

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

June 18, 2020

Chief Clint Nichols
Commerce City Police Department
7887 E 60th Avenue
Commerce City, CO 80022

Re: The investigation into the death of David Heeke, DOB 9/18/56, occurring on February 14, 2020.

Dear Chief Nichols,

The investigation and legal analysis of the officer-involved shooting death of David Heeke is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Thornton Police Detective Brad Barkley and Adams County Sheriff Detective Dylan Lussier. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. The factual findings of the investigation were presented to my office on May 7, 2020. The CIIT presented police reports, officer body worn camera footage, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officers or other involved parties. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove any criminal violations beyond a reasonable doubt to a jury. In this instance, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified pursuant to Colorado law. This review does not evaluate the appropriateness of the actions of the involved officers, whether department policies or procedures were followed, or whether the policies, practices, or training at the involved agency were sufficient. That evaluation is left to the involved agency.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving any crimes beyond a reasonable doubt at trial. Therefore, no criminal charges will be filed against the law enforcement officers involved in this incident.

The Incident

On February 14, 2020, officers were dispatched in response to a call of shots fired at 11340 Iola Street. The reporting party, Christine Trujillo, said that at approximately 7:00 a.m. she got into her vehicle, which was parked in her garage. As she backed her vehicle out of the garage, down the driveway, and onto the street she saw a pickup truck driving directly toward her vehicles front bumper. As the truck approached, she realized the driver was her ex-husband, David Heeke. Mr. Heeke drove his truck in her direction until he struck the front of Ms. Trujillo's vehicle with the front of his truck. Mr. Heeke then got out of his truck. Ms. Trujillo began to exit her vehicle as well and saw that Mr. Heeke had a handgun. Ms. Trujillo got back into her vehicle and put her car in reverse to flee the scene honking her vehicles horn in attempt to get her neighbors attention. Mr. Heeke fired two gunshots at Ms. Trujillo as she drove away. Both gunshots missed her and her vehicle. Ms. Trujillo's Ring Doorbell camera system at her residence recorded this event.

Ms. Trujillo drove away from the area and immediately called 911. The 911 dispatcher advised her to stop to talk to a police officer. Ms. Trujillo pulled over at a nearby Shell gas station where officers later contacted her.

Mr. Heeke fled the scene of the shooting driving a white 1980's model Ford pickup truck. As police officers were arriving into the area of the shooting, officers located Mr. Heeke's truck in the area of 104th Avenue at Potomac Street and attempted a traffic stop. Mr. Heeke failed to stop for officers and led officers on a pursuit to the area of 104th Avenue at Blackhawk Street. Mr. Heeke eventually slammed on the brakes of his truck and hit a another vehicle traveling in front of his truck. Officers completed a high risk traffic stop. During the traffic stop, Mr. Heeke failed to comply with officer's verbal commands to get out of the truck and show them his hands. Mr. Heeke remained in his truck, seated in the driver seat with the driver side door open with his body facing out of the truck. Mr. Heeke failed to show officers both of his hands and made a statement that he could not show his right hand because he had a gun. Mr. Heeke abruptly moved his body towards the officers on scene, while he brought his right arm and hand in an upward motion towards the officers. Officers discharged their firearms, striking and killing David Heeke. The handgun that Mr. Heeke had in his right hand was found on scene next to his body.

Relevant Witness Interviews

Christine Trujillo

Thornton Police Detective Sean Coleman and Westminster Police Detective Matt Calhoun interviewed Christine Trujillo on February 14, 2020. On the morning of February 14, 2020, Ms. Trujillo had an appointment at her place of employment. In addition, she had a flight to leave out of town later that day. Ms. Trujillo put her luggage in the trunk and got into her vehicle parked in her garage. Ms. Trujillo opened the garage door, backed out of the garage and down the driveway onto the street. As Ms. Trujillo pulled onto the street, she looked to the left, back at her house, to ensure she closed the garage door. As she looked toward her house and

then back to the street, she noticed a white pickup truck driving straight toward her vehicle. As the truck got closer, she realized the driver was her ex-husband, David Heeke. Mr. Heeke struck the front of her vehicle with the front of his truck two times. Mr. Heeke exited the truck and she started to exit her vehicle. As she exited her vehicle she saw that Mr. Heeke was armed with a handgun pointed at her. Ms. Trujillo immediately got back into her vehicle, put her car in reverse, and backed up away from Mr. Heeke. As she was driving in reverse, Mr. Heeke walked toward her car and fired two gunshots at her. Ms. Trujillo continuously honked her horn as she drove in reverse, with the hope that a neighbor would witness the incident. Ms. Trujillo fled the scene and called 911. At the direction of the 911 dispatcher, Ms. Trujillo drove to a nearby Shell gas station and waited for police officers to arrive.

Ms. Trujillo and Mr. Heeke were together for a total of four years. Ms. Trujillo filed for divorce in May of 2019 and their divorce was final on November 18, 2019. Ms. Trujillo made several prior police reports of harassment regarding Mr. Heeke in both Jefferson County and Adams County. Ms. Trujillo reported that Mr. Heeke would text her continuously, threatened her on social media, and made death threats towards her in the past. Ms. Trujillo obtained a protection order against Mr. Heeke in March of 2019. Ms. Trujillo purchased a new cell phone and Mr. Heeke did not have her current phone number. The last contact she had with Mr. Heeke was around Thanksgiving of 2019, before she purchased the new phone.

As a result of the threats she received from Mr. Heeke, Ms. Trujillo purchased a Ring Doorbell camera system and a residential security system. The Ring camera system from that morning captured the above incident on video.

The Ring video also shows Mr. Heeke peering into the peephole at her front door earlier that morning just prior to the shooting incident. He is wearing a black jacket, a hood which covers his head, and glasses. Mr. Heeke opens the front screen door, leans into the camera and states, "I'm here. I'm here. You're never safe." The video shows Mr. Heeke walk away from the camera and off the front porch. Mr. Heeke sways and is unsteady on his feet as he walks down the stairs of the front porch, bumping his shoulder into a porch beam and stumbling down the stairs.

Officer Andrew Saracino

Thornton Police Detective Barkley and Adams County Sheriff Detective Lussier interviewed Officer Andrew Saracino on February 14, 2020 shortly after this incident. Officer Saracino has been employed with the Commerce City Police Department (CCPD) since October 2018. Prior to his employment with CCPD, he worked with the Trinidad Police Department since August of 2011. Officer Saracino was in a uniformed two-man training car with Recruit Officer, Oscar Morales. They were in a marked Commerce City Police patrol vehicle.

On the morning of February 14, 2020, Officer Saracino was in a briefing at CCPD, just prior to the start of his shift, when he received a report of shots fired in the area of 11340 Iola Street. Dispatch advised that the reporting party, Christine Trujillo, said her ex-husband, David Heeke, shot at her. Officer Saracino and Officer Morales immediately left the police department

and responded to the area with their emergency lights and siren activated. Officer Saracino drove north on Highway 2 to the area of the incident. While in route, he received information that the suspect vehicle was last seen in the area of 112th and Peoria near a fire station. Officer Saracino drove east on 104th Avenue to the area of 104th and Peoria. Peoria is a main north-south street that exits the neighborhood. As Officer Saracino responded to that area, he observed a white older model Ford Pickup truck, which matched the description of the suspect vehicle dispatch provided. The suspect vehicle was traveling southbound on Peoria and turned eastbound onto 104th Avenue. Officer Saracino determined that the pickup truck's travel of southbound on Peoria at 104th Avenue would be consistent with the driving time from the area of 11340 Iola Street.

Officer Saracino observed the driver and only occupant of the truck, later identified as Mr. Heeke, fidget in the vehicle, and make side to side movements with his shoulders one way, then the other. Mr. Heeke was driving the truck erratically, revving his engine while at a stop light, changing positions within the lane, and braking erratically. Dispatch confirmed the description of the truck to match the description of the truck involved in the earlier shooting. Officer Saracino attempted a high risk stop as they continued eastbound on 104th Avenue.

Officer Saracino followed the truck eastbound past 104th and Blackhawk. The truck then approached a smaller black sedan, which appeared to be yielding to the emergency police vehicles approaching from behind. Mr. Heeke's truck struck a black sedan from behind as the sedan slowed and pulled to the right side of the roadway. Officer Saracino was close enough to have to slam on his brakes to avoid impact with Mr. Heeke's truck. Officer Saracino stepped out of his police vehicle and pointed his gun at Mr. Heeke. Officer Saracino ordered Mr. Heeke to get out of the truck and to show him his hands. Officer Saracino continued to give Mr. Heeke several loud verbal commands.

Officer Saracino described Mr. Heeke as a white male, with a small goatee, wearing a black leather jacket. Mr. Heeke opened the door of the pickup truck and showed only one hand. Mr. Heeke was partially standing and sitting between the front driver door and driver seat of the truck, and faced out of the truck sideways towards Officer Saracino. Mr. Heeke was only showing his left hand. Officer Saracino could not see his right hand because Mr. Heeke's body blocked his view of it.

Officer Saracino continued to yell verbal commands for Mr. Heeke to show his other hand. Mr. Heeke stated that he had a weapon in that hand. Officer Saracino then began to order Mr. Heeke to drop the weapon. Mr. Heeke responded with the statement, "That's not gonna happen."

Officer Saracino continued to yell commands for Mr. Heeke to drop the weapon. Mr. Heeke then suddenly brought his right hand up, rapidly, in an upward motion toward Officer Saracino and his partner. Officer Saracino then fired his service weapon at Mr. Heeke.

When Officer Saracino fired his weapon at Mr. Heeke, other officers were firing their weapons as well. Officer Saracino observed something drop near Mr. Heeke just before he fell. A handgun was later located near the feet of Mr. Heeke, near where Officer Saracino saw

something drop. Officer Saracino and the other officers then performed CPR and rendered aid to Mr. Heeke.

Officer Saracino believed he fired approximately six or seven rounds. Officer Saracino stated that he fired his handgun because he believed Mr. Heeke had a weapon and his life was in danger. He said he stopped firing because Mr. Heeke fell to the ground.

Officer Saracino was wearing a body worn camera. The body camera video shows the pursuit of the truck. Officer Saracino is driving emergent. Mr. Heeke does not comply or pull his truck over in response to the lights and sirens. Once the truck eventually stops, Officer Saracino comes to a stop behind it. The video shows Officer Saracino exit his vehicle and take a position behind his open driver side door and the frame of the doorway. Officer Saracino has his gun drawn.

In the video, Officer Saracino can be heard giving an immediate loud command. Officer Saracino yells, "Show us your hands! Do it now!" Officer Saracino then yells, "Shut off the car! Do it now!" Officer Saracino commands the driver again and yells, "Show us your hands! Put your hands out the window!" Officer Saracino then shouts commands to Mr. Heeke and states "Face away from us! Show me your hands!" Mr. Heeke does not comply and Officer Saracino yells, "Show me both your hands! Show me both of your hands!" Officer Saracino then yells "Drop the weapon! Drop the weapon! Drop the gun!" The video then shows Mr. Heeke rapidly turn his body toward the officers, while bringing up his right hand and arm, and the officers respond with gunfire.

Officer Oscar Morales

Thornton Police Detective Barkley and ACSO Detective Lussier interviewed Officer Oscar Morales on February 14, 2020. Officer Morales has been with the Commerce City Police Department for two weeks. Officer Morales graduated from civilian post academy in May of 2019.

Officer Morales was at the Commerce City Police Department in the morning briefing when there was a tone alert based on a reporting party stating her boyfriend shot at her. Officer Morales was in training and assigned to a Field Training Officer, Officer Saracino, so they left the substation together. Officer Morales was wearing a full police uniform. They responded emergent north on Highway 2. Dispatch reported the suspect vehicle was a Ford F150, but later reported it was a Ford F250 with white with black paneling.

Officer Morales and Officer Saracino traveled emergent, with lights and sirens, east on 104th Avenue and spotted the suspect truck. Officer Morales noted the truck was driving with the blinkers on the whole time, as it swerved and increased its speed. Officer Morales saw the driver, later identified as Mr. Heeke, look back toward them through the rear view mirror. Mr. Heeke's truck hit a bystander vehicle in front of him at 104th Avenue and Blackhawk Street.

Officer Saracino and Officer Morales stopped their patrol vehicle slightly behind and to the right of the pickup truck. Officer Saracino exited the patrol vehicle and took cover behind the driver side door. Officer Saracino yelled verbal commands. A Sergeant then appeared to the right of Officer Morales and told Officer Morales to hold his position. Officer Saracino continued to yell verbal commands for Mr. Heeke to show his hands. Mr. Heeke opened the door and stuck a hand outside the truck. Officer Morales had a view of Mr. Heeke from the back window of the truck. Once Mr. Heeke placed his body facing outside the truck while still seated, Officer Morales could see Mr. Heeke's head, face, upper body and shoulder blade.

Officer Morales described that Mr. Heeke fully leaned out of the truck but still had one hand placed inside the truck. Officer Saracino commanded Mr. Heeke to show both of his hands. Officer Morales heard Mr. Heeke respond, "Oh, no, that's where my weapon is at. I am not letting go of that." Officer Morales said the Mr. Heeke's tone was like it was a joke, and he made the statement with a smirk on his face. Officer Saracino ordered Mr. Heeke to show both of his hands. Officer Morales described that Mr. Heeke then turned his body, and moved his upper body towards the officers, at which point Officer Morales saw a gray gun in his right hand. Officer Morales stated Mr. Heeke raised his arm and hand up and pointed the gun at Officer Saracino. Officer Morales said he was in imminent fear for Officer Saracino's life and shot at Mr. Heeke. Officer Morales stopped shooting when Mr. Heeke dropped to the ground. Officer Morales held his position at the patrol vehicle while the Sergeant to his right and Officer Saracino cleared the truck. Officer Saracino responded to Mr. Heeke and provided medical attention until another officer took over CPR compressions.

Officer Morales was wearing a body camera. The video shows Officer Morales riding in the front passenger seat of the patrol car. Officer Saracino was driving. The video shows the patrol vehicle follow the pickup truck emergent. The video shows the patrol car come to an abrupt stop when the truck stopped. Officer Morales immediately opened the front passenger door and took a position behind the open door and door frame of the patrol vehicle. The video shows Officer Morales had his gun drawn. Officer Saracino is heard giving several loud verbal commands (as described above). From the video, Officer Morales has a viewpoint of Mr. Heeke through the back window of the pickup truck. Mr. Heeke can be seen opening the front driver side door of the truck and raising his left hand. Officer Saracino is heard giving several more loud commands. The video shows Mr. Heeke rapidly turn his body toward the officers while raising his right hand. The video shows Officer Morales fire several shots in the direction of Mr. Heeke.

Sergeant Tallon Darling

Thornton Police Detective Barkley and ACSO Detective Lussier interviewed Sergeant Tallon Darling on February 14, 2020. Sergeant Darling has been with the Commerce City Police Department since June 2019. Prior to his employment with CCPD, he worked for the Wheatridge Police Department for nine years. Prior to that, he was a deputy sheriff in Nebraska for two and half years.

On February 14, 2020, Sergeant Darling was driving an unmarked black Tahoe and was wearing his full police uniform. Sergeant Darling was working as the traffic sergeant when he heard dispatch air a shots fired call located at 11340 Iola Street. Sergeant Darling responded from the Commerce City Police Department substation. While in route, Sergeant Darling noticed other officers responding emergent to the area, with lights and sirens.

Sergeant Darling received information that the incident involved an older model Ford F150 and the suspect was a white male. As Sergeant Darling approached 104th Avenue, he observed a pickup truck pull onto 104th Avenue, with Officer Saracino traveling behind the suspect truck. Sergeant Darling followed behind Officer Saracino with another patrol vehicle traveling behind Sergeant Darling. They traveled east on 104th Avenue from Highway 2.

Sergeant Darling observed the truck engage in erratic driving as it veered in between lanes. He described the veering as an intentional, purposeful, exaggerated back and forth motion. Sergeant Darling instructed Officer Saracino to conduct a felony stop on the truck. The suspect truck increased its speed to approximately 55 mph, at which point it slowed down, then abruptly slammed on the brakes and stopped. As a result, Officer Saracino swerved to the left and came to a stop.

Sergeant Darling exited his vehicle, ran to Officer Saracino's vehicle, and took a position at the front passenger door with Officer Morales. Sergeant Darling and Officer Morales had their guns drawn. Officer Saracino immediately gave loud verbal commands for Mr. Heeke to get out of the car and show his hands. The driver side door of the truck swung open. There was only one occupant in the truck. Mr. Heeke responded to the command and placed his body facing outside of the truck, while still seated in the driver side compartment. Mr. Heeke's body was facing out of the vehicle and he showed his left hand. Sergeant Darling did not see Mr. Heeke's right hand, as it was still inside the truck. Mr. Heeke looked back towards Officer Saracino as Officer Saracino gave several loud verbal commands and demanded to see Mr. Heeke's other hand. The driver kept only one hand up. Officer Saracino gave a verbal command to let the officers see his other hand. Mr. Heeke responded that he would not, and that he was holding a weapon.

Sergeant Darling recalled that the initial dispatch call involved shots being fired. Sergeant Darling regained his sight picture and stated that everything slowed down. Sergeant Darling had no doubt that Mr. Heeke had a gun. Mr. Heeke then turned and as he did, he pulled something up. Sergeant Darling saw Mr. Heeke move and he processed that Mr. Heeke's gun was coming up. Sergeant Darling feared Mr. Heeke was going to shoot him and the other officers. Sergeant Darling shot rounds through the truck's back window as Mr. Heeke was bringing up his gun. Sergeant Darling estimated he shot three to five rounds.

Mr. Heeke dropped to the ground and Sergeant Darling stopped shooting. He and Officer Saracino approached the truck to clear it. Sergeant Darling walked around the front of the truck, to the driver side, and saw Mr. Heeke down on the ground and observed a handgun on the ground next to Mr. Heeke. Sergeant Darling and Officer Saracino provided medical to Mr. Heeke until more officers arrived to assist.

Sergeant Darling was wearing a body worn camera. The video shows the pursuit of the truck. Once the truck stops, the video shows Sergeant Darling stop his vehicle behind Officer Saracino's patrol car. The video shows Sergeant Darling run to Officer Saracino's patrol vehicle and take a position at the front passenger door, to the right of Officer Morales. Officer Saracino can be heard giving several loud verbal commands (as described above). From Sergeant Darling's position, the video shows Mr. Heeke showing his left hand, high above his body and out the door of the truck. Mr. Heeke only shows his left hand. It remains high in the air, reaching outward and above his body. After Officer Saracino's last command, the body camera video shows Mr. Heeke rapidly move his body and turn in a motion towards the officers. The video shows Mr. Heeke simultaneously swing his right arm and hand around toward the officers. The video shows Mr. Heeke is holding a handgun in his right hand. The video shows Sergeant Darling fire several shots in the direction of Mr. Heeke.

Officer Joseph Neville

Thornton Police Detective Barkley and ACSO Detective Lussier interviewed Officer Joseph Neville on February 14, 2020. Officer Neville has been a police officer with the Commerce City Police Department for approximately nineteen years. Officer Neville has nine years of prior experience with the El Paso County Sheriff's Office.

On February 14, 2020, Officer Neville was at the Commerce City Police Department substation at 104th Avenue and Tower Road. Officer Neville was in a briefing prior to his shift when he heard a call reporting shots fired. Officer Neville left the substation and traveled west on 104th Avenue toward the area. As he responded, he learned that the reporting party had stated her ex-husband fired gunshots at her.

As Officer Neville neared 104th and Highway 2, he observed Officer Saracino, and an unmarked patrol car, traveling behind a white pickup truck. Officer Neville approached in his patrol vehicle from behind and followed them eastbound on 104th Avenue. Officer Neville described the suspect truck as a white truck with a black panel at the bottom. This vehicle matched the description of the suspect truck provided in the earlier report of shots fired.

Officer Neville observed the truck drive erratically as it traveled east on 104th Avenue. The suspect truck came to a sudden stop at 104th Avenue and Blackhawk. Officer Saracino's marked patrol vehicle was immediately behind the truck.

Officer Neville observed the pickup truck stop in the far right lane of traffic. Officer Saracino's vehicle parked directly behind the truck. Officer Neville stopped and parked to the left, and behind where Officer Saracino's parked his patrol car.

Officer Neville exited his vehicle and stepped onto the center median of the roadway. He advanced to the east until he was a short distance in front of his patrol car, which gave him a better view of the driver's side of the truck. Officer Neville heard Officer Saracino yelling commands to Mr. Heeke to show his hands. Mr. Heeke only showed his left hand and kept his right hand down beside him next to his body. Officer Neville observed Mr. Heeke raise his right hand and Officer

Neville saw a handgun in his hand. Officer Neville was in Mr. Heeke's line of fire. Mr. Heeke turned toward Officer Neville "driving" the handgun towards him.

Officer Neville fired a number of rounds from his service weapon toward the chest area of Mr. Heeke. Officer Neville observed Mr. Heeke go down. Officer Neville said that he feared he would be killed as Mr. Heeke brought the handgun up into a firing stance. Officer Neville stopped shooting when he perceived that Mr. Heeke was no longer moving and was not a threat. Officer Neville estimated he was about fifteen yards away from Mr. Heeke when he fired. The other officers approached Mr. Heeke and began to perform CPR on him.

Officer Neville estimated he fired around ten to eleven rounds. Officer Neville believed Mr. Heeke's handgun was a black compact handgun. Officer Neville perceived Mr. Heeke's demeanor as angry and aggressive.

Officer Neville was wearing a body worn camera. The video shows Officer Neville in pursuit of Mr. Heeke's truck behind Officer Saracino and Sergeant Darling. Once the truck came to a stop, Officer Neville stopped his patrol vehicle behind, and to the left of the truck, Officer Saracino and Sergeant Darling. All of the vehicles were in front, and slightly to the right of Officer Neville. Once stopped, the video shows Officer Neville immediately open his driver side door and exit the vehicle. Officer Neville takes a position in front of his vehicle, standing in the roadway to the left and behind the truck. Officer Neville has his gun drawn.

Officer Saracino is heard giving several loud commands at Mr. Heeke. After several commands, the driver side door opens and Mr. Heeke leans out of the doorway, while staying seated. Mr. Heeke has his legs on the ground with his upper body still seated in the truck. Officer Saracino is heard giving several more loud commands (as described above). Mr. Heeke shows his left hand. Mr. Heeke has his left arm held high above his head. Mr. Heeke's right hand is concealed from Officer Neville's perspective. Officer Saracino is heard giving more commands. The video shows Mr. Heeke rapidly turn his body toward the officers while raising his right arm. Officer Neville then fires his weapon in the direction of Mr. Heeke.

Matthew Nuanez

Westminster Police Department Officer Smeester interviewed Matthew Nuanez on February 14, 2020. Mr. Nuanez's is the driver of the vehicle that a Mr. Heeke struck at 104th Avenue and Blackhawk.

On the morning of February 14, 2020, Mr. Nuanez was driving east on 104th Avenue at Highway 2 when he noticed several police cars. Mr. Nuanez continued eastbound and as he approached Blackhawk Street, he saw police red and blue lights approaching from behind. He looked for a place to pull to the side of the road. As he started to pull to the side of the road, he saw in his rear view mirror a white pickup truck quickly approaching from behind traveling at a high rate of speed. Mr. Nuanez then observed four police vehicles approach from behind, along with the white truck. The white truck struck his car from behind.. Mr. Nuanez pulled forward,

stopped his vehicle, and began to look for his insurance paperwork and registration for the vehicle.

Mr. Nuanez saw in his rear view mirror that the officers stopped behind the truck and they had exited their patrol cars with their hands on their guns. Mr. Nuanez heard the officers give commands to the white truck. Mr. Nuanez turned down the volume of his radio and heard the officer's command, "Come out and put your hands up." Mr. Nuanez looked in his rear view mirror again and saw the officers had their guns drawn and he ducked down in his vehicle. When Mr. Nuanez crouched down, he heard several loud pops. He could not estimate how many pops he heard. Mr. Nuanez initially thought the pops were fireworks, but later realized it was gunfire. Mr. Nuanez did not see the driver of the white truck and did not know the make and model of the truck. Mr. Nuanez was only able to see that the driver had a beanie and beard.

Other Witnesses

There were a number of other law enforcement officers who were interviewed in connection with the investigation of this incident. In summation, these officers arrived on scene after the shooting occurred. These officers provided backup upon arrival, provided medical to Mr. Heeke and provided transport of the shooting officers back to the Police Substation. The officer's interviews did not add significant detail to the investigation of the incident.

Scene and Round Accountability

Thornton and Westminster Police Departments Crime scene investigators processed the scene. A Beretta handgun was located under Mr. Heeke's pickup truck. There were nine Winchester 9 mm Luger shell casings and twenty-one Hornady 9mm Luger shell casings collected at the scene.

Officer Andrew Saracino

Officer Saracino's fired weapon was a Glock 17 Gen 4 9mm handgun with a TLR-1 HL tactical light. The fired ammunition was Hornady 9mm Luger, red tip hollow point. There was one live round in the chamber and eleven live rounds in the magazine, which has a seventeen round capacity.

Officer Saracino stated that he typically fully loads the magazine and keeps one round in the chamber, for a total of eighteen rounds. Twelve rounds present in the firearm leads to the conclusion that Officer Saracino fired six times during this incident.

Officer Oscar Morales

Officer Morales' fired weapon was a Glock 17 Gen 5 9mm handgun with a TLR-1 HL tactical light. The fired ammunition was Hornady 9mm Luger, red tip hollow point. There was

one live round in the chamber and nine live rounds in the magazine, which has a seventeen round capacity.

Officer Morales stated that he typically fully loads the magazine and keeps one round in the chamber, for a total of eighteen rounds. Ten rounds present in the firearm leads to the conclusion that Officer Morales fired eight times during this incident.

Sergeant Talon Darling

Sergeant Darlin's fired weapon was a Smith and Wesson M&P 9mm handgun with an Inforce tactical light. The fired ammunition was Hornady 9mm Luger, red tip hollow point.

Examination of the weapon revealed one live round in the chamber with eleven live rounds in the magazine, which has a seventeen round capacity. Sergeant Darling stated that he typically fully loads the magazine and keeps one round in the chamber, for a total of eighteen rounds. Twelve rounds present in the firearm leads to the conclusion that Sergeant Darling fired six times during this incident.

Officer Joe Neville

Officer Neville's fired weapon was a Sig Sauer P320 9mm pistol. The fired ammunition was Winchester 9mm Luger, hollow point. There was one live round in the chamber and five live rounds in the magazine, which has a seventeen round capacity.

Officer Neville stated that he typically loads sixteen rounds in the magazine and keeps one round in the chamber, for a total of seventeen rounds. Six rounds present in the firearm leads to the conclusion that Officer Neville fired eleven times during this incident.

Medical Examination Analysis

On February 18, 2020, Forensic Pathologist Dr. Stephen Cina conducted an autopsy of the male identified as David Heeke. Dr. Cina identified twelve gunshot wounds. There was a perforating gunshot wound to the left hand, two perforating gunshot wounds to the right thigh, a penetrating gunshot wound to the right chest, a penetrating gunshot wound to the abdomen, a penetrating gunshot wound to the right upper arm, a penetrating gunshot wound to the left upper back, a gunshot wound to the right posterior shoulder, a grazing entrance wound to the back of the head, a graze wound to the back of the head, a penetrating gunshot wound to the left side of the head, and a penetrating gunshot wound to the left ear and neck.

The most serious wounds were to the left side of his neck and the left side of his head. There was no evidence of close range firing on the skin. There were multiple exit wounds and multiple projectiles recovered. Noted in Mr. Heeke's jacket were several personal affects that included a note that read, "No body in this life ever has the right to ruin another one's life, no body. As an organ doner, per my Colorado driver's license, time may be of the essence."

The decedent's toxicology report revealed a blood alcohol concentration of .256 g/100mL. Dr. Cina determined the cause of death to be multiple gunshot wounds and the manner of death to be homicide.

Legal Analysis

As was previously noted, this review is limited to a determination of whether to file criminal charges against the involved officers. 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 Colorado law. 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 the involved law enforcement officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officer Saracino, Officer Morales, Officer Neville and Sergeant Darling fired their handguns at David Heeke causing his death. The issue of which involved officer actually caused the death is complicated, as four officers fired their weapons resulting in the death of Mr. Heeke. The forensic evidence cannot conclusively distinguish which firearm caused the fatal shots. In addition, the handguns used by three of the officers were of the same caliber. Therefore, for the purposes of this review, it is presumed that any one of the shooting officers actually caused the death of Mr. Heeke.

All of the involved officers were engaged in their duties as peace officers to investigate a suspect who reportedly just shot at someone. 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 not justified under Colorado law at the time the officers fired their weapons.

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

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” §18-1-901(3)(d), C.R.S. (2019).

Under the circumstances of this case, all officers were attempting to effect a stop and arrest of Mr. Heeke for his actions of committing a felony for shooting at Ms. Trujillo. All four


involved officers had a reasonable belief that Mr. Heeke was armed and dangerous based on the information Ms. Trujillo provided to dispatch. When Mr. Heeke stopped his pickup truck and the officers approached and began to give him loud verbal commands to get out of the truck and show them his hands, Mr. Heeke admitted he was holding a gun in his right hand, and did not comply with the officers commands. The body worn camera footage shows Mr. Heeke rapidly turn his body toward the officers while raising his right arm. Mr. Heeke's actions dictated the officer's response as it was reasonable for the involved officers to conclude that Mr. Heeke was about to use deadly force towards them based on the totality of the circumstances involved in this investigation.

The body worn camera footage and the scene investigation supports the summary of facts the four involved officers provided. There is no evidence to dispute that Officer Saracino, Officer Morales, Officer Neville and Sergeant Darling fired their weapons at Mr. Heeke because they reasonably believed it was necessary to defend themselves from what they perceived to be the imminent use of deadly physical force by Mr. Heeke. Therefore, the prosecution cannot prove that the officers' actions were not justified beyond a reasonable doubt to a jury as applied to §18-1-707.

Conclusion

Applying the facts of this incident to the applicable Colorado law, the evidence does not support the filing of any criminal charges against Officer Saracino, Officer Morales, Officer Neville and Sergeant Darling for the shooting of Mr. Heeke on February 14, 2020. 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