



November 22, 2019

Chief Nicholas Metz  
Aurora Police Department  
15001 E. Alameda Parkway  
Aurora, CO 80012

Re: The investigation into the death of Elijah McClain

Dear Chief Metz:

Aurora Police Department Detective Matthew Ingui presented the factual findings of the investigation into the tragic death of Elijah McClain to my office on October 21, 2019. The investigation included police reports, videos of the interviews of the involved police officers and witnesses, along with officer body-worn camera videos, 911 audio and other relevant material. The forensic autopsy report was made available to my office on November 8, 2019. Even though this incident did not involve a law enforcement officer's use of a firearm that would mandate review by the Office of the District Attorney pursuant to §20-1-114 and §16-2.5-301 (C.R.S 2019), I feel that the legal analysis as to the criminal filing decision should be directly communicated to you.

The District Attorney's review is strictly limited to determining whether any state criminal charges should be filed against any person involved in the death of Elijah McClain. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any violation of the Colorado criminal code beyond a reasonable doubt to a jury. In this regard, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force applied to Mr. McClain was not justified pursuant to Colorado law. This review does not include any opinions of civil liability or evaluation into the appropriateness of departmental policies, practices, or procedures.

Based on the investigation presented and the applicable Colorado law, there is no reasonable likelihood of success of proving any state crimes beyond a reasonable doubt at trial. Therefore, no state criminal charges will be filed as a result of this incident.

## Overview of the Incident

On Saturday, August 24, 2019 at 10:32 p.m., the Aurora Police Department Communications Center (Dispatch) received a 911 call from J.V. describing a suspicious black male wearing a ski mask, “acting weird” by “waving his arms around” in the area of Billings Street and East Evergreen Street in the City of Aurora. Aurora Police Officer Nathan Woodyard was dispatched to the location and was the first officer to arrive. Officers Jason Rosenblatt and Randy Roedema assisted as cover officers. Officer Woodyard located a black male wearing a ski mask, brown coat and black pants walking in the area of East Colfax Avenue and Billings Street. The male was later identified as Elijah Javon McClain. Officer Woodyard advised via radio that he located the male and awaited his cover car prior to making contact. Officer Woodyard was driving his patrol car south on Billings Street and activated his emergency lights, siren, spotlight, and stopped his patrol car parallel to where Mr. McClain walked. Officer Woodyard stepped out of his car and told Mr. McClain to stop at least three times. Mr. McClain appeared to ignore the commands and continued walking northbound on Billings Street.

As Officer Woodyard approached Mr. McClain on foot, again telling him to stop. Mr. McClain said, “I have a right to go where I am going.” Officer Woodyard responded, “I have a right to stop you because you’re being suspicious.” Officer Woodyard grabbed Mr. McClain’s left arm. Mr. McClain immediately tightened up his arms and pulled them to his chest. Officer Rosenblatt grabbed Mr. McClain’s right arm just as Officer Woodyard grabbed Mr. McClain’s left arm. Officer Roedema arrived on scene seconds later. Mr. McClain was clutching to his chest a plastic style shopping bag with items in it. Officers did not know the contents of this bag. Officer Woodyard later told Detective Ingui that he was telling the male to calm down because he thought the male might have weapons on his person and wanted to conduct a “pat down” search for weapons given the circumstances. According to Officer Woodyard, this area of East Colfax Avenue was known for criminal activity, and the male was reported by a citizen to be acting suspicious, while wearing a ski mask on a warm August night. Officer Woodyard described Mr. McClain as not relaxing or allowing himself to be searched.

An officer can be heard on a body worn camera saying “stop tensing up dude, stop tensing up.” Mr. McClain then said, “let me go, no let me go, I am an introvert, please respect my boundaries that I am speaking.” One of the officers said, “relax” and Mr. McClain responded, “I am going home.” An officer said, “relax or I am going to have to change this situation.” Mr. McClain said, “leave me alone.” Officer Roedema said, “stop sir, can you please cooperate, we are going to talk to you.” Mr. McClain responded, “can you leave me alone, you guys started to arrest me and I was stopping my music to listen, now let me go.” Officers can be heard saying, “let’s get him over to the grass.” This appeared to escalate the situation, as Mr. McClain says, “I intend to take my power back, I intend to be censored, I intend to be censored.” As Mr. McClain is saying this, Officer Roedema said, “he just grabbed your gun.”

In their interviews, the officers described that they attempted to move the male away from the rocks and onto the grass in case a physical altercation caused them to go to the ground. Officer Woodyard and Officer Rosenblatt moved Mr. McClain onto the grass. Officers Woodyard and Rosenblatt heard Officer Roedema proclaim, “he is going for your gun!” but didn’t know whose gun was being referenced. Officer Roedema described in his interview how Mr. McClain reached for and grabbed the grip of Officer Rosenblatt’s gun that was holstered. All three officers then took Mr. McClain down to the ground as quickly as possible.

The officers described their fears and concerns upon hearing that Mr. McClain reached for the gun. Given the circumstances, Officer Rosenblatt attempted to use a carotid control hold on Mr. McClain, but was unsuccessful due to his position. The carotid control hold is a pressure control tactic that involves an officer placing his arm around the subject's neck, applying pressure around the subject's neck, restricting the flow of blood to the brain via the carotid arteries. The intent of the hold is to gain control of a combative individual. Officer Woodyard was in a better position and effectively placed Mr. McClain into a carotid control hold.

According to the officers, Mr. McClain briefly went unconscious and Officer Woodyard immediately released the hold. Officers Woodyard, Rosenblatt, and Roedema described Mr. McClain as actively resisting, fighting the officer's attempts to place him into handcuffs and resisting their control. Officers called for the assistance of the Aurora Fire Department per departmental policy following the application of a carotid control hold.

Aurora Fire Rescue Station 2 was dispatched to the location. Falck Ambulance also responded. Aurora Fire Rescue Lieutenant Peter Cichuniec, Engineer Firefighter Daniel DeJesus, Fire Medic Jeremy Cooper, and Firefighter Austin Bradley arrived on scene. All members of Aurora Fire Rescue described Mr. McClain on the ground, resisting officers. Fire Medic Cooper advised they were unable to gather any medical history or speak with Mr. McClain as he was combative and appeared to be showing signs of excited delirium by his appearance and his aggression. As a result, Fire Medic Cooper requested ketamine from Falck Paramedic Ryan Walker in an attempt to sedate Mr. McClain. Fire Medic Cooper said in his interview with Detective Ingui that ketamine is the drug to be administered per AFD protocol when someone is showing the signs of exciting delirium which includes hyper aggression, tachycardia, diaphoretic, and increased strength. Fire Medic Cooper requested 500 milligrams of ketamine to administer to Mr. McClain, who he estimated to weigh approximately 100 kilograms.

Fire Medic Cooper administered the ketamine via a syringe into the right deltoid of Mr. McClain. After approximately two to three minutes, Mr. McClain calmed down. He was placed on a gurney, his handcuffs were removed, and he was placed into soft restraints on the gurney and loaded into the ambulance. Fire Medic Cooper noted that after his initial examination, Mr. McClain's chest was not rising on his own, and he did not have a pulse. Cardiopulmonary resuscitation and medication were administered to Mr. McClain and he was taken by ambulance to the University of Colorado Hospital for treatment.

Mr. McClain received advanced medical care while at the hospital. However, Mr. McClain was declared brain dead on August 27, 2019 at 3:51 p.m. On September 3, 2019, Dr. Stephen Cina performed a forensic autopsy on the body of Elijah McClain. On November 7, 2019, the Adams County Coroner's Office released a report detailing the pathological findings from the autopsy. Dr. Cina declared the manner of death to be undetermined, listing several alternative possibilities that may have led to the death of Elijah McClain. In particular, Dr. Cina concluded that a combination of intense physical exertion and a narrow left coronary artery contributed to Mr. McClain's death.

Mr. McClain's blood toxicology was positive for marijuana and ketamine. The pathological findings of the blood ketamine concentration was noted to be within a therapeutic level. Although there is no evidence to support a ketamine overdose, Dr. Cina could not exclude the possibility that Mr.

McClain suffered from an unexpected reaction to the drug. Dr. Cina noted the carotid control hold applied during the decedent's restraint. However, he could not determine whether the carotid control hold contributed to death, as there were no signs of traumatic asphyxiation. In addition, he noted that there were no injuries to the muscles of the neck, larynx, or hyoid bone that would suggest an injury to the neck causing death. The evidence also revealed that the decedent was still struggling with officers after the carotid hold was removed, leading to the conclusion that any restraint placed by police officers did not directly cause Mr. McClain's death. Specifically, Dr. Cina made these findings:

The decedent was violently struggling with officers who were attempting to restrain him. Most likely the decedent's physical exertion contributed to death. It is unclear if the officers' actions contributed as well. It is also unclear whether the decedent aspirated vomit while restrained. While on scene, the decedent displayed unusual behavior and enhanced strength. These features are commonly seen in Excited Delirium. The decedent was not hyperthermic (febrile) upon admission to the hospital and there was no history of a pre-existent severe mental illness (e.g. schizophrenia). There was also no history of stimulant drug use (e.g. cocaine, methamphetamine) and no such drugs were detected in his blood at the time of hospital admission. Nonetheless, the patient's sudden collapse after an intense struggle is commonly seen in Excited Delirium. It is thought that when adrenaline levels drop, potassium levels surge resulting in an arrhythmia. This mechanism may well explain his cardiac arrest which led to anoxic encephalopathy.

In summary, the manner of death may be accident if it was an idiosyncratic drug reaction. It may be natural if the decedent had an undiagnosed mental illness that led to Excited Delirium, if his intense physical exertion combined with a narrow coronary artery led to an arrhythmia, if he had an asthma attack, or if he aspirated vomit while restrained. It may be a homicide if the actions of officers led to his death (e.g. the carotid control hold led to stimulation of the carotid sinus resulting in an arrhythmia). Based on my review of the EMS reports, hospital records, bodycam footage from the restraining officers, and the autopsy findings, I cannot determine which manner of death is most likely.

### **Legal Analysis**

As was previously noted, this review is limited to a determination of whether state criminal charges should be filed against the involved officers. It is therefore not my role to second guess the actions of the involved officers to determine if they could have reacted to this situation in a different manner. That is left to you and your agency with regards to training and/or changes in policies within your agency as a result of this incident.

The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Generally speaking, criminal liability is established when the evidence is sufficient to prove all of the elements of a crime beyond a reasonable doubt. In addition to proving all the elements of a crime beyond a reasonable doubt, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. In this instance, in order to file a criminal charge, the District Attorney's Office must also prove beyond a reasonable doubt that the involved law enforcement officer's actions were not justified under the circumstances surrounding this incident and the applicable Colorado law.

Therefore, the legal question presented to the Office of the District Attorney is whether, the prosecution can prove beyond a reasonable doubt that the officers' actions were criminal and not justified under Colorado law.

Under Colorado law, a law enforcement officer's reasonable suspicion of criminal activity warrants a minimal detention of a person for the purposes of investigating into a person's actions. Under §16-3-103, C.R.S. (2019):

- (1) A peace officer may stop any person who he reasonably suspects is committing, has committed, or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions.
- (2) When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that his personal safety requires it, he may conduct a pat-down search of that person for weapons.

Whether reasonable suspicion for criminal activity exists is based upon the totality of the facts known to the officer. In addition, the officer's training and experience must be considered. Based on the circumstances present here, the officers had a reasonable basis to not only stop and question Mr. McClain, but also to pat him down for weapons to ensure a safe contact with him.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707(1), C.R.S. (2019), the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

- (1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
  - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
  - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

The “reasonable belief” standard is the touchstone of the justified use of force. As such, the critical question is whether there is sufficient evidence to prove, beyond a reasonable doubt, that the involved officers did not have a reasonable belief that it was necessary to use physical force to defend themselves or other officers from what they reasonably believed to be the use or imminent use of physical force.

The standard of reasonableness requires consideration of whether, under all of the circumstances, an objective person situated as the officer would have maintained the same belief. Although we now know the tragic reality that Mr. McClain did not possess a weapon when he was stopped, the investigation proved that the police officers who responded to this incident did not know that critical detail. Consequently, the evaluation of the involved officer’s reasonable belief must be based not upon what we now know, but the circumstances as they perceived them at the time.

Here, the officers were responding to a 911 call made by a citizen who reported a male wearing a mask and acting suspicious. When the officers contacted Mr. McClain, he was walking down the street in an area known for criminal activity, wearing a ski mask and a coat on a warm summer night when it was reported to be approximately 80 degrees. To suggest that the officers had no basis to contact Mr. McClain discounts the experience and direct observations of the law enforcement officers, as well as a citizen’s observations of suspicious activities that caused a report to law enforcement in the first place.

The purpose and scope of the intrusion by a law enforcement officer is also based upon the standard of reasonableness. That is, while law enforcement officers should use the least intrusive means reasonably possible during the detention, they may use a reasonable degree of force necessary to accomplish the purpose of the stop. A law enforcement officer may use various forms of physical restraint under circumstances where such force constitutes a reasonable precaution for the protection and safety of the officers investigating the situation.

Here, as with many calls for service, a degree of uncertainty surrounded the dispatch. When the officers located Mr. McClain who matched the description from the 911 call, he was carrying a plastic bag with unknown items in it. From the perspective of the law enforcement officers, Mr. McClain appeared to refuse to comply with the officers’ lawful commands to stop. Mr. McClain’s response caused the law enforcement officer’s belief in the need to increase the degree of physical force in order to detain him and ensure that there was no criminal activity happening.

All three officers attempted to have a conversation with Mr. McClain to determine his activities that led a citizen to call 911. They also sought to ensure that he did not possess a weapon. Mr. McClain actively resisted the officer’s attempted contact. According to one of the officers, during this initial contact, Mr. McClain reached for Officer Rosenblatt’s gun. While the body camera video does not depict this action, the audio does and there is no evidence to dispute the perception of the officers in the need to escalate the use of force. This escalated the situation dramatically. From the officer’s perception it went from an investigatory stop to a potential life threatening incident and it certainly raised the officer’s use of force.

Criminal liability is established when the prosecution can prove beyond a reasonable doubt that a person committed all of the elements of a crime defined by Colorado statutes. While the elements of the crimes of homicide vary widely, each requires proof of a voluntary act prohibited by law, together with a culpable state of mind as well as that the act caused the death of Mr. McClain.

Here, although extensive, the scope and character of the intrusion by law enforcement officers in effecting Mr. McClain's detention was not itself a criminal act. There is no evidence that any one of the officers sought to cause injury or death to Mr. McClain. Rather, the evidence suggests that they exercised a degree of force they believed necessary to detain him and investigate into his possible criminal activity. Perhaps more importantly, in any homicide prosecution, the prosecution must prove beyond a reasonable doubt that the involved individual's actions caused the death of a person.

The results of the forensic autopsy demonstrate that the cause of Mr. McClain's death was undetermined. Therefore, the evidence does not support a conclusion that Mr. McClain's death was the direct result of any particular action of any particular individual. Under the circumstances of this investigation, it is improbable for the prosecution to prove cause of death beyond a reasonable doubt to a jury of twelve. Consequently, the evidence does not support the prosecution of a homicide.

### **Conclusion**

Applying the facts of this incident to the applicable Colorado law, the evidence does not support the filing of any state criminal charges against the involved officers for the unfortunate and tragic death of Mr. McClain. Since this matter does not fall under §20-1-114 and §16-2.5-301 (C.R.S 2019) this letter will not be posted on our office website. Since no state criminal charges are being filed based on your investigation, your agency is the sole custodian of records with regards to this incident. Any request that my office gets for release of records with regards to this investigation will be referred back to your agency. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', written in a cursive style.

Dave Young  
District Attorney