



November 9, 2015

Chief Gary Creager
Broomfield Police Department
7 DesCombes Drive
Broomfield, CO 80020

Re: The officer involved shooting of Phillip Pflughardt, DOB 6/15/1971, on September 11, 2015.

Chief Creager,

The Seventeenth Judicial District Critical Incident Team has completed its investigation of the officer involved shooting of Phillip Pflughardt that occurred on September 11, 2015. Detective Fred Longobricco (a detective with the Thornton Police Department) and Detective Luis Hernandez (a detective with the Adams County Sheriff's Department) were the lead detectives in this matter, and they presented this investigation to the District Attorney's Office on October 19, 2015. The documents and materials presented to the Office of the District Attorney includes police reports, recordings and transcripts of witnesses and police officers, recordings and transcripts of 911 calls, recordings and transcripts of police radio communications, documentation from the hospital and the coroner's office, photographs, and diagrams. Upon review of these materials, it is clear that this investigation was thorough and complete.¹

Based on the evidence presented and analysis of the applicable Colorado law, no criminal charges will be filed against Officer Joel Waight, the police officer involved in this incident.

¹ The shell casings, bullets, bullet fragments, firearms recovered from Mr. Pflughardt and the white truck, and blood DNA evidence from the scene have not been tested by the Colorado Bureau of Investigation (CBI). It is clear from the other evidence and from the witness statements that the testing of those items will not affect the analysis or conclusions in this review. Rather than await testing by CBI, we have decided to proceed with our analysis in order to bring earlier closure to the family of the deceased, the involved officer, and the community.

INCIDENT OVERVIEW

On Friday, September 11, 2015 at 3:27 p.m., the Broomfield Communication Center received a robbery alarm from the TCF Bank located at 4036 W. 144th Avenue. The alarm was from a GPS tracker that was activated from the bank. A GPS tracker is activated when a bank robbery is being committed and money containing a GPS tracking device with it is being stolen. The GPS tracker was initially stationary at the bank, but eventually moved away from the bank. Broomfield Police Officers began to proceed to the TCF bank and the approximate area of where the GPS tracker was pinging.

At approximately 3:29 p.m., telephone communication with the bank confirmed that a robbery had just occurred. Approximately a minute later, information was aired that the bank robber was armed and had discharged his firearm while in the TCF bank. The preliminary information also indicated that no one had been injured at the bank.

Recordings of the radio communication from the Broomfield Communication Center were provided for this review. Initially, police officers did not have any information as to what type of vehicle the suspect was operating; however, at about 3:31 p.m., dispatched aired that the suspect was in a white pickup truck. At about 3:33 p.m., Officer Joel Waight reported to the Communication Center that he was behind a white ford diesel, no license plates, occupied by one male. Officer Waight had observed this white pickup truck traveling westbound on West 144th Avenue, near Aspen Street and began to pursue it. Officer Waight transmitted to the Communication Center that the truck was stopping. Approximately seventeen seconds later, Officer Waight's transmitted, "Shots fired, suspect down, shots fired, just west of Aspen."

When the white pickup truck initially pulls to the side of the road and Officer Waight positions his marked patrol vehicle behind it, a white male gets out of the driver's side of the truck and points a firearm at Officer Waight and fires a shot. Officer Waight then returns fire striking the male twice.

Officer John O'Hayre arrived on scene approximately thirty seconds after the shooting. He observed a white Ford pickup pulled off to the right shoulder. Officer Waight's fully marked patrol car was directly behind it. Officer O'Hayre stated that Officer Waight was standing in the vicinity of the patrol car's front bumper. The front driver's door of the truck was open, and an unknown white male, later identified as Phillip Pflughardt, was face down on the ground next to the open door. Mr. Pflughardt's hands were beneath his torso. Officer O'Hayre observed blood flowing from Mr. Pflughardt's head. Officer Waite still had his firearm out, covering Mr. Pflughardt. Officer Waite was issuing commands to Mr. Pflughardt to show him his hands. Officer O'Hayre observed a black semi-automatic hand gun under Mr. Pflughardt's foot.

Officer O'Hayre stated that once a third officer arrived, they determined how to take Mr. Pflughardt into custody. Officer Waite continued to cover Mr. Pflughardt as the other officers approached him. Officer O'Hayre grabbed the hand gun by the handle and moved it away from

Mr. Pflughardt and placed it by the truck's left front tire. Mr. Pflughardt was handcuffed and taken into custody. The scene was secured, and officers called for medical assistance to come to the scene, identifying Mr. Pflughardt's injury as a gunshot wound to the head.

Mr. Pflughardt was transported to Good Samaritan Hospital. After efforts to sustain him failed, he was pronounced deceased, and his body was transported to the Adams County Coroner's Office.

Witness Statements:

In addition to speaking to Broomfield Police Officers, the Investigators for the Critical Incident Team interviewed several civilian witnesses to the shooting.²

Nora Ganger:

Nora Ganger and Paul Daw, Jr. are married. They and their four children were heading eastbound on Dillon Road in their black Honda Pilot on the date of the incident. Mr. Daw was driving. Ms. Granger was in the front passenger seat. Mr. Daw pulled off onto the right shoulder in response to the overhead lights and siren of the oncoming patrol car of Officer Waight. When the truck and the patrol car came to a stop on the opposite shoulder, their car was already stopped facing the opposite direction on the eastbound shoulder at the time of the shooting. The patrol car was to their front and left, and the truck was to their back and left.

Ms. Granger stated they were eastbound on Dillon Road when she saw the white pickup truck "flying" down the road in the opposite direction. She said the patrol car was right behind the truck with its lights and siren on. Her husband pulled their black Honda Pilot off the road. She said that the white truck pulled over and slammed on its brakes. The patrol car stopped behind it. She felt that something bad was happening based upon the truck's speed and the manner in which the truck pulled over.

The truck driver – a tall, heavy set, white male – jumped out of the truck really fast. The truck driver had his gun out before he even exited the truck. She believed the truck driver looked really angry. She said, "He looked like he was focused," and, "Yeah. He was on a mission for sure." Ms. Granger believed the gun was initially in the driver's left hand, but as he exited he turned or rotated to face the officer. By the time he was fully turned, he had both hands on the gun, pointing it at the police officer.

Ms. Granger stated that the police officer got out of his car and stood behind his door. She heard the officer yell, "Hands up," or something similar.

² Note that though the interviews were conducted at the Broomfield Police Department – that being the closest law enforcement facility set up for video recorded interviews – all the interviews were conducted by investigators from other law enforcement agencies.

Ms. Granger said she wasn't positive, but she believes the police officer fired first. She noted that her husband had a different opinion.³ She stated that the entire incident happened very quickly. She stated that from the time that they were stopped until the suspect was on the ground was, "Under a minute. Like thirty seconds." She stated that the exchange of gunfire was under fifteen seconds. She believes she heard one shot, followed by one shot, then a cluster of multiple shots. She estimated that the number of shots fired was between eight and twelve.

Ms. Granger volunteered at various points that the police officer was justified in shooting. She stated that one of her immediate reactions when she saw the suspect and the gun was, "He's trying to kill this officer." Later in the interview, she stated, "I guess I just, I want to make it clear that the officer, I think he fired the first shot, but with one hundred percent justification ...". Ms. Granger indicated that it appeared that Officer Waight did everything appropriately. She heard him yell, "Hands up!" She said that she knew he didn't fire until he saw the truck driver's gun. She stated, "...I can't stress enough the demeanor of the guy that got out of the truck was so fast and so aggressive, and the, the gun was so out there and apparent that he was a hundred and fifty percent a threat to the officer."

Ms. Granger expressed that she was frightened for the safety of her family. She said the officer stopped firing when the truck driver went down, though he continued to point his gun at the driver until other officers arrived.

Paul Daw, Jr.:

Mr. Daw indicated that he and his family were eastbound on Dillon Road. There was a lot of traffic. He observed a white truck and a patrol car coming toward them really fast. The patrol car was attempting to pull the truck over. The truck swerved over abruptly and stopped, and the patrol car pulled in behind him.

The door to the truck and the door to the patrol car swung open almost at the same time. The truck driver and the police officer got out almost at the same time. Mr. Daw expressed that what happened next was almost a blur to him. Mr. Daw stated that he was still coming to a complete stop. He did not see the truck driver get out or the truck driver's gun; he was looking forward, still driving. He heard a "pop" – a gunshot – go off behind him. Mr. Daw stated that it wasn't hearing a sound as much as feeling the "concussion" or shock wave from the rounds. Mr. Daw was insistent that the first shot came from the back, so the man in the truck had to have fired first. He was looking at the police officer at that time. The officer had his hand at his holster, and the officer pulled his gun out. The officer fired five to eight rounds. He indicated the officer's rounds were

³ The two spoke before arriving at the Broomfield Police Department, where they were separated and interviewed.

fast and followed one after another. Mr. Daw reiterated that at the time of the first “pop,” the police officer did not have his gun drawn.

Mr. Daw stated he looked back, and the truck driver was on the ground. After the shooting, the officer kept his gun on the suspect and stayed about a car-length away from the driver until other police officers arrived. Mr. Daw believed the driver had a head wound, but he didn’t see any blood.

Mr. Daw was uncertain if the police officer said anything before the shots were fired. He said the officer might have said, “Drop it,” or something similar; however, the incident was “lightning fast.” Later in the interview, he stated he was “pretty sure” the officer issued a command to the truck driver like, “Put it down,” or, “Put your hands down.”

When asked if he had anything else to say, Mr. Daw volunteered, “I thought um, actually you know, all the stuff in the news and everything, I thought the cop actually handled himself very well. Just from – I’m not like pro-cop or anything like that or vice versa, but I just thought he handled it pretty professionally. Not, not, not that I see shootouts all the time.”

Nathan Montoya:

Police contacted Mr. Montoya on September 11, 2015, but he had to depart before he could be interviewed. He was interviewed on September 16, 2015.

Mr. Montoya was driving eastbound on Dillon Road on his way home after work. He states that he pulled over on the south shoulder, coming to rest almost opposite Officer Waight’s patrol car on the north shoulder. (His vehicle was in front of the Granger/Daw vehicle.)

Mr. Montoya stated that the officer got out of his patrol car and yelled, “Freeze.” Mr. Montoya looked behind him and saw the white truck and a guy holding a gun. Mr. Montoya said that there was an exchange of gunfire, and the guy by the truck fell. Mr. Montoya stated the guy fired at the police officer first. When asked how many shots were fired at the officer, Mr. Montoya stated, “It was at least maybe two,” and “I think he fired twice maybe.” Mr. Montoya stated he did not get a good look at the suspect’s gun and the exchange of gunfire lasted seconds.

Helen Datta, Nishant Datta, and Jeremy Kiefert:

These three witnesses were also eastbound, but they came to a stop in front of the white truck. Their statements are generally consistent with the statements of Nora Granger, Paul Daw, Jr., and Nathan Montoya. However, because they were in front of the truck, they were unable to see the suspect at the time of the shooting. Their view of him was blocked by the door of the truck. They describe the abrupt stop by the white truck, the

door of the truck opening immediately, the door of the patrol car opening at the same time or immediately after the truck door opening, the driver of the truck and the officer getting out of their vehicles, seeing the police officer fire, then seeing the officer standing at or near his patrol car with his gun drawn until other officers arrived.

Michael Grodecki:

Mr. Grodecki stated that he was driving home from school with his sister. He was eastbound on Dillon Road. Mr. Grodecki also pulled off the road due to the approach of the white truck and the patrol car. Mr. Grodecki stopped his Durango to the west (in front of) the white truck. Mr. Grodecki's vehicle was the last vehicle pulled over. (He was stopped behind the vehicles of the Datta's and the vehicle of Mr. Kiefert, making him the furthest of these vehicles away from the incident.)

Mr. Grodecki's statement – up to the point where the truck and the patrol car pull over and stop – is consistent with the other witnesses. However, his description of events after that point is inconsistent with all of the other witnesses. Mr. Grodecki stated that after both vehicles came to a stop, the police officer "came running out" toward the truck. He describes the officer firing shots at or into the truck. He stated that when the shots were fired by the officer, the driver of the truck was seated in the truck. Further, he stated that the truck's door was closed the entire time that gunfire was occurring. Mr. Grodecki stated that after the shooting stopped, the police officer opened the door of the truck. Mr. Grodecki stated that the driver of the truck then fell out of the truck onto the roadway. Mr. Grodecki states that he only heard two or three muffled shots. Mr. Grodecki stated that his windows were open, but he was playing his stereo very loud. Mr. Grodecki stated that other officers arrived. Mr. Grodecki stated that none of the officers touched the truck driver until the paramedics arrived.

In addition to being inconsistent with the other witnesses, Mr. Grodecki's statement is inconsistent with the physical evidence, specifically the bullet impacts and trajectories which strongly demonstrate that the truck door was open when it was hit by gunfire.

John Anthony:

Mr. Anthony was interviewed at the Thornton Police Department on September 15, 2015.

Mr. Anthony indicated that he was westbound on 144th Avenue. He was on the way to pick up his child after school. While heading westbound, a white truck overtook him and was "on his tail." A patrol car went past him eastbound at high speed with its lights and sirens on. Mr. Anthony stated that both he and the white truck pulled over. After the patrol car passed, both he and the white truck pulled back onto the roadway to go westbound. He stated the driver of the white truck was "being kind of a jerk, trying to get around me." He became aware that the patrol car had turned around and came up behind

them. Mr. Anthony stated that the driver of the white truck made some back and forth moves like he was going to pull over, but the driver of the white truck did not. Mr. Anthony said he slowed and began to pull over, and the white truck went around him. Mr. Anthony said the white truck then unexpectedly pulled over. By this point, the patrol car had also passed him and moved to pull over behind the truck.

Mr. Anthony observed the police officer get out of the patrol car. Mr. Anthony is unsure if the officer had his gun out or if the officer just had his hand on his holster. The driver's side door of the pickup opened, and the driver of the truck got out with a gun. Mr. Anthony said the driver already had the gun in his hand as he was getting out. At this point in the video, Mr. Anthony used his hands and body to portray a person turning and holding a gun with both hands. Mr. Anthony said that the truck driver pointed the gun at the officer. The angle was such that Mr. Anthony felt that the gun was also pointed directly at Mr. Anthony. Mr. Anthony stated that at this point, the officer fired shots at the truck driver. Mr. Anthony stated he could not say whether or not the truck driver fired any shots or if the truck driver fired first. Mr. Anthony stated that he was in fear for his life, so he "dove under the dash." Mr. Anthony stated he was unsure how many shots were fired. He heard three or four. Mr. Anthony stated that this happened very quickly. He estimated that the time from when the truck stopped to the time that the shots were fired was maybe ten seconds.

After the shots were fired, Mr. Anthony could not see the truck driver. He stated that he waited, but did not feel secure where he was at. Mr. Anthony stated he backed his vehicle up until he was close to the vehicle behind him. After waiting a few minutes, he did a u-turn and left the scene. No law enforcement officers spoke to him before his departure. After picking up his child, Mr. Anthony called the Broomfield Police Department and gave them his contact information. During the interview, the investigator from the Critical Incident Team asked him why he called in after leaving. Mr. Anthony stated that he called because he felt like he "owed the cop a debt of gratitude." He explained that if the officer had hesitated or not acted, the driver could have shot him (Mr. Anthony) or the officer. He said he wasn't sure if he had much to contribute, but he wanted to express his view that there was no "wrongdoing" on behalf of the officer.

Officer Joel Waight:

After the shooting, Officer Waight was contacted at the Broomfield Police Department. While at the police department, investigators with the Critical Incident Team wanted to interview him about the events of the shooting. Officer Waight – on the advice of his attorney – declined to make a statement at that time. There was no indication that Officer Waight was too distraught or emotional to give a statement on September 11, 2015. Officer Waight and his attorney agreed to give a statement on September 15, 2015.

On September 15, 2015, Officer Waight met with and was interviewed by investigators assigned to the Critical Incident Team⁴.

Officer Waight stated that he started his shift on September 11, 2015 at 2:00 p.m. He was wearing a standard Broomfield Police Department uniform, which has shoulder patches and a badge identifying him as a law enforcement officer. His patrol car was fully marked as a Broomfield Police Department patrol car with standard lights for a police car.

Officer Waight stated he was performing normal patrol duties when dispatch aired the bank alarm. Officer Waight stated he could hear the GPS tracker alert in the background. Based upon his training and experience, Officer Waight knew that such tracker alerts were highly reliable. It was highly likely that a bank robbery had occurred. The initial indication was that the tracker was still stationary at the bank. Officer Waight stated he could hear the radio traffic of the other patrol cars, and he determined that the areas heading away from the bank to the east and south were adequately covered. Officer Waight proceeded in a direction that would allow him to cover routes to the west of the bank. He proceeded north on highway 287, then eastbound on Dillon Road.

Officer Waight heard dispatch air that the suspect was in a white, full sized pickup. The GPS tracker was indicating that the suspect vehicle had driven into a residential neighborhood for a short period of time. Officer Waight speculated that the suspect was either lost, unaware that he was being tracked or had ventured into the residential area to lose himself in traffic.

Officer Waight heard over the radio that the tracker was showing the suspect south on "one four four" and that it was coming up to south 100th or 120th. When he heard that, Office Waight stated that he believed the suspect was eastbound on Dillon Road and that he was going toward south 120th Street.

"Dillon Road" and "144th Avenue" are the same street. East of Sheridan Boulevard it is named 144th Avenue; West of Sheridan Boulevard it is named Dillon Road. Dillon/144th runs east and west. Further, there is a 100th Street and a 120th Street that run north and south and that intersect Dillon/144th. These two north/south streets are west of Aspen Street, which also runs north and south. A car heading west on Dillon/144th (and away from the TCF Bank) would sequentially pass through the intersections with Sheridan Boulevard, Aspen Street, 120th Street, and then 100th Street. Based upon the radio traffic and where Officer Waight was at, he would have good reason to believe that the suspect vehicle was in his immediate vicinity and heading toward him.

⁴ Det. Fred Longobricco (Thornton Police Department) and Det. Victor Avila (Thornton Police Department).

Officer Waight stated that as he was coming up to Aspen Street, he saw a white Ford diesel pickup drive past him in the opposite direction. Officer Waight had not seen any other white pickups in the area, so he decided that he should stop the pickup and determine if it was the suspect vehicle. As the vehicle passed, he saw that it did not have license plates. The window tint prevented him from getting a good look at the occupant, but he did see that there was one person in the truck.

Officer Waight was already driving "code 3," i.e. he had his lights and siren activated. Officer Waight performed a u-turn and proceeded westbound on Dillon road with his lights and siren on. Other westbound traffic yielded to his lights and siren, and Officer Waight was able to get behind the white truck. While Officer Waight was getting immediately behind the truck, Officer Waight stated that the white truck was "wiggling" in its lane. Officer Waight's opinion was that the driver was being indecisive about whether to pull over or whether to attempt to flee. Officer Waight said at this point he became convinced that the driver of the white truck was the suspect.

Officer Waight stated that the driver suddenly just pulled off the road. Officer Waight immediately pulled off the road, so his patrol car was still behind the white truck. He quickly canted his wheels, threw his patrol car into park, and switched off the siren.

Officer Waight recalls that he suddenly realized that the truck's front driver's door was wide open. This caused immediate concern for Officer Waight, and he decided he needed to quickly get out of his patrol car. Officer Waight stated this concern was based upon several factors. He knew the suspect was armed. He knew that the suspect had already fired his gun during the robbery, indicating a willingness to use deadly force. The suspect was not behaving like a driver in a normal stop. Moreover, now that the door was open, the suspect would be able to easily get out while he, Officer Waight, was still seated in his car. Officer Waight also expressed concern that he was alone on scene without backup. Officer Waight expressed that this realization occurred quickly.

Officer Waight quickly got out of his car, and – as he was getting out – he looked forward and saw the male driver was now standing outside by the truck's door. He said the suspect was squared up facing him. He said the suspect's hands were kind of down in the area of his waist. Officer Waight stated that as he looked down at the suspect's hands, he saw the muzzle of a gun pointing at him.

While he was getting out, Officer Waight stated he could not remember unbuckling his seat belt or drawing his handgun, though he knew he had to have done both.

At that point, Officer Waight heard a gunshot and realized that the suspect had just shot at him. Officer Waight returned fire, firing multiple rounds at the suspect. Officer Waight indicated that this happened quickly. He said that the suspect was still facing him with the gun still pointed at him, when the suspect made a motion like a "shrug," and

then he started to fall down. Once this happened, Officer Waight said he stopped firing. At this point, Officer Waight stated he keyed the microphone on his body radio and aired, "Shots fired, suspect down."

Officer Waight stated that he stayed focused on the suspect, who was still on the ground. He believes that he stayed at or near the area of his front bumper, covering the suspect with his firearm until backup arrived. Officer Waight stated that he continued to cover the suspect because he did not know if the suspect would get back up. Officer Waight said he also was not certain that the suspect was the only person in the truck. He called out for anyone else in the truck to put their hands up and come out.

Other officers arrived. The officers approached the suspect and the truck. They confirmed the truck was unoccupied, and then they approached and handcuffed the suspect. Officer Waight stated that he was able to observe the front inch or inch and a half of the gun sticking out from underneath the suspect's leg before he was handcuffed and rolled over.

Officer Waight stated that in addition to fearing for his own life, he was concerned for others on scene. There was a lot of traffic on the road. He was aware that two other vehicles (who had been westbound) had pulled over behind him before the shooting. Other vehicles (who had been eastbound) had pulled over to the side of the road facing the opposite direction prior to the shooting.

Scene Investigation

After the scene of the shooting was secure and witnesses transported to the Broomfield Police Department, the scene was processed and evidence collected by criminalists and officers assigned to the Critical Incident Team. An important feature of the Critical Incident Team is that investigators assigned to the investigation are drawn from law enforcement agencies that are not involved in the incident. Thus, none of the team's investigation was performed by Broomfield officers. For instance, the scene was processed primarily by Criminalist Chris Pardo (Westminster Police Department), Deputy Von Bailey (Adams County Sheriff's Office), and Criminalist Chandra Thurston (Westminster Police Department).

Criminalist Pardo obtained Officer Waight's handgun and extra magazines. Both extra magazines were fully loaded. The handgun, which had a seventeen round magazine and could also hold one round in the chamber (a total capacity of eighteen rounds), was found to have nine rounds in the magazine and one round in the chamber (ten rounds total). Criminalist Pardo confirmed that Officer Waight kept the gun's magazine full and carried a round in the chamber. Thus, Criminalist Pardo was able to determine that eight rounds were "unaccounted for," meaning that Officer Waight must have fired eight rounds at the scene.

A total of eight shell casings were found near Officer Waight's patrol car. These shell casings (Winchester 9mm sjhp) were the same type of rounds as the unfired rounds that were still in Officer Waight's handgun.

An additional shell casing (a Tulammo 9 mm) was found on the roadway nearby the driver's door of the white truck. Three fully loaded magazines were also located on the roadway near the driver's side door of the white truck. The ammunition in these magazines was Winchester 9mm full metal jacket round nose (fmj-rn) cartridges. A 9mm Beretta semi-automatic handgun was recovered near the front left tire of the white truck. This handgun had a fifteen round capacity magazine plus the capacity to hold one round in the chamber (a total capacity of sixteen rounds). The magazine was found to have fourteen rounds, and an additional round was in the chamber (a total of fifteen rounds). If the suspect carried one round in the chamber with a full magazine, one round would be unaccounted for. The round or cartridge in the chamber of the Beretta was a Tulammo 9mm, which is the same type of ammunition as the shell casing by the truck. When the Beretta was recovered, the slide was closed, the hammer was cocked, and the safety was off.

Inside a black nylon bag in the truck, the criminalists observed and collected:

- An additional handgun, a .41 caliber Ruger six-shot revolver. This was a black pistol with wooden grips. The Ruger was found to have five live rounds in the cylinder. A spent shell casing was also in the cylinder, and the spent casing was located directly under the hammer. This indicated that the Ruger had been fired one time. This Ruger revolver matched the witnesses' description of the gun that Mr. Pflughardt fired during the aggravated robbery at the bank.
- \$1,536 of bundled money.
- Two GPS Trackers and an additional \$80 in bills.

Apparent bullet impacts were found on the driver's side exterior of the truck and the driver's side door.

- A ricochet impact was found above the rear wheel well.
- Two circular, perforating impacts were found on the driver's side door frame, and each had a corresponding exit perforation.
- A perforating, circular impact was found on the "interior"⁵ side of the driver's door. Pieces of copper jacketing and lead were found inside the driver's door.
- A perforating impact, about 9 mm in diameter was found on the driver's side window of the truck. The glass around the perforation was beveled outward, i.e. from the "interior" side of the window to the "exterior" side of the window.⁶

⁵ If, as indicated by various witnesses, the truck's door was open, the "interior" side of the door would have been exposed and would have been facing in the direction of Officer Waight's patrol car.

- An irregular shaped penetrating impact was found on the driver's side rear-view mirror. This mirror is mounted on the exterior of the door. The location of this impact is such that it is highly probable that the same bullet that penetrated the window struck the mirror.
- An irregular shaped, perforating impact was found in the driver's side door's air spoiler.

All of the bullet impacts and trajectories are consistent with shots being fired at Mr. Pflughardt's location next to the white pickup truck driver's side door from the direction of where Officer Waight was standing or near the left side his patrol car. The projectile from Mr. Pflughardt's shot was not recovered and there were no bullet impacts in Officer Waight's patrol car.

Autopsy

On September 14, 2015, Dr. Dawn Holmes, a forensic pathologist performed a forensic autopsy on Mr. Pflughardt. Dr. Holmes determined that Mr. Pflughardt had sustained two gunshot wounds. One projectile entered the suspect's right forearm. This projectile did not exit the suspect's arm, coming to rest near his right elbow. This would be consistent with Mr. Pflughardt holding his handgun in his right hand and pointing it at Officer Waight as witnesses described at the time Officer Waight fired this shot.

Another projectile entered the left side of the Mr. Pflughardt's head, slightly behind his temple. The pathologist determined that the trajectory of this projectile went from the front to the back of the head with a slight angle from the left to his right. A bullet was recovered from the Mr. Pflughardt's elbow, and bullet fragments were recovered from the Mr. Pflughardt's cranium. Dr. Holmes determined that the cause of death was "multiple gunshot wounds" and concluded that the manner of death was "homicide," i.e. that the gunshot wounds were caused by another person.

Phillip Pflughardt – Criminal History, Status, and Connection to White Truck

Mr. Pflughardt has an extensive felony criminal history going back to 1997. He has been charged in sixteen felony cases, and he has amassed eleven felony convictions. He has been sentenced to prison numerous times, though many of those sentences were concurrent with each other. Two felony cases were active and pending at the time of his death. He had absconded and was a fugitive from justice on one of those felony cases at the time of his death. Specifically, he had the following felony criminal history:

⁶ Again, if the door was open, the "interior" side of the glass would have been facing in the direction of Officer Waight's patrol car.

Jefferson County case # 2015CR253: This is a pending felony case for Violation of Bail Bond Conditions. This case arose as a result of Mr. Pflughardt absconding on 2014CR655, violating his bond, and becoming a fugitive from justice.

Jefferson County case # 2014CR655: Mr. Pflughardt was charged with Felony Theft from an At Risk Adult and a felony count of Forgery. Mr. Pflughardt pled guilty Felony Theft from an At-Risk Adult on July 28, 2014. Part of that plea included a stipulated sentence to prison. Mr. Pflughardt's case was continued for sentencing on October 20, 2014. Mr. Pflughardt did not appear for sentencing, and a warrant was issued for his arrest. At the time of this matter, there was an active warrant for his arrest.

Summit County case # 2004CR14: Mr. Pflughardt was charged with Forgery, a felony. He received a plea bargain to misdemeanor theft. His six month jail sentence was served concurrently with #2003CR94.

Denver County case # 2003CR3553: Mr. Pflughardt was charged with Felony Theft, and pled guilty to a reduced charge of *Attempted Felony Theft*. He received a six year prison sentence.

Jefferson County case # 2003CR2136: Mr. Pflughardt was charged with Felony Theft of Rental Property, and pled guilty to a reduced charge of *Attempted Felony Theft of Rental Property*. He received a suspended prison sentence.

Arapahoe County case # 2003CR334: Mr. Pflughardt was charged with *Felony Theft of Rental Property*. He pled guilty and received a two year sentence to prison.

Douglas County case # 2003CR731: Mr. Pflughardt was charged with *Felony Theft of Rental Property*. He pled guilty and received a five year sentence to prison.

Summit County case # 2002CR205: Mr. Pflughardt was charged with Felony Second Degree Aggravated Motor Vehicle Theft and Felony Fraud by Check, and pled guilty to a reduced charge of *Attempted Felony Second Degree Aggravated Motor Vehicle Theft*. He received a three year prison sentence.

Summit County case # 2002CR201: Mr. Pflughardt was charged with Felony Fraud by Check, and pled guilty to a reduced charge of Misdemeanor Theft.

Elbert County case # 2002CR62: Mr. Pflughardt was charged with *Felony First Degree Aggravated Motor Vehicle Theft*. He pled guilty and was sentenced to seven and a half years (78 months) in prison.

Weld County case # 1999CR1512: Mr. Pflughardt was charged with Felony Theft and other felonies. He pled guilty to *Felony Theft*. He received a three year prison sentence.

Larimer County case # 1999CR457: Mr. Pflughardt was charged with Felony Theft. He pled guilty to *Felony Theft*, and he received a four year prison sentence.

Douglas County case # 1999CR285: Mr. Pflughardt was charged with Felony Theft and Misdemeanor Fraud by Check. He pled guilty to misdemeanor Fraud by Check, and he received one year in jail.

Denver County case # 1997CR1080: Mr. Pflughardt was charged with Felony *First Degree Aggravated Motor Vehicle Theft*. He pled guilty, and he was sentenced to three years in Community Corrections. After violating that sentence, he was resentenced to three years in prison.

Summit County case # 1997CR69: Mr. Pflughardt was charged with Felony Theft. He pled guilty to a reduced charge of *Attempted Felony Theft*. He was sentenced to three years in Community Corrections. After violating that sentence, he was resentenced to three years in prison.

Denver County case # 1994CR3796: Mr. Pflughardt was charged with *Felony Fraud by Check*. He pled guilty, and he was granted a deferred sentence. Mr. Pflughardt failed to complete his period of deferral, and he was sentenced to three years in Community Corrections. Mr. Pflughardt failed to successfully complete that program, so he was resentenced to three years in prison.

Department of Motor Vehicle records identified that the owner of the white truck was Mr. Albert J. Gervasio. Initial contact was made with Mr. Gervasio's wife because Mr. Gervasio was out of town. She was surprised to hear that Mr. Pflughardt had the truck, believing that the truck was in the possession of a mechanic and was being worked on. Further investigation revealed that they had purchased the white truck from Phillip and Laura Pflughardt.

Mr. Gervasio was also interviewed at a later time. He stated that he had known Mr. Pflughardt for several years. During their association, Mr. Pflughardt had had the truck serviced by a mechanic named, "Jake." Mr. Gervasio had no communication with "Jake" except through Mr. Pflughardt. When the truck needed work, he arranged to have it done by "Jake" through Mr. Pflughardt. Mr. Gervasio stated that he had no reason to distrust Mr. Pflughardt or "Jake." He had no idea that his truck was involved until a neighbor informed him that his truck was on the news.

Ms. Laura Pflughardt was interviewed on September 16, 2015. She identified herself as the estranged wife of Mr. Pflughardt. They were married and had two children. Ms. Pflughardt indicated that when Mr. Pflughardt was charged in the 2014 Jefferson County case, he signed over the white truck to her as collateral for his bail. This was the truck that was sold to Mr. Gervasio.

Ms. Pflughardt said she had not spoken to her husband since October, 2014. She said he skipped out on his bail and never showed up for court. She said Mr. Pflughardt told her that he was never going back to prison. She said that in that last phone call, he told her goodbye. She said she had no idea where or with whom he had been staying since he disappeared.

LEGAL ANALYSIS

This review is limited to determining whether criminal charges should be filed against the involved officer. 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 the elements of a crime, 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 prove beyond a reasonable doubt that Officer Waight's actions were not justified under the circumstances surrounding this incident and the applicable law.

There is no dispute that Officer Waight fired his service weapon and caused the death of Mr. Pflughardt, and that he is a law enforcement peace officer. The legal question presented is whether the Office of the District Attorney can prove beyond a reasonable doubt that at the time Officer Waight fired his weapon, it was **not** justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under C.R.S. § 18-1-707, 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.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

(II) Is attempting to escape by the use of a deadly weapon; or

(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

(3) Nothing in subsection (2) (b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If they believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

When considering Officer Waight's statement, it should be noted that the Office of the District Attorney disfavors delaying taking a statement from officers involved in a shooting for several reasons. It is important for the integrity of the investigation and the truth finding process to get a statement of any witness as soon as possible, so that there is no possibility that the witnesses' statement is influenced from other sources. The investigation should be conducted like how every other shooting (involving someone other than a law enforcement officer) is investigated. Delay in obtaining statements increases the risk that the later statement has been tailored to fit facts. It increases the risk that the officer will obtain information related to the incident outside of his personal knowledge that will influence or alter the officer's statement. Delay in obtaining the statement may impair the ability of investigators to follow up and uncover evidence or statements that corroborate or disprove the statement. It may also have an impact on how a scene is investigated or what physical evidence is collected.

There are certainly circumstances that necessitate the need to interview an officer involved in a shooting at a later time, such as if the officer is injured or due to the trauma of the shooting, the officer is not emotionally stable to give a statement. It is apparent from the Critical

Incident Team Investigators that Officer Waight most likely had a desire to give a statement on September 11, 2015, but his attorney advised him not to.

Fortunately, in this particular matter, there is ample eyewitness evidence to corroborate and support Officer Waight's statement. Even if this matter was analyzed *without* the statement of Officer Waight, the other evidence supports the same conclusion.

At the time that Officer Waight stopped Mr. Pflughardt, he had information to cause him concern: 1) the occupant of the truck had just committed a serious crime where he discharged a firearm, and was fleeing the scene of the crime; 2) he was armed with a deadly weapon; 3) he had demonstrated a willingness to use that deadly weapon; 4) the manner that the truck was driven indicated that the driver was vacillating between pulling over or fleeing at high speed, even passing another vehicle that had pulled over for the patrol car; and 5) the driver's abrupt and sudden stop.

Once he had the truck stopped, Mr. Pflughardt immediately opened the door of his truck. Mr. Pflughardt quickly got out of his truck, and multiple witnesses confirm that he had his gun in his hand as he got out. Ms. Nora Granger and Mr. John Anthony corroborate that he quickly turned and, using both hands, aimed the handgun directly at Officer Waight. Ms. Granger describes Mr. Pflughardt as angry, focused, and on a mission.

There is strong corroboration that Mr. Pflughardt fired at Officer Waight first. The physical evidence, a shell casing by Mr. Pflughardt that matches the next round in his handgun, is highly conclusive evidence that he fired a round. The statement of Mr. Paul Daw, Jr., that he heard *and felt* the concussive force of the first shot emanating from behind him is very compelling. Moreover, it is clear that all of Mr. Pflughardt's actions on scene indicate his intention to shoot and kill Officer Waight. It is also consistent with Mr. Pflughardt statement to his wife that he was not going to prison again.

Moreover, even if Mr. Pflughardt did not fire first, the evidence demonstrates that Officer Waight was still justified in firing his weapon. Officer Waight was engaged in a dangerous, high risk stop of an armed and fleeing suspect who had already discharged a firearm during the bank robbery. Mr. Pflughardt immediately exited his truck, turned to face him, and leveled a handgun at him. Under those circumstances, it would be incredibly unreasonable to expect Officer Waight to delay and allow Mr. Pflughardt to fire first.

Officer Joel Waight stated that he was not just afraid for himself. He was concerned for the other citizens around him, particularly the occupants of the vehicles behind him. This fear is confirmed by Mr. Anthony, who perceived that he was in the direct line of fire and ducked. It is also reflected in the fear of Ms. Granger and Mr. Daw for themselves and their four children.

Based upon all the information known to Officer Waight, Officer Waight reasonably believed that Phillip Pflughardt, who was aiming a handgun with both hands at Officer Waight

and who fired a round at Officer Waight, was going to seriously injure or kill Officer Waight or one of the other citizens in the vicinity. Therefore, under Colorado law, Officer Joel Waight was justified in using deadly force at the time that he fired his weapon.

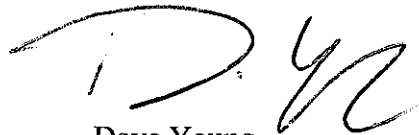
CONCLUSION

Officer Waight reasonably believed that Phillip Pflughardt used or was immediately about to use unlawful deadly physical force against him or another person, that belief was reasonable in light of the totality of the facts and circumstances of this incident.

The independent Critical Incident Team thoroughly investigated the September 11, 2015 shooting of Phillip Pflughardt. The District Attorney's Office has reviewed the investigation and applied the relevant law to the evidence. Pursuant to the Colorado law and the state statutes cited above, Officer Joel Waight was justified in using deadly force on September 11, 2015. Therefore, no criminal charges will be filed against Officer Joel Waight.

Please feel free to contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Young', is written over the typed name.

Dave Young
District Attorney