



OFFICE OF THE DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
Michael T. Dougherty, District Attorney

May 25, 2023

VIA ELECTRONIC MAIL

Chief Maris Herold
Boulder Police Department
1805 33rd St
Boulder, CO 80301

Re: Independent Audit of Cases

Dear Chief Herold:

The District Attorney's Office completed the independent audit of 46 open cases assigned to Kwame Williams at the time he left the Detective Division. The 46 cases in question spanned the time period of 2019 through 2022. The independent audit included a review of all police reports associated with each of the cases, as well as a review of any information in the District Attorney and Court records for each of the cases.

We recognize that the Boulder Police Department has already addressed this matter. We appreciate your desire and request to have our office conduct an independent audit on each of the cases. Based upon the investigation by the Boulder Police Department, as well as our audit, Kwame Williams failed to complete assignments on these 46 cases. At the same time, he did actively work cases during the above time period. The Boulder Police Department identified 46 cases for which he failed to work on and/or complete. Our office audited the 46 cases that he failed to work to completion. The Boulder Police Department assigned other personnel to finish working on those 46 cases. The audit reflects the outcomes following that additional work.

Of the 46 cases that Williams failed to work in whole or in part, 43 cases can be placed into four general categories. The four general categories are: Criminal Case Resulted, District Attorney Declined Prosecution, Statute of Limitations Expired, and Insufficient Evidence. The criteria for placing a case in a specific category is discussed below. Three cases are unique and do not fall under any of the four general categories.



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Three Unique Cases

One case was ultimately determined to have occurred in a location outside the jurisdiction of the Boulder Police Department. This case was referred to a neighboring jurisdiction for investigation and considered an "Outside Agency Assist" rather than a substantive investigation.

Two of the cases had involved unattended deaths. As you know, it is common for detectives to be involved in unattended death investigations at the early stages until it is determined the death is not related to criminal activity. Consistent with the initial investigation, the Boulder County Coroner ruled the manner of death as a suicide in one of the unattended death cases. In the second unattended death case, the Boulder County Coroner determined the death was a result of COVID and pneumonia and ruled the manner of death as natural.

No criminal charges could be brought in either one of these cases. The lack of detective work did not appear to impact the work, or timing involved, with the Coroner's Office.

Four General Categories

Criminal Cases

Twelve of the cases ultimately resulted in a case being filed in the judicial system. Cases in this category include cases currently at various stages of the criminal justice system. The specific criteria for inclusion in this category are cases where an arrest was made, an arrest warrant was obtained, or a summons was issued. During the time the District Attorney's Office was conducting this independent audit, several cases moved from an "active arrest warrant" status to "arrest made" status. Cases will continue to move from "warrant" to "arrest" status until all active arrest warrants are executed. The distribution of cases entering the criminal justice system include: one juvenile case, five misdemeanor cases, and six felony cases. These cases are now moving forward in the justice system as they should, despite Williams' failure to work them to completion.

District Attorney Declined Prosecution

Ten cases are categorized as, "District Attorney Declined." This category includes all cases presented to the District Attorney's Office for a charging decision in which prosecution was declined. Law enforcement should only present cases to the District Attorney's Office for a charging decision when there is evidence near, or above, the probable cause standard for arrest. When cases are presented to the District Attorney's Office for review, any additional investigation that could result in a prosecutable case will be requested prior to making a final determination. In all cases, the criminal filing standard for prosecutors requires that there be a reasonable likelihood of conviction in order to bring criminal charges against an individual(s).



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In considering the reasonable likelihood of conviction, the District Attorney's Office takes into consideration the burden of proof of beyond a reasonable doubt and that verdicts in a criminal trials must be unanimous. These legal and ethical requirements guide our analysis in all cases. Prosecutorial discretion is also applied in the review of cases for filing. The exercise of prosecutorial discretion often incorporates the wishes of the victim and what is in the best interest of justice. Ten of the cases presented resulted in our office declining to prosecute at the time, absent additional evidence.

Statute of Limitations Expired

The statute of limitations had expired in five cases, during the time period that elapsed. A criminal case cannot be prosecuted after the applicable statute of limitations has expired. All five cases involved misdemeanor offenses. The statute of limitations for misdemeanor offenses is, generally, eighteen months. The statute of limitations for misdemeanor unlawful sexual contact and misdemeanor child abuse is, generally, five years. All five of these cases involved allegations of misdemeanor domestic violence offenses. It is important to note that none of these cases involved felony offenses.

In three of the statute of limitations cases, the evidence was sufficient to support a criminal filing. In two of the five cases, the evidence was insufficient to support prosecution at the time the statute of limitations expired.

Of significant concern is that three of these five defendants committed additional felony and/or misdemeanor domestic violence offenses *after* the date of offense for the original case assigned to Williams. In the fourth case, the defendant was sent to the Colorado Department of Corrections for a felony domestic violence offense committed 21 days *prior* to the date of offense reviewed in the audit. In the fifth case, the defendant had no additional involvement in the criminal justice system after the date of offense for the case reviewed in the audit.

In sum, three of these five defendants committed additional offenses while the original investigation handled by Williams was pending.

Insufficient Evidence

After the investigations were completed by other personnel, the largest number of cases examined were placed in the category of insufficient evidence. 16 cases fell in the insufficient evidence category. Most of the cases in this category did not meet the standard of probable cause, which is required for arrest. Cases included in this category did not contain evidence sufficient for prosecution and were not presented to the District Attorney's Office for a charging decision prior to the independent audit. Among the 16 cases, the evidence was insufficient for a variety of different reasons. Our office only examined these as part of the audit; none presented sufficient evidence of a crime.



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In several cases, a thorough review of the reports indicated that the insufficient evidence was based on the refusal or inability of the victim or witnesses to provide sufficient information for the investigation to proceed. Cases fitting into this sub-category included children who did not disclose abuse when interviewed, and victims unable or unwilling to identify the perpetrator of the offense.

In other cases, the Boulder Police Department was unable to locate the victim to conduct follow up investigation. Investigation in several of the cases in this category indicated a crime had not actually been committed. In one case, the suspect was able to provide an alibi. In another case, it was determined the protection order alleged to have been violated had not yet been served on the suspect at the time of the violation.

Conclusion

As part of the follow up on these cases, the Boulder Police Department attempted to contact all the victims. In cases where contact was unsuccessful, the Boulder Police Department sent registered letters to the victims' last known address in a further attempt to make contact. The twelve investigations which resulted in criminal charges are a testament to the Boulder Police Department efforts to remedy the situation.

Unfortunately, the independent audit also revealed information concerning to the District Attorney's Office. Of greatest concern were the three misdemeanor domestic violence cases (of 46 total) with evidence sufficient to move forward with prosecution and for which the statute of limitations expired. As you recognized, it is unacceptable for a crime to go without investigation for a period resulting in the expiration of the statute of limitations. In addition, some of these cases involved victims of sexual assault and domestic violence who went without contact for a prolonged time after the crimes were reported to law enforcement. Williams' failure to work these cases and to communicate with these victims fell below what is expected and required of a detective.

The independent audit has been completed. The District Attorney's Office determined the Boulder Police Department responded appropriately and exercised due diligence on all the cases after identifying the issues with Williams. Cases were reassigned to other detectives and reasonable follow-up was conducted.

The District Attorney's Office recognizes the many outstanding women and men in the Boulder Police Department. The overall quality of their work is, generally, excellent. We appreciate you identifying the failures of this individual and taking steps to ensure that it is not repeated, including changes to your case management system. Please let us know if you have any questions.



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Sincerely,

Kenneth E. Kupfner
First Assistant District Attorney
20th Judicial District
(303) 441-3708

The following is a breakdown of our findings:

Case Status/Category	Number of Cases
Criminal Case Resulted	12
District Attorney Declined	10
Statute of Limitations Expired	5
Insufficient Evidence	16
Outside Agency Assist	1
Unattended Death-Natural	1
Unattended Death-Suicide	1