

Gordon P. McLaughlin
District Attorney



201 LaPorte Avenue, Suite 200
Fort Collins, Colorado 80521-2763

Phone: (970) 498-7200
Fax: (970) 498-7250

Memorandum Regarding February 18, 2023, CIRT Incident: LCSO #SO23-1704, LPD #LP23-1274, FCPS #FC23-2239.

Sheriff John Feyen,

The District Attorney's office has been asked to review the use of force against, and ultimate death, of Brent Thompson on February 18, 2023, which occurred on US Interstate 25 in Larimer County, to determine whether Larimer County Sheriff's personnel or any other parties violated any Colorado criminal statutes.

I. EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in greater detail below, I conclude that there is no reasonable likelihood of success in proving unanimously and beyond a reasonable doubt that Deputy Lorenzo Lujan is criminally culpable for his attempt to effect the arrest of Brent Thompson on February 18, 2023. Having concluded that burden cannot be met, no criminal charges will be filed against the deputy. The authority of the District Attorney under the law is limited to determining whether criminal charge(s) can be filed and does not cover review of officer training procedures or personnel decisions. Additionally, I conclude that the driver of the vehicle that hit Mr. Thompson is not criminally responsible for the crash that resulted in his death.

II. THE STATUTORY FRAMEWORK FOR OFFICER INVOLVED USE OF FORCE INVESTIGATIONS AND REVIEW

While this case did not involve an officer-involved shooting and therefore C.R.S. § 16-2.5-301 is inapplicable, the incident nonetheless triggered a Critical Incident Response Team (CIRT) investigation. This investigation was conducted by a multi-agency team consisting of personnel from agencies within the jurisdiction who are members of the district's Critical Incident Response Team (CIRT), as outlined in the 8th Judicial District's Critical Incident Protocol. Specifically, Fort Collins Police Services was the lead agency, and they were aided by other agencies, including the Loveland Police Department, the Larimer Sheriff's Office, and the District Attorney's Office.

This document constitutes a report of the District Attorney's findings and includes the basis of the decision not to charge the involved peace officer or any other person under any criminal statute.

III. MATERIALS REVIEWED

I have been provided materials produced during the CIRT investigation and the information I have considered includes, but is not limited to:

- The body worn camera footage of the involved peace officers
- Reports/summaries of the CIRT investigators
- Recorded interviews of involved peace officers
- Recorded interviews of witnesses
- Computer aided dispatch reports and audio recordings of law enforcement radio traffic
- Photographic evidence
- Physical evidence
- Maps depicting the geographical area in which the events took place
- Accident reconstruction analysis
- ATF firearms trace
- Expert report from Taser
- Scene inspection

IV. APPLICABLE LAW

The District Attorney’s review of this event is guided by the Colorado statutes pertaining to the use of force by peace officers. Deputy Lujan and all other persons referred to as “officers” or “peace officers” in this letter are “peace officers” per statute. *See* §16-2.5-101-103, C.R.S.

While Deputy Lujan deployed his Taser and Mr. Thompson died during the incident, the use of force in this case is not considered “deadly force” per Colorado law, as in deploying the Taser the deputy did not intend to cause Mr. Thompson’s death. *See* §18-1-901, C.R.S. (“Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death).

Note - a “Taser” is a conducted energy device primarily used to incapacitate people; the device fires two small, barbed darts intended to puncture the skin and remain attached to the target to cause immobilization/incapacitation of the subject.

§ 18-1-707, C.R.S. (Use of force by peace officers—definitions), states in relevant part:

- (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 injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
 - (b) Use only a degree of force consistent with the minimization of injury to others;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
 - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

V. SUMMARY OF LEGAL STANDARD AS APPLIED TO THIS EVENT

Distilling the legal authority down to an applicable standard to apply to this event, we must determine:

- 1) Whether Deputy Lujan used physical force?
- 2) Whether nonviolent means would have been ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to Deputy Lujan or another person in this situation, and the related question of whether Deputy Lujan first attempted to apply nonviolent means before resorting to the use of physical force (*i.e.* the Taser)?
- 3) Whether Deputy Lujan used only a degree of force consistent with the minimization of injury to others?
- 4) Whether Deputy Lujan – or other peace officers – ensured that assistance and medical aid were rendered to Mr. Thompson as soon as practicable; and
- 5) Whether Deputy Lujan – or other peace officers ensured that any of Mr. Thompson’s identified relatives or next of kin were notified as soon as practicable.
- 6) If either of the questions summarized in 1) or 2) above is answered in the negative, then the District Attorney must decide whether it appears the officer has violated any substantive criminal statute and whether criminal charges and prosecution are appropriate.

VI. SUMMARY OF RELEVANT FACTS

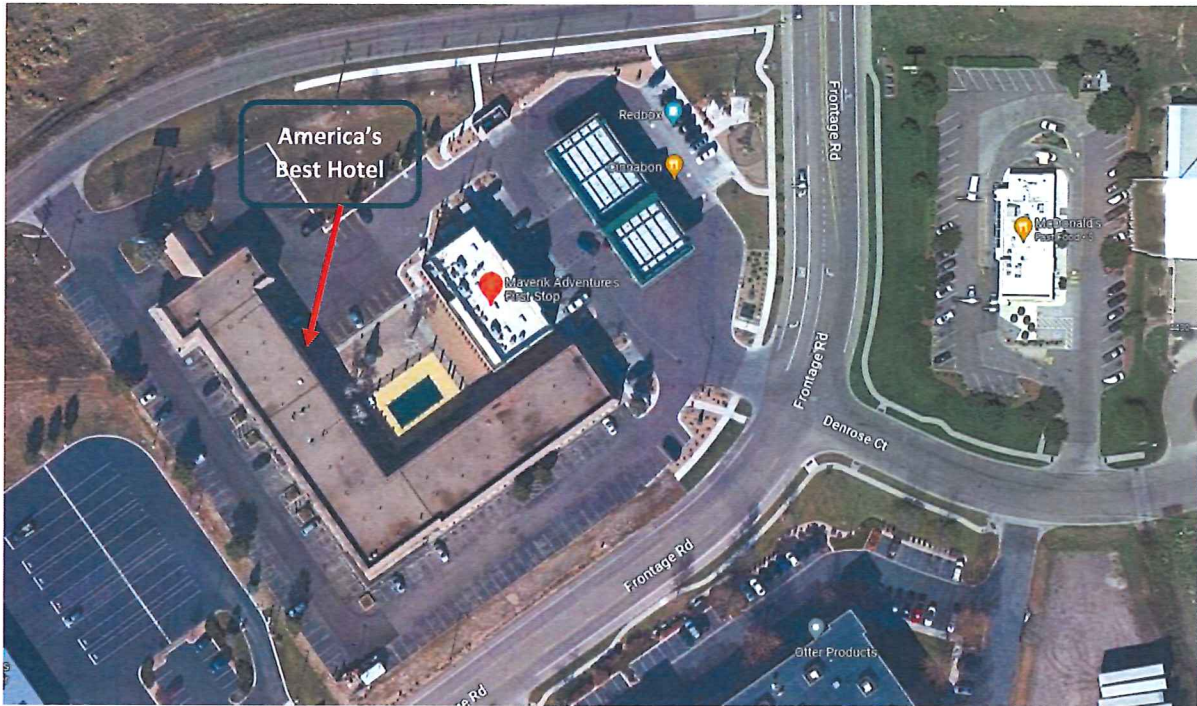
The following summary of the investigation includes relevant portions of the extensive review conducted by the CIRT. Key interviews, evidence, and context are highlighted but it is not intended to be an exhaustive review of the months of investigative work.

a. Summary of Events

On February 18, 2023, Larimer County Sheriff’s Deputy Lorenzo Lujan was working an overtime patrol shift in the area of Interstate 25 and Mulberry Street. Deputy Lujan was near the Americas Best Value Inn & Suites (4333 E. Mulberry Street) when he observed a vehicle with its backup lights on and reversing out of a parking space on the south side of the hotel. Deputy Lujan gave the vehicle space to back out of the parking spot, but the vehicle remained idling in that location and Deputy Lujan reported he found that behavior suspicious.

The vehicle was identified as a gray Ford Fusion bearing Colorado license plate AOI099. Deputy Lujan completed a records check of the plate and learned the registration was expired as of February 2022. Believing the vehicle to be suspicious and deserving of further investigation, Lujan parked his vehicle and walked on foot toward the Fusion. Deputy Lujan observed the vehicle still parked behind the hotel and idling but in a different spot. Deputy Lujan returned to his patrol

vehicle in hopes of repositioning to get a view of what may be occurring in the Fusion when he observed the Fusion leave the parking lot.



Photograph 1 - Deputy Lujan first observed Thompson parked behind the America's Best hotel.

Deputy Lujan followed the Fusion onto the southeast Frontage Road. At that time, he observed the registration stickers on the license plate did not match the Department of Motor Vehicle records. Lujan asked dispatch to reconfirm the registration status was expired before he conducted a traffic stop and dispatch responded, "I confirm it is, three of 22." CIRT investigators confirmed the license plate displayed registration tabs of 2/2023, but the DMV records showed registration expired as of 3/2022.

When the light turned green, both vehicles turned left onto Mulberry Street and the Ford Fusion made a last-second maneuver, crossing the solid white lines, onto the northbound I-25 on-ramp. Deputy Lujan followed the Ford Fusion onto I-25 and alerted Larimer County Sheriff's Office dispatch that he would be attempting a traffic stop and requested a cover officer.

As they drove north on the interstate, Deputy Lujan noted the vehicle was going much slower than the posted 75 MPH speed limit. At 2115 hours, Deputy Lujan activated his overhead lights and initiated the traffic stop as they approached the next exit, exit number 271 for Mountain Vista Drive, as he hoped the driver would take the off-ramp as it would provide a safer location for a traffic stop than the interstate. The driver took the exit and stopped his vehicle near the top of the off-ramp. Deputy Lujan approached the driver's side of the vehicle and attempted to identify the driver. The driver identified himself "Jacob Jones" and reported a date of birth of November 30th, 1994.

The driver provided registration and insurance for the vehicle, both of which were expired. Deputy Lujan noted the insurance information matched the name of the registered owner, who the driver identified as his girlfriend. As Deputy Lujan was talking to the driver, he noticed his eyes were constricted so he asked him about drug or alcohol use that night. The driver denied using either.



Photo 2 – The Ford Fusion driven by Thompson, pictured in the location it stopped on the I-25 offramp on February 18.

Deputy Lujan returned to his vehicle and utilized police databases to run the name he was provided. Deputy Lujan found a “Jacob Jones” with the birthdate provided and could see the photograph of Jones did not match the driver of the Fusion. Deputy Lujan used law enforcement databases to look at associates of Jacob Jones and one of the first individuals he saw was a “Brent Thompson”. Deputy Lujan was able to view a picture of Thompson and positively identify him as the driver of the Ford Fusion. Dispatch informed Lujan that Thompson’s driver’s license was revoked as an habitual traffic offender – a person with three or more convictions that would suspend a license.

CIRT investigators later found at least two prior instances in which Thompson used the same false identification information “Jacob Jones.” Once in 2021, while in contact with Windsor Police Department, documented in WPD 21-11062; and once in 2017, while in contact with the Colorado State Patrol, documented in CSP 3C17-1960.

While Deputy Lujan was reviewing information in his vehicle, Larimer County Sheriff’s Corporal Matthew Bordewick arrived as a cover officer. Deputy Lujan showed Bordewick the two pictures and advised him that Thompson had provided a fake name. Based on the totality of his observations, including what was believed to be suspicious behavior at the hotel, suspected impairment, and the reporting of a false identity, Deputy Lujan requested a K-9 officer to respond to the scene. Larimer County Sheriff’s Corporal Aaron Hawks advised he would respond to Deputy Lujan’s location with his K9.

Deputy Lujan reapproached Thompson’s vehicle with Corporal Bordewick to contact Thompson.

As they were approaching, Corporal Bordewick realized he had left his body camera docked at the Sheriff's Office. Corporal Bordewick told investigators he had docked it there at the beginning of the midnight shift (around 9pm) to recharge because the battery was running low. When he heard Deputy Lujan request a cover officer, he immediately responded and forgot to bring his body camera.

When the deputies reached the vehicle, Deputy Lujan asked Thompson to step out of the vehicle and Thompson complied. Deputy Lujan allowed Thompson to roll his window up and close the door as a cat was in the vehicle. Deputy Lujan confronted Thompson with the fact that he provided a fake name. Thompson insisted he had not lied and confirmed the false name. Deputy Lujan advised Thompson he was under arrest, at which point Thompson ran west down a steep embankment toward I-25. Deputy Lujan ran after Thompson and aired over his radio that he was in a foot pursuit. He unholstered his Taser and gave a use of force command. Deputy Lujan reported he looked to the south and did not see any cars or headlights for a great distance but could not see southbound traffic because of the overpass structure.

At I-25 Thompson attempted to jump over the guardrail on the shoulder of northbound I-25 but caught his foot on the guardrail and stumbled onto the shoulder of I-25 the interstate. Deputy Lujan was able to close the distance in that time and he subsequently deployed his Taser. The Taser was effective in creating NMI (neuromuscular incapacitation). Deputy Lujan reported that Thompson was under Taser power for one cycle (5 seconds). As Deputy Lujan walked through the lane of travel, he reported seeing a car travelling northbound and described it as being "closer than expected."

Corporal Bordewick said he saw Deputy Lujan deploy his Taser and that Thompson fell in the northbound lane of travel on the interstate. Seconds later, Corporal Bordewick observed headlights coming northbound toward them, so he went into the road and attempted to use his flashlight to stop the approaching vehicle but was unsuccessful. The oncoming vehicle hit Thompson in the roadway. At the time of the collision, Deputy Lujan was standing in the number one traffic lane (i.e. the left-most lane) and Corporal Bordewick was standing on the shoulder of the road. The impact caused Thompson's body to be pulled further into the roadway. After realizing he hit something, the driver of the SUV pulled over on the side of the road and backed up to return to the site.

Deputy Lujan moved Thompson onto to the shoulder and began rendering medical aid by performing chest compressions. At various times, Corporal Bordewick switched in to administer chest compressions. Deputy Lujan and Corporal Bordewick requested additional resources, including emergency medical response, to the scene. Additional deputies arrived on scene and assisted in rendering medical aid. When EMS arrived, they took over medical support and transported Thompson by ambulance to the Medical Center of the Rockies (MCR). Thompson was pronounced deceased at 2201 hours while at MCR.

While deputies were on scene for crime scene security, they were approached by two females, one of whom was identified as the registered owner of the vehicle Thompson was driving. The second female reported that she was with Thompson right before the accident and she was following him to his mother's house to return a cat.

The next morning, on February 19, 2023, while the scene was still secure, Larimer County Sheriff's Corporal Hawks was able to run his K-9 around the perimeter of the Ford Fusion. Corporal Hawks indicated his K-9 had alerted to the presence of narcotics inside the vehicle. Based on that information, the vehicle was towed to a police lot while a search warrant was sought. A judge signed a search warrant for the vehicle and several items of evidence were collected, including drug paraphernalia (a fake can storage container, burnt tinfoil, and glass pipe), narcotics, seven cell phones, and a Sig Sauer 1911 handgun.

Detectives ran an ATF (Bureau of Alcohol Tobacco and Firearms) trace and contacted the purchaser of the firearm found in Thompson's vehicle, who reported he sold the handgun to Thompson's father in 2018. The narcotics were submitted to the Colorado Bureau of Investigation for testing and were determined to be 10 tablets of Buprenorphine (a schedule V controlled substance), 5 tablets of Acetaminophen and Hydrocodone (a schedule III controlled substance pharmaceutical preparation), and 2 tablets of Oxycodone (a schedule II controlled substance).



Photo 3 – Glass pipe found on floorboard of Thompson's vehicle.



Photo 4 – Burnt tinfoil found in Thompson's vehicle (spread during evidence processing).



Photo 5 – Controlled substances and fake can found in Thompson's vehicle.



Photo 6 – Evidence marker 3 depicts the location of the gun case as found in Thompson's vehicle.



Photo 7 – Firearm found in Thompson's vehicle and reported to belong to Thompson.

b. Interview of Deputy Lujan

Deputy Lujan agreed to a voluntary interview on the night of the incident, occurring in the early morning hours of February 19th. Deputy Lujan answered all questions of CIRT investigators, and his answers appeared truthful and forthright. The interview was conducted, per CIRT policy, prior to Lujan having the opportunity to view his body worn camera. His explanations were largely consistent with the body worn camera and other evidence collected during the investigation.

Lujan began by explaining his initial observations of the Ford Fusion and his suspicions of the vehicle. He reported choosing the location because he knew the area to have impaired drivers. He described these initial observations and the records check of the vehicle plates as routine. Lujan waited to see if the vehicle would leave and noticed continued odd driving behavior from the driver. Because of these observations and the expired registration, he decided to follow the vehicle as it left the hotel and entered northbound I-25, which he described as changing lanes at the “last second” across the solid lines. He then advised dispatch he would be conducting a traffic stop. He decided to conduct the stop at the next exit ramp, which was the Mountain Vista exit, as that was the safest option.

Lujan reported he was “pacing” Thompson’s vehicle northbound, going at the same speed, and his odometer indicated they were traveling at 57mph which was well below the posted speed limit, and an unusual speed for the interstate. Lujan initiated a traffic stop and Thompson exited on the Mountain Vista offramp and pulled over.

Upon contact with Thompson, Lujan noted the registration and insurance he was provided were both expired. Lujan explained Thompson’s answers were odd and he appeared nervous, specifically while trying to explain why he was traveling northbound if he was heading to Loveland. Lujan noted that Thompson’s “eyes were a little bit more constricted than normal.” Lujan stated that these observations, in combination with the suspicious behavior in an area known for drug distribution, gave him probable cause to search the vehicle, thus he requested the K9 officer to respond.

Lujan described easily being able to see that the driver was not “Jacob Jones,” and found Thompson as Jones’ known associate and positively identified him as the driver. Recontacting Thompson, Lujan requested him to step out of the vehicle and confronted him about the false name. Lujan stated:

“I asked him if he was being honest, I mean, I believe he confirmed ‘yes,’ and I pressed him that I knew his actual name and - and told - said his name and I advised him that he was under arrest and I advised him to turn around and place his hand behind his back at which point while I was doing so he began to run due west from - from the location of the top of the off-ramp.”

Lujan advised dispatch he was in a foot pursuit. He described the embankment as steep, and that Thompson’s longer stride and head start created distance immediately. Lujan gave a use of force advisement, “stop or you’re gonna get Tased, stop,” to Thompson and reports looking for traffic from both directions. He explained he couldn’t see northbound traffic for a long distance and that the embankment blocked a view of southbound traffic, stating:

“I looked to the south and noticed that there wasn’t any cars for a great distance. I didn’t notice any headlights for a great distance for northbound traffic and the male continued to run west. I couldn’t see any northbound traffic um just because of the embankment and I was more so worried with the northbound um traffic rather than the southbound traffic. I’m sorry if I said northbound. I feel like I messed up there. But I didn’t see southbound traffic due to the embankment and I was more concerned at the time with the - with the northbound side first because that’s the first lane he’s gonna travel through.”

Deputy Lujan explained that as he pursued Thompson, he believed Thompson posed a risk to himself and to people traveling on I-25. He was concerned that if Thompson were to be struck by a vehicle, he could seriously injure or kill the occupants and create significant hazards on the roadway in either the northbound or southbound lanes, summarizing that, “my concern was trying to get to him as soon as I could to incapacitate him to hopefully stop harm from him or from motoring public traveling northbound on I-25.” However, he explained things were rapidly evolving and he could not have predicted the exact outcome had he not used force.

Deputy Lujan told detectives his decision to use the Taser was based on several factors. He stated he tried to use verbal commands, but they were not successful in stopping Mr. Thompson. Lujan reported there was too much distance between him and Mr. Thompson to go “hands on” to physically detain him or use “OC” spray (commonly known as pepper spray), so the only other weapon available to him would have been his firearm, and he believed deadly force at that point was not justified. In his opinion, the Taser was the “only less lethal tool to stop the subject from fleeing toward the interstate.”

After deploying the Taser, Lujan described he looked again at traffic and saw a vehicle closer than expected, stating:

“I observed that the car was gaining distance very quickly, quicker than expected - that was traveling northbound. I couldn’t tell which lane of travel it was in. And at which point the - I attempted to grab my flashlight to also try to get traffic to stop but it seemed to be failing as that car was continuing still at Interstate or higher rates of speed. And at which point it was too late for me to try to stop that vehicle or it seemed like we were failing at getting that vehicle to slow down so we could get him out of the road and the vehicle continued at a high rate of speed striking the male that was laying on the ground.”

Lujan drew a diagram of his memory of the positioning at the moment he deployed his Taser. He placed Thompson in the number two lane of travel, which is consistent with the body worn camera evidence. He placed himself on the opposite side of the guardrail. The body worn camera shows Lujan was in fact over the guardrail on the shoulder when the Taser was deployed. This difference does not impact the analysis in this report.

Asked specifically if his thought process changed once Thompson entered the roadway, Lujan said it did not and his goal was still to safely detain Thompson so he didn’t create a hazard, and he believed he could do so, stating:

“I was trying to, from what I can remember, is I was trying to get him hopefully on the side, like on the shoulder. But obviously like he got up very quickly and began to run. That’s when I when I deployed probes. Because I felt that we had great enough distance, from what I perceived, to allow me to hopefully take him into custody or try to attempt to slow that vehicle down so that we could take him safely into custody.”

c. Interview of Corporal Bordewick

Corporal Bordewick provided a voluntary interview the CIRT on the night of the incident, occurring in the early morning hours of February 19, 2023. Bordewick answered all questions of CIRT investigators, and his answers appeared forthright and truthful.

Bordewick reported he was at the Larimer County Sheriff's Office on Midpoint Drive when Lujan asked for backup assistance. His body worn camera was charging in anticipation of his upcoming shift and he mistakenly left without it, only realizing he had left it as he walked up to contact Thompson. Bordewick spoke with Lujan at Lujan's vehicle and was briefed on the fact Thompson had provided a false identification. Bordewick provided backup as Lujan confronted Thompson about the false name and attempted to place him under arrest.

Bordewick followed Lujan down a "steep embankment" and observed Lujan had drawn his taser and heard him issue a use of force warning. Bordewick saw headlights from southbound traffic but did not observe any traffic northbound at that point in time. He estimated he was 15 yards behind Lujan and that Lujan was 10 yards behind Thompson. Bordewick continued toward the interstate and observed Lujan deploy his Taser on Thompson and Thompson fall to the roadway.

At this point Bordewick noticed traffic headed northbound and stepped into the lane of travel to "strobe" his flashlight at the vehicles in attempt to slow them down. He witnessed an SUV traveling at a "quick" rate of speed and stepped back to the shoulder, and then witnessed the vehicle strike Thompson. Bordewick explained that it is very challenging to estimate a vehicle's speed by looking at oncoming headlights in the dark and he did not know specifically what speed it was traveling. Bordewick immediately called for an ambulance. Bordewick then assisted Lujan in removing Thompson from the roadway to begin medical aid.

Bordewick reported the driver approached him on scene and he informed the driver to remain on scene for the investigation.

d. Interview of Ford Explorer Driver

The driver of the Ford Explorer that struck Thompson agreed to a voluntary interview at the Sheriff's Office on the night of February 18th. His name is being withheld as he is not suspected of committing any crimes.

He reported that he was driving, his wife was in the front passenger seat, and their three children were in the back of the vehicle as they were traveling from Firestone back home to Wellington. He described driving in the right-hand lane, traveling northbound on I-25, with minimal traffic once he passed the Mulberry exit. He noticed two police vehicles on the off ramp, and he reported:

"That whole area is just dark. I see two green, two green lights just flicker. At this time, I didn't know what the heck it was. Two second reaction, I see something laying on the ground and I see two male figures off to the side. I try my best to steer away from two male figures, not knowing what was in the road. I hit the thing that was in the road. I immediately pull over, when I got out, I realized there was somebody in the road."

He described seeing officers waving green lights, but it was too late to do anything other than avoid the officers. This recollection was likely based on him seeing a combination of the flashlight waved by Bordewick and the green LEDs on the Taser used by Lujan.

He estimated he was traveling “between 65 and 70” miles per hour. As soon as he saw individuals in the road, he tried to brake. It wasn’t a “complete lock up” of the brakes but was an “oh shit” moment and he did everything he could to avoid what he saw. He concluded that given the timing, “there wasn’t much I could do.”

He described he then stayed on scene to speak with officers and be helpful if he could. The CIRT detective conducting the interview observed no signs of impairment and the driver stated he had not used any drugs or alcohol that night. There was no evidence gathered that implicated the driver of the vehicle in any criminal conduct, as his driving was not careless, criminally negligent, or reckless.

e. Interview of Ford Explorer Passenger

The passenger of the Ford Explorer that hit Thompson agreed to a voluntary interview at the Sheriff’s Office on the night of February 18th. She reported she was in the passenger seat, with her husband driving, and their three kids in the back.

She reported she saw law enforcement vehicle lights on the off ramp as they approached the Mountain Vista exit, that it was very dark in the area, and then she noticed a “green laser” in the roadway. Before she was able to process the green lights, they had already hit something in the roadway. She reported they were traveling “at highway speeds,” estimating that was around 78 miles per hour.

f. Interview with Thompson’s Girlfriend

CIRT detectives interviewed the registered owner of the Ford Fusion that Thompson was driving. Her name is being withheld in this report as she is not alleged to have engaged in any criminal activity. The owner identified herself as Thompson’s girlfriend. She told detectives Thompson was the primary user of the Fusion since December of 2022 and all items in the vehicle belonged to him. She reported Mr. Thompson was a regular user of fentanyl and knew him to carry an “antique” firearm which could loosely match the description of the 1911 model found in the Fusion.

The girlfriend reported that she had bonded Thompson out of jail on February 16th and brought him to his mother’s house. According to the girlfriend, Thompson got into an argument with his mother about his addiction to opioids that resulted in Thompson and his girlfriend going to the America’s Best hotel. Because Thompson was upset with his mother, he decided to take her cat. Later, Thompson decided to return the cat, which is why the cat was in the Fusion at the time of this incident (the cat was released on scene to a family member). The last time she saw Thompson was around noon on the day of this incident and she doesn’t know what occurred between then and the traffic stop. She did speak with Thompson during the day, however, and based on her familiarity with Thompson, she believed he had been actively using fentanyl.

She told the CIRT detectives she did not believe Thompson to be suicidal and they were making plans for him to get sober. However, she did know him to have a history of running from law enforcement and those actions stemmed from fear of arrest and fear of withdrawals while in custody.

g. Interview with Thompson's Friend

CIRT detectives interviewed the second female who approached them on the evening of the incident. Her name is being withheld as she is not being charged with any crime. She admitted she gave Thompson three fentanyl pills and shared a pill with Thompson on the night of February 18th, about an hour prior to this incident. She further reported Thompson found another pill and asked to have it. While she did not witness Thompson use that pill, she believes he smoked it outside the hotel room in his vehicle while waiting for her to leave. She explained that she knew him to be a user of about ten fentanyl pills per day, however, his tolerance and usage may have changed having just been in custody in jail.

The friend reported she was going to follow Thompson back to his mother's house in her own car. The friend saw Thompson make the sudden move to enter the I-25 North on-ramp and observed the LCSO car follow him. The friend was unable to make the turn in time and used a walkie talkie to communicate to Thompson that law enforcement was behind him as she was worried he may get pulled over.

The friend called his girlfriend while still on the frontage road to report what occurred, and that call was recorded on a cell phone application. Regarding Thompson's driving actions, she says on the recording:

“He fucking freaked out. The cop got behind him and he fucking jumped the lane to fucking get off the fucking - to get on the interstate to go toward fucking Cheyenne. I watched the whole thing. And like, the cop was already in the left lane and he was in the right lane so he could go to Denver and he fucking freaked out I guess because the cop, the cop was already on the left side of him and he fucking jumped over into the lane to fucking get off and go toward Cheyenne. And fucking, I don't know why the fuck he did that. I was immediately like ‘dude what the fuck did you just do’ because I had a walkie talkie and uh, like because the cop immediately and he jumped lanes, he jumped a whole lane and fucking went, so I knew he was gonna get pulled. He was like ‘I gotta cop behind you’ and I said ‘dude you just jumped that lane, he's behind you, he's gonna fucking pull you over.’”

Further on in the recorded call, she states regarding Thompson's use of Fentanyl:

“I wasn't gonna give him anything until we went to his house and got his (inaudible) and he came back in begging for - fucking begging for one. And I was like ‘why do you need one, we are going to your house?’ And he was like, ‘well, I like to hit it while I'm driving.’”

While the friend attempted to follow Thompson on the frontage road, she did not observe any actions related to the eventual use of force.

h. Autopsy

On March 23, 2023, CIRT received the autopsy report for Thompson from Dr. Joseph White, a pathologist at the Larimer County Coroner's Office. The autopsy determined that Thompson died of multiple blunt force injuries sustained in a pedestrian versus vehicle accident. Dr. White documented the following injuries:

- A) Cutaneous abrasions, contusions, and lacerations
- B) Fractures of right ribs 7 through 10, left ribs 1 through 11, pelvis
- C) Lacerations of left lung, stomach, liver, spleen, left kidney, bladder
- D) Contusion of the heart
- E) Bilateral hemothoraces

Additionally, Dr. White included Mr. Thompson's toxicology report which showed a blood alcohol concentration of 0.012 and fentanyl levels of 100 ng/mL from chest cavity blood and 60 ng/mL from vitreous fluid. Dr. White opined that the level of Fentanyl was extraordinarily high. Based on the elevated fentanyl levels, detectives followed up with Forensic Toxicologist Jennifer Swatek with NMS Labs. Swatek opined that the observed levels were very high, but she was unable to say conclusively if those levels were lethal. She stated in her and her colleagues experience, they had seen fentanyl results ranging from barely detectable to "hundreds" of ng/mL and lethal levels are highly influenced by an individual's tolerance level to fentanyl. Therefore, while the toxicology report does indicate significant impairment from fentanyl may have existed, it cannot be said that the levels would have caused Thompson's death.

i. Analysis of Taser Data

The Taser firing log, pulse graph, and body worn camera video of the incident were submitted to Senior Investigations Engineer Bryan Chiles with Axon (the manufacturer of LCSO Axon body worn cameras and Taser electronic control weapons) for analysis. Axon provided a report on April 7th, 2023, with a summary of the incident and overview of the Taser 7 Energy Weapon. Chiles reported Deputy Lujan's Taser was trigger activated 1 time on February 18th, 2023, at 21:26:14 hours, deploying the cartridge in Bay 1. Deputy Lujan's Taser battery log indicated the clock was running 3 seconds behind actual time. The pulse graphs indicated it was active for 4.96 seconds (one cycle is approximately five seconds) and discharged into a very high impedance load, consistent with discharging through skin and fat tissue for the entire cycle – indicating to connected fully with Thompson's body. The video, combined with the Taser logs, show the trigger was activated just before Thompson ran into the traffic lane and ended 0.6 seconds before the vehicle struck him.

CIRT detectives also spoke with Assistant General Counsel & Senior Director of Taser Safety, Amy Nguyen. Nguyen stated there would not be anything contained in the training material specific to Taser use near or on a roadway and there had never been an incident where a Taser was

deployed in a roadway and a subject was subsequently struck by a vehicle, and to her knowledge this would be the first incident of this kind.

j. Accident Reconstruction

Accident reconstruction experts with Fort Collins Police Services, assigned to the CIRT, conducted an objective analysis of the collision between the vehicle and Thompson based on measurable facts on the roadway and relating to the parties. While they cannot measure what a driver was actually perceiving, or what he or she thought, they can analyze the response of the subject driver in comparison with how other drivers have responded to similar conditions during research testing.

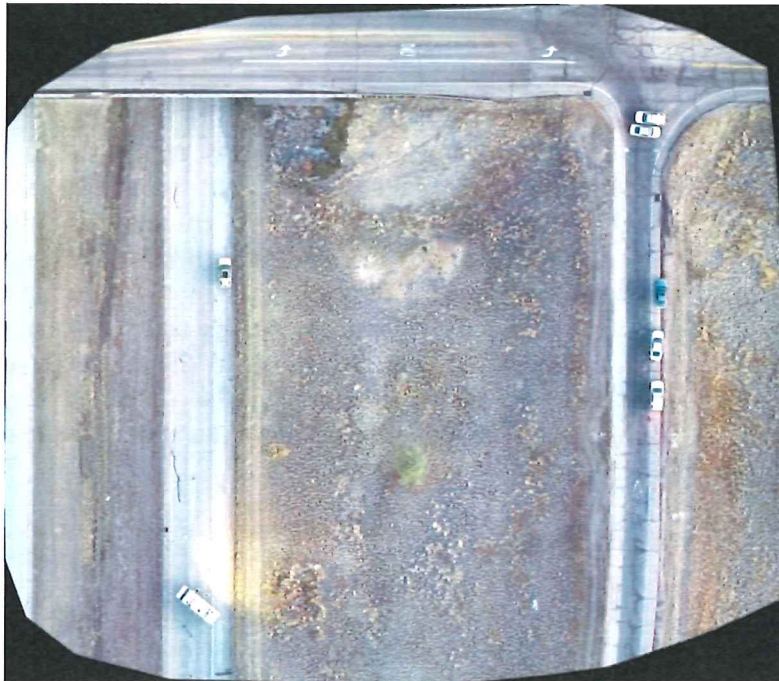


Photo 8 – Drone photograph from the morning of February 19. Showing vehicles of driver (green), Thompson (blue), and Lujan (white, directly behind Thompson), and Bordewick (white, directly behind Lujan) in their original locations. Also depicted are several law enforcement vehicles which arrived on scene after the incident.

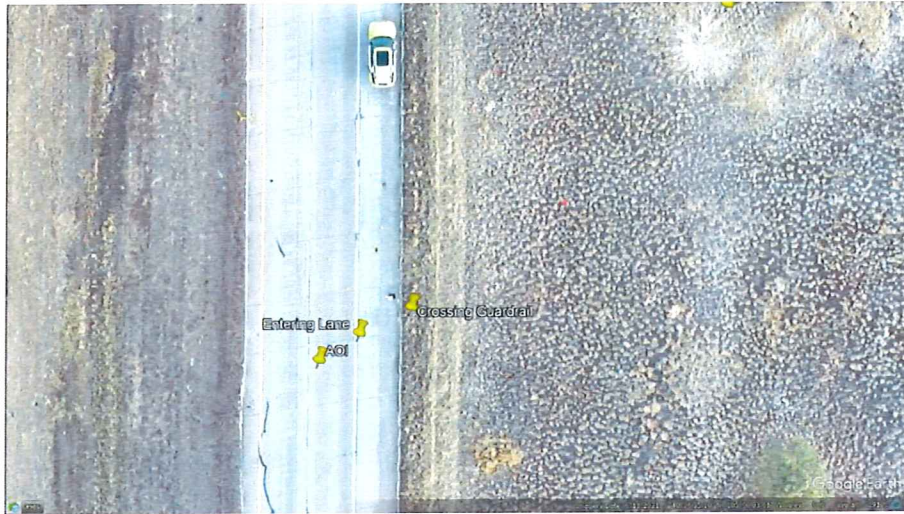


Photo 9 – The approximate locations of Thompson as he crossed the guardrail, entered the traffic lanes, and at the area of impact, as determined by the accident reconstruction.

The accident reconstruction looked at the likely speed of the vehicle. The driver estimated his speed at 65mph. The front passenger estimated the speed at 78mph. The vehicle did not record any electronic data regarding the speed at the time of impact. The posted speed limit is 75mph. Deputies indicated the vehicle was traveling typical highway speeds. While unable to precisely determine the actual speed, the reconstruction analyzed speeds range from 65 to 75mph to cover a reasonable range of circumstances. At that range, the vehicle was approaching at approximately 95 to 110 feet per second.

The reconstruction, using the body worn camera and other available evidence, determined the following key times prior to impact. All times are approximate.

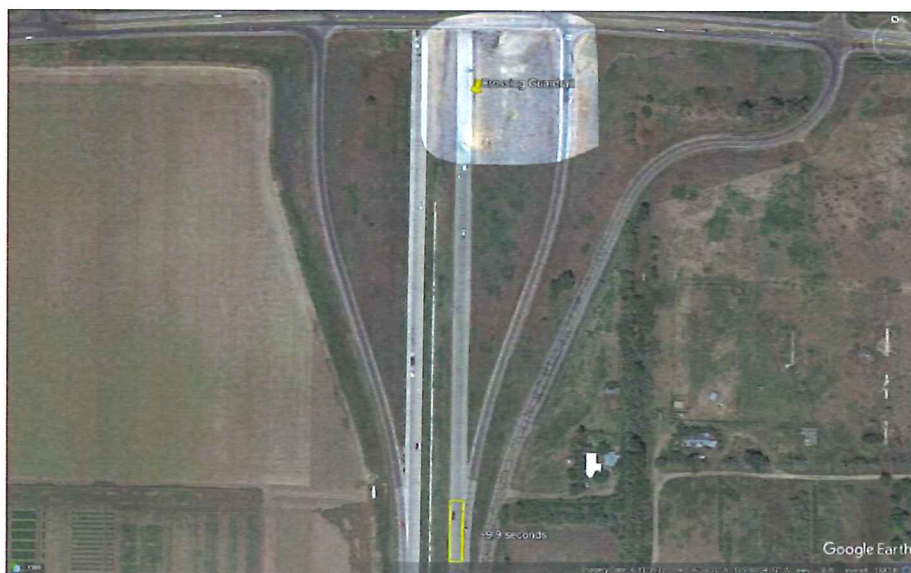
- 20.2 seconds –Lujan gives commands and looks for traffic
- 14.7 seconds – Thompson runs past the tree on the embankment
- 9.9 seconds – Thompson jumps the guardrail
- 8.2 seconds – Bordewick begins strobing his flashlight
- 7.3 seconds – Lujan crosses the guardrail
- 5.6 seconds – Lujan deploys his taser, Thompson enters the northbound lanes
- 5.1 seconds – Thompson begins to fall
- 4.5 seconds – Thompson is lying on the roadway

From those times, the reconstruction worked to determine how far away the vehicle may have been at each time, and therefore what opportunity Lujan may have had to observe the vehicle. At 20.2 seconds prior to impact, Lujan was pursuing Thompson across the offramp lanes, and had entered the embankment where he gave commands. The vehicle at this point would have been between 1,927 and 2,224 feet south of the point of impact. Given the distance and obstructions, it is unlikely that Lujan would have been able to see the vehicle.



Photograph 10 – Range of Explorer from scene at the beginning of the foot pursuit.

At 9.9 seconds before the impact, Mr. Thompson was crossing the guardrail onto the shoulder. The vehicle would have been between 943 and 1,088 feet south of the point of impact.



Photograph 11 – Range of the Explorer at the time Thompson crosses the guardrail.

At 5.6 seconds before impact, Mr. Thompson was hit with the Taser probes. At this point, the vehicle would have been between 533 and 615 feet south of the point of impact.

The accident reconstruction analyzed many potentially relevant factors involved in this incident. All parties, the two deputies and Mr. Thompson were wearing dark clothing which would make it difficult for approaching traffic to see them. Law enforcement vehicles on the offramp had their emergency lights on which can be a focal point for passing drivers and can momentarily divert

their attention from the roadway as well as impact their night vision. It was dark at the time of the incident, and there was no street lighting on the interstate, the off ramp, or the overpass. Vehicles have widely different headlight configurations, lumen outputs, glass quality, and dirt that may be obstructing the light at any given time.



Photo 12 – The Ford Explorer which hit Thompson, pictured after being towed to a law enforcement garage.

Research relied upon by the accident reconstruction team shows that hazards must be easily identifiable before most drivers will begin to respond. When a hazard is below a recognition threshold, drivers are unable to recognize the hazard and will likely not respond. In this case, there were three pedestrians wearing dark clothing on a dark roadway. Deputy Lujan was standing on the left side of the subject driver, Brent Thompson was lying on the roadway directly in front of the driver, and Deputy Bordewick was standing on the right side of the driver. Given this scenario, the only response available to the driver was to emergency brake and stop to avoid a collision.

Drivers who were studied under similar conditions did not recognize the immediate hazard of a pedestrian in dark clothing on a dark roadway until they were approximately 127 feet away from the collision. The average perception-response time was between 1.8 and 2.2 seconds. At speeds between 65mph and 75mph, a driver would need approximately 430 to 500 feet to perceive the immediate hazard and brake to a stop.

From the body worn camera video, the driver started to emergency brake approximately 0.4 seconds *after* the collision. Considering the average perception-response time of drivers, the driver likely perceived the immediate hazard 1.4 to 1.8 seconds *prior* to the collision based on research reviewed by the accident reconstruction team. At speeds between 65mph and 75mph, he was approximately 130 to 200 feet from the collision. The driver needed approximately 360 to 500 feet to brake to a stop. Therefore, the accident reconstruction concluded the driver's behavior was similar to the driving behavior of tested drivers and that this driver could not have avoided this collision given the conditions.

k. Scene Inspection

CIRT Detectives and FCPS Accident Reconstruction officers facilitated a scene inspection on May 2, 2023. The goal of this inspection was to understand the distances, measurements, and on-the-ground realities of the scene. While exact scene conditions cannot be replicated, the visit was conducted on a dry night from approximately 9:00PM to 10:00PM, when lighting conditions were similar to February 18.

CIRT members placed markers in the approximate locations of Thompson's vehicle, Lujan's vehicle, the location where Lujan gave commands to Thompson, the location Thompson crossed the guardrail and the location where Thompson was hit. CIRT members walked the approximate path that Thompson and Lujan ran from the off ramp to the roadway. It was noted that the median area along that line was quite steep, and the footing was loose, uneven, and obstructed by brush. It was difficult to navigate in the dark.

While traversing that path down to the interstate, the Mountain Vista overpass would obstruct views of southbound traffic. Views of northbound traffic were better, though they were still obstructed by a stand of trees near the beginning of the offramp that prevented a longer view. The ability to observe northbound traffic was also significantly impeded by lighting from the Mulberry corridor area that were in the same field of vision when viewed from the height of the offramp.

There is a drainage ditch at the bottom of the embankment that dips significantly below the highway before rising again up to the guardrail. The low vantage point and location of the guardrail would significantly impact one's ability to observe oncoming traffic while crossing this low area.

A FCPS officer, who is an expert in accident reconstruction, drove north on I-25 several times at an approximate speed to that which the evidence and reconstruction indicated the vehicle was driving. While factors such as exact speed, exact headlamp illumination, and exact road conditions, cannot be duplicated, it is believed the CIRT analysis that evening provided a reasonable approximation. CIRT members stood approximately where Lujan was at the guardrail and observed the FCPS vehicle travel north. Consistent with the data produced in the written reconstruction report, the vehicle, traveling normal highway speeds, covered the distance from the point of ability to observe it to the point of impact very quickly, leaving little time to react.

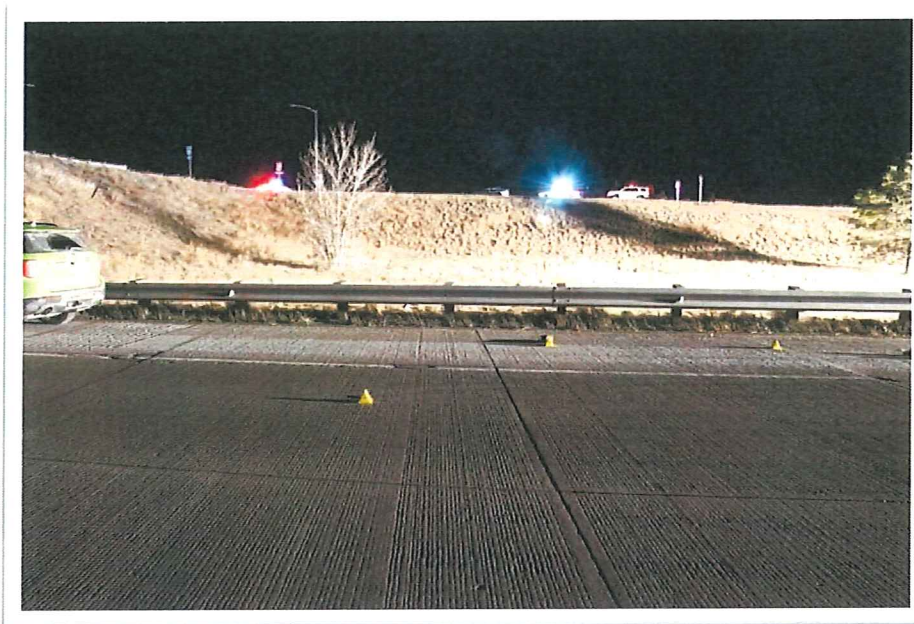


Photo 13 – The scene as photographed on the night of the incident, taken from the interstate, depicting the roadway, the embankment, and Thompson, Lujan, and Bordewick’s vehicles stopped on the offramp.

I. Brent Thompson’s Bond Status

At the time of his death, Mr. Thompson had several pending criminal cases. Those cases had not resulted in convictions, and therefore remain only allegations, with Mr. Thompson granted the presumption of innocence. It is unnecessary to list all those matters for purposes of this review, however, the possibility of re-arrest may have played a role in Mr. Thompson’s actions that night and their existence is therefore noteworthy.

Specifically, on January 24, 2023, a warrant was issued for Mr. Thompson by the court for failure to comply with the terms of his pretrial release in pending Larimer County criminal case 2022M2863 (in which Mr. Thompson faced charges for Possession of a Controlled Substance, a Class 1 Drug Misdemeanor; Driving Under Restraint, a Class 2 Traffic Infraction; and Drug Paraphernalia Possession, a Drug Petty Offense). He was arrested on that outstanding warrant on February 15, 2023, and his bond was set by the court at \$125 cash only. His bond was posted by his girlfriend on February 16th, 2023, and Mr. Thompson was released. He was again ordered to comply with various pretrial conditions, including supervision, substance monitoring, and to remain law abiding.

Mr. Thompson’s actions may have also been affected by his prior criminal history which contained several convictions. While it is unnecessary for the purposes of this review to list each case, Mr. Thompson did have at least one felony conviction, which would render his possession of a firearm illegal and traffic convictions which would escalate the level of offense he may face for driving with a suspended license.

m. Body Worn Camera Review

Deputy Lujan's body worn camera depicted the entirety of his interaction with Thompson. The video begins with timestamp. Analysis from Taser indicates the time stamps ran several seconds behind actual time. All time references herein refer to the time as indicated on the body worn camera video.

- 21:15:09 – Body worn camera begins recording while Lujan is in his patrol vehicle (Body worn cameras have a built in 30 second recall for video but not audio, and therefore the first 30 seconds contain no audio as is standard).
- 21:17:05 – Lujan approaches Thompson's vehicle. Thompson has his window down and Lujan advises him the reason for the stop is expired registration.
- 21:17:20 – Thompson hands Lujan registration (expired) and indicates he does not have his license in his possession.
- 21:18:06 – Thompson identifies himself as Jacob Jones with a date of birth of November 30th, 1994.
- 21:18:34 – Thompson indicates he was headed to Loveland and a conversation ensues regarding the fact he was headed north at the time.
- 21:19:20 – Lujan asks Thompson about illicit drug use and Thompson states, "no illicit drugs."
- 21:19:34 – Lujan returns to his patrol vehicle to check the information he has been provided.
- 21:22:18 – Bordewick arrives, and Lujan mutes his camera to have a conversation about the situation.
- 21:24:54 – Both deputies approach Thompson's vehicle and Lujan asks Thompson to exit the vehicle.
- 21:25:30 – Lujan confronts Thompson about the false name.
Lujan: "Did you give me the right name?"
Thompson: "Yeah."
Lujan: "What's your name?"
Thompson: "Jacob Todd Jones."
Lujan: "Why didn't you give me the right name?"
Thompson: "It is the right name"
Lujan: "No it isn't."
Thompson: "Yes, it is."
Lujan: "Brent, I know. So, right now you're under arrest. Go..."
- 21:25:54 – Thompson disregards the advisement he is under arrest, turns and begins to flee on foot toward the interstate.



21:25:58 – As he leaves the off ramp and enters the embankment, Lujan yells, “stop or you’re gonna get Tased.” Thompson continues to flee.

21:26:10 – Thompson attempts to jump the guardrail onto I-25 having previously turned to run southbound, parallel to the roadway. Headlights can be seen in the northbound lane at some distance away.



21:26:14 – Thompson enters the roadway from the shoulder, just as Lujan deploys his Taser.



21:26:15 – Taser probes make contact with Thompson

21:26:17 – As Lujan’s focus adjusts to the roadway and he observes the vehicle coming, he yells, “shit, shit.”



21:26:19 – Taser activation cycle ends after 4.96 seconds (based on BWC and Taser analysis done by Taser experts)

21:26:20 – The vehicle impacts Thompson while he is in the roadway.

21:26:57 – Lujan places Thompson in handcuffs and removes him from the roadway to the shoulder.

21:27:29 – Lujan states, “hey man, stay with me,” as he begins to assess Thompson for medical needs.

21:27:52 – Lujan checks Thompson’s pulse.

21:27:53 – Lujan begins administering CPR to Thompson.

21:28:25 – Bordewick advises they move Thompson over the guardrail, out of the shoulder, for everyone’s safety and the deputies move Thompson. CPR continues immediately on the other side of the guardrail.

21:31:46 – An ambulance arrives and EMTs begin rendering medical aid while deputies continue CPR. Lujan stayed with Thompson until relieved on scene.

n. Deputy Lujan Training Materials

CIRT investigators gathered the training materials regarding Lujan’s certification on the Taser. The logs showed Lujan had been trained and certified in use of the Taser and his training was current per LCSO standards. It showed he had obtained a total of 26 hours of Taser training since starting with LCSO in 2019.

Username	First Name	Last Name	Certificate Name	Awarded Time	Total Awarded Credit Hours
lujanlt	Lorenzo	Lujan	TR-Taser 7 CEW - User Certification 6 hours	2022-10-04 00:00:00	6
lujanlt	Lorenzo	Lujan	TR-TASER Annual Recertification 2022 (master list)	2022-10-04 00:00:00	0
lujanlt	Lorenzo	Lujan	TR-TASER Annual Re-Certification & Updates 4 hour	2021-10-02 00:00:00	4
lujanlt	Lorenzo	Lujan	TR-TASER Annual Recertification 2021 (master list)	2021-10-02 00:00:00	0
lujanlt	Lorenzo	Lujan	TR-Taser 7 CEW - User Certification 5 hours	2020-06-29 00:00:00	5
lujanlt	Lorenzo	Lujan	TR-TASER Annual Recertification 2020 (master list)	2020-06-29 00:00:00	0
lujanlt	Lorenzo	Lujan	TR-TASER 7 CEW - User Certification Course online 3 hour	2020-06-14 00:00:00	3
lujanlt	Lorenzo	Lujan	TR-Mini Academy: TASER X2 CEW User Certification Course	2019-06-08 00:00:00	8
lujanlt	Lorenzo	Lujan	TR-TASER Annual Recertification 2019 (master list)	2019-06-08 00:00:00	0

Photograph 14 – LCSO Taser training log for Deputy Lujan

The LCSO Conducted Electrical Weapon (CEW) policy for Taser use, includes the following guidance to deputies and was included in Lujan’s training:

61276.5 USE OF THE CEW

The CEW has limitations and restrictions requiring consideration before its use. The CEW should only be used when its operator can safely approach the subject within the operational range of the weapon. Although the CEW is generally effective in controlling most individuals, deputies should be aware that the weapon may not achieve the intended results and be prepared with other options.

The CEW may be used when the circumstances perceived by the deputy at the time indicate that such application is reasonably necessary to control a person if:

1. The person is violent or is physically resisting.
2. The person has demonstrated, by words or action, an intention to be violent or to physically resist and reasonably appears to present the potential to harm deputies, themselves or others.

The use of a CEW is not authorized to apprehend an individual, without known circumstances or factors, whose only action is flight from a deputy attempting to make contact.

61276.5.1 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the CEW on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the deputy, the subject or others, and the deputy reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- 1. Individuals who are known to be pregnant.
- 2. Elderly individuals or obvious younger juveniles.
- 3. Individuals with low body mass.
- 4. Individuals who are handcuffed or otherwise restrained.
- 5. Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
- 6. Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

VII. CRIMINAL CHARGES CONSIDERED AGAINST NON-LAW ENFORCEMENT

a. Brent Thompson

Had Mr. Thompson survived, the evidence derived from the CIRT investigation would have led to the following charges being filed against him:

1. C.R.S. §18-12-108 (1) Possession of Weapon by Previous Offenders (Class 5 Felony)
2. C.R.S. §18-18-403.5 (1), (2c) Unlawful Possession of a Controlled Substance (Class 1 Drug Misdemeanor) – Three Counts
3. C.R.S. §18-5-113 (1)(b)(II),(III) Criminal Impersonation (Class 2 Misdemeanor)
4. C.R.S. §18-8-103 Resisting Arrest (1)(b) (Class 2 Misdemeanor)
5. C.R.S. §18-8-102 Obstructing Government Operations (1) (Class 2 Misdemeanor)
6. C.R.S. §42-3-114 (1)(a)(II) Expired Registration (Class Traffic B Infraction)
7. C.R.S. §42-3-121 (1)(b) Violation of Registration – fictitious or Cancelled Tabs (Class 2 Traffic Misdemeanor)
8. C.R.S. §42-4-1007 (1)(a) Unsafe Lane Change (Class A Traffic Infraction)
9. C.R.S. §42-4-1409 (3)(a) Failure to Provide Compulsory Insurance (Class 1 Traffic Misdemeanor)
10. C.R.S. §42-2-206 (1)(a)(I) Driving after Revocation Prohibited (Class 2 Traffic Misdemeanor)

The filing of new charges against Mr. Thompson would also have resulted in the filing of charges of Violation of Bail Bond Conditions C.R.S. §18-18-212 given Mr. Thompson's

open criminal matters and his failure to remain law abiding in accordance with the conditions of his bond.

b. The Ford Explorer driver

The actions of the driver of the vehicle which struck Thompson were also fully analyzed. The determination of the accident reconstruction and all available evidence is that the driver had no practical ability to avoid the individuals in the roadway given the totality of the circumstances. There was no evidence that the driver acted carelessly, was distracted, was impaired, or otherwise exhibited any criminal driving behaviors. As such, while the driver may have been the proximate cause of Thompson's death, he did not possess the requisite *mens rea*, or mental state (for instance, reckless or careless), necessary to file a criminal charge and therefore no charges can or will be filed against them.

VIII. CONCLUSIONS

This CIRT investigation comported with the 8th Judicial District's Critical Incident Protocol. The investigation was thorough, objective, well-resourced, and all relevant materials were provided in a timely manner. Finally, the investigation yielded ample evidence from which factual and legal conclusions could be reached.

It should be noted that while every CIRT event is analyzed closely and on the specific facts of the case, this scenario was unique even by CIRT standards. The factual and legal questions in this case were unusually complex. According to Taser, the dominant manufacturer of CEWs, a circumstance involving a less-lethal CEW being deployed in a roadway where the target dies by other means has never occurred before. As such, the CIRT investigators and District Attorney's office dedicated an unprecedented amount of resources and attention to this review.

Deputy Lujan cooperated with the CIRT investigation and provided a voluntary interview on the night of the incident and answered every question presented to him. He appeared candid and genuine in his responses. His account was essentially consistent with the other evidence, including the body worn camera footage and physical evidence. Pursuant to CIRT protocols, Deputy Lujan did not watch his body worn camera footage before the interview.

As a threshold matter, this is not a case where "deadly force" was used, per Colorado law ("Deadly physical force" means force, "the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death," §18-1-901, C.R.S.). There was no evidence Deputy Lujan *intended* his use of force to cause a death nor is the Taser intended to cause death when deployed. As it is clear the resulting death was not intentional, the analysis need not reach whether the circumstances rendered it natural or probable, as the law requires all three prongs to be met to implicate deadly force. Therefore, we do not, and cannot, hold Deputy Lujan's conduct to that higher standard. It seems clear, and Deputy Lujan himself stated, that deadly force as defined by Colorado law, would not have been justified in this circumstance.

Q#1: Did Deputy Lujan use physical force?

Answer: Deputy Lujan did use physical force in deploying his Taser. When reviewing the use of physical force, Colorado courts have stated, albeit in different contexts, that the term only requires “the application of force to the body.” *People v. Hoge*, 488 P.3d 436, 439 (Colo. App. 2018). Here, while his hands did not touch Mr. Thompson, the Deputy started the kinetic action that led to physical impact (*i.e.*, the Taser barbs) being applied.

Q#2: Would nonviolent means have been ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to Deputy Lujan or another person in this situation, and did Deputy Lujan first attempt to apply nonviolent means before resorting to the use of physical force (*i.e.* the Taser)?

Answer: It appears from the evidence that there were no means aside from at least some level of force that would have been effective in completing an arrest of Mr. Thompson. At the time Deputy Lujan advised Mr. Thompson he was under arrest he had probable cause for several criminal offenses, including, but not limited to, Driving After Revocation Prohibited (Habitual Traffic Offender) a class 2 traffic misdemeanor and Criminal Impersonation, a class 1 misdemeanor.

While it is reasonable for the community to ask whether *any* pursuit of Mr. Thompson was necessary under the circumstances presented here, that is not the legal question that must be answered by the District Attorney. Under Colorado law, an officer is given the authority and, in fact, *is expected* to arrest persons suspected of engaging in criminal behavior. Mr. Thompson was initially cooperative with the deputies, but soon became evasive, provided false information, and ultimately fled as he was being advised he was under arrest. Deputy Lujan gave commands to stop, but it was apparent that Mr. Thompson was not going to comply with being taken into custody without force.

Q#3: Did Deputy Lujan use only a degree of force consistent with the minimization of injury to others?

Answer: This question is complex and must be evaluated under the totality of the attendant circumstances. The subparts of the relevant inquiry are: 1) was the degree of force used consistent with the minimization of injury to others; and 2) if so, as the statute seems to require just enough force to accomplish this result (*i.e.* “*only* a degree of force consistent...”), was there any lesser or different degree of force at Deputy Lujan’s disposal that could have reasonably been used to effect an arrest of Thompson?

Deputy Lujan’s conduct is difficult to evaluate under this standard. When we assess whether the degree of force used (*i.e.* a Taser deployment) was “consistent with the minimization of injury to others” one could reasonably answer yes, as the *degree* of force (versus the *result* of the force) was not excessive. It was the unintended result of Deputy’s Lujan’s use of the Taser, and not the anticipated effects of the Taser, that were not consistent with the minimization of injury to others.

If we consider as part of the “degree of force” used by Deputy Lujan the *results* of the deployment, it would appear the deputy’s use of force overall was not consistent with the minimization of injury to others. If we consider only the reasonably intended - and typical - effect of the Taser itself as

the “degree of force,” then the answer is different, as the use of a Taser does not typically increase the risk of injury to others in the manner which occurred here.

The evidence supports that the deputy did in fact believe he was acting in a way that would reduce risk to Mr. Thompson and other motorists. His belief with respect to other motorists appears to have been incorrect, as the deputy seems to have exacerbated an already dangerous situation by temporarily immobilizing Mr. Thompson in a roadway with oncoming traffic. Even considering the tragic consequences in this incident, we can never know for certain whether the deputy’s use of force minimized possible injury to other motorists. At the time, Thompson was impaired by Fentanyl use, running toward an interstate, and had already stumbled. Whether he would have put himself or other motorists in danger in the north or southbound lanes is unknown. However, as we review this incident with the luxury of time and research (which, of course, the deputy did not have), we can fairly say Deputy Lujan’s use of force was not objectively consistent with the minimization of injury to others.

While the above answer leads us to move forward and analyze whether any crime was committed, it is still helpful to review whether less force may have been used by the deputy to accomplish his intended goal of arresting Mr. Thompson while minimizing injury to others. As stated above, the deputy was legally permitted to arrest Mr. Thompson based on the information available, and it was the deputy’s belief that Mr. Thompson and other motorists were at risk if he were to run across the highway, which he was clearly intent on doing. During the investigation, the deputy was asked about his choice of the Taser. He stated verbal commands didn’t work, OC spray would not have worked from the distance between them, and deadly force (*e.g.* his gun) was not justified, so he felt the “taser was the only less lethal tool to try to stop the suspect from continually fleeing towards the interstate.”

While the result of this decision was tragic, as a legal matter, once he decided that he could minimize injury by stopping Mr. Thompson from crossing the highway, the use of the Taser was probably the only use of force he had available. Thus, while the decision to use force at all and to use it on the interstate raise reasonable questions of judgment, the mere choice of the Taser (given its typical less-than-lethal characteristics) would not appear to violate the use of force statute. It is, therefore, the deputy’s use of the Taser *here* (*i.e.*, the overall circumstances surrounding use of the Taser) that is arguably not protected by §18-1-707, C.R.S. Because there remains a question about the application and effect of the use of force statute, I analyze the deputy’s conduct against the elements of the applicable criminal charge below.

Q#4: Did Deputy Lujan – or other peace officers – ensure that assistance and medical aid were rendered to Mr. Thompson as soon as practicable?

Answer: Deputies on scene, including Deputy Lujan, rendered immediate and appropriate medical care. Deputy Lujan pulled Mr. Thompson out of the roadway and with the help of Deputy Bordewick brought him to the safe side of the guardrail. Lujan immediately began a medical assessment and began CPR. Mr. Thompson was provided lifesaving efforts continually until paramedics on scene assumed complete care. While these efforts were tragically unsuccessful, evidence shows that every effort was made to render aid to Mr. Thompson after the impact.

Q#5: Did Deputy Lujan or other peace officers ensure that any of Mr. Thompson's identified relatives or next of kin were notified as soon as practicable?

Answer: Mr. Thompson's mother was notified of her son's death by police personnel on the night of the incident. Police personnel attempted to notify Mr. Thompson's father on the night of the incident, but he was not at his residence. Law enforcement did make telephone contact with Thompson's father on February 22. Thompson's girlfriend was also notified on the night of the incident.

Q#6: As it is questionable whether Deputy Lujan used *only* a degree of force consistent with the minimization of injury to others, the question of the charging and prosecution of Deputy Lujan must be assessed.

Answer: The District Attorney must determine whether, after a review of all attendant facts and circumstances, criminal charges are supported and should be brought against the involved peace officer. A decision to prosecute requires not only an assessment of whether the facts support the elements of proof of any particular criminal charge, but also a determination that there is a reasonable likelihood of conviction beyond a reasonable doubt by a unanimous jury.

Given the facts presented, the charges to consider would include Criminally Negligent Homicide, §18-3-105, C.R.S., and [Reckless] Manslaughter, §18-3-104, C.R.S. These crimes are defined as follows:

Criminally Negligent Homicide

Any person who causes the death of another person by conduct amounting to criminal negligence commits criminally negligent homicide.

Manslaughter

- (1) A person commits the crime of manslaughter if
 - (a) Such person recklessly causes the death of another person.

The culpable mental states involved in the two crimes are defined in §18-1-501, C.R.S., as:

“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.

“Recklessly”. A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

All elements of the crimes, including the culpable mental state, must be proven beyond a reasonable doubt to support a conviction. *See COLJI G1:01.*

Colorado courts, including our highest court, have compared the elements and culpable mental states for criminal versus civil liability (*i.e.* criminal negligence and recklessness versus ordinary or “civil” negligence):

In addition to the separate analyses that are applied to determine whether a risk is both “substantial” and “unjustified,” the concept of a “substantial and unjustifiable risk” implies a risk that constitutes a **gross deviation from the standard of care** that a reasonable law-abiding person would exercise under the circumstances. Both the Model Penal Code and the New York Code, which the General Assembly followed in drafting the Colorado criminal code, expressly define a “substantial and unjustifiable risk” as one that is a gross deviation from the reasonable standard of care. *See MPC, § 2.02* at 226; *N.Y. Penal Law, § 15.05*. A substantial and unjustifiable risk must constitute a “gross deviation” from the reasonable standard of care in order to justify the criminal sanctions imposed for criminal negligence or reckless conduct, as opposed to the kind of deviation from the reasonable standard of care that results in civil liability for ordinary negligence.

People v. Hall, 999 P.2d 207, 218-19 (Colo. 2000) (emphasis added).

The *Hall* Court further discussed the differences in culpability between criminal negligence and recklessness.

Although recklessness is a less culpable mental state than intentionally or knowingly, it involves a higher level of culpability than criminal negligence. Criminal negligence requires that, “through a gross deviation from the standard of care that a reasonable person would exercise,” the actor fails to perceive a substantial and unjustifiable risk that a result will occur or a circumstance exists. An actor is criminally negligent when he should have been aware of the risk but was not, while recklessness requires that the defendant actually be aware of the risk but disregard it. Thus, even if she should be, a person who is not actually aware that her conduct creates a substantial and unjustifiable risk is not acting recklessly.

Id at 219-20 (internal citations omitted).

The totality of the evidence presented through the CIRT investigation reveals that Deputy Lujan was attempting to enforce Colorado law when he contacted and sought to arrest Mr. Thompson. The deputy was engaged in a lawful arrest, as there was probable cause for multiple criminal charges against Mr. Thompson and he was attempting to flee the deputy’s lawful arrest. The law clearly doesn’t require police inaction in these circumstances.

In reviewing Deputy Lujan’s actions, it is reasonable to ask whether there were other approaches he could have, and should have, taken with respect to Mr. Thompson. Using hindsight, and with the luxury of time to consider each action and reaction during the contact, pursuit, and use of force by the deputy, the answer seems to be yes. However, the fact that the deputy’s decision was not the correct one, nor the fact that other officers may have made different decisions given all attendant circumstances, is not dispositive of whether his choices that evening lead to criminal culpability.

First, it is apparent that Deputy Lujan’s conduct should be examined under the criminal negligence rather than the reckless standard, as he seems to have failed to perceive the risk (negligence)

associated with the Taser deployment, as opposed to knowing the risk and disregarding it (recklessness). Thus, the question remaining is whether his failure to perceive the risk to Mr. Thompson's life was the result of a "gross deviation from the standard of care that a reasonable person would exercise."

While this CIRT review is not designed to impose 20/20 hindsight on officer actions, the tragedy of this situation necessarily raises the commonsense question - albeit separate from any legal conclusions - of "what should Deputy Lujan have done in the situation?" Remembering that his duty was to arrest, it is too simple to offer that he merely should have let Mr. Thompson run away. The law allows for arrest and Deputy Lujan not only had probable cause for arrest on multiple criminal charges, but also legitimate community safety concerns about allowing an impaired individual to run onto a highway. Preventing Mr. Thompson from entering the roadway, by itself, would have been prudent, and utilizing the less-lethal Taser option to effect an arrest *prior* to him entering the roadway would almost certainly not be cause for concern.

In evaluating Deputy Lujan's conduct, understanding his training and the Sheriff's Office policies that guide it, are also relevant. The policies, 61276.5.1 "Special Deployment Considerations," and 61276.5 "Use of the CEW" are cited above. Among other admonitions, the policy requires an officer to consider the totality of the circumstances and generally avoid using a Taser when "individuals whose position or activity may result in collateral injury." A commonsense interpretation of those policies would seem to prohibit incapacitating an individual in a high-speed roadway. However, neither LCSO trainings nor any training advice provided by Taser themselves speaks specifically to use in or around roadways. Presumably, this is because this incident is one of first impression. Whether those policies should now include specific reference to roadway safety in light of this tragedy is an important conversation, and one which we encourage and expect them to have.

However, the District Attorney does not evaluate whether an officer's conduct violated any internal policy or procedure as that is outside this office's purview. Internal investigations regarding policy violations are typically stayed until the completion of the CIRT investigation. That assessment is now certain to be addressed by the Sheriff's Office.

Perhaps then, the more reasonable question to pose in evaluating the deputy's conduct is, once it was clear that Mr. Thompson was actually entering the roadway, what, if any, action should the deputy have taken? Using hindsight, we can say that allowing Mr. Thompson to run across the interstate would likely have led to a less tragic result. While it is possible Mr. Thompson could have caused an accident in either lane, that is at best speculative. It also may have resulted in Mr. Thompson evading arrest that evening, however his suspected crimes were non-violent in nature and law enforcement had already positively identified him for issuance of a warrant. However, the legal question regarding the deputy's culpability does not rest on the fact that his decision was not the best, or correct, one under the circumstances.

Because the deputy was a peace officer acting in accordance with his responsibilities, we must evaluate his conduct in the context of a dynamic and rapidly evolving interaction with a non-compliant suspect. As our courts and the U.S. Supreme Court has noted when addressing the use of force by police officers, "[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.” *People v. Hardrick*, 60 P.3d 264, 269 (2002) (quoting *Graham v. Connor*, 490 U.S. 386, 396–97 (1989)).

When determining whether Deputy Lujan’s conduct was a gross deviation from the standard of care, we must consider all attendant circumstances (*e.g.* lighting, timing, purpose, other risks to individual and community safety, police practices and policies, etc.), what the officer perceived, and the manner and sequence in which he perceived the environment. This consideration naturally involves the deputy’s decision making at all stages of the rapidly unfolding situation.

The many significant considerations occurring simultaneously here included, though are certainly not limited to: Lujan was mid-pursuit of a suspect who was disobeying commands; Lujan reported the suspect had a jump on him and a longer stride and was exerting significant effort to catch up; the embankment was very dark, it was quite steep, and it was marked by uneven ground and vegetation making running challenging; southbound traffic was almost impossible to see given the overpass; northbound traffic was visible but identifying specific vehicles difficult given the lighting in the Mulberry corridor and interstate speeds; Mr. Thompson’s direction of travel was not straightforward and it was not clear until the last second that he would actually clear the guardrail and cross the shoulder into the travel lanes; and Mr. Thompson’s intentions and impairment level were unknown to the deputy.

As stated above, the deputy concluded that the “Taser was the only less lethal tool to try to stop the suspect from continually fleeing towards the interstate.” In coming to that conclusion, he evaluated and rejected other options, including pepper spray (because of the distance between them), and the use of his firearm (because deadly force was not warranted). Importantly, as it pertains to the legal analysis of the use of force pursuant to §18-1-707, the deputy spoke about his concerns for the safety of Mr. Thompson and the public. When asked what he thought the outcome would have been if he didn’t take any action, he stated that he didn’t know what the outcome would be but that his “intended outcome was to take him safely into custody.”

In describing pursuing Mr. Thompson from the off ramp down the embankment toward I-25, Deputy Lujan stated he looked to south and noticed no northbound traffic cars for “a great distance,” as he was yelling use of force commands to Mr. Thompson. He also stated he couldn’t see any southbound traffic due to the overpass but was more worried with the northbound traffic. We know from the investigation that it was approximately 20 seconds before Mr. Thompson is hit that Deputy Lujan specifically looked and saw that traffic was not within proximity. The deputy does not discuss looking at northbound traffic again before deploying his Taser, which appears to be approximately 15 seconds after his initial surveillance of northbound traffic. Clearly the time that passed without the deputy again seeing – or at least recalling – the proximity of northbound traffic was a critical time window in relation to the deputy’s actions. While evidence shows the vehicle would have been difficult - if not impossible - to see when Lujan started his pursuit and it closed a significant distance in a short period of time, it is also true that the speed appeared to be in line with typical highway traffic flow and, therefore, that a clear looking stretch of highway could quickly change is not unforeseeable. His failure to fully assess the imminent threat of oncoming highway traffic was a clear lapse in judgment.

He explained:

[Mr. Thompson] was fleeing from our location due west down embankment – I was trying my hardest to try to close that distance prior to him getting to the interstate because I knew there was a greater risk of serious bodily injury or death, not only to the suspect -just because there's a lot of traffic even at nighttime on the interstate - and so I knew there was the potential [] he could place himself into a situation where he could get seriously hurt or killed running onto the interstate, not just northbound but continue to the southbound lanes as well, and if he continued to run, he was a pretty tall dude, depending on the vehicle, if a vehicle ended up striking him it could have caused serious bodily injury or potential death to that motorist, so my concern was trying to get to him as soon as I could to incapacitate him to hopefully stop harm from him or from motoring public travelling northbound on I-25.

When asked about his thought process when he was right next to -and on- the interstate, the deputy explained:

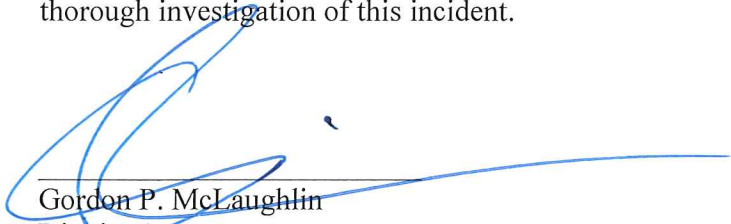
I was trying to get him hopefully on the side, like the shoulder . . . obviously he got up very quickly and began to run, that's when I deployed probes because I felt that we had great enough distance from what I perceived to allow me to hopefully take him into custody, or to try to attempt to slow that vehicle down so that we could take him safely into custody.

It is important to the District Attorney's decision that evidence supports Deputy Lujan's intent was to take Mr. Thompson safely into custody. While in retrospect it is clear he used poor, and ultimately tragic, judgment in deploying his Taser after Mr. Thompson was already in the traffic lanes of I-25, the split-second decisions here were not formed with evil intent and were made after a quick assessment of the possible dangers to Mr. Thompson and any motorists that may be impacted by his fleeing across the lanes of travel. The many factors involved in the deputy's decision-making in pursuing a fleeing subject toward the interstate at night (including his own mental and physiological processes, the environmental factors, etc.) make assessing his conduct very difficult. These considerations have an impact not only on the provability of the crime considered but also on whether criminal charges are appropriate after such consideration.

In conclusion, the District Attorney does not believe there would be a reasonable likelihood of success of conviction if the evidence from this investigation was presented to a jury. While criminal negligence does not require intentional or knowing conduct, it nonetheless requires more than mere negligence. A gross deviation from the standard of care, when assessed at the time of the deputy's deployment of the Taser, would be very difficult to prove beyond a reasonable doubt for all the reasons stated above. Combined with Deputy Lujan's actual intent to take Mr. Thompson safely into custody, while avoiding harm to other motorists, his actions show poor judgment and possibly a need for additional and more robust training, but not criminal culpability. As stated above, the District Attorney's decision only relates to the criminal negligence standard and does not purport to opine on any other lesser standards of culpability or legal burdens.

On behalf of the District Attorney's office, I offer my heartfelt condolences to the family of Brent Thompson. While nothing can ever bring Mr. Thompson back, it is my hope that out of this tragic situation will come a reassessment of when, where, why, and *if*, specific pursuits and less-lethal deployments are in the best interests of community safety, even when they may be legally permissible. Renewed analysis and training may ensure that this tragedy is not repeated.

The District Attorney's Office thanks the Critical Incident Response Team for conducting a thorough investigation of this incident.



Gordon P. McLaughlin
District Attorney
8th Judicial District

