



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

September 8, 2020

Sheriff Jeff Shrader
Jefferson County Sheriff's Office
200 Jefferson County Parkway
Golden CO 80401

Re: 1st JD DA Investigation of Jeffco SWAT Officer-Involved Shooting at 2301 Youngfield Street, Golden CO (CIRT 19-07) on November 7, 2019

Dear Sheriff Shrader,

On November 7, 2019, the 1st Judicial District Attorney's Office was notified by Jefferson County Sheriff's Office command staff that an individual had been injured during the Jefferson County Regional SWAT team's execution of a "No Knock" search warrant. The initial information received was that a person had been hit by shrapnel during a shotgun breach of the front door of a residence located at 2301 Youngfield Street in Golden. Shortly thereafter, information was received that the person had been shot by a SWAT member's shotgun and that the person was alive and had been transported to a hospital. Our office was then notified of your request that the CIRT team conduct the investigation of this shooting. In this jurisdiction, the Critical Incident Response Team (CIRT) investigates incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. However, due to the unavailability of sufficient uninvolved members of the CIRT team, it was determined that investigators from the District Attorney's Office would be the primary agency handling this investigation under the CIRT protocol to determine whether any criminal charges were warranted against any law enforcement officer.

Led by Senior Investigator David Lynn, a team of DA investigators conducted interviews of SWAT team members, canvassed the neighborhood of this shooting in search of witnesses or any video recordings, collected documents and physical evidence including video recordings and

photographs from other law enforcement agencies including ATF and JCSO, submitted evidence for analysis by CBI experts and put together a full and complete review of this incident.

On June 24, 2020, Senior DA Investigator David Lynn and DA Investigator Mark Spurgeon presented this investigation to the CIRT commanders, law enforcement command staff from JCSO, Golden PD, Lakewood PD, Wheat Ridge PD and members of my office.

A review of these reports and documentation has been completed and my findings, analysis, and conclusions of law with respect to the use of force in this incident are as follows:

Applicable Law

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes.

§ 18-3-202, C.R.S. Assault in the first degree

(1) A person commits the crime of assault in the first degree if:

(a) With intent to cause serious bodily injury to another person, he causes serious bodily injury to any person by means of a deadly weapon; or

(c) Under circumstances manifesting extreme indifference to the value of human life, he knowingly engages in conduct which creates a grave risk of death to another person, and thereby causes serious bodily injury to any person.

§ 18-3-203, C.R.S. Assault in the second degree

(1) A person commits the crime of assault in the second degree if:

(a) With intent to cause bodily injury to another person, he causes such injury to any person by means of a deadly weapon; or

(c) He recklessly causes serious bodily injury to another person by means of a deadly weapon.

§ 18-3-203, C.R.S. Assault in the third degree

(1) A person commits the crime of assault in the third degree if:

(a) The person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon.

§18-1-501, C.R.S. Definitions

(3) "Criminal negligence" A person acts with criminal negligence when, through a gross

deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

(4) “Culpable mental state” means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence, as these terms are defined in this section.

(5) “Intentionally” or “with intent”... A person acts “intentionally” or “with intent” when his conscious objective is to cause the specific result proscribed by the statute defining the offense...

(6) “Knowingly”... A person acts “knowingly” with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

(8) “Recklessly”. A person acts recklessly when he consciously disregards a substantial and unjustified risk that a result will occur.

§18-1-901, C.R.S. Definitions

(3)(c) “Bodily injury” means physical pain, illness or any impairment of physical or mental condition.

(3)(e) “Deadly weapon” means a firearm whether loaded or unloaded.

(3)(p) “Serious Bodily Injury” means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

“Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

Caselaw definition of “Extreme indifference to the value of human life”

“Extreme indifference to the value of human life” is not statutorily defined in Colorado. Colorado caselaw regarding C.R.S. 18-3-102(d) states that extreme indifference to the value of human life “necessarily comprehends killing acts that put at grave risk a number of individuals not targeted by the defendant, as well as acts putting at risk a single victim, without knowing or caring who that may be” see *Candelaria v. People*, 148 P.3d 178, 181-83 (Colo. 2006). *People v. Anderson* 442 P.3d 76, 79, 81 (Colo. 2019) held that extreme indifference murder involves “a killing act objectively demonstrating a willingness to take life indiscriminately,” meaning it is not limited to conduct endangering multiple people.

Summary of Opinion

Applying these statutes to the facts presented through this investigation, I find that no law enforcement officer is subject to criminal prosecution for his actions on November 7, 2019.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. On November 7th, 2019, law enforcement had an “Immediate Entry” search warrant, otherwise known as a “No Knock” search warrant for Dustin Ullerich’s residence in Golden, Colorado. The evidence in this case establishes that JCSO Deputy/SWAT Assistant Team Leader Anthony Brown was assigned to utilize a breaching shotgun to force open the front door of this residence. Deputy Brown angled his shotgun at the wood on the side of the door and fired to disable the locking mechanism. He was not attempting to fire his weapon at any person. He was following the SWAT plan to “breach, bang and hold” without entering the residence. Unbeknownst to Deputy Brown, Dustin Ullerich had walked up to the door and was opening the door at the same time that the Deputy fired the shotgun. Deputy Brown’s shot hit Dustin Ullerich in the stomach. No other law enforcement officer on scene caused any injury to any individual.

Deputy Brown did not possess the necessary culpable mental state required for any type of criminal assault charge. There is no reasonable probability of proving any criminal charges regarding the shooting of Dustin Ullerich and criminal charges will not be filed against any law enforcement officer.

Factual Summary

Law Enforcement Interviews

The following is a synopsis of the information collected during the investigation. This information came from interviews done by 1st JD DA and various law enforcement investigators of numerous witnesses and from the investigation done of the physical evidence collected, photographs taken by crime scene investigators and visual recordings of the incident.

JCSO Deputy Anthony Brown was interviewed the day after the incident. He had worked for the Jefferson County Sheriff’s Office for the past five years and, prior to that, was in the U.S. military for ten years. While in the military, he was trained in mechanical, ballistic and explosives breaching which are various methods utilized in opening doors with force. He had been a member of the Jefferson County Regional SWAT team for three years and had been a breacher on the team for 2 years. He attended a three day breacher training course in 2018 and trains for ten hours every two weeks with the SWAT team. They also have a 40-hour training annually. His training involved the utilization of a breaching training door and his most recent breaching training was two weeks prior to this incident. Deputy Brown had also recently been promoted to an assistant Team Leader for the Jefferson County Regional SWAT team.

Two weeks prior to this event, he was advised of this operation by SWAT commanders. He was told that they would be executing a search and arrest warrant for a suspect who occupied a residence at 2301 Youngfield Street in Golden, Colorado. He was told that they would have a "no knock" warrant and that the suspect was normally armed with a handgun that he kept in an ankle holster. He was also told that the suspect was a member of the Hell's Angels motorcycle gang. Deputy Brown described that the plan for the execution of the search warrant was a "breach, bang and hold" which meant that once SWAT was able to breach/open the front door, they would drop a flashbang to gain compliance from the individuals in the home and then the SWAT members would hold/remain at the door and make announcements for the people inside to come out with their hands up. He indicated that they were not going to make an entry into the home due to the safety concerns. Due to this being a high-risk warrant with the possibility of booby traps and weapons in the home, they were concerned that entering the residence could result in hostage taking and barricades. Therefore, using a tactic which did not involve actual entry was chosen.

Deputy Brown was assigned to the breaching/entry team with Deputy Bybee. The plan was for the team to execute the warrants at 4am. Initially, the plan was for the door to be explosively breached but due to various lights on in the residence and movements by people inside including apparent motion lights outside the residence, SWAT Team Leader Mark Donohue changed the plan to a mechanical breach. Deputy Brown agreed with this change to a mechanical breach because of the greater safety issues that were created by an explosive breach.

During the operation on November 7th, Deputy Brown was wearing a fully marked Jefferson County Sheriff's Office SWAT uniform, described as green in color, with Sheriff clearly printed on the front and rear of his tactical vest, with the Sheriff's Office SWAT logo on shoulder of his sleeves. He was wearing a ballistic helmet with clear protective glasses and Peltor hearing protection which he described as a noise reduction headset that protected his ears from gunshot noise but also allowed him to hear ambient noise and which allowed conversation with the other operators on his team. The headset was tied into his radio system which was attached to his vest and he could hear radio communication through the headset. He was wearing a balaclava and was carrying his standard weapons including his duty pistol in a drop leg holster on his left side. Deputy Brown described that he is left handed. He had his rifle slung over his left shoulder, had his breaching shotgun attached to a sling and his vest on his right side. He was carrying a tool used to pry doors open. He described his breaching shotgun as a 12 gauge, short barrel 870, pistol grip shotgun and he had been using this gun for the previous two years. He had 4 rounds of ammunition which were Royal Arms 12 gauge Taser #2. Deputy Brown described that the ammunition used in the breaching shotgun was not used for lethal means but that he knew it could be lethal if the operator was not cautious in using it. His training was to direct the weapon at an angle towards the ground when firing it into the door so that if there was penetration past the door, the round would be directed towards the ground and not into a room where people could be located.

Deputy Brown described that Deputy Bybee was going to use a ram to open the interior front door and that his job was to first open the screen door. Deputy Hamilton led the way as he had the shield. Their group moved into position at the front of the house where Deputy Brown found the screen door to be unlocked and he opened the door which swung to the left where Team

Leader Donohue held it open. Team Leader gave the order to initiate and Deputy Bybee began striking the interior door with the ram and other team members began to break and clear the front windows to the left of the front door. Deputy Brown indicated that Deputy Bybee struck the front door at least three times but it did not open. Deputy Brown noticed a steel plate around the door locks and he stated to the others that it was a failed breach. He then pulled Deputy Bybee off the door. Deputy Brown could not recall if he aired that the breach had failed over the radio or if just yelled that to the group.

Deputy Brown described that he transitioned to his ballistic shotgun. He unsnapped it from his vest, loaded a round into the chamber and took the safety off. He indicated that the front door was higher off the ground than a standard door which caused the front door locking area to be closer to chest-high rather than abdomen-high. He described placing the end of the shotgun barrel directly onto the door at the locking mechanism with the gun at a 45-degree angle pointed downward where the lock meets the doorframe. He was intending to "sweep" the door where the lock meets the door frame to defeat the locking mechanism. He applied pressure to the door with the front of the barrel and pulled the trigger on his shotgun. The door opened and he saw a man "spin away" and fall to the ground. Deputy Brown described that he still believed he had breached the door successfully which caused it to open and he stepped aside for the team to enter. He then heard the man say something to the effect of "You shot me". Deputy Brown saw a female in the living room and he heard Sgt. Donohue say, "He is shot". He then heard Sgt. Donohue order a limited penetration into the residence to render aid to the injured male. Deputy Brown recognized the man as being the suspect who was wanted on the warrant. He described him as wearing a red shirt with boxer briefs.

Medics came into the house and began treating the male. Deputy Brown indicated after the shot, he snapped his shotgun to his vest, pushed his rifle toward the back of his vest and helped the medics by assisting with carrying the man out on a litter. He then went to the bearcat where he was told that this was not a CIRT investigation. **Deputy Brown went back to the front door to check for signs of the breach on the door.**

Deputy Brown was brought in for a second interview on February 20th after the DA's Office received a copy of a videotape which was recovered by ATF through a search of the residence's recording devices. This tape shows the SWAT team moving up to the front of the house, the attempts to ram in the door and the shooting by Deputy Brown. It does not show Dustin Ullerich, or any part of the interior of the home nor is there any audio recording. Deputy Brown indicated that watching the video did not change his recollection of the incident. However, Deputy Brown gave further details regarding his attempt to take the safety off with his left hand which was unsuccessful. He had not remembered that he had to use his right hand to take the safety off. He stated that this was the first time he had not been able to release the safety on his shotgun during a breach with his left hand and he attributed that issue to how much higher the door sat at this residence. While he was wearing gloves, those were his normal training gloves that he wears for all missions and they did not interfere with his disabling the safety. He stated again that he had the gun in a downward 45-degree angle and he was trying to shoot the wood behind the lock in order to open up the locking mechanism. Deputy Brown was shown photos of the door and he pointed out where the scrape was from shooting his gun into the door. Deputy Brown indicated that after the shooting, he could see himself talking with Sgt. Donohue

on the video and that he motioned with his shotgun and told Sgt. Donohue that he thought he hit the suspect with the breaching round. He said that he felt badly after this incident.

Deputy Brown was asked whether he heard any commands being given during this operation. He stated that the only command he heard Sgt. Donohue give was the command to initiate. He stated that during a no-knock search warrant, they utilize "breach, bang and hold", which was the case in this instance. He distinguished that from a "knock and announce warrant" where the team must make announcements to the occupants and allow a sufficient and reasonable amount of time for the persons inside to react. He stated that the plan in this situation never changed in terms of handling this as a no-knock warrant. Deputy Brown indicated that when the mechanical breach failed and he then called out "Failed breach", that the responsibility for communicating that to the units on scene and the command post is Team Leader Donohue.

Deputy Brown indicated that once the door was open due to a successful breach, commands would have been given such as "Police. Put your hands up." He indicated there was some exigency in getting the door opened due to the concerns regarding the people in the home being part of the Hells Angels motorcycle gang and that they were likely armed with multiple weapons. He knew that the efforts to breach the door put Deputy Bybee and himself at risk since they could be shot through the door.

Golden PD Officer Ryan Beale was interviewed on November 11th and he indicated that he has been with GPD for 12 years and has been on the SWAT team for 10 years. He described his training with the SWAT team and he indicated he was present for the briefings on this matter, for the training with the breachers and for the walk-throughs. His assignment for this incident was to be a part of the left-side window breach team where he provided lethal coverage for Deputy Turco who was assigned to breach the window.

He recalled that this was going to involve a "no knock" arrest and search warrant and that the person wanted was a Hell's Angel gang member. The underlying incident for the charges involved a kidnapping and possible attempted murder. He was shown a photograph of the suspect and was told that multiple warrants were planning to be served simultaneously to the one that his team would be executing at the Youngfield address. He recalled that the original plan was for an explosive breach of the front door but that changed to a mechanical breach as that would be quicker and safer based upon new information about the scene.

Officer Beale was wearing all his SWAT gear with his night vision on and he had his AR-15 type of rifle deployed. When they approached the residence, he was near the front left corner of the residence, on the left side of the windows next to the front door. He described that the rest of the team was at the front door or at the front right corner of the residence. He heard Team Leader Donohue give the order to initiate over the radio. Deputy Turco then broke out the windows but there were large curtains in the way which prevented the officers from being able to see into the residence. Deputy Turco described being uncomfortable about how long it was taking to get a visual into the residence as it seemed significantly longer than normal. As he heard Sgt. Donohue give the order to initiate, he heard glass breaking, the ram hitting the front door and he heard operators on the right (northeast) corner of the house deploying 40mm baton rounds into the north side windows of the home. He also heard other team members deploying

flashbangs on the south side of the residence. Meanwhile the bearcat was pulling up and several people were yelling. When he could see inside the residence, he saw a female screaming and a man on the floor inside the door. He heard commands being given and saw the man roll over revealing blood and tissue in his abdomen area. He heard the male say he had been hit by something. The female was then brought out of the residence. He entered the residence and learned another male was inside. He provided cover with his weapon as the injured were moved out. He assisted with clearing the rooms on the north side of the residence and he saw a DVR recorder that appeared to be recording. He turned the power off on the 2 power strips that were supplying power to the DVR. He also observed several firearms in this bedroom to include pistols and shotguns. He indicated he turned the power off on the DVR due to safety concerns that the video could possibly be being viewed by others who were off site. He indicated that he saw external cameras outside the residence and that during their walkthroughs, they practiced disabling the cameras. He believed that Officer Turco had disabled the camera on the south side of the residence.

Officer Beale was not aware that the ram had failed to breach the door nor was he aware that a ballistic shotgun breach had occurred. He did not hear the shotgun breach. He did not know where Deputy Brown was entry was accomplished. After the residence was cleared, he was asked to stay with Deputy Brown. He described that Deputy Brown was "shook up" but calm. He indicated that Deputy Brown spoke about trying to breach the door as a male opened the door at the same time. Deputy Brown said that it was a "freak mistake" and he felt bad about injuring the male. He remained with Deputy Brown until Lieutenant Swavely spoke with them. Lieutenant Swavely said this was not going to be investigated as a CIRT investigation. Deputy Brown then asked for permission to view the front door. Lieutenant Swavely agreed and Deputy Brown and Officer Beale went to view the door. Officer Beale described that Deputy Brown pointed out a scrape near the lock and Deputy Brown stated that this was where he put the barrel of the shotgun when he breached the door.

JCSO Deputy Nicholas Turco was interviewed regarding this incident. His description of the preparation for this incident and the approach to the house was largely the same as Officer Beale's. He indicated that Officer Beale was to cover the interior of the home while Deputy Turco broke out the southeast window and raked out any window covering. When they arrived at the house, Deputy Turco described that his back was to the breaching team so he could not see what they were doing. He heard the command to initiate and he heard several loud thuds or bangs. He believed those sounds were made by Deputy Bybee ramming the front door. He could not state how many thuds he heard because he was busy communicating with Officer Beale about how to cover inside the house. Deputy Turco used his breaching tool to break the windows and rake the frame. At some point in time, he heard a large explosion which he knew to be a flashbang deploying outside. He also heard a female screaming and he was not sure if that occurred before or after the flashbang. Deputy Turco heard orders being shouted by Sgt. Donohue during the time of the flashbang. These orders were something to the effect of identifying them as law enforcement, there was a search warrant and to come to the door. At the time of those orders, he did not believe that any law enforcement officers had entered the home. After the window was ported, he saw what he believed to be a surveillance camera on the southeast corner of the house which he destroyed. He saw a female come out of the front door and he joined the arrest team to help handcuff her. Prior to that time, he had not seen what was

going on at the front door. He was asked how long it was between the initiate command and him joining the arrest team at the front door and he indicated it was a matter of seconds.

JCSO Deputy Jordan Bybee was interviewed by DA investigators on November 8th. He described the briefings prior to this incident and indicated he knew that the wanted party was a known Hells Angels associate and that he was suspected of serious felonies to include attempted murder and kidnapping. He indicated that he was informed that the suspect was known to carry a handgun in an ankle holster and that booby traps were possibly in place at the residence. He also had been told that video surveillance, motion lights and an unknown number of weapons were probably at the residence. Deputy Bybee's job was to breach the front door with a ram which he indicated was a heavy device with two handles. After the door was forced open by defeating the locking system with a ram, the plan was that the SWAT team would perform a "containment and call out". This involves the team waiting at the open front door and announcing themselves by saying "Search warrant, under arrest, come to the front door."

Deputy Bybee described what occurred during the actual operation. He indicated that Deputy Brown opened the unlocked front storm door and held it open. Sgt. Donohue then gave the command "Initiate" which meant for them to start executing the search warrant. Deputy Bybee then stepped up to the front door and hit it with the ram four times. The door seemed to be reinforced as he was not able to defeat the lock by hitting the door with the ram. Deputy Brown then called out "Failed breach" which caused Deputy Bybee to move from the front door. Deputy Brown then stepped up to use a ballistic shotgun to breach the door. Deputy Bybee saw Deputy Brown set the shotgun on the door to prepare for the breach. Deputy Bybee heard one shot from the breaching shotgun and, at the same time, the front door opened. Deputy Bybee did not know if the door opened because the shotgun defeated the locking mechanism or if the front door was opened by someone on the inside. Once the door was open, he saw an adult male inside the door fall to the ground and heard that man yell something to the effect of "You hit me". Officers began yelling commands for the man to show his hands as his back was to the front door and they could not see his hands. He said the man rolled over and he saw what appeared to be a gunshot wound to the man's stomach. He noted that the man's intestines were protruding to the outside of the man's stomach through a small golf ball sized hole. He said the man had his hands up. He then saw an adult female screaming in the living room and SWAT operators gave commands for her to come to the front door. After she was cuffed, Deputy Bybee patted her down for weapons, found none and handed her off to another officer. Deputy Bybee then assisted other officers with a "limited penetration" inside the home. This involved yelling commands for any other persons to come to the front door. Sgt. Donohue aired over the radio for a paramedic to come to the house to treat someone for a gunshot wound to the stomach. Deputy Bybee and other operators "held" the area of the front door by performing a protective circle around those who were assisting in providing care to the injured man. He indicated the injured man said that another man was in the home who had a motorcycle injury. Deputy Bybee began to yell commands for that man to come out which did occur. He then cuffed that man, patted him down for weapons and had the man sit in a reclining chair in the living room, due to his injuries. The residence was then searched for other people or potential danger. Deputy Bybee indicated that he did not hear the man on the ground make any other statements. Deputy Bybee indicated that the front door was reinforced by a steel casing over the bolt and door handle and there was a reinforced striker plate on the inside of the door frame.

On February 20, 2020, 1st JD DA investigators conducted an additional interview with Deputy Bybee. During this interview, Deputy Bybee was shown the video seized from the residence and he was asked additional questions. During the time that Deputy Brown was calling out "Failed breach", which he said at least one time, Deputy Bybee heard other sounds including windows breaking. He recalled that once Deputy Brown called the failed breach, he heard Sgt. Donohue calling out "Jefferson County Sheriff's Office, search warrant". He heard him say this more than one time but he could not recall how many times Sgt. Donohue made that statement. He said that Sgt. Donohue was still to the left of the front door when he made that announcement. He was asked about whether there was a plan for announcements to be made during this operation and he indicated that because it was a "no knock" warrant, that no one was planning on giving any commands or making any announcements.

Golden PD Sergeant Mark Donohue was interviewed the day after the incident and he indicated that he was a team leader on the Jefferson County Regional SWAT Team and he had been a member of SWAT for almost five years. He indicated that approximately one month prior to this incident he had been given very limited information by ATF that they wanted assistance from the Jeffco Regional SWAT team to serve a warrant. Sgt. Donohue indicated that he slowly was given more information as time progressed. He was told that the name of the person who lived at the residence in question was Dustin James Ullerich. He was told that Ullerich had no criminal history but that very serious charges would be pending for Ullerich's arrest. He was told that the arrest warrant would be active right before the search warrant was served. Sgt. Donohue described that he began planning for the execution of this search warrant. He had been told that it would be a no-knock search warrant and that there would be multiple search warrants being served at the same time across the metro area so it was going to be a large operation. He met with commanders and team leaders from other teams that would be serving those additional search warrants. At that meeting, he became aware of a level of danger involving this situation that caused him concern for the safety of his operators. As a result of that concern, the initial plan was to employ an explosive breach at the front door of the house. The goal was to secure anyone inside the home safely so an explosive breach which disorients and distracts the residents would serve that purpose. Simultaneously, SWAT members would be raking a large window to the left of the front door in order to allow them to see inside the house. Another team would be armed with a 40 mm. less lethal launcher that would shoot foam batons through a separate window.

On Wednesday, November 6th, the SWAT team trained in preparation for this warrant execution along with the explosive breachers from Douglas County. Sgt. Donohue attended a meeting at the ATF headquarters and he received additional information that Ullerich was believed to be armed with an ankle holster and that there were firearms at the residence. He indicated that this information reinforced that the warrant involved high risks for his team. Sgt. Donohue also attended a meeting at Lakewood Police Department regarding this search warrant and another search warrant that would be executed in Jefferson County. He indicated that other law enforcement agencies outside Jefferson County provided manpower to assist in this operation because of the amount of resources required to accomplish the execution of these two search warrants.

During the early morning hours of November 7th, he became aware that surveillance of the residence showed that people were likely awake in the home due to lights and televisions going on and off. The surveillance team also indicated that they believed there were surveillance cameras outside the home and motion detector lights. This caused Sgt. Donohue concern for the plan to use an explosive breach on the front door. He described that if someone in the residence was awake and came to the door to find out why their motion detector lights were on, there was a potential that the charge detonating at the front door could severely injure or kill that person on the other side of the door. He was also concerned that his team might be detected as they approached the residence and they could be shot at from within the residence. He determined that the safest route for the sake of everyone involved was to not use an explosive breach. He considered attempting a breach through a separate door in the back of the residence but it was too far from the main living room and it would be difficult to control movement of people in the home from that back door. He indicated that the SWAT team wanted to prevent the individuals from fortifying themselves or secreting deeper into the home. He also considered using Arapahoe County's bearcat to force the front door open but it was not physically possible to maneuver the bearcat into the correct angle due to an iron fence blocking the path. He also considered calling into the home to order the individuals out but due to the complexity and size of the property, they would not have been able to adequately contain the area. Sgt. Donohue indicated that he chose an option involving a mechanical breach of the front door. His team had practiced this option the day before in case the explosive breach failed. He indicated that this was a tactic that his SWAT team utilized the most frequently when serving a warrant. He stated that most of the warrants they serve are "knock and announce warrants" which require them to give the homeowner a reasonable time to come to the door after law enforcement announces their presence. If the homeowner does not come to the door, they use a mechanical breach. He informed his team of this change of plans roughly an hour before the service of the warrant. He spoke with his senior operators about it first and they indicated they were relieved and more comfortable with the mechanical breach. This would allow them to gain entry into the house more quickly than if they had used an explosive breach. He indicated that this new plan was announced and put in place prior to leaving the Lakewood Police Department.

Per ATF, the warrants were to be simultaneously executed at 4am so the team staged a few blocks away from the home. As 4am grew near, the SWAT team approached the home in full SWAT gear wearing vests labelled with "Sheriff" on the front and back. They were wearing safety glasses to protect their eyes from breaking glass and also wore headsets so they could communicate with their team members. Sgt. Donohue was armed with his duty rifle. As they approached the residence, Sgt. Donohue remembered light coming from somewhere but he could not recall where. He did not see movement or lights on in the house as they approached. Sgt. Donohue described where each member was in relationship to himself. Of significance to this review, he described that Deputy Anthony Brown and Officer Bybee were the two-man breaching team. He stated that Deputy Brown was going to open the screen door and that he had a halogen tool to utilize in case he had to force out any outward opening doors. Once the screen door was open, Officer Bybee would utilize a ram to force the inside door open. He described that another law enforcement team made up of Officers Moody and Clark was on the right side of the front door and they were to break out those windows.

In describing the event, Sgt. Donohue stated that Deputy Brown was able to open the screen door

to 90 degrees. Sgt. Donohue was positioned to the left side of the screen door with windows to his left side. He saw Officer Bibey ram the door at least 3 times. Sgt. Donohue indicated he could hear glass breaking to his left and he turned and saw that the curtains were still in place and that his SWAT members could not yet see into the house. He stated that he feared:

...if we didn't announce our presence, um, because of the, uh, severity of these warrants, um, his likelihood to be armed, uh, the amount of security around his house, he's obviously someone who takes this house very seriously. I was afraid he would think that it's people tryin' to break into his house. Um, I also am aware of, um, rivalries between other motorcycle gangs. Um, I didn't want him to think that we were coming for him, um, ya know, as another motorcycle gang or somethin'. So, um, generally I won't announce our presence until we are through the door and I can control that area. My fear was that we were making so much noise and starting to break out all of their windows, if we did not identify ourselves as police, uh, I didn't wanna start getting shot at through the walls or through the doors or anything like that. Um, at that time I stepped up toward the window here. Um, I, uh, I could no longer see the door here. Um, Brown and Bivey were, uh had positioned themselves in a way that I can no longer see what was happening at the front door so I turned to this window and stated giving, um, announcements while they kept trying to break, uh, break and rake the rest of the window and get that, um, curtain out of the way. Um my announcements as I turned were as, um, the front door team was still trying to work this door. So, um, I don't know the exact series of events, um, because I was unaware of part of what was happening at this front door.

(question)

"So, as, um, I turned to this window I gave two sets of announcements. Um, my announcements are generally the same on all of our search warrants.

And it is, "Sheriff's Office, search warrant, come to the door." Um, that - that's three - it kinda covers three things. Um, I'm identifying myself as a police officer and I'm letting them know why I', here. Additionally, from the window port team my hope was that they would be able to get eyes in and, um, in the event it took longer to get this door opened, um, then we would be able to down them in the living room from here if we could get them out of their bedrooms, um, that would prevent them from barricading or secreting further into the structure and we would down them in the living room.... We would give them loud verbal commands, um, to lay on the ground, show us your hands, get down on the ground, um, basically take control from them and gain compliance from the. As long as they're compliant, they just lay down and we step in once the situation is controlled and we take them into custody."

Sgt. Donohue indicated he gave those announcements twice, very quickly and very loudly. As he was giving the announcements, he could hear shouting at the door and he turned back and Bybee and Brown had moved away. He saw that the door was open and he heard them giving commands to someone. He thought that he saw this simultaneously as he was giving announcements through the window. He then assisted Officer Green in ordering people out of

the house. He first saw a woman screaming from the bedroom area of the home and she disappeared so he aired her position to the SWAT members on the perimeter. He then saw a man lying on the ground in the home with his back facing him. He ordered him to show his hands but the man was rolling and having difficulty showing his hands. The female came back out and she was taken into custody. The man was in a fetal position and Sgt. Donohue saw that as he rolled over, there was a lump on his stomach like "fatty tissue". The man stated something to the effect of "You hit me with something." Sgt. Donohue indicated that he was unaware that the SWAT members had transitioned to a ballistic breach. He stated that he believed he did not hear them say that they were transitioning to a ballistic breach. He indicated that he was busy giving announcements and with the windows being smashed right next to him, he didn't hear. His thought was that the man had perhaps been hit by a .40 less lethal round during announcements or he also assumed that he had been hit by the door. He heard Deputy Brown say something to the effect of "It was a shotgun breach".

Sgt. Donohue then called for an immediate entry so that medical aid could be rendered to the man. He asked the man on the ground if anyone else was in the home and he learned that there was another male in the back of the home who had been injured from a motorcycle accident. Sgt. Donohue described being concerned because there were areas in the home that were still uncontrolled and that could contain a threat. Sgt. Donohue told SWAT officers to station themselves throughout the home to control the scene. The injured man was located and he was compliant. The injured man was requested to sit in a chair where he was secured and checked by a medic. As this occurred, the rest of the SWAT team cleared the home for the presence of any other individuals and none were found. Ullerich was removed from the home on a stretcher and taken by paramedics to the hospital.

When asked further questions about the use of the shotgun breach in this case, Sgt. Donohue indicated that the decision by Deputy Brown to transition to a ballistic breach after the ram breach had failed was a normal decision. Sgt. Donohue described Deputy Brown as a subject matter expert in breaching and he teaches and trains the SWAT team on breaching to include ballistic breaching. Sgt. Donohue stated that he trusted and expected Deputy Brown to make decisions in the field. Sgt. Donohue described that he did not hear the ballistic breach occur but he recalled hearing yelling, glass breaking, a flashbang going off and the bearcat pulling up into the driveway.

On February 20, 2020, 1st JD DA investigators conducted an additional interview with Sgt. Donohue. During this interview, Sgt. Donohue was asked additional questions and he was also shown the video seized from the residence which captured visual images of the SWAT team as they approached the front door, opened the exterior door, attempted to ram the door and the ballistic breach of the front door. Sgt. Donohue indicated that he could not identify himself in the video and that the video did not change his recollection of the event. Sgt. Donohue was asked further questions about the nature of a no-knock search and arrest warrant and the customary procedures that are utilized during the execution. He stated that due to the danger level associated with executing an immediate entry warrant and the concerns for officer safety, law enforcement can enter the house without making announcements or identifying themselves as police. He stated that he told his team on numerous occasions that this was a no knock search warrant. He indicated that the plan on executing this search warrant was that he was not going

to make any announcements. He stated that the standard process for executing all no knock search warrants is that once the door is open, commands are given for the occupants to come to the door. SWAT members do not enter the home but remain at the threshold of the home as the occupants are being ordered out. The standard set of commands is "Sheriff's Office. Search Warrant. Come to the door." Sgt. Donohue stated that the plan to execute this no knock search warrant in the standard fashion did not change after they deployed.

Sgt. Donohue was asked who makes the decision to transfer from a ram breach to a shotgun breach. He indicated that if the ram breach did not work, a shotgun breach would be the next step and that the breaching officer is trained to make that call. As the Sergeant, he relies on the trained breachers to determine when to shift to a shotgun breach. Sgt. Donohue indicated that if the breaching team had been unable to get through the door in this search warrant execution, there was a contingency plan to attempt entry at a secondary entry point. Since the door was able to be breached, they did not have to attempt entry at a different door.

Arvada PD Officer Paul Green was part of the SWAT team assigned to breach the front door that was led by Sgt. Donohue. He was interviewed on November 8, 2019 and provided much of the same information as other team members. Officer Green's assignment at the front door was to provide lethal cover with a rifle for the breaching team if there was a threat at the door. Officer Green was staged on the right side of the door at a 45-degree angle. He described that Deputy Brown opened the unlocked screen door and Deputy Bybee moved forward and hit the door with the ram four times but the breach was not working. Officer Green was concerned that the door did not open after four hits. Deputy Brown then moved in with his breaching shogun. He observed Deputy Brown put his shotgun next to the door handle so he assumed Deputy Brown was going to attempt to breach that area of the door. Officer Green turned to cover the window as Deputy Brown fired the shotgun. Officer Green heard the shogun fire and he turned back and saw the door was open and he saw a male lying approximately three feet inside the front door. Officer Green ordered the male to show his hands but the male was rolling with his back towards the door and did not respond. Sgt. Donohue then stepped to the left side of the door and gave orders to someone else in the house. A female then came to the front door and they moved her out. Officer Green described the male on the floor saying words to the effect of that they had hit him with something. Officer Green did not know what could have hit the male. Once the male rolled on to his back, Officer Green saw the injuries to his stomach. Officer Green then helped secure the residence so the medical team could enter and provide assistance to the injured male. Medics came in and the injured male was removed from the residence. The injured male also stated that another man was in the back room who could not move well. Officer Green heard Sgt. Donohue say that they had an injured guy down and he believed he heard Sgt. Donohue tell the command post over the radio that it was from a breaching round. Once the house was entirely cleared, he spoke with Deputy Brown. He noted that Deputy Brown did not have his normal demeanor and he seemed "down". He told Deputy Brown that he was "just doing his job and not to be hard on himself". Officer Green was asked by investigators if he was aware of flashbangs being deployed. He stated he knew that Arapahoe County was going to deploy one and that Deputy Colley was going to deploy one as well but he did not recall them being deployed. He indicated that he probably heard them but he did not specifically recall the noise.

Officer Green was interviewed again by DA investigators on February 20, 2020 and he was

given the opportunity to view the video seized by ATF. He indicated that he looked away as the shotgun was fired in order to cover himself from the blast of the shotgun. He was asked if he recalled any announcements or commands being given as the door was attempting to be breached. He did not recall Deputy Brown making any announcements as he transitioned to a shotgun from the failed ram breach of the door but he indicated that it was typical to transition to a shotgun breach if the ram failed. He recalled hearing his team leader, Sgt. Donohue giving the command to initiate but that was the only command he heard. He said it was normal for no announcements to be given during a “no knock” search warrant.

JCSO Deputy Anthony Hamilton was also part of the entry team and he was interviewed on November 8th. He gave basically the same information as the other team members regarding the preparation for this incident. He indicated that his job was to have the primary shield for the planned explosive breach. When the plan shifted to a manual breach, his job remained the same and he was assigned to cover the front door and the front bay window. Once they reached the front door, he put the shield down and deployed his rifle. He described the mechanical breach process which was to breach the front door, “get eyes” in the residence and to start ordering people out of the residence. He described Deputy Bybee’s unsuccessful efforts to get the door open with the ram and he heard Deputy Brown call out “Failed breach.” He saw Deputy Brown approach the front door and plant the muzzle of his shotgun against the door lock. He presumed based upon the angle of the shotgun which had the stock of the shotgun up and the muzzle pointed towards the floor that Deputy Brown had contact with the door. Deputy Hamilton then turned and moved to cover Detective Green’s back. He heard loud banging and he did not know if the shotgun being fired was part of the bangs. He saw into the living room through the curtains and saw a female screaming with her hands up. He heard orders being given for her to come out and she complied. He was approximately six feet from the front door and he heard other team members talking to someone and he heard someone say something like “hit me in the gut”. He made entry with the others and saw the man on the ground who he believed had made that statement.

Arvada PD Officer Bretton Clarke was teamed with Golden PD Officer Parker Moody. Both of these officers were interviewed by investigators on November 8, 2019. Officer Clarke described his job as being to use a 40- mm foam breaching round in order to break out the window on the northeast corner of the residence. He was assisted by Officer Moody who was providing lethal cover. Officer Clarke described approaching the residence with the SWAT team and he and Officer Moody split off from the group to head to their assigned area. When they were in position behind a vehicle facing the north side of the house, he heard “Initiate, initiate, initiate,”. He then heard several bangs with a pause before the final bang. He could not discern what was specifically causing the bangs and described not knowing if the bangs were the sounds from ramming the door or if they were the sounds from flashbangs. He then heard “Police. Search warrant. Come to the door.” He described that he paused, which was part of the protocol for him to pause briefly after those commands, and he then ported the window by shooting a foam round from his 40-mm launcher. He saw some lights come on in the home and he reloaded and ported another window. He heard yelling coming from the front of the home and then heard a female yelling.

Golden PD Officer Parker Moody described specifically hearing the “Initiate” command and he

then heard the front door being hit by the ram, glass breaking and sounds of flash bangs going off. Officer Moody then told Officer Clark to breach the windows as he provided lethal cover. They remained on the north side of the house to watch for any threats. Officer Moody did not indicate that he heard any commands being given. Neither Officer Moody or Officer Clark saw the breach of the front door and they were unaware of the shotgun breach.

Interviews were also conducted with ACSO Deputy Jarrod Crist who was assigned as the turret gunner in the bearcat, ACSO Investigator Jason Bacon and ACSO Investigator Nelson Trumball who was assigned as part of a two-man sniper team stationed on a rooftop across the street, ACSO Investigator Charles Butterfield who was part of a two-man sniper team along with ACSO Investigator Ed Doremus. None of these officers saw the actual shotgun breaching of the door so they could not provide any additional information that was significant to this review.

Firefighter/Paramedic Zac Hutchins was assigned to ACSO as a SWAT medic and he was present for briefings on the night of this operation. His specific assignment was medical support and arrest team. He knew the SWAT team's deployment plan was to approach on foot and a bearcat team would deploy a sight/sound diversionary device (flash bang) in the front yard and that another team was going to simultaneously deploy a flash bang to the west side of the house. He knew that the original plan was for an explosive device to be deployed but that switched to a mechanical breach and everyone was notified about the change in plans. He stated that his team rode in the bearcat and when they were within a few blocks of the house, members got out and rode on the bearcat. When they arrived, he moved to the back of the bearcat. He heard the flash bangs deploy which were two separate booms and then heard a third boom which he could not identify. He indicated that could have been the breaching round. He stated that these booms occurred within five seconds of each other. He said one sound was very distinct which was the diversionary device his team deployed and that the other two booms were on top of each other. He stated that a female came out of the house who appeared to be distraught. He heard the radio call for a medic and he responded. He was told that a breaching round had injured a person in the house. He entered the home and saw the injury. He described the injury as being a very close contact with a less lethal round or a gunshot wound. He said the subject had an "evisceration" and that a baseball size portion of the subject's intestines were hanging out of the upper right quadrant of his abdomen. He assessed the individual and found this to be his only injury. He immediately radioed to his partner SMFT Lieutenant Paramedic Jeff Meyers to get an ambulance which he knew was staged one block away. He said he asked the subject what his name was and he heard the man mumble and he gave his name as Dustin. He began to curse at the operators and he said, "I was walking towards the front door to open it, and then you shot me." He told them to take him to a "real ambulance" and he was constantly cursing. He would not answer some of FF Hutchins medical questions. FF Hutchins was asked what the timeframe was between the flash bang deployment and when he got to the door of the residence and he indicated it was perhaps one and one-half minutes. He estimated that it took less than five minutes to remove the subject from the residence and be placed in an ambulance.

Arapahoe County Sheriff's Reserve Deputy Jeff Meyers who is also a South Metro Fire Department Lieutenant/Paramedic was interviewed on November 18th. Deputy Myers is currently employed by South Metro and he is the SWAT Medic Team Leader for Arapahoe County SWAT. He learned of this operation on October 31, 2019 when he was told that

Jefferson County needed assistance with an operation and that he would be assigned to help. On November 6, 2019, he attended an ATF briefing where he learned there were multiple front range addresses and targets upon which simultaneous execution of "no knock" search and arrest warrants would occur on November 7th at 4am. He was told the warrants related to the Hell's Angels Motorcycle Gang and were issued for crimes including kidnapping and attempted murder. The suspect related to the warrant for 2301 Youngfield Street was a person named Dusty Ullerich who was known to carry a firearm in an ankle holster. He also attended a Jefferson County SWAT briefing late in the day on November 6th where he also learned that eight additional HA patch members had been seen at the Youngfield address and it was unknown how many individuals would be at the address during the execution of the warrant.

Deputy Meyers was assigned to the bearcat team with five other officers. He drafted the medical plan and was going to be the second medic to respond, if needed, into the residence. He was aware that the original explosive breach plan was changed to a mechanical breach as they were staging at 32nd and Youngfield. The role of the bearcat armored vehicle was to provide cover and containment for the entry team upon their approach. The bearcat was to drive up and park on the driveway southeast of the home.

Deputy Meyers described that as they approached the residence, he saw a porch light on plus another light illuminated in the residence. Once everyone was in position, he heard the Jefferson County Team Leader give the initiate order over the radio. He then got out of the bearcat to give Deputy Baldwin lethal cover while Deputy Baldwin deployed flashbangs on the south side of the house. He then returned to the bearcat. He described that there were multiple distraction devices being deployed. He next heard that a female had been detained inside the residence. He helped with taking her to the back side of the bearcat. He heard someone ask over the radio for a medic to respond into the residence and Medic Hutchins went into the residence. Deputy Meyers then responded inside where he saw a person he recognized as Ullerich inside the front door on the floor. Ullerich was on his left side, rocking back and forth. His feet were approximately 2-3 feet from the doorway and his head was further away from the doorway. Medic Hutchins told him that Ullerich had a gunshot wound from a breaching round. Deputy Meyers described the injury as an abdominal wound with intestines visible. Medic Hutchins was bandaging the wound. Deputy Meyers asked for a soft litter to be brought into the residence and he then coordinated with West Metro Fire to pick up the patient and transport him to the hospital. Ullerich was transported by ambulance to St. Anthony Hospital and he arrived at 4:45am. Per Patrol Deputy Garrett Henriksen, Ullerich was immediately taken into surgery and a clear slug shot casing was removed from him. JCSO Investigators responded to the hospital later that morning to photograph Ullerich's injuries. The breaching round and his personal belongings including the clothing he had been dressed in at the time of the shooting were given to JCSO investigators as evidence. The clothing included a red short-sleeved Sturgis Black Hills Rally t-shirt which was later sent to CBI.

Crime Scene and Lay Witness Interviews

1st Judicial District DA Investigators did a canvas of the homes around the area of this incident and while many individuals were awakened by the sound of bangs, no one witnessed the entry into the home by SWAT. Additionally, the residents were asked if they had any video or audio

recordings of the SWAT entry. One resident had video of the aftermath but no one had video of the incident. A video camera was located on the outside of Abrusci's Fire and Wine Restaurant at 2200 Youngfield Street. Abrusci's manager Marvin Williams allowed investigators to view the video surveillance system and he also supplied a copy of the video. The video captured the approach of the bearcat and swat operators to the residence. The residence is approximately 60-70 yards away from the video camera. The video showed the SWAT team walking up to the residence and the bearcat pulling up and parking in the driveway of the residence. A large tree blocked the camera view of the front door where the breaching occurred. All that could be seen were flashbangs being deployed and an apparent flash at the front door.

JCSO Crime Scene Technicians were dispatched to the residence at 4:25am. Technician Gregory Sykes examined and photographed the front door of the residence. He observed a spent shotgun shell on the front porch which was collected. He also saw that the right side of the door frame near the strike plate had damage. On the inside of the door jam, the wood appeared to be cracked or split. He noted that the exterior doorknob had pink or reddish material on it and there was a black mark on the door to the left and below the doorknob. Photographs were also taken by Investigator Kathleen Ireland to document the house's exterior and the interior of the home visible from the front threshold. The photographs show what appear to be tiny red material fragments or fibers on the front right side of the door close to the door knob.

At 7:59 am, Deputy Anthony Brown was photographed by JCSO crime scene personnel as were his rifle, handgun and shotgun. The shotgun was a Remington 870 Magnum 12-gauge shotgun with a black web sling. Three Royal Arms 12-gauge breaching rounds had been removed from the firearm and the shotgun and breaching rounds were collected.

The shotgun, spent casing, live rounds, photographs of the exterior side of the front door and red t-shirt worn by Ullerich were submitted to the Colorado Bureau of Investigations for scientific analysis. Forensic Scientist and firearms specialist Dale Higashi did the analysis and authored a report. The report indicated that the Royal arms spent casing was identified as having been fired in the shotgun. The red t-shirt had a hole in the front and the area around the hole was microscopically examined and chemically processed for the presence of gunshot residue which was found. The residue pattern developed was indicative of a muzzle to target distance of less than 1 foot to near contact when compared to the residue pattern observed on the red t-shirt. The photographic images indicated that the red t-shirt was in close proximity to the front door exterior knob when the shotgun was discharged.

On February 11, 2020, Alcohol Tobacco and Firearms Task Force Investigator Doug Pearson provided DA Senior Investigator David Lynn a video clip from an exterior camera at the residence. The recording shows the entry team walking up to the front door, the attempts by a SWAT officer to ram the door 6 times and the breaching actions taken by Deputy Brown. This video recording was shown to several SWAT team members as indicated in this report and it was also provided to Forensic Examiner Dale Higashi for his opinion. The following opinion from FE Higashi was received by the DA's office on February 20, 2020:

Investigator Spurgeon, I have reviewed the video from 2301 Youngfield and would like to share my opinion of the events that transpired. It appears that the Breacher Deputy attempts to breach the

door at the location with the shotgun that I examined. He appears to make an attempt but realizes that the safety is engaged. He comes off the door lock mechanism and reaches under the shotgun with his right hand to disengage the safety. After disengaging the safety, he repositions the shotgun on the door lock mechanism and as he readies to brace the shotgun with his right hand and shoot, it appears that the door abruptly opens. He does not have his support hand fully on the weapon and appears to be trying to secure the muzzle against the lock mechanism. As the door swings open, the weapon discharges and it still does not appear that he fully has his support hand on the shotgun. I also viewed photos of the door lock and there was no apparent strikes from the shotgun. The sudden opening of the door and the Breachers inability to secure the muzzle against the lock mechanism could account for the discharge of the shotgun,- meaning he was following the lock-mechanism with the muzzle, but the door opened and swung the lock mechanism out of the line of discharge. Dale Higashi

Firearms/Tool mark Examiner

Denver Forensic Science Laboratory

ATF Agents along with JCSO investigators spoke with lay witness Valerie Malcovich on scene. She was the female who had been in the residence at the time of the SWAT execution of the search warrant. ATF Agent Brandon accompanied by Denver PD Investigator Bret Starnes initially spoke with Ms. Malcovich as documented in DPD Inv. Starnes' report. She stated that she was in the residence in the bedroom with "Dustin" (Dustin Ullerich) and that another male was also inside the residence. She said that they heard a noise and Dustin got up to see what the noise was in the living area. She also gave other details regarding Ullerich, his work and his activities. After this interview was over, she was interviewed on scene by JCSO Investigators. Ms. Malcovich identified herself as "Dusty's girlfriend" and she said that she had been living at the residence for approximately two years. She indicated that she was sleeping when loud noises and crashes woke her up. She said she came out of the bedroom when she was called out to the door by the police. She said she walked past Dusty as he was lying on the floor. She said she did not see much because there were flashlights directed at her. She stated that she was taken outside and sat on the ground for about 15-20 minutes and then was placed in a patrol car. After the interview, she and Ryan Mallock, who was identified as the injured male found in the residence, were checked through NCIC/CCIC for any active warrants and none were found. Ms. Malcovich requested her purse, car keys and dog as she wanted to leave the scene in her Jeep. She was given those things and she left in her vehicle with Ryan Mallock.

Mr. Ullerich has been indicted and is charged with felony offenses in Denver, Colorado. No interview of Mr. Ullerich has been conducted regarding this shooting as his attorney declined that interview. Also, the People are not in possession of any medical records regarding the injury sustained or the medical treatment received by Mr. Ullerich.

Legal Analysis

This case involves a deputy sheriff's use of force in executing an immediate entry/no-knock search warrant. While Mr. Ullerich sustained apparent serious bodily injury from a potentially deadly weapon, this review does not involve an analysis of the use of deadly physical force because Mr. Ullerich did not die.

It was known that the execution of this search warrant involved great risks. Law enforcement was well aware that that person being sought was a dangerous gang member who was alleged to have been involved with violent crimes involving attempted murder and kidnapping. He was known to be armed with guns. There was possible video surveillance being done by the residents of the home which could result in detection of the law enforcement officers as they carried out this dangerous operation. Based upon the language of the search warrant which was signed by Denver Judge Spahn on November 5, 2019, "immediate entry" was authorized in the execution of the warrant. This is the equivalent of a "No-Knock" search warrant which allows law enforcement to force entry into a designated place without knocking and announcing their presence. The statute requires that a Chief Deputy District Attorney review the warrant for legal sufficiency, be approved and signed prior to the presentation of a judge which based upon the signatures on the warrant did occur. The exact language at the end of the affidavit which supported this immediate entry search warrant is as follows:

BASIS FOR THE REQUEST FOR IMMEDIATE ENTRY SEARCH WARRANT

Based upon the aforementioned facts and from your Affiant's training and experience, he knows during investigations involving Outlaw Motorcycle Gang members the potential for violence increases to Law Enforcement. These Outlaw Motorcycle Gang members and associates are frequently involved in violent activities and habitually carry firearms or have them in close proximity to them. Your Affiant knows from his training and experience that Outlaw Motorcycle Gang members anticipate they will be the targets of violence from other rival Outlaw Motorcycle Gang members, and for this reason frequently carry weapons, anticipating that they will be involved in these violent encounters. Your Affiant is aware of multiple incidents where Law Enforcement has encountered gun fire during the service of residential search warrants on Outlaw Motorcycle Gang members and in one incident a Law Enforcement Officer was killed during the service of a search warrant at the residence of an Outlaw Motorcycle Gang member. This IMMEDIATE ENTRY request of is for all SUBJECT PREMISES with the exception of #2 and #18.

This review is to determine if Deputy Anthony Brown is subject to any criminal liability for his act of shooting a breaching round into a door in an attempt to force a door open which struck and seriously injured Mr. Ullerich. The relevant statutes to consider are those listed at the beginning of this review. Despite not having access to Mr. Ullerich's medical records, Mr. Ullerich sustained injuries which presumably would meet the definition of serious bodily injury so this analysis will utilize that level of injury. It is also clear that the shotgun utilized by Deputy Brown is capable of causing serious bodily injury or death. It is also evident from this investigation that when Deputy Brown fired the round towards the door, the round he fired struck Mr. Ullerich and caused his serious bodily injury. The analysis therefore centers on the mens

rea of Deputy Brown.

It is clear from the evidence that is summarized in this review that Deputy Brown did not reasonably believe that anyone was in danger of being hit by the firing of his weapon. His express purpose in firing the shotgun was to force the door open per the SWAT operational plan. There is no evidence that he intended to injure Mr. Ullerich, instead, his intent was to shoot open the door. The People would be unable to prove that Deputy Brown intended to cause serious bodily injury to Mr. Ullerich. There is no evidence that he was acting under circumstances manifesting extreme indifference to the value of human life and was knowingly engaging in conduct which created a grave risk of death to another. Deputy Brown was acting according to training and an operational plan which involved forcing an entry into a residence. This method of entry involved a level of risk to others inside the residence but the methods utilized by Deputy Brown were designed to mitigate that risk and he trained consistently on breaching a door safely. That is the opposite of having extreme indifference to the value of human life. The People would be unable to prove the elements of either theories of 1st Degree Assault in this incident.

As to whether Deputy Brown acted in a reckless manner, there is no evidence that Deputy Brown disregarded a "substantial and unjustifiable risk" that someone would be injured by his actions. He described in his interview that he was trained to aim the gun at an angle towards the ground specifically to avoid having the round travel horizontally and accidentally strike someone. It is clear from the video evidence that he had the gun aimed in that manner when he fired and that he was acting properly according to his extensive training and experience in breaching doors with a shotgun.

As to whether he acted with criminal negligence, the question becomes whether through a gross deviation from the standard of care that a reasonable person would exercise, Deputy Brown failed to perceive a substantial and unjustifiable risk that someone would be injured by his actions. Once again, Deputy Brown has received significant training in the military and as a SWAT operator in how to breach a door with a shotgun. He had trained as recently as several days earlier on this exact exercise. The training is designed to limit the possibility of someone being harmed. There is no evidence that he grossly deviated from the standard of care that a reasonable person would exercise.

While Deputy Brown apparently struggled slightly with taking the safety off the weapon prior to shooting it, the question is whether this impacted his aim or caused him to fire anywhere other than where he intended to aim which was the locking mechanism. Forensic Examiner Higashi opined that in his expert opinion, Deputy Brown did not have his support hand fully on the weapon and that it appeared that he was trying to secure the muzzle against the lock mechanism when the door suddenly opened. Examiner Higashi indicated that the door suddenly opening combined with the inability to secure the muzzle against the lock mechanism could account for the shotgun's discharge. On the other hand, Deputy Brown stated in his interview that he intentionally fired his weapon at the locking mechanism. What is clear, is that the door opened exactly at the time Mr. Ullerich opened the door. While Deputy Brown thought at the time that the door opened due to the force from his breaching round, that assumption is not borne out by the physical evidence. Instead, based upon the photograph which shows the spray of red fabric particles on the front side of the door between the edge of the door and onto the side of the door

knob closest to the edge of the door, the door had to be in a position to the immediate right side of Mr. Ullerich for the fabric of his shirt to be propelled to that limited area. It is also clear that the door was not fully open as the location of the fabric is closest to the area of the door next to the door jam and the fabric particles do not travel past the side of the door knob.



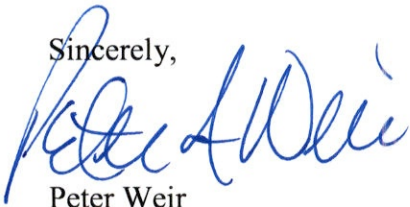
This opening of the door could not have been reasonably anticipated by Deputy Brown. This is true despite the commands being given by Sgt. Donohue. Like many of the other SWAT operators next to him, Deputy Brown did not hear these commands being given. Once the command was given to initiate, the quiet was instantly broken and things became extremely noisy due to the loud flash bangs being thrown in two locations, the breaking of glass out of windows, the ramming of the door, the approach of the bearcat and the other attendant circumstances. These actions are specifically designed to take the residents by surprise so that they do not have the time or thought process to attempt to respond with weapons or force. Accordingly, it was not part of the operational plan for commands to be given or communication to be attempted with the residents until the door had been opened/the breach would have occurred. A no-knock search warrant expressly does not require announcements prior to entry to allow for this type of diversionary tactic. No team members indicated that they expected commands to be given prior to the entry point being breached; instead, they expected the opposite. It also remains unclear exactly when Sgt. Donohue gave these commands. Sgt. Donohue stated that he was unaware of the shotgun breach so he could not indicate whether his commands were before or after the breach. He stated that his commands may have been simultaneous with the shouts from his team into the residence which would mean that his commands were given immediately after the shotgun was fired. While Officer Clarke and Officer Turco both heard Sgt. Donohue's commands, neither of them were specifically aware of when the shotgun was fired, so the timing is still unclear. Mr. Ullerich's statements to the paramedic indicated that he was opening the door when he was shot. However, this does not mean that he was responding to commands to open the door; just that he was opening the door.

By their very nature, certain law enforcement actions come with inherent risks. The law allows

law enforcement to make entry into a home unannounced when law enforcement demonstrates to a judicial officer that it is appropriate and only after it has been approved for legal sufficiency and signed by a District Attorney or a Chief Deputy District Attorney. The simultaneous action by Deputy Brown firing into the door coupled with Mr. Ullerich's simultaneous action of opening the door resulting in serious injuries do not make Deputy Brown's actions criminal. His use of force in this dangerous situation was reasonable and appropriate.

It is the conclusion of my office, based upon the applicable law and the investigation, that Deputy Brown's actions during this incident do not constitute a crime. No criminal charges are appropriate and none will be filed against Deputy Brown.

Sincerely,



Peter Weir
District Attorney
First Judicial District Attorney

cc: Golden Police Chief Bill Kilpatrick
Arvada Police Chief Link Strait