



For Immediate Release:

Chris Hopper
Director of Communications
chopper@da17.state.co.us
da17media@da17.state.co.us
(303) 835-5639

October 24, 2024

Decision Letter:

Attached is the decision letter issued by District Attorney Brian Mason related to the use-of-force incident on February 8, 2024, involving Sergeant Rusty Waters from the Thornton Police Department.

PowerPoint Synopsis:
[UseofForceDecisionLetter2824.pdf](#)

###

District Attorney Mason assumed the oath of office on January 12, 2021. The 17th Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17th Judicial District.

*AdamsBroomfieldDA.org, Facebook: [@da17colorado](https://www.facebook.com/da17colorado) Twitter: [@da17colorado](https://twitter.com/da17colorado)
Instagram: [@da17colorado](https://www.instagram.com/da17colorado) YouTube: [ColoradoDA17](https://www.youtube.com/ColoradoDA17)*



October 24, 2024

Interim Chief Greg Reeves
City of Thornton Police Department
9551 Civic Center Dr.
Thornton, CO 80229

RE: February 8, 2024 arrest of Kevin Atkinson

Dear Interim Chief Reeves:

On February 8, 2024, an individual identified as Kevin Atkinson suffered injury while arrested by police officers employed by the City of Thornton. Upon your request, the City of Westminster Police Department conducted an independent investigation into the use of force by the involved Thornton Police officers to identify any potential criminal conduct. This letter summarizes the facts of the investigation and offers legal conclusions regarding the involved officer's conduct.

This review is limited to determining whether any criminal charges should be filed against the involved officer. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all the elements of a crime beyond a reasonable doubt. The independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. The 17th Judicial District Attorney's review does not evaluate compliance with any departmental policies, standards, or procedures. Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt against the involved officer. Therefore, no criminal charges will be filed against the law enforcement officer involved in this incident.

The circumstances surrounding this incident resulted in criminal charges against Kevin Atkinson. Until recently, that criminal case remained pending in Adams County District Court. Based on limitations set forth in the Colorado Rules of Professional Conduct restricting pretrial publicity, we delayed public disclosure of all the facts pertinent to this aspect of the investigation to preserve the integrity of the pending criminal case.

FACTUAL SUMMARY OF THE INCIDENT

In early 2024, officers with the Thornton Police Department planned a joint undercover prostitution operation with the Colorado Bureau of Investigation (CBI) and Homeland Security Investigations (HSI). The design of the operation involved the posting of fake online

advertisements offering sexual encounters with an underage minor in exchange for money. Agents with CBI and HSI interacted with potential suspects online and then transferred the communication to an undercover officer with the City of Thornton Police Department, who then made the final arrangements to coordinate a meeting. Once a suspect arrived at the designated location and completed the transaction, the arrest team moved in to take the suspect into custody.

On February 8, 2024, an unknown person, later identified as Kevin Atkinson, responded to the online advertisement. A detective with the Thornton Police Department, acting in an undercover capacity, took over the communications from CBI. These conversations resulted in Mr. Atkinson negotiating an arrangement to have sex with a fourteen-year-old girl in exchange for \$400. Following a series of phone calls, Mr. Atkinson was directed to meet at the Candlewood Suites Hotel, where he was greeted by the undercover officer in the parking lot.

While the initial meeting took place, the arrest team awaited in an unmarked car parked in the parking lot. The arrest team was composed of five officers from the Thornton Police Department, led by Sergeant Rusty Waters. Each of the officers wore department issued patrol vests designated with badges and police insignia. The undercover officer was equipped with a transmitter allowing the other officers to listen to the transaction as it took place. Once the predetermined bust signal was given, the arrest team deployed to arrest Mr. Atkinson, who stood near the hotel entrance.

Four officers exited the undercover vehicle and rushed toward Mr. Atkinson. As the officers approached him, they shouted, "Police! Get on the ground! You're under arrest!" Sergeant Waters ran directly into Mr. Atkinson, forcefully colliding with him, causing him to fall to the ground and hit his head. Mr. Atkinson was arrested and taken to a nearby hospital for medical treatment. He was later diagnosed with a spinal fracture and an abrasion to his head because of the hit.

The factual circumstances surrounding this incident resulted in criminal charges filed against Mr. Atkinson for soliciting child prostitution and attempt to commit sexual assault on a child. Upon the request of the Thornton Police Department, detectives with the Westminster Police Department conducted an independent investigation into the use of force by Sergeant Waters during the arrest.

INDEPENDENT INVESTIGATION

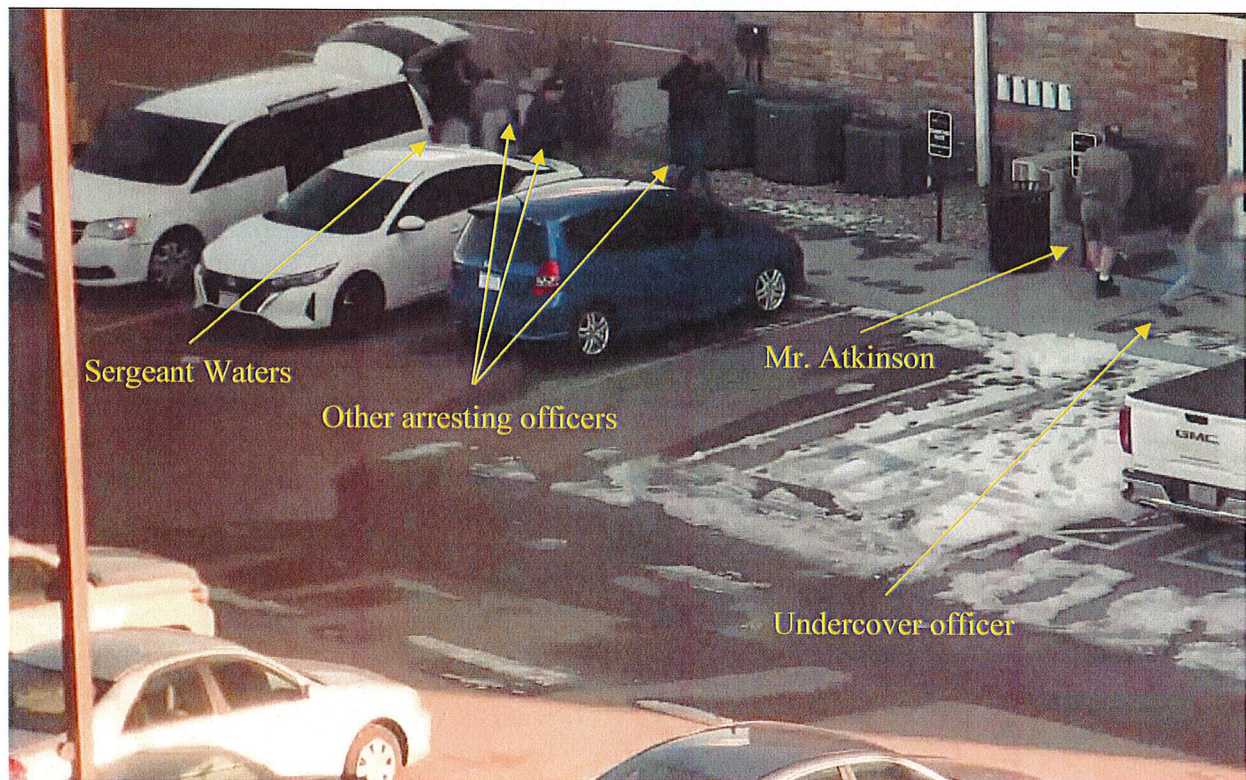
Westminster Detective Sergeants Steve Roll and Mike Harris led the investigation, which involved a review of all materials that were gathered as part of the underlying criminal investigation. They also conducted additional interviews of the officers who were part of the arrest team.

Pole Camera

The incident was recorded on a pole camera that documented video, but not audio. The camera is positioned to the top of a light structure north of the hotel, high above the parking lot

where the incident occurred. Its vantage point is southern facing, capturing video of the entire incident. Mr. Atkinson is observed parking his pickup truck and getting out to meet the undercover officer in the parking lot. The two talk for several minutes in the parking lot before walking toward the sidewalk leading to the door of the hotel.

As the undercover officer and Mr. Atkinson get to the door, the arrest team exited an unmarked minivan parked along the sidewalk three spaces to the east. Four officers got out and quickly approach Mr. Atkinson as he stood on the sidewalk. Two officers had their guns drawn. The undercover officer ran west down the sidewalk, away from Mr. Atkinson. Mr. Atkinson turned toward the officers with his hands in his front pockets. Sergeant Waters ran around the other officers, lowered his head and shoulders and violently ran into Mr. Atkinson, causing Mr. Atkinson to fall to the ground on his back. Two officers held Mr. Atkinson at gunpoint while Sergeant Waters and another officer placed Mr. Atkinson into custody. The entire incident, from the arrest team's exit of the vehicle to the handcuffing Mr. Atkinson, lasted approximately ten seconds.



Still image from pole camera of arresting officers pursuing Mr. Atkinson while the undercover officer begins to run away.



Still image from pole camera of Sergeant Waters running around the other arresting officers toward Mr. Atkinson.

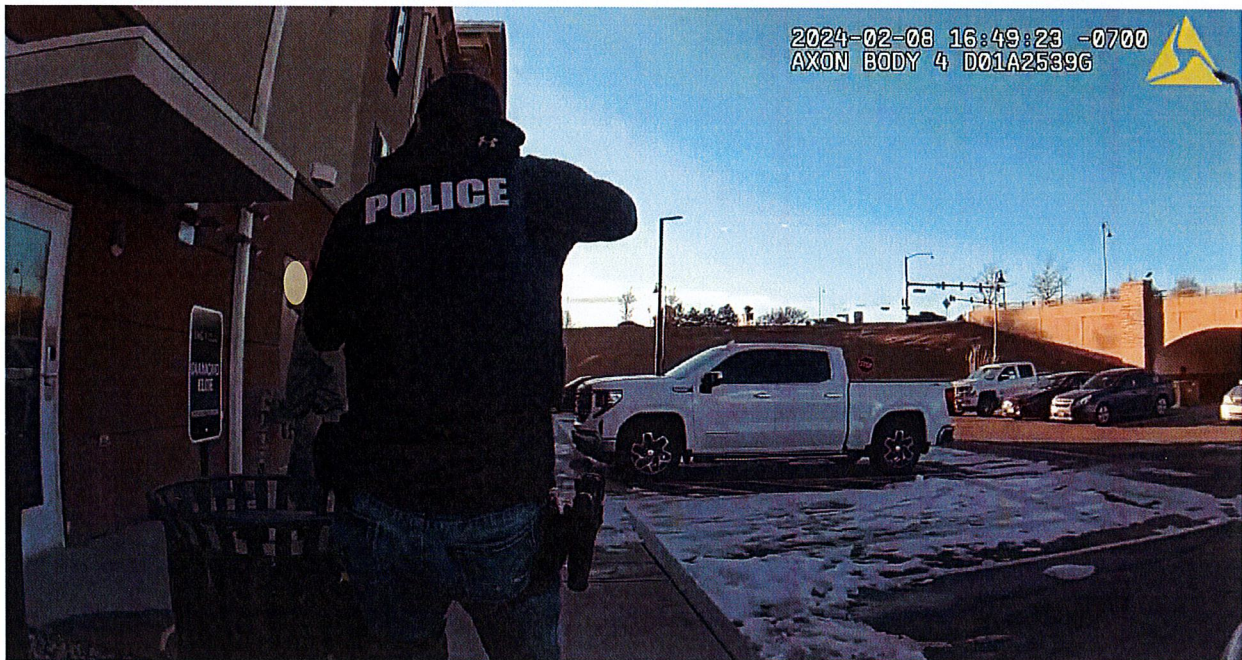


Still image from pole camera the moment Sergeant Waters hit Mr. Atkinson as other arresting officers stand nearby.

Body-Worn Cameras

Each of the officers was equipped with a body-worn camera (BWC) that captured audio and video of the incident. The BWCs begin while the officers are seated in the unmarked vehicle waiting for the predetermined arrest signal. The audio of the BWCs captures the arrest team discussing their arrest strategy. The audio also picks up the transmission of the conversation between the undercover officer and Mr. Atkinson as they discuss the planned sexual encounter. When the arrest signal was made, four of the officers simultaneously exited the vehicle.

While there are some obstructions to the BWCs, a review of the BWC evidence is consistent with the pole camera recording and reveals that the officers quickly approached Mr. Atkinson as he stood near the hotel door. Three of the officers appeared to approach on the sidewalk. Two officers had their weapons drawn at Mr. Atkinson, one with a rifle and the other with a handgun. An officer can be heard to yell, "Police! Get on the ground! You are under arrest!" Within one second, the command is repeated, "Get on the ground! You are under arrest!" While the commands were given, Mr. Atkinson remained standing with his hands in his pockets. Sergeant Waters ran around the officers on the sidewalk. One second later, Sergeant Waters ran directly into Mr. Atkinson, striking him by lowering his head near Mr. Atkinson's right shoulder and raising his arm around Mr. Atkinson's left shoulder, as if to tackle him. As Sergeant Waters hit Mr. Atkinson, he said, "Get on the fucking ground!" Mr. Atkinson fell to the ground on his back. Sergeant Atkinson and the other unarmed officer immediately took Mr. Atkinson into custody by placing his wrists behind his back and into handcuffs. Review of the BWCs confirm that only about ten seconds elapsed between the moment the arresting officers emerged from the vehicle and the time Mr. Atkinson was placed into handcuffs.



Still image from one of the arresting officers BWC showing Mr. Atkinson with his hands in his pockets as commands were given.



Still image from one of the arresting officers BWC showing the moment Sergeant Waters struck Mr. Atkinson.



Still image from Sergeant Waters's BWC one second before he struck Mr. Atkinson.

Interviews

Each of the officers on the arrest team authored written reports of the incident. In addition to reviewing the reports, the Westminster Sergeants conducted interviews of these officers. Sergeant Waters, through his legal counsel, chose not to give an interview but rather relied upon his written report of the incident. Despite several phone messages and a certified

letter, Mr. Atkinson did not respond to requests for an interview.

The five officers explained their roles in the operation—a team leader, a driver, two lethal cover officers, and an arrest officer. The driver did not get out of the vehicle until the arrest was made, leaving only four officers involved in the actual arrest of Mr. Atkinson: two officers who displayed firearms to provide cover for the two arresting officers. Sergeant Waters was the team leader and, in this incident, served as the second arresting officer.

Generally, the officers described the operation from the point of arrest to include one officer announcing “Police!” and giving Mr. Atkinson multiple repeated commands, “Get on the ground!” They further described that Mr. Atkinson was not complying with the officer’s commands and did not appear to change his body language in response to their presence. Rather, they described that he appeared to be “surprised,” “stunned,” and to be contemplating what to do. Each of the officers gave various descriptions of how Sergeant Waters put Mr. Atkinson to the ground—either as a “shoulder check,” “push,” or “forearm shiver.”

Notably, the officer that served as the first officer to approach Mr. Atkinson described his understanding of the arrest strategy based on his experience. He believed that he, as the first officer, would approach the suspect armed with his rifle drawn while making announcements and giving commands to the suspect to get on the ground. Once the suspect complied, he would give a signal to the arresting officer to move up and take physical control of the suspect while he maintained lethal cover. According to this officer, this strategy allowed for a tactical threat assessment to be made prior to making any contact with the suspect. During the arrest of Mr. Atkinson, the first officer gave commands to Mr. Atkinson, but Mr. Atkinson appeared “confused” and was “processing” what was happening. During this initial threat assessment, before the suspect indicated compliance with commands, Sergeant Waters rushed up and forced Mr. Atkinson to the ground

The officers were each asked to describe other arrests they made as part of this operation. They described that the other arrests did not involve physical force because the other suspects ordinarily demonstrated immediate compliance with the orders to get to the ground.

Sergeant Waters’s Report

Sergeant Waters submitted a lengthy written report documenting the operation and procedures, his role, and the factual detail leading up to and surrounding the arrest of Mr. Atkinson. Sergeant Waters reported his general expectations for the operation and the challenges that he encountered involving the suspect later identified as Mr. Atkinson. He also expressed his frustration with the command and decisions related to the operation. For example, he reported that the body wire transmitter and covert listening applications provided to the arrest team were not functional, so he had to retrieve his own equipment from another source. He claimed that the arrest team was not provided identifying information for the suspect and that they had to research it themselves. Sergeant Waters also took issue with the fact that his command would not allow the undercover officer to carry a firearm and that it would not authorize the use of a noise and flash distraction device.

As it related to the facts of this incident, Sergeant Waters relayed a series of “aggravatingly dangerous circumstances,” such as Mr. Atkinson’s criminal history related to prostitution-related crimes and weapons offenses, Mr. Atkinson’s attempts to deviate from the planned transaction based on his experience, and Mr. Atkinson’s desire to have the undercover officer accompany him inside the building. For these reasons, Sergeant Waters expressed concern that this arrest would not go as planned. As such, Sergeant Waters explained that he initiated the arrest because he believed that Mr. Atkinson posed an immediate threat to the undercover officer:

Based upon my training and experience, I believed it was immediately necessary to jolt the suspect and wrap him up while his hands were still in his pockets to prevent him from being able to retrieve a weapon from his pockets. I felt this was the best course of action because I knew the undercover officer had been positioned down the range of the lethal cover officers, leaving her vulnerable to crossfire. For this reason, I continued to run toward the suspect with the intention of forcefully impacting him and wrapping my arms around him to take control of him quickly. I did not have an intention to tackle him to the ground because we were on concrete, and that could potentially cause injury to the suspect and/or myself.

Sergeant Waters went on to explain how Mr. Atkinson’s sudden movements and the ground conditions caused him to lose balance and control, ultimately running into Mr. Atkinson and “knocking him to the ground.”

Sergeant Waters further described the behavior of other suspects in the operation who, within seconds, raised their hands in compliance when contacted by the arrest team. In comparison, Sergeant Waters explained, Mr. Atkinson did not comply or show any indication of cooperating with the multiple clear and loud commands given by the officer for a period of five seconds before the use of force.

LEGAL ANALYSIS

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against Sergeant Waters, 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. Criminal liability is established when the evidence is sufficient to prove all 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. Consequently, to file a criminal charge, the District Attorney’s Office must be able to 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.

Generally, the elements of the crime of assault require that the prosecution prove a person caused injury to another, and that the person acted with the requisite state of mind to cause the injury. There are varying degrees of assault, each dependent upon the person’s state of mind and the seriousness of the victim’s injury. Here, there is no dispute that Sergeant

Waters engaged in conduct that caused the victim to suffer fractured vertebrae, defined as serious bodily injury. However, the evaluation into whether a crime was committed does not end there. When a peace officer uses physical force against a person resulting in injury, the analysis must also include consideration of whether the force was justified as necessary and reasonable under the circumstances as applied to Colorado law. Consequently, the critical legal question presented by the facts of this case is Sergeant Waters's state of mind at the time and whether his use of physical force was justified under the circumstances.

The Colorado Legislature has made clear that peace officers, when possible, shall apply nonviolent means in carrying out their duties: "A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person." §18-1-707(1), C.R.S. (2023). The law applicable to an officer's use of physical force at the time of this incident specifically provides that when physical force is used, a peace officer shall:

- (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- (b) Use only a degree of force consistent with the minimization of injury to others; [and]
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable;

In addition, the United States Supreme Court has set forth a standard of "objective reasonableness" in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer's use of force must (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (2) be judged from the perspective of an objectively reasonable officer on the scene "in light of the facts and circumstances confronting them, without regard to [his] underlying intent or motivation." Further, the United States Supreme Court notes, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Here, Sergeant Waters was engaged in his role as Team Lead for an undercover arrest operation. According to his report, prior to the arrest of Mr. Atkinson, Sergeant Waters identified a series of "aggravatingly dangerous circumstances" surrounding the arrest of Mr. Atkinson. Those circumstances included consideration of Mr. Atkinson's criminal history that included prior arrests for prostitution and weapons-related offenses, Mr. Atkinson's communications with the undercover officer about his prior experiences and attempt to deviate from the plan. Based on consideration of these factors, Sergeant Waters believed that Mr. Atkinson posed an immediate danger to the undercover officer and others. Sergeant Waters further expressed that when the officers announced their presence and gave commands, Mr.

Atkinson appeared as if he were not going to comply. Sergeant Waters believed that, given the location of the other officers, he was the only officer able to immediately effect the arrest, and that it was “necessary to jolt the suspect and wrap him up while his hands were still in his pockets to prevent him from being able to retrieve a weapon.”

In his report, Sergeant Waters makes a statement suggesting that he accidentally caused Mr. Atkinson to fall: “I did not have an intention to tackle him to the ground because we were on concrete, and that could potentially cause injury to the suspect and/or myself.” Yet, a review of the BWC evidence suggests the opposite—not only did Sergeant Waters appear to deliberately and violently collide with Mr. Atkinson, but Sergeant Waters also says, “Get on the fucking ground!” simultaneous with the collision. For those reasons, it appears that Sergeant Waters engaged in conduct with a purpose: to employ the use of physical force to take Mr. Atkinson to the ground. It is not credible to suggest otherwise.

The question then arises whether Sergeant Waters’ acted with the intent to *cause injury* or the knowledge that his conduct would cause injury to the suspect, which the prosecution must prove in order to file charges. Here, while Sergeant Waters’s conduct appears extreme, I conclude that the prosecution cannot prove, beyond a reasonable doubt, that Sergeant Waters acted with the intent or knowledge to cause Mr. Atkinson injury. Sergeant Waters stated that he used a degree of physical force that he believed necessary to stun Mr. Atkinson and effect his immediate arrest based on a belief that Mr. Atkinson posed a threat to the officers. The evidence does not contradict this claim. Applying the statutory factors relevant to the use of physical force by a peace officer, Sergeant Waters did not use deadly force, and he ensured medical aid was rendered immediately. The statutory requirement that Officer Waters use only a degree of force consistent with the minimization of injury to others is less clear here, given Officer Waters’ violent collision with the suspect. The risks that the suspect presented as well as the safety of the other officers provides some justification for a quick takedown. While I find Officer Waters’ actions here to be unnecessarily excessive, the prosecution does not have a reasonable likelihood of success of proving that his actions do *not* meet the criterion in the law, outlined above, beyond a reasonable doubt.

Further, under the totality of circumstances, the prosecution cannot *disprove* that Sergeant Waters’s conduct was “objectively reasonable.” Clearly, every undercover operation involves some degree of risk assessment and concern for officer safety. In this case, Mr. Atkinson’s history of arrests and communication with the undercover officer raised that level of concern, at least as expressed by Sergeant Waters in his report. In addition, the other arresting officers corroborated Sergeant Waters’s report that Mr. Atkinson did not immediately comply with the loud commands to get on the ground. Consequently, while one can reasonably question Sergeant Waters’s response, these circumstances do not warrant the filing of a criminal charge for assault against Sergeant Waters.

Let me be clear: I do not find Sergeant Waters’ actions here to have been appropriate. On the contrary, I find Sergeant Waters’s conduct to be overly aggressive, uncontrolled and irresponsible. I must nevertheless follow the law on whether to file criminal charges, which includes a determination of whether charges are warranted and whether the prosecution could prove any charges filed. Here, I find that the evidence does not sustain a criminal charge

because the evidence (1) does not demonstrate that Sergeant Waters acted with the requisite state of mind to cause Mr. Atkinson injury, and (2) does not disprove that Sergeant Waters had a reasonable belief Mr. Atkinson posed a threat to the officers and that some degree of physical force was necessary to make an immediate arrest under the quickly evolving circumstances. As previously stated, it is not for the prosecution to evaluate and decide upon the proper tactics and restraint that should be employed in these types of encounters. Those matters are properly left to the internal affairs process conducted by the Thornton Police Department.

Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Sergeant Waters for causing injury to Kevin Atkinson on February 8, 2024.

Please feel free to contact me if you have any questions.

Sincerely,



Brian S. Mason
District Attorney