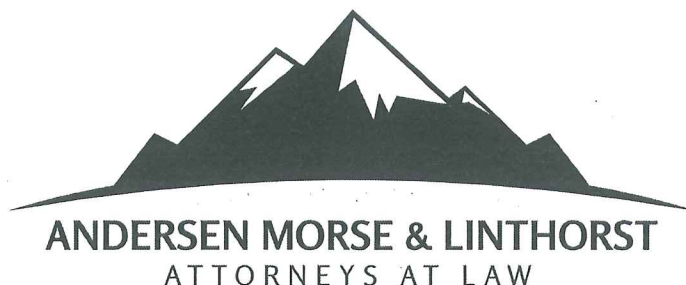


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### **Prepared Statement**

On September 19, 2018, officers of the Eagle Point Police Department killed a mentally ill, schizophrenic and unarmed Matthew Graves by firing two shots into his back.

On October 24, 2018, the Jackson County District Attorney issued a press release announcing that five of seven members of a grand jury had determined - after only 15 minutes of deliberation - that the officers had acted lawfully. Based on this decision, the District Attorney decided not to file criminal charges against either of the officers.

It is important to note that the grand jury only heard the evidence that the District Attorney presented. Matthew's family did not have legal representation at that hearing and could not present evidence or cross-examine any of the witnesses. The expert the District Attorney used, John Black, mainly defends police in excessive force cases. Matthew's family did not have the right to call an opposing expert.

In just 15 minutes of deliberation none of the grand jurors could have carefully considered, much less absorbed, Matthew's constitutional and statutory rights - the laws that protected him. Moreover, the District Attorney instructed grand jurors only to focus on the "moment when he [Cárdenas] fires." Oregon law actually requires that determining police misconduct must be based upon a "totality of the circumstances."

In light of this, the outcome of the grand jury could have been predicted before the first witness was called. The most noteworthy finding of the grand jury is that two of its seven members did not agree that the officers had acted lawfully.

The split decision of the grand jury has no binding effect on the civil case that Matthew's family intends to file to recover damages for violation of his constitutional rights. The grand jury only determined that the officers should not be criminally charged for their misconduct. It did not - and could not - determine civil liability to Matthew's family.

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This office has exhaustively researched the law regarding what police conduct is and is not allowed under the Fourth Amendment to the United States Constitution; under Article 1, Section 9, of the Oregon Constitution; under specific Oregon legislative statutes; and under the decisions of the United States Supreme Court, the Ninth Circuit Court of Appeals, and the Oregon Supreme Court. These various laws are set forth in the Complaint.

Cardenas has alleged that Matthew crossed the street within a cross walk but against the light. At most, this would have been a traffic "violation." Under the Motor Vehicle Code, ORS 810.410, an officer "shall not arrest a person for a traffic violation." Cardenas told the grand jury that he initially wanted to talk to Matthew about jaywalking. When Matthew did not want to talk to him, Cardenas doggedly pursued Matthew into Carl's Jr., never telling Matthew why he wanted to talk to him and never once issuing a command to which Matthew could comply. Cardenas told the grand jury he was pursuing Matthew based on a suspicion that Matthew might possibly be guilty of something. Under the Fourth Amendment of the US Constitution, and other applicable state and federal laws, this vague suspicion is not enough to justify a stop, much less an arrest. When Cardenas drew his gun, trapped Matthew in the bathroom and would not allow Matthew to leave, the law is clear that Cardenas had arrested Matthew. Such an arrest requires that an officer must have "specific and articulable facts that give rise to a reasonable inference that the defendant committed or was about to commit a specific crime or type of crime."

After making an unlawful arrest, Cárdenas compounded the problem by using excessive force. In doing so Cárdenas himself created the very crisis for which he later claimed to have needed to use deadly force.

We have repeatedly watched Cárdenas's body cam footage and have carefully studied the transcript of that footage. We have also studied the recently released transcript of the grand jury hearing and have compared that transcript to the body cam transcript. We are very grateful there is body cam footage. Otherwise, the testimony of the two officers could not be challenged, since Matthew is dead and cannot speak for himself.

In comparing the body cam footage, the body cam transcript, and the grand jury transcript, we have detected significant discrepancies in the testimony that Cárdenas and Davis gave to the grand jury:

-- Davis gave conflicting accounts of what happened when he arrived. At one point he stated: "By the time I saw the subject when I walked around Officer Cárdenas, they were on the floor, fighting and whatnot, maybe 2, 3 seconds, I guess." Elsewhere he said: "I stepped around the officer [Cárdenas] and got hit." Matthew could not have hit Davis if Matthew was already on the floor when Davis arrived. Detective Gabriel Burchfiel of the Jackson County Sheriff's office, who



arrived at Carl's Junior immediately after the shooting, did not himself observe any injury to Davis.

-- Davis told the grand jury that he yelled "I'm getting zapped" [with the Taser]. No such yelling is heard on the body cam video, nor is any such statement contained in the transcript of that video. The body cam footage does not even hint that Davis had been Tased.

-- Cárdenas told grand jurors that when he first called out to Matthew on the sidewalk, Matthew was "beyond pissed off. He was so upset. You could see it in his face." As the encounter happened at night and at some distance, Cárdenas could not have made out any such features on Matthew's face.

-- Cárdenas claimed that Matthew began "posturing" and "stepping towards me," outside Carl's Junior. The body cam footage shows no such posturing or change of direction toward Cárdenas.

-- Cárdenas told the grand jury that, once inside the bathroom, "I have determined 100 percent this guy wants to fight. It's just clear to me. If I get anywhere near him, he's going to fight. If I touch him, he's going to want to fight." Yet the body cam shows that Cardenas does in fact touch Matthew, pushing him back into the bathroom, and Matthew does not respond by fighting; he only continues to try to leave the situation and get around Cárdenas, even showing him the money he intends to use to buy something to eat.

- Cárdenas told the grand jury that he repeatedly told Davis to "step it up" (meaning to hurry) because he wanted backup sooner. But in fact, according to the body cam transcript, the only time Cárdenas ever said "step it up" was after he had already shot Matthew.

- Cárdenas told grand jurors that he used obscenities ("let me see your fuckin's hands," "what the fuck are you doing," and "touch me again and see what fuckin' happens") because "sometimes you have to match the way people talk." But in fact his use of such obscenities was a regular part of his vocabulary and he continued to use them after he had shot Matthew.

After carefully considering the whole matter, the family has decided to file a lawsuit. In doing so the family wants to bring accountability and consequences to the Eagle Point Police Department - and to all police departments and to all law enforcement agencies, here and throughout the nation - so that all police officers, local, state and federal, will be better trained in how to deal with innocent citizens, including those who suffer mental impairments.

The Graves family and this law firm wish to thank all the good people who work in law enforcement. They have difficult and dangerous jobs, and we all rely upon them

for our protection. Most of the time, they do their jobs well. But officers, who carry with them deadly force, must operate within the bounds of well-established laws that balance their protection against the rights of private citizens to be let alone when they are not committing crimes. When an officer is poorly trained and does not know the limits of his authority, all citizens are at risk and in danger.

The details of the misconduct are set forth in the body of the Complaint for Deprivation of Civil Rights.



Kelly L. Andersen and David Linthorst