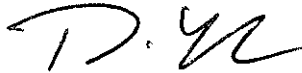
Deputy Gilbert Abdullah, Officer Robert Buswold, and Trooper Nathan Parks were all involved in the pursuit of the suspect with an active warrant for an armed robbery in Boulder County. They had knowledge from fellow officers that the suspect was likely in possession of a firearm that he had discharged earlier that day. In addition, they made direct observations of the risk to public safety presented by the suspect's determination to avoid police contact and evade arrest. In short, these officers were engaged in efforts to make an arrest of an armed and dangerous person based on an arrest warrant that gave them reason to believe that he had committed a felony involving the use of a deadly weapon.

Once the suspect was stopped in his vehicle and within a short distance of these officers, he displayed a weapon and refused to obey the officers' continued commands to drop the weapon. During this encounter, Deputy Abdullah, Officer Buswold, and Trooper Parks were all in a position to see the suspect holding the silver handgun. Each officer explained his individual perception that as the suspect moved his head around, the handgun appeared as if it were going to be pointed out in the direction of officers. From approximately eight feet, Deputy Abdullah could see the suspect's finger on the trigger. Each officer explained that at the time they fired their weapons, they were in fear for their own life, as well as the lives of their fellow officers due to the close proximity and the relative ease of which the suspect could turn to fire the weapon on them. Therefore, under these circumstances, the prosecution cannot prove that Deputy Abdullah, Officer Buswold, or Trooper Parks's actions were not justified as applied to §18-1-707, C.R.S. (2015).

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 discharged their weapons in the fatal shooting incident involving Jason Mesaros on November 10, 2015. 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". The signature is stylized with a large, sweeping "D" and a cursive "Young".

Dave Young
District Attorney