



February 8, 2019

Chief Tim Carlson
Westminster Police Department
9110 Yates Street
Westminster, CO 80031

Re: *Investigation of the officer-involved shooting of Timmy Henley, DOB 11/7/1990, on September 4, 2018 in Westminster, Colorado.*

Dear Chief Carlson,

The investigation of the officer-involved shooting of Mr. Timmy Henley occurring on September 4, 2018 in the City of Westminster is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted the investigation into this matter, led by Detective Scott Hendrickson of the Thornton Police Department and Detective Jai Rogers of the Adams County Sheriff's Office. 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. The factual findings of the investigation were presented to my office on November 20, 2018. The CIIT presented law enforcement reports, video-recorded interviews of witnesses, photographs, and diagrams of the crime scene. The Office of the District Attorney concludes that the investigation is thorough and complete.

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

Based upon the evidence presented and applicable 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 4, 2018, at approximately 10:15 a.m., Westminster Police Officers were dispatched to 3496 W. 97th Avenue. A reporting party had contacted the police because an unknown white male, later identified as Timmy Henley, was standing on the bed of the reporting party's truck and was refusing to get down from the truck.

Westminster Police Officer Louis Engleberg, Sergeant Robert DeHerrera, Officer Paul McDonald, and Sergeant Alexander Johnstone responded to the location. The officers were able to coax Mr. Henley off the truck. Mr. Henley told the officers that he used cocaine earlier in the morning and believed that he was having a "bad trip." Paramedics responded and treated Mr. Henley. Mr. Henley calmed down and was able to converse with officers and paramedics. He was orientated to time, place and location. Mr. Henley was released from the scene.

On September 4, 2018, at approximately 1:00 p.m., Westminster Police Officers Louis Engleberg and Chris Hempelmann were dispatched to a burglary in progress at the Environ Apartments located at 3357 West 97th Avenue. Multiple people called the police to report that a male armed with a knife was breaking into apartments. As the officers proceeded to the location, dispatch provided a description of the burglar as a male wearing a black shirt, shorts, socks, no shoes and wielding a knife.

Once on scene, Officer Engleberg and Officer Hempelmann approached the apartment building on foot. As the officers turned the corner, the door to apartment unit #19 swung open. In the threshold of the apartment, there was a male matching the description of the suspect. The male, later identified as Timmy Henley, had a large kitchen knife in his hand. Mr. Henley raised the knife over his head and charged toward the officers.

Officer Engleberg yelled commands at Mr. Henley to stop. Mr. Henley did not comply with the commands. Officer Engleberg fired his weapon at Mr. Henley, and Mr. Henley fell to the ground. Officer Engleberg ceased firing his weapon and repeatedly ordered Mr. Henley to remain on the ground. Mr. Henley returned to his feet and continued to move toward the officers. Officer Engleberg fired again. This time, Officer Hempelmann also fired his weapon at Mr. Henley. Mr. Henley eventually fell to the ground and rolled into the parking lot, where he died as result of the gunshot wounds.

SYNOPSIS OF WITNESS AND OFFICER INTERVIEWS

The involved officer witnesses were identified and contacted within a short time of the incident. Investigators from multiple police departments, including Brighton, Commerce City, the Adams County Sheriff's Office and the District Attorney's Office conducted witness interviews. All witnesses were interviewed within hours of the incident at the Westminster Police Department. Though there were many witnesses interviewed, only the relevant and material witnesses are specifically summarized herein.

Officer Louis Engleberg: Detective Scott Hendrickson of the Thornton Police Department and Detective Jai Rogers of the Adams County Sheriff's Office interviewed Officer Engleberg on September 4, 2018, shortly after the shooting. Officer Engleberg is a police officer employed by the Westminster Police Department for twenty-eight years.

At 1:30 p.m., Officer Engleberg was dispatched to a burglary in progress at the Environ Apartments located on 97th Avenue. As Officer Engleberg was driving to the location, dispatch aired over the radio that the suspect was breaking into a second occupied apartment, unit #28. Dispatch aired that the suspect was wearing a black t-shirt, shorts, was barefoot and had a large knife.

Officer Engleberg and Officer Hempelmann arrived simultaneously and parked south of the apartment building. The officers approached the apartment building on foot. Believing that the burglary was occurring in a second floor apartment, Officer Engleberg focused his attention on the second floor. As the officers approached, the first floor northern apartment door swung open. A male, later identified as Mr. Henley, was standing in the doorway with a knife in his hand. Officer Engleberg and Officer Hempelmann stood in the grassy area west of the apartment, approximately 20-30 feet from Mr. Henley. Mr. Henley wore a black shirt and no shoes. Mr. Henley looked directly at the officers, raised the knife over his head, and began to charge at Officer Engleberg and Officer Hempelman.

Officer Engleberg yelled commands at Mr. Henley to stop and drop the knife. Mr. Henley ignored the commands and continued towards the officers. Mr. Henley was less than twenty feet away from the officers as he came at them in an aggressive manner. Officer Engleberg believed that Mr. Henley still had the knife in his hand. Concerned for his safety, Officer Engleberg fired his weapon at Mr. Henley. Mr. Henley was still within the concrete landing in front of the apartment building moving towards the officers when Officer Engleberg began shooting. Officer Engleberg continuously yelled commands to stop and get on the ground. Mr. Henley fell to one knee. Officer Engleberg stated that he "stopped shooting and reassessed" the situation. Mr. Henley returned to his feet and continued closing the distance between himself and Officer Hempelman. Officer Engleberg fired additional rounds at Mr. Henley, still believing the knife was in Mr. Henley's hand. Mr. Henley fell a second time but continued moving towards the officers. Officer Engleberg again fired his weapon. At that point, Officer Engleberg no longer observed the knife in Mr. Henley's hand. Officer Engleberg was unsure what happened to the knife.

Mr. Henley eventually fell to the ground and rolled into the parking lot, where he remained. Mr. Henley continued to move his arm and attempted to reach underneath his body. Officer Engleberg believed that Mr. Henley may have been attempting to reach for a weapon. Officer Engleberg kept Mr. Henley at gunpoint until additional officers arrived on scene. Officer Engleberg also requested for medical assistance to arrive.

Officer Engleberg estimated that the entire incident happened in 15-20 seconds. Officer Engleberg stated that if Mr. Henley wanted to run away from the officers, he could have jumped the railing and ran in the opposite direction. Officer Engleberg stated that he fired his weapon

because he believed that if Mr. Henley was able to reach the officers, he was “going to stab us and kill us.” Officer Engleberg said that he stopped shooting his firearm each time Mr. Henley dropped to the ground. He shot again when Mr. Henley got up and continued to approach them while he ignored the officer’s commands to stop.

Officer Chris Hempelmann: Detective Scott Hendrickson of the Thornton Police Department and Detective Jai Rogers of the Adams County Sheriff’s Office interviewed Officer Hempelmann on September 4, 2018, shortly after the shooting. Officer Hempelmann is a police officer employed by the Westminster Police Department for twenty years.

Officer Hempelmann was dispatched to a disturbance at the Environs Apartment Complex at approximately 1:00 p.m. Dispatch upgraded the call to a burglary in progress in unit #28 and advised that a male forced entry into an occupied apartment. Officer Hempelmann clarified with dispatch that an individual was in the apartment with the suspect. Officer Hempelmann stated that this “stepp[ed] it up a level” because he believed that someone was in danger. Officer Hempelmann and Officer Engleberg arrived at the incident location at the same time. As Officer Hempelmann pulled into the apartment complex, he read in his computer dispatch notes and heard over the radio that the suspect had a large knife. Officer Hempelmann stated that this again “rais[ed] the bar” of a possible threat to others.

Officer Hempelmann and Officer Engleberg entered the courtyard of the apartment complex on foot. As Officer Hempelmann and Officer Engleberg turned the corner, a lower apartment door flew open. Officer Hempelmann observed a large man, later identified as Mr. Henley, standing in the doorway holding a knife in his hand. Officer Hempelmann saw a flash of silver and the tip of the blade. Mr. Henley immediately charged towards the officers. Officer Engleberg yelled, “Knife!” and began firing his gun at Mr. Henley. Officer Hempelmann did not initially fire his weapon because he was standing behind Officer Engleberg and Officer Hempelmann did not have a clear shot.

Mr. Henley stumbled to the ground. Officer Engleberg yelled commands to “stay on the ground!” and to “stop moving!” In Officer Hempelmann’s words, Mr. Henley continued “full bull charge” towards him and Officer Engleberg. At this time, Officer Hempelmann stepped to the right of Officer Engleberg. Officer Hempelmann and Officer Engleberg both fired their weapons at Mr. Henley. Mr. Henley again fell to the ground, but returned to his feet and continued towards the officers. Officer Hempelmann described Mr. Henley’s movements “like a football player coming off the line.” Mr. Henley would go down to his hands and knees and then get back up with “active aggression.” Mr. Henley eventually fell to the ground and rolled toward the parking lot.

Officer Hempelmann believed that Mr. Henley was going to assault either himself or Officer Engleberg with the knife. Officer Hempelmann and Officer Engleberg stood out in the open and did not have cover or a place to retreat. Officer Hempelmann assumed that Mr. Henley still had the knife in his hands, but had difficulty seeing his hands as he came at the officers.

Mr. Andrew Lopez: Detective Casey Browning of the Thornton Police Department and Detective Burke Payne of the Federal Heights Police Department interviewed Mr. Lopez shortly after the incident at the Westminster Police Department. Mr. Lopez resides at 3357 W. 97th Avenue, unit #29.

Mr. Lopez returned home at approximately 1:00 p.m. As he entered his home, he observed that his blinds were disturbed and on the floor. As Mr. Lopez was picking up the blinds, he heard a loud sigh from somewhere within his apartment. Mr. Lopez became frightened and walked to his front door. Mr. Lopez observed that the trim from his door latch was laying on the ground. Mr. Lopez believed that someone had forced their way into his apartment.

Mr. Lopez ran out of his apartment and stood at the top of the stairs. An unknown white male, later identified as Mr. Henley, exited Mr. Lopez's apartment. Mr. Henley was wearing a black t-shirt, shorts, socks, and no shoes. Mr. Henley had a dazed look on his face, was sweating profusely and took deep breaths. Mr. Henley held a long silver object in his hand. Mr. Lopez believed that the object might have been a pipe. Upon seeing the male, Mr. Lopez asked Mr. Henley, "can I help you?" Mr. Henley looked in Mr. Lopez's direction but did not respond. Mr. Henley then turned around and reentered Mr. Lopez's apartment.

Mr. Lopez went downstairs, got into his truck and reversed into a spot located next to another building. Mr. Lopez then called 911 and provided a description of the suspect. While Mr. Lopez was on the phone, he observed Mr. Henley exit the apartment and walk toward unit #28.

From his vantage point, Mr. Lopez was unable to see the front door to unit #28. Mr. Lopez lost sight of Mr. Henley and assumed that he went inside unit #28. A few minutes later, Mr. Henley returned into view and ran downstairs. Mr. Henley ran toward a first floor apartment door and unsuccessfully attempted to gain entry. Mr. Henley then ran toward the apartment directly below unit #29 and forced the door open with his shoulder. Mr. Henley entered the apartment and the door shut behind him.

About thirty seconds later, two police officers arrived on scene and approached on foot. According to Mr. Lopez, as the officers approached, Mr. Henley came "flying out of the condo" and looked at the officers. The officers took their guns out and repeatedly yelled "stop!" Mr. Henley turned away from the officers and then turned back toward the officers. Mr. Lopez believed that Mr. Henley may have been trying to escape but was unable to jump the railing. Instead, according to Mr. Lopez, Mr. Henley "book[ed]" it toward the officers. The officers opened fire on Mr. Henley. There was a brief pause in the shooting. The officers continuously ordered Mr. Henley to stop and to get on the ground.

Despite being shot and the officers' commands, Mr. Henley continued to move toward the officers. The officers again fired their weapons at Mr. Henley. Mr. Lopez observed Mr. Henley move in a circle and walk toward the building. It appeared to Mr. Lopez that Mr. Henley was attempting to dodge the bullets. Mr. Henley then walked toward the vehicles in the parking lot and dropped on the ground. The officers stopped firing their weapons. Mr. Henley continued

to move his hands while he was laying on the ground. The officers approached Mr. Henley with their guns drawn and demanded that Mr. Henley stop moving. The officers kept Mr. Henley at gunpoint until other officers arrived on scene.

The entire episode with the officers lasted approximately fifteen seconds. Mr. Lopez stated that the officers were yelling commands the entire time. Mr. Lopez stated he was not focused on Mr. Henley's hands and was unsure whether the male had anything in his hands. Mr. Henley stated that every other time Mr. Henley exited an apartment, Mr. Henley had an object in his hand.

Mr. Gaspar Villalobos: Detective Scott Spurr of the Thornton Police Department interviewed Mr. Villalobos shortly after the incident at the Westminster Police Department. Mr. Villalobos speaks Spanish. Officer Luis Lopez of the Westminster Police Department translated the interview for Detective Spurr.

Mr. Villalobos is employed by the apartment complex. That day, Mr. Villalobos was working in building #3347, unit #19. While Mr. Villalobos was inside the apartment, an unknown heavyset white male with brown and blond hair and a beard forced entry into the unit. The male, later identified as Mr. Henley, was grunting and swinging a knife in each hand. One blade was approximately 10-12 inches long and the second blade was six inches long. Both blades were silver. Mr. Villalobos feared that Mr. Henley was going to stab him, which caused Mr. Villalobos to grab a hand tool to protect himself. Mr. Villalobos ran out of the apartment without incident. Mr. Villalobos contacted his supervisor and remained in the area. Approximately eight minutes later, Mr. Villalobos heard voices repeatedly yelling get on the ground. He also heard gunshots.

Mr. Ethan Tackett: Investigator Mark Rule of the 17th Judicial District Attorney's Office and Detective Mike Acker of the Brighton Police Department interviewed Mr. Tackett shortly after the incident at the Westminster Police Department. Mr. Tackett resides at 3357 W. 97th Avenue, unit #28.

Mr. Tackett was sitting on his couch when he heard noises coming from his front door. An unknown male, later identified as Mr. Henley, burst through the door, causing damage to the doorframe and the dead bolt. Mr. Henley was armed with a large kitchen knife with a silver blade approximately 9 inches long.

Mr. Henley ran into Mr. Tackett's bedroom and back into the entryway. Mr. Henley told Mr. Tackett that someone was trying to kill him. Mr. Tackett ran into his bedroom, locked the door behind him and called the police. Mr. Tackett heard Mr. Henley run upstairs and back down the stairs. Mr. Henley then forced his way into Mr. Tackett's bedroom causing Mr. Tackett to hide in his bathroom. Mr. Tackett heard Mr. Henley run back upstairs then back downstairs a second time. Mr. Tackett remained in his bathroom.

A short time later, Mr. Tackett heard someone yelling "stop" outside of the apartment, followed by gunshots. Mr. Tackett heard one gunshot, followed by a pause, then three rapid fire shots followed by two slow gunshots.

As part of the investigation, Mr. Tackett's 911 recording and corresponding chronology were collected. According to the chronology, Mr. Tackett reports hearing gunshots at 1:04:30 p.m. The recording of Mr. Tackett's 911 call captures the sound of the gunshots being fired. The gunshots last four seconds. There is a gunshot, then a two-second pause, followed by multiple gunshots.

Mr. Robert Grule: Detective Michael Vasquez of the Commerce City Police Department interviewed Mr. Grule shortly after the incident at the Westminster Police Department.

Mr. Grule dropped his daughter off at Rocky Mountain Elementary School nearby the Environ apartment building when he heard yelling. Mr. Grule observed a police officer with his gun drawn, screaming get on the ground. A small vehicle obstructed Mr. Grule's view of the individual that the officer had at gunpoint.

Shortly after Mr. Grule heard the yelling, Officer Grule heard gunshots, a short pause, and then additional shots. The officer began yelling repeatedly stay on the ground. The officer kept his gun pointed at the individual, Mr. Grule could now see on the ground, until officers began to arrive.

SCENE INVESTIGATION

On September 4, 2018, CSI Doug Young of the Thornton Police Department and CSI Jennifer Mitchell of the Adams County Sheriff's Office processed the scene and collected evidence.

CSI Mitchell conducted the round accountability of Officer Engleberg and Officer Hemplemann. First, CSI Mitchell met with Officer Engleberg. Officer Engleberg was wearing a standard police-issue uniform. CSI Mitchell collected and examined Officer Engleberg's firearm, a Glock model 22, .40 caliber semi-automatic handgun. At the time of the examination, the weapon contained one live round in the chamber and the magazine was empty. The magazine's capacity is fifteen rounds. Officer Engleberg reported that he started his shift with a full magazine with one round in the chamber, for a total of sixteen bullets in the weapon. CSI Young recovered nine .40 caliber casings and four live .40 caliber rounds at the scene. It is not known how the live rounds got there. With one bullet remaining in the chamber at the time of the examination and the ballistic evidence left on scene, there remains two unaccounted for rounds. Therefore, it is not known if Officer Engleberg shot nine or eleven times.

Officer Hemplemann was wearing a standard police-issue uniform. CSI Mitchell collected and examined a Glock model 17, 9 mm semiautomatic handgun. The magazine's capacity is seventeen rounds. At the time of the examination, there was one live Speer 9mm Luger round in the chamber and thirteen rounds in the magazine. Officer Hemplemann stated that he began his shift with a full magazine with one round in the chamber. CSI Young

recovered four 9 mm casings on scene. As such, the round accountability was consistent with Officer Hemplemann shooting four rounds from his weapon.

The scene of the shooting is a two-story apartment building called the Environs Apartments located at 3357 West 97th Street, Westminster. The shooting occurred on the west side of building #3357, located in the northeastern edge of the apartment complex. Apartment units #28 and #29 are located on the second floor of the building. Apartments #18 and #19 are located on the ground floor of the building, beneath units #28 and #29. A parking lot, boarded by a sidewalk, is located to the west of the building. There is a grassy area between the sidewalk and the building. There is a small rocked area between the grassy area and building #3357.

CSI Young observed Mr. Henley's body lying on the ground in the parking lot. He observed bloodstains on the sidewalk. CSI Young also observed blood in both the grassy and the rock areas. In the grassy area, CSI Young observed a disturbed area of grass characterized by scuffing of the dirt. This area contained blood. CSI Young recovered two projectiles in this area.

North of the grassy area, there are two sets of concrete stairs and landings leading to the first floor breezeway and apartment units #18 and #19. The northern apartment is apartment #18 and the southern apartment is apartment #19. CSI Young did not observe any blood on the stairs, landings, or breezeway. There is a wooden support post located between the second set of stairs and the breezeway. There was a graze mark on the side of the post consistent with a bullet impact. Just north of this support post is a second post. This post contained a perforating defect consistent with a bullet impact. CSI Young recovered a mushroomed projectile in close proximity to the second post. North of the posts is a bedroom window associated with unit #19. Beneath the window, CSI Young documented an additional penetrating defect and recovered a 9 mm bullet projectile imbedded in the bedroom wall inside unit #19. Near the southwest corner of the building, CSI Young recovered nine .40 caliber cartridge cases, four live .40 caliber rounds and four 9mm cartridge cases.

It appeared that the door of unit #19 was forced open. There was splintered wood and molding lying on the floor. CSI Young recovered a large black handled kitchen knife inside the threshold of unit #19.

CSI Mitchell processed 3357 West 97th Avenue, unit #29. A piece of the doorframe was on the ground in the entryway. CSI Mitchell observed what appeared to be blood on the inside of the front door. CSI Mitchell also observed what appeared to be blood on the bathroom doorframe. CSI Mitchell processed 3447 West 97th Avenue, unit #18. The apartment appeared to have been rummaged through. CSI Mitchell recovered a pair of large sized flip-flops on the bed in one of the bedrooms. CSI Mitchell processed 3447 West 97th Avenue, unit #19. The apartment was vacant. She recovered a pizza cutter inside the master bedroom.

AUTOPSY AND ANALYSIS

Dr. Steve Cina conducted an autopsy of the male identified as Timmy Henley, DOB November 7, 1990, at the Adams County Coroner's Office. The examination revealed a total of nine gunshot wounds to the body and two injuries consistent with graze wounds. Dr. Cina recovered a number of projectiles from the body. None of the gunshot wounds revealed evidence of close range firing.

The most serious gunshot wounds were to the neck and chest area. There was a gunshot wound to the right side of the neck, leaving both an entry and an exit wound. The projectile injured the right internal jugular vein and right carotid artery. The wound path was right-to-left, downward and back-to-front. There were also three gunshot wounds to the chest causing damage to internal organs. One entered the right side of the upper chest and lacerated the lung and liver. The wound path was directed left-to-right, front-to-back and downward. There were two additional gunshot wounds to the chest—one to the right side and one to the left side. The pathway of each of these wounds was right-to-left, front-to-back and downward. Projectiles were recovered from these chest wounds. There was also a gunshot wound to the left side of the abdomen. The bullet path was front-to-back. Dr. Cina recovered a projectile from this injury.

There were a number of gunshot wounds that were non-fatal. There was a gunshot wound to the right wrist/hand, leaving both an entry and an exit wound. The wound path was directed back-to-front, such that the entrance is to the underside of the wrist and the exit is from the back of the hand. There was a wound to the left thigh. The wound path was front-to-back and right-to-left. Dr. Cina recovered a projectile from this injury. There were wounds to the right upper arm and right thigh, leaving both entrance and exit wounds. The wound paths for these injuries were front-to-back and right-to-left. There was a graze wound to the left side of the chin and a graze wound to the left hip. Directionality for these wounds could not be established. Other non-fatal injuries included abrasions to the elbows, right forearm, right knee, right lower leg, right foot and left thigh.

Mr. Henley's toxicology revealed the presence of cocaine and benzoylecgonine, a metabolite of cocaine. Dr. Cina determined that the cause of death to be multiple gunshot wounds and the manner of death to be homicide.

PREVIOUS INCIDENT

Detective Burke Payne of the Federal Heights Police Department interviewed Mr. Andrew Willis on September 4, 2018 at 3476 W. 97th Avenue, unit #75.

Mr. Willis stated that earlier in the day, between 9 a.m. and 10 a.m., his neighbor, later identified as Mr. Henley, was pacing back and forth on Mr. Willis' truck bed hopper and refused to come down. Mr. Henley was wearing black shorts, a black shirt, and black baseball cap. Mr. Henley stated that his name was Tim and that he had been taking cocaine for the past two days.

Mr. Willis described Mr. Henley as paranoid. Mr. Henley believed that dogs were chasing him and that there was a German Shepard inside Mr. Henley's home. Mr. Willis opened the door to Mr. Henley's home and attempted to assure Mr. Henley that there were not any dogs inside the home. Mr. Henley still refused to come down.

Mr. Willis called the police. Westminster police officers responded to the scene. The officers were able to coax Mr. Henley off the truck. The officers placed Mr. Henley on the curb and spoke with Mr. Henley. Paramedics responded and met with Mr. Henley. After the paramedics left, Mr. Willis was unsure where Mr. Henley went.

The Westminster Police reports from this call were collected as part of the investigation. The reports indicate that Sergeant Robert DeHerrera, Sergeant Alexander Johnstone, Officer Paul McDonald and Officer Engleberg responded to 3496 W. 97th Avenue on September 4, 2018, at approximately 10:20 a.m. Sergeant DeHerrera arrived on scene and observed Officer Engleberg speaking with a male, later identified as Mr. Henley. Mr. Henley told officers that he had been using cocaine since 4 a.m. Mr. Henley stated that he had not used cocaine for six months and believed that he was having a "bad trip."

Sgt. DeHerrera requested that paramedics respond to the location. While officers waited for the paramedics, they spoke to Mr. Henley. Mr. Henley explained to officers that he was new to Colorado, that he worked for Amazon, and was a semi-professional football player. Mr. Henley told the officers that he was feeling a lot better. It appeared that Mr. Henley was alert and orientated to date, time, and place. After paramedics treated him, Mr. Henley was released from the scene.

The Westminster Fire Department Patient Care Report was collected as part of the investigation. The report indicates that they treated Mr. Henley at 10:40 a.m. at 3496 W. 97th Avenue. The report stated that Mr. Henley was "seated calmly" with police on scene. The report further states that Mr. Henley was "breathing normally, in no apparent distress, calm and cooperative." Mr. Henley admitted to using cocaine earlier in the day. Mr. Henley refused medical treatment. Mr. Henley was able to verbalize the risks associated with cocaine use and refusing medical treatment.

LEGAL ANALYSIS

As was previously noted, this review is limited to determining whether criminal charges should be filed against Officer Louis Engleberg and Officer Chris Hempelmann for the shooting that occurred on September 4, 2018. 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 Officer Engleberg's and Officer Hempelmann's actions were not justified under the circumstances surrounding this incident and the applicable law.

In this case, there is no dispute that Officers Engleberg and Hempelmann shot and killed Mr. Timmy Henley. At the time of the shooting, Officers Engleberg and Hempelmann were engaged in the course of their duties to investigate a burglary in progress by an armed suspect. The issue of which of the involved officers actually caused the death of Mr. Henley is complicated, as the investigation does not reveal forensic evidence that would conclusively make this determination. Therefore, for purposes of this review, it is assumed that either one of the shooting officers actually caused the death of Mr. Henley. Therefore, the legal question presented to the Office of the District Attorney is whether, at the time Officers Engleberg and Hempelmann fired their weapons, the Office of the District Attorney can prove beyond a reasonable doubt that their actions were not justified under Colorado law.

The use of force by a law enforcement officer necessarily invokes an analysis under C.R.S. § 18-1-707, the law applicable to the use of force by a peace officer. In pertinent part, the language of the statute reads as follows:

(1) A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or immanent use of physical force while effectuating or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

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

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

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

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

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

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

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

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

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

The "reasonable belief" standard is the linchpin upon which self-defense applies. As such, the critical question in this case is whether there is sufficient evidence to disprove, beyond a reasonable doubt, that Officer Engleberg and Officer Hempelmann reasonably believed that it was necessary to use deadly force to defend themselves from what they reasonably believed to be the use or imminent use of deadly physical force. This standard of reasonableness requires consideration of whether, under all of the circumstances, an objective person situated in the officers position would have maintained the same belief. Consequently, the evaluation of Officer Engleberg's and Officer Hempelmann's reasonable belief must be based not upon what we now know, but the circumstances as they perceived them at the time of the shooting.

Officer Engleberg and Officer Hempelmann were responding to a burglary in progress that included multiple apartment units. The officers believed that an armed suspect was inside an apartment with a victim. The description provided to the officers was a male wearing a black t-shirt, shorts, and wearing no shoes. As the officers approached the apartment building, they observed Mr. Henley swing open the door of unit #19. Mr. Henley appeared to match the suspect's description. Both Officer Engleberg and Officer Hempelmann observed Mr. Henley armed with a large knife. Mr. Henley raised the knife over his head and charged towards the officers.

During this rapidly evolving situation, both officers stated that they were in fear that Mr. Henley was going to attack them with the knife. Mr. Henley was moving in an aggressive manner towards the officers. This caused Officer Engleberg to fire his weapon at Mr. Henley. Officer Hempelmann did not initially fire his weapon because he could not safely do so. After the initial shots, Mr. Henley fell to the ground. Perceiving the immediate threat to be over, Officer Engleberg stopped firing his weapon and ordered Mr. Henley to remain on the ground. Despite Officer Engleberg yelling clear commands to stop, Mr. Henley returned to his feet and continued towards the officers. Officer Engleberg and Officer Hempelmann believed Mr. Henley still possessed the knife as Mr. Henley moved towards the officers. Consequently, both

Officer Engleberg and Officer Hempelmann again perceived that Mr. Henley presented a threat to their safety when they fired their weapons at Mr. Henley.

Officer Engleberg's and Officer Hempelmann's version of events is corroborated by other evidence. Multiple witness in the area heard Officer Engleberg yelling commands to stop and remain on the ground. Mr. Lopez observed Mr. Henley "book it" towards the officers. The audio recording of Mr. Tackett's 911 call also corroborates the officers' version of events. The recording reveals that there was a gunshot, followed by a two-second pause, and additional gunshots. This is consistent with Officer Engleberg's initial shooting, the pause while Mr. Henley was on the ground, and then both officers firing their weapons when Mr. Henley continued advancing. Additionally, CSI Young recovered a large kitchen knife in the location that officers initially observed it in Mr. Henley's hand.

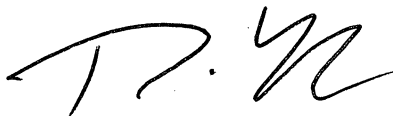
The location of the gunshot wounds on Mr. Henley's body is consistent with the officers' version of events. The majority of the entrance wounds are to the front of the Mr. Henley's body, consistent with Mr. Henley moving towards the officers. The bullet wound located on Mr. Henley's right wrist is consistent with Mr. Henley having his right arm raised over his head when he suffered the gunshot wound.

Under these circumstances, there is insufficient evidence to contradict Officer Engleberg's and Officer Hempelmann's reasonable belief that they were in danger of receiving serious bodily injury or death at the time they fired their weapons. Therefore, given the fact that Mr. Henley had been armed with a large knife and chose to charge at the officers, it is not probable that a jury of twelve members of the community would unanimously find beyond a reasonable doubt that Officer Engleberg's and Officer Hempelmann's actions were not reasonable. Under these facts, the Office of the District Attorney cannot prove that Officer Engleberg's and Officer Hempelmann's actions of firing at Mr. Timmy Henley were not justified as applied to C.R.S. §18-1-707.

CONCLUSION

Applying the facts of the incident to the applicable law, the evidence does not support the filing of any criminal charges against Officer Louis Engleberg and Officer Chris Hempelmann for discharging their weapons in the fatal shooting of Timmy Henley on September 4, 2018. 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