



**OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO
J.E. CHOSTNER
District Attorney**

May 23, 2018

Chief Troy Davenport
Pueblo Police Department
Pueblo Municipal Center
200 S. Main Street
Pueblo, CO 81003

Sheriff Kirk Taylor
909 Court Street
Pueblo County Sheriff's Office
Pueblo, CO 81003

Re: District Attorney CIT Decision Letter
Officer Involved Incident on December 10, 2017
Location: 3300 N. Freeway Road, Pueblo
Deceased: Emanuel James Ronald Miera, DOB 11/4/1991
Officers Involved: Glen Bustos, Patrick Fleming, and Richard Jones

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on December 10, 2017 to investigate an Officer Involved Incident which resulted in the death of Emanuel James Ronald Miera (DOB 11/4/1991). The Pueblo Sheriff's Office (PCSO) was designated as the lead investigative agency and other CIT participants included the Colorado State Patrol (CSP), Pueblo County Coroner, Pueblo Police Department (PPD), and the 10th Judicial District Attorney's Office (DA). After the investigation, the CIT prepared and submitted an executive summary and its investigative reports and materials to the District Attorney's Office for review. Those materials were reviewed and this is the District Attorney's Decision Letter pursuant to CIT protocol.

Overview of the Incident

At approximately 1:42 p.m. on December 10, 2017, an off duty CSP Communications Supervisor contacted CSP to report a male pedestrian who had stepped out in front of her car and who was walking back and forth (West and East) across I-25 between exits 102 and 104. At 1:45 p.m. CSP relayed the report to PPD and indicated that the male was wearing a dark colored coat and a red backpack and was last seen by the reporting party walking northbound in the grass directly across from the Sam's Club gas pumps along I-25.

At approximately 3:25 p.m., Officer Bustos was dispatched to the area. Officer Bustos reported that a male was staggering or walking strange in the grass near the northbound lanes by exit 101 and requested that additional units respond to the area. At 3:40 p.m., Bustos reported that he was north of Exit 102 and asked the male to stop and talk to him, but the male ran across the center median and was walking in the lanes of traffic. He aired that the male was not listening to him and was running into the lanes of traffic. Corporal Fleming responded to the area and soon after, the male ran back across both the southbound and northbound lanes and towards the frontage road that was on the east side of the Interstate. Corporal Jones responded to the area in an attempt to assist Bustos and Fleming in directing the male out of traffic. While on the east side of the Interstate, the male ran down an embankment in an effort to avoid contact with law enforcement officials and fell into an overgrown ditch near the frontage road and across from Furniture Row and the Tile House.

Bustos, Fleming, and Jones contacted the male in the ditch and tried to take him into custody. At approximately 3:56 p.m., Bustos aired that the male had been tased, and PPD requested an Ambulance and notified the Fire Department at 3:59 p.m. At 4:01 p.m., after officers had the male in custody, Jones requested that the Fire Department "step it up" because the male's lips were turning blue.

The Fire Department and ambulance responded to the scene by 4:04 p.m., contacted the male at 4:06 p.m., and the ambulance transported the male to Parkview Hospital at approximately 4:11 p.m. EMTs initiated resuscitation efforts at approximately 4:07 p.m. and Jones and a fireman continued those efforts while the male was transported to the hospital. Resuscitation efforts were taken over by Parkview medical personnel at approximately 4:16 p.m. and were continued for four cycles of CPR and Epinephrine.

The male was pronounced dead at approximately 4:32 p.m. Identification found in the male's belongings at the scene identified him as Emanuel James Ronald Miera DOB 11/4/1991, and Hospital staff contacted his next of kin, Ms. Linda Pennington, who responded to the ER at approximately 6:30 p.m.

Body-worn Camera, Dash-cam, and Radio Logs: Initial Contact on I-25

Officer Bustos aired that he initially saw a male between exits 102 and 103 and requested additional units to respond while he tried to make contact with him. He also aired that the male was staggering or walking strange and was in the grass near the edge of northbound lane. He requested additional units again after contacting the male near the 102 exit.

Bustos initially contacted the male on the grass embankment east of the Interstate while the male was walking towards a shopping center. Bustos said "Hi, how you doing? Why don't you come over here real quick," but the male turned around and walked back towards the Interstate. Bustos said "No, don't go that way... If you're gonna keep walking, go that way then. I can't let you run out into the 'I.'" The male did not change his pace, stepped over the guardrail, and began walking southbound in the northbound shoulder. Bustos yelled "Sir, you're not in trouble—just get over here." while following the male on foot. The male looked over his shoulder at Bustos but continued walking, changing his direction to walk into the lanes of traffic, stepping into traffic, and then walking back on the shoulder. Bustos aired that the male was not listening to him, ran from him after he told him to "stop and talk to me," and was going to run out into the interstate.

He explained the male was walking into the southbound lanes of traffic and that he was trying to get him to move "inward" but that the male was still staggering around. The male then turned into the lanes of traffic and ran across towards the northbound lanes. Bustos aired that "I'm not gonna chase him... I'm gonna keep an eye on him." and continued to walk parallel to the male as the male made it to the center median and continued to walk southbound. Bustos then asked Dispatch if he should "just let him go," but was concerned about the male causing an accident. He aired that based on his demeanor, he thought the male was "high on something; he's just acting real strange."

Cpl. Fleming aired that he was going to respond to the location to help, because no additional units had responded yet. When Fleming arrived, he aired that the male was waving his arms around and had entered the southbound lanes of traffic. Bustos confirmed that the male was walking across the southbound lanes and aired that "I guess we're just gonna let him go because he ain't gonna stop—I don't want to run him into traffic." Bustos then returned to his vehicle, indicating that he was going to try and contact him by Highway 50.

Fleming then aired that the male was still walking southbound and had crossed the median and was in the lanes of traffic again. Dispatch asked if there was any way Fleming could force him to the other side of the median and Fleming responded that there was a break in the median where he could possibly force him out of traffic. He aired that he was going to let him walk "parallel" to him and wait for a break in the traffic so he could contact him and keep him on the outside of the rail along the highway.

At this point, Bustos aired that they didn't need any additional units because "I don't want him to dart into traffic," but also indicated that he was returning to his patrol vehicle to turn around and re-contact him. Fleming attempted to contact the male and said "Come here, I want to talk to ya buddy," but the male said "No." and began running. Fleming ran after him across the traffic lanes but the male maneuvered over the metal guardrail and outran him. Fleming replied that the male was running in the lanes of traffic and requested an additional unit respond. Cpl. Jones responded to the area of I-25 and 29th with his lights and sirens activated. Fleming then aired that the male had passed I-25 and Hwy. 50 and was still walking southbound while shaking his head and pointing at him. Jones's dash-camera shows the male staggering on the elevated concrete wall dividing the Hwy. 50 onramp from the southbound lanes of the Interstate. The

male didn't turn around or look up despite Jones approaching him with lights and sirens activated. When Jones slows down and approaches, the male turns his head towards Jones but continues to walking at the same pace, eventually stepping over the metal rail guard into the southbound lanes of traffic.

Bustos, Fleming, and Jones aired that they were going to try and "corner" the male with Jones approaching from 29th, Bustos approaching from Hwy. 50, and Fleming blocking the median so they could chase him towards Applebee's. Fleming then aired that the male made a "timeout sign" towards him, but that he was continuing to walk southbound. Fleming aired that he was a "pretty wild-eyed looking guy" and that "he ran pretty fast" when he tried to contact him.

As the officers were planning to "squeeze" him out towards Applebee's, the male crossed over the Interstate and began walking towards the frontage road between I-25 and the shopping center. Fleming got out of his vehicle to regain a visual of the male, who was initially kneeling, stood up, then sat down while looking at Jones and Bustos approaching from the opposite direction. Fleming aired that he was off the Interstate, but going towards the frontage road and Denny's. Vehicles can be seen on Fleming's body-worn camera crossing in front of the male on the frontage road while he walked into the intersection. However, when Jones regained a visual of the male near the frontage road and asked the male to "Come here. Come here, man." the male ran back towards the Interstate and Jones aired that he was "dodging back in traffic." Jones drew his taser and followed the male on foot yelling the commands, "Hey—Hey! Go that way." and "Get down on the ground. Get down. Get on the ground." as he crossed the northbound lanes of traffic and the center median. As Jones was yelling the commands, Fleming ran up to the median from the opposite direction and the male turned around and ran back across the northbound lanes towards the strip mall and the Tile House. Body-worn camera confirms that all three officers were driving marked patrol units and wearing their standard-issued uniforms with their badges, decals, duty belts displayed.

Body-Worn Camera: Custody & Taser

When Officer Bustos arrived at the location across from the Tile House, he ran up the embankment while Cpl. Fleming and Cpl. Jones were chasing the male out of the northbound lanes of traffic towards Bustos. Jones raised his taser and said "I'm gonna tase ya. Stop." but the male continued to run, initially from Fleming and Jones and then from Bustos while he was still in the lanes of traffic. Jones told Bustos "Let him run. Let him go. We'll get him." as the male ran down the embankment towards the frontage road. Bustos told the male to "Come here. Come here." but the male yelled something inaudible and continued to run. The male ran down the grass embankment towards Furniture Row, and Bustos told the male to "Stop. Stop right there." The male stopped, turned around, yelled something inaudible at Bustos, and put his hands in his pocket. Bustos retrieved his taser while the male was turning around and yelled "Take your hands out of your pocket!" The male then turned towards Furniture Row and ran from Bustos and Jones. They pursued the male, who eventually fell into an overgrown ditch bordering the frontage road.

Bustos got on top of the male and yelled "Show me your hands." while the male was clenching his fists. Bustos then said "I will tase you right now." while trying to get control of the male.

The male said some words and then said "I can't breathe, I can't breathe," as he turned over to face Bustos. Fleming and Jones came to aid Bustos and they turned his body and head to face the ground while they tried to get a handcuff on the male. Jones told the male "You can breathe—stop screaming." They told him "Stop. Stop. Stop... Stop" as Bustos held him down and one of the officers asked the other to "help me get his hands." They said "Quit resisting, quit your resisting, quit resisting, quit resisting.... Quit resisting" and the male said "I can't breathe, I can't breathe... Let me up, pull me up... Please!" in a higher-pitched voice.

Officers were able to get a handcuff on the male's left hand after saying "quit resisting" twice but still had to pull the male's right hand and arm to get the other handcuff on. At that point, the male turned on his side to face Fleming and was actively pulling his right arm away from Fleming, who was using both of his hands to try and pull the male's arm out from under him. They told the male to "quit resisting" three more times and Bustos told officers to "Let me know if you want him tased... Do you want me to tase him?" Jones replied "Hold on, I got his hand," and told the male three times to "Put your arm behind your back." but the male did not comply. Bustos warned officers that "I'm gonna tase him" and the male responded "Please don't... Stop." while continuing to resist Fleming's attempts to get his arm behind his back. Fleming eventually told Bustos "Ok, just tase him right there" as Bustos lifted the male's shirt and jacket to expose his lower right flank. The male was tased in the right flank while Jones was holding his left arm down against his back, Officer Bustos was on the male's lower body, and Fleming was struggling with the male's right arm.

The male continued to resist as he was being tased. Officers told him to "Put your hands behind your back. Quit resisting. Stop Resisting." and the male said "I am." and then "Stop." three more times. However, the male continued struggle with his right arm as Fleming put it above the male's head and onto the ground. Bustos then aired to Dispatch that the male had been tased while Jones told him "Put your arm behind your back." and Fleming said "Do as you're told. Do it. Do it." Jones told the male "Do it now." The male again said "I am." These commands were also partially heard by Dispatch over Bustos's radio as he updated them of the situation. However, Fleming was still struggling to have the male comply and place his right arm behind his back as Jones held his left arm. Fleming stated "he's locked his elbow."

As Fleming was securing the handcuffs, he pulled his hand away from the male and told him "Don't grab me." The male can be seen on Jones's body worn camera trying to grab Fleming's hand with his left hand while he had handcuffs on. Jones then said "Hold on. He ain't right. He's gonna keep resisting." Approximately two minutes and 15 seconds after the initial physical contact in the ditch, Bustos aired that they had handcuffed the male, "but he's still kicking quite a bit." and suggested that they put handcuffs on his feet "'cause he keeps kicking us." He also requested leg shackles. The male can be seen on Jones's body worn camera twisting his lower body and legs and making sudden movements with his legs.

The male fell into the ditch bordering the frontage road approximately 14 minutes and 42 seconds after Officer Bustos attempted to initiate contact with him on I-25. Bustos dove on top of the male a few seconds later and Cpl. Fleming and Cpl. Jones contacted them approximately 12 seconds afterwards. The male told Bustos he couldn't breathe approximately 15 seconds into the physical contact in the ditch. Bustos was on top of the male for approximately one minute,

using his right forearm to hold the male's upper body and head towards the ground. Jones was holding the male down on his left side while holding his left arm as Fleming was fighting to pull the male's right arm out from under him. The male was tased approximately 16 minutes and five seconds after the initial contact on I-25 and one minute and 25 seconds after the male fell into the ditch. Bustos aired that the male had been tased approximately 15 seconds after he had disengaged the taser, and while the male was still resisting officers. It took approximately 35 seconds after the male was tased for officers to get his right arm behind his back and to secure the handcuffs.

Body Worn Camera: After the Taser

Approximately a minute and 15 seconds after the male was tased and 40 seconds after he had been secured in handcuffs, the male was still struggling and officers told him twice to "Turn your head sideways so you can breathe" and also to "Get your head out of the mud." The male turned his head and Cpl. Jones said "There you go. You can breathe." The male stopped struggling and remained on his stomach with Jones holding his arms, Bustos straddling his legs, and Cpl. Fleming leaning on the upper portion of his back for approximately a minute. They then turned the male on his right side and Jones looked at the male and said "Yeah your breathing." Approximately 15 seconds after, Officer Bustos requested that the Fire Department respond to remove the taser barbs. Within seconds of that request and approximately a minute and 30 seconds after the male had stopped kicking at officers, Jones stood up and helped Fleming turn the male on his right side.

Jones asked the male for his name but he did not respond. Jones told officers that he could still see the male breathing and Fleming said "He's good—he's still good. He's still breathing—he's alright" while checking the male's pulse on his neck. Fleming confirmed the male's pulse approximately two minutes and 50 seconds after the male was tased. He then said "Boy, he's not all there." Bustos told officers that the male said that he had a knife, and officers then began to search the male for weapons. Another officer arrived to assist and Fleming stated that "He's out of it—he's still out of it." The male can be seen moving his head and mouth on Fleming's body-worn camera during this time. Officers then began to search for the man's ID and briefly rolled him onto his stomach to access the contents of his backpack. After they accessed the backpack, they rolled him back on his side and Jones asked Dispatch to tell Fire Rescue to "step it up." Jones eventually found a knife in one of the male's front right pockets.

Approximately two minutes and 15 seconds after Bustos had initially requested the Fire Department to respond for a taser removal, Jones again requested Fire Rescue. Within a few seconds Bustos asked if the male was still breathing, and Jones indicated that "he seems to be... He is... It's probably all the dope and everything... he ain't right." While Dispatch was trying to confirm the location of the incident, Jones noticed "His lips are really blue." and relayed the information to Dispatch and that "He's most likely under the influence of something 'cause his lips are really blue." Jones notified Dispatch that the male's lips were blue approximately a minute and 12 seconds after he had requested Fire Rescue. Jones asked Fleming to check for a pulse approximately 40 seconds after they noticed his lips were blue, and he indicated that the male was "swallowing." After a few seconds, Jones mentioned using Narcan and officers tell

him that Fire Rescue is on the way. The officers can hear Fire Rescue responding and approaching with their sirens.

The Fire Department arrived approximately five minutes and 30 seconds after Bustos initially requested a taser barb removal to Dispatch. As the Fire Department approaches, officers tried to get the male to sit upright and then carried him to a flat-cut grass area for medical personnel to respond with a gurney. Officers then removed the handcuffs and transferred him to the gurney. Identification was eventually found in the male's belongings, and he was identified as Emanuel James Ronald Miera.

Resuscitation Efforts

The Fire Department and American Medical Response (AMR) were requested by PPD at 3:59 p.m. and arrived to the scene at approximately 4:04 p.m. The Fire Department was initially dispatched to help remove taser barbs, but then escalated the call to Code 3 "emergent" status while en route. The Fire Department arrived at the scene first and a Fire Department EMT observed Mr. Miera sitting upright with the help of the officers on scene. He requested that Mr. Miera be removed from handcuffs and transported to a flatter surface. When Mr. Miera was placed on the gurney, he was without a pulse and Fire Department personnel initiated chest compressions and utilized a Bag Valve Mask to administer oxygen. The EMT noted that a lot of fluid was emitting from Mr. Miera's airway.

AMR arrived shortly after the Fire Department and contacted Mr. Miera at 4:06 p.m., began resuscitation efforts at 4:07 p.m., and transported him to Parkview Hospital at approximately 4:11 p.m. He arrived at the emergency room at 4:16 p.m., where resuscitation efforts were taken over by hospital personnel.

AMR records indicate Mr. Miera's condition was "critical," he was unresponsive, and that he had symptoms of cardiac arrest when they initially observed him. One of the EMTs later described Mr. Miera as appearing extremely blue, with a dark brown substance emitting from his mouth. AMR could not detect a pulse and started resuscitation efforts with the help of the Fire Department while they continued to monitor his pulse and blood pressure through an EKG. The EKG continued to report PEA (pulseless electrical activity) during Mr. Miera's transport to the hospital. Cpl. Jones assisted in providing chest compressions and EMTs administered a dose of Epinephrine and Narcan. Fire Department personnel also attempted a ventilation (intubation) procedure, but were unsuccessful when Mr. Miera vomited during the procedure. Suction procedures were conducted "often" and removed a "copious" amount of vomit during transport. After the unsuccessful intubation procedure, EMTs again utilized a Bag Valve Mask to administer oxygen to Mr. Miera. AMR records indicate that EMT personnel did not attempt to remove the taser barbs in Mr. Miera's flank because his condition required "more immediate attention."

The male was transferred from the ambulance to Parkview Hospital's Emergency Room at approximately 4:16 p.m., where hospital personnel took over resuscitation efforts. A doctor removed one of the taser barbs from Mr. Miera's right flank to avoid injuring medical personnel. Medical records indicate that Mr. Miera was diagnosed with "acute cardiac arrest" and

emergency room personnel conducted four cycles of CPR with the administration of increasing amounts of Epinephrine at each cycle. Sodium Bicarbonate and Calcium Chloride were also administered. An EKG reported a pulse was only present during CPR, an ultrasound indicated no cardiac activity, and urine screens tested positive for the presence of both amphetamines and cannabinoids. The Doctor noted a "copious" amount of vomit had to be suctioned while inserting an airway tube. All attempts at resuscitation were unsuccessful, and Mr. Miera was declared deceased at 4:32 p.m. Mr. Miera's internal body temperature was noted at 100.9°F at 4:35 p.m.

The second taser bard was removed and given to officers and Mr. Miera's body was placed in a body bag at 4:40pm and transported to the mortuary at approximately 8:30 p.m. Mr. Miera's medical records pertaining to this incident were later produced to CIT investigators pursuant to a warrant granted by a judge in the 10th Judicial District Combined District and County Courts.

Autopsy

The autopsy of Mr. Miera's body was conducted on December 12, 2017 at the McKee Medical Center in Loveland, Colorado. Two taser probe marks were found on the right back flank above the right hip. Abrasions were noted on the left knee, left cheek, and back of the right wrist. Abrasions and contusions compatible with handcuff injuries were also noted on the right wrist.

A blood toxicity report indicated the following substances in Mr. Miera's blood at the time of death:

- 11-Hydroxy Delta-9 THC: 1.4 ng/ml
- Delta-9 Carboxy THC: 5.7 ng/ml
- Cyclobenzaprine: 58 ng/ml
- Norfluoxetine: 58 ng/ml
- Citalopram/Escitalopram: 1600 ng/ml
- Amphetamine: 20 ng/ml
- Methamphetamine: 240 ng/ml
- Caffeine, Cotinine, Naloxone: present

The forensic pathologist did not find evidence of needle tracks on Mr. Miera's body.

The forensic pathologist also noted that there were no injuries or bruises corroborative of asphyxia or strangulation and that the hyoid bone and larynx were intact. The electronic control device barbs contacted the body in two places on the lower right back, which was not in the cardiac region of the body. The autopsy report also indicated that a review of the body-worn camera shows Mr. Miera exhibiting "purposeful movements" for at least one to two minutes after he was tased and that there was no video evidence of positional asphyxia or respiratory distress when he was being restrained by officers.

An internal examination of the various organ systems indicated "unremarkable" results. A microscopic examination revealed small vessel arteriosclerosis in the left ventricle of the heart. Furthermore, bacteria and foreign material was found in the lungs, but had not caused any inflammation.

The forensic pathologist concluded that Mr. Miera died of combined drug toxicity, with intense physical exertion and coronary arteriosclerosis (small vessel disease) as contributing factors. Methamphetamine, Citalopram/Escitalopram, and Cyclobenzaprine were cited as the drugs contributing to death. The manner of death was ruled as an accident.

Additional medical information

Mr. Miera's aunt, Linda Pacheco, was interviewed by CIT detectives on December 11, 2017. Ms. Pacheco informed detectives that Mr. Miera lived with her and that his ex-wife and children lived with Mr. Miera's step-father. She indicated that Mr. Miera suffered from mental health issues and depression and had received prescriptions for Prozac and "serotonin" (later to be determined as Sertraline) on November 30, 2017. She stated that she told Mr. Miera that he had to take his medications exactly as prescribed, and that he had taken his medications with him when he left her house.

Ms. Pacheco stated that Mr. Miera was sensitive to cold temperatures, borderline diabetic, had high blood pressure, and had a history of heart defects in his family.

Ms. Pacheco also informed detectives that Mr. Miera was aware of a warrant in La Junta and was planning on turning himself in after Christmas. She said this could have been a reason why Mr. Miera started using drugs again. She stated that Mr. Miera smoked marijuana from time to time and that he had used heroine in the past.

A Pueblo County Jail Intake Screening form completed by Mr. Miera on March 9, 2016 indicated that Mr. Miera admitted to inhaling "meth" "every few days" and that he was not compliant with taking his depression medications. Mr. Miera also indicated that he had used heroin a few months prior and used alcohol and marijuana "on special occasions."

When Mr. Miera's belongings were searched, officers found a baggie of marijuana and two pipes that are commonly used to smoke narcotics. Another pipe was found on Mr. Meira's person while he was at Parkview Hospital. A small amount of brown leafy substance wrapped in white paper was also found on Mr. Miera's person and tested presumptive for marijuana.

Processing of Taser Information

While processing the crime scene the morning of December 11th, CIT detectives located a blast door belonging to a deployed taser cartridge and two taser AFIDS. Three additional taser AFIDS were located amongst Mr. Miera's belongings at the hospital. Two of the AFIDS has serial numbers that matched the blast door's serial number. Another AFID had a partial serial number that possibly matched the blast door's serial number.

Officer Bustos, Corporal Fleming, and Corporal Jones gave their tasers to CIT detectives while they were processed for evidence in a PPD evidence processing room on the evening of December 10th. CIT Detectives processed the data from the tasers and found that Cpl. Jones's and Cpl. Fleming's tasers were reported as having "good health" and hadn't been deployed during the incident. Officer Bustos's taser reported "major error" and detectives contacted the

manufacturer regarding the error message. The manufacturer conducted a physical inspection, electronic test, and data analysis of Bustos's taser and determined that it had an irregular clock drift most likely caused by a physical connectivity issue within the internally hardwired clock components.

The taser manufacturer processed the taser's data and provided the following statements regarding its irregular clock drift:

"Due to internal component tolerances and environmental conditions, the internal Real Time Clock (RTC) of an X26P CEW can drift up to ± 2 minutes per month. The enclosed Event Log [from Officer Bustos's taser] indicates that prior to the reported incident on December 10, 2017, the last time synchronization was conducted on January 8, 2017 (Line 187). Because the clock was running without synchronization for over 11 months, the potential clock drift on December 10, 2017 could be expected to be up to ± 22 minutes." However, when CIT detectives conducted the clock synchronization and data download on December 11, 2017, "the clock was running 1,570 hours, 45 minutes, and 1 seconds slow (over 65 days)." When the taser manufacturer analyzed the clock drift on the taser, it found that "between January 8, 2017 and December 11, 2017, the X26P CEW's clock began to either drift an irregular amount, stopped running, or had another type of clock fault."

The taser manufacturer also discovered that the taser would register a "major error" when a physical knock, such as hitting it with a bare hand or on a wooden bench, was applied to the taser. Electric testing was conducted to test the hardware circuitry and connectivity and the manufacturer concluded that "the testing indicates, but does not guarantee, that the issue with the clock is likely caused by a physical issue with a component of the clock circuitry, possibly a poor or intermittent connection."

The taser manufacturer attempted to calculate a synchronized event log based on the actual time of the taser's data download and the log's reported time of the download. However, the synchronization calculations revealed the irregular and intermitted nature of the taser's clock drift, and the manufacturer could not determine with certainty if or when the taser was trigger activated on December 10, 2017. The manufacturer therefore analyzed the synchronized events which were closest in time to the December 10th incident. They found that both events lasted for five seconds and one event involved a high impedance load voltage (occurs when contacting a subject with high adipose fat tissue content) and the other event involved a low impedance load voltage (occurs when contacting a subject with low adipose fat tissue content.)

The manufacturer also conducted a deployment test and concluded that there were no physical impediments to the taser's functionality and that Officer Bustos's taser was functioning within published specifications for pulse rate, peak loaded voltage, output charge, and pulse duration.

Interview: Officer Bustos

Officer Bustos was interviewed by CIT Detectives at the Pueblo County Sheriff's Annex on December 13, 2017. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Officer Bustos's account of the events that led up to Mr. Miera's death was generally consistent with his body-worn camera and PPD Dispatch and Radio Logs. Bustos explained that when he first saw Mr. Miera, "I just felt like something was not quite right with him" and he didn't want

to chase him because he was “clearly in a... compromised mental state.” He described Mr. Miera as mumbling and that “something wasn’t right with him” because of his posture and demeanor. Bustos stated that he called his sergeant to ask if he should just let Mr. Miera go because he was ignoring him and walking away, and his sergeant asked if Bustos could contact him because “we don’t wanna cause an accident but at the same time we don’t wanna just let him go.” Bustos explained that his main goal was to get Mr. Miera to run off the Interstate and that he “didn’t want him to dart back out into the interstate” because “he was either going to kill himself by running into the Interstate or—or cause a multiple car pile-up...”

Bustos explained that once Mr. Miera was on the embankment and far enough away from traffic, he thought that he could “gain ground” on him and before Mr. Miera could run back onto the Interstate. However, Mr. Miera turned to Bustos, put his hands in his pockets, and said that he had a knife. Bustos explained that “I’m concerned that he said he had a knife on him. So it kind of changed the game a little bit for me cause now I’m worried about maybe being stabbed.” Bustos stated that he didn’t know if Mr. Miera was suicidal or homicidal.

Bustos described a ditch at the bottom of the embankment and stated that Mr. Miera tripped and fell at the ditch, so he “immediately kind of land[ed] on top of him... trying to stabilize him.” He stated that he tried to stabilize Mr. Miera’s head and shoulders because that would limit the rest of his movements. He also described how both Cpl. Jones and Cpl. Fleming were “trying to get control” of Mr. Miera’s arms while Bustos was “just trying to keep him stable.” Mr. Miera was “moving and he’s flailing around” and at one point twisted his body up. Bustos described feeling “powerless” because he didn’t know if Mr. Miera’s behavior was a psychotic delirium or drug induced and “we just couldn’t get control of him.” He explained that he was “amazed” at how strong Mr. Miera was and referred to his past experience handling people under the influence of drugs. He stated that these past experiences were why he initially asked for a cover unit when he responded to the scene.

Bustos recalled that he told the officers to let him know if he should tase Mr. Miera because “I wanted to give it every possible opportunity before I tased him.” He explained that a few moments passed and they were still struggling to handcuff Mr. Miera, so he asked again if they wanted him to tase him. Bustos recalled that a few more moments passed and Cpl. Fleming indicated that Bustos should tase Mr. Miera. Bustos stated that he tased Mr. Miera in the “fatty back area on the right side” but that he “wasn’t sure if the taser was having any effect on him.” Bustos stated that “He was still resisting even after the taser was deployed... It’s not like he immediately complied...” and explained that Mr. Miera’s body did not stiffen or become rigid as he has commonly observed in his past experience.

Bustos then explained that after they were able to handcuff Mr. Miera, they rolled him on his side because “We’re not just gonna leave him face down in the dirt.” He recalled that officers began to pat Mr. Miera down for weapons and “his movement just kind of slowly began to subside.” Bustos recalled asking for Fire Rescue to respond for a taser barb removal and Fleming checking for a pulse. He also recalled Jones asking for Fire Rescue to “step it up” because Mr. Miera’s lips were turning blue.

Bustos explained that he only tased Mr. Miera for one five-second cycle because after the failed results from the first cycle, “we’re taught and we’re trained to use the minimal—minimal force necessary on any situation like that. And even though we didn’t have complete control... there’s still three of us, you know, we’re—eventually we’re gonna get this... We’re gonna get cuffs on him. And I didn’t feel that there was a need to deploy it a second time.” He also confirmed that they did not employ any strikes, such as knee strikes or punching, during the incident.

Officer Bustos stated that his intent when he tased Mr. Miera was “to—to get handcuffs on him and—and get him some help.” He stated that “it was scary when he was running out into the ‘I’” and “all we wanted to do was—was get him off the Interstate... and find out what—what was going on with him ‘cause a normal person doesn’t walk back and forth on the ‘I.’” He ended his interview by stating “we just wanted to get him some help.”

Interview: Corporal Fleming

Corporal Fleming was interviewed by CIT Detectives at the Pueblo County Sheriff’s Annex on December 13, 2017. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Cpl. Fleming’s account of the events that led up to Mr. Miera’s death was generally consistent with his body-worn camera and PPD Dispatch and Radio Logs. He described how he activated his patrol vehicle lights when attempted to contact Mr. Miera on the Interstate and that Mr. Miera said “No. no. no.” and ran from him. His impression was that Mr. Miera had a mental illness or under the influence of drugs and that he had “erratic” behavior. Fleming recalled that when Mr. Miera was at the top of the embankment, he was kneeling and looking at the other officers. He then explained how he eventually approached the embankment and saw Bustos and Jones struggling with Mr. Miera while he was prone on the ground.

Fleming described Mr. Miera as “a pretty strong guy” and explained that he “grabbed [Mr. Miera’s] right hand and fought with him on that.” He recalled that even after Jones got a handcuff on Mr. Miera’s left hand and got his left arm around his back, Mr. Miera was still fighting them and “posturing up... and he was still fighting me pretty bad.” He stated that Mr. Miera was flexing his upper body and his hands and it was “quite a bit of struggle.” He then recalled that even after Bustos had tased him, Mr. Miera “continued to struggle” and that “it had just a small effect with him. And then he just started posturing and flexing and - ‘cause he was a pretty strong guy.” Fleming confirmed that Mr. Miera did not react to being tased as most people do, and that “it was just a—just a second of him just—not even relaxing in a sense and then just enough for me and I still struggled to get that cuff on him because he went directly back to—to resisting.” He did not see any officers use strikes to get Mr. Miera to comply, but did admit to attempting to use “pain compliance” by twisting the handcuffs on Mr. Miera’s right hand to get Mr. him to put his right hand and arm behind his back. Fleming also recalled that Mr. Miera was grabbing his hand even once the cuffs were on and his arms were behind his back.

Fleming stated that he checked for Mr. Miera’s pulse because “he was kind of limp... he wasn’t responding, he was just laying there” after they had handcuffed him. Fleming explained that when he checked Mr. Miera’s pulse, “he was okay. It—it was a strong pulse” and that “he was

breathing but he wasn't talking." He also explained that after they patted Mr. Miera down and cut his backpack off, officers rolled him on his side to keep his face out of the dirt. He estimated that he checked Mr. Miera's pulse about five times, and that "I just kept on ha-hanging onto his clothes to keep him up out of the ditch—to keep his face up out of the ditch. And then, uh, I cleared the grass out of his mouth and all that." Fleming also recalled that "when I checked his pulse, uh, he had a strong pulse and it—it was kind of weaker a couple more times and then—but his Adam's apple moved so I knew he was breathing or he swallowed." He did note that when he checked Mr. Miera's eyes, they looked dilated and that there was some clear liquid coming from his mouth and nostrils.

Fleming explained that he felt like Mr. Miera was "putting himself in—in danger and—and possibly the—the people, um, driving down the highway. He explained that "the whole idea—we got up there to try to, you know, get him out of the lane of traffic. I mean, he's a danger to himself and others and the driving public."

Interview: Corporal Jones

Corporal Jones was interviewed by CIT Detectives at the Pueblo County Sheriff's Annex on December 13, 2017. He was interviewed in the presence of his attorney and advised pursuant to *Garrity*.

Cpl. Jones's account of the events that led up to Mr. Miera's death was generally consistent with his body-worn camera and PPD Dispatch and Radio Logs. He explained that when he responded to the scene and began communicating with Bustos and Fleming, "we wanted to get him off the Interstate, first of all, because for his safety, for our safety, when I say ours, pretty much the rest of the citizens drivin' down the Interstate and all that. We're tryin' to get the guy off at that point. Once we could get him off, we'll make, we could contact him and we could figure out what's goin' on... [T]here was somethin' wrong with the guy... At that point, we just didn't understand. We didn't know enough. But we wanted to get him off and get him checked."

Jones explained that he activated his patrol vehicle's lights when he saw Mr. Miera, Bustos, and Fleming at the top of the embankment. He stated that Mr. Miera "could run pretty well" and Bustos began chasing him down the embankment. He stated that he told Bustos to "Let him go. Let him go." Because he thought other officers were coming and "we'd be able to surround him with everybody else." Jones then recalled that as Bustos was chasing him down the hill, he heard Mr. Miera say "I have a knife" and saw him reach into the right pocket or area of his clothing.

He then described Bustos and Mr. Miera "falling" into a ditch with thick bushes. He stated that he caught up to them and he tried to get Mr. Miera's arm out from under him, but "the guy had—he—he had a lot of strength." He explained that Mr. Miera "would not give us his arms. Both of his arms were underneath his body. He did not wanna be handcuffed for anything. Ah, he was tryin' to kick... I mean, kickin', kickin', kickin'...like a wild man." He described Mr. Miera's feet "still going a hundred miles an hour" when Bustos straddled Mr. Miera's legs. Jones also stated "He just had the strength of the world." Jones indicated that he was concerned that Miera had a knife on him and possibly a firearm because of an object he saw in Mr. Miera's pocket as

they were struggling. He explained that Fleming was "doin' everything he can to get that arm back to the other arm so we can cuff 'em together" and when Fleming couldn't get his arm back, Bustos tased Mr. Miera. Jones then explained that "he tases him. And, ah, nothin', nothin'. ...[Y]ou know, you've got a hold of somebody and one guy will tase him and you get a shock in that. I get nothing. I feel nothing from him. There's no, ah, his body didn't lock up. He didn't, ah, he didn't convulse. He didn't do any of the normal things that we see when somebody gets tased... It didn't seem to affect him at all. But at that point, we were able to handcuff him." He explained that Mr. Miera was still kicking after he was tased and "everything is still goin' but it had no effect on him... he had the super strength."

Jones recalled ultimately searching Mr. Miera for weapons after he was in handcuffs and finding a knife. He also explained that while Mr. Miera was face down on the ground, "the ground wasn't wet so there was a lot of space underneath his face. Because of the way the—the bushes were... he had plenty of ample, ah, opportunity to breathe and everything like that..." and that "we were tryin' to make sure that he didn't... didn't stop breathin'—basically get stuff shoved in his face or that asphyxiate or so." Jones remembered that Fleming eventually checked for Mr. Miera's pulse and continued to check his pulse "every couple of minutes" and that Fleming "did a good job with that. It was constant where he's constantly checkin' his pulse" and even recalled that Fleming stated he could see Mr. Miera breathing and swallowing. He also recalled telling Fire Rescue to "step it up" because Mr. Miera's lips were turning blue and he saw white foam on his mouth. He then described that Fleming "takes him and he brings the individual up and puts his head up on his knee and he kinda gets him up at an angle so that he has a easier way to breathe." Jones then explained how he helped administer CPR on Mr. Miera after he was placed on the gurney and while he was being transported to the hospital and how he continued to see the white foam go up and down in Mr. Miera's mouth until it was suctioned out.

Conclusion

A review of the CIT investigative reports, autopsy reports, and the materials provided by the taser manufacturer reveal no evidence of assault or any other criminal activity on Officer Bustos's, Corporal Fleming's, or Corporal Jones's behalf. The forensic pathologist who conducted the autopsy concluded that Mr. Miera's manner of death was an accident, and that he died of combined drug toxicity that was aggravated by physical exertion and coronary arteriolosclerosis. Furthermore, a review of the body-worn cameras of the officers involved in this incident show that Mr. Miera did not exhibit signs or symptoms of respiratory distress and displayed purposeful movement one to two minutes after he was tased. The autopsy did not reveal any physical or internal injuries corroborative of strangulation or asphyxiation. Therefore, criminal charges against the officers would not be appropriate, and no criminal charges will be filed.

Dated this 31st day of May 2013



J.E. Chostner
District Attorney