



November 10, 2020

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

Re: Investigation of the officer-involved shooting of David Jacobs, DOB 03/15/1982, on June 18, 2020, in Westminster, Colorado.

Dear Chief Carlson:

The investigation and legal analysis of the officer-involved shooting of David Jacobs occurring on June 18, 2020 involving Westminster Police Sergeant Steve Holton and Sergeant Blair Wilson is complete. The 17th Judicial District Critical Incident Investigation Team (CIIT) conducted this investigation. The CIIT is comprised of detectives and crime scene technicians from multiple police agencies within the 17th Judicial District, as well as investigators from the Office of the District Attorney for the 17th Judicial District. On September 10, 2020 Thornton Police Department Detective Doug Parker presented the CIIT factual findings of the investigation to my office. Detective Parker presented police reports, videos,<sup>1</sup> audio interviews, and transcripts of the interviews of witnesses, along with photographs and diagrams of the scene investigation.

This review is strictly limited to determining whether criminal charges are warranted 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 unanimous jury. Here, the prosecution also has the burden to prove beyond a reasonable doubt that the use of force was not justified under 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 are sufficient. That evaluation is left to each individual agency.

As further set forth herein, based on the evidence presented and the 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 Sergeant Steve Holton and Sergeant Blair Wilson.

<sup>1</sup> Currently Westminster Police Department is not outfitted with body worn cameras.

## STATEMENT OF FACTS<sup>2</sup>

On the evening of June 18, 2020, the Lakewood Police Department advised the Westminster Police Department that they had an outstanding felony warrant<sup>3</sup> for David Jacobs, and a second new felony arrest warrant<sup>4</sup> for burglary, assault and menacing involving the use of a 9mm handgun. Members of the Lakewood Police Department Special Enforcement Team (SET) unit tracked Mr. Jacobs to 6980 Stuart Street, Unit #1-209, an apartment located in Westminster. A search warrant was also authorized for the search of that residence. The Lakewood Police Department requested the Westminster Police Department to assist with the arrest of Mr. Jacobs.

The Westminster SWAT team worked to execute the arrest and search warrant at the residence. At a briefing, Westminster SWAT members were advised of the arrest warrant and search warrant as well as Mr. Jacobs' criminal history. In preparation, the SWAT team established a staging area near the Stuart Street address that included members of law enforcement, rescue teams and paramedics. While SWAT was organizing in the staging area, other officers were at the apartment complex office providing real-time updates on unit #1-209.

As officers began to approach the second-floor apartment, using the exterior stairwell, Sergeant Drew Smith observed a male he recognized to be Mr. Jacobs begin to exit the apartment door. Mr. Jacobs then quickly retreated into the apartment closing the door behind him. Police officers approached the apartment; knocking and announcing their presence, saying, "police, search warrant" prior to entering the apartment. Officers made entry into the apartment through the front door that opened up into a living room area where four uninvolved individuals were located. These four persons in the living room complied with the officers' orders and left the apartment. The apartment is very small with one bedroom, a living room, dining room and kitchen area. One of the individuals in the living room, E.J.,<sup>5</sup> heard Mr. Jacobs stating that SWAT was there as Mr. Jacobs retreated towards the back bedroom moments before the SWAT team entered.

Officer David Holton entered the apartment and as he began to make his way through the apartment noticed a locked bedroom door. Other Officers on scene simultaneously heard updates on the radio that a male was in the back bedroom. Officer David Holton, Sergeant Steve Holton and Sergeant Blair Wilson approached and entered the back bedroom. Officer David Holton breached the door and saw Mr. Jacobs sitting on a bed with a handgun pointed to his head with his finger on the trigger.

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<sup>2</sup> The Statement of Facts are culled from the overall CIIT investigation and is presented here largely in chronological order.

<sup>3</sup> 20CR2078 for charges of Trespass to an automobile, Violation of a Criminal Protection Order, Reckless driving and Driving under revocation prohibited.

<sup>4</sup> The second arrest warrant was issued on June 18, 2020, for charges of 1<sup>st</sup> degree burglary, 2<sup>nd</sup> degree assault, felony menacing, violation of bail bond conditions, violation of protection order and obstruction of telephone service.

<sup>5</sup> Use of initials is to maintain the privacy of citizen witnesses.

Sergeant Steve Holton entered the bedroom and also observed Mr. Jacobs with a handgun in his right hand pointed at his head and began to yell commands to drop the gun. Mr. Jacobs repeatedly said, "I'll do it, I'll do it." Mr. Jacobs ignored repeated commands the officers gave him to drop the gun. Mr. Jacobs started to move his gun towards the officers and Sergeant Steve Holton described "watching him, and we tell him to drop it, and he's saying I'll do it. And then at that point, the gun starts to come towards us and that's when I fire." All three officers described Mr. Jacobs with his finger on the trigger moving his handgun from his head to a position where the barrel of the gun is pointing directly at the officers who were within three to four feet from Mr. Jacobs. Sergeant Steve Holton and Sergeant Blair Wilson then fired their weapons striking Mr. Jacobs. Officer David Holton stated in his interview that Mr. Jacobs was an immediate threat to all three officers. Sergeant Blair Wilson stated in his interview that, "he was not going to kill himself, but kill one of us."

The investigation concluded that Sergeant Steve Holton fired his .223 rifle three times and Sergeant Blair Wilson fired his .223 rifle two times at Mr. Jacobs. Officer David Holton did not discharge his weapon. The officers reported that they stopped firing when Mr. Jacobs was no longer a threat. EMS responded to provide medical treatment to Mr. Jacobs and transported him to Good Samaritan Hospital where he succumbed to his injuries. A 9mm Luger semi-auto handgun loaded with one live round in the chamber and five rounds in the magazine was recovered from the bedroom.<sup>6</sup>

On June 19, 2020, forensic pathologist Dr. Holmes performed the autopsy. Dr. Holmes noted five penetrating gunshot wounds to the lower chest, abdomen, buttock, thigh and forearm. A toxicology report showed Mr. Jacobs to have a blood alcohol concentration of .070 and positive levels of amphetamine and methamphetamine. Dr. Holmes determined the cause of death to be multiple gunshot wounds.

### LEGAL ANALYSIS

In this incident, there is no dispute that Sergeant Steve Holton and Sergeant Blair Wilson shot Mr. Jacobs causing his death. The issue of which involved officer actually caused the death is complicated, as two law enforcement officers fired their weapons resulting in the death of Mr. Jacobs. The forensic evidence cannot conclusively distinguish which firearm caused the fatal shots. Therefore, for the purposes of this review, it is presumed that either of the shooting officers actually caused the death of Mr. Jacobs.

Both of the involved officers were engaged in their duties as peace officers to arrest Mr. Jacobs based on an active arrest warrant. Therefore, the legal question presented to the Office of the District Attorney is whether the

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<sup>6</sup> CSI Davenport performed a functionality examination on the 9mm Luger and determined the handgun functioned as designed, firing one round with each trigger pull.

prosecution can prove beyond a reasonable doubt that the officers' actions were not justified under Colorado law at the time the officers fired their weapons.

The use of force by a law enforcement officer necessarily invokes an analysis under §18-1-707, C.R.S. (2020), 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.” §18-1-901(3)(d), C.R.S. (2020).

As was previously noted, this review is limited to determining whether criminal charges should be filed against Sergeant Steve Holton and Sergeant Blair Wilson. 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.

Accordingly, the issue here is whether there is enough evidence of criminal conduct that a jury would find beyond a reasonable doubt that Sergeant Holton and Sergeant Wilson acted without a lawful justification. Here, the question is whether the use of deadly physical force by the officers was not justified and whether the force used was not reasonable. As the United States Supreme Court has mandated, the test is whether the nature and degree of force used is objectively reasonable after considering the totality of the circumstances. Graham v. Connor, 490 U.S. 386 (1989).

Alternatively phrased, the question here is whether a reasonable police officer, confronted with the same facts and circumstances, could have concluded that it was necessary to discharge his firearm to defend himself and the other officers and stop the threat that David Jacobs presented.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer’s beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. Graham v. Connor, 490 U.S. 386, 396-97 (1989).

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat the officer faces. Illinois v. Lafayette, 462 U.S. 640 (1983); Scott v. Henrich, 39 F.3d 912 (9<sup>th</sup> Cir. 1994). The 9<sup>th</sup> Circuit Court of Appeals has stated:

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. Scott v. Henrich, supra, 39 F.3d at 915.

### CONCLUSION

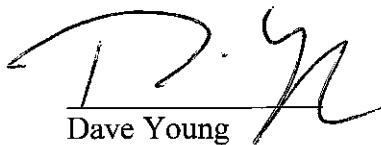
Under the particular facts of this investigation, the prosecution cannot prove beyond a reasonable doubt to a jury that the actions of Sergeant Holton and Sergeant Wilson were not legally justified under Colorado law and United States Supreme Court precedent. All three officers state that Mr. Jacobs refused commands to drop his gun and began to point his handgun at the officers. There is no evidence to refute what the officers said happened and the physical evidence at the scene corroborates their version of events.

Pursuant to C.R.S. §18-1-707(2)(a), the prosecution cannot prove that both Sergeants were not justified in using deadly physical force under these circumstances. The evidence supports the objectively reasonable conclusion that all the officers in the room with Mr. Jacobs were in “imminent danger of being killed or of receiving great bodily injury.”

In order to file criminal charges, the prosecution is legally required to prove criminal conduct and disprove beyond a reasonable doubt to a unanimous jury the validity of the foregoing affirmative defenses. Applying the facts of this incident to the applicable law, the evidence does not support the filing of any criminal charges against Sergeant Steve Holton and Sergeant Blair Wilson for discharging their weapons in the fatal shooting of David Jacobs on June 18, 2020.

Please feel free to contact me if you have any questions or if you believe that further investigation is needed.

Sincerely,



Dave Young  
District Attorney