



September 15, 2017

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

Re: The investigation of the officer involved shooting of Joseph David Jaster,
DOB 01/26/977, occurring on May 9th, 2017

Dear Chief Carlson:

The investigation and legal analysis of the officer involved shooting of Joseph David Jaster has been completed. The investigation into this matter was conducted by the 17th Judicial District Critical Incident Team. The investigation was led by Det. Doug Parker and Det. Bryan Adair of the Thornton Police Department. The investigation was presented to the 17th Judicial District Attorney's Office on July 10th, 2017 and included police reports, videos and interviews from lay witnesses and police officers, photographs, diagrams and the scene investigation. The District Attorney's Office review of these materials found the investigation to be 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 each individual agency.

Based on the evidence presented and the applicable Colorado law, no criminal charges will be filed against the officers involved in this incident.

OVERVIEW OF THE INCIDENT

An anonymous person called the Adams County Sheriff's Office on May 8, 2017 to report that an individual named Joseph Jaster had been riding a stolen blue and silver Yamaha Sport bike with skulls on it and that Mr. Jaster had been at the residence located at 1318 W. 135th Ave. in Westminster the previous day. The reporting caller said that Mr. Jaster would elude officers if he were contacted and made statements that, "he will shoot it out with the police." The caller also said Mr. Jaster would be armed with a .40 caliber handgun. An Officer Safety Information Bulletin was created and distributed to local law enforcement agencies based on the reporting party's call.

On May 9th, 2017, Officer Damien Perez received this information during his shift briefing. While on patrol at approximately 5:18 p.m. that day near 120th and Huron Street, Officer Perez saw an individual matching the description riding the same type of motorcycle. Officer Perez last saw this individual heading in the direction of 1318 W. 135th Ave.

Officer Perez went to the residence and located Mr. Jaster in the front yard. Officer Perez drew his weapon and told Mr. Jaster that he was under arrest. Mr. Jaster then walked into the house while maintaining eye contact with the officer. At approximately 5:56 p.m., Officers set up a perimeter around the house and established that Mr. Jaster had not exited the home from the rear. Officers were able to speak to the owner of the residence, Yvonne Barton, at 6:07 p.m. and confirmed that Mr. Jaster was in the home along with Ms. Barton and a child. The child and Ms. Barton exited the home about seven minutes after speaking with officers. Ms. Barton told officers that the last time she saw Mr. Jaster in her home, he was in the basement and that he had a .9 mm pistol and was making suicidal statements. She also said he was the only person left in the home and that he was "agitated."

Officers attempted numerous times to get Mr. Jaster to come out of the home using a bullhorn and by calling a phone number believed to be Mr. Jaster's phone. All of these attempts resulted with no response from Mr. Jaster until 7:38 p.m., when Mr. Jaster yelled from the residence asking why he was under arrest. Officers advised Mr. Jaster that he had outstanding warrants. Mr. Jaster then threatened to shoot himself and told officers that he, "wanted his last meal and a body bag."

Based on the situation a SWAT team and a negotiator were called to the scene. The negotiator made numerous and continued attempts to get Mr. Jaster to communicate with him and to come out of the home. At 9:06 p.m., after previous contact attempts failed, the negotiation team attempted to contact Mr. Jaster with the use of a "throw phone." A "throw phone" is a cellular telephone that is placed in the residence that is directly connected to and monitored by the negotiations team. There was no response to repeated requests to communicate with Mr. Jaster.

Since all attempts at communication failed, and Mr. Jaster made threats of shooting officers or himself, SWAT deployed teargas into the home. Additional attempts to communicate with Mr. Jaster failed. SWAT then made the decision to enter the home. Initially, there was an attempt to use a robot to search the home, but due to the excessive amount of clutter in the home, the robot was not able to move around in the home. The home was in a state of disarray with all but narrow walkways containing clutter up to six feet tall. Even the walkways had clutter in

them, making it impossible to search for Mr. Jaster with a robot.

The SWAT team consisting of Officers Brian Hemplemann, Mark Cressman, Mike Catalano, David Galbraith, Jason Poppenger, Drew Smith, and Robert DeHerrera searched for Mr. Jaster room by room starting in the upstairs rooms and working their way to the basement of the residence. At 10:59 p.m., after a prolonged search, Officers Galbraith and Catalano found Mr. Jaster hiding behind the furnace in the basement crawlspace of the home.

Mr. Jaster was in possession of a handgun. As Officers ordered him to drop the gun, Mr. Jaster responded with "I am not dying today" or "I am dying today" and raised his gun pointing it in the direction of Officer Galbraith. Officers Galbraith and Catalano both fired their weapons at Mr. Jaster. Both officers saw a muzzle flash from Mr. Jaster's gun. Sergeant Poppenger, who was standing at the entrance of the crawlspace at the time shots were fired, also fired his weapon in the direction of Mr. Jaster. Hearing shots fired, Officer Smith fired his weapon through the floor of the kitchen in the direction of Mr. Jaster's location.

Mr. Jaster died as a result of multiple gunshot wounds. It was later discovered that Mr. Jaster fired at least one .9 mm round from his handgun that went through the floor above the crawlspace into the stairs of the residence, striking Sergeant Brian Hempleman in the arm.

SYNOPSIS OF LAY WITNESS INTERVIEWS

Yvonne Barton: Ms. Barton is Ms. Jaster's girlfriend and lives at the residence with her mother and her seven year old son. She told officers at the scene that she was at home with her child when Mr. Jaster came over to the residence to help her fix her car. Mr. Jaster was outside working on her car when he came in the home and was frantically running around with a gun saying he needed to find a place to hide. He tried to hide under a pile of clothes and when she told him he couldn't hide there, he said, "Get the fuck out!" Ms. Barton stated that she then got her child and left the home. She said that he was the only person left in the home and he made suicidal statements when talking to her. Ms. Barton provided a drawing of the layout of the home and stated that the most likely place to hide would be the crawlspace in the basement of the home because the attic requires a ladder to access it.

Erica Boland: District Attorney Investigator Dave Tallman interviewed Ms. Boland on May 16, 2017. Ms. Boland is Mr. Jaster's ex-wife and said that Mr. Jaster had a history of verbal and physical abuse in their relationship and abused alcohol and drugs.

Jerry Jaster-Videler: Investigator Dave Tallman interviewed Ms. Jaster-Videler on May 18, 2017. Ms. Jaster-Videler is the mother of Mr. Jaster and said that she last saw her son in 2012, but did speak to him regularly. She stated that Mr. Jaster had a drinking problem and is a recreational drug user. During their conversations Mr. Jaster told her that he would rather be dead than go back to jail. In her opinion, Mr. Jaster committed "suicide by cop."

Alece Dickhaut: Investigator Dave Tallman interviewed Ms. Dickhaut on May 30, 2017. Ms. Dickhaut is Mr. Jaster's wife. She stated that she and Mr. Jaster had been separated for about a year but still hung out together. She believes he was still using Methamphetamines, but does not believe he had an alcohol problem. She said that Mr. Jaster has on several occasions made statements that no matter what happens he is not going back to prison.

SYNOPSIS OF LAW ENFORCEMENT OFFICER INTERVIEWS

Officer Damien Perez: Thornton Police Detective Brent Mullen and Adams County Sheriff Detective Richard Brookman interviewed Officer Damien Perez on May 10, 2017. Officer Perez said that he had received information during his shift briefing about Joseph Jaster having an arrest warrant. While Officer Perez was responding to a call for service, he saw a male matching the description of the Mr. Jaster riding a motorcycle near 120th Avenue and Huron Street. Officer Perez called the Police Department and had someone send him a photograph of the motorcycle involved with Joseph Jaster. Officer Perez stated that the photo he received did appear to be the person he had seen on the motorcycle. Officer Perez then met with his sergeant and informed him he had possibly seen the man and the motorcycle near 135th Drive. Officer Perez last saw this individual heading in the direction of 1318 W. 135th Ave.

Officers set a perimeter while one officer drove past the possible residence to see if the motorcycle was present. The bolo for the wanted man stated he was known to be armed and would possibly "shoot it out with police." Once on scene, Officer Perez recognized that the male in the front yard appeared to be Joseph Jaster. Officer Perez stated, "Joseph Jaster, you're under arrest." The male immediately turned and made eye contact with Officer Perez at which time Officer Perez was able to visually confirm the male as Joseph Jaster. Officer Perez said that Mr. Jaster then turned and ran directly into the house.

Officer Perez spoke with a neighbor who confirmed that Mr. Jaster did not exit the rear of the house. Officer Perez stated they were able to communicate with Yvonne, the female occupant of the residence and she confirmed that Joseph Jaster was still inside the house. Officer Perez attempted to contact Mr. Jaster via the public announcement speaker in his patrol vehicle. Officer Perez said at one point an officer heard Mr. Jaster asking what he was wanted for and officers replied that he had warrants for his arrest. Officer Perez stated Mr. Jaster told them he wanted his "last meal and a body bag." Officer Perez said these short conversations were taking place at around the same time as the SWAT team was arriving.

Commander Dave Lester: Detectives Doug Parker and Bryan Adair with the Thornton Police Department interviewed Commander Dave Lester on May 10, 2017 at 2:09 a.m. Commander Lester is in charge of the Westminster Police Department SWAT team. Commander Lester said that the SWAT Team members assembled and were briefed of the incident prior to responding to the address. Commander Lester stated that part of this briefing included Mr. Jaster's statement to officers at the scene, "I want my last meal and a body bag." The SWAT team went to the residence and Commander Lester said that they attempted negotiations with Mr. Jaster using a speaker type intercom system initially, where they announced themselves as police officers and told Mr. Jaster to surrender.

After determining the use of the loud speaker to be ineffective, a throw phone was deployed into the house in a further attempt to have Mr. Jaster surrender. Commander Lester advised that after unsuccessfully contacting Mr. Jaster by use of the speaker and throw phone, they decided to introduce chemical munitions (teargas) into the house. Chemical munitions were ineffective on Mr. Jaster inside of the residence, at which point the SWAT Team then deployed a mechanical robot, equipped with a fixed live visual recording device. The robot was deployed in an attempt to locate Mr. Jaster's position within the house. While in the house, the robot was unable to maneuver through the house, due to clutter and piles of debris constantly blocking its

way.

The SWAT team then decided to make entry into the residence. Commander Lester said that every available option was used prior to deciding to make entry into the house, including hours of attempted communication with Mr. Jaster. SWAT made entry into the residence and eventually went into the basement to clear the crawlspace area. Commander Lester could hear a SWAT team member say "he's got a gun" and then could hear shots being fired from within the residence.

Sergeant Brian Hemplemann: Detectives Doug Parker and Bryan Adair interviewed Sergeant Brian Hemplemann on May 11, 2017. Sergeant Hemplemann identified himself as a K9 handler with the Westminster Police Department. Sergeant Hemplemann said he took his dog into the residence and assisted with the search of Mr. Jaster. He stated that as the SWAT Team members entered into the crawlspace, he was standing somewhere near the stairs between the main floor and the basement. He said a bullet struck him under his right arm, which he assumed came through the floor. Officer Hemplemann said he fell backwards onto his dog, and crawled to the back door of the residence with his dog because he thought he was getting shot at through the floor. Sergeant Hemplemann was taken to the hospital and treated for a gunshot wound to his arm. He said the next day he went back to the home to help the crime scene investigators determine the trajectory of the bullet that hit him in his arm.

Officer Mark Cressman: District Attorney Investigator Dave Tallman interviewed Officer Mark Cressman on May 10, 2017. Officer Cressman said that upon arriving on scene he was assigned to the southeast corner of the house on the east side of the house. Officer Cressman stated that he maintained his position while attempts were made to contact the male with a "Hailer," (loud speaker), and a "throw phone." When the male refused to respond, Sergeant Steve Holton and Operator Steve Roll began breaching the windows on the south side of the house. Officer Cressman stated that the officers attempted to introduce a robot into the house through both the front and rear doors, but were unsuccessful because of the clutter and debris blocking both entry points. Officer Cressman stated that a five man entry team was deployed and cleared the house, which resulted in no contact with Mr. Jaster. Officer Cressman was called into the house to assist with a second search of the house.

Officer Cressman stated that the main floor was cleared while K9 Sergeant Hemplemann sent his canine into the lower level and cleared the crawlspace. Officer Cressman stated that after Sergeant Hemplemann and his canine left the house, he remained in the kitchen/living room area. Sergeant Hemplemann and his canine re-entered the house and moved to the top of the stairs. Officer Cressman stated that he was behind Sergeant Hemplemann when he heard several gun shots. He saw Sergeant Hemplemann fall back onto the floor and thought Sergeant Hemplemann had been shot. Officer Drew Smith, who was just outside the kitchen in the living room, then shot approximately three to four times into the floor down towards the crawlspace. Officer Cressman stated that he helped Sergeant Hemplemann get up and they both went outside.

Officer Mike Catalano: Thornton Police Detective Brett Mullen and District Attorney Investigator Dave Tallman interviewed Officer Mike Catalano on May, 10, 2017 with his attorney present. He said that he is a member of the SWAT Team that was called out on this incident. He was positioned near the front of the home and heard the numerous attempts to get Mr. Jaster to come out of the home. He said that the negotiations went on for a prolonged period of time, during which time Mr. Jaster was informed that he was under arrest, but Mr. Jaster failed

to respond to any type of communications. Officers decided to breach the house and the windows were broken out. Subsequently, officers deployed teargas to try and get Mr. Jaster to come out of the house. Officers introduced a robot into the home to try and help with the search. The clutter in the home made this effort impossible. A canine was released to help clear the home and search for Mr. Jaster but was also unsuccessful.

The SWAT Team did a room to room search until the last place they looked was the crawlspace in the basement. The entrance of the crawlspace was a small rectangular door that was blocked by a dresser or credenza. Officer Galbraith was the first to enter the crawlspace with his handgun drawn. Officer Catalano also entered with his handgun drawn. Officer Catalano said that Officer Galbraith moved to his right along a wall in the crawlspace. Deep in the crawlspace, Officer Catalano saw what he described as a body part behind the furnace and in front of the back wall. Officer Catalano said that he challenged Mr. Jaster by ordering him to show his hands. Mr. Jaster responded verbally, but Officer Catalano could not make out what he was saying. Officer Catalano asked for his rifle because he knew that he would need more penetrating power. Officer DeHerrera then handed him his rifle.

Officer Catalano said that as he was getting the rifle, Officer Galbraith moved into a position next to him and commanded Mr. Jaster to show his hands. Mr. Jaster then sat up saying that he had a gun in his hand and continued to say, "I am not going to die today." After saying this, Mr. Jaster raised the gun up while all the officers were yelling at him to drop the gun. Mr. Jaster then pointed the gun at Officer Galbraith. Officer Catalano said that he was in fear for his life and the life of Officer Galbraith, so he fired his rifle in the direction where he knew Mr. Jaster's body was located based on where he saw his head. Officer Catalano stated that Officer Galbraith and Sergeant Poppenger fired their weapons at the same time he did. He further recalled that he saw muzzle flashes coming from Mr. Jaster's gun. Officer Catalano thought that he fired twenty eight rounds and that he was approximately fifteen feet away from Mr. Jaster when he fired. Officer Catalano described the lighting in the crawlspace as dark, and that the only illumination was from the officer's flashlights. Officer Catalano believed that if he had not fired his weapon, that he and Officer Galbraith would have been killed.

Officer Catalano said that Officer Galbraith checked on Mr. Jaster and found that he was deceased. Mr. Jaster's weapon was collected and they left the house because after the shooting there was a strong odor of natural gas that might have been caused from a bullet striking a gas line. The SWAT team then exited the residence until the space was made safe.

Officer Dave Galbraith: Detectives Doug Parker and Bryan Adair interviewed Officer Dave Galbraith on May 10, 2017 with his attorney present. He stated that he is a member of the SWAT Team and was called out to deal with an armed person barricading himself in a home. His team was positioned in front of the house while negotiators attempted to make contact with Mr. Jaster and get him to come out of the home. Those attempts failed and the negotiators tried next to use a "throw phone." The requests for communication using the phone went on for an extended period of time without response so they tried to get Mr. Jaster to come out by using teargas. Officer Galbraith said that they also put a robot into the home but it was ineffective because the home was cluttered.

The SWAT Team ultimately entered the house and did a room by room search, but it took a long time because of the clutter. The search started upstairs and ended in the basement crawlspace. Officer Galbraith stated that he was the first officer that went into the crawlspace

armed with his handgun after he gave another officer his rifle to make it easier to maneuver in the tight quarters of the crawlspace. He moved to his right and followed a wall deep into the crawlspace near a furnace.

Officer Galbraith said as he went further into the crawlspace, Officer Catalano entered as well. At about that time, Officer Catalano said that he saw movement in the direction of the furnace. Officer Galbraith said that he saw the black plastic sheeting moving and began giving verbal commands for Mr. Jaster to show his hands, and Mr. Jaster responded with, "I'm not dying today" or "I am dying today." Mr. Jaster also said that he had a gun in his hand. Officer Galbraith said that the officers continued to challenge Mr. Jaster to drop the gun and then Officer Galbraith saw Mr. Jaster's head come up as officers were giving these verbal commands. Shortly after this, Mr. Jaster pointed the gun at Officer Galbraith, causing him to believe he was going to be shot. Officer Galbraith said he fired his weapon and noticed that there were muzzle flashes coming from the area that Mr. Jaster was in. Officer Galbraith shut off his light and moved to get a better angled shot, and fired a second volley when he saw that Mr. Jaster was still moving.

Officer Galbraith described the lighting in the crawlspace as "pitch black." He added that the crawlspace was illuminated well with officer's flashlights and that he was approximately ten feet away from Mr. Jaster when he fired his weapon. As he approached Mr. Jaster, Officer Galbraith noticed the smell of natural gas so he retrieved Mr. Jaster's gun and left the home for safety reasons. The hammer of the gun was in the cocked-back position when Officer Galbraith retrieved it.

Sergeant Jason Poppenger: Detectives Doug Parker and Bryan Adair interviewed Sergeant Jason Poppenger on May 10, 2017 with his attorney present. During his interview he said that he is a member of the SWAT Team and was called out to a situation where an armed person was barricaded in a house and was homicidal and suicidal. Sergeant Poppenger was the leader for the team that made entry into the home and is responsible for assisting with formulating a plan and coordinating all of the teams. Sergeant Poppenger stated that part of this briefing included a statement from Mr. Jaster to officers at the scene, "I want my last meal and a body bag."

The SWAT Team went to the residence and secured the perimeter. The SWAT negotiator attempted communications for a long time, which consisted of asking Mr. Jaster to come out of the home and advising him that he was under arrest. The communication attempts continued with the use of a "throw" phone. Sergeant Poppenger said that after all attempts to start a dialog had failed and Mr. Jaster had not come out of the home, the SWAT Team used teargas to try and get Mr. Jaster to leave the house. When the teargas was unsuccessful, the SWAT Team made entry into the home and tried to use a robot to find Mr. Jaster, but because of the immense amount of clutter in the home, the robot was only used on the first floor.

The SWAT Team performed a slow and deliberate search that consisted of many officers holding an area within the home, searching it, and then moving to the next area. Throughout the duration of this event, police and negotiators were making requests of Mr. Jaster to come out of the home. The amount of clutter in the home created a tactical advantage for anyone wanting to harm the officers searching. The obstacles also prolonged the amount of search time. The team searched the main level first, then the upstairs, the basement, and finally, the crawlspace.

Sergeant Poppenger stated that the small door to the crawlspace had a single entry point. This confined space created a dangerous and inferior tactical position for the officers. Officers Galbraith and Catalano were the first officers to enter the crawlspace armed with their handguns. Officer Galbraith made his way deeper into the crawlspace while Officer Catalano rearmed himself with a rifle to provide cover through some of the obstructions like ductwork. Sergeant Poppenger said that he heard a commotion and that Officer Galbraith started saying, "show me your hands," "I got contact," and "He's back here." Officer Catalano engaged Mr. Jaster telling him to show his hands and then said, "He's back behind the furnace." Sergeant Poppenger said he heard gunfire from behind the furnace and saw Officer Catalano fire his weapon. Sergeant Poppenger moved into a position next to Officer Catalano and fired his weapon approximately five times through the ductwork in an effort to neutralize the threat.

Sergeant Poppenger said that he knew that Mr. Jaster was firing his weapon from behind the furnace because he could hear shots ringing out from behind the furnace. Sergeant Poppenger stated that at the time he fired his weapon, he was concerned about the safety of all the officers in the area, and that Mr. Jaster was firing his weapon at Officers Catalano and Galbraith. When they all believed the threat was over and there was no more movement, they retrieved Mr. Jaster's gun and exited the home because of the smell of natural gas.

Officer Drew Smith: Detectives Doug Parker and Bryan Adair interviewed Officer Smith on May 11, 2017 with his attorney present. He said that he is a SWAT Team member that was called out to participate in a barricade situation. He was responsible for breaching the entrance and holding an inner perimeter of the house. Officer Smith stated that communication with Mr. Jaster was repeatedly attempted, but went unanswered. Teargas was also unsuccessful in getting Mr. Jaster to come out. Officer Smith said that after using the teargas, SWAT tried to use a robot and a canine to locate Mr. Jaster, but were unsuccessful.

Officer Smith said that the search of the residence took a long time but ended up in the basement level crawlspace. The canine was sent into the crawlspace and came back out, and then he heard a gunshot from the crawlspace, so the canine was sent back in but later came back out without finding Mr. Jaster. After that, officers went into the crawlspace. Officer Smith said he was upstairs on the main level watching that level and the upstairs level when he heard a shooting coming from the corner of the crawlspace and then heard additional gunfire he believed to be from the officers.

As shots were fired from the corner of the crawlspace, the K9 Sergeant Brian Hemplemann fell down on his dog. Officer Smith said he believed that Sergeant Hemplemann was wounded. As the officers on the main level were getting out of the home, Sergeant Hemplemann said, "He is shooting through the floor." Officer Smith said he fired his rifle approximately nine times through the floor into the crawlspace because he was afraid for his safety and the safety of other officers. He stated that he fired through the floor into the area he knew Mr. Jaster was located. His decisions were based on his tactical training, knowing where his fellow officers would be located, and the distinctive sounds of the different types of weapons used. Officer Smith said that after he fired his weapon, he left the home with Sergeant Hemplemann as quickly as he could.

Officer Robert DeHerrera: Adams County Sheriff Detective Richard Brookman interviewed Officer Robert DeHerrera on May 10, 2017. Officer DeHerrera said he is a member of the entry team on the Westminster Police Department SWAT Team. Officer DeHerrera said he was part of the team who responded to a call of a person who was barricaded into a home and was wanted for multiple warrants at a residence located at 13181 W 135th Drive. Upon arrival at the address, Officer DeHerrera stated the SWAT Team initially cleared the garage and the immediate area around the home in order to provide an area to operate if the wanted suspect surrendered himself. Officer DeHerrera stated that patrol officers were relieved of their duties and a "Hailer" was brought up for a negotiator to give commands, but there was no response. Officer DeHerrera stated that at one point, windows were broken out of the home and "gas was introduced." Once it was decided the suspect was not coming out, SWAT operators made entry into the home and started a slow search for the suspect. Officer DeHerrera described this as a lengthy process due to the amount of "clutter" in the home.

Once the upstairs was cleared, Officer DeHerrera stated that the team began searching the basement. He said that officers continued to make verbal announcements. When they were conducting a manual search, Officer DeHerrera noted a desk along the west wall of the basement which he believed looked as if it had been moved. Officer DeHerrera said that the basement of the home was finished, but filled with clutter like the other floors. Officer DeHerrera stated that the access to the crawlspace was approximately two feet by two feet and was finished with drywall. He said that he and Officer Galbraith moved the desk. Officer Galbraith then knocked the access cover open, revealing another room filled with clutter. They decided to introduce a canine, who spent very little time in the room. The canine was commanded to search a second time, but again spent very little time searching due in part to the amount of clutter inside the room.

Officers Galbraith and Catalano then entered the crawlspace to conduct a manual search. Due to the small size, ceiling height and amount of clutter in the crawlspace, the two SWAT operators used only their handguns, electing to leave their rifles with operators outside the crawlspace. Officer DeHerrera stated that he heard Officers Galbraith and Catalano start giving commands, which he knew meant that they were in contact with a suspect. Officer DeHerrera believed he heard both officers giving commands. He heard an unknown third male voice but was unable to discern what that person was saying. Officer DeHerrera gave Officer Catalano his long gun because Officer Catalano's was left behind.

Officer DeHerrera stated that he heard one of the officers say the male had a gun and the officer say "Drop the gun, drop the gun, drop the gun!" Shortly thereafter, he heard gunfire. Officer DeHerrera said that his team leader, Sergeant Poppenger, went into the crawlspace, gave a command and fired his weapon. Officer DeHerrera said that he was not able to get into the crawlspace because there was not enough room. Officer DeHerrera said he decided to hand Officer Catalano his rifle because both rifles are functionally the same. Officer DeHerrera said after the shooting stopped, they immediately smelled natural gas so they backed out and called the fire department.

CRIME SCENE INVESTIGATION AND EVIDENCE ANALYSIS

Members of the Critical Incident Team conducted the crime scene collection and evidence analysis. Thornton Police Department Crime Scene Investigator Doug Young and

Commerce City Police Department Crime Scene Investigator Dennis Davenport performed a scene investigation that included but was not limited to taking photos and video, documenting and collecting evidence, trajectory analysis, weapon and round accountability.

Investigator Davenport met with each officer who fired their weapon in this incident individually in a separate conference room shortly after this incident to collect and examine their firearms. He first met with Sergeant Poppenger and examined Sergeant Poppenger's rifle, which is an LMT Guardian .556 caliber semi-automatic rifle. Sergeant Poppenger stated that he carried a total of five (5) rifle magazines, each loaded with twenty eight (28) .556 rounds. Sergeant Poppenger stated that he had done a tactical re-load after firing his rifle, meaning that after the initial firing of rounds, he dropped the magazine in the weapon and reloaded with a new fully-loaded magazine. Investigator Davenport found that his rifle had one (1) live round in the chamber and twenty-eight (28) live rounds in the magazine. One of his magazines had twenty (20) live rounds in it, and the additional three magazines had twenty-eight (28) live rounds in each. Provided that Sergeant Poppenger had indeed loaded each magazine as he stated, his round accountability indicated that he fired eight (8) .556 rounds.

Investigator Davenport then met with Officer Catallano and examined Officer Catallano's rifle, which is also an LMT Guardian .556 caliber semi-automatic rifle. Officer Catallano stated that he carried a total of five (5) rifle magazines, each loaded with twenty-eight (28) .556 rounds. Officer Catallano stated that he believed that he may have left one of his magazines at the scene; this magazine was later recovered and discovered to be empty. Investigator Davenport found that his rifle had one (1) live round in the chamber and twenty-eight (28) live rounds in the magazine. The additional three magazines had twenty-eight (28) live rounds in each. Provided that Officer Catallano had indeed loaded each magazine as he stated, his round accountability proved that he fired twenty-eight (28) .556 rounds.

Investigator Davenport then met with Officer Drew Smith and examined Officer Smith's rifle, which is also an LMT Guardian .556 caliber semi-automatic rifle. Officer Smith stated that he carried a total of four (4) rifle magazines, each loaded with twenty eight (28) .556 rounds. Officer Smith stated that he had done a tactical reload after firing his rifle. Investigator Davenport found that his rifle had one (1) live round in the chamber and twenty-eight (28) live rounds in the magazine. One of his magazines had nineteen (19) live rounds in it, and the additional two magazines each had twenty-eight (28) live rounds. Provided that Officer Smith had indeed loaded each magazine as he stated, his round accountability indicated that he fired ten (10) .556 rounds.

Investigator Davenport then met with Officer Galbraith and examined Officer Galbraith's rifle, which is another LMT Guardian .556 caliber semi-automatic rifle. Officer Galbraith stated that he carried a total of four (4) rifle magazines, each loaded with twenty-eight (28) .556 rounds in each. Investigator Davenport noted that his rifle had one (1) live round in the chamber and twenty-eight (28) live rounds in the magazine. Officer Galbraith's additional three magazines had twenty-eight (28) live rounds in each. Provided that Officer Galbraith had indeed loaded each magazine as he stated, his round accountability indicated that he did not fire his rifle.

Investigator Davenport then examined Officer Galbraith's handgun, which is a Glock model 17, 9mm semi-automatic pistol with a "Streamlight TLR-1 HL" flashlight mounted to the front of the frame. The pistol was loaded with one (1) live 9 mm round in the chamber and an empty magazine. Officer Galbraith had two (2) additional magazines on his duty belt. Each

magazine was loaded with seventeen (17) live 9mm rounds in each. Officer Galbraith stated that he loaded each of his magazines with seventeen (17) rounds each and one (1) round in the chamber of the firearm, for a total of eighteen (18) live rounds in the weapon. Provided that Officer Galbraith had indeed loaded each magazine as he stated, his round accountability indicated that he fired seventeen (17) rounds from his pistol.

Investigators Young and Davenport went to the residence to process the scene and observed that the house was in disarray, cluttered and dirty. As Investigator Young examined the living room floor, he observed several .556 cartridge cases in various locations. A total of six (6) were located and later recovered.

In the basement, Investigator Young observed a 2' x 2' opening that led into the crawlspace. Based on earlier conversations with detectives, Investigator Young knew that Mr. Jaster as well as ammunition evidence should be located inside this crawlspace. He was also aware that a water pipe was struck during the shooting causing the crawlspace to flood. Investigator Young used a remote lighting system to illuminate the area to recover evidence. As Investigator Young prepared to enter the crawlspace, he noted it to be cluttered and the ability to move within this space was limited without moving items out of the way. Investigator Young collected a .556 caliber cartridge case lying just inside the entry portal to the crawlspace.

Investigator Young took measurements of the crawlspace. The crawlspace was approximately 22' 9" long, 16' 10" wide, and 4' high. The crawlspace area was essentially the entire area of the first floor, which included the living room and the kitchen. Inside the crawlspace was a furnace located on a concrete pad on the south side, essentially under the kitchen counter area. The body of Mr. Jaster was located in the crawlspace to the south of the furnace. Investigator Young collected a "PMAG 30" .556 empty magazine, twenty-eight (28) "Speer" .556 cartridge cases, and thirteen (13) "Speer" 9 mm cartridge cases from the general area where officers were firing their service weapons from. Due to the volume of items (cartridge cases and ammunition) and the condition of the crawlspace (cluttered, flooded and muddy), it is likely that ammunition and cartridge cases were not located. Investigator Young also collected multiple fragment and projectile pieces that were found in various locations of the crawlspace.

Investigator Young also took measurements of Mr. Jaster's location. Mr. Jaster was concealed on the south side of the furnace as well as being partially covered with a black piece of plastic. Investigator Young collected nine (9) live 9 mm rounds and two (2) "Winchester" cartridge cases from the crawlspace near the decedent. Investigator Young collected a 9mm Ruger P95 semi-automatic handgun bearing serial number 31693299 from the SWAT command post that SWAT officers removed from the area where Mr. Jaster was located. Investigator Davenport noted that it appeared that someone had attempted to obscure or obliterate the serial number on the handgun.

Investigators Young and Davenport processed the upstairs area of the residence. They collected six (6) .556 cartridge cases from the living room floor. Investigator Davenport removed a section of carpet from the living room and located six (6) holes in the wood that they determined was most likely caused by the .556 rounds being fired through the floor. Investigator Davenport located a possible bullet hole in the wall along the south side of the stairway leading from the living room to the lower level of the home. A fired bullet was also located on the stairway. Investigator Young inserted a trajectory probe into the hole and took measurements.

Based on the measurements as well as the visual characteristics of the hole, Investigator Young determined that it is highly probable that the bullet was fired upward from the crawlspace where Mr. Jaster was located and the hole is from the bullet that stuck Sergeant Hempelmann in the upper right arm.

SUSPECT INFORMATION

According to the NCIC/CCIC data bases, Joseph David Jaster had an active felony warrant as well as five active misdemeanor warrants at the time of this incident. One of the active warrants was a domestic violence warrant that included a no bond hold.

AUTOPSY AND ANALYSIS:

On May 10, 2017, Doctor Stephen J. Cina performed a post-mortem examination on the body of Mr. Joseph David Jaster. During the autopsy it was determined that Mr. Jaster suffered numerous fatal gunshot wounds. None of the entrance sites showed evidence of close range firing on the skin. There were multiple gunshot wounds to the head and face of Mr. Jaster, as well as multiple wounds to the body and extremities. In total, the forensic pathologist noted a total of forty-one (41) defects or wounds. Doctor Cina's opinion is that Mr. Jaster died of multiple high velocity gunshot wounds, the most lethal of which involved the heart and brain.

Toxicology from Mr. Jaster's blood obtained at the autopsy revealed the following results: Amphetamine: 70 ng/mL; Methamphetamine: 700 ng/mL; Benzoylcegonine: 13 ng/mL

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.

The use of force by officers under these circumstance 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 imminent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

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

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

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

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

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

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

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

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If they believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is 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).

In this case, there is no dispute that Officer David Galbraith, Officer Mike Catalano, Sergeant Jason Poppenger, and Officer Drew Smith all fired their weapons at Joseph Jaster. Likewise, there is no dispute that the death of Mr. Jaster was the result of multiple gunshot wounds. There is also no question that any one of the four firearms used was capable of causing death. The issue of which of the involved officers actually caused the death is complicated, as four officers fired their weapons and there were several fatal gunshot wounds. The forensic evidence cannot conclusively distinguish which firearm or firearms caused the fatal shot. In addition, several of the firearms used by the officers are the same caliber. Therefore, for purposes of this review, it is assumed that any one of the shooting officers actually caused the death of Joseph Jaster.

At the time of the shooting, all of the law enforcement officers were engaged in the course of their duties to arrest a suspect in possession of a stolen motorcycle. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time the officers fired their weapons, the prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law.

LEGAL ANALYSIS AS TO OFFICER DAVID GALBRAITH

Officer Galbraith responded to a residence to apprehend an armed suspect with an arrest warrant who had barricaded himself inside the home. He and Officer Catalano climbed down into the dark and narrow crawlspace of the home in an effort to locate the suspect. Upon locating the suspect, Officer Galbraith ordered him to show his hands. Mr. Jaster responded by stating he had a gun and saying something about dying today. While officers were commanding the suspect to drop the gun, Officer Galbraith saw the Mr. Jaster sit up and point his gun in Officer Galbraith's direction approximately ten feet away.

At the time Officer Galbraith fired his weapon, he saw the muzzle flash from the suspect's gun. Officer Galbraith stated that he feared for his life as well as the lives of the other officers in the area. Consequently, the prosecution cannot prove that Officer Galbraith was not justified in protecting himself and other investigators from what he perceived to be the use of deadly physical force under §18-1-707, C.R.S. (2016).

LEGAL ANALYSIS AS TO OFFICER MIKE CATALANO

Officer Catalano was involved in the prolonged efforts to apprehend a suspect with an arrest warrant who was believed to be armed and dangerous. He followed Officer Galbraith down into the crawlspace of the home, where he found the suspect hiding. The suspect ignored Officer Galbraith's commands to show his hands. The suspect claimed to have a gun and made a statement that he was not going to die today. Officer Catalano saw the suspect point the gun at Officer Galbraith and believed that the suspect was about to shoot Officer Galbraith at close range.

When Officer Catalano fired his weapon, he noticed muzzle flash from the suspect's gun. Based on the circumstances, he was in fear for his safety as well as the safety of Officer Galbraith. Indeed, Officer Galbraith stated that if he had not fired his weapon, he and Officer Galbraith would have been killed. Under these facts, the Office of the District Attorney cannot prove that Officer Catalano's actions were not justified as applied to §18-1-707. Therefore, the prosecution is unable to prove the elements of any crime beyond a reasonable doubt with regard to Officer Catalano.

LEGAL ANALYSIS AS TO SERGEANT JASON POPPENGER

Sergeant Poppenger helped coordinate the effort of apprehending an armed and dangerous suspect who claimed that he "wanted his last meal and a body bag." The suspect refused multiple opportunities to peacefully surrender and barricaded himself inside a residence. Sergeant Poppenger positioned himself at the entry of the narrow crawlspace. He armed himself with a high-powered rifle for penetrating power in the event it became necessary to cover the other officers who were further inside.

Sergeant Poppenger heard Officers Galbraith and Catalano locate the suspect in the crawlspace behind the furnace. He heard the officers challenging the suspect to show his hands. Sergeant Poppenger heard a gunshot from behind the furnace and saw Officer Catalano fire his weapon.

At the time he fired his rifle, Sergeant Poppenger knew that the suspect was firing his weapon at the officers inside the crawlspace. When he pulled the trigger, Sergeant Poppenger stated that he was trying to “neutralize the threat,” and that he believed that the officers lives were in danger as a result of the suspect’s actions. Under these circumstances, the prosecution cannot prove that Sergeant Poppenger was not justified in protecting himself and other officers from what he perceived to be the use of deadly physical force under §18-1-707.

LEGAL ANALYSIS AS TO OFFICER DREW SMITH

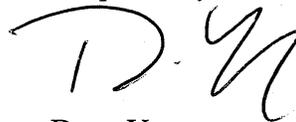
Officer Smith was standing above the area of the crawlspace when he heard the exchange of gunfire. He heard Sergeant Hemplemann say “he is shooting through the floor,” and saw Hemplemann fall to the ground. Believing Sergeant Hemplemann to have been shot, Officer Smith fired his rifle into the floor in the general direction he reasonably believed the suspect to be located. Officer Smith stated that he was afraid for his life and the lives of those around him when he fired his weapon.

Based on this totality of the information available to Officer Smith at the time he fired his weapon into the floor, the prosecution cannot prove that Officer Smith’s actions were not justified in protecting other officers from what he perceived to be the use of deadly physical force under §18-1-707, C.R.S. (2016).

CONCLUSION

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 the shooting incident involving Joseph David Jaster on May 9th, 2017. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,



Dave Young
District Attorney