

Dave Young
District Attorney



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

January 3, 2018

Chief Tim Carlson
Westminster Police Department
9110 Yates Street
Westminster, CO 80031

Re: The investigation of the officer involved shooting of Birendra Thakuri, DOB: 11/16/1990, occurring on August 25, 2018.

Dear Chief Carlson,

The investigation and legal analysis of the officer-involved shooting of Birendra Thakuri is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Thornton Police Detective Brad Barkley and Adams County Sheriff's Detective Matthew Peterson. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to our office on November 8, 2018. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs of the scene investigation. The Office of the District Attorney concludes that the investigation was 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.

As further set forth herein, based upon the evidence presented and applicable law, there is no reasonable likelihood of success of proving beyond a reasonable doubt that the involved officer committed any crime during this incident. Therefore, no criminal charges will be filed against the involved officer.

The Incident

On August 25, 2018 at approximately 8:51 p.m., Westminster Police Officer Steven Bare responded to a dispatch call that referenced people fighting in the 114th block of Federal Boulevard. Officer Bare drove his marked patrol vehicle to the area and located two males on their knees in the grassy area to the southeast of the intersection of Federal Boulevard and Ranch Reserve Parkway. Officer Bare activated his police emergency lights and parked nearby. He illuminated the two males with the spotlight of his patrol vehicle. The two males were later identified as Birendra Thakuri and his brother, Surendra Thakuri.

Officer Bare stepped out of his patrol vehicle and walked to the grass area on the side of the road, where he stood with his flashlight in his left hand. Birendra Thakuri stood up and walked towards Officer Bare, appearing to be agitated. The other male, Surendra Thakuri followed him. Officer Bare yelled, "Stop!" Birendra Thakuri turned around and returned to where Surendra Thakuri was. The two brothers appeared to have a brief conversation in the Nepali language. Birendra Thakuri suddenly turned and ran towards Officer Bare a second time. This time, Birendra Thakuri ran with his arms flailing as if he was going to punch Officer Bare. Officer Bare retreated toward the back bumper of his patrol vehicle. When Birendra Thakuri was within arm's reach of Officer Bare, Officer Bare swung his flashlight at him and shoved him back with his right hand.

Birendra Thakuri returned to Surendra Thakuri again. They appeared to have another brief conversation in Nepalese. Birendra Thakuri then ran towards Officer Bare. Surendra Thakuri also advanced toward Officer Bare, walking behind Birendra Thakuri. Officer Bare drew his service weapon and fired one shot into the chest of Birendra Thakuri, causing his death.

History of Reported Police Contact

During the investigation, Broomfield Police Detective Dale Hammell provided a history of the Thakuri family's contacts with the Broomfield Police Department from November of 2017 to August 25, 2018. In February of 2018, Birendra Thakuri was placed on a mental health hold after threatening to sexual assault his mother with his friends. During this incident, his mother, Sanu Thakuri did not want to press charges and suggested he needed mental health treatment.

On August 24, 2018 at approximately 1:30 a.m., Sanu Thakuri contacted the Broomfield Police Department to report her concern that Birendra Thakuri had not taken his medication. He had apparently run out into the street and away from their residence. Sanu Thakuri and Surendra Thakuri drove around looking for Birendra Thakuri and located him near the Old Chicago restaurant. Birendra Thakuri ran away from them again and Sanu Thakuri reported that Birendra Thakuri said "last day." Sanu Thakuri also reported that Birendra Thakuri said that he thought people were after him and wanted to kill him. Surendra Thakuri reported that he did not think his brother was suicidal and that he usually leaves the house at night to smoke marijuana.

Sanu Thakuri again called the Broomfield Police Department on August 25, 2018 in reference to Birendra Thakuri having a mental breakdown and not taking his medication. She

said that Birendra Thakuri came home at 5:00 a.m. claiming that the neighborhood wanted to kill him. At approximately 11:48 a.m., Broomfield Police Officer Jason Collins made contact with Birendra Thakuri who said that he was fine and did not need to take his medication. Surendra Thakuri also told Officer Collins that Birendra Thakuri is okay and that they both needed to go for a walk to get away from their mother for a while. Officer Collins did not feel that Birendra Thakuri met the criteria for a mental health hold and he was not placed into custody. The Edge Mental Health Group was notified of the incident, but due to the weekend, did not make contact with any of the involved parties prior to this incident.

Witness Interviews

Investigators with the 17th Judicial Critical Incident Team conducted interviews of all necessary witnesses at the Westminster Police Department. Though there were other witnesses interviewed, only the involved officer and material witnesses are specifically summarized herein.

Officer Steven Bare

Thornton Police Detective Brad Barkley and Adams County Sheriff's Detective Matthew Peterson interviewed Officer Bare on August 28, 2018 with his attorney present. Officer Bare has been with the Westminster Police Department since November of 2000 and has an additional ten years of experience with the Brighton, Colorado and Torrington, Wyoming Police Departments.

On August 25, 2018, Officer Bare was on routine patrol when he responded to a report of a disturbance of people fighting on the side of the road around the 114th block of Federal Boulevard. When he arrived in the area and drove south on the west side on Federal Boulevard, he initially did not see anyone. He turned around to check the east side of Federal Boulevard. Officer Bare used his spotlight on his marked patrol vehicle and noticed two males kneeling in the grass approximately ten feet apart facing each other. Officer Bare stopped his patrol vehicle approximately thirty to forty feet to the south of these males and notified dispatch that he has located them. He then activated his overhead emergency lights and got out of his patrol vehicle with his flashlight in his left hand. Officer Bare stood on the grass on the passenger side of his patrol vehicle. The patrol vehicle's spot light illuminated the males and Officer Bare saw that both males were looking at him and having a conversation about something as they were making gestures with their hands.

Officer Bare did not say anything to the males and just stood on the grass on the side of the road. The male who was facing east, later identified as Birendra Thakuri, suddenly sprang to his feet and started walking towards Officer Bare. The male flailed his arms and screamed something in a foreign language that Officer Bare did not understand. Officer Bare was confused because he had done nothing to agitate the male, who appeared to be upset about something. Officer Bare retreated towards the back of his patrol vehicle as the male approached him. Officer Bare called out to dispatch to send back up as he sensed something was about to happen. The male seemed to focus on the patrol car by pointing at it as he approached Officer Bare while continuing to scream. The male then ran towards Officer Bare screaming with his

hands flailing. Officer Bare yelled, "Stop!" The male turned around and walked towards the second male, later identified as Surendra Thakuri, who was also on his feet walking in the direction of Officer Bare. The two males appeared to have a very brief conversation in a foreign language. The first male continued to flail his arms around. Officer Bare believed that these two younger males were planning to fight with him. Suddenly, the first male ran towards Officer Bare a second time.

Officer Bare retreated again, trying to gain distance so he could have time to react to the male. Officer Bare lost sight of the second male as he was focused on the male charging at him. As the first male got within arm's reach, Officer Bare swung his flashlight at the male in what he described as a "parry" motion and shoved the male back with his right hand. The male then turned and retreated back to the second male. They appeared to have another very brief conversation in a foreign language. Based on their actions, Officer Bare believed that they were planning on doing something to him. The first male suddenly ran full speed toward Officer Bare, screaming and with his fist balled up a third time. The second male also walked towards Officer Bare. Officer Bare retreated approximately twenty feet towards the rear of his patrol vehicle.

Officer Bare stated that he did not have time to do anything with two males approaching him and he believed it would be difficult to defend himself against the two males that appeared to be half his age. He stated that he was in fear of either being seriously injured or that the males would be able to take his gun and shoot him. When the first male got within ten feet of Officer Bare, Officer Bare pulled out his service weapon with his right hand and shot the male one time in the chest. The male stopped, turned and walked toward Federal Boulevard before falling to the ground next to a passenger vehicle that had just pulled up to the curb. The second male no longer appeared to be a threat to Officer Bare, as the male focused on the first male and complied with Officer Bare's commands to get on the ground. Officer Bare notified dispatch that shots were fired and gave medical treatment to the first male.

Officer Bare said that he did not have time to use less lethal force. He did not feel like he had time to reach for his Taser or pepper spray. His Taser was down on his left side and his pepper spray was on the front of his utility belt. Officer Bare lost his prescription glasses during the first altercation with the male. He did not shoot on the first physical encounter because he felt that the situation did not call for such force. Officer Bare believed that there was nothing else he could do to stop the threat that these two males posed to his safety.

Surendra Thakuri

In the early morning hours after this incident, Westminster Police Detective Steve Sanders and Thornton Police Detective Doug Parker interviewed Surendra Thakuri at the Westminster Police Department. Surendra Thakuri is Birendra Thakuri's brother. Surendra Thakuri stated that he understood the English language, and he was oriented to the circumstances, as well as his presence at the police department. He said that his brother, Birendra Thakuri, spoke and understood the English language better than he did. Surendra Thakuri recalled that earlier in the day on August 25, 2018, a Broomfield Police Officer was asking the Thakuri brothers questions at their residence regarding whether or not Birendra Thakuri needed to be hospitalized due to a mental condition. The brothers told the officer that

Birendra Thakuri was fine and that he did not need to be hospitalized. Birendra Thakuri was upset because earlier he had been in an argument with Surendra Thakuri's wife. Birendra Thakuri wanted to leave. The brothers then left the residence for several hours on a walk. They walked all over the northern metro area and purchased marijuana at a dispensary in Northglenn. They both smoked marijuana during the course of the night.

Surendra Thakuri recalled that Birendra Thakuri became more and more upset as the night went on. Birendra Thakuri expressed his belief that the marijuana was poisoned because it was having an adverse effect on him. In the area of where this incident took place, Birendra Thakuri began screaming, clawing at the ground, and putting grass in his mouth. Surendra Thakuri said that he had never seen him get so mad like this. Surendra Thakuri asked his brother, "What's going on?" and stated "like it's the meth and the pot was going crazy on him or something like that." Though Surendra Thakuri mentioned "meth," he claimed that they did not ingest methamphetamine that night.

According to Surendra Thakuri, the brothers were in the area for around five to ten minutes before a police officer arrived. When the Westminster Police officer arrived, Birendra Thakuri said, "they were after me" and ran towards the police officer. Surendra Thakuri said that his brother was "out of his brain" at this time and was concerned that the officer would shoot his brother. The officer backed up as Birendra Thakuri approached him. The officer hit Birendra Thakuri in the cheek with an object. Birendra Thakuri came back to Surendra Thakuri and asked him in Nepalese to help fight the police officer. Birendra Thakuri said, "Come brother, help me, hit him, hit him." Surendra Thakuri then followed with his fist clinched, but was thinking that he would not hit the officer because he would get shot.

Birendra Thakuri and the officer were fighting when suddenly Surendra Thakuri heard a gunshot and saw his brother fall to the ground. Surendra Thakuri described his brother and the officer fighting for fifteen seconds and the officer backing up, pulling his gun out and shooting his brother. Surendra Thakuri said that he knew his brother was going to get shot because he was fighting with a police officer. Surendra Thakuri complied with the officer's command to get on the ground and the officer handcuffed him before he was transported to the Westminster Police Department. Surendra Thakuri thought his brother went after the police officer because he was tired of the police always coming to their residence.

After the initial interview, the detectives interviewed Surendra Thakuri a second time using a Nepalese translator. Surendra Thakuri provided similar factual information as he did in the first interview.

Tomasita Martinez

Detectives Steve Sanders and Doug Parker interviewed Tomasita Martinez hours after the incident. Ms. Martinez was driving her Honda Pilot with her kids southbound on Federal Boulevard from 120th Avenue, when she observed a police officer out with a male on the east side of the road. Ms. Martinez saw that the police officer was backing up and the male was "swinging on the officer." Ms. Martinez stated that she "knew the officer was in danger," so she made a U-turn on Federal Boulevard and pulled in and parked behind the patrol vehicle. Ms.

Martinez never saw a gun, but heard a gunshot while she was still in her vehicle. Ms. Martinez exited her vehicle and offered her assistance to the Westminster police officer. Ms. Martinez had her two-year old, B.G., and her eleven-year old, C.G., with her in the backseat. Neither of her children exited the vehicle during this incident. She said that she couldn't believe that she pulled over to help because her kids were in the car. However, she felt the officer was in danger and needed her help.

C.G.

Shortly after the incident on August 25, 2018, Adams County Sheriff Detective Matthew Peterson interviewed C.G., the eleven year old son of Tomasita Martinez. C.G., his sister, and his mother were in their vehicle driving home after a birthday party for his cousin. While in the vehicle, C.G. saw a police car with its emergency lights activated on the side of the road. He saw a man walking towards a police officer with the officer yelling at the man to get on the ground. The officer appeared to be backing up as the man walked toward him. The man was punching at the police officer. It appeared to C.G. that the man was hitting the officer in the upper chest area. C.G.'s mother made a U-turn to go back after driving past the area of the incident. As they were turning around, C.G. heard a gunshot.

When their vehicle stopped next to the police officer's vehicle, C.G. observed the man lying on the ground. Another man approached the man on the ground. C.G. thought the second man was associated with the man that got shot. This second man then approached their vehicle and asked for help. C.G. stated that his mother told this person to get on the ground. C.G. stated that prior to the shooting, this second man appeared to be pacing back and forth, but at no time did he observe the second man strike the police officer.

Scene Investigation

Adams County Sheriff Criminalist Jennifer Mitchell processed Officer Bare's service weapon. Officer Bare carried a Glock model 19, semiautomatic handgun bearing serial number WWT423. He explained that the magazine was loaded to a maximum capacity of fifteen rounds. He also explained that he loaded one round in the chamber of the weapon, for a total capacity of sixteen rounds in the firearm. During the round accountability, Criminalist Mitchell recovered one Speer 9mm Luger live round from the chamber of the weapon and fourteen Speer 9mm Luger rounds from the magazine. Each magazine from his belt was examined and each contained fifteen Speer 9mm Luger rounds. The round accountability is consistent with one round being fired during the incident.

Commerce City Police Department Criminalist Dennis Davenport processed the scene. The scene consisted of Officer Bare's marked patrol vehicle and a Silver Honda Pilot parked on the east side of northbound Federal Boulevard, in the right turn lane for Ranch Reserve Parkway. The Honda Pilot belonged to Tomasita Martinez who had stopped to provide assistance during this incident.

The Honda Pilot was parked approximately twenty feet behind the marked patrol vehicle in the turn lane. Several items of evidence were located in the grass area next to the roadway, between the concrete sidewalk and the roadway. These items included a container with 2.67 grams of marijuana, a cell phone, wallet and a fired 9mm shell casing. Officer Bare's prescription eyeglasses were located in the roadway directly behind his patrol vehicle.

Medical Examination Analysis

On August 27, 2018, Dr. Stephen Cina, a Forensic Pathologist with the Adams County Coroner's Office, conducted a forensic autopsy of the body of Birendra Thakuri. Dr. Cina found a single gunshot wound to Mr. Thakuri. The path of the bullet traveled through his left dorsal finger before entering his chest cavity. A projectile was recovered on the left side of his vertebrae. The entrance wounds showed no evidence of close range firing. Mr. Thakuri had three abrasions to his face. These abrasions were located above his right eyebrow, nose and right cheek. He also had abrasions to both knees and his right foot. The toxicology report revealed positive levels of amphetamines and THC. Dr. Cina determined the cause of death to be a gunshot wound to the chest and the manner of death to be homicide.

Legal Analysis

As was previously noted, this review is limited to determining whether criminal charges should be filed against the involved officer. The decision to file criminal charges involves an assessment of all the 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 officer's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Bare fired his weapon at Birendra Thakuri. Likewise, there is no dispute that the death of Mr. Thakuri resulted from a single gunshot wound to his chest. Just prior to the shooting, Officer Bare was engaged in his duties as a peace officer responding to a report of people fighting on the side of the road. The legal question presented to the Office of the District Attorney is whether, at the time the officer fired his weapon, the prosecution can prove beyond a reasonable doubt that the officer's actions were criminal and 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. (2018), 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 immanent 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 the 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.

Moreover, Colorado's law of self-defense, §18-1-704, C.R.S. (2018), provides in pertinent part:

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself... from what he reasonably believes to be the use or imminent use of unlawful physical force by that person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable ground to believe, and does believe, that he ... is in imminent danger of being killed or of receiving great bodily injury...

"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. (2018).

The forgoing are "justifications" under Colorado law and they are "affirmative defenses." This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was not justified. Accordingly, the question I must consider is: Is there enough evidence of criminal conduct that a unanimous jury could find beyond a reasonable doubt that Officer Bare acted without lawful justification?

Here, Officer Bare was engaged in the performance of his duties as a peace officer, when he responded to investigate a report of people fighting. He located two unknown males in the vicinity. When he parked his patrol vehicle on the side of the road, Officer Bare had no information from dispatch regarding the identity of who may have been involved in the fighting. He also had no information concerning prior police contacts with the Thakuri brothers.

Officer Bare turned on his emergency lights and exited his patrol vehicle in attempt to investigate if these two individuals were related to the dispatch call. Birendra Thakuri suddenly stood up and came at Officer Bare in an obvious state of anger. Officer Bare did not provoke the use of force and could not anticipate what was going to happen. Officer Bare was confused by Birendra Thakuri's actions. Birendra Thakuri was screaming in what appeared to be a foreign language, flailing his arms and was clearly angry about something as he approached. Given this unusual response, Officer Bare was unable to anticipate what Birendra Thakuri or his brother would do next.

Birendra Thakuri ran towards Officer Bare as he continued to scream and flail his arms. Officer Bare yelled, "Stop!" and Birendra Thakuri turned around and walked towards Surendra Thakuri, who was also walking toward Officer Bare. The two brothers had a very brief conversation in Nepalese as Birendra Thakuri continued to flail his arms. Officer Bare felt that these two males, who were quite a bit younger than him, were going to fight him. Surendra Thakuri's interview corroborates Officer Bare's belief, as he recalled Birendra Thakuri saying, "Come brother, help me, hit him, hit him."

Suddenly, Birendra Thakuri ran towards Officer Bare a second time. Officer Bare retreated again to gain distance to be able to react to Birendra Thakuri's actions. He still had his flashlight in his left hand. Officer Bare lost sight of Surendra Thakuri as he was focused on Birendra Thakuri charging at him. As Birendra Thakuri got within arm's reach, Officer Bare swung his flashlight at him and shoved him back with his right hand. Birendra Thakuri then turned and ran back towards his brother. They appeared to have another very brief conversation in Nepalese. Based on their actions, Officer Bare believed that the two males were planning to attack him. Birendra Thakuri then suddenly ran full speed toward Officer Bare a third time with his fist balled up and screaming. Surendra Thakuri walked behind his brother towards Officer Bare. Officer Bare retreated approximately twenty feet towards the rear of his patrol vehicle.

Tomasita Martinez's interview is perhaps the most compelling evidence in this investigation. Ms. Martinez, a mother driving with her two young children, observed Birendra Thakuri attacking a police officer on the side of the road. Believing that the police officer was in danger, she pulled over to provide assistance, leaving her young children in her vehicle even after hearing a gunshot.

Officer Bare reported that under these rapidly emerging and dangerous circumstances, he had no reasonable alternatives. He stated that it was difficult to defend himself against two males half his age and that he did not believe that he had time to react in any other way. He stated that he was in fear of either being seriously injured or that the males would be able to disarm him and shoot him. Based upon this belief, Officer Bare quickly pulled out his service weapon with his right hand and shot Birendra Thakuri in the chest.

A police officer's use of deadly force against an unarmed citizen must be closely reviewed and critically scrutinized. However, this review must also keep in mind the legal principles of self-defense. For example, Colorado law is well-established that a person is not required to retreat prior to using force in self-defense. In addition, the "reasonable belief" standard is the linchpin upon which self-defense applies. As such, the critical question is whether there is sufficient evidence to disprove, beyond a reasonable doubt, that Officer Bare reasonably believed that it was necessary to use deadly force to defend himself from what he reasonably believed to be the use or imminent use of deadly physical force.

The investigation into this matter demonstrated that Officer Bare previously attempted to use less lethal force when Birendra Thakuri first charged at him. In that situation, Officer Bare commanded Mr. Thakuri to stop, which in fact resulted in Mr. Thakuri walking back to his brother. The second time Mr. Thakuri advanced toward Officer Bare, Officer Bare struck Mr. Thakuri with the flashlight and shoved him back. According to Officer Bare, it appeared that the two males were planning their attack upon him just before the third time Birendra Thakuri charged at Officer Bare.

Birendra Thakuri chose to pursue a fight with Officer Bare despite the verbal and physical warnings. Under these circumstances, the evidence is insufficient to prove beyond a reasonable doubt that Officer Bare's belief that he was in danger of receiving serious bodily injury or death was not reasonable. Officer Bare reasonably believed that the two younger males would overtake him if he did not react to the perceived threat with the use of deadly force. In

addition, given the repeated advances and the number of assailants that appeared to threaten Officer Bare, the evidence is insufficient to prove that the degree of force was not reasonable.

Given that Birendra Thakuri chose to fight with Officer Bare, it is not probable that a jury of twelve members of the community would unanimously find beyond a reasonable doubt that Officer Bare's perception that deadly physical force was necessary to prevent the threat was not reasonable under the totality of circumstances. Under these facts, the Office of the District Attorney cannot prove that Officer Bare was not justified in protecting himself from what he perceived to be the imminent use of deadly physical force under § 18-1-704 or § 18-1-701, C.R.S. (2018).

Conclusion

The evidence in this investigation demonstrates that Birendra Thakuri's actions dictated Officer Bare's response. Therefore, applying the facts of this incident to the applicable Colorado law, the evidence does not support the filing of any criminal charges against Officer Bare for the fatal shooting of Birendra Thakuri on August 25, 2018.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that no criminal charges will be filed against Officer Bare. 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 dark ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young
District Attorney