



## OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY  
18TH JUDICIAL DISTRICT  
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

---

DATE: 2/5/2020

FROM: Brian Sugioka, Chief Deputy District Attorney

RE: APD case 19-11789, concerning incident on March 29, 2019 involving Officer Nathan Meier.

### BACKGROUND AND INTRODUCTION

On December 10, 2019, our office became aware through a media report of an incident that occurred on March 29, 2019, involving Aurora Police Officer Nathan Meier. Prior to the media report, we were not made aware of the incident by the Aurora Police Department (APD). The incident involved Officer Meier being found unconscious, in uniform and armed, in a marked patrol vehicle with the engine running while stopped in a roadway in Aurora. He smelled of alcohol. Consistent with our obligation to investigate and, when appropriate, prosecute all violations of state law occurring within our jurisdiction, the District Attorney's Office initiated an inquiry-turned-investigation of this incident to determine if criminal charges should and could be filed against Officer Meier. For the reasons set forth in this letter, our office has determined that no charges can ethically be filed at this time against Officer Meier or any other officer involved in this matter, as we do not have a reasonable probability of conviction at trial based on the information currently available and resulting from the decision not to treat this matter as a DUI investigation on March 29, 2019.

### MATERIALS OBTAINED AND REVIEWED

The police reports, bodycam footage, dispatch notes, and related materials from this incident were provided by APD at our request. We obtained and executed a search warrant for the materials from the Internal Affairs investigation into this incident conducted by APD. Our office obtained additional records from Falck Ambulance, Buckley Fire Department, and Aurora Fire Department. Our office also conducted numerous interviews of EMS personnel, citizen witnesses, and two APD officers who had not previously been interviewed.

The initial review of the Internal Affairs materials was conducted by a different Chief Deputy D.A. and D.A. Investigator, who redacted any materials concerning statements or information provided by Meier in the course of the IA investigation prior to turning those materials over to the undersigned for purposes of case evaluation. In essence, we built a wall within our office to shield the decision to charge from evidence prohibited from being considered by existing law. This procedure was in compliance with the requirements of *Garrity v. New Jersey*, 385 U.S. 493 (1966), and related case law, that precludes the use of incriminating information provided by a suspect when that information is compelled in the course of an internal affairs investigation. As of the

writing of this letter, the undersigned has not seen any of the Garrity protected material, and thus this letter is written without any reliance upon it.

### FACTUAL SUMMARY

On March 29, 2019 at approximately 3:45 p.m., two separate citizen witnesses called 911 to report an individual wearing a police uniform passed out in the driver's seat of a running vehicle in the roadway of E. Mississippi Avenue in Aurora, near the entrance to Buckley Air Force Base. APD officers and paramedics from three different agencies, Buckley Fire, Aurora Fire, and Falck Ambulance Service, responded to assist. It was determined that the individual in the car was an in-uniform Aurora Police Detective, Nathan Meier.

Paramedics noted that Meier was unresponsive when they tapped on the glass and shouted. They noted the vehicle was still in drive and that Meier's foot was on the brake. They also noted that Meier appeared to be armed, with a pistol on his duty belt. The doors were locked and all windows were raised.

The first officer on scene was then-APD Deputy Chief Paul O'Keefe. O'Keefe happened to be in the vicinity when he heard the call for service and responded. O'Keefe recognized Meier as being an APD Detective.

Paramedics determined that they would have to break the vehicle's windows in order to get inside. They also made the decision to put chocks under the wheels to prevent the vehicle from moving, in case Meier's foot came off the brake. They were also concerned that were Meier to startle awake, he might reach for his firearm. Working with O'Keefe, they broke the front windows, removed Meier's firearm, and placed the vehicle in park.

When O'Keefe entered the vehicle shortly after the windows were broken, he smelled an odor of alcohol. In his report and IA interview, O'Keefe characterizes the odor as "mild" and "fleeting", and indicated he was unsure whether the odor was emanating from Meier specifically or from the vehicle interior. O'Keefe indicated his observations of Meier's condition were inconsistent in his experience with someone under the influence of alcohol, due to the odor not being strong and the extent of Meier's unresponsiveness. O'Keefe did acknowledge calling then-APD Chief Nick Metz, and informing Metz that Meier might be intoxicated. O'Keefe indicated he did not hear any other officers or EMS personnel mentioning an odor of alcohol or potential intoxication. At the hospital, O'Keefe indicated he attempted to gather information about Meier's condition, but hospital staff were close-lipped and unwilling to provide any details. O'Keefe indicated he "made the call" not to initiate a DUI investigation, as he believed he had insufficient evidence of intoxication, and rather believed this to be a medical situation. O'Keefe indicated he "erred on the side of protecting [Meier] and in fact anybody else under the same circumstances...from that blood draw based on the entirety of those circumstances."

The internal affairs investigation provides some detail in interviewing people in the chain of command at APD concerning the genesis of the decision not to attempt to obtain a sample of Meier's blood for testing for alcohol and controlled substances while Meier was at the hospital.

For purposes of this letter however, it is critically important that no such sample was ever obtained. Thus, no test results are available.

Other APD officers responded to the scene shortly after O'Keefe arrived. Ultimately, eight APD officers, including Deputy Chief O'Keefe, were on scene. Two of those officers assisted in removing Meier's duty belt and extricating him from the vehicle. Both of those officers, Officers Rivas and Cardenas, indicated they smelled alcohol on Meier's person as they were doing so. Rivas later mentioned this fact to Officer Vandyk, who was on scene. Vandyk relayed this information to APD Lieutenant Joe D'Agosta, who arrived later.

Of the eight officers who responded, five were equipped with body worn cameras (BWC). (Lt. D'Agosta, Lt. Moody, and Deputy Chief O'Keefe were not issued bodycams, as they did not routinely respond to calls for service). Of those five, four had their BWCs activated for portions of the contact. The fifth, Officer Rivas, indicated the battery was dead on his. Further, an officer who happened to be posted to the hospital when Meier arrived, Officer Crump, had his BWC activated as well. Of the four who had BWCs on scene, a total of 16 minutes and 20 seconds of BWC footage was provided to us. From the captured video, it appears the officers turn their bodycams on and off at different times during the contact, which accounts for the relatively small amount of bodycam footage.

Officer Vandyk's BWC captures an interaction with Lt. Joe D'Agosta as Lt. D'Agosta was arriving on scene. Officer Vandyk can be heard saying to D'Agosta "he's a little intoxicated", immediately followed by Vandyk making a disgusted sound and immediately turning off his BWC. Vandyk was asked about this interaction during the IA interview, and indicated that he was passing along the information provided to him by Officer Rivas, who had smelled alcohol on Meier's person.

In total, six officers had some degree of interaction with Meier on scene. Of those six, three smelled alcohol coming from either his person or the vehicle, and three did not.

The city-owned Ford Taurus driven by Meier was transported to the city shops to have the windows replaced. The APD officers who did so were not directed to conduct any search of the vehicle, which would have required no warrant and no probable cause to conduct. No such search was conducted. From the BWC footage, the only item of potential significance that can be seen inside Meier's car is a plastic disposable bottle containing a clear liquid, on the passenger side front seat. This bottle was never seized or further examined.

An investigator from the District Attorney's Office obtained records from Falck Ambulance, Buckley Fire, and Aurora Fire. With that information, the investigator interviewed five of the responding EMS personnel who directly interacted with Meier. All five were asked if they smelled alcohol on Meier. All five stated they did not. Importantly, all five stated that no APD officer on scene told them that they had smelled alcohol on Meier. Several of the five stated that had they been told about an odor of alcohol, it would have been helpful in their assessment.

The five EMS personnel were also all asked whether they suspected alcohol intoxication. All five stated they did not. Several mentioned that they suspected stroke, and one suspected opioid

exposure, such as fentanyl, as a possibility. Others were unsure what the cause of Meier's condition was.

These five EMS personnel, well-trained in their fields and with significant experience assessing suspected intoxicated drivers, presumably would testify at any future trial of Officer Meier.

Numerous APD officers went to the hospital where Meier was being treated. Several APD officers note that the medical staff were unusually close-lipped about Meier's condition. Several APD officers noted that in their experience, hospital staff will at least give an assessment of whether someone appeared to be under the influence; in this instance, hospital staff were unwilling to say anything. One APD officer did overhear two nurses conversing in Spanish, and overheard one of them say something about someone being drunk, but was unable to say whether that was in connection with Meier. That same APD officer overheard two other hospital staff members speaking and heard the words "BAC" and "490" or "460". That APD officer again indicated that he was not sure who that was in reference too. Ultimately, APD did not seek to obtain any medical records or test results from Meier's hospitalization.

As part of the follow-up investigation by the District Attorney, investigators looked for any REDDI (Report Every Drunk Driver Immediately) reports or any other similar reports concerning the vehicle in question being driven erratically earlier that day. The District Attorney's Office inquired of the Parker Police Department, the Douglas County Sheriff's Office, the Arapahoe County Sheriff's Office, and the Colorado State Patrol. No such reports were found to exist.

### ANALYSIS

It is the ethical obligation of all prosecutors and the policy of the District Attorney's Office only to prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime alleged, and 2) there is a reasonable probability of conviction at trial. This is a higher standard than the probable cause standard that is employed by police when making initial charging and arrest decisions. In some circumstances, we will accept a case filing from a law enforcement agency based on probable cause alone, if we believe additional information will be forthcoming from law enforcement. In this particular case, no case filing has been submitted to the District Attorney's Office by APD. Therefore, the decision whether to pursue a criminal prosecution of Officer Meier is based upon the reasonable probability of conviction standard.

Media reports suggest that Officer Meier had a significant level of alcohol in his system. None of the information available to us corroborates this information. Our office closely examined the question of whether there is an avenue by which we can obtain the results of any testing done on Agent Meier's blood by the hospital. Based on past experience, it is very likely such testing was conducted, and thus very likely that records exist concerning the results of that testing. Generally, medical records of this type are protected from disclosure by state and Federal law, most significantly by C.R.S. 13-90-107(1)(d), commonly referred to as the "medical privilege," which protects from disclosure and use any information obtained by a physician in the course of attending to the patient. It is clear that the records from Meier's hospitalization would, generally, be of the sort covered by that privilege.

There is a statutory provision allowing law enforcement to obtain blood test results in the context of a DUI investigation under certain circumstances. That statute, C.R.S. 42-4-1301.1(8), provides as follows:

(8) Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of the person's blood or any drug content within such person's system as provided in this section. If a test cannot be administered to a person who is unconscious, hospitalized, or undergoing medical treatment because the test would endanger the person's life or health, the law enforcement agency shall be allowed to test any blood, urine, or saliva that was obtained and not utilized by a health care provider and shall have access to that portion of the analysis and results of any tests administered by such provider that shows the alcohol or drug content of the person's blood, urine, or saliva or any drug content within the person's system. Such test results shall not be considered privileged communications, and the provisions of [section 13-90-107, C.R.S.](#), relating to the physician-patient privilege shall not apply

This provision appears in the general statute concerning Colorado Express Consent, C.R.S. 42-4-1301.1. Read in context, 42-4-1301.1(8) requires that an officer have probable cause to believe a suspect driver is under the influence of alcohol, drugs or both. If the suspect is unconscious, then the plain language of the statute then requires the investigating officer to attempt to obtain a sample of the suspect's blood. If it is not possible to obtain such a sample because doing so would interfere with medical treatment and pose a danger to the suspect, then an investigating officer can obtain any residual blood that was drawn by hospital staff for treatment purposes, and can obtain the results of any blood testing done by the hospital, and such results would not be protected by the medical privilege.

However, in this case, as mentioned above, no one initiated a DUI investigation or attempted to follow the requirements of 42-4-1301.1(8). It is our interpretation of 42-4-1301.1(8) that in order to obtain these medical records, even if probable cause now exists to believe such records contain evidence of intoxication, it was necessary to first attempt to obtain a blood sample directly from Officer Meier. Since this was never done, 42-4-1301.1(8) does not provide an avenue for us to obtain these records at this late date.

It is our opinion that there was probable cause to seek a sample of blood from Meier. Had anyone from APD called us, as they routinely do, to discuss whether probable cause existed, we would have told them we believed it did. No such call was made.

In the absence of those records, the evidence available to the District Attorney generally consists of the following:

1. The driving behavior of Officer Meier. Specifically the fact that he was found in control of the vehicle while it was stopped in a lane of travel, in drive, and with his foot on the brake.
2. Observations of Agent Meier's condition. Specifically the fact that he was unconscious and completely unresponsive.

3. The observations of the three officers who smelled an odor of alcohol on Meier's person or emanating from the vehicle.
4. The observations of EMS personnel.

The People note that the prevailing case law would likely support a probable cause determination under these circumstances. Cases such as *Grassi v. People*, 320 P.3d 332 (Colo.2014), and *People v. Shepherd* 906 P.2d 607 (Colo.1995) support the conclusion that an odor of alcohol, coupled with bad driving behavior and a suspect's physical condition consistent with intoxication was likely sufficient for probable cause to attempt to obtain a blood sample, and likely probable cause to charge an individual with DUI.

In applying the reasonable probability of conviction standard, the People must also consider the significance of the assessment and observations of EMS personnel. Although law enforcement officers on scene would not have known this at the time, all of the EMS personnel who were interviewed, as well as the EMS records, suggest that the initial belief—in the absence of any indication that Meier had an odor of alcohol on him—was NOT that Officer Meier was under the influence of alcohol or drugs, but rather that he was suffering from an undefined medical condition. That information would likely be presented to a jury and have a significant impact in any deliberation over “reasonable doubt.”

The People also must consider the impact on a jury's assessment of the case that law enforcement failed to attempt to obtain a blood sample despite having an avenue to do so. Given that the People bear the burden in a criminal trial of proof beyond a reasonable doubt, and that the jury is allowed to consider both the evidence and the lack of evidence in the case, this factor would likely have weighed heavily against conviction. The fact that Officer Meier's vehicle was never searched, despite it being a city-owned vehicle, would similarly weigh against the prosecution in any trial.

Among the charges that the People considered were Driving Under the Influence or Driving While Ability Impaired pursuant to C.R.S. 42-4-1301, Prohibited Use of Weapons(intoxicated while in possession of a firearm) under C.R.S. 18-12-106(1)(d), Reckless Endangerment under C.R.S. 18-3-208 and Second Degree Official Misconduct under 18-8-405(1)(b)(2). All of these charges revolve around our ability to prove beyond a reasonable doubt that the defendant's driving behavior and physical condition was due to intoxication by drugs, alcohol, or both. For all of the reasons set forth above, the People do not believe we have a reasonable probability of proving this fact beyond a reasonable doubt. Thus, it is our assessment that no charges can be filed against Officer Meier at this time.

Respectfully submitted,

*Brian Sugioka #30856*

Brian Sugioka

Chief Deputy District Attorney