



February 6, 2018

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

Re: *The investigation of the officer involved shooting of Troy Coen, DOB: 6/15/1962, occurring on September 27, 2017.*

Dear Sheriff McIntosh:

The investigation and legal analysis of the officer involved shooting of Troy Coen is complete. The 17<sup>th</sup> Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detectives Matt Calhoon of the Westminster Police Department and Doug Parker of the Thornton Police Department. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17<sup>th</sup> Judicial District, as well as investigators from the Office of the District Attorney. The factual findings of the investigation were presented to my office on December 4, 2017. The CIIT presented police reports, transcripts and videos of the interviews of witnesses, along with photographs and diagrams of the scene investigation. The Office of the District Attorney concludes that the investigation is thorough and complete.

The District Attorney's review is limited to determining whether criminal charges should be filed against the involved officer. 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, there is no reasonable likelihood of success of proving that the involved officers committed any crimes beyond a reasonable doubt. Therefore, no criminal charges will be filed against the officers involved in this incident.

## **OVERVIEW OF THE INCIDENT**

On September 27, 2017, Adams County Dispatch received a 911 call from Kelli Lopez at 7773 Navajo Street saying a male had just pointed a gun at her husband, Robert Lopez. Deputies from the Adams County Sheriff's Office (ACSO) responded to the scene and spoke with Mr. Lopez, who stated that a man in a red Toyota pickup truck had stopped in front of his house, pointed a gun at him, and accused Mr. Lopez of stealing from him. Ms. Lopez heard her husband's description of the suspect and told the responding deputies that she believed it was their neighbor, later identified as Troy Coen. Ms. Lopez described how Mr. Coen had confronted her a few weeks prior through their backyard fence alleging that her children had stolen marijuana from his backyard.

Deputy Dustin Ball then responded to 7762 Osage street and saw a red Toyota pickup truck that matched the description of the suspect's vehicle. The Toyota was registered to Troy Coen. Sergeant Chris Eye, Deputy Lance Kestel and Deputy Cole Cockrum arrived on scene and took up places on the property to form a containment perimeter. Deputy Kestel covered the south side of the home, including the front and driveway portions, while Deputy Cockrum covered the northeast part of the home, where he could observe the backyard from a break in the fence. Sergeant Eye covered the front side of the home. At this time, Deputy Ball proceeded to the front porch, knocked on the front door and was met by Diann Coen, Troy Coen's wife of 31 years. Deputy Ball asked to speak with Mr. Coen. Mrs. Coen agreed to get Mr. Coen and shut the door on Deputy Ball. Meanwhile, Deputy Cockrum observed Mr. Coen pacing in the backyard with a gun in his hand. Deputy Cockrum yelled out "gun!" and ordered Mr. Coen to drop the gun and show his hands. Mr. Coen made eye contact with Deputy Cockrum but disobeyed his orders and moved towards the residence. Sergeant Eye moved around the front of the house to the south side to potentially intercept Mr. Coen, however Mr. Coen was able to enter his home from the back. Deputy Ball then saw Mr. Coen carrying a handgun and walking through the house toward the front door where he was standing. Deputy Ball identified himself as the police and ordered Mr. Coen to drop the gun and to show his hands. Mr. Coen disregarded these orders, raised the gun, pointed it at Deputy Ball, and fired. Deputy Ball could see the muzzle flashes of the gun and immediately returned fire. He then took cover next to the entry door and later worked his way to the north side of the home, where he joined Deputy Cockrum.

Sergeant Eye, meanwhile, had returned to the front of the home and was just feet away from the front door when he saw muzzle flashes and heard two pops coming from inside the residence. He saw Deputy Ball return fire. Sergeant Eye looked inside the door and saw several muzzle flashes pointed in his direction. He then heard the sounds of bullets pass where he was located. Sergeant Eye immediately returned fire into the residence and then took cover behind a nearby tree in the front yard. As he sought to protect himself behind the tree, several bullets were fired in his direction, striking the tree and ricocheting off of it. Sergeant Eye could hear the bullets hitting the tree. Sergeant Eye illuminated the doorway of the residence with his tactical flashlight and continued to return fire into the residence. He could see the silhouette in the doorway and continued to see multiple muzzle flashes coming in his direction.

Deputy Kestel initially took cover from where he was when the shooting began, then moved toward the driveway and could see Mr. Coen's silhouette in the front door of the home. He, too, saw multiple muzzle flashes and could both hear and see bullets hitting the tree where Sergeant Eye was taking cover. Deputy Kestel returned fire toward the figure in the doorway.

After several rounds of gunfire, Mr. Coen ceased firing and called out to deputies "You got me." Sergeant Eye ordered Mr. Coen to drop the gun and come out of the house with his hands up. Mr. Coen did so and was immediately apprehended and taken into custody. He was transported to Denver Health Medical Center where he was treated for gunshot wounds to his chest and shoulder. He was later released from the hospital.

### **SYNOPSIS OF WITNESS AND OFFICER INTERVIEWS**

All of the involved witnesses, both officers and lay witnesses, were identified and contacted within a short time of the incident. Investigators from multiple police departments, including Thornton, Westminster, Commerce City, Broomfield and the District Attorney's Office, conducted the witness interviews. All officer and lay witnesses were interviewed within hours of the incident at the Adams County Sheriff's Office. The suspect, Mr. Coen, was later interviewed on October 6, 2017. The following are summaries of the interviews of the involved officers and material witnesses.

#### **Deputy Dustin Ball:**

Deputy Dustin Ball is a senior deputy assigned to the patrol division and works a swing shift. Thornton Detective Doug Parker and Westminster Detective Matt Calhoon interviewed Deputy Ball on September 28, 2017 at 1:29 a.m., hours after the shooting incident occurred.

Deputy Ball was initially dispatched to 7773 Navajo Street on a report of a felony menacing. Upon arrival, he spoke to the male victim, Mr. Lopez, who stated that a red Toyota pickup truck had pulled up in front of his house and a white male party had gotten out, pointed a gun at him and accused him of stealing from him. The white male then got back into the red Toyota and drove south on Navajo street. After speaking with the victim, Deputy Ball began searching for the red Toyota and was advised by Deputy Wellman to go to 7762 Osage to look there.

Deputy Ball responded to the Osage address where he was joined by Sergeant Eye, Deputy Kestel and Deputy Cockrum. They found a red Toyota matching the description given by the victim and ran the license plates, which came back to a Troy Coen. Deputy Ball approached the front door of the home and a white female answered the door. Deputy Ball asked to speak with Troy. The woman then slammed the door in his face, but came back to say that Troy would be out shortly. Deputy Ball then heard Deputy Cockrum challenging someone in the backyard. Deputy Ball heard Deputy Cockrum yell "gun!" and saw a white male come through the kitchen of the residence holding a handgun. Deputy Ball immediately challenged the male saying "Police" "Don't Move" "Let me see your hands" and "Drop the gun!" The male then raised the gun towards Deputy Ball and fired at him. Deputy Ball heard a loud pop and saw the muzzle flash from the gun. Deputy Ball was in fear for his life and immediately returned fire. He then stepped to the left of the front door and continued to hear shooting from inside the residence. He realized he was still vulnerable on the porch and moved to the northwest corner of the building, all the while hearing more gunfire. Deputy Ball went around to the north of the home, then came back around to the front of the house and, at this time, saw the suspect on the front lawn with his arms spread out. Deputy Ball then assisted Deputy Cockrum handcuff the suspect.

#### **Sergeant Chris Eye:**

Sergeant Chris Eye is the swing shift sergeant for the patrol division. Thornton Detective Doug Parker and Westminster Detective Matt Calhoon interviewed Sergeant Chris Eye on September 28, 2017 at 12:08 a.m., hours after the shooting incident occurred.

Sergeant Eye heard the radio traffic about a felony menacing involving an older white man in a red pickup truck that occurred near Navajo street. When he heard Deputy Ball dispatched to 7762 Osage, he decided to respond and help cover the scene. He arrived at the Osage address and saw the red pickup truck. As Deputy Ball approached the front porch, Sergeant Eye proceeded to the northwest corner of the house to provide cover for him. Deputy Cockrum arrived on the scene and went to the north side of the house towards the back of the residence while Deputy Kestel arrived and covered the south side.

As Deputy Ball spoke with a woman at the front door, Sergeant Eye heard Deputy Cockrum challenging someone in the backyard to show his hands and then heard him yell "gun!" Sergeant Eye rushed to the backyard but did not see the suspect. He ordered Deputy Cockrum to stay there and then moved back to the front of the house. He then saw Deputy Ball on the porch challenge the male party, who was now inside the house, to show his hands. Sergeant Eye then heard two pops which sounded like gunfire and saw Deputy Ball return fire. Sergeant Eye moved toward the front of the house and immediately saw several muzzle flashes coming from the front door of the residence in his direction, seven to eight feet from where he was standing. As he saw the muzzle flashes, he also heard bullets whizzing by him. At this time, Sergeant Eye said he thought he might had been shot or would be shot. Sergeant Eye immediately returned fire, aiming toward the muzzle flashes inside the house.

He then moved south and took cover behind a large tree. Once behind the tree, he heard several rounds hit the tree and ricochet near his location. He could both hear and feel the rounds striking the tree. He turned on his tactical light that was attached to his firearm and pointed it toward the house, where he could see the silhouette of a man firing in his direction. Sergeant Eye returned fire and saw the man retreat further into the house. He did a magazine exchange and returned to aim his gun at the suspect. At this time, Sergeant Eye could see the suspect standing and could see blood on the suspect's abdomen area. He ordered the suspect to come out of the house with his hands up. The suspect replied, saying "Hey, ok, you got me" and then came out of the house and was taken into custody. Sergeant Eye and Deputy Cockrum then did a protective sweep of the house to make sure it was secure, during which he saw blood and several shell casings on the floor. After the protective sweep, Sergeant Eye, Deputy Ball and Deputy Kestel stood aside to allow other deputies to take over the scene.

#### **Deputy Lance Kestel:**

Deputy Kestel is assigned to the patrol division of the Adams County Sheriff's Office. Thornton Detective Doug Parker and Westminster Detective Matt Calhoon interviewed Deputy Lance Kestel on September 28, 2017 at 12:56 a.m., hours after the shooting incident.

Deputy Kestel was responding to a report of a missing person when a tone alert came over the radio regarding a felony menacing by a man in a red Toyota who had allegedly pointed his gun at the reporting party. Deputy Kestel responded to the scene at 7773 Navajo street and arrived just behind Deputy Wellman, who advised him to drive around the neighborhood in search of the suspect's truck. Shortly thereafter he drove to 7762 Osage, where Deputy Ball was dispatched. Upon arrival, he saw a vehicle that matched the description of the suspect's vehicle. Sergeant Eye arrived shortly thereafter and they approached the scene with guns drawn, given the earlier report of a felony menacing. They cleared the vehicle and found no one inside.

Deputy Cockrum arrived and took a position at the north of the house while Deputy Ball approached the front door and asked for Troy, the name of the suspect given by the reporting party. Deputy Cockrum then encountered the suspect near the backyard. He yelled out "gun!" and commanded

the suspect to get on the ground. Deputy Kestel then heard Deputy Ball, who was still at the front of the house, order the suspect to drop the gun, indicating that the suspect was inside the home. At this point, Deputy Kestel heard gunshots and saw muzzle flashes from inside the house. Deputy Ball, who was on the front porch and directly in the line of fire, retreated from the house and Sergeant Eye, who was completely exposed in the front yard, got behind a tree in the yard. Deputy Kestel described feeling terrified at this moment and feeling vulnerable if the suspect decided to come outside. Deputy Kestel stated he feared for his life, as well as for the lives of his fellow officers. As the shooting continued, Deputy Kestel could see and hear bullets fired and ricocheted off the tree where Sergeant Eye was standing and concluded that the suspect was intentionally trying to kill Sergeant Eye. Deputy Ball returned fire after the initial shots from the suspect that came from inside the house. Sergeant Eye returned fire from behind the tree.

Deputy Kestel himself could see the silhouette of the suspect inside the home and continued to see muzzle flashes from inside the home. He fired at the suspect after trying to illuminate the suspect with the tactical light on his weapon. The suspect eventually stopped firing and said "ok, ok, you got me" at which point Deputy Kestel and the other deputies ceased shooting. Sergeant Eye ordered the suspect out of the house and the suspect came outside with his hands up and was handcuffed by Deputy Ball. Deputy Kestel handcuffed the woman from the house, later to be identified as the suspect's wife, and then cleared the house to make sure there were no more threats to the safety of officers or others. During his time inside the home, he noticed blood on the walls and on the floor. After exiting the house, Deputy Kestel and his two fellow officers were relieved by other officers.

#### **Deputy Cole Cockrum:**

Deputy Cole Cockrum is assigned to the K9 unit and works with the patrol division. Thornton Detective Doug Parker and Westminster Detective Matt Calhoon interviewed Deputy Cockrum on September 27, 2017 at 11:06 p.m., hours after the shooting incident occurred.

Deputy Cockrum was responding to another call when he heard the dispatch regarding a felony menacing, which he decided to respond to instead. While in transit, he heard that Deputy Ball had located the suspect truck at 7762 Osage and proceeded to that address. Upon arrival, he saw Deputy Ball speaking to a female at the front door. Sergeant Eye instructed Deputy Cockrum to check the backyard, so Deputy Cockrum proceeded to that area and took up a spot overlooking the fence. Deputy Cockrum saw a male suspect carrying a black gun in the backyard moving towards the home. Deputy Cockrum illuminated the suspect with his flashlight and commanded the suspect to put down his gun and to show his hands. The male suspect made eye contact with Deputy Cockrum and disregarded his commands. Instead, the suspect yelled something about having things stolen from him and entered the home. Deputy Cockrum aired that the suspect had entered the home and, seconds later, heard gunshots from the home. He aired "shots fired" as he could hear a barrage of gunfire. He ran to the front of the house, where he could hear the gunshots, but could not see well enough into the home to see where the suspect was or where the shots were coming from. He did not have a good shot to take at that time. Deputy Cockrum then noticed a bay window and thought the suspect was shooting at him, so he took cover behind a truck in the driveway along with Deputy Ball. Deputy Cockrum next heard other deputies commanding the suspect to get on the ground. He then noted that the suspect was prone, face down on the ground. Deputy Cockrum then assisted other officers handcuff the suspect. Immediately thereafter, he joined Sergeant Eye to clear the house for safety. At no time did Deputy Cockrum discharge his weapon.

### **Troy Coen:**

Detective Matt Calhoun interviewed suspect Troy Coen at the Adams County Detention Facility on October 6, 2017. Mr. Coen waived his Miranda rights and agreed to speak with Detective Calhoun about the incident.

Mr. Coen stated that two weeks before the date of the incident, eighty percent of the marijuana he grows in his backyard was stolen and he suspected the son of the neighbor behind his house was responsible. On the day in question, he consumed several drinks and then drove to the front of his neighbor's house on Navajo street and confronted the family about his missing marijuana. He admitted to having a gun with him and pulling the gun out and pointing it at his adult male neighbor. He returned to his home and realized that the police were at his neighbor's house. His wife then informed him that the police were at their home and he could see the blinking lights from the patrol vehicles so he knew the police were there. He claims he then decided that he didn't want to live anymore and hoped the police would shoot him. He said the police had lit up his home with search lights. He then started shooting at the tree in the front yard. He said he knew someone was at the tree as he could see a light coming around it. He claims he did not intend to shoot any of the officers but hoped they would kill him. He says he stopped shooting because he was out of bullets. He felt the three gunshots hit him and was later taken into custody and treated at the hospital.

### **Diann Coen:**

Broomfield Detective Dale Hammond and Adams County District Attorney Investigator Angela Gallegos interviewed Diann Coen, the wife of suspect Troy Coen. Ms. Coen said that she and Mr. Coen had lived at 7762 Osage for 27 years and have been married for 31 years. She said that approximately three weeks prior to the incident, some of Mr. Coen's marijuana plants had been stolen out of their backyard. On the night of September 27, 2017, Mr. Coen informed her that he was going to drive around the block to investigate into the missing plants. He returned ten minutes later and said that the police were called but did not say why. Shortly thereafter, police knocked on her front door and asked for Mr. Coen. She went to the backyard and told him the police were there and wanted to see him, then she came back inside. Shortly thereafter, she heard a deputy say "Put down the weapon" and then heard her husband respond "No, you put down the weapon." She then heard gunfire coming from both inside and outside her house and believed that her husband and the police were shooting at each other. She barricaded herself in the bathroom for her own protection until the shooting was over. Officers later escorted her out of the house. She saw blood on her kitchen floor and assumed her husband had been shot. She also stated that she did not know that her husband had a gun on him that night. Mrs. Coen claimed that Mr. Coen's behavior was shocking to her and stated that she did not believe him to be suicidal or homicidal.

## **CRIME SCENE INVESTIGATION**

Crime scene investigators Dennis Davenport of the Commerce City Police Department and Chandra Thurston of the Westminster Police Department processed the evidence in this case. Criminalist Davenport began by examining each officer, taking photographs of them, and performing round accountability on their weapons.

Deputy Lance Kestel was wearing a standard ACSO Deputy uniform, complete with a badge affixed to the breast, along with a black duty belt which contained his firearm and extra magazines. He had blood stains on the left sleeve of his shirt from moving Mr. Coen, but was not injured. Deputy

Kestel carries a Smith & Wesson model M&P, 9mm semi-automatic pistol with a Streamlight TLR-1 light mounted to the front of the frame. The pistol had twelve (12) 9mm rounds in the magazine and one (1) 9mm round in the chamber. Deputy Kestel reported that he loaded his magazines with seventeen (17) rounds each and one (1) round in the chamber of his pistol, leading to the conclusion that he fired five (5) rounds from his pistol.

Deputy Dustin Ball was wearing a standard ACSO Deputy uniform, with a badge on the breast and a black duty belt which contained his firearm. Deputy Ball carries a Smith & Wesson model M&P 9mm semi-automatic pistol with a Streamlight TLR-1 light mounted to the front of the frame. His pistol was loaded with twelve (12) 9mm rounds in the magazine and one (1) 9mm round in the chamber. Deputy Ball stated that he loaded his magazines with seventeen (17) rounds each and one (1) round in the chamber of his pistol, which suggests that he fired five (5) rounds.

Sergeant Christopher Eye was wearing a standard ACSO Sergeant uniform with a badge on his breast and had a black duty belt which contained his firearm. Sergeant Eye carries a Glock model 22, 40 caliber semi-automatic pistol with a Streamlight TLR-1 light mounted to the front of the frame. The pistol was loaded with fifteen (15) .40 caliber rounds in the magazine and one (1) .40 caliber round in the chamber. Sergeant Eye stated that he conducted a re-load of his weapon after completely emptying his first magazine. He stated that he loaded each of his magazines with fifteen (15) rounds each and one round in the chamber. Upon examination, his gun contained sixteen (16) total rounds, leading to the conclusion that Sergeant Eye fired fifteen (15) rounds from his weapon.

Deputy Cole Cockrum was wearing a tactical ACSO K-9 Deputy uniform, complete with a badge on the left breast and all capital letters "SHERIFF" on the right breast and the back. He wore a black duty belt which had his firearm on it. Deputy Cockrum carries a Smith & Wesson model M&P, .40 caliber semi-automatic pistol with a Streamlight TLR-1 light mounted to the front of the frame. Deputy Cockrum stated that he loaded each of his magazines with fifteen (15) rounds and one in the chamber and that he had not fired his weapon. His pistol was loaded with fifteen (15) .40 caliber rounds in the magazine and one (1) .40 caliber round in the chamber, leading to the conclusion that the gun had not been fired.

Criminalists Davenport and Thurston went on to process the scene at 7762 Osage Street. Due to rain, the criminalists had to suspend the investigation in the early morning hours until sunrise. The scene consisted of a single story, single family, brick house with a detached garage located on the south side. There were three vehicles parked in the driveway. The suspect vehicle, a red Toyota pickup truck, was parked on the northeast side of the driveway. There were several ACSO marked vehicles located in the street to the front of the residence, one of which had a bullet impact on the windshield.

Several fired casings were discovered in the front yard and driveway next to the house. Criminalists collected thirteen (13) .40 caliber fired casings in the front yard, all of which were from Sergeant Eye's pistol as he was the only officer who fired .40 caliber rounds. As noted above, Sergeant Eye's round accountability indicated that he fired fifteen (15) rounds. Criminalists were unable to find two of the fired casings from Sergeant Eye's pistol at the scene.

Five (5) 9mm casings were located from the south side of the front yard and in the driveway near where Deputy Kestel was located. These casings were likely fired by Deputy Kestel and would account for all five of his fired rounds. Two (2) 9mm fired casings were located in the front of the house, one just off the front porch and the other just inside the front door. These areas were consistent with where Deputy Ball would have fired his rounds. Investigators only located two of the five casings that Deputy Ball fired.

Investigators observed several bullet impacts to the tree in the front yard. Additionally, investigators located several apparent bullet impacts on the brick surface of the front exterior to the home. Several pieces of bullet fragments were located in the front yard and front porch. A bullet hole was found in the front door frame to the home as well as two bullet impacts in the metal awning over the front porch. Inside the home, investigators located ten (10) fired 9mm casings, all of which were of a different manufacture than the 9mm casings used by the deputies on scene, leading to the conclusion that they all came from the Mr. Coen's gun. Investigators located a Beretta, 9mm pistol in the front living room on a chair next to the front door. It had an empty magazine inserted and the slide was locked back in the open position, suggesting that the gun was fired until it was completely out of bullet cartridges. There were two (2) live 9mm rounds on the floor in the area of the chair where the gun was found and several fired bullets or bullet fragments in the living room. Bullet impacts were located throughout the front living room and kitchen on furniture, appliances and walls.

The homes across the street from the suspect home were searched and bullet impacts were noted at 7751 Osage and 7741 Osage. The angle and area of the two recovered bullets from these two addresses were consistent with having been fired from the interior of the suspect house at 7762 Osage Street.

### **SUSPECT INFORMATION**

Mr. Troy Wayne Coen is a 55 year old white male. He has confirmed misdemeanor convictions, but no felony convictions. As a result of Mr. Coen's actions he was charged with four counts of attempted first degree murder, four counts of attempted assault in the first degree, and three counts of menacing. This case is pending in Adams County District Court and is currently set for arraignment on February 7, 2018.

### **MEDICAL EXAMINATION ANALYSIS**

Mr. Coen was transported to Denver Health Medical Center after the incident, where he was treated for gunshot wounds to the chest and to his left shoulder. Mr. Coen sustained multiple penetrating wounds to the left chest and gunshot wounds to his left shoulder, but suffered no fracture or organ injury. Bullet fragments were found in his chest wall and in his left shoulder. No bullets were recovered from Mr. Coen's body. Mr. Coen was reported to have alcohol on his breath by the attending medical personnel. Mr. Coen was treated for his injuries and released from the hospital.

### **LEGAL ANALYSIS**

As previously noted above, this review is limited to a determination of 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 criminal charges, 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.



In this case, there is no dispute that three officers fired their weapons at Troy Coen and that Mr. Coen sustained gunshot injuries from this incident. At the time of the shooting, all of the law enforcement officials were engaged in the course of their duties to investigate a report of a felony menacing with a firearm. 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.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (2017), 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 that if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is

effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

“Deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” §18-1-901(3)(d), C.R.S. (2017).

### **Deputy Dustin Ball**

Deputy Dustin Ball was investigating a felony menacing when he arrived at 7762 Osage and knocked on the front door. He knew, from speaking to the victim of the felony menacing, that the suspect was armed with a gun and had pointed it at the menacing victim. After speaking to the suspect’s wife, who said she would get Mr. Coen, Deputy Ball heard Deputy Cockrum challenging someone in the backyard and heard him yell “gun!” Deputy Ball then saw a white male come through the kitchen holding a handgun. Deputy Ball ordered the male to drop the gun but the male instead raised the gun, pointed it at Deputy Ball and fired at him. The male continued to fire his weapon multiple times. Deputy Ball was in fear for his life and returned fire.

Under these facts, Deputy Ball was justified in returning fire at Mr. Coen and the prosecution cannot prove that Deputy Ball was not justified in protecting himself from what he reasonably believed to be the use of deadly physical force under §18-1-707, C.R.S. (2017).

### **Sergeant Chris Eye**

Sergeant Chris Eye was engaged in a search for the suspect in a felony menacing when he arrived at 7762 Osage. Sergeant Eye knew from other officers that the suspect was armed with a gun and had pointed it at a neighbor. Sergeant Eye took up a cover position near the house as Deputy Ball approached the front door. Sergeant Eye then heard Deputy Cockrum challenging someone in the backyard and yell “gun!” He ran to the backyard, then returned to the front yard and saw Deputy Ball challenge a male party to show his hands. Sergeant Eye then heard gunfire and saw Deputy Ball return fire. Sergeant Eye moved toward the front of the house and saw several muzzle flashes coming from inside the residence. He then felt bullets whizzing by him, and believed he was going to be shot. Accordingly, he returned fire. He later took cover behind a tree and was shot at several times. Sergeant Eye returned fire from that position as well.

Under these facts, Sergeant Eye was justified in returning fire at Mr. Coen and the prosecution cannot prove that Sergeant Eye was not justified in protecting himself from what he reasonably believed to be the use of deadly physical force under §18-1-707, C.R.S. (2017).

### **Deputy Lance Kestel**

Deputy Lance Kestel was engaged in an investigation of a felony menacing when he arrived at 7762 Osage. He knew from fellow officers that the suspect was reported to have menaced his neighbor and was armed with a gun. After taking up a position on the suspect’s property, he heard Deputy Cole Cockrum confront someone in the backyard of the house and yell “gun!” and then heard Deputy Dustin Ball order the suspect to drop his gun. Immediately thereafter, he heard gunshots being fired from

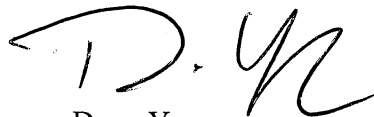
inside the house and saw the muzzle flashes to match the gunfire. Deputy Kestel watched as Sergeant Eye took cover behind a tree and saw that Sergeant Eye was shot at many times by the suspect, with the bullets ricocheting off the tree. Deputy Ball and Sergeant Eye were both in the line of fire and Deputy Kestel was in fear for their lives as well as his own. He stated that he fired his weapon at the suspect to defend himself and his fellow deputies and out of fear for his life and theirs.

Under these circumstances, Deputy Kestel was justified in returning fire at Mr. Coen and the prosecution cannot prove that Deputy Kestel was not justified in protecting himself and other officers from what he reasonably believed to be the use of deadly physical force under §18-1-707, C.R.S. (2017).

### **CONCLUSION**

Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Deputy Dustin Ball, Sergeant Chris Eye or Deputy Lance Kestel for discharging their weapons in the shooting of Troy Coen on September 27, 2017. Thankfully none of the officers involved in this lawful arrest were killed or seriously injured as a result of Mr. Coen's actions. Please feel free to contact me if you have any questions or if you believe that further investigation is warranted.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Young', with a stylized flourish at the end.

Dave Young  
District Attorney