



OFFICE OF THE DISTRICT ATTORNEY

Jefferson and Gilpin Counties

Peter A. Weir, District Attorney

May 30, 2019

Sheriff Jeff Shrader

Jefferson County Sheriff's Office

200 Jefferson County Parkway

Golden CO 80401

Re: JCSO 19-188 In Custody Death of Philip Andrew Thomas

Dear Sheriff Shrader,

Your agency investigated the in-custody death of Philip Thomas DOB 7/10/84 which occurred on January 3, 2019 in the Jefferson County Detention Facility. On February 21, 2019, Investigator Ralph Gallegos and other members of the JCSO staff made a presentation to our office regarding inmate Philip Thomas's death in the jail. In addition to that presentation, we have reviewed the reports and taped interviews provided to our office. Also, our office recently received copies of the camera recordings of the south and east hallways in the Special Housing Unit.

The focus of my office's review is limited to analyzing the facts and circumstances to determine whether criminal charges are legally appropriate to bring against anyone regarding the death of Mr. Thomas. It is not within our office's purview to provide any opinion on the administrative or civil aspects of Mr. Thomas's death.

Mr. Thomas was arrested on January 2nd, 2019 by the Wheat Ridge Police Department for a failure to comply warrant out of Denver. When Thomas arrived at the JCSO jail, he was evaluated by medical and counseling staff. During the screening, Thomas stated that he rarely drank alcohol and that he did not use controlled substances. He stated he had never had seizures or drug withdrawals. He reported he had a previous plan to hang himself and that two of his family members had committed suicide. However, he also stated that he was "doing good" and he denied any suicidal ideation. The jail staff initially placed him on a Level 1 suicide watch. That suicide watch was later downgraded to Level 2 and on January 3rd at 9:17pm, Thomas was moved from booking to Cell #23 in the Special Housing Unit. At 11:49pm, an inmate by the name of Daniel Walz was moved into Thomas's cell by Deputy Johnson. Per Deputy Johnson, Thomas was laying on his bunk and he rolled over to his right side while Deputy Johnson was in the cell.

The protocol in the Special Housing Unit (SHU) is that deputies walk through the unit at least every 15 minutes to do suicide checks on the inmates. The deputies do not enter each cell but view the inmates by looking through the door window into their cell. At 11:56pm, a walkthrough was done by Deputy Pete Nielsen and at 12:23am and 12:31am, walkthroughs were done by Deputy Jason Salazar. At 12:45am another walk-through was done by Deputy Salazar and he noticed that Thomas was on the cell floor in front of his bunk. Thomas was facing away from the door and appeared to Deputy Salazar to be asleep. He had a blanket covering his upper torso area up to his shoulders. Deputy Salazar did not enter the cell.

Deputy Johnson conducted the next walk-through at 1:01am. He was accompanied by Nurse Robyn Sinkhorn. When he looked into the cell, he saw Thomas laying on the floor parallel to the cement bunk he had been sleeping on earlier. When Deputy Johnson was interviewed, he stated that "it just looked off" to him and he went into the cell to investigate why Thomas was on the ground. As he entered, he asked the other inmate in the cell if his cellmate was ok and Walz stated something to the effect of "Yeah, he's just sleeping on the ground over there." Deputy Johnson shook Thomas and got no response. He rolled him onto his back and his body was limp. Deputy Johnson noted yellow mucus coming from Thomas' nose and mouth and he saw no signs of breathing. Nurse Sinkhorn entered the cell and did a sternum rub but there was no response. Deputy Johnson radioed for help and began CPR. Inmate Walz was escorted away from the cell due to the rescue efforts.

JCSO Deputies, male medical unit personnel and members of the Golden Fire Department along with paramedics from American Medical Response performed lifesaving measures on Inmate Thomas until he was pronounced dead at 1:50 am at the jail by Paramedic Zweibel under the medical direction of Dr. McDade of Boulder Hospital. Jefferson County Coroner's Investigator Philip Johnson arrived on scene at 4:55 am and he examined Thomas's body. He noted no signs of petechiae or any obvious signs of trauma on Thomas's body. An autopsy was later conducted by Dr. John Carver who found that the cause of death was probable complications of chronic ethanol abuse. The autopsy showed no significant traumatic injuries, no evidence of pressure on the neck and only a low level of the active component of marijuana in Thomas's blood. Dr. Carver indicated that Thomas had a clinical history of chronic ethanol abuse which was supported by a fatty liver and was based upon interviews done by JCSO of Thomas's family. Dr. Carver also noted that the precise cause of death in the case of chronic alcoholics is not always evident at autopsy and that a fatty liver associated with chronic alcoholism may be the only significant finding in sudden, unexpected death. Dr. Carver found that the manner of Thomas's death was natural.

During Deputy Nielson's interview, he indicated that when he was in the cell at 11:25 pm, he saw Thomas lying on his bunk facing the cell door with his eyes closed and he was covered with a blanket. He stated that he did not have any conversation with Thomas and Thomas did not move when the doors were opened. Deputy Nielson went on break at 12:30 am and he was not in the unit when the radio call came out regarding the unresponsive male. He returned to the SHU and later removed Walz to another cell as emergency aid was being given to Thomas. As he walked with Walz, Walz stated that he told another unidentified deputy that Thomas was making weird noises during the night but that the deputy did not take it seriously.

Deputy Salazar was on his 1st full day of being assigned to the Special Housing Unit. Deputy Salazar wears glasses and has dark hair. When interviewed, Deputy Salazar stated that as he was looking into the cell at inmate Thomas on the floor during the 12:45 am walk-through, Inmate Walz looked up from his bed and told Deputy Salazar, "Yea he's been sleeping on the floor." Deputy Salazar did not enter the cell based upon his experience working at JCSO and previously at the Denver Sheriff's Department. He indicated that he has seen numerous inmates sleeping on the floor rather than in their bunk so he did not find Thomas's position unusual. Deputy Salazar was asked about how inmates can call for deputy assistance from their cell and he stated that the inmates can call deputies from their cells by pushing a button which illuminates

outside the cell. Deputy Salazar said that he did not get any notifications from the Thomas/Walz cell that evening.

Inmate Daniel Walz was interviewed twice on January 3rd by JCSO investigators regarding this incident.

During the first interview, Walz described that when he first arrived in the cell, he saw Thomas laying on a bunk. They had a brief conversation about the sink not working and that Thomas seemed fine. Walz laid down on the other bed in the cell and a short time later, he heard Thomas making what Walz verbalized as low roaring noises. He stated that Thomas fell out of the bed onto the floor. Walz told investigators that he hit the call button to try to get a jail deputy to respond to the cell. He stated that no one came so he kept pushing the button. He then went and stood by the cell door to wait for someone to come down the hall outside the cell. Eventually a jail deputy came by who Walz described as wearing glasses and Walz thought he may have been black. Walz stated that he told the deputy "I think there's something wrong with him" and pointed at Thomas on the floor. He said that the deputy looked toward Thomas but he did not enter the cell. Walz stated that he thought this was normal behavior for Thomas since the deputy did not seem concerned.

Inmate Walz was interviewed again that day and Walz again told them that Thomas was making weird noises and, as a result, he hit the button several times to get a deputy's attention. He stated that he heard the call button make a dinging noise as he pushed it. He stated that he laid down on his bed waiting for someone to arrive. He described that when the deputy came to the door, he stated "I think something is wrong with that guy" and that the deputy looked in, said nothing and did nothing. He said that the deputy had glasses and darker skin. During his interview, he described the sounds that Thomas was making as an aggravated grunting noise. He stated that Thomas appeared to be sleeping as he was making these noises. He also stated that he did not say anything to the second deputy who came to the door and entered it to check on Walls. He said this deputy then got help and told him he had to get out of the cell.

JCSO investigators told Walz that the jail deputies on duty stated that Walz only said "he is just sleeping on the floor" and Walz was asked about why there was a conflict between what the deputies say he said and what Walz stated during the interview. Walz stated that maybe the deputies are trying to get out of not doing something. He was asked if the deputy could have misunderstood his statement and Walz stated he did not think so but he later said that he was not 100% sure that he was speaking clearly and that he could have been groggy. He also stated that the inmate was still making noises on the floor as the deputy was at the door. However, he stated that he was 100% sure that he said "I think there's something wrong with that guy" to the deputy with glasses.

Crime Scene Technician Kathleen Ireland examined the inmate call button in Cell #23 in the SHU on January 4, 2019. She noted that on the exterior of the cell are located two metal plates. One contains the reset button and that is just above the door handle. The other is near the top of the door with a light on it that illuminates when a button inside the cell is pushed. Inside the cell, a button is located to the left of the door above the handle of the door. When the button is pushed inside the cell, a high pitched audible alarm beeps three times and the exterior light goes on above the door outside the cell. The beep continues sounding approximately every 60 seconds and the light remains illuminated until reset by pushing the reset button on the exterior of the door. The audible beep can be heard throughout the SHU section. Additionally, when the button is pushed inside the cell, a light goes on at the SHU control desk indicating the cell number where the button was pushed. That light remains illuminated until someone walks to the cell where the button was pushed and pushes the reset button on the exterior of the door.

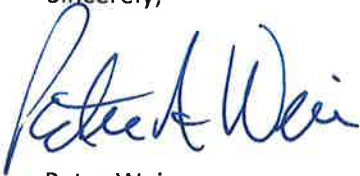
During the presentation to the DA's office, JCSO investigators were asked whether there was any independent evidence other than inmate Walz's statements that the call button from Walz cell had been pushed prior to entry by deputies into the cell. Investigators indicated that there is no electronic or physical record available so there is no independent evidence to substantiate call buttons being pushed.

Additionally, the video recording camera in the SHU which is pointed down the hallway of Cell #23 was blocked by a door that evening so no video evidence exists regarding whether the call button outside the cell was lit during the relevant timeframe. None of the deputies on duty that evening indicate that Cell #23's light was ever illuminated or that anyone had to push the reset button to shut off the alarm and the light. There is not any camera recording of the SHU control desk and the cameras do not record audio.

After examining the facts of this case and applying the relevant law, it is the opinion of my office that there is no reasonable likelihood of a criminal conviction regarding Mr. Thomas's death. Deputy Salazar was newly assigned to the Special Housing Unit which is a more restrictive, closely monitored setting than his previous assignments. Based upon the materials presented, Deputy Salazar did not receive any specific training regarding the walk-through process nor was he instructed regarding what was abnormal behavior in the SHU. Deputy Salazar's observation of an inmate laying on the floor in front of his bunk was not highly unusual based on his experience. He stated that he did not hear the inmate making any unusual noises and he did not hear the other inmate state any concerns. This conflicts with what inmate Walz says occurred when Deputy Salazar was at the door. Inmate Walz was certain he stated that there was something wrong with his roommate although, upon further questioning, he stated that he was not certain how clearly he stated that. Deputy Johnson said that Walz told him the guy was laying on the floor sleeping but Walz does not claim to have said anything to Deputy Johnson. Walz' statement that he attempted to get help for Thomas by pushing the cell buzzer cannot be substantiated by any other witness or physical evidence.

Based upon the conflicts in the evidence and the lack of evidence, it cannot be proven beyond a reasonable doubt that Deputy Salazar failed to perceive a substantial and unjustifiable risk that a certain result (i.e., Mr. Thomas's death) would occur and that the risk was of such nature that his failure to perceive it was a gross deviation from a reasonable person's standard of care.

Sincerely,

A handwritten signature in blue ink that reads "Peter Weir". The signature is cursive and fluid, with the first name "Peter" and last name "Weir" clearly distinguishable.

Peter Weir

1st Judicial District Attorney