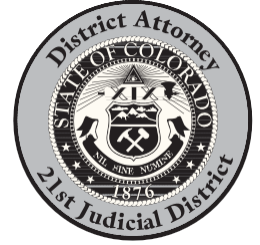


DANIEL P. RUBINSTEIN
DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE
Mesa County Justice Center ~ P.O. Box 20,000 - Dept. 5031 Grand Junction, CO 81502-5031 (970)
244-1730

CRITICAL INCIDENT 8/22/2026

October 7, 2026

Detective Zac McCullough
Grand Junction Police Department
555 Ute Ave.
Grand Junction, CO 81501

Dear Detective McCullough,

Thank you for the prompt and thorough investigation. I have reviewed the case you have sent up for possible prosecution. Below are my findings of fact and conclusions of law, ultimately leading to the decision that criminal charges are not appropriate.

On August 22, 2026, Mesa County Sheriff's Deputies Carbajal and Tinkle used force while detaining Mr. Herrera outside the Central Distributing Company at 3244 F ½ Road in Clifton. Mr. Herrera became unresponsive at the scene and died at St. Mary's Hospital early the following morning. The 21st Judicial District Critical Incident Response Team (CIRT) was activated at the request of Sheriff Todd Rowell, and the CIRT investigated the encounter. Detective Zachary McCullough was the lead detective. His investigation included dispatch records, witness and deputy interviews, business surveillance, a customer's video, body worn cameras, physical evidence, toxicology, and the autopsy. He also gathered training materials from recent use of force trainings, and the MCSO policy on use of force. The underlying recordings and reports remain the source for the complete account. My findings of fact and conclusions of law are summarized below, leading to my conclusion that no charges are appropriate, as it would be difficult to prove beyond a reasonable doubt that the use of force was the proximate cause of death, the culpable mental states for any homicide charge cannot be proven beyond a reasonable doubt, and to the extent the use of force constitutes a possible charge of misdemeanor assault, the use of force was appropriate and authorized by law.

The essential questions are what the deputies knew when they contacted Mr. Herrera, what happened before and after he was handcuffed, what caused his death, whether the evidence establishes the elements of any criminal offense, and finally, whether the

use of force was appropriate, given the situation. The fact that he died while restrained requires close scrutiny of the force used and the foreseeability of any outcomes from it.

FINDINGS OF FACT

Mr. Herrera's condition before the deputies arrived

Mr. Herrera was 57 years old. Local law enforcement records described him as approximately 5 feet 6 inches tall and 280 pounds. His former wife, Crystal Herrera, and his sister, Berna Herrera, spoke with investigators at the hospital. Both reported that he had diagnoses of schizophrenia, attention deficit hyperactivity disorder, and what they described as multiple personality disorder as well as diabetes. His sister said his medications were delivered to her home. Neither woman monitored every dose, but both said he often selected which medications to take and had taken none for approximately two weeks before this incident. These are the family's reports of his diagnoses and medication use; the deputies had not been told this history when they encountered him.

The women described recurring beliefs by Mr. Herrera that he was an alien or possessed special powers that let him communicate with aliens. Ms. Herrera said that on August 21, he reported seeing aliens on the mountains and tried to photograph what he saw. A review of his telephone uncovered an unusual text to Ms. Herrera early that day, referring to a "flaming ball in the sky," and searches for "I AM GOD," the Black Knight satellite, and other alien and Anunnaki subjects. The searches alone do not diagnose a condition, but they are consistent with the subjects of the beliefs his family described. His former wife and sister said they had not known him to be violent or combative, even when he was experiencing psychosis.

Both women knew of a history of methamphetamine use, although they did not know of recent use and initially reported that he did not consume other substances. Ms. Herrera said they smoked marijuana together on the morning of August 21. She described him as "okay" that morning; he helped clean a truck and take out trash. She last saw him around 2:00 or 3:00 p.m. and did not know where he went afterward. They had also argued about his Facebook communications with other women. Hospital testing later established that methamphetamine was in his system. The mental health history and drug intoxication may both bear on his conduct.

Investigators identified two earlier August calls to law enforcement involving unusual conduct. On August 4, Mr. Herrera drove onto a private property, handled game cameras, and placed magnets on cameras, a fence, a gate, and a pole. He told responding officers that the magnets marked where he had been; the owner requested that he be trespassing. On August 12, he drove to another property, pulled on the door of a storage container, and walked toward the railroad while leaving his car doors open and music playing. The owner did not pursue charges and deputies did not contact him on that occasion. These prior contacts help describe a pattern of unusual conduct; there

is no indication Deputies Carbajal and Tinkle knew of them during the August 22 encounter.

Video from Maverik at 3249 F Road showed Mr. Herrera arriving in his car at approximately 5:40 p.m. on August 21. He spoke with Armando Rodriguez-Flores about tires in Mr. Rodriguez-Flores's truck, and the two exchanged telephone numbers. Mr. Rodriguez-Flores later told investigators he thought Mr. Herrera might have a mental disability or be under the influence because of his behavior. Mr. Herrera remained in or near that store's area until about 10:08 p.m. The video showed him wearing a light blue shirt, a gray hat, red shoes, and pants worn normally. He appeared to walk normally and left his car there. Investigators could not establish where he went between that point and his arrival on foot at the Sun King Way Maverik around midnight, on August 22. The distance between the two Mavericks is approximately 0.8 miles.

The Maverik call and information given to the deputies

At about midnight, Mr. Herrera came to the Maverik at 636 Sun King Way without a shirt or hat, wearing black pants inside out and red shoes. Clerk Brendan Dalton noticed his rapid blinking, odd hand movements, and tendency to enter the store backward. Mr. Dalton later said Mr. Herrera seemed to be in a "fugue state," as though the clerk did not exist. He moved in and out of the store, wandered through the parking lot, went behind the counter despite instructions not to, approached the coffee area, and took a sleeve of cups. Mr. Dalton believed Mr. Herrera was impaired and did not understand what he was doing.

Craig Edwards and his son Charlie were fueling a truck at the store. Mr. Herrera approached them, offered to help pump gas, and continued toward the truck when Mr. Edwards declined. The two moved away and locked the vehicle. Mr. Herrera tried a locked door, said "that's not fair," and folded the driver's side mirror. The customers initially believed it had broken and asked the clerk to call police. They later found the mirror intact and left before the deputies arrived. Charlie took a video of the encounter. His video shows Mr. Herrera walking toward the truck bent at the waist, moving between the truck and the pump, touching or leaning on the vehicle, and manipulating the door handle and mirror. The material point for the deputies is that dispatch reported a possible assault or unwanted touching and apparent property damage; investigators later learned the mirror was not damaged.

Mr. Dalton called dispatch at approximately 12:08 a.m. He described a shirtless Hispanic man with pants inside out, estimated at 5 feet 6 or 7 inches tall, who had approached a customer and folded a mirror. He repeatedly described the man as very intoxicated and behaving strangely. Mr. Dalton said he saw no weapon and wanted the man removed from the business. During the call, he reported that Mr. Herrera had said something like other people were "not even there," was wandering, blinking rapidly, and seemed unaware of where he was or what he was doing. A customer later recalled Mr. Herrera saying "you can't see me" while walking with his hands behind his back. Those remarks and behaviors are significant to the assessment of his apparent mental condition, although dispatch and the deputies did not know his family's account at the time.

Dispatch sent Deputies Carbajal and Tinkle to investigate a reported vandalism. The radio traffic and call notes conveyed the physical description, possible contact with a customer, a mirror said to be broken, apparent intoxication, the lack of an observed weapon, and Mr. Herrera's unusual movements and statements. The deputies could have seen the call notes on their patrol computers.

At approximately 12:13 a.m., Mr. Herrera left the Maverik and crossed F ½ Road toward Central Distributing. Security video there shows him walking past the east entrance around 12:19 a.m., repeatedly throwing and retrieving the coffee cups which he had taken from the Maverik. Around 12:21 to 12:22 a.m., he threw rocks at an exterior window, ran into it and fell, then kicked through the outer pane. The inner pane remained intact. Investigators later found broken glass at that window and estimated the repair cost at approximately \$6,000. This activity explains the glass and cuts the deputies observed, although they had not yet seen this surveillance when they made contact.

Deputy Tinkle saw a shirtless man behind the Central Distributing building and radioed Deputy Carbajal. Both drove marked sheriff's vehicles and wore uniforms. They located Mr. Herrera near a dirt embankment on the northwest side of the building shortly after 12:26 a.m. He matched the description of the male reported to be at the Maverik. Deputy Tinkle reported that he had blood and glass on him and requested an ambulance to respond routinely before any physical struggle. Moments later, the deputies reported that he was not cooperative, and advised that he was resisting and fighting. The timing and words of these transmissions were documented independently of the later interviews.

Deputy Tinkle's account

Investigators interviewed Deputy Tinkle on August 26. He had worked for the Sheriff's Office for a little over eight years, most of that time in the jail and the remainder on patrol. He recalled a dispatch about a man approaching a customer and damaging a truck mirror. He located a man matching the description near Central Distributing. Mr. Herrera was sweaty and had blood and glass on the left side of his body. Deputy Tinkle requested an ambulance because of what he saw before physical contact began.

Deputy Tinkle said Deputy Carbajal first tried to speak with Mr. Herrera. Mr. Herrera asked for water, tried the driver's door of Deputy Carbajal's patrol vehicle, and moved around it. Deputy Tinkle thought he might run. Mr. Herrera then walked toward Deputy Carbajal and turned with his hands behind his back. Deputy Tinkle said the dispatch description, visible injury, and unusual behavior led the deputies to detain him while determining what had happened.

According to Deputy Tinkle, Mr. Herrera turned and began "swinging erratically" as Deputy Carbajal attempted to handcuff him. Deputy Tinkle described him as flailing and thought he might strike Deputy Carbajal. Deputy Tinkle said he took hold of Mr. Herrera in a seat belt style grip around the shoulder and upper body and brought him to the ground so they could control his arms. On the ground, Mr. Herrera pushed up against them. Deputy Tinkle recalled controlling his head with one hand and placing the other

on his back. He said he shifted position and put a knee on Mr. Herrera's back to free a hand for his handcuffs, placing considerable weight there because Mr. Herrera continued pushing up. The deputies then secured both arms and applied the handcuffs.

Deputy Tinkle reported a second period of resistance after handcuffing. He said Mr. Herrera tried to turn to his side and use his legs and body to push out from under them, a movement he described as "shrimping." Deputy Tinkle said he again placed his knee on the back or shoulder, then took his weight off when the resistance stopped. The body worn camera provides a more precise account of the timing and location of that contact, discussed below.

After finding identification in Mr. Herrera's wallet, the deputies rolled him to a recovery position. Deputy Tinkle said he noticed that Mr. Herrera did not hold his head up, rolled him onto his back, and tried sternum rubs without a response. He requested an emergent ambulance response and began CPR. Three doses of naloxone were administered while the deputies worked to resuscitate him. Deputy Tinkle said that Mr. Herrera's sweating, apparent overheating and request for water, attraction to the glass, and unusual responses suggested a drug induced or other medical event; he did not smell alcohol. He reported injuries to his knee, elbow, and back from the encounter.

Deputy Tinkle said he realized while performing CPR that his body worn camera had not been activated. He turned it on at approximately 12:33:32 a.m. The earlier physical encounter is recorded on Deputy Carbajal's camera, not on Deputy Tinkle's. Investigators photographed apparent abrasions on Deputy Tinkle's elbows and knee and dust on his pants. No apparent injury was found on Deputy Carbajal.

Deputy Carbajal's account

Investigators interviewed Deputy Carbajal on August 27. He had approximately eight years of law enforcement experience, including four with the Sheriff's Office and four with the Colorado State Patrol. He recalled being sent to a possible vehicle damage call and joining Deputy Tinkle with a shirtless man near the distribution building. Mr. Herrera was sweating heavily, had glass on his left shoulder, and was asking for water. Deputy Carbajal said he tried to detain Mr. Herrera and thought he might initially cooperate when he placed his hands behind his back.

Deputy Carbajal said Mr. Herrera pulled away and spun as he attempted to apply the handcuffs, at one point taking the handcuffs with him. Both deputies grabbed for Mr. Herrera's arms as the three turned in a circle. Deputy Tinkle then brought Mr. Herrera to the ground in what Deputy Carbajal described as a "bear hug" movement. Deputy Carbajal said he positioned himself on or near Mr. Herrera's left thigh and worked to control his legs while Deputy Tinkle worked to control his upper body. The deputies repeatedly told Mr. Herrera to stop resisting.

Deputy Carbajal described Mr. Herrera posting on an arm, pushing against Deputy Tinkle, and trying to push with a leg. He interpreted those movements as continued resistance. He said he controlled one arm and helped bring it behind Mr. Herrera's back. After Mr. Herrera was handcuffed, Deputy Tinkle asked whether they should put him

“into a figure four.” Deputy Carbajal told him to hold off. The deputies did not use that maneuver. The recording does not establish precisely what Deputy Tinkle meant by “figure four.” In the interview, Deputy Carbajal described this as a restraint move to twist the legs and achieve pain compliance.

Deputy Carbajal said Mr. Herrera eventually stopped resisting, after which the deputies noticed he was not responding. They rolled him to the recovery position, found that he was not breathing and had no pulse, and began CPR. Deputy Carbajal administered naloxone because Mr. Herrera’s behavior suggested impairment, possibly from fentanyl; he understood there was little downside to administering it even if opioids were not the cause. He said naloxone did not produce an observable response. The deputies performed repeated rounds of compressions before paramedics arrived. They found Mr. Herrera’s identification in his wallet and later discovered a pill bottle and other items in his pockets.

Deputy Carbajal’s body worn camera

Deputy Carbajal’s camera first shows Mr. Herrera at approximately 12:26:14 a.m. He was shirtless and wore black jeans inside out. Glass was visible on his body, and there appeared to be a cut on his left arm or shoulder. Deputy Carbajal told him that he needed an ambulance. Mr. Herrera said he did not and wanted water. He went to the driver’s door of Deputy Carbajal’s patrol vehicle and tried to open it, saying there would be water inside. Deputy Carbajal redirected him. When asked what he was doing, Mr. Herrera said he was “just hanging out.” Deputy Carbajal asked his name, he responded, “I don’t got a name.” Deputy Carbajal asked what he could call him.

Mr. Herrera continued moving around the vehicle with his hands behind his back while Deputy Carbajal put on gloves. When Mr. Herrera approached, Deputy Carbajal took hold of his hands and told him that he was being detained while they figured out what was happening. Deputy Tinkle also took hold of a hand. At about 12:27:28 a.m., when Deputy Carbajal brought the handcuffs to Mr. Herrera’s wrists, Mr. Herrera pulled away and turned toward the deputies. The three turned in a circle as each deputy tried to control an arm. Deputy Tinkle lost hold of a wrist; Deputy Carbajal maintained his grip. Deputy Tinkle came from the side, caught Mr. Herrera around the shoulder and neck area, and took him to the ground at about 12:27:48 a.m.

The deputies maneuvered Mr. Herrera onto his stomach while he continued to struggle. Deputy Carbajal was behind him, over or near his legs, and worked to control an arm. Deputy Tinkle was at his right side and tried to bring the other arm out from under his body. Mr. Herrera pushed up toward his knees while the deputies repeatedly told him to stop resisting. The footage places Deputy Tinkle’s right leg or knee at the upper shoulder and base of the neck area during this effort. It does not by itself quantify the amount of weight at every moment. Deputy Tinkle told investigators he placed considerable weight on Mr. Herrera while trying to obtain the handcuffs and overcome his resistance.

The deputies secured the handcuffs at approximately 12:28:21 a.m. and reported that Mr. Herrera was detained. Deputy Tinkle’s knee came off the upper shoulder and neck

area at approximately 12:28:27 a.m. The recorded interval from the takedown to removal of that knee was about 39 seconds, and the knee remained there for roughly six seconds after the handcuffs were applied. Mr. Herrera could be heard grunting. The deputies later described the struggle, and the video shows that he ceased actively pushing up at the end of the first period.

A short time after being handcuffed, Mr. Herrera tried to roll onto a side. The deputies told him to stop resisting and returned him to his stomach. Around 12:28:53 a.m., Deputy Tinkle placed his right knee on Mr. Herrera's upper back near the shoulder blade. Mr. Herrera grunted and panted. He said, "Get off." Deputy Tinkle told him, "Stop resisting, you're not going to win this fight." Deputy Carbajal retrieved Mr. Herrera's wallet from his rear pocket while Deputy Tinkle remained near his upper body.

Deputy Tinkle asked whether they should put Mr. Herrera "into a figure four." Deputy Carbajal replied, "He's alright." The recording does not establish precisely what Deputy Tinkle meant by "figure four," and the deputies did not use that maneuver. Deputy Tinkle then said, "I just want him to be able to breathe a little." At approximately 12:29:24 a.m., the video shows him shifting some of his weight off Mr. Herrera while his knee remained on Mr. Herrera's upper back. He removed the knee at approximately 12:29:44 a.m. This second period of knee contact lasted approximately 50 seconds, with the shift in weight occurring during its final 20 seconds.

Mr. Herrera remained prone after Deputy Tinkle's knee was removed. The audio captured labored breathing until approximately 12:30:06 a.m. The investigators could no longer hear breathing after that point; the audio alone cannot establish the precise moment he stopped breathing. The deputies obtained his identification and briefly assessed their own injuries. At approximately 12:30:29 a.m., they rolled him into a recovery position. Deputy Carbajal advised dispatch at 12:30:36 a.m. that the ambulance needed to respond emergently because Mr. Herrera was not conscious. The time between removal of the knee and movement into the recovery position was approximately 45 seconds.

The deputies rolled Mr. Herrera onto his back. Deputy Tinkle performed sternum rubs at about 12:30:40 a.m. without a visible response. He began chest compressions at approximately 12:30:58 a.m. Deputy Carbajal administered the first dose of naloxone at about 12:31:17 a.m.; Deputy Tinkle administered the second and third doses at approximately 12:32:19 and 12:33:27 a.m. Other deputies and Sergeant Simon arrived while CPR continued. Deputy Tinkle activated his camera at about 12:33:32 a.m. Clifton Fire Department paramedics arrived around 12:34:52 a.m. and took over medical care while deputies continued compressions at their request.

The footage later captured the deputies' spontaneous descriptions to the responding personnel. They said Mr. Herrera had been covered in glass before they touched him, had fought the handcuffing, and had moved again after he was cuffed. Deputy Tinkle said they had put weight back on him when he resisted a second time and taken it off when he stopped. He also expressed distress that he had taken a man to the ground and the man had died. Those statements are relevant to what the deputies perceived, but the actual timing and movements are best measured against the video.

Responding deputies and medical personnel

Sergeant Simon supervised Deputies Carbajal and Tinkle that night. She heard the initial vandalism call, the request for an ambulance based on Mr. Herrera's cuts, the request for clear radio traffic during the struggle, and then the emergent medical request. She arrived to find CPR underway and brought additional naloxone. She saw superficial cuts on Mr. Herrera's left shoulder or arm, but no other obvious injuries. She recalled that the deputies described an initial handcuffing struggle followed by renewed resistance and then unresponsiveness. Her account largely reflects the radio traffic and what she saw after the force, rather than an independent view of the restraint.

Deputies Baker and Gordon responded when they heard the request for assistance. They arrived after the encounter had progressed to CPR. Deputy Baker took over chest compressions for a period and noted that Mr. Herrera's hands were still handcuffed behind his back. When paramedics asked that the cuffs be removed, deputies rolled him; his head struck the concrete during the movement, and personnel then supported it. This occurred during resuscitation, after he had become unresponsive. Deputy Baker saw blood on the left shoulder and did not see another injury. The autopsy found no traumatic injury that contributed to death.

Sergeant Simon directed Deputy Gordon to cut open the pockets of Mr. Herrera's inside out pants to access them while medical care continued. Deputies recovered a bag of assorted pills, a prescription style bottle holding a bag with white powder, and other small items. Subsequent testing by the Colorado Bureau of Investigation identified the powder as approximately 4.74 grams of methamphetamine. No controlled substances were detected in the other recovered pills. Officers at the scene initially suspected the powder might be fentanyl, thus naloxone was administered based upon observations, but later the laboratory result identified it as methamphetamine.

Deputy Gordon rode in the ambulance. Mr. Herrera remained unconscious. Paramedics regained a pulse at approximately 12:51 a.m. and stopped CPR at that point. They loaded him into an ambulance around 1:00 a.m. By their arrival at St. Mary's Hospital at approximately 1:12 a.m., they were again performing CPR. He never regained consciousness and was pronounced dead at 4:11 a.m. on August 23.

Civilian witness accounts

Craig Edwards said he and his son stopped at the Sun King Way Maverik shortly before midnight while driving across Colorado. He saw a shirtless, disheveled man approach the truck from the direction of the store. That man was later identified as Mr. Herrera. He told his son to lock it and kept it between them and the man. Mr. Herrera offered to help pump gas. After Mr. Edwards declined, Mr. Herrera tried at least the driver's door, found it locked, and folded the side mirror. Mr. Edwards and his son believed briefly that it was damaged. Mr. Edwards later verified that it was not. The men went into the store and asked the clerk to call police. Mr. Edwards recalled Mr. Herrera moving between the store, truck, and a drainage area, sometimes with his hands behind his back, and saying, "you can't see me." He thought Mr. Herrera might be under the influence or experiencing a mental health crisis and chose to keep his distance.

Charlie Edwards gave a generally consistent account, while cautioning that his memory of the order of events might not be exact. He said Mr. Herrera approached while they were fueling, touched the truck, tried the locked door, and said “that’s not fair” before folding the mirror. Charlie described his eyes and manner as alarming and thought he was under the influence. The two moved inside the store. Mr. Herrera later returned to the truck and moved the mirror back into place. Charlie and his father informed the clerk that it was intact and left. Charlie’s video captures part of the later approach to the truck; it is not a recording of the deputies’ encounter.

Brendan Dalton, the clerk who called 911, said Mr. Herrera’s conduct stood out immediately. He described him as shirtless, with his pants inside out, rapidly blinking, making unusual movements with his hands, and backing through a doorway. At one point he appeared to attempt a purchase without having anything to buy. Mr. Dalton said Mr. Herrera ignored ordinary attempts to speak with him, wandered behind the counter and near the kitchen, and carried away several coffee cups. Mr. Dalton at different times called him “in his own world” and compared his manner to a fugue state. He believed Mr. Herrera was impaired, but had no diagnosis or toxicology result at the time. His descriptions of observable conduct carry more weight than the label he used for its possible cause.

Mr. Dalton did not have a full view of every interaction at the truck. Some details about attempted touching came from the customers and were relayed through him to dispatch. He believed the mirror was broken because it appeared to snap; the customers later corrected that impression. He saw Mr. Herrera leave toward Central Distributing with the cups. The customers declined to remain because their vehicle had no damage. This sequence explains why the dispatch information differed in part from what investigators later established.

Armando Rodriguez-Flores spoke with Mr. Herrera at the earlier Maverik about tires in the back of his truck. He said they exchanged numbers and that he had not met Mr. Herrera before. He thought Mr. Herrera’s manner might reflect a disability or drug impairment but described no confrontation. The contact is corroborated by the phone log and business video. It places Mr. Herrera in the area hours before the incident and provides a comparison with his much more disorganized appearance around midnight.

Business video, scene evidence, and other records

The Maverik and Central Distributing recordings provide an independent sequence before the deputies arrived. The first Maverik video shows a marked change in Mr. Herrera’s presentation over the evening. At approximately 10:08 p.m. on August 21 he was still at the F Road store, dressed in a shirt and hat, wearing his pants normally, and walking without the pronounced movements seen later. Investigators did not determine where he spent the next nearly two hours. Around midnight he arrived on foot at the Sun King Way store without the shirt or hat and with his pants inside out. These recordings establish a change in observable condition, but do not establish when he used methamphetamine or stopped taking prescribed medication.

At the Sun King Way Maverik, the store and customer recordings support the basic sequence the clerk and the Edwardses described: Mr. Herrera came and went, interacted with their truck, and left with cups. The customer video begins during one of his approaches and cannot resolve everything that preceded it, including whether he attempted to touch either customer. The assertion of attempted touching was passed from a customer to the clerk and then to dispatch. The apparent damage to the mirror was likewise an initial perception later corrected by the customers. Those differences matter when distinguishing what the deputies were told from what the completed investigation established.

Central Distributing's video shows Mr. Herrera throwing cups, throwing rocks at a window, running into the window and falling, and then kicking through the outside pane shortly before the deputies found him. Forensic photographs show the broken exterior pane of the double paned window and the intact interior pane. Investigators collected a glass sample. The company estimated replacement at about \$6,000. The exterior damage gives a concrete explanation for the glass and blood on Mr. Herrera before he touched either deputy. Three Maverik cups were recovered from the road and a stack of six near the dirt hillside. Other small wrappers and a napkin were documented near the loading areas.

The encounter occurred between the deputies' marked vehicles in the loading area. Investigators photographed and swabbed an apparent blood stain on the concrete and a red stain on one patrol vehicle. They also documented red stains on Deputy Tinkle's vest and sleeve, abrasions on his elbows and right knee, dusty pants, and his report of back pain. Deputy Carbajal's pants were dusty, but investigators saw no apparent injury on him. These findings corroborate a physical struggle and the presence of blood before and after it. They do not, by themselves, determine how much pressure the knee exerted or what Mr. Herrera could perceive while prone.

Mr. Herrera's cellular telephone contained the August 21 searches and messages discussed above. Its call log corroborated the telephone exchange with Mr. Rodriguez-Flores at about 5:49 p.m. A warrant search of Mr. Herrera's white Nissan Altima on August 25 found packaged medications, prescription medicines for psychiatric and other conditions, broken glass pipes with white residue, fentanyl test strips, several telephones and laptops, and a blue shirt. The presence of medications in the car does not establish when any particular dose was taken. The pipes and test strips are contextual evidence, not a substitute for the toxicology findings. Laboratory testing of the substance in the pill bottle found in his pocket established that the powder was methamphetamine.

Medical examination and cause of death

Dr. Dean Havlik performed an autopsy on August 24. He certified the cause of death as mixed drug (methamphetamine and bupropion) intoxication, listed law enforcement restraint and obesity as other significant conditions, and classified the manner of death as homicide. Dr. Havlik has 5 options for manner of death, which are homicide, suicide, natural causes, accidental, or unknown.

He reviewed Deputy Carbajal's body worn camera footage of the encounter. His report described Mr. Herrera becoming aggressive during handcuffing and being placed face down, handcuffed behind his back, while an officer's knee was on his back on two occasions. Dr. Havlik observed that Mr. Herrera appeared to breathe and moan while the knee was present. The autopsy found no injury from trauma that contributed to death. Mr. Herrera's body mass index was 38.

Testing of peripheral blood drawn shortly after Mr. Herrera arrived at the hospital measured methamphetamine at 491 nanograms per milliliter, its metabolite amphetamine at 24.7 nanograms per milliliter, bupropion at 272 nanograms per milliliter, and lamotrigine at 1.0 microgram per milliliter. Naloxone and caffeine were also detected. Dr. Havlik characterized the bupropion concentration as high and the lamotrigine concentration as low. The report did not identify a traumatic injury, such as a fatal fracture or hemorrhage, that accounted for the collapse. The laboratory finding of methamphetamine and the recovered powder provide evidence of intoxication independent of witnesses' impressions.

Dr. Havlik explained the significance of the restraint in qualified terms. He did not believe the force appeared excessive. He considered the prone position, pressure on the back, and obesity risk factors for impaired breathing in a person intoxicated with drugs, and therefore contributors to this death. He classified the manner as homicide because the action of another person contributed to the death. In forensic pathology, "homicide" describes the manner in which death occurred; it does not decide whether an officer committed murder, manslaughter, or any other crime. His conclusion that restraint contributed must be considered alongside, rather than erased by, his primary finding of mixed drug intoxication.

At the request of Dr. Havlik, prior to him completing his report, I also authorized the body worn camera footage to be provided to him. He is a very experienced forensic pathologist and was asked about the risk created by the deputies' conduct.¹ He said he did not believe that conduct created a **substantial risk of death**. That assessment bears directly on the risk component of the reckless and criminal negligence statutes. It does not purport to resolve every legal question about the detention, the degree of force, the time in the prone position, medical aid, or compliance with agency policy. Nor is it inconsistent with an autopsy that identifies restraint as one contributing condition: contribution to an actual death and a substantial prospective risk of death are different questions.

The record cannot pinpoint from audio alone the instant breathing ceased, and it cannot reduce the death to a single factor. It does show the drug levels, the preexisting obesity, the struggle, two periods of knee contact, continued prone positioning after the knee was removed, a transition to the recovery position, and resuscitation. Each part matters

¹ Due to the unusual situation of a death resulting in a CIRT, where no gun was discharged, or other obvious use of deadly force, Dr. Havlik requested a meeting prior to releasing his report to assure that it included what I needed in order to make appropriate case related decisions. At that meeting, I explained the definition of reckless conduct and criminally negligent conduct, and in light of his watching the body worn camera footage, if asked him directly if he believed that the deputies' conduct created a substantial risk of death. This meeting occurred at the Grand Junction Police Department on September 23, 2026.

to causation and to the separate question of the deputies' criminal culpability. The subsequent contact of Mr. Herrera's head with concrete while handcuffs were being removed for medical care occurred after the collapse; the autopsy found no contributing traumatic injury.

Sequence most relevant to the charging decision

The following approximate times are drawn principally from Deputy Carbajal's body worn camera and the CIRT timeline. The recordings, not this abbreviated list, are the best source for the precise sequence.

- **12:26 a.m.** Deputies contact Mr. Herrera. They see glass and blood; Deputy Tinkle requests an ambulance before force is used.
- **12:27:28 a.m.** Deputy Carbajal attempts to handcuff him. Mr. Herrera pulls away and turns during the struggle.
- **12:27:48 a.m.** Deputy Tinkle takes him down. Mr. Herrera is prone while the deputies work to control his arms; a knee or leg is at the upper shoulder and base of neck area.
- **12:28:21–12:28:27 a.m.** Handcuffs are secured, followed about six seconds later by removal of that knee. The first interval from the takedown to removal is about 39 seconds.
- **12:28:44–12:29:44 a.m.** Mr. Herrera tries to roll. The deputies return him to his stomach. Deputy Tinkle places a knee on the upper back around 12:28:53, shifts weight around 12:29:24, and removes the knee around 12:29:44.
- **12:29:44–12:30:29 a.m.** Mr. Herrera remains prone without the knee. Breathing is audibly labored until about 12:30:06. The deputies roll him into a recovery position at about 12:30:29.
- **12:30:36–12:30:58 a.m.** The ambulance response is upgraded to emergent, sternum rubs produce no response, and CPR begins. Naloxone and continued CPR follow.
- **12:34:52 a.m. onward.** Paramedics arrive, regain a pulse around 12:51 a.m., transport him, and resume CPR by hospital arrival around 1:12 a.m. He dies at 4:11 a.m. on August 23.

LEGAL ANALYSIS

The first question is whether the evidence establishes the elements of a crime by either deputy. A person's death, even when another person's acts contributed to it, does not dispense with proof of the particular conduct, required mental state, and causation specified by a criminal statute. For any charge, the prosecution must be able to prove the offense beyond a reasonable doubt. The same principle applies to an officer. Colorado law expressly provides that an officer who uses excessive force is subject to its criminal laws to the same degree as another person, including the homicide statutes. C.R.S. § 18-8-803.

The justification for a peace officer's use of force under § 18-1-707, C.R.S., is often called an affirmative defense. Such a defense assumes that conduct otherwise satisfies a criminal offense and asks whether a legal justification nevertheless excuses it.

Accordingly, I begin with the possible offenses which I considered in analyzing this case. Regarding the homicide offenses, which I analyze first, below, an underlying problem with all of those charges is the conclusion from Dr. Havlik that the conduct of the officers was merely a contributor to death, but was not the cause of death. Dr. Havlik identified mixed drug intoxication as the medical cause of death and restraint and obesity as other significant conditions that contributed to it.

His designation of restraint as a contributor cannot simply be set aside because intoxication was the primary medical cause. Colorado law permits more than one cause of death, and a person's preexisting condition does not necessarily break the causal connection between another person's conduct and the death. I need not resolve whether the deputies' conduct could be proved to be a legal cause beyond a reasonable doubt, however, because the evidence does not establish the mental state required for any of the homicide offenses considered below. While the facts do not support any homicide charge for the reasons detailed below, about the culpable mental states not being supported by the evidence, causation is also a significant hurdle to support any homicide charge.

Second degree murder: knowing causing the death of another

The relevant theory of second degree murder requires proof that a person knowingly caused the death of another. C.R.S. § 18-3-103(1)(a). When a statute makes a result part of an offense, a person acts knowingly with respect to that result, if he is aware that the conduct is practically certain to cause that result. C.R.S. § 18-1-501(6). Here, the result is death. An intent or desire to kill is not required, but the crime requires that the prosecution prove that the actor had knowledge that death is practically certain to flow from their conduct. Knowledge can be inferred from conduct and circumstances; it cannot be supplied solely by the fact that death occurred.

The footage shows a contested handcuffing, restraint of a handcuffed man who then tried to roll, and a delay before the recovery position. It does not show the deputies acting with awareness that their conduct was practically certain to kill Mr. Herrera. They requested an ambulance for his visible injuries before the struggle, took pressure off his back, discussed allowing him to breathe, and initiated CPR and an emergent medical response after recognizing unresponsiveness. Those facts do not make every decision correct, but they weigh against the mental state required for knowing murder. The autopsy identifies intoxication as the primary cause and no fatal trauma. A knowing murder charge is unsupported.

Reckless manslaughter: consciously disregard of a risk of death

Manslaughter under C.R.S. § 18-3-104(1)(a), requires proof that a person recklessly caused the death of another. Recklessness means consciously disregarding a substantial and unjustifiable risk that a result will occur. C.R.S. § 18-1-501(8). For this

result offense, the risk at issue is death, not merely discomfort or some possibility of injury. The prosecution would need evidence both that the risk of death was substantial and unjustifiable in the circumstances and that the particular deputy perceived and disregarded it.

The second knee placement and the continued prone position after handcuffing deserve particular attention. Mr. Herrera was obese, drug impaired, breathing hard, and unable to use his cuffed hands to reposition himself. His “Get off” and the visible or audible distress were warnings to evaluate, although the deputies interpreted his rolling as renewed resistance. Deputy Tinkle’s statement that he wanted Mr. Herrera to breathe a little shows some awareness of breathing as a concern. The actual pressure on the upper back and the time before repositioning therefore cannot simply be treated as a continuation of the initial effort to secure handcuffs. The risk and justification for force can change as resistance changes.

There is, however, a difference between appreciating that breathing could be impaired and consciously disregarding a substantial risk of death. Here I find that I both that I lack proof that there was a substantial risk of death, and also find that even if such risk was substantial, that the deputy was aware of it, and disregarded it. The knee was removed approximately 50 seconds after its second placement, with weight shifted earlier; Mr. Herrera could still be heard breathing after its removal. The deputies moved him and summoned emergent aid when they recognized that he was unresponsive. Dr. Havlik described restraint and obesity as contributors in the presence of mixed intoxication, but did not find the force apparently excessive. Dr. Havlik did not believe the conduct created a substantial risk of death.

On this record, the evidence does not establish the risk and conscious disregard necessary to prove reckless manslaughter beyond a reasonable doubt. Further, Dr. Havlik opined that the use of force was not excessive, and after watching the body worn camera it did not appear to exceed the normal level of force necessary for any arrest of a person who was resisting. The fact that similar arrest tactics commonly end without death informs the assessment of risk, but the question is the risk presented by this encounter, including Mr. Herrera’s condition and the restraint after handcuffing. I have weighed those circumstances, the deputies’ opportunity to perceive them, and Dr. Havlik’s assessment after reviewing the video. On this record, I cannot prove beyond a reasonable doubt the substantial and unjustifiable risk of death and culpable mental state required for manslaughter or criminally negligent homicide.

Criminally negligent homicide: failure to perceive a risk of death

Criminally negligent homicide under C.R.S. § 18-3-105, C.R.S., requires a death caused by conduct amounting to criminal negligence. To act with criminal negligence, the actor must fail to perceive a substantial and unjustifiable risk that the result will occur, and that failure must be a gross deviation from the care a reasonable person would exercise. C.R.S. § 18-1-501(3). As with manslaughter, the relevant result is death. The distinction is that recklessness concerns a risk the actor perceived and consciously disregarded; criminal negligence concerns a risk the actor culpably failed to perceive. Neither is

established merely by showing that an adverse outcome was foreseeable in a general sense, or that a different procedure might have been safer.

The post handcuffing restraint, his breathing, and the time spent face down warrant scrutiny under this standard even if the deputies did not subjectively foresee death. The question is whether their failure to perceive a substantial and unjustifiable risk of death, if any, was a gross deviation from reasonable care in the circumstances they faced. The medical opinion about the absence of a substantial risk of death is particularly consequential to that threshold. The video and autopsy establish that this particular man died after a restraint to which the pathologist attributed a contributing role. They do not establish that the deputies' conduct presented the substantial risk of death required for this charge. I therefore do not find a provable criminally negligent homicide charge.

These conclusions do not depend on proving that intoxication alone would have killed Mr. Herrera. Multiple causes can contribute to a death. The decision rests on the separate criminal requirements for the nature of the risk and each officer's culpable mental state, assessed in light of the whole record. It also leaves room for a training or administrative review to address conduct that does not satisfy a criminal homicide offense.

Assault

Although the evidence does not support a homicide charge, I also considered whether either deputy could be charged with third-degree assault. A person commits that offense by knowingly or recklessly causing bodily injury to another person. C.R.S. § 18-3-204(1)(a). "Bodily injury" includes physical pain, even if it is slight. C.R.S. § 18-1-901(3)(c). It does not require proof of a substantial risk of death. Here, the deputies took Mr. Herrera to the ground, controlled his arms and legs, and applied pressure while restraining him. Mr. Herrera grunted and, at one point, said, "Get off." That evidence is sufficient to support an inference that the force caused him physical pain and to consider a third-degree assault charge against the deputies.

Use of Force in Effecting an Arrest

The deputies had a lawful basis to stop and investigate Mr. Herrera. Dispatch reported that a man matching his description had approached customers at Maverik, tried to touch one of them, and broken a vehicle mirror. When the deputies located Mr. Herrera nearby, he had blood and broken glass on his body, was sweating, and was behaving erratically. He tried to enter Deputy Carbajal's patrol vehicle and did not provide a name or an explanation that resolved what had occurred. C.R.S. § 16-3-103 permitted the deputies, on reasonable suspicion of criminal activity, to stop him and seek his name, address, identification if available, and an explanation of his actions. Their stated purpose in applying handcuffs was to detain him safely while they determined who he was and what had happened. Handcuffing does not automatically turn an investigative detention into an arrest, although the restraint must be justified by the circumstances and reasonably related to the stop's purpose.

The deputies also had grounds to consider an arrest. Based on the report available to them, they could reasonably believe Mr. Herrera had damaged the customer's mirror, supporting probable cause for criminal mischief. The later determination that the mirror was intact does not change what the deputies had been told when they contacted him. Once Mr. Herrera pulled away, turned toward the deputies, and physically struggled as they attempted to handcuff him, his conduct also supplied a basis to consider obstructing a peace officer under C.R.S. § 18-8-104. That potential offense rests on the physical interference with their investigation, not on his failure to answer their questions. A warrantless arrest may be made when an officer has probable cause to believe an offense was committed by the person arrested, or when a crime is committed in the officer's presence. C.R.S. §§ 16-3-102(1), 18-4-501, 18-8-104(1)(a), (1.5).

C.R.S. § 18-1-707 requires officers to use nonviolent means when possible. It permits physical force when nonviolent means would be ineffective to effect an arrest, prevent escape, or prevent an imminent threat of injury to the peace officer or another person, and requires a degree of force consistent with minimizing injury. Here, the deputies first spoke with Mr. Herrera and requested an ambulance because of his apparent condition. Mr. Herrera initially put his hands behind his back, but pulled away when Deputy Carbajal attempted to handcuff him. Both deputies expressed concern about the way Mr. Herrera was swinging his arms, and that they may be struck. The deputies struggled to control his arms, and Deputy Tinkle took him to the ground. Mr. Herrera continued pushing up as they worked to secure his hands. At that point, verbal direction and the initial attempt to handcuff him had proved ineffective. The deputies had a legitimate need to control his movements to complete the detention and protect themselves from injury.

The need for force must be assessed again after the handcuffs were secured. Mr. Herrera attempted to roll, and the deputies directed him to stop. Deputy Tinkle placed a knee on his upper back or shoulder area for a second period of restraint, then shifted weight away and removed the knee. The deputies did not apply the proposed figure-four leg restraint. Mr. Herrera remained on his stomach for approximately another 45 seconds after the knee was removed before they moved him toward a recovery position. His words and audible breathing during this period are significant. Handcuffs did not give the deputies unlimited authority to maintain pressure or keep him prone; the relevant questions are what resistance they reasonably perceived, what force remained necessary, and when a safer change of position became practicable. C.R.S. § 18-1-707 and the Sheriff's Office policy both require attention to minimizing injury and obtaining medical aid. The policy also cautions against leaving a person on his stomach for an extended period.

After reviewing each stage of the encounter, I conclude that the deputies' force was a reasonable response to Mr. Herrera's physical resistance as they detained him and worked to bring him under control. I have considered the continued prone restraint separately, including the reduction and removal of knee pressure, the decision against an additional leg restraint, the time before Mr. Herrera was repositioned, and the deputies' response when they recognized he was unresponsive. Although the evidence is sufficient to consider the elements of third-degree assault, it is insufficient to disprove

beyond a reasonable doubt that the deputies' use of force was justified. I therefore will not charge either deputy with third-degree assault. C.R.S. § 18-1-407(2).

SUMMARY AND CONCLUSION

Deputies Tinkle and Carbajal were dispatched after a Maverik employee reported that a shirtless man who appeared highly intoxicated had approached a customer, tried to put his hands on him, and bent the mirror of the customer's truck, which was then believed to be broken. Dispatch also reported that the man was behaving strangely inside and outside the store, had gone behind the counter and taken cups, and had not been seen with a weapon. The deputies found Mr. Herrera nearby at Central Distributing, wearing no shirt and pants that were inside out, with blood and broken glass on his body. He was sweating heavily, asked for water, and tried to open the driver's door of Deputy Carbajal's patrol vehicle. The deputies requested an ambulance and attempted to identify him and determine what had happened, but Mr. Herrera said, "I don't got a name," and continued moving around the patrol vehicle.

When Deputy Carbajal attempted to handcuff Mr. Herrera, he pulled away and spun, and Deputy Tinkle took him to the ground; the deputies held him prone while securing the handcuffs, with Tinkle's knee near Mr. Herrera's upper shoulder and the base of his neck. After Mr. Herrera tried to roll while handcuffed, Tinkle placed a knee on his upper back for approximately 50 seconds, eased and removed the pressure, and the deputies later moved Mr. Herrera into a recovery position.

Dr. Havlik concluded that Mr. Herrera died from mixed methamphetamine and bupropion intoxication, with obesity and law enforcement restraint contributing to his death. He classified the manner of death as homicide because restraint contributed, while finding no injury at autopsy that contributed to death and no apparent excessive force by the deputies.

Based upon this information, I conclude that the evidence is insufficient to prove a homicide charge beyond a reasonable doubt, as a reasonable person would not conclude that there was a substantial and unjustified risk that death would result from their conduct, or be practically certain that death would result. I further conclude that any lesser charge would be inappropriate as the use of force by the peace officers was a reasonable use of force in response to the actions of Mr. Herrera. Accordingly, I decline to file any charges in this matter.

Respectfully,

/s/ Daniel P. Rubinstein

Daniel P. Rubinstein