

Dave Young  
District Attorney



17<sup>th</sup> Judicial District  
Adams & Broomfield Counties  
District Attorney's Office

March 19, 2013

Douglas N. Darr, Sheriff  
Adams County Sheriff's Office  
332 N 19<sup>th</sup> Avenue  
Brighton, CO 80601

Re: The investigation of the officer involved shooting of Robert Alan Penning, DOB 09/26/67, occurring on January 14, 2013.

Dear Sheriff Darr:

The 17<sup>th</sup> Judicial District Critical Incident Team has completed the investigation and legal analysis of the officer involved shooting of Robert Alan Penning occurring on January 14, 2013. Det. Fred Longobricco (CIT; Thornton Police Department), Det. Bernard Von Felt (CIT; Westminster Police Department) and Det. Dennis McGee (CIT; Brighton Police Department) led this investigation. The documents and materials presented to the Adams County District Attorney's Office included police reports, 911 calls and transcripts, videos, transcripts of interviews from lay witnesses and police officers, photographs, diagrams and the crime scene investigation. Based on my review of these materials, the investigation was thorough and complete. Based on the evidence presented and the applicable Colorado law, no criminal charges will be filed against Deputy Manuel Aragon, the deputy involved in this incident.

#### **INCIDENT OVERVIEW**

On January 14, 2013 at approximately 5:59 p.m., the Adams County Sheriff's Office received a call of a suspected driving under the influence accident in the area of 138<sup>th</sup> Avenue and Quebec Street, located in Adams County, Colorado. Adams County Sheriff's Office patrol deputies Manual Aragon and Shawn Billings were dispatched to the scene. While en route, ADCOM dispatch updated that there were other reports of a possible roll-over accident in the area of 156<sup>th</sup> Avenue and Quebec. A civilian named witness Elise Cornett had called 911 after observing a car high-centered in a field off of Quebec Street. At approximately 6:06 p.m., Deputy Manual Aragon arrived first on scene at 146<sup>th</sup> Avenue and Quebec Street and aired his arrival over the radio. Within a minute of his arrival, Deputy Aragon aired over the radio "shots fired" and requested medical units to respond to the scene.

Back-up officers immediately responded to the scene. Upon arrival, they learned that Deputy Aragon had shot and killed a male, later identified as Robert Alan Penning (DOB 9/26/67), after Mr. Penning had pulled a gun from his waistband and pointed it at Deputy Aragon. Ms. Cornett observed the incident unfold while sitting in her Volkswagen nearby. There were no other witnesses on scene. Deputy Aragon held Mr. Penning at gun point until Deputy Billings arrived on scene as cover. When Deputy Billings arrived, he placed Mr. Penning into handcuffs and checked his body for a pulse. Emergency medical services responded to the scene soon thereafter.

Adams County Sheriff's Office Deputy Ian Austin also responded to the area of 146<sup>th</sup> and Quebec Street. He observed a black vehicle that appeared to have been in an accident in the field to the east of Quebec Street. Deputy Austin also observed Ms. Cornett sitting in her parked car on the shoulder of Quebec facing north, and Deputy Aragon's car parked behind the Volkswagen with its over head emergency lights on.

Deputy Austin approached the scene and observed Mr. Penning, handcuffed, lying off to the eastside of Quebec Street. Deputy Billings located a handgun, (later identified as a Smith and Wesson, .357 mm Taurus revolver) lying directly underneath Mr. Penning near his left waistline. Deputy Billings secured the weapon in the back of his locked patrol unit. Subsequently, Det. Rich Coffee with the Adams County Sheriff's Office retrieved the revolver from the cargo area of the right passenger rear side of Deputy Billings' patrol unit. The gun was found with the hammer cocked back and fully loaded. Upon retrieval of the weapon, Det. Coffee noted that the weapon was loaded with a total of six rounds.

Deputy Brent Miller arrived on scene and observed an open case of beer on the ground next to the passenger rear tire of the Volkswagen. Deputy Miller briefly spoke on scene to Deputy Aragon, who reported that the suspect had pulled a gun on him and that in response he shot at the suspect twice. Deputies transported Deputy Aragon and Elise Cornett to the Adams County Sheriff's Office substation. Mr. Penning was incapacitated by his injuries and remained at the scene. The Thornton Fire Department relayed his status to Dr. Paluska at the North Suburban Medical Center and Dr. Paluska pronounced Mr. Penning deceased at 6:23 pm. Dr. Michael Arnall conducted an autopsy on January 16, 2013 and determined that the cause of death was a single gunshot wound to Mr. Penning's left chest area.

### **WITNESS INTERVIEWS AND STATEMENTS**

As discussed above, the Critical Incident Team for the 17<sup>th</sup> Judicial District was contacted to investigate the shooting. The detectives interviewed numerous witnesses involved in the case and obtained their statements.

## Elise Cornett

On January 14, 2013, Det. Fred Longobricco (CIT; Thornton Police Department) Det. Bernard Von Felt (CIT; Westminster Police Department) and Det. Dennis McGee (CIT; Brighton Police Department) conducted an interview of Elise Cornett (12/03/64).

Ms. Cornett advised that she works at the Colorado Department of Motor Vehicles and left work on January 14, 2013 at approximately 5:10 p.m. Ms. Cornett stated that she drove home the same way she always does, via Quebec Street. Ms. Cornett was at the 14200 block of Quebec Street when she observed what appeared to be "smoke." Ms. Cornett later clarified that the "smoke" she observed was in fact dust. She explained that when she saw the "smoke," she also saw a black colored sedan to be off of the right of the roadway. She stated that the car appeared to be "high-centered" and that she could see a single male occupant inside.

Ms. Cornett pulled over to the side of the roadway to assist the driver. As she pulled up, she observed the male occupant attempting to get out of the ditch, but because the car was "high-centered," dust came up from the spinning tires. Ms. Cornett also observed two white males pull over and walk over to the male to see if they could help. The male driver, (later identified as Robert Alan Penning), got out of the car, grabbed a twelve (12) pack of beer from the car, and walked over to the two male witnesses to ask for a ride.

Ms. Cornett advised that while the two males spoke to Mr. Penning near his car, she asked the two males to attempt to obtain the license plate number. The males advised that there was no plate on the front of the car and also told her that Mr. Penning wanted a ride. Ms. Cornett told the males not to give Mr. Penning a ride, and that she was calling the police. The two unknown males walked back to their car and drove away, southbound on Quebec Street. Ms. Cornett stated that Mr. Penning then walked back to her car holding the twelve (12) pack of beer in his left hand, and crouched behind her car on the right passenger's side. Ms. Cornett was not sure what Mr. Penning was doing, but thought he might be looking at a cell phone because she could see an object in his hands.

Mr. Penning remained behind Ms. Cornett's car for several minutes. During this time, Ms. Cornett was not always able to see Mr. Penning from her mirrors. During this time, Ms. Cornett never got out of her car, but her front driver's side window was down and the front passenger's side window was rolled down approximately four (4) inches. While Ms. Cornett remained on the phone with 911, she could hear police sirens approaching from the south. A patrol unit then pulled up behind her car. She stated that the police unit's lights were blinding and she was unable to see the deputy get out of his patrol unit. Ms. Cornett stated that she observed red and blue lights, but could not see anything behind her due to the spotlights.

Once Deputy Aragon arrived on scene, Ms. Cornett stated she heard Mr. Penning say "[W]ell I guess it's time for me to go" through the open window on the passenger's side of her car. Ms. Cornett then heard two (2) gunshots come from the rear of her car, and she

explained she could hear the deputy yell "[D]on't move!" approximately four (4) times. Ms. Cornett advised initially she didn't know who shot the gun, but then saw the deputy slowly walk on the passenger's side of her car.

Once the deputy arrived at her window, Ms. Cornett advised that the deputy asked if she had seen the gun Mr. Penning had been holding. Ms. Cornett had been unable to see anything at this point, but unbuckled her seat belt, leaned over into the passenger's seat, and looked out the passenger window. Ms. Cornett stated when she looked out she could see Mr. Penning lying in the ditch face down, with this head facing north. Ms. Cornett could not see Mr. Penning's hands or right arm, but stated she could see a metal revolver lying under Mr. Penning's stomach near the left side of his waistband. Ms. Cornett stated that the deputy only took two steps towards Mr. Penning to see if he was breathing. Ms. Cornett heard Mr. Penning moan, but nothing else. According to Ms. Cornett, Deputy Aragon remained at the passenger's side window of her car until a second deputy, (later identified as Deputy Shawn Billings) arrived on scene.

### **Deputy Shawn Billings**

On January 14, 2013, Det. Joe Hastings (CIT; Westminster Police Department) and Det. Dennis McGee (CIT; Brighton Police Department) conducted an interview of Deputy Shawn Billings (4/14/75).

Deputy Billings was the first deputy to arrive on scene after shots were fired. Deputy Billings heard Deputy Aragon receive the dispatch call to the area of E. 136<sup>th</sup> Avenue and Quebec Street reference a possible D.U.I. and also heard Deputy Aragon arrive at the scene a short time later. Deputy Billings reported that almost immediately after Deputy Aragon arrived on scene, Deputy Aragon aired "shots fired," and Deputy Billings responded emergent to his location.

Upon arrival, Deputy Billings observed Deputy Aragon holding Mr. Penning at gun point, standing on the rear side of Ms. Cornett's car. Deputy Billings pulled his patrol unit up to the driver's side of Ms. Cornett's car, got out of his car, and then approached the ditch where Mr. Penning was lying at the front of Ms. Cornett's car. Deputy Billings advised Deputy Aragon to remain at Ms. Cornett's car, and held Mr. Penning at gunpoint until he was placed into handcuffs. Deputy Billings then placed Mr. Penning in handcuffs and checked for a pulse. Deputy Aragon then holstered his service weapon until it was turned over for testing and evaluation. Deputy Billings secured the scene and then seated Deputy Aragon in a Thornton Police Unit that had arrived on scene. Deputy Billings then returned to Ms. Cornett and Mr. Penning's body and waited for medical units to respond.

Once the medical team arrived, Deputy Billings collected the revolver that was found underneath Mr. Penning's body. Deputy Billings advised he wore gloves and bent down, placing his hands under the weapon. As Deputy Billings picked up the gun, he noted that the hammer on the weapon was cocked back in the firing position, and the chambers in the cylinder were loaded with ammunition. Deputy Billings carried the gun to his patrol

unit and placed the gun in the back seat of his locked patrol unit, where it remained, undisturbed until CSI Coffee collected it.

### **Deputy Manuel Aragon**

On January 14, 2013, Det. Bernard Von Felt conducted an interview of Deputy Manuel Aragon. Deputy Aragon stated that on January 14, 2013 he was on routine patrol in his marked police car when he was dispatched to a possible rollover accident in the area of 152<sup>nd</sup> Avenue and Quebec Street. Deputy Aragon responded in emergent mode with lights and siren.

Upon arrival, Deputy Aragon saw a Volkswagen parked on the right hand shoulder of the roadway and a dark sedan off of the road to the right. Deputy Aragon pulled approximately 1 ½ car lengths behind the Volkswagen. At this time, he observed a male (later identified as Robert Alan Penning) crouching down at the rear of the Volkswagen with his left side and back to him. Deputy Aragon got out of his car and approached Mr. Penning and asked if he was okay. He stood approximately 10-12 feet away from Mr. Penning. Deputy Aragon indicated that Mr. Penning suddenly stood up, turned around, and pointed a revolver directly at him. Deputy Aragon expressed that he was scared and in fear for his life. Deputy Aragon took two steps back, removed his gun from his holster, and fired two rounds at the chest of Mr. Penning, causing Mr. Penning to fall back into a ditch.

Deputy Aragon then approached Mr. Penning, who was lying on his stomach and observed a revolver partially exposed underneath Mr. Penning's body. He noted that the hammer of the gun was cocked back in the firing position. Deputy Aragon held Mr. Penning at gunpoint until cover arrived. Deputy Aragon immediately advised "shots fired" over his police radio and requested medical units to respond. Deputy Aragon expressed concern for the female witness inside the Volkswagen which was just feet away from Mr. Penning. Deputy Aragon feared that Mr. Penning may have been "playing possum" and at that time it was unknown if he could still utilize his gun.

Shortly thereafter, Deputy Billings arrived and placed handcuffs on the suspect. Deputy Billings then secured the revolver found under Mr. Penning's body and placed it in the rear of his patrol unit. Deputy Aragon indicated that he had never seen Mr. Penning before and did not know his name. At the time of his interview, Deputy Aragon was unaware that Mr. Penning had passed away.

### **Kursten Penning**

On January 22, 2013, Det. Fred Longobricco conducted an interview with Kursten Penning. Kursten Penning is the biological daughter of Mr. Penning. Ms. Penning reported that she had last spoken to her father on the telephone on Monday, January 14, 2013 at approximately 1100 hours. Ms. Penning stated that her father sounded okay, and not under the influence of alcohol or narcotics. Mr. Penning spoke of running some errands that day.

Ms. Penning stated that although her father did not sound upset during this conversation, Mr. Penning was consistently depressed, and had been for some time. Ms. Penning stated that her father had been an alcoholic for the majority of his life and often made suicidal threats, such as "I want to die" and "my life sucks." Ms. Penning stated that her father had gotten divorced about a year ago and had been staying in hotels and occasionally at a friend's house. Ms. Penning stated that her father had been in trouble with the police before, and that he had mentioned an intention to point a gun at a police officer, but not pull the trigger. Ms. Penning stated that her father's girlfriend Carla had mentioned that he had obtained a gun from a friend prior to Christmas of 2012. She was unable to provide any additional information about precisely when or where Mr. Penning had obtained the gun.

### **Stacia Rice-Penning**

On January 22, 2013, Det. Fred Longobricco conducted an interview with Stacia Rice-Penning. Ms. Rice-Penning stated that she had not seen or spoken to Mr. Penning since he was sentenced on charges of harassment and domestic violence naming her as the victim. Ms. Rice-Penning stated that as far as she knew, Mr. Penning was transient and would sleep anywhere he could.

Ms. Rice-Penning stated that when sober, Mr. Penning did not show any signs of aggression toward the police. However, when intoxicated, Ms. Rice-Penning stated that he would fly into rants against the police. She further stated that Mr. Penning was an alcoholic who suffered from depression and was suicidal. Ms. Rice-Penning stated that Mr. Penning frequently stated that his life "sucked" and that he "wanted to die".

Ms. Rice-Penning stated that he was unable to purchase a gun because of his criminal record and asked her to purchase a gun for him after the 9/11 attack on the World Trade Center. Ms. Rice-Penning stated that she had refused to buy a gun for him, and he had not asked again. Ms. Rice-Penning stated that Mr. Penning never possessed a gun while they were together, and added that she did not know where he would have obtained one.

### **Cecilio Guerrero**

On January 30, 2013, Det. Joe Hastings conducted an interview of Cecilio Guerrero. Mr. Guerrero is a friend of Mr. Penning and has known him for two years. Det. Hastings had discovered through court obtained phone records that Mr. Penning had called Mr. Guerrero several times on January 14, 2013.

Mr. Guerrero stated that he did speak to Mr. Penning on January 14<sup>th</sup> and recalled their last conversation. Mr. Guerrero stated that Mr. Penning made statements like "nice knowing you," "probably won't be seeing you anymore," and said that he loved him. Mr. Guerrero stated that Mr. Penning had a "death wish" for the last couple of months due to "girl problems." Mr. Guerrero stated that he had talked Mr. Penning out of suicide in the past.

Mr. Guerrero reluctantly mentioned that Mr. Penning claimed he had a gun, but Mr. Guerrero was unsure whether he was being truthful or not, and became hesitant to answer further questions about the gun. When asked why Mr. Penning would point a gun at an officer, Mr. Guerrero stated it was probably because it was the quickest way to get killed. Mr. Guerrero opined that Mr. Penning did it because he wanted to die.

### **SUSPECT INFORMATION**

Mr. Penning has numerous prior contacts with law enforcement spanning over many years. On January 17, 1988 the Adams County Sheriff's Office arrested Mr. Penning for Second Degree Burglary. On July 19, 1990, the Arvada Police Department arrested Mr. Penning for Driving Under the Influence. On September 25, 1994, the Westminster Police Department arrested Mr. Penning for Driving Under the Influence. On April 9, 1996, the Westminster Police Department arrested Mr. Penning for Driving Under the Influence and Hit and Run. On January 21, 1997, the Westminster Police Department arrested Mr. Penning for Criminal Mischief and Obstruction. On April 8, 1999, the Lakewood Police Department arrested Mr. Penning for Driving Under Revocation as a Habitual Traffic Offender and Driving Under the Influence. On September 17, 1999, the Jefferson County Sheriff's Office arrested Mr. Penning for Driving Under the Influence. On May 28, 2012, Mr. Penning was charged in Adams County case number 12M2486 with Telephone Harassment as a crime of Domestic Violence (a class 3 misdemeanor). He pled guilty and received a sentence of two years probation with 30 days jail.

### **LEGAL ANALYSIS:**

Criminal liability is established in Colorado when it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statutes, and it is proven beyond a reasonable doubt that the offense was committed without any statutorily recognized justification or excuse. The charging standard for our office is whether there is a reasonable likelihood of conviction at trial. In analyzing this case, one must look at the current statutory law that applies when deadly physical force can be used by a law enforcement officer.

C.R.S. §18-1-707(2) defines when a peace officer may use deadly physical force in Colorado:

"(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.

(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..."  
C.R.S. §18-1-707.

The first question presented in this investigation is whether at the time Deputy Aragon fired his weapon, he reasonably believed that Mr. Penning was about to direct imminent unlawful physical force against him or another person. In order to establish criminal responsibility for an officer who knowingly or intentionally causes serious bodily injury or death to another, it has to be proved beyond a reasonable doubt that the officer doing the shooting either did not believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was unreasonable in light of the totality of the facts and circumstances.

Initially, it would have been clear to any reasonable person that Deputy Aragon was a peace officer. Deputy Aragon was dressed in his Adams County Sheriff's Office issued uniform and equipment, and stood only a few feet away from Mr. Penning. Deputy Aragon drove an Adams County Sheriff's Office patrol vehicle with appropriate markings and lights. As Deputy Aragon exited his vehicle with his service weapon holstered, Mr. Penning stood and turned from a crouched position next to Ms. Cornett's car, then stood up and raised a cocked and loaded .357 Magnum hand gun directly at Deputy Aragon. This is a weapon capable of causing death or serious bodily injury. During those few critical seconds on scene, Mr. Penning never dropped his weapon, but retained possession of the gun and continued to point it directly at Deputy Aragon while standing just feet away from Ms. Cornett. Under these facts, Deputy Aragon justifiably feared for his own safety and the safety of Ms. Cornett. Believing that Mr. Penning may shoot either Ms. Cornett or himself and feeling in fear for the safety of his life, Deputy Aragon fired his gun two (2) times, striking Mr. Penning once in the left chest area.

Mr. Penning pointed a fully loaded firearm directly at Deputy Aragon at the time of the shooting while contemporaneously stating: "[W]ell I guess it's time for me to go." These facts are established by the physical evidence of the cocked and loaded .357 Magnum handgun collected on scene, as well as the report of lay witness Ms. Cornett who heard Mr.



Penning's statement just prior to the shooting. Based on all the information known to Deputy Aragon, Deputy Aragon reasonably believed that Mr. Penning was about to seriously injure or kill either himself or Ms. Cornett. Therefore, C.R.S. Sec. 18-1-707(2)(a) specifically applies here as Deputy Aragon had to fire his weapon not only to defend himself, but also to defend Ms. Cornett. Deputy Aragon used the appropriate amount of deadly physical force to safely stop the threat in this matter.

### **CONCLUSION**

The independent Critical Incident Team thoroughly investigated the January 14, 2013 shooting of Robert Alan Penning. The District Attorney's Office reviewed the investigation and applied the relevant law to the evidence. Pursuant to Colorado law, Deputy Manuel Aragon was justified in using deadly force on January 14, 2013. There will not be any criminal charges filed as a result of Deputy Aragon's actions as it relates to the January 14, 2013 shooting of Robert Alan Penning.

If you have any questions pertaining to this report or findings and conclusions, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Young', written in a cursive style.

Dave Young  
District Attorney  
Seventeenth Judicial District Attorney's Office