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District Attorney



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

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April 28, 2021

## **Decision Letter:**

*17<sup>th</sup> Judicial District Attorney Brian Mason's decision letter related to the fatal shooting of Harmony Wolfgram on January 26, 2021, by Adams County Sheriff's Deputy Cliff Brooks*

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*District Attorney Mason assumed the oath of office on January 12, 2021. The 17<sup>th</sup> Judicial District Attorney's Office prosecutes and seeks justice in criminal felony, misdemeanor, and traffic cases for the citizens of Adams and Broomfield counties.*

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April 28, 2021

Sheriff Rick Reigenborn  
Adams County Sheriff's Office  
4430 S. Adams County Parkway  
Brighton, CO 80601

Re: The officer-involved shooting of Harmony Wolfgram, occurring on January 26, 2021

Dear Sheriff Reigenborn:

The 17<sup>th</sup> Judicial District Critical Incident Response Team (CIRT) completed its investigation into the January 26, 2021 shooting death of Harmony Wolfgram. Thornton Police Detective Doug Parker and Broomfield Police Detective Vincent Parker led the investigation. The remaining investigators on the CIRT who worked on this case are associated with law enforcement agencies independent of the Adams County Sheriff's Office. On March 11, 2021, the factual findings of the investigation were presented to the 17<sup>th</sup> Judicial District Attorney's Office. This letter includes a summary of the facts and materials that the CIRT presented for review.

The 17<sup>th</sup> Judicial District Attorney's review is limited to determining whether any criminal charges should be filed against any of the involved officers for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all of the elements of a crime beyond a reasonable doubt. The prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, the 17<sup>th</sup> Judicial District Attorney's review does not evaluate compliance with any departmental policies, standards, or procedures.

The evidence and the applicable Colorado law do not support the filing of charges against the law enforcement officers in this case. Furthermore, there is no reasonable likelihood of success of proving any crime, beyond a reasonable doubt, with regard to the officers' actions in this case. Therefore, there will be no criminal charges filed against the involved officers.

### **SUMMARY OF THE INCIDENT**

At 12:18 a.m. on January 26, 2021, an Adams County Sheriff's Office Patrol Deputy identified a stolen vehicle from Greeley traveling westbound on Interstate 76, near 88th Avenue. The deputy attempted to initiate a traffic stop but the vehicle refused to yield. The vehicle continued eastbound on Interstate 270, then eastbound on Interstate 70 with three marked patrol vehicles in

close pursuit. After a high-speed pursuit for more than twenty-miles, the deputies deactivated their overhead lights and terminated the chase.

The stolen vehicle exited off Interstate 70 at the Watkins road exit, and into a residential neighborhood. Deputies located the vehicle parked on the private property of a residence near a towable RV camper. Upon searching the property, deputies noticed two possible suspects inside the camper. Six patrol officers surrounded the camper and commanded the suspects to come out. The camper door suddenly opened and two females appeared to come out. The first female stepped out with her hands up, stating, “She’s got a gun!” and “She’s going to kill me!” The second female appeared to hold onto the first female with one hand, while pressing an object against her lower back with the other hand. Based upon the circumstances, including the announcements of a gun, each of the six patrol officers believed that the second female was holding the first female hostage with a gun at her back. The officers yelled repeated commands to the second female to drop the gun.

The residential homeowner and his son observed the moments leading up to the incident from a distance of approximately twenty-five yards. One of them reported seeing the first female come out with her hands up and a second female stand directly behind. This person also described the second female “gripping” the first female, holding an object against the first female’s back. Another resident heard the first female tell officers that the other female had a gun. Both residents heard the officers yell, “Drop the gun or we will shoot!” multiple times. They watched as the second female ignored the commands and continued to step away, pulling the first female with her.

Fearing that this hostage victim had little chance of survival if the situation continued, Deputy Brooks fired a single shot aimed at the second female’s head, killing her. The female was later identified as Harmony Wolfgram.

## **INTERVIEWS OF WITNESSES**

Investigators from various law enforcement agencies including the Westminster Police Department, Thornton Police Department, and Broomfield Police Department conducted interviews of the necessary witnesses. The following are summaries of the interviews pertinent to this review.

### **Involved Officers**

**Deputy Cliff Brooks** Cliff Brooks is a patrol deputy with the Adams County Sheriff’s Office. Deputy Brooks has worked for the Sheriff’s Office for thirty-eight years. Thornton Police Detective Doug Parker and Broomfield Police Detective Vincent Lopez interviewed him on January 28, 2021. Deputy Brooks’ attorney was present during the interview.

On January 25, 2021, Deputy Brooks was working the swing shift of a uniformed patrol assignment. At around midnight, he heard another deputy report being in pursuit of a stolen vehicle westbound on Interstate 76. Deputy Brooks drove his marked patrol vehicle to the area of the chase and engaged in the pursuit. By the time Deputy Brooks caught up to the stolen

vehicle, it was traveling on eastbound Interstate 270 and then onto eastbound Interstate 70. The deputies were commanded to stop the pursuit. Deputy Brooks stopped his pursuit, but continued on eastbound Interstate 70 to the Watkins Road exit.

As Deputy Brooks approached the exit, he saw the stolen vehicle drive northbound on Watkins road. Deputy Brooks lost sight of the vehicle, but heard over the radio that it entered into a residential subdivision. Other deputies found the stolen vehicle abandoned on private property. Over the radio, Deputy Brooks heard that the deputies identified two suspects in a camping trailer nearby.

Deputy Brooks drove to the location of the camper. When he got out of his vehicle and approached the camper, he saw deputies focusing on the door of the camper repeatedly yelling, "She's got a gun!" and "Drop the gun and come out!" He recalled Deputy Gilbert Abdulla standing near the camper door. As he walked around the camper, Deputy Brooks heard two distinct female voices. One said, "She's got a gun" and the other said, "I've got a gun." Because deputies had their guns drawn, Deputy Brooks took a position at the corner of a building nearby to avoid being in the line of fire.

The camper door opened and two women appeared on the stairs. Deputy Brooks described them as a "first" or "younger" female who stood in front of the "second" or "older" female. According to Deputy Brooks, the second female held onto the first female's belt from behind. He also observed the second female's hand in the first female's back as the two walked down the stairs. Deputy Brooks again heard a female voice say, "She's got a gun." He also heard Deputy Gilbert Abdulla and the other deputies repeatedly giving commands such as, "Show me your hands!" "Show me your hands, or I'll shoot!" and "Drop the gun or I'll shoot!"

The second female walked the first female backwards, pulling her from behind and keeping her faced toward the deputies. Deputy Brooks believed that he saw a slide of a gun at the top of the second female's hand as she held onto the first female. From his vantage point, Deputy Brooks believed the second female was holding the first female hostage by holding a gun at the first female's lower back. The second female pulled the first female in a direction toward Deputy Brooks. Based on what he observed, Deputy Brooks thought he was faced with a hostage situation. During the interview, Deputy Brooks stated that, based on his training as a hostage negotiator, he could not allow the second female to take the hostage away because it increased the potential for harm to the hostage. He expressed his belief the first female's life was in danger if he failed to take action, stating, "I can't let a hostage taker go mobile with a hostage...you just don't do that because that's the death of the hostage."

Deputy Brooks further stated that he did not believe that he had an alternative to using deadly force on the second female. The second female ignored the commands to release the first female and show her hands. Accordingly, Deputy Brooks aimed his handgun at the second female's head and fired one shot. He believed he struck the second female in the head because she dropped to the ground and the first female ran away. Deputy Brooks kept his weapon aimed at the female on the ground, as he continued to perceive her as a threat.

**Deputy Gilbert Abdulla** Gilbert Abdulla is a patrol deputy for the Adams County Sheriff's Office, where he has worked since 2001. He works in a uniformed capacity with a K9 officer. Thornton Police Detective Doug Parker and Broomfield Police Detective Vincent Lopez interviewed him on January 28, 2021 in the presence of his attorney.

On January 26, 2021, Deputy Abdulla was traveling in his marked patrol vehicle when he heard another deputy report the pursuit of a stolen vehicle westbound on Interstate 76 at 88<sup>th</sup> Avenue. Deputy Abdulla caught up to the chase eastbound on Interstate 270. The pursuit continued to eastbound Interstate 70 until a Sergeant ordered it discontinued. Deputy Abdulla heard over the radio that other deputies observed the vehicle exit Interstate 70 and enter into a residential subdivision within the town of Watkins. Through the radio discussion, he learned that other deputies located the vehicle behind a residence.

Deputy Abdulla responded to the residence where the stolen vehicle was found. Given the nature of the eluding and lengthy pursuit of the stolen vehicle, Deputy Abdulla decided to use the dog to help search for the suspect. As they searched the wide-open areas, Deputy Abdulla made announcements that the people inside the stolen vehicle are under arrest and advised them to identify themselves or he would send the dog. Deputy Abdulla walked his dog near the vehicle to see if the suspects were hiding nearby. The dog expressed interest in the camper, but did not alert to it. Deputy Holguin checked the door to the camper and it was locked.

While continuing to search, Deputy Abdulla overheard that the suspect was seen hiding inside the camper. Deputy Abdulla went back to the camper and stood outside the door with the dog. With his gun drawn, Deputy Abdulla announced the police presence outside the camper. He further advised that anyone inside the camper was under arrest and that they should come out with their hands up or he would send in the police dog. He gave repeated announcements for what he thought was a sufficient period that would allow those inside to surrender to police.

Sergeant Meaney used the keys to unlock the door to the camper. As he did so, Deputy Abdulla heard a voice from inside say, "Okay, okay, I'm coming out. I'm coming out. Don't send the dog. I'm giving up." Deputy Abdulla then ordered the person to come out the door with their hands in the air. About the same time, a fellow deputy announced that he could see an additional person inside the camper. The door opened and Deputy Abdulla could see directly into the trailer through the doorway. One female came out of the door of the camper with her arms up, stopped on the steps and pleaded that he not release the dog. This was the "first" female. Another female stood immediately behind her. He referred to that person as the "second" female.

Deputy Abdulla said that the first female out the door had a panicked look on her face. He recalled her yelling, "Don't! She's gonna shoot me! She's got a gun! She's got a gun! She's gonna shoot me!" At that point, Deputy Abdulla perceived a hostage situation. Deputy Abdulla tried to convince the second female to let the hostage go by repeating, "Let her go! I'm going to shoot you!" The first female continued to yell, "Please don't! Please don't! She's going to kill me! She's going to kill me!"

Deputy Abdulla ordered the two females to walk out toward him. As the two stepped down from the camper, Deputy Abdulla believed the second female held something in her hand pressed against the back of the first female. Deputy Abdulla did not see a gun. However, based upon his observations and the observations of his fellow deputies, he was concerned that the second female was armed with a gun and would not surrender or release the hostage. Deputy Abdulla believed the second female presented a threat to the hostage as well as to the officers. He attempted to aim the sight of his gun on the second female, but from his vantage point, he was afraid he might inadvertently strike the hostage.

As the first female walked out, she had her back to Deputy Abdulla. Given the circumstances, he believed he could release his dog to bite the second female and help facilitate her apprehension without using deadly force. As Deputy Abdulla let the line out on the leash, both of the females turned around. The dog bit the first female's leg. Deputy Abdulla recalled that simultaneous to the dog bite, he heard a gunshot and saw a gun muzzle flash from the hitch area of the camper. He saw the second female drop. Deputy Abdulla pulled the dog and the first female away from the second female, not knowing whether the second female was still alive and armed. He immediately called for medical assistance.

### **Lay Witnesses**

**F.S.** F.S. resides at 34050 East 25<sup>th</sup> Avenue, Watkins, Colorado. F.S. described his residence as a five-acre property that included his private residence, an outbuilding he referred to as a "shop," a shipping container, a trailer, a couple of vehicles, and a camper trailer. During the early morning of January 26, 2021, F.S. was at home sleeping when the police awakened him. He saw the police searching his property and observed a Ford Escape parked near his son's Trailblazer that he did not recognize. Both front and rear driver's side doors were open. The police advised him that the vehicle was stolen and that they were looking for suspects.

F.S. walked through his house and checked on his family to find that they were all sleeping. He walked outside and asked the police if they checked his camper trailer, which he left unlocked. The police looked through the camper window and observed two people inside the camper. They tried to open the door, but it was locked.

From the doorway of his garage about twenty-five yards away, F.S. could hear the police banging on the camper door saying, "Police! Come out, hands up!" He also heard the police warn the suspects that if they did not come out, the police dog would bite them. F.S. estimated hearing more than a dozen of these repeated announcements.

F.S. gave the police the keys to the camper. As the police prepared to unlock the door, F.S. saw it open from the inside. F.S. saw two people standing in the camper doorway, one behind the other. Though he could not see the second person well, F.S. noticed that the second person was "gripping" the first person with their left hand and holding something in their right hand against the first person's back. He could not see the object.

F.S. heard the officers announce a gun. He recalled hearing one of the officers say something to the effect of, "Gun! Drop the gun! Drop the gun, or we will shoot!" F.S. saw the first person

put their hands up as the two individuals walked down the stairs of the camper. The two individuals stepped away from the camper. The officers shouted, "Drop it!" as F.S. heard a single gunshot. He saw a flash, but did not know which one of the officers fired.

F.S. saw the dog get a person trying to get away. The person was on the ground yelling at the police to get the dog off. He heard her exclaim that she was the victim because the other person was trying to kill her all night.

**J.S.** J.S. is a resident where the incident occurred. J.S.'s father, F.S., woke him up at the time the police were searching the property. He stood at the doorway to the garage with his father and watched as the police gave repeated announcements and warnings to the camper. After approximately ten to fifteen minutes, the camper door opened. He saw two individuals. The first person raised her hands and said the person behind her had a gun. The police announced "Gun!" and kept saying, "Put the gun down! Put your hands up!" several times. The two individuals came out of the camper together and sidestepped toward another vehicle. He heard the officers give additional commands, "Get your hands up! Drop the gun! You're going to get shot!" He heard one gunshot and saw the person behind the first person fall down. The person in front ran away and was chased by the dog. He did not see who fired the gun.

**E.S.** E.S. lives at the residence where the incident occurred. Ms. Schofield reported waking up on the morning of January 26, 2021 to the police in her back yard searching the area. She watched from her second floor bedroom window as officers knocked on the camper door and repeatedly ordered people to come out or the police dog would bite them. After an estimated fifteen minutes, the camper door opened and two people came out, one in front of the other. The front person put their hands up and moved away from the other. The police officers continued to yell, "Put your hands up!" and she heard one gunshot. She saw the second person go down. The other person ran over by the shop and screamed about the dog.

**M.S.** M.S. was identified as the "first female" to come out of the camper. Thornton Police Detective Brian Adair and Casey Browning interviewed M.S. on January 27, 2021 at the hospital, where she received treatment for the injuries to her hand.

M.S. advised that on January 25, 2021, she was riding around Denver in a vehicle driven by a woman she knew as "Harmony." M.S. denied that the vehicle was stolen. She claimed that she borrowed the vehicle from her boyfriend in Greeley with his permission.

M.S. recalled that while Harmony was driving, a police car followed behind them. Harmony sped up and the police car chased them for a while. At some point, the police car backed off and turned off its lights. Harmony drove into a neighborhood and parked near a house. M.S. did not recognize the area, but found a "trailer" and went inside. They locked the door behind them and laid down under a blanket.

M.S. recalled hearing the police announce themselves and knock on the door. She wanted to open the door, but Harmony told her to stay and be quiet. Harmony said she had an idea to escape through the floor of the trailer, but they could not find a way to do it. The police announced that they were going to release the dog and it would bite them. M.S. told Harmony

that she was going to surrender to the police. M.S. said that Harmony told her not to surrender, and that she was going to use M.S. as a hostage to escape. M.S. finally decided to open the door because she did not want to get bit by the dog.

According to M.S., when she opened the door, Ms. Wolfgram put something behind her back and said, "tell them that you have a gun behind your back." M.S. felt something pushed against her back. Ms. Wolfgram told her it was a gun and M.S. believed it was a gun. M.S. yelled, "Gun!" and the officers said that they were going to shoot her. M.S. recalled that as they walked out, Ms. Wolfgram held M.S. with one hand on her side, and the other hand pushing against her back, leading M.S. to believe there was a gun against her back. M.S. thought that Ms. Wolfgram was trying to lead her in the direction of the stolen vehicle. M.S. visually identified police officers based on the announcements, the clothing they wore, and the vehicles with flashing red and blue lights. She also recalled them giving commands to drop the gun. According to M.S., they "clearly looked like police officers" and she wanted to cooperate with them.

M.S. recounted the dog biting her and fighting with it. She did not hear a gunshot and did not recall what happened to Ms. Wolfgram. She admitted that she and Ms. Wolfgram had ingested controlled substances earlier in the day.

### **Witness Officers**

Members of the CIRT also interviewed several ACSO officers who were part of the perimeter surrounding the camper. These officers were identified as Sergeant Phil Meaney, Deputy George Worden, Deputy Adan Holguin, and Deputy Jeremy Selvidge.

Sergeant Meaney and Deputy Worden spoke with the homeowner who advised that he left his camper unlocked. Deputy Worden tried to open the door, but it was locked. He looked inside a window a few feet to the left of the door and saw a figure of a person hiding inside. Sergeant Meaney knocked on the door and advised the suspects to come out. Deputy Worden continued to watch inside the camper and announced to the other deputies that he could see another person moving inside.

Deputies Adan Holguin and Jeremy Selvidge arrived with Deputy Abdulla. Deputy Holguin stood nearby the window with Deputy Worden. Deputy Selvidge stood closer to the camper door. The deputies all had their firearms drawn and gave multiple commands to the suspects to come outside. The suspects did not comply with the officers' commands and could be heard talking inside the camper. Deputy Abdulla took over commands, demanding that the suspects exit or that the dog would be sent in. Deputy Worden watched through the window as the suspects moved toward the camper door. He saw the larger of the two suspects reach into the small of her back and pull out a black object that she appeared to drop. Deputy Worden shouted, "Gun!" believing that the black object was a firearm. He saw this same suspect reach into the sink area of the camper.

After several commands, the camper door opened from the inside and two individuals stood in the doorway. Two females stepped out, one in front of the other. As the two suspects came out of the camper, the female in front appeared smaller in stature than her counterpart, who stood

behind her. The female in front put her hands up and yelled, “She’s got a gun!” and “She’ll kill me!” several times. Each of the officers heard the first female claim that the other female had a gun and, given the relative positions of the two women, they believed the gun was held in the second female’s right hand at the first female’s lower back. The officers each explained that they perceived a hostage situation.

As the two women stepped out of the camper, the deputies described fearing for the safety of the smaller female. Each also explained why they did not fire their weapon. Sergeant Meaney and Deputy Holguin expressed concern for a crossfire situation because other deputies were in the line of fire. Deputy Worden maintained his sights on the inside of the camper watching for other possible suspects. Deputy Selvidge aimed his handgun at the second female, but did not shoot because he did not believe he could safely do so without striking the first female.

Deputy Selvidge lowered his gun and moved to get a different vantage point on the situation. Once he repositioned, Deputy Selvidge observed the dog bite the first female and separate her from the larger female. Deputy Selvidge explained that at that moment, he realized the larger female was not holding a gun, but a butane lighter in her hand. Deputy Selvidge saw Deputy Brooks fire the weapon before he, Deputy Selvidge, had the chance to announce his observation.

### **CRIME SCENE INVESTIGATION**

Criminalists from the Westminster Police Department, Thornton Police Department, and the Colorado Bureau of Investigation gathered evidence and processed the scene. The crime scene is a private residential acreage located at 34050 E. 25th Avenue, Watkins, Colorado. The residence is located south of the main roadway. The shooting incident took place southeast of the residence near the area of a pole barn.

Three vehicles and a towable RV camper were located within the area south of the pole barn. The trailer hitch of the camper was situated toward the southwest and the single door to the camper faced northeast toward the pole barn. Two vehicles were parked to the west of the camper. The northern most vehicle was a 2008 white Jeep Grand Cherokee SUV. The vehicle south of the Jeep was a 2004 blue Chevrolet Trailblazer SUV.

The stolen vehicle pursued by deputies the evening prior was located parked just southwest of the Trailblazer. The original color of the vehicle was white, but it appeared to be spray-painted black. The front of the vehicle faced southeast. Both the front and rear driver side doors were open. The vehicle was properly identified as a 2006 white Ford Escape SUV.



The decedent was lying in a prone position on the ground in the area between the rear of the Jeep and Trailblazer and the hitch of the camper trailer. The decedent's head was facing south and her feet to the north. The decedent's right shoulder area was approximately 2' east of the rear bumper of the Trailblazer and her left hip was approximately 3' 5" west of the hitch area of the camper. The bottom of the decedent's feet were approximately 16' south of the overhead pole barn door. A butane lighter and electronic card reader with an attached lanyard was located approximately 2' left, or to the east, of the decedent's body. A .45 caliber cartridge case labeled "Winchester 45 Auto" was found a few feet to the south of the camper. A damaged projectile was found in the area south of the Trailblazer.





Butane lighter

.45 caliber shell casing



The exterior of the camper revealed an apparent bullet defect near the left front corner above the hitch area. This defect was approximately 4' 4" up from the ground. There appeared to be tissue and hair adhering to the metal immediately adjacent to the defect. Approximately four to five small, elongated bloodstains were identified on the metal siding of the door side of the camper. The group of stains measured approximately 5' 4" to 5' 8" above the ground and appeared in an upward direction from the front area of the trailer near the hitch upward and toward the rear of the trailer. One of the stains tested presumptive for the presence of blood.

Criminalists searched the inside of the camper. A small black bag was found in the sink. The bag contained miscellaneous drug paraphernalia and a loaded syringe containing a brown liquid.

Deputy Brooks was dressed in the standard department-issued patrol uniform, which consists of black cargo pants and a long sleeve blue shirt. A badge is affixed above the left pocket and a name plate above the right pocket. Patches were on both his right and left shoulders stating "Sheriff Adams County Colorado." Deputy Brooks had a duty belt around his waist that held his firearm on his right hip. Deputy Brooks' firearm was a Colt Series 80, 1911 .45 caliber handgun. Attached to the front of the duty belt were four additional magazines loaded with a maximum eight rounds in each for a total of thirty-two "Winchester 45 Auto" bullets.

The criminalists collected and examined Deputy Brooks' duty weapon, magazine and ammunition. The firearm was identified as a Colt .45 caliber semi-automatic pistol, Model 1911. Deputy Brooks stated that he kept his weapon loaded with eight rounds in the magazine and one

round in the chamber, for a total of nine rounds. At the time of examination, the weapon was loaded with one bullet in the chamber and seven bullets in the magazine, for a total of eight rounds. The ammunition in the weapon was identified as “Winchester 45 Auto.”

At the time of the incident, the Adams County Sheriff’s Office did not equip its patrol deputies with body worn cameras. There was no other source of surveillance recordings of the incident.

### **Dispatch Notes**

The investigators collected and reviewed the recorded information from the Adams County Communications Center. A review of the voice call and radio traffic recordings, as well as the background event chronology/computer-aided dispatch (CAD) records from January 26, 2021 helps reveal the sequence of events as reported through the dispatch center. The CAD records shows the notes added to the call through the dispatch center. However, not all officer communication between officers goes through the dispatch center and is recorded in the CAD notes. Consequently, not all of the events observed are captured in the incident detail reports.

The initial contact of the vehicle occurred at 12:18 a.m. The police pursuit continued for a distance of more than twenty miles until approximately 12:36 a.m., when it was discontinued. At 12:42 a.m., the vehicle was located. The first dispatch report of the identification of suspects was at 1:00:55 a.m. At 1:05:54 a.m., the notes read that an officer reported “an armed hostage situation,” and at 1:06:03 a.m., the notes read, “shots fired.”

### **Background Investigation**

On January 23, 2021, the owner of a 2006 white Ford Escape reported a theft of his vehicle within the City of Greeley, Colorado. The owner advised that a female acquaintance of his named “M.” (the same first name as M.S.) drove off in his vehicle and never returned it.

### **MEDICAL EXAMINATION ANALYSIS**

On January 27, 2021, Dr. Stephen Cina conducted an autopsy of the female identified as Harmony Wolfgram, date of birth, February 6, 1979. The examination revealed one perforating gunshot wound to the head. The projectile appeared to enter the left side of the back of the head, pass through the brain, and exit just behind the right ear. The trajectory of this wound path was back to front, left to right, and downward. None of the wounds presented evidence indicative of close-range firing.

The decedent’s toxicology report revealed positive levels indicative of heroin, methamphetamine, and fentanyl usage. Dr. Cina determined the cause of death to be a gunshot wound to the head; the manner of death to be homicide.

M.S. suffered injuries to her hand, forearm, and leg as a result of dog bites. The most severe injury consisted of a fracture and lacerations to her right hand.

### **LEGAL ANALYSIS**

As was previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. 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. Consequently, in order 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.

In this case, there is no dispute that Deputy Cliff Brooks fired his weapon at Harmony Wolfgram, causing her death. There is also no dispute that M.S. suffered various injuries as a result of dog bites from the police dog released by Deputy Gilbert Abdulla. The question is whether these two involved officers' conduct, taking into account the actions of each individual officer as well as each mental state at the time of the incident, amounts to a criminal offense.

Under Colorado law, a law enforcement officer may use an amount of force that is necessary and reasonable to effect an arrest. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers' use of force at the time of this incident is found under §18-1-707, C.R.S. (2020). The pertinent language of the statute reads as follows:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. 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 serious bodily injury or death to the peace officer or another person.
- (2) 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....
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

In the 1989 case of *Graham v. Connor*, the United States Supreme Court set forth a “reasonableness standard” 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 noted, “[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.”

Here, the involved police officers were engaged in the course of their duties to search for, and possibly apprehend, any suspect associated with the crimes of vehicle theft and eluding, along with a trespass and potential burglary into the private residential property of another. Once the officers became aware that the suspects were inside the camper, they made an effort to safely contact the suspects for further investigation. The several officers in the vicinity were uniformed and, by all accounts, announced their presence and that of the police dog with adequate time to allow for a nonviolent resolution of the situation. However, the suspects did not comply with the commands to come out of the camper.

The moment the camper door opened, the posture of Ms. Wolfgram and M.S. presented the appearance of a hostage situation. M.S. immediately stated that Ms. Wolfgram had a gun and was trying to kill her. This declaration was heard by the involved officers as well as many other

witnesses. Additionally, Ms. Wolfgram used one hand to move M.S. and her other hand to hold an object placed against M.S.'s back. Many witnesses, including officers, lay witnesses, and M.S. herself, described these actions, all of which gave the appearance of a potentially life threatening situation, namely that involving a hostage whose will is overcome by the threat of a weapon.

Ultimately, the investigation revealed that the object in Ms. Wolfgram's hand was not, in fact, a gun. However, in the rapidly-evolving context of this perceived hostage situation, the involved officers did not have the benefit of this thorough and completed investigation. Up until the very moment the two women separated from one another, all of the officers in the vicinity believed the object in Ms. Wolfgram's hand was a handgun and that it was being used in a manner that posed a threat to M.S.

Deputy Brooks stated his perception that Ms. Wolfgram was armed with a gun and threatened the life and safety of M.S. He further expressed his belief that he had no alternative to using deadly force, as Ms. Wolfgram did not obey commands and did not release M.S. As such, he believed M.S.'s life was in danger if he failed to take action. Given this belief, he fired his weapon at Ms. Wolfgram.

Deputy Abdulla explained that he aimed his weapon at Ms. Wolfgram, but did not fire because he did not believe he could do so without striking M.S. As the situation evolved, he decided to release the police dog to bite Ms. Wolfgram and separate her from M.S. Accordingly, his assessment involved the use of alternative resources not available to Deputy Brooks. Recognizing the significance of the hostage situation, Deputy Abdulla explained his intent to have the dog bite Ms. Wolfgram to separate M.S. from the threat and help facilitate a safe arrest of Ms. Wolfgram. He stated his thought process: "I had a small window of opportunity to try to deescalate this without using deadly force."

Given the evidence, the prosecution cannot prove that Deputy Brooks' actions were not justified in this incident. He did not immediately resort to the use of force. Rather, he, along with the other deputies, gave repeated opportunities to Ms. Wolfgram and M.S. to resolve the situation without violence. Ms. Wolfgram ignored these repeated commands and represented a situation that appeared to officers that she was armed with a gun, thus posing an immediate threat to M.S. Deputy Brooks' observations, combined with his training and experience, led him to believe that Ms. Wolfgram was armed with a gun and that a lesser degree of force was inadequate to address the threat of death or injury to M.S. Therefore, despite the fact that the completed investigation revealed that Ms. Wolfgram was not, in fact, in possession of a gun, the prosecution cannot disprove that Deputy Brooks' belief was not objectively reasonable.

Likewise, Deputy Abdulla exercised restraint prior to the use of physical force. The commands and warnings as to the use of the police dog had no effect on Ms. Wolfgram, as she continued to give the appearance that she was armed with a gun held to the hostage's back. Deputy Abdulla attempted to use the police dog to avoid a deadly force situation. However, as the dog was released, Ms. Wolfgram turned and the dog bit M.S. The release of the dog undoubtedly constitutes a use of physical force, albeit a use of force that Deputy Abdulla did not intend to use against M.S. Nevertheless, under these circumstances, the prosecution cannot prove that Deputy

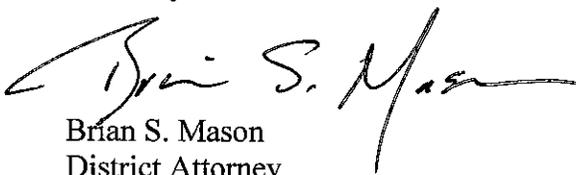
Abdulla's release of the dog was not justified in an effort to effect an arrest of Ms. Wolfgram or prevent the imminent threat of injury to M.S.

### CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2020). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Deputy Brooks for firing his weapon at Ms. Wolfgram and causing her death. Additionally, the evidence does not support the filing of any criminal charges against Deputy Abdulla for releasing his police dog and causing injury to M.S.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brian S. Mason". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian S. Mason  
District Attorney