



December 9, 2016

Chief Tim Carlson
Chief of Police
Westminster Police Department
9110 Yates St.
Westminster, CO 80031

Re: *The investigation of the officer involved shooting of Thomas Tucker, DOB 07/19/67, occurring on September 20th, 2016*

Dear Chief Carlson:

The investigation and legal analysis of the officer involved shooting of Thomas Tucker is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Derrick Aragon of the Commerce City Police Department and Fred Longobricco of the Thornton Police Department. 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 October 31, 2016. The CIIT presented police reports, videos and transcripts of the interviews of witnesses, along with photographs and diagrams of the crime 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 officer, 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 each individual agency.

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

OVERVIEW OF THE INCIDENT

On September 20, 2016 at approximately 3:25 pm, Westminster Police Officers were dispatched to a robbery that had just occurred at 12170 Bannock Street Apartment #B located in City of Westminster. Dispatch advised officers that a male victim had just been robbed and assaulted at gun point. Two suspect vehicles were involved: a silver/grey Chevy Malibu with no license plate and a motorcycle. Both vehicles had fled the area heading southbound prior to officers arriving.

Westminster Police Officer Chris Neal went to the scene and contacted the victim identified as Matthew Jerry Maczuga, outside of his garage in the parking lot. Mr. Maczuga was upset and was bleeding from his mouth and nose. Mr. Maczuga told Officer Neal that he had just been "robbed at gunpoint" by multiple individuals. Mr. Maczuga stated that he was home alone during the incident and went outside to check the mail when he encountered three males inside his garage stealing his items. He confronted the males and one of the males punched him in the face while they stole his backpack and other items.

Mr. Maczuga advised the males were screaming at him calling him a "druggie" and stating that he stole the items from them. Mr. Maczuga said he did not recognize any of the individuals who had robbed him but told them to "stop" and not to "take his stuff." Mr. Maczuga saw a male parked on a motorcycle near his garage and began to ask him for help. The male was described as 5'10" Hispanic male with a bandana and a yellow and black "bike jacket." This male got off his bike and pointed a silver and black handgun to his face. The male told him he would "shoot his ass" while pointing the gun a few inches from his face. The male then began taking items from his garage and stole several of his mother's tool sets. Mr. Maczuga said the male took a yellow and black tool bag, placing it onto the motorcycle. The male left the residence after the other male suspects drove away in a silver Chevy Malibu. Officer Neal reported the vehicle and suspect description given by Mr. Maczuga to other officers in the area.

Around the time of the 911 call, Westminster Police K-9 Officers Damian Perez and Anthony Stroup as well as Boulder County Sheriff's Department K-9 Deputy Todd Moody were all actively training their dogs at the Ranch Country Club, located near 120th Ave and Federal Blvd. They heard a "Tone Alert" of a robbery with a gun in progress at 12170 Bannock Street. All three officers went to the area to assist in the investigation and look for the suspect vehicles. As the officers were discussing the details with Mr. Maczuga present, a Harley Davidson motorcycle driven by a white male with a black and yellow jacket drove westbound by the scene on E 121st Avenue. Mr. Maczuga identified the man as the suspect.

Officer Perez, in a fully marked Westminster PD patrol vehicle, pursued the suspect motorcycle rider and caught up to him on E. 121st Ave as they approached Huron Street. Officer Perez illuminated his over head emergency lights and siren, but the suspect did not stop. The rider was using one hand to reach back, as if he were attempting to secure something attached to the motorcycle. The speeds were very slow as the suspect appeared to not be able to shift gears on the motorcycle. Officer Perez relayed this information through dispatch. Officer Perez also observed a large knife in a leather sheath located near the suspect's back. The suspect drove to the corner of E 121st Ave. and Huron St., where he turned right after still failing to stop. A few feet from this intersection, the suspect laid down the bike and ran off on foot. Officer Perez

again pursued the man, this time on foot through an apartment complex located in between 121st and 122nd Avenues on Huron St.

During the chase, the suspect reached into the front of his jacket and produced a laptop. The laptop fell to the ground as the suspect was running away from Officer Perez who was giving loud verbal commands of "Police, stop." As they continued to run, the suspect reached into the front of his jacket, and produced a handgun, but the handgun also fell to the ground. Shortly after dropping the gun, the male stopped and pulled out the large knife that was sheathed in his back. The suspect turned and took a "fighting stance" within ten to fifteen feet of Officer Perez. Officer Perez fired what he thought were two shots at the male suspect. Officer Perez tripped and fell backward to the ground while the suspect continued to advance. The suspect still had the large knife that was sheathed in his back and stood over Officer Perez.

Officer Stroup arrived and saw the suspect with a knife in his hand standing over Officer Perez. Officer Stroup pointed his handgun and fired at the suspect. Officer Perez fired two more shots at the suspect and the suspect fell to the ground. Both officers place handcuffs on the male suspect, later identified as Thomas Tucker, and made a call for medical assistance. Medical personnel pronounced Mr. Tucker deceased at the scene.

SYNOPSIS OF LAW ENFORCEMENT OFFICER INTERVIEWS

Officer Damian Perez:

Commerce City Police Detective Derek Aragon and Thornton Police Detective Fred Longbricco interviewed Officer Perez the night of this incident with his attorney present. Officer Perez stated that he has twenty-two years of experience as a law enforcement officer with the last seventeen being with the Westminster Police Department.

Officer Perez advised that he, Westminster Police Officer Anthony Stroup, and Boulder County Sheriff's Department K-9 Deputy Todd Moody were all actively training their dogs at the Ranch Country Club, which is located near 120th Ave and Federal Blvd. They all heard a "Tone Alert" of an in progress Burglary, at 12170 Bannock St and in which a gun was involved. They were told that a Silver Chevy Malibu with multiple occupants was involved, as well as a single Harley Davidson motorcycle rider. The motorcycle rider was the suspect who had a gun and pointed it at the victim, Mr Maczuga.

Officer Perez stated that he then drove to the scene and had contact with Officer Neal as well as Mr. Maczuga. He heard Mr. Maczuga describe the motorcycle rider as wearing a black and yellow jacket and that he had a black handgun with a silver barrel. He also became aware that the motorcycle rider suspect had tools and a backpack attached to the motorcycle. As they were still discussing details of the motorcycle rider, a Harley Davidson motorcycle being driven by a white male with a black and yellow jacket drove by the scene on E 121st Ave. heading westbound. Mr. Maczuga pointed out this male as the suspect. Officer Perez, in a fully marked Westminster Police patrol vehicle, gave chase and caught up to the suspect on E 121st Ave approaching Huron St. Officer Perez illuminated his over head emergency lights and siren, but the suspect motorcycle rider failed to stop. The suspect was using one hand to reach back and

attempting to secure something attached to the motorcycle . The motorcycle was going very slow, approximately three to four miles per hour, and Officer Perez radioed this information via dispatch. Officer Perez also noted a leather sheath containing a rather large knife located in the small of the suspect's back.

The suspect drove to the corner of E 121st Ave and Huron St., where he turned right after still failing to stop. A few feet from this intersection, the motorcycle rider laid down the bike and ran off on foot. Officer Perez chased the man on foot and they ran to the east, initially through the apartment complex located at the intersection, then in a northerly direction, between the buildings of the apartment complex. During the chase, the suspect reached into the front of his jacket and produced a laptop, the laptop fell as he was running away from Officer Perez who was giving loud verbal commands of "Police, stop." As they neared the second apartment building, still running in a northern direction, the suspect reached back into the front of his jacket and pulled out a handgun which fell to the ground as they kept running.

Shortly after this action, the suspect stopped within ten to fifteen feet from Officer Perez, turned to face Officer Perez and pulled out the large knife that was sheathed in his back. Officer Perez described being at a bad disadvantage because he was out of breath from chasing the suspect and he was concerned with other people being in the apartment complex. He feared a carjacking or other similar incident. Once he perceived the threat was turned to him, Officer Perez felt he had to end it and he fired what he thought were two shots at the male suspect. Officer Perez then fell to the ground after tripping over something. As he fell and rolled over to a seated position, he felt like he was in a very dangerous and life-threatening position. The suspect was within eight to ten feet, holding a large knife in his hand as he stood over Officer Perez. Officer Perez said he fired two more shots at the suspect and the suspect turned away from Officer Perez and fell to the ground. Officer Perez believed that if he had not fired his service weapon, that the suspect would have stabbed him or killed him. At the time he fired his weapon, Officer Perez realized that Officer Stroup was nearby. Officer Perez stated that he heard shots being fired from an area to his right, but did not see Officer Stroup shooting. After recognizing the suspect was shot, Officer Stroup and him then moved in tactically and placed handcuffs on the male suspect and called for medical assistance. Officer Perez carries a Glock .45 caliber handgun as his service weapon.

Officer Anthony Stroup:

Commerce City Police Detective Derek Aragon and Thornton Police Detective Fred Longobricco interviewed Westminster Police Officer Anthony Stroup the night of this incident with his attorney present. Officer Stroup stated that he has seven years of law enforcement experience. Officer Stroup was in training with his K-9 at the Ranch Country Club location with Officer Perez and Boulder County Sheriff Deputy Todd Moody. They heard the tone alert of the "strong armed robbery" taking place only blocks away from their location. Dispatch advised that the man on the motorcycle had brandished a handgun during the aggravated robbery. They all went to the area and were unable to locate the suspects. He then heard over the radio that Officer Perez found the motorcycle rider near E 121st Ave and Huron St. and was in pursuit. Officer Stroup was to the east of the pursuit and joined in at the scene where the suspect dismounted the motorcycle.

Officer Stroup paralleled the foot chase in his patrol vehicle and drove through the apartment complex courtyard. Officer Stroup stated that they began to curve north while they were running in between two buildings, so he followed and as they did that, he saw the suspect start reaching down into the top part of his jacket. Officer Stroup aired this over the radio because he knew the victim said the suspect was armed with a gun and wanted to warn Officer Perez of the suspects actions. They continued north and he saw the suspect throw a laptop out of his jacket onto the ground as he ran.

Officer Stroup came into an area where he could no longer drive and got out of the patrol vehicle. He ran to the area where Officer Perez and the suspect were located, which was at Huron St. He saw the suspect reach back behind him and pull a knife out of a sheath that was attached to his belt. As the suspect pulled the knife out, the suspect turned around and squared off in a "fighting stance" with Officer Perez. He then saw Officer Perez fall to the ground and simultaneously heard gun shots. Officer Stroup then saw the suspect standing over Officer Perez, holding a knife in his hand within ten feet of Officer Perez. Officer Stroup stated that he fired an estimated three shots toward the suspect and observed the suspect flinch and turn. Officer Stroup then fired a fourth shot at the suspect's torso and the suspect fell down. Officer Stroup stated that when he fired the fourth round, he saw the suspect turning away. He was afraid that the suspect was going to continue to run into a public populated area and felt he needed to be stopped right then. Officer Stroup stated that he felt the suspect would have killed Officer Perez and himself if the suspect was not stopped. He stated that the suspects actions forced him to shoot his weapon.

Officer Stroup and Officer Perez rendered aid to the suspect after they had placed handcuffs on him. Officer Stroup stayed with the suspect and the knife, which were located close together. Officer Stroup carries a 9 mm Glock handgun.

Deputy Todd Moody:

Detective Matthew Peterson and Detective Mark Faulhaber of the Adams County Sheriff's Office interviewed Deputy Todd Moody on the night of the incident. Deputy Moody stated that he has worked for the Boulder County Sheriff's Office for eleven years and was in training on September 20, 2016 with the Westminster Police Department to become a certified K-9 handler for the Boulder County Sheriff's Office. Deputy Moody was training with Officers Stroup and Perez.

Deputy Moody stated that Officer Stroup told him that there was a robbery that occurred and that it was very close to their location. Deputy Moody got into his patrol vehicle which is an assigned Boulder County Sheriff's Office vehicle. This vehicle is equipped with both lights and sirens and has the Boulder County Sheriff's logo printed on it. Deputy Moody stated he followed Officer Perez to a location around 122nd Avenue, but could not recall any exact address, as he does not work in this area. Once he arrived at this location, Deputy Moody observed a motorcyclist that was dragging something behind him. Deputy Moody stated that this item was approximately five to ten feet behind the motorcycle and was being dragged on the ground. Deputy Moody stated that Officer Perez pursued the vehicle and that he followed as well.

Officer Perez's vehicle was a Westminster Police SUV that is clearly marked as a law enforcement vehicle with emergency lights and sirens. Deputy Moody also stated that both Officers Stroup and Perez were wearing basic duty uniforms with a Westminster Police K-9 Shirt that has a Westminster Police Department badge printed on it. Deputy Moody said that eventually the pursuit ended and he observed Officer Perez exit his vehicle and chase the male suspect on foot. Deputy Moody did not initially join the foot chase as he first secured Officer Perez's vehicle. Eventually, Officer Stroup arrived on scene and also chased the suspect on foot. Deputy Moody said that the male suspect ran through an apartment complex and eventually ran toward Huron Street. He observed the male suspect during the foot pursuit reach for something in his back area. Deputy Moody observed the suspect run toward Huron Street. Deputy Moody did not follow Officers Stroup and Perez, but instead took a different route away from Officers Stroup and Perez in an effort to capture the suspect from another direction.

Deputy Moody said that at some point during the foot pursuit, Officer Perez tripped and fell. Deputy Moody stated that when he got back to Huron Street he observed the suspect fall after being shot. Deputy Moody heard gunfire, but did not see who was shooting because he was trying to flank the suspect from a different path than Officers Stroup and Perez. Deputy Moody stated that when the suspect fell to the ground from being shot, Officers Stroup and Perez were approximately two to three yards away from him. Deputy Moody did not know which Officer shot or how many rounds, if any, each officer shot. Deputy Moody approached the suspect, put handcuffs on him and searched him. Deputy Moody observed that the suspect had a knife in his pocket on the right side, but could not recall if it was his front or back pocket. Deputy Moody stated that he found another kitchen knife with a white handle in the grass area that was approximately two yards away from where the suspect was. Deputy Moody said that during the foot pursuit, repeated commands were given to the suspect to stop running. Due to his distance from the end of the foot pursuit, Deputy Moody could not state whether commands were given just prior to the shooting.

SYNOPSIS OF WITNESS INTERVIEWS

Diane Breen:

Seventeenth Judicial District Attorney Investigator Patrick Ness interviewed Diane Breen regarding this incident. Ms. Breen said she had just got off work at Alliance Data and was stopped at the intersection of Huron and 121st Avenue and was waiting to turn north. She was in her car facing the apartment complex and had her windows down. Ms. Breen saw police vehicles pursuing a man on a motorcycle on Huron Street. This man laid down the motorcycle and fled the scene on foot. The police officers also got out of their police cars and chased the man on foot. Ms. Breen said she knew they were police officers because they were wearing black uniforms and they got out of police cars. The police cars had the emergency lights activated. The man and the police officers ran behind a building but reemerged within a minute on Huron Street.

The police officers were yelling at the man with loud voices, but Ms. Breen could not hear what they were saying. She could not recall if the officers had their handguns out. While the man was running, he was looking behind at the two police officers chasing him. Ms. Breen said she heard three gunshots. The man "went down" and Ms. Breen saw a "black" item

slide away from his body as he fell down. Ms. Breen thought the police officer closest to the man was the officer who had fired his weapon but she wasn't sure. Ms. Breen said the gunshots were in quick succession. At the time of the shooting, she described the man and the police officers being within eight feet of each other. At the time of the shots were fired, the man was running away from the police officers. Ms. Breen said she was very scared because the man "could have been coming after me for all I know," or could have been going to where she works.

Kristina Samuelson:

Seventeenth Judicial District Attorney Investigator Patrick Ness interviewed Kristina Samuelson. At the time of the shooting, Ms. Samuelson was standing outside of her work place at Alliance Data located at 995 West 122nd Avenue where she is employed as a Customer Service Advocate. From her vantage point, Ms. Samuelson could see the intersection of Huron St. and 122nd Ave. This distance is approximately one block west of the shooting location. Ms. Samuelson wears prescription glasses and was wearing these glasses at the time of the incident, but said that she sees "bad at distances."

Ms. Samuelson could see two white police vehicles with their emergency lights and sirens activated going very slowly (two miles an hour) following a male on a motorcycle. The police vehicles were "right on the butt" of the motorcycle. The motorcycle "tipped over" and the male ran away from the motorcycle and headed towards the apartment complex to the west with the officers pursuing him on foot. Ms. Samuelson heard "aggressive yelling" but could not make out the words or who was yelling. There were one or two police officers running after the male and another officer driving around the area in a police car.

The male re-emerged on the other side of the apartment complex running at a sprint with two people behind him. These people ran into the street on Huron. Ms. Samuelson said she thought she saw three people running toward her direction. All of these individuals were "in black" and she could not tell if any were police officers or not. Ms. Samuelson heard numerous sirens come into the area. Traffic on Huron street stopped for the individuals in the street. Ms. Samuelson saw a police officer wearing a short sleeve white shirt approach the three individuals. This police officer drew a weapon and "started shooting." Ms. Samuelson stated she "assumed" the officer in the white shirt was firing a weapon because "this was the only gun" she saw at the time. Ms. Samuelson heard five to six shots that were coming from the same location. Ms. Samuelson thought she heard two shots and then a short pause and then three more shots. Ms. Samuelson said at the time of the shooting the male who had been riding the motorcycle was running but she could not say whether or not this male was facing the police officers or not.

Alicia Calder:

Seventeenth Judicial District Attorney Investigator Patrick Ness interviewed Alicia Calder. She is also an employee of Alliance Data, and at the time of the incident was stopped in her car at the intersection of 122nd Avenue and Huron, waiting to turn right. Ms. Calder was stopped next to Ms. Breen's vehicle. Alicia Calder said she saw three police officers running after a male in a leather motorcycle jacket. The officers were on foot and they had badges on their uniforms. The police officers also had their guns out. The male ran onto Huron Street.

Ms. Calder said she did not see the male subject holding anything in his hand. When the police were within five feet of the male, he put his right hand on his hip and turned towards the police officers while he was still running. The male placed his right hand where Ms. Calder could see a "bulge" in his jacket. The police officer closest to the male and in between the other two officers fired his weapon. The male turned back around and fell down. Ms. Calder heard five shots and the shots were in quick succession with a small pause after the first shot. The entire shooting occurred within two seconds.

Alicia Calder said she thought the male in the leather jacket had a gun by the way he grabbed his hip and turned towards the officers. She could not see the male's right hand because she was positioned on the left side of him and the police officers. After the shooting, the police officers approached the male and searched him. Ms. Calder estimated the time she first saw the police chasing the male and the time the shooting ended was approximately thirty seconds.

Robert Hall:

Commerce City Detectives Aran Conroy and James Zamora interviewed Robert Hall regarding the incident at his home on September 20, 2016. Mr. Hall said he was just getting to his ex-wife's apartment complex at 12163 Melody Drive when he observed a male party running west from police officers who were pursuing him on foot, as well as an SUV police vehicle. Mr. Hall said he went west about forty yards and stood at the northwest corner of the apartment block 12152. Mr. Hall observed the male party run toward Huron Street on the west side of apartment block 12152 still pursued by officers who shouted for him to stop. When the male party reached Huron Street, officers fired several shots striking him in the back causing him to fall. Mr. Hall said, "Those cops murdered him," and added "what I said in the statement is exactly what happened.." Mr. Hall recalled that the "SWAT looking officer" fired about five times and the "other cop shot twice." Mr. Hall was about 30 to 35 feet from the scene and estimated the officers were within ten feet of the male party when they fired at him.

Michelle Herrera:

Detectives Aran Conroy and James Zamora interviewed Michelle Herrera at her home on September 20, 2016. Ms. Herrera said she was standing out on her patio of her apartment and observed a male party running west through the courtyard from two police officers on foot and one in an SUV. Ms. Herrera heard two gunshots, but the officers and the male party were obstructed from view from apartment building 12152. After hearing the shots, Ms. Herrera left her patio and went to the parking lot about 10 yards north where she looked west and observed the male party, approximately 90 yards away, laying on the ground while the officer with the "bigger build" fired four shots at him. Ms. Herrera stated that she was standing next to Mr. Hall when she observed this in parking space 528.

CRIME SCENE INVESTIGATION

Scene collection and evidence analysis was done by members of the CIIT. The scene investigation and examinations revealed the following:

On September 20, 2016, CSI Von Bailey with the Adams County Sheriff Office processed the area of West 122nd Avenue and Huron Street. The body of Thomas Tucker was lying in the right lane of the entrance into the apartment complex on northbound Huron St., just south of W. 122nd Ave.,. The head of the decedent was facing towards the north and the feet to the east. A white sheet covered the upper half of the decedent's body and a grey wool blanket covered the lower half of the decedent. A canopy had been placed over the decedent and screens were placed around the sides, again to conceal the scene from onlookers. As a point of reference, building twenty-four, (24) of the apartment complex was about fifty (50) yards east of the decedent, and building twenty-five (25) was about seventy-five (75) yards southeast of the decedent. In between building number twenty-four (24) and where Mr. Tucker was located is a parking lot, a row of trees, sidewalk and then in-between the sidewalk and Huron St. there is a grass/weeds area.

A patch of green tangle foot weeds was located east of Mr. Tucker, between the street and a sidewalk. Eight (8) Speer 45 Auto cartridge cases and one (1) Speer 9mm Luger + P cartridge cases were located and collected in the vicinity. In this same area, investigators located a fixed blade, kitchen type knife with a grey and white handle. Investigators also found a black leather knife sheath in the weeds about twenty five (25) feet southeast of the decedent.

In the courtyard east of building twenty-five (25) and north of building twenty-two (22) was a black "Black Label," model 1911, 380 caliber semiautomatic handgun bearing serial number 51HZV07260. The magazine was removed from the weapon and upon examination appeared to be loaded with seven (7) live cartridges. Inside the chamber of the weapon was a spent CBC 380 Auto + P cartridge casing. Typically, a semiautomatic handgun will automatically eject a cartridge case from the chamber of the weapon after it has been fired.

CSI Dennis Davenport with the Commerce City Police Department examined the gun that Mr. Tucker dropped and found a fired casing in the chamber. It was not clear if the suspect fired at the officers and the casing failed to eject or if the pistol was nonfunctional at the time of this incident.

CSI Davenport examined Officer Stroup's firearm, a Glock model 17, 9mm pistol with serial number VPT314, and a "Xiphos NTx" light mounted to the front of the firearm. The firearm was loaded with thirteen (13) live 9 mm rounds in the magazine and one (1) live 9 mm round in the chamber. Officer Stroup had two additional magazines on his duty belt. Each magazine was loaded with seventeen (17) live 9 mm rounds. CSI Davenport confirmed with Officer Stroup that he had loaded each of his magazines with seventeen (17) rounds and one round in the chamber of the firearm, for a total of eighteen (18) live bullets. As such, provided that Officer Stroup had indeed loaded each magazine as he stated, his round accountability revealed that he fired four (4) rounds.

CSI Davenport also examined Officer Perez's firearm, which is a Glock model 21, 45 cal.

firearm with serial number HZS818. The firearm was loaded with five (5) live 45 caliber rounds in the magazine and one (1) live 45 caliber round in the chamber. Officer Perez had two (2) additional magazines on his duty belt. Each magazine was loaded with thirteen (13) live 45 cal. rounds. CSI Davenport confirmed with Officer Perez that he had loaded each of his magazines with thirteen (13) rounds and one round in the chamber of the firearm, for a total of fourteen (14) live bullets. Therefore, provided that Officer Perez had indeed loaded each magazine as he stated, his round accountability revealed that he fired eight (8) rounds.

AUTOPSY AND ANALYSIS:

Dr. Stephen J. Cina performed a forensic autopsy on Thomas Tucker on September 21, 2016, and concluded that Mr. Tucker died as a result of multiple gunshot wounds. Dr Cina found that Mr. Tucker had six (6) gunshot wounds and identified them in his autopsy report. Dr. Cina is not able to determine the sequence of the gunshot wounds, but was able to identify the locations of the entry wounds.

Mr. Tucker had a gunshot wound to his left arm in the upper triceps area that exited his arm in the left mid biceps area. Mr. Tucker had a gunshot wound to his upper mid back that exited his left chest just below his left nipple. Mr. Tucker had a gunshot wound that entered his left side of his lower back with a projectile associated with this entry wound recovered from his right upper back. Mr. Tucker had a gunshot wound located in the left lower back area with a projectile associated with this entry wound found on the left side of his chest next to his second left rib. Mr. Tucker had a gunshot wound to his left chest with a projectile associated with this entry wound found in his chest area just below the entry wound. Mr. Tucker had a gunshot wound in his right forearm with a projectile associated with this entry wound found in his left forearm.

LEGAL ANALYSIS

As was previously noted, this review is limited to determining whether criminal charges should be filed 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 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 the officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

There is no dispute that Officer Damian Perez and Officer Anthony Stroup intentionally fired their weapons and caused the death of Mr. Thomas Tucker. The legal question presented to the Office of the District Attorney is whether it can be proved beyond a reasonable doubt that at the time the officers fired their weapons that their actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under § 18-

1-707, C.R.S. (2016), 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 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 affecting 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. (2016).

LEGAL ANALYSIS AS TO OFFICER DAMIAN PEREZ

Officer Perez was responding to an aggravated robbery crime scene where a gun was involved. The victim of the crime identified a suspect while Officer Perez was on the scene. Officer Perez activated his emergency lights and began to pursue the suspect, Mr. Tucker. The suspect failed to stop on his motorcycle and Officer Perez pursued him to make an arrest. In doing so, Officer Perez observed a large knife in a sheath tucked in the back of the suspect's pants. As Officer Perez began his foot pursuit, he saw Mr. Tucker attempt to arm himself with a firearm and drop it. As the foot pursuit continued to Huron St., Mr. Tucker pulled a large knife out of his sheath and took what Officer Perez described as a “fighting stance” within ten (10) to fifteen (15) feet of Officer Perez.

At this point, Officer Perez fired his weapon at least two times and tripped on the sidewalk. Officer Perez rolled over to a seated position, at which point Mr. Tucker stood over him with the knife still in his hands. and Officer Perez then fired multiple additional shots, causing Mr. Tucker to go down.

The evaluation of Officer Perez's actions must take into consideration the witness statements, the officers' statements, and the physical evidence. Under these facts, the Office of the District Attorney cannot prove that Officer Damian Perez's actions were not justified as applied to § 18-1-707. Therefore, the prosecution is unable to prove beyond a reasonable doubt that Officer Damian Perez committed the elements of any crime.

LEGAL ANALYSIS AS TO OFFICER ANTHONY STROUP

Officer Stroup was responding to the scene of an aggravated robbery involving a gun. He observed Officer Perez pursuing Mr. Tucker on foot. He engaged in the pursuit in his patrol vehicle until he could no longer drive it in the area. He then joined the foot pursuit of Mr. Tucker.

During the pursuit, he saw Mr. Tucker reach back behind his body and pull a knife out of a sheath that was attached to his belt. As Mr. Tucker pulled the knife out, he turned around and squared off in a “fighting stance” with Officer Perez. Officer Stroup saw Officer Perez fall to the ground and heard simultaneous gun shots. Officer Stroup then saw Mr. Tucker standing over Officer Perez, holding a knife in his hand within ten (10) feet of Officer Perez. Officer Stroup stated that he then fired an estimated three (3) shots towards Mr. Tucker and observed Mr. Tucker flinch and turn. Officer Stroup then fired a fourth shot at Mr. Tucker's torso and Mr. Tucker fell down. Officer Stroup also stated that he was afraid that Mr. Tucker was going to continue to run into a public populated area and felt he needed to be stopped immediately.

This evaluation of Officer Stroup's actions must take into consideration the witness

statements, the officers' statements, and the physical evidence. Under these facts, the Office of the District Attorney cannot prove that Officer Stroup's actions were not justified as applied to § 18-1-707. Therefore, the prosecution is unable to prove beyond a reasonable doubt that Officer Anthony Stroup committed the elements of any crime.

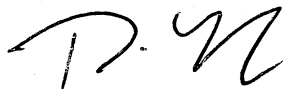
CONCLUSION

Based on the officers' observations, they had a reasonable belief that Mr. Tucker had committed a felony with the use of a deadly weapon and was trying to escape. They also reasonably believed that there was an imminent need to stop Mr. Tucker in the interest of public safety. When Mr. Tucker pulled a large knife and threatened Officer Perez, the officers' made reasonable conclusions that their lives were in danger as well as other members of the public .

Additionally, the amount of force used was reasonable, because Mr. Tucker was armed with a large knife, was in close proximity of Officer Perez, and appeared to advance on Officer Perez. Both officers stated that they fired their weapons because Mr. Tucker threatened Officer Perez with a knife. As such, there is no basis for which to conclude a lesser degree of force was necessary. Mr. Tucker's actions and behavior dictated the officers response of firing their weapons.

Given all the facts and circumstances, the prosecution cannot prove that the involved officers actions of pulling their triggers intending to shoot Mr. Tucker was not justified as applied to §18-1-707. Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against any of the officers for shooting Thomas Tucker on September 20th, 2016. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,

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

Dave Young
17th Judicial District Attorney