



April 13, 2018

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

Re: The investigation into the death of Kyler Grabbingbear, dob 9/10/1998, occurring on December 7, 2017

Dear Sheriff McIntosh:

The investigation and legal analysis of the officer-involved death of Kyler Grabbingbear is complete. The 17<sup>th</sup> Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detective Brad Barkley of the Thornton Police Department and Detective Jim Zamora of the Commerce City Police Department. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17<sup>th</sup> Judicial District, as well as investigators from the Office of the District Attorney for the 17<sup>th</sup> Judicial District. The factual findings of the investigation were presented to our office on February 20, 2018. 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 officer 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 officer, 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 the involved 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 officer involved in this incident.

## **The Incident**

On December 7, 2017, during the early morning hours, Deputy Wilfred Europe went to an apartment complex located at 8770 Gaylen Court to contact a victim to provide notification of an individual's release from jail. While standing in the hallway outside of the apartment, Deputy Europe heard people yelling inside an adjacent apartment. The nature of the commotion led Deputy Europe to believe that the individuals were involved in a domestic disturbance. Deputy Europe reported his concerns over the radio and waited outside the apartment for another officer to arrive.

The door to the adjacent apartment opened and a male walked out into the hallway carrying a small table. Deputy Europe attempted to contact the male, but was unsuccessful, as the male shoved the table into Deputy Europe's legs and ran down the stairwell leading to the first level hallway of the apartment building. Deputy Europe pursued him down the stairs and along the first floor hallway, until he caught up to him at the doorway to the exterior. The two came out the door entangled with one another and continued to struggle in an open area between two apartment buildings.

The male placed his right arm around Deputy Europe's neck in a "headlock" fashion. Deputy Europe tried to pry the male's arm off of his neck, but was unable to control the male around his neck. Deputy Europe experienced loss of breath and dizziness as he continued to break himself free from the male's grasp. After several attempts, Deputy Europe was able to separate himself from the male and draw his weapon from his holster. Deputy Europe fired his weapon one time, killing the male. The male was later identified as Kyler Grabbingbear.

## **Witness Interviews**

Investigators from various law enforcement agencies including the Westminster Police Department, Thornton Police Department, Commerce City Police Department, and the District Attorney's Office conducted interviews of the necessary witnesses. The following are summaries of the interviews pertinent to this review.

**Deputy Wilfred Europe:** Deputy Wilfred Europe is a patrol officer with the Adams County Sheriff's Office. Detective Brad Barkley from the Thornton Police Department and Detective Jim Zamora from the Commerce City Police Department interviewed Deputy Europe on December 12, 2017 with his attorney present.

On December 7, 2017, Deputy Europe worked a routine patrol shift. He wore a standard-issue uniform with a badge affixed to his breast area. At approximately 3:30 a.m., Deputy Europe responded to 8770 Gaylen Court, apartment number 303, in an effort to personally notify a victim of domestic violence of a suspect's impending release from the Adams County Detention Facility. The apartment was located on the third floor, where the front door was accessed through an internal hallway shared with other apartment doors. Deputy Europe knocked on the door and identified the victim, Vanessa Pacheco, who came out of the residence and into the hallway to talk to him. As he spoke with Ms. Pacheco, he heard what he described as "yelling, screaming and banging" coming from an adjacent apartment. He also heard the

sound of a female voice shout "get out!" several times. He heard a male's voice yell back. Ms. Pacheco stated, "they're at it again." Deputy Europe asked whether the disturbance was a common occurrence, to which Ms. Pacheco replied, "all the time." Given the nature of the commotion, Deputy Europe believed that an incident of domestic violence was occurring inside the apartment. He got on the radio and requested dispatch to send another patrol unit to his location with the intent of investigating the incident.

After a couple of minutes, Ms. Pacheco went back inside her apartment and Deputy Europe focused his attention on the commotion from the neighboring apartment. He walked down the hallway to the front door of the other apartment, continuing to listen to the commotion. He reported to dispatch the apartment number as he waited for a cover officer to respond. The yelling and screaming continued, but Deputy Europe could not understand the exchange of voices, as it appeared to be in Spanish. Suddenly, the apartment door flung open and a Hispanic male came out carrying what appeared to be an end table.

Deputy Europe stepped in front of the male and ordered him to stop. The male looked directly at Deputy Europe and tried to push his way through, but Deputy Europe stopped him and pushed him back with one hand. The male slowed and bent down as if he were about to set the table down in front of Deputy Europe. Suddenly, the male aggressively shoved the table into Deputy Europe's knees, causing Deputy Europe's legs to lock. This action immobilized Deputy Europe for a moment as the male ran away down the flight of stairs. Deputy Europe ran down the stairs after the male and stumbled as he tried to grab the male by his shirt. Deputy Europe had a difficult time getting ahold of the male because the male was sweaty and pulled away from Deputy Europe. Once down the flight of stairs, Deputy Europe ran after the male down an interior hallway. During the foot pursuit, Deputy Europe repeatedly yelled, "stop!" and threw his flashlight at the male in an attempt to gain compliance. The flashlight hit the male in the back, but the male ignored the commands and continued to run away.

Deputy Europe caught up to the male as they reached the door to the exterior of the building. He tried to grab the male but the male punched and elbowed him. Deputy Europe fought to get control of the male in the doorway by wrapping his arms around the male. He was unable to hold the male and the male got outside to the parking lot area. Deputy Europe chased the male and tackled him in the open space between the apartment buildings. The male put his arms around Deputy Europe's neck in a "headlock" fashion as the two continued to struggle in the open space. Deputy Europe fell to his knees and fought to get control of the male by pulling at the male's clothing.

During the struggle, Deputy Europe and the male were huddled together side by side, knees on the ground, arms wrapped around one another's upper body. Deputy Europe repeatedly told the male to "stop" and to "give up." At one point, the male maneuvered above Deputy Europe, who was unable to get up from his knees. The male was on Deputy Europe's left side. Deputy Europe's head remained in the male's grasp and turned against the male's body. Deputy Europe gave the male multiple commands to stop, but the male refused to comply and continued to engage Deputy Europe in the headlock maneuver. Deputy Europe felt pressure on his neck and started having difficulty breathing. He became dizzy and light-headed as he was fighting to control the male. Deputy Europe soon realized that the situation was "going south" and he

reached for his radio to call for help. The radio was not on his hip. Deputy Europe was able to “peel” the male’s hands from the headlock grip a couple times. However, each time, the male reengaged his hold on Deputy Europe’s neck. Deputy Europe could not speak or breathe due to the pressure around his neck. He described his situation as “indefensible” and stated that the male was “committed to trying to kill [him].” Deputy Europe believed that he needed to end the fight or he would become unconscious and die.

Deputy Europe again peeled the male’s hands away, breaking the strangle hold. As Deputy Europe broke free, he drew his firearm and pushed away from the male. Deputy Europe fired one round at the male from a range of approximately two feet. He believed he shot the male in the torso area. The male stumbled to his knees on the ground. Deputy Europe stood up and backed away from the male. He held the male at gunpoint while he caught his breath and looked for his radio. He noticed a person standing on a balcony up above who called out, “are you ok?” He told that person to call 911. Deputy Europe found his radio and called out shots fired.

Deputy Engel, the cover officer, arrived with his gun drawn looking for the suspect. Deputy Europe motioned to the suspect, who was slumped on his knees, and told Deputy Engel to handcuff him for safety. A Thornton Police Department officer arrived and began resuscitative efforts while other officers went inside the apartment building to identify other witnesses. Deputy Randy Rael stayed with Deputy Europe. Following the incident, Deputy Europe experienced a headache and neck pain. He also felt soreness in his knees and elbows. He was taken to North Suburban Hospital, where he was thoroughly examined and treated for his injuries.

Deputy Europe reported that he carries less lethal weapons such as a Taser and pepper spray. However, Deputy Europe did not consider these options because he believed his life was in danger due to the use of force by the male. Deputy Europe stated that he shot the male to stop him and that he believed he would be “choked to death” if he didn’t stop the male.

**Deputy Corey Engel:** Deputy Corey Engel is a patrol officer for the Adams County Sheriff’s Office. Thornton Detective Brad Barkley and Commerce City Detective Jim Zamora interviewed Deputy Engel hours after the incident.

During the early morning hours of December 7, 2017, Deputy Engel was working patrol when he responded to 8770 Gaylen Court to help cover Deputy Europe. Deputy Engel recalled that Deputy Europe was at the scene conducting victim notification when he overheard a domestic disturbance in the apartment next door, #301.

As Deputy Engel drove to the location, he overheard a report of shots fired over the radio. Within seconds, Deputy Engel arrived on scene and observed Deputy Europe standing in the open space between two apartment buildings. Deputy Europe described Deputy Europe’s appearance as “disheveled” and “distressed,” like he had been in an altercation. His radio microphone was hanging from his uniform and his shirt was rumpled. He was trying to catch his breath and was gasping for air. These initial observations led Deputy Engel to believe that Deputy Europe was suffering from the gunshot.

Deputy Engel had no information as to what had occurred and was concerned for the safety of himself and others. Deputy Europe did not readily provide much information and, according to Deputy Engel, did not appear to be "with it." Deputy Engel saw a male slumped in a kneeling position down on the ground beneath a balcony of the apartment building to the north. Deputy Europe advised that he had been "choked" by the male. Deputy Engel handcuffed the male while he attempted to secure the scene and make contact with individuals in the apartment where the domestic disturbance occurred. He noticed that the male was bleeding and, given the circumstances, assumed he had been shot.

When other cover officers arrived, Deputy Engel proceeded to enter the building at 8770 Gaylen Court. He noticed a table at the top of the stairwell near apartment #301. He conducted a protective sweep of apartment #301 and identified individuals with knowledge of the domestic incident. According to one of the women identified as "Wendy," her sister was in the midst of a break up with a boyfriend, Kyler Grabbingbear, who used to live in the residence. On December 7, 2017, Mr. Grabbingbear showed up unannounced and entered the apartment to retrieve some property. The sister was not present at the time. While inside, Wendy and Mr. Grabbingbear got into a verbal altercation. The residents characterized Mr. Grabbingbear as being threatening and violent. Deputy Engel secured the scene and had no further involvement. Other than his initial inquiry concerning the situation, Deputy Engel had no conversation with Deputy Europe.

**Deputy Randy Rael:** Deputy Randy Rael is a patrol officer for the Adams County Sheriff's Office. Thornton Detective Brad Barkley and Commerce City Detective Jim Zamora interviewed Deputy Rael hours after the incident.

Deputy Rael was working patrol when he overheard Deputy Europe on his police radio. Deputy Europe sounded out of breath and reported "shots fired." When Deputy Rael arrived on the scene, he observed an officer from the Thornton Police Department conducting CPR on a male with an apparent gunshot wound. Deputy Rael turned his attention to Deputy Europe, who he explained had been in a struggle based upon his appearance. He observed Deputy Europe's shirt untucked and grass stains on the sleeves and pants of his uniform. He also saw scratches on Deputy Europe's head and recalled Deputy Europe to be out of breath and coughing. He also described Deputy Europe's voice to be "raspy."

Deputy Rael explained his only purpose was to get medical assistance for Deputy Europe. He did not ask Deputy Europe any questions about the incident and had no other involvement.

**Michael Wilkins:** Westminster Detective Troy Gordonier interviewed Michael Wilkins hours after the incident. Mr. Wilkins lives in 8770 Gaylen Court, #305 with his brother. During the early morning hours on December 7, 2017, Mr. Wilkins was smoking a cigarette while sitting in the driver's seat of a white Chevrolet Lumina parked in the parking lot west of the building. The parking space is situated just beyond the exterior door to 8770 Gaylen Court.

As Mr. Wilkins sat inside the parked car, he saw another car pull up Galen Court and park behind his location. An individual got out of the car and walked into the exterior door of the building at 8770 Gaylen Court. Mr. Wilkins described the individual as a male Sheriff's

Deputy wearing a blue police uniform with a badge. He advised that the Deputy's uniform made it clear that he was a police officer. Mr. Wilkins decided to remain in his car and wait for the Deputy to leave the building before returning to his apartment.

Approximately seven to eight minutes after seeing the Deputy enter the building, Mr. Wilkins described hearing individuals running through the building and a man shout, "Stop!" just prior to seeing the exterior door "slam" open. He saw a male, who he recalled to be a "kid he recognized from the neighborhood" wrapped up with the Deputy. In particular, he described the male "making an altercation" with the Deputy as he was positioned behind the Deputy with his arm around the Deputy's neck in a "choke hold." He described the Deputy trying to throw the male off of his body by making a "rotational" movement. He heard the Deputy yell, "Stop!" and then heard a loud "pop" five to six seconds later.

Mr. Wilkins explained that he had his seat tilted back and window down while he was smoking a cigarette in his car. He watched the door as it "flung" open and the Deputy and male came out in an obvious struggle. The two individuals separated a few seconds after Mr. Wilkins heard the Deputy shout "Stop!" According to Mr. Wilkins, the Deputy shouted loud enough for anyone close by to hear. Mr. Wilkins described that the male and the Deputy were not far apart from each other when he heard the loud "pop." Mr. Wilkins explained that he was parked next to a Chevrolet Tahoe and that he could only see the upper torso of the Deputy from his vantage point. He could not see the male after the Deputy threw him off of the choke hold. Mr. Wilkins did not see the Deputy fire his gun. Neither did he see a gun pointed at the male nor a muzzle flash.

After hearing the sound of the gunshot, Mr. Wilkins crouched down in his seat. He heard the Deputy call over the radio, "shots fired" and requesting "backup." Mr. Wilkins explained that he stayed in his car, as he did not want to move and trigger something because police were everywhere and he preferred to wait for things to calm down before walking into the scene. While waiting there, Mr. Wilkins fell asleep and woke up around 7:00 in the morning. As he tried to enter the building, law enforcement contacted him. He then explained his observations.

**Vanessa Pacheco:** Westminster Detective Troy Gordanier interviewed Vanessa Pacheco hours after the incident. Ms. Pacheco lives at 8770 Gaylen Court, apartment number 303. She recalled a knock on her door between 3 and 4 o'clock in the morning of December 7, 2017. The law enforcement officer at the door notified her that her ex-boyfriend was released from jail. She explained that she was the protected party on a restraining order issued due to a crime of domestic violence that occurred with her ex-boyfriend some time ago.

As she stood outside the door to her apartment, she heard yelling from the apartment next door. According to Ms. Pacheco, the sound was a common occurrence, as the neighbors constantly argue and bang on the wall adjoining her apartment. The officer heard the commotion and asked, "do they always do this?" Ms. Pacheco answered in the affirmative. She saw the officer get on his radio and call for help to check on the situation next door. After Ms. Pacheco finished talking to the officer, the officer walked toward the adjoining apartment as the arguing continued.

Ms. Pacheco went back inside her apartment and shut the door. She heard someone say "call the police" and "I'm allowed to stay here because my stuff is here." She also heard the sound of running and a door slam shut but did not go back outside her apartment. She went to bed and did not hear anything further.

**Wendy Trejo:** Westminster Detective Troy Gordanier interviewed Wendy Trejo hours after the incident. Ms. Trejo resides at 8770 Gaylen Court, apartment number 301. She lives with her sister, "Samantha," the ex-girlfriend of Kyler Grabbingbear.

On December 7, 2017, Samantha left the apartment to spend the night with a friend. Ms. Trejo slept on the couch and awoke to the sound of someone entering the door to the apartment. She got up and saw Mr. Grabbingbear. She confronted him and told him to leave as he went into Samantha's bedroom. Mr. Grabbingbear said that he had a right to be there since he lived there for three months. He said that he was getting his things. Mr. Grabbingbear picked up a small table and some food items and walked toward the front door. Ms. Trejo did not see him leave. She described hearing the sound of "thumping" but did not see anything, as Mr. Grabbingbear was gone and the front door was shut. Ms. Trejo did not hear anything after Mr. Grabbingbear left the apartment. A few minutes later, a police officer knocked on her apartment door.

**Luis Ramos:** Westminster Detective Kent Hampshire interviewed fifteen year old Luis Ramos with the permission of his mother, Elva Guzman. Luis lives at 8770 Gaylen Court, #301 with his mother, his two sisters, Wendy and Samantha.

On December 7, 2017, Luis was home with his mother and sister, Wendy. He awoke up around 3 or 3:30 a.m. to the sound of his sister arguing with Kyler Grabbingbear, who he identified as his sister Samantha's ex-boyfriend. Luis stated that Wendy was telling Mr. Grabbingbear to get out and Mr. Grabbingbear was saying he had a right to be there. Luis explained that Mr. Grabbingbear previously lived there and had a key to the apartment, but that Samantha was trying to kick him out. Luis's mother told them to keep their voices down. Mr. Grabbingbear took what Luis described as a "shelf" or "counter" of food items out of the bedroom and walked out the apartment door. Luis went back to sleep and woke up to police officers at his front door.

Referencing Mr. Grabbingbear's criminal history, Luis stated that Mr. Grabbingbear mentioned to Luis that he had warrants for his arrest.

**Samantha Bucio:** Thornton Detective Robin Danni interviewed Samantha Bucio on December 7, 2017. Ms. Bucio lives at 8770 Gaylen Court, #301, but was not present during the incident.

Ms. Bucio advised that she was dating Kyler Grabbingbear from 2013 until a few months ago. She stated that since they broke up, she wanted him to move out of the apartment, but that he kept returning because his belongings were there and he had no other place to go. She explained that Mr. Grabbingbear was diagnosed with bipolar disorder a couple years ago and stopped taking his medication. She characterized him as verbally and physically abusive toward

her. Ms. Bucio stated that Mr. Grabbingbear recently advised her that he was using heroin and methamphetamines.

**Andrea Feltman:** District Attorney investigators Jorge Villegas and Mark Lindberg interviewed Andrea Feltman on December 7, 2017. Ms. Feltman is the mother of Kyler Grabbingbear.

Ms. Feltman advised that Mr. Grabbingbear was emotional and upset about the breakup with his girlfriend, Samantha. The two dated for four years and recently moved into Samantha's apartment. On December 6, 2017, Mr. Grabbingbear told his mother that he was going to get all of his property from Samantha's apartment. Around 3:00 in the morning, Mr. Grabbingbear took his mother's car keys from her while she was falling asleep. She did not want him to leave and did not know where he went.

Ms. Feltman further advised that Mr. Grabbingbear told her he had a warrant for his arrest for missing a court date. He advised her that he was not going to jail and would run if contacted by police. She also stated that her son does not like the police based on the way they treated him on previous contacts.

**Other Witnesses:** There were a number of other individuals who were interviewed in connection with the investigation of this incident. These interviews are not summarized here because their interviews did not add significant details to the investigation of the incident.

In addition, investigators canvassed the two apartment complexes in the vicinity in an effort to identify additional witnesses. None of the individuals contacted had any further information beyond what is summarized herein.

### **Crime Scene Investigation**

Criminalists Shallon Beckman from the Broomfield Police Department and Heather Hatfield from the Thornton Police Department processed the scene and the evidence. The scene of the shooting was located near the west end of an open grass area situated between two apartment buildings—8780 Gaylen Court to the north and 8770 Gaylen Court to the south. The distance between the two buildings is approximately twenty-two feet. By the time the scene was processed, the decedent was removed. A number of items of evidentiary significance were found near the southwest corner of 8780 Gaylen Court: two areas of a bloodlike substance, a Winchester .45 Auto shell casing, a wallet, cellphone and keys, handcuffs and a handcuff key, an ACSO blue knit cap. The bloodlike substance appeared in the grass area near 8780 Gaylen Court, as well as the concrete area beneath a balcony overhang from an apartment inside 8780 Gaylen Court. The substance tested positive for the presence of blood.

The criminalists entered the exterior door of the building at 8770 Gaylen Court and noted four steps going up to the second floor. A number of items were located on the second floor, including a flashlight, and a broken necklace. On the stairs leading up to the third floor, criminalists found a cardboard box with a number of food items that appeared to have been



spilled onto the floor. A small black table was located on the third floor near apartment #301. Criminalist Hatfield entered apartment #301 and documented the overall interior, including two areas noted to be damage to the walls. The approximate distance between apartment #301 and apartment #303 is fifty feet.

Among the vehicles observed in the parking lot west of the apartment complex was Deputy Europe's marked patrol vehicle and several other cars. A witness identified as Michael Wilkins was located inside a white Chevrolet Lumina in the parking lot. After speaking with Mr. Wilkins, investigators entered his vehicle and took photographs of his vantage point. The exterior door to 8770 Gaylen Court was a direct line of sight out the front windshield of the Lumina. The approximate distance from the windshield to the door is twenty-nine feet. A Chevrolet Tahoe was parked in the space north of the Lumina. The front end of the Tahoe partially obstructed the view out of the driver's side window of the Lumina.

Criminalists responded to Denver Health Medical Center and examined the decedent, identified as Kyler Grabbingbear, date of birth, September 10, 1998. He appeared to have abrasions on his face and forehead, right hip area, back, and both knees. A ziplock bag was discovered on the emergency room floor near the decedent containing green and orange pills of an unknown substance.

Criminalist Beckman reported to North Suburban Hospital, where she located Deputy Europe sleeping in a hospital bed. He was fitted with a cervical collar, and appeared to have two small abrasions on his head.

Criminalist Hatfield collected Deputy Europe's firearm and examined it. The firearm is described as a 1911, .45 caliber semi-automatic pistol. At the time of examination, the weapon contained one live round in the chamber and ten rounds in the magazine. The magazine holds a maximum capacity of eleven rounds. Deputy Europe reported that he started his shift with eleven rounds in the magazine and one round in the chamber, totaling twelve rounds in the weapon. As such, the round accountability was consistent with one round fired from the weapon.

### **Medical Examination Analysis**

On December 8, 2017, Dr. Dawn Holmes conducted an autopsy of the male identified as Kyler Grabbingbear. Dr. Holmes identified a number of abrasions to the body—on the head, upper right shoulder, back, and both knees. There was one penetrating gunshot wound to the body. The trajectory of the wound course was identified as front to back, left to right, and downward. A bullet fragment was located and collected. Dr. Holmes concluded that the bullet penetrated both lungs. She further identified the gunshot range as "close to intermediate" based on the presence of soot and stippling near the wound entrance. Dr. Holmes could not estimate the precise distance from gun barrel to wound entrance beyond an approximate range of six inches to three feet.

The decedent's toxicology report revealed positive levels of amphetamine and methamphetamine, as well as THC, the active ingredient in marijuana.

Dr. Holmes determined the cause of death to be a gunshot wound; the manner of death to be homicide.

### **Legal Analysis**

As was previously noted, this review is limited to a determination of whether to file criminal charges against the involved officer. 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 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 Deputy Europe fired his handgun at Kyler Grabbingbear causing his death. At the time of the shooting, Deputy Europe was engaged in the course of his duties as a law enforcement officer seeking to apprehend a fleeing suspect who just assaulted him with an end table and who Deputy Europe believed to be involved in a domestic disturbance. The legal question presented to the Office of the District Attorney is whether, at the time Deputy Europe fired his weapon, the prosecution can prove beyond a reasonable doubt that his 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. (2017), 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

...

(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. (2016).

Here, Deputy Europe was dispatched to the apartment building to conduct victim notification of a jail release at approximately 3:00 a.m. While standing in the interior hallway of the building, Deputy Europe heard the sounds of a male and female yelling at one another from inside an apartment. The neighbor of the apartment advised Deputy Europe that the occupants were constantly fighting and banging things inside. Based on the circumstances, Deputy Europe believed an incident of domestic violence was occurring inside the apartment.

As Deputy Europe stood by to further investigate the incident, the door to the apartment opened and Mr. Grabbingbear stepped outside appearing to hold an end table. Deputy Europe attempted to detain Mr. Grabbingbear, but Mr. Grabbingbear shoved a table into Deputy Europe’s legs and ran away. Deputy Europe decided to use force necessary to detain Mr. Grabbingbear by chasing, yelling “stop!” and grabbing at him. Once he caught up to Mr. Grabbingbear, he tried to detain him, but was unable to due to Mr. Grabbingbear’s physical resistance. The two engaged in a physical struggle outside the door of the apartment building. Deputy Europe described Mr. Grabbingbear’s arms around his neck in a “headlock” fashion. Deputy Europe became concerned for his life as the struggle continued into the open space between the apartment buildings.

As with many officer-involved incidents, the question often arises whether alternatives to lethal force would have been more reasonable under the circumstances. However, as referenced, this question is beyond the scope of the Office of the District Attorney’s review. The question is not whether less lethal alternatives were available and considered, the question is whether the

prosecution can prove beyond a reasonable doubt that Deputy Europe's use of force was not based upon a reasonable belief that such force was necessary.

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 Deputy Europe believed Mr. Grabbingbear to be a suspect of a domestic disturbance who just assaulted him with an end table. Mr. Grabbingbear fled from Deputy Europe attempting to make a justified contact, refused to obey orders, and physically resisted Deputy Europe's attempts to detain him.

Mr. Grabbingbear not only refused Deputy Europe's commands to stop, he became physically aggressive with Deputy Europe. In attempting to effect this detention, Deputy Europe became engaged in hand-to-hand combat on the ground with Mr. Grabbingbear. Deputy Europe stated his belief that Mr. Grabbingbear was "committed to trying to kill him" by the manner in which he continued to hold Deputy Europe's neck. Deputy Europe was the sole officer involved in trying to detain Mr. Grabbingbear and could not reach his microphone. Deputy Europe also stated that he did not consider less lethal force options because of the nature of the assault and his perception that he was going to become unconscious and die if the struggle continued.

Under the circumstances of this case, there is no evidence to dispute Deputy Europe's belief that he was using reasonable and appropriate physical force to effect a detention of Mr. Grabbingbear. In fact, Michael Wilkins observations are consistent with Deputy Europe's description of this incident as Mr. Wilkins described Mr. Grabbingbear having Deputy Europe in a "choke hold." Further, there is no evidence to dispute that Deputy Europe fired his weapon at Mr. Grabbingbear because he reasonably believed it was necessary to defend himself from what he perceived to be the imminent use of deadly physical force by Mr. Grabbingbear. Therefore, given this evidence, the prosecution cannot prove that Deputy Europe's actions were not justified as applied to CRS §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 Deputy Europe for the killing of Kyler Grabbingbear on December 7, 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', is written over the printed name.

Dave Young  
District Attorney