



John R. Newsome
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

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Amy Folsom Mullaney
Assistant District Attorney

June 16, 2006

OFFICER INVOLVED SHOOTING REPORT
RE: TCSO DEPUTIES MICHAEL ROMERO AND JERRY KERR/ INCIDENT INVOLVING
JACK JONES

FACTUAL SUMMARY

On June 1, 2006 Teller County Sheriff's Deputies responded to a domestic disturbance at 168 Cherokee Circle, Florissant, CO. The 911 call was received from a Ms. Sandra Jones, who had left the residence due to the threats and disturbing behavior of her husband, Jack Jones (Jones). Several TCSO deputies arrived on scene and approached Jones, who was visibly agitated and holding a Stevens Model 311 Series H twelve gauge shotgun. As TCSO Sgt Mark Foky attempted to verbally convince Jones to put down his weapon and talk about the situation, TCSO deputies took positions of cover. Jones repeatedly threatened to shoot the deputies if they did not leave his property and began a countdown to three, signaling his intention to fire his weapon. Sgt. Foky began to withdraw, and Jones responded by raising his weapon towards the retreating officer. As Jones raised his shotgun, Deputy Michael Romero fired one round from his AR 15 rifle. Deputy Jerry Kerr, who was observing the situation through a scope and from a position of cover, fired one round from his Remington Model 700 sniper rifle. Jones died from a single gunshot wound to the head.

The 4th Judicial District Attorney's Critical Incident Team was activated and conducted the investigation in association with detectives from the Teller County Sheriff's Office as well as personnel from the Colorado Bureau of Investigation.

That investigation and legal analysis of the shooting of Jack Jones has been completed, and on behalf of the 4th Judicial District Attorney's Office and the People of the State of Colorado, I conclude **that under Colorado law, Deputy Michael Romero was justified in using deadly force against Jack Jones.** I further conclude **that under Colorado law, Deputy Jerry Kerr was justified in using deadly force against Jack Jones.**

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorney's Office Critical Incident Team, in conjunction with TCSO and CBI, interviewed numerous witnesses, obtained written statements, collected physical evidence, collected all TCSO reports and records, and photo documented the scene.

All reports of the investigators and the results of physical testing were submitted to me for review, and will be contained and preserved for public view.

SCENE INVESTIGATION and WITNESS STATEMENTS

An important aspect to this investigation came from an interview with deceased's wife, Sandra Jones. Ms. Jones reported that her husband, a sixty eight year old male, was in constant and severe pain due to a medical condition. This pain made him experience mood swings and outbursts. Jones was unable to sleep comfortably, and refused to seek additional VA assistance.

On the day in question, Jones told his wife that he was going to shoot the fuel line of the family ATV and blow it up. He also stated that he was going to kill her and then himself "to get it over with". This attitude was thought to be the product of 15 years of declining health, increasing depression, and assorted medications. Jones had recently sought psychiatric help in Colorado Springs.

When Jones went to get the ATV, Ms. Jones called 911 and fled the house due to fears of her husband's erratic behavior and his loaded shotgun. The deputies at issue here responded to her call.

STATEMENTS OF DEPUTIES

Several TCSO Deputies were interviewed, and their statements were reviewed. While there are minor differences in their statements due to visual lines, vantage points, and recollection of exact verbage used by Jones, I conclude that collectively these statements are supported by the evidence and accurately portray this incident. While too lengthy to give in their entirety, a summary of pertinent facts would include:

- (1) all deputies were clearly identified as police officers;
- (2) all deputies took positions of cover from various vantage points;
- (3) Jones was armed with a shotgun near a shed;
- (4) Sgt Mark Foky attempted to verbally deescalate the situation;
- (5) Jones was ignoring repeated commands to put his weapon down;
- (6) Jones was yelling threats of harm if the officers did not immediately leave his property;
- (7) Jones began a verbal countdown to what was clearly an expressed desire to begin shooting;
- (8) Jones raised his weapon in the direction of the person of Sgt. Foky;
- (9) The officers in question responded to this believed threat of harm and death to a peace officer by discharging one round from their weapons.

I would note that of importance is the fact the DA personnel were immediately notified and on scene less than an hour from the time of shooting and that all DA protocols and procedures were strictly adhered to by the TCSO.

EVIDENCE COLLECTED AT THE SCENE

The scene at 168 Cherokee Circle was processed by Investigators from the 4th Judicial District Attorney's Office as well as CBI. The entire scene was photo documented. Investigators discovered the following relevant items:

- (a) A Remington Model 700 sniper rifle with a Leopold scope (Deputy Kerr)
- (b) A spent cartridge found near the location of Deputy Romero fired from his AR 15 rifle
- (c) A Stevens Model 311 series h shotgun recovered from Jones body
- (d) A spent shotgun shell from Jones shotgun

- (e) A casing recovered from Kerr's sniper rifle
- (f) A copper jacketed bullet fragment recovered from the NE corner of the shed near Jones
- (g) An AR 15 rifle issued by TCSO (Deputy Romero)
- (h) A bullet fragment recovered from the shed
- (i) Swabbings of apparent blood from the shed associated with Jones' fatal injury

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... 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

Under Colorado law, the operative question in this case is whether, at the instant he fired the shot that killed Jack Jones, Deputy Kerr reasonably believed that he or another person in the community was in imminent danger of bodily injury or death by Jack Jones or whether Deputy Kerr reasonably believed that deadly force was necessary to effect the arrest of a person he reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon. The question presented for determining criminal culpability of Deputy Kerr is **not** whether, in fact, Jack Jones intended to shoot Sgt. Foky or to commit suicide. Therefore it is of no consequence whether Jones was actually intending to kill a peace officer. The question is simply whether Deputy Kerr, at the time that he fired his weapon, had a "reasonable belief" that deadly force was necessary to defend himself or a third person or to effect an arrest of a person he reasonably believed had committed or attempted to commit a felony with a deadly weapon. The same analysis would apply to Deputy Romero. In short, Colorado law does not require peace officers to wait until a shot is fired or a fellow officer is wounded or killed to legally defend themselves.

CONCLUSION

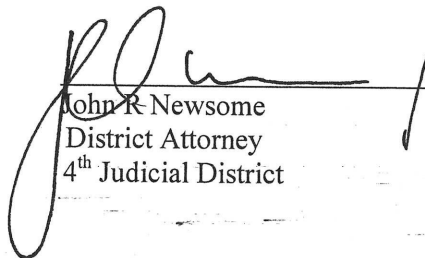
Based upon all of the facts developed in this investigation, I conclude that the evidence supports that Deputy Kerr did, in fact, believe that as Jack Jones raised his shotgun at Sgt Foky, Jones presented a deadly threat to a peace officer. I further conclude that based on the evidence, these beliefs were reasonable.

Based upon all of the facts developed in this investigation, I conclude that the evidence supports that Deputy Romero did, in fact, believe that as Jack Jones raised his shotgun at Sgt. Foky, Jones presented a deadly threat to a peace officer. I further conclude that based on the evidence, this belief was reasonable.

Therefore, on behalf of the People of the State of Colorado, it is my opinion that Deputy Kerr's and Deputy Romero's use of deadly force against Jack Jones was justified under Colorado law.

6/16/06

Date



John R. Newsome
District Attorney
4th Judicial District



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John R. Newsome
District Attorney

Amy Folsom Mullaney
Assistant District Attorney

October 16, 2006

Sheriff Terry Maketa
210 S. Tejon Street
Colorado Springs, CO 80903

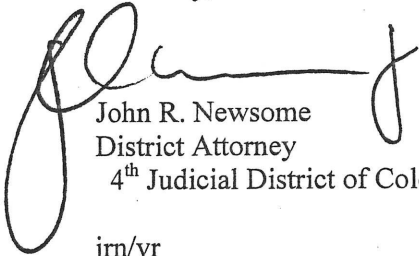
Dear Sheriff Maketa:

On August 30th, 2006, during the early morning hours, El Paso County Sheriff's Deputies Shawn Moncalieri and Scott Aldridge were dispatched separately to a report of a burglary in progress to the rear of the EZ Pawn Shop, located at 2025 B Street, Colorado Springs, Colorado. Upon arrival, the deputies found the suspect, later identified as Edward Johnson, DOB 10/11/17, still on scene and actively engaged in the crime of theft of property from the EZ Pawn. During Deputy Moncalieri's attempts to apprehend the suspect Edward Johnson, Edward Johnson accelerated his vehicle at a high rate of speed in the direction of Deputy Moncalieri and in such a fashion as to cause Deputy Moncalieri to reasonably believe that his life was in imminent danger. Deputy Moncalieri then fired a series of seven shots at the suspect vehicle and at the suspect, hitting the suspect in the buttocks and in the arm as the suspect attempted to escape. Edward Johnson was later apprehended at Memorial Hospital, and is currently facing serious criminal charges as an habitual criminal.

The 4th Judicial District Attorney's Critical Incident Team was immediately activated and conducted the investigation in conjunction with detectives from the El Paso County Sheriff's Office.

That investigation and legal analysis of the shooting of Edward Johnson has been completed, and I conclude that **under Colorado law, as to the first three shots fired at the vehicle as the vehicle accelerated towards the deputy, Deputy Moncalieri was justified in using deadly force against Edward Johnson.** As to subsequent shots which struck the vehicle and the suspect after he had passed Deputy Moncalieri, I find that there is **insufficient evidence to support criminal prosecution.** Under Colorado law, where self defense is raised, the burden is upon the prosecution to prove beyond a reasonable doubt that an individual was not acting in self defense. Under these specific circumstances there is simply insufficient evidence to support a finding that Deputy Moncalieri acted unreasonably.

Sincerely,



John R. Newsome
District Attorney
4th Judicial District of Colorado

jrn/vr

OFFICER INVOLVED SHOOTING REPORT
RE: DEPUTY SHAWN MONCALIERI/ DEFENDANT EDWARD JOHNSON
2025 B STREET
COLORADO SPRINGS, COLORADO
AUGUST 30, 2006

FACTUAL SUMMARY

On August 30th, 2006, during the early morning hours, El Paso County Sheriff's Deputies Shawn Moncalieri and Scott Aldridge were dispatched separately to a report of a burglary in progress to the rear of the EZ Pawn Shop, located at 2025 B Street, Colorado Springs, Colorado. Upon arrival, the deputies found the suspect, later identified as Edward Johnson, DOB 10/11/17, still on scene and actively engaged in the crime of theft of property from the EZ Pawn. During Deputy Moncalieri's attempts to apprehend Edward Johnson, Edward Johnson accelerated his vehicle at a high rate of speed in the direction of Deputy Moncalieri and in such a fashion as to cause Deputy Moncalieri to reasonably believe that his life was in imminent danger. Deputy Moncalieri then fired a series of seven shots at the suspect vehicle and at the suspect, hitting the suspect in the buttocks and in the arm as the suspect attempted to escape. Edward Johnson was later apprehended at Memorial Hospital, and is currently facing serious criminal charges as an habitual criminal.

The 4th Judicial District Attorney's Critical Incident Team was immediately activated and conducted the investigation in conjunction with detectives from the El Paso County Sheriff's Office. In October, 2006, I was assigned to review the case and to determine whether criminal charges should be filed against Deputy Moncalieri.

That investigation and legal analysis of the shooting of Edward Johnson has been completed, and on behalf of the 4th Judicial District Attorney's Office, I conclude **that under Colorado law, as to the first three shots fired at the vehicle as the vehicle accelerated towards the deputy, Deputy Moncalieri was justified in using deadly force** against Edward Johnson. As to subsequent shots which struck the vehicle and the suspect after he had passed Deputy Moncalieri, I find that there is **insufficient evidence to support criminal prosecution.**

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorney's Office Critical Incident Team as well as detectives from the El Paso County Sheriff's office interviewed numerous witnesses, obtained written statements, collected physical evidence, conducted forensic tests on evidence and photo documented the scene.

The reports of the investigators and the results of physical testing were submitted to me for review.

WITNESS STATEMENTS and SCENE INVESTIGATION

LAY WITNESSES

Deputy District Attorney Paul Sanford

On August 30, 2006, at approximately 10:30 a.m., Ed Butler, an Investigator with the Fourth Judicial District Attorney's Office, conducted an initial interview (at the 7-11 store 2025 B Street, Colorado Springs, Co) with DDA Paul Sanford. Mr. Sanford is a prosecutor with the 4th Judicial District Attorney's Office and is the coincidental reporting party to this shooting due to the location of his home.

Mr. Sanford stated that around 5:00 a.m. he awoke and was told by his wife that something odd was going on at the EZ Pawn Shop. His wife advised him that someone had driven a vehicle out of the parking lot area of the EZ Pawn behind the 7-11 store into the wooded area.

Mr. Sanford stated he then looked out from his kitchen's sliding glass door of his residence and observed what he thought to be a pickup truck, facing east, parked in the wooded area with no lights on. Mr. Sanford stated he estimated the truck to be parked somewhere between and behind the 7-11 store located at 2025 B Street and the Déjà Vu business located at 2145 B Street. Mr. Sanford stated he immediately dialed 911.

Mr. Sanford stated that approximately 5 minutes later he observed an individual (believed to be a sheriff's deputy) approaching from the northeast on foot towards the truck. A short time later he heard a male's voice yelling "Sheriff" and then immediately heard a vehicle accelerating. Mr. Sanford stated that almost instantly after that he heard a series of rapid firing gunshots that he believed were coming from a semi-automatic hand gun.

Mr. Sanford stated that after the shots had gone off he believed he observed the pick up truck backing up in a westerly direction. Mr. Sanford stated the truck then made an abrupt turn. He then observed the trucks headlights which led him to believe the truck was now going forward. Mr. Sanford observed the vehicle travel out of the wooded area (north) into the parking lot of the 7-11 store. Mr. Sanford thought the truck continued north through the parking lot exiting out onto B street.

Mr. Sanford was unable to supply any other additional information about the truck or its occupants.

STATEMENTS OF DEPUTIES

Deputy Shawn Moncalieri

On August 30, 2006 Investigator David Guest with the Fourth Judicial District Attorney's Office, conducted an interview of Deputy Shawn Moncalieri. The interview began at 0915 at the El Paso County Sheriff's Department Law Enforcement Bureau. The interview was video-taped.

During the interview, Deputy Shawn Moncalieri stated that he was at their EPSO South Substation at about 0500 hours when he saw a call on the terminal. Dispatch stated that an informant saw two suspicious vehicles behind the pawn shop at 2025 B Street. Dispatch updated them on the radio stating that the informant said that there were two vehicles between the DejaVu Club and the Seven-Eleven Market. The informant said that something was possibly being stolen from the pawn shop.

Deputy Moncalieri stated that he then drove to the scene and into the parking lot at the southwest corner of DejaVu. Deputy Aldridge pulled into the parking lot behind Deputy Moncalieri.

After they parked their units, Deputy Moncalieri got out of his unit and walked south towards a short part of the fence behind the club. He was ahead of Deputy Aldridge and assumed that Deputy Aldridge was following him. Deputy Moncalieri stepped through a gap in the fence and began to walk downhill along a dirt trail. He thereafter heard noise down the hill and saw a headlight on in the dark. He heard a vehicle engine, but his view was obscured by trees, so he did not have a complete view of the area. As he walked closer he saw a male subject at the back of a pick-up truck on the driver's side near the tailgate. Deputy Moncalieri stated that he was approaching on the passenger side. Deputy Moncalieri described that the truck was stopped in the bushes on the east/west trail facing west. Deputy Moncalieri was walking south along a north/south trail that forms a T intersection with the east/west trail. There was a raised berm in the trail on the west side of the T intersection.

Deputy Moncalieri advised that as he was approaching the vehicle and was about twenty yards away, he saw the subject at the back of the truck and yelled, "Stop! Sheriff's Office!" He shined his flashlight in the direction of the vehicle at the male subject, but after he shouted at him the subject disappeared out of his view. Deputy Moncalieri moved closer to the front of the vehicle. Its headlights were on, and they were blinding him. He could see only the silhouette of a male subject in the driver's seat, and could hear the engine revving.

Deputy Moncalieri stated that while he was still twenty yards to the northwest of the truck, he again heard the engine revving. Deputy Moncalieri then drew his handgun from his holster with his right hand, and pointed it at the truck and driver. He held his flashlight on in his left hand which he brought up and under his right hand so that his left hand holding the light was pressed against the back of his right hand holding his

handgun. He stated that he yelled, "Stop! Get out of the car!" He heard the engine stop revving and then saw the truck start to move. Deputy Moncalieri yelled again, "Stop! Don't do it!" Deputy Moncalieri then described that the truck was now turning to the right in his direction and moving towards him. He was blinded by the headlights and the truck was now ten yards away and moving fast. Deputy Moncalieri said at this point due to the speed of the truck and his proximity to it, he was definitely in fear for his life.

Deputy Moncalieri said he saw the right headlight of the truck swinging in his direction so he moved backwards and to his left, in a northwest direction which had him moving backwards towards the berm. He began to stumble as he backed up and moved to his left. He saw the outline of a man behind the wheel of the truck as it drove fast towards him. He fired one shot at the vehicle, and then he saw the driver and fired at him, "four or five" more rounds in rapid succession. The truck continued past him at an unknown speed and passed within two feet of him on the passenger side.

Deputy Moncalieri recalls that he had to move out of the way of the truck to avoid being struck. Deputy Moncalieri described the lighting conditions as "very dark" and stated on several occasions that the headlights from the vehicle "blinded" him as they approached. When asked about different shots to the truck entering the truck from different angles, Deputy Moncalieri could not remember with specificity. During later conversations with Sheriff's Deputies, Deputy Moncalieri states that he only clearly remembers one shot.

Deputy Moncalieri described that the truck passed within arm's length, and then went up and over the berm at such a high rate of speed that it launched a stolen all-terrain vehicle from the bed of the truck ten feet straight up in the air. The front of the truck came down hard on the other side of the berm, and then continued to drive westbound on the trail. The ATV landed on its wheels next to the berm.

After Deputy Moncalieri fired the rounds at the suspect he heard someone on the radio advise that there had been shots fired. Deputy Moncalieri then transmitted on the radio that the shots were from him, and requested assistance. Neither Deputy Moncalieri nor Deputy Aldridge was able to pursue the suspect from the scene.

Deputy Scott Aldridge

On August 30, 2006, Investigator Nancy Collins with the Fourth Judicial District Attorney's Office, along with El Paso County Sheriff's Department Detective Pat Gattenby, interviewed Deputy Scott Aldridge of the El Paso County Sheriff's Office. This interview was conducted at the El Paso County Sheriff's Department and started at approximately 0939 hrs. The interview was video-taped.

Deputy Aldridge stated that during the early morning hours he heard a call come over his radio of a suspicious incident occurring behind the 7-11 store at 2025 B Street. Upon his arrival at the scene he observed Deputy Shawn Moncalieri at the entrance of the Déjà Vu Nightclub, as well as a small chain-link fence next to the building leading down to an undeveloped area behind the store.

Deputy Aldridge stated that when he exited his patrol vehicle he could hear two engines running; a small cycle-type engine like a motorcycle, as well as a vehicle engine. Deputy Aldridge said he and Deputy Moncalieri started walking towards a dirt path that leads down into the grassy, wooded, creek area below them. As they were walking down the dirt path to their right, he could hear the engine noises were coming from his left. Deputy Moncalieri continued down the path they were on and Deputy Aldridge walked up and around to the left on another dirt path to come around on the other side of the suspects.

Deputy Aldridge reported that as he was heading up and starting around to the other side of the vehicles, he heard Deputy Moncalieri challenging someone. He further stated that he could hear Deputy Moncalieri say, "Sheriff's Office, let me see your hands, freeze!" Deputy Aldridge said he immediately started back towards Deputy Moncalieri. Deputy Aldridge said he could hear the tension in Deputy Moncalieri's voice as he was coming towards him. Deputy Moncalieri was further shouting, "Don't do it, don't do it!"

Deputy Aldridge stated that as he approached Deputy Moncalieri, he could see that Deputy Moncalieri had his arms up pointing a gun. He then saw a vehicle shoot forward right towards Deputy Moncalieri and heard a rapid succession of shots fired by Deputy Moncalieri. Because of the time of day and resultant poor lighting, Deputy Aldridge reported that he could not see exact angles or distance. However, as the vehicle approached Deputy Moncalieri, Deputy Aldridge reported that he could see Deputy Moncalieri silhouetted against the vehicle headlights. He could also see a berm in front of the truck on the other side of Deputy Moncalieri. He further observed that Deputy Moncalieri was attempting to back up and side-step to move and get out of the way when he first saw the deputy with his weapon drawn. Deputy Aldridge reports that he heard the shots, and saw Deputy Moncalieri firing his weapon at the vehicle. Deputy Aldridge states that he was very concerned that the vehicle was going to knock Deputy Moncalieri over.

Deputy Aldridge stated that he then saw the truck pass Deputy Moncalieri and launch up over a berm. He also observed an ATV launching out of the back of the vehicle. The truck came down on the other side of the berm and continued away from the area.

Deputy Aldridge stated that he could see Deputy Moncalieri run after the truck, so he knew the truck had missed. Deputy Aldridge returned to his patrol car to give chase, and observed the suspect truck northbound on B Street.

After the arrival of the Critical Incident Team, Deputy Aldridge was dispatched to Memorial Hospital to secure the suspect's vehicle. At the hospital, he observed a go-cart in the bed of the truck which he hadn't seen at the scene and in the dark. This go-cart was later confirmed to be stolen from EZ Pawn.

EVIDENCE COLLECTED

Scene

The scene at 2025 B Street was processed by Investigators from the 4th Judicial District Attorney's Office as well as Sheriff's detectives. The entire scene was photo and video documented. Investigators discovered the following relevant items:

- (a) **Red ATV**, with sticker with the words, "EZ Pawn" and a sticker price; later identified as having been stolen from EZ Pawn on August 30th, 2006;
- (b) Six (6) **expended shell cases**, consistent in caliber with the duty weapon carried by Deputy Shawn Moncalieri;

Hospital/ Suspect Vehicle

- (a) 1982 Toyota Single Cab Pickup truck identified as the truck driven by Edward Johnson; vehicle is marked by evidence of 6 bullet strikes
- (b) Trajectory analysis by Metro Crime Lab Criminalist Jeff Saviano revealed evidence of the following:
 - (c) **Shot 1** – Based on the evidence found at the scene as well as witness descriptions, it was determined that the first shot fired by Deputy Moncalieri struck the pickup truck's passenger's side turn signal lens. This round entered the lens from front to back, left to right, at a downward angle. The evidence establishes that Deputy Moncalieri was standing to the north of the pickup truck facing southeast as the pickup truck approached him traveling southwest. The distance between Deputy Moncalieri and the pickup truck when he fired shot 1 was approximately 25'4". See the diagram and photos attached.
 - (d) **Shot 2** – Based on the evidence it was determined that Deputy Moncalieri's second shot struck the pickup truck's passenger's side quarter panel crest of the exterior portion of the wheel well from front to back, left to right, at a downward angle. Deputy Moncalieri was standing to the north of the pickup truck facing southeast and the pickup was traveling in a southwesterly direction. The distance between Deputy Moncalieri and the pickup truck when he fired shot 2 was approximately 13'5".
 - (e) **Shot 3** – Based on the evidence found at the scene Deputy Moncalieri's third shot struck the pickup truck's passenger's side quarter panel crest of the exterior portion of the wheel well. The round entered the wheel well from front to back, left to right, at a downward angle. The evidence will also show that Deputy Moncalieri was standing to the north of the pickup truck facing southeast and the pickup truck was traveling in a southwesterly direction. The distance between Deputy Moncalieri and the pickup truck when he fired shot 3 was approximately 9'3". See attached diagram and photos.

- (f) **Shot 4** –Based on the evidence found at the scene a fourth shot struck the passenger side window.
- (g) **Shot 5** – Based on evidence found at the scene Deputy Moncalieri's fifth shot struck the pickup truck in the front portion of the inside of the truck bed from back to front, right to left, at a downward angle. This round passed through the truck's bed, cab and seat. The evidence also shows that Deputy Moncalieri was standing to the north of the pickup truck facing southwest and the pickup truck was traveling west over an earthen embankment. The distance between Deputy Moncalieri and the pickup truck when he fired shot 5 was approximately 16'.
- (h) **Shot 6**– Based on evidence found at the scene, Deputy Moncalieri's sixth shot struck the pickup truck in the passenger side portion of the back sliding glass window from back to front, right to left, in a downward angle. The evidence will show that Deputy Moncalieri was standing to the north of the pickup truck facing west and the pickup truck was traveling west over an earthen embankment. The distance between Deputy Moncalieri and the pickup truck when he fired shot 6 was approximately 19'.

911 tape

- (a) Digital enhancement reveals seven (7) distinct shots fired within a matter of just a few seconds. Neither a shell casing nor a bullet hole was recovered in association with a seventh shot.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... 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

Under Colorado law, the operative question in this case is whether, at the instant he began firing at the suspect vehicle, Deputy Moncalieri **reasonably believed** that he or another person in the community was in imminent danger of bodily injury or death by Edward Johnson. The question presented for determining criminal culpability of Deputy Moncalieri is **not** whether, in fact, Edward Johnson was trying to hit him with the vehicle versus simply escape. The question is simply whether Deputy Moncalieri, at the time


that he fired his weapon, had a "reasonable belief" that deadly force was necessary to defend himself.

CONCLUSION

Based upon all of the facts developed in this investigation, I conclude the evidence supports that Deputy Moncalieri did, in fact, believe that as the vehicle revved its engine and drove towards him at a high rate of speed, Edward Johnson presented an imminent danger to the life of Deputy Moncalieri and the community. I further conclude that based on the evidence, this belief was reasonable, and that Deputy Moncalieri's use of deadly force as the vehicle approached him was justifiable under Colorado law.

As to subsequent shots which struck the vehicle and the suspect after he had passed Deputy Moncalieri, under the facts and circumstances of this particular case, I find that there is insufficient evidence to support criminal prosecution. It is undisputed by all witnesses that Deputy Moncalieri challenged Edward Johnson clearly and loudly, and that Edward Johnson knew that law enforcement was on scene and giving him commands. Thereafter, Edward Johnson revved his engine and drove in Deputy Moncalieri's direction at a very high rate of speed, causing Deputy Moncalieri to reasonably fear for his life. Although at different angles into the truck, the shots fired by Deputy Moncalieri were so rapid and so close in time that there is insufficient evidence to support a conclusion that Deputy Moncalieri had the time to assess whether the threat had passed as he acted to defend himself. Moreover, extremely poor visibility in the area and the blinding nature of the suspect's headlights would contribute to the difficult circumstances under which Deputy Moncalieri found himself. Under Colorado law, where self defense is raised, the burden is upon the prosecution to prove beyond a reasonable doubt that an individual was not acting in self defense. Under these specific circumstances there is simply insufficient evidence to support a finding that Deputy Moncalieri acted unreasonably.

Respectfully submitted,



Amy Folsom Mullaney
Assistant District Attorney
4th Judicial District
State of Colorado



News from the Office of the District Attorney

FOR IMMEDIATE RELEASE
DECEMBER 13, 2006

Contact: Lisa Kirkman ElizabethKirkman@elpasoco.com
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INVESTIGATION INTO OFFICER INVOLVED SHOOTING (November 7, 2006); DISTRICT ATTORNEY FINDS NO VIOLATION OF CRIMINAL LAW

The Office of the District Attorney has completed the investigation of the events of November 7, 2006 where Defendant William Gregg was shot during the execution of an arrest warrant.

Any time an officer fires his weapon and a person is injured, the Office of the District Attorney conducts an independent investigation. The sole purpose of that investigation is to determine if any criminal laws were violated by the law enforcement officer shooting his/her weapon.

C.R.S. §18-1-707 allows for a peace officer to use deadly force if he reasonably believes that it is necessary to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon. C.R.S. §18-1-704 further allows anyone to use deadly physical force if he reasonably believes that a lesser degree of force is inadequate and reasonably believes he or another person is in imminent danger of being killed or receiving great bodily injury.

After review of the investigation, District Attorney John Newsome concludes that the two Colorado Springs Police Officers who fired their weapons on November 8, 2006 used a reasonable amount of force to arrest an armed and dangerous bank robber. DA Newsome also finds that both officers reasonably believed they were in grave danger because of the actions of the Defendant and they used a reasonable amount of force in defending themselves and other members of the Colorado Springs Police Department.

The independent investigation consists of interviewing witnesses, to include those officers who shot their weapons. Physical evidence is carefully examined. Forensic evidence is reviewed. "We try to reach a complete investigation before making a determination," said DA Chief Investigator Larry Martin. "We look at the forensic evidence, the witness statements and the totality of the circumstances. Investigations into these matters take time."

"We were careful to compare the physical evidence to the witness statements. The physical evidence clearly corroborates the statements given by the police officers," continued Martin. "We were able to determine the following facts during our investigation:

On November 7, 2006, Colorado Springs Police Department detectives assigned to the Robbery Unit were trying to locate and apprehend William Gregg, who had been identified as the suspect in an aggravated robbery of a US Bank branch that had occurred on November 2, 2006. During that robbery, Mr. Gregg had threatened to shoot the bank teller if she did not comply with his commands.

Earlier in the day of November 2, 2006, Mr. Gregg had also failed to appear in court on three other bank robberies where he was facing charges. During the course of their investigation, detectives learned from Mr. Gregg's wife that Mr. Gregg wanted to commit suicide by having police shoot him during his apprehension.

On November 7, 2006, detectives received a call at 6:15 p.m. from a relative of Mr. Gregg's informing them that Mr. Gregg was at a particular house on El Sereno Drive. When detectives and a uniformed police officer arrived at 4 El Sereno Drive shortly after 7 p.m., they made contact with the home owner. The home owner informed police that Mr. Gregg was in the basement of his house. For the next thirty minutes, as police surrounded the house, Detective Eric Anderson made verbal contact with Mr. Gregg by identifying himself as a police detective and requesting that Mr. Gregg come upstairs with his hands up. Mr. Gregg did not respond in any way to this communication.

Shortly after 8 p.m., the Tactical Enforcement Unit (TEU) arrived and surrounded the house. Members of the TEU continued to request from the top of the stairs that Mr. Gregg surrender himself. After thirty more minutes of repeated requests to come upstairs and no response from Mr. Gregg, several members of the TEU walked downstairs to the basement. As the TEU began to search the basement, Mr. Gregg announced that he had a gun and that he would start shooting if the police did not leave. Immediately after the announcement, Mr. Gregg fired a handgun from behind the door of a small room he had hidden in. As it was dark in the basement, investigators did not learn until after Mr. Gregg was apprehended that Mr. Gregg had fired his gun into a concrete foundation wall.

Believing that Mr. Gregg had fired his gun at them, the TEU returned upstairs. The TEU immediately deployed tear gas down the stairs and through basement windows. Members of the TEU, now wearing gas masks, continued to issue commands for Mr. Gregg to come upstairs. Nearly thirty minutes after the gas had been deployed, a significant quantity of gas had emanated from the basement into the kitchen at the top of the stairs and out the back door into the backyard. It was dark and visibility was significantly reduced. In that open position, the back door partially blocked the exit from the basement.

At that time, the TEU could hear Mr. Gregg cough and begin to sprint upstairs. Upon reaching the main level of the house, Mr. Gregg darted from the top of the stairs, around the back door of the house, and out into the backyard. Several members of the TEU who

were inside the house observed that Mr. Gregg was carrying a semi-automatic handgun as he ran out of the basement and into the backyard. As Mr. Gregg exited out the back, K-9 Bosko was released from inside the house by his handler, Sgt. Steve Buzzell.

In the backyard, TEU officers Rafael Chanza and Rob McPike had positioned themselves to contain Mr. Gregg if he exited out the back of the house. Officers McPike and Chanza both observed Mr. Gregg lift his gun and aim in the direction of the officers as he ran out of the house and down a set of three stairs. Officer McPike fired several shots. One of Officer McPike's shots hit K-9 Bosko in the head as K-9 Bosko attempted to apprehend Mr. Gregg. As Mr. Gregg rolled on the ground, Officer McPike observed Mr. Gregg point the gun in his direction again. Officer McPike fired several more shots at Mr. Gregg. Medical examination later revealed that Mr. Gregg had been shot in the arm, in the lower left calf area, and in the hip/buttocks area.

Inside the house, as soon as Mr. Gregg had run out the back door, Officer Lazoff of the TEU, who had been inside the house, immediately followed Mr. Gregg. Officer Lazoff had also seen that Mr. Gregg was carrying a semi-automatic handgun in his right hand when Mr. Gregg ran from the basement and into the backyard. As Officer Lazoff approached the back door, he heard several shots being fired outside and heard K-9 Bosco cry out in extreme pain. Upon reaching the back door, Officer Lazoff felt K-9 Bosko run past him and felt a significant amount of blood on the dog. Having heard the shots and observing that K-9 Bosko had been shot, Officer Lazoff believed that Mr. Gregg had shot at officers outside and had shot K-9 Bosko.

When he reached the back door of the house, Officer Lazoff fired his rifle one time at Mr. Gregg, who was on the back patio at that point still in possession of his handgun.

Mr. Gregg was arrested immediately thereafter. Police at that time seized a 9mm handgun from Mr. Gregg. At the time it was seized, the handgun was in the cocked, ready-to-fire position. The events from the point of Mr. Gregg running up the basement stairs to the point of Mr. Gregg being placed in handcuffs lasted less than ten seconds.

Subsequent investigation by the Office of the District Attorney revealed that during the flurry of gunfire, Officer Rafael Chanza, who had been positioned in the back yard of the residence, had been hit in his bulletproof vest. This bullet shattered upon impact, causing superficial wounds to Officer Chanza's arm.

Mr. Gregg was subsequently treated for his wounds at Memorial Hospital and released into the custody of the Colorado Springs Police Department.

On November 30, 2006, the District Attorney's Office filed aggravated robbery charges against Mr. Gregg for the November 2, 2006 robbery of the US Bank and 1st Degree Assault on a Peace Officer charges for his actions at 4 El Sereno Drive on November 7, 2006.

OFFICER INVOLVED SHOOTING REPORT
RE: CSPD OFFICERS ROBIN MCPIKE AND LANCE LAZOFF
SUSPECT WILLIAM GREGG

FACTUAL SUMMARY

On November 7, 2006, Colorado Springs Police Department detectives assigned to the Robbery Unit were trying to locate and apprehend William Gregg, who had been identified as the suspect in an aggravated robbery of a US Bank branch that had occurred on November 2, 2006. During that robbery, Mr. Gregg had threatened to shoot the bank teller if she did not comply with his commands.

Earlier in the day of November 2, 2006, Mr. Gregg had also failed to appear in court on two other bank robberies that he had been charged with. During the course of their investigation, detectives learned from Mr. Gregg's wife that Mr. Gregg wanted to commit suicide by having police shoot him during his apprehension.

On November 7, 2006, detectives received a call at 6:15 p.m. from a relative of Mr. Gregg's informing them that Mr. Gregg was at a particular house on El Sereno Drive. When detectives and a uniformed police officer arrived at 4 El Sereno Drive shortly after 7 p.m., they made contact with the home owner, Clarence Huffstetler. Mr. Huffstetler informed police that Mr. Gregg was in the basement of his house. For the next thirty minutes, as police surrounded the house, Detective Eric Anderson made verbal contact with Mr. Gregg by identifying himself as a police detective and requesting that Mr. Gregg come upstairs with his hands up. Mr. Gregg did not respond in any way to this communication.

Shortly after 8 p.m., the Tactical Enforcement Unit (TEU) arrived and surrounded the house. Members of the TEU continued to request from the top of the stairs that Mr. Gregg surrender himself. After thirty more minutes of repeated requests to come upstairs and no response from Mr. Gregg, several members of the TEU walked downstairs to the basement. As the TEU began to search the basement, Mr. Gregg announced that he had a gun and that he would start shooting if the police did not leave. Immediately after the announcement, Mr. Gregg fired a handgun from behind the door of a small room he had hidden in. As it was dark in the basement, investigators did not learn until after Mr. Gregg was apprehended that Mr. Gregg had fired his gun into a concrete foundation wall.

Believing that Mr. Gregg had fired his gun at them, the TEU returned upstairs. The TEU immediately deployed tear gas down the stairs and through basement windows. Members of the TEU, now wearing gas masks, continued to issue commands for Mr. Gregg to come upstairs. Nearly thirty minutes after the gas had been deployed, a significant quantity of gas had emanated from the basement into the kitchen at the top of the stairs and out the back door into the backyard. In that open position, the back door partially blocked the exit from the basement.

At that time, the TEU could hear Mr. Gregg cough and begin to sprint upstairs. Upon reaching the main level of the house, Mr. Gregg darted from the top of the stairs, around the back door of the house, and out into the backyard. Several members of the TEU who were inside the house observed that Mr. Gregg was carrying a semi-automatic handgun as he ran out of the basement and into the backyard. As Mr. Gregg exited out the back, K-9 Bosko was released from inside the house by his handler, Sgt. Steve Buzzell.

In the backyard, TEU members Rafael Chanza and Rob McPike had positioned themselves to contain Mr. Gregg if he exited out the back of the house. Officers McPike and Chanza both observed Mr. Gregg lift his gun and aim in their direction as he ran out of the house and down a set of three stairs. Officer McPike fired several shots at Mr. Gregg. These shots caused Mr. Gregg to fall to the ground. One of Officer McPike's shots also hit K-9 Bosko in the head as K-9 Bosko attempted to apprehend Mr. Gregg. As Mr. Gregg rolled on the ground, Officer McPike observed Mr. Gregg point the gun in his direction again. Officer McPike fired several more shots at Mr. Gregg. Medical examination later revealed that Mr. Gregg had been shot in the arm, in the lower left calf area, and in the hip/buttocks area.

Inside the house, as soon as Mr. Gregg had run out the back door, Officer Lazoff of the TEU, who had been inside the house, immediately followed Mr. Gregg. Officer Lazoff had also seen that Mr. Gregg was carrying a semi-automatic handgun in his right hand when Mr. Gregg ran from the basement and into the backyard. As Officer Lazoff approached the back door, he heard several shots being fired outside and heard K-9 Bosco cry out in extreme pain. Upon reaching the back door, Officer Lazoff felt K-9 Bosko run past him and felt a significant amount of blood on the dog. Having heard the shots and observing that K-9 Bosko had been shot, Officer Lazoff believed that Mr. Gregg had shot at officers outside and had shot K-9 Bosko.

When he reached the back door of the house, Officer Lazoff fired his rifle one time at Mr. Gregg, who was on the back patio at that point still in possession of his handgun. That bullet entered Mr. Gregg's elbow and exited his wrist. During the flurry of gunfire, Officer Rafael Chanza, who had been positioned in the back yard of the residence, was hit in his bulletproof vest by the round fired by Officer Lazoff that had gone through Mr. Gregg's arm. This bullet shattered upon impact, causing superficial wounds to Officer Chanza's arm.

Mr. Gregg was arrested immediately thereafter. Police at that time seized a 9mm handgun from Mr. Gregg. At the time it was seized, the handgun was in the cocked, ready-to-fire position. The events from the point of Mr. Gregg running up the basement stairs to the point of Mr. Gregg being placed in handcuffs lasted less than ten seconds. Mr. Gregg was subsequently treated for his wounds at Memorial Hospital and released into the custody of the Colorado Springs Police Department. According to Dr. Krieg from Memorial Hospital, the through and through wound to Mr. Gregg's arm was consistent with a bullet fired from a very high velocity weapon. Officer's Lazoff's M16 rifle is a very high velocity weapon.

The 4th Judicial District Attorney's Critical Incident Team was activated immediately after the incident and conducted the investigation in association with detectives from the Colorado Springs Police Department. That investigation, along with the legal analysis of the shooting of William Gregg, has been completed, and on behalf of the 4th Judicial District Attorney's Office and the People of the State of Colorado, I conclude **that under Colorado law, both Officers McPike and Lazoff were justified in using deadly force against William Gregg.**

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorney's Office Critical Incident Team, in conjunction with the Colorado Springs Police Department, interviewed numerous witnesses, collected physical evidence, collected all CSPD reports and records, and photo documented the scene. All reports of the investigators and the completed results of physical testing were submitted to me for review and will be contained and preserved for public view.

SCENE INVESTIGATION AND WITNESS STATEMENTS

The scene investigation conducted by the District Attorney's Office included a search of the house at 4 El Sereno Drive. In the basement bathroom where Mr. Gregg was when he fired a shot, there was damage to the exterior foundation wall consistent with a bullet striking it. In that same room was found a partial lead bullet and an expended 9 mm shell casing consistent with ammunition found in Mr. Gregg's handgun. Additional investigation of the back patio and backyard area included the recovery of 8 9mm shell casings consistent with those fired by Officer McPike, the Ruger 9 mm pistol used by Mr. Gregg, one rifle casing consistent with the weapon used by Officer Lazoff, and small amounts of blood. Examination of the back exterior steps and wall of the house revealed that four shots fired by Officer McPike struck the house.

In analyzing the actions of Mr. Gregg and of the Colorado Springs Police Department officers, the statement of Mr. Gregg's wife was critical. She had told detectives that her husband wanted to commit suicide by having police shoot him during his apprehension.

STATEMENTS OF OFFICERS

All of the TEU officers who had responded to the scene were interviewed by Investigators with the District Attorney's Critical Incident Team. A summary of the important facts includes:

- (1) CSPD repeatedly requested that Mr. Gregg exit the basement of the house;
- (2) Two hours passed from the time CSPD initially requested Mr. Gregg exit the

basement until the time he was shot;

(3) Mr. Gregg fired his gun while officers were searching the basement;

(4) Mr. Gregg exited the basement with a 9mm handgun that was observed by several officers;

(5) Mr. Gregg raised his weapon and pointed it in the direction of Officer McPike;

(6) Upon falling to the ground outside, Mr. Gregg pointed his weapon in the direction of Officer McPike again.

EVIDENCE COLLECTED AT THE SCENE

The scene at 4 El Sereno Drive was processed by Investigators from the 4th Judicial District Attorney's Office and the Colorado Springs Police Department. The entire scene was photo documented. Investigators discovered the following relevant items:

- (1) Eight 9mm shell casings from the back yard area near where Officer McPike had positioned himself;
- (2) A Ruger 9mm pistol that Mr. Gregg had been armed with from the back patio and that a magazine with brass hollow point rounds and one round in the chamber;
- (3) Part of a broken magazine for a pistol that Mr. Gregg had in his front pants pocket;
- (4) A rifle casing from the back patio consistent with the ammunition used in Officer Lazoff's weapon;
- (5) A partial lead bullet and 9 mm shell casing in the downstairs bathroom where Mr. Gregg had been when he fired the one round in the basement;

Investigators also recovered the following relevant items:

- (6) A 55mm or 223 M16 rifle that Officer Lazoff had fired;
- (7) An MP5 that Officer McPike had fired;
- (8) Officer Chanza's TEU-issued vest;

APPLICABLE LAW

C.R.S. §18-1-707 allows for a peace officer to use deadly force if he reasonably believes that it is necessary to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

C.R.S. §18-1-704 further allows anyone to use deadly physical force if he reasonably believes that a lesser degree of force is inadequate and reasonably believes he or another person is in imminent danger of being killed or receiving great bodily injury.

CONCLUSION

The District Attorney's Office for the Fourth Judicial District has concluded that both Officer McPike and Officer Lazoff used a reasonable amount of force to arrest a bank robber known to be armed and dangerous. Not only had Mr. Gregg committed bank robbery less than a week before by threatening the use of gun, but he also fired a shot when police officers were attempting to arrest him in the basement of 4 El Sereno Drive. Moreover, when Mr. Gregg finally exited the home, he was still armed. His aiming the gun in the direction of Officer McPike two times makes the use of deadly force to effect Mr. Gregg's arrest entirely reasonable.

The District Attorney's Office has further concluded that both Officer McPike and Officer Lazoff reasonably believed they were in grave danger because of Mr. Gregg's actions and that they used a reasonable amount of force in defending themselves and other members of the Colorado Springs Police Department. Mr. Gregg's exiting the home with a handgun, coupled with his pointing the gun at Officer McPike two times, makes the use of deadly force by both Officers Lazoff and McPike reasonable.

On November 30, 2006, the District Attorney's Office filed one count of Aggravated Robbery against Mr. Gregg for the November 2, 2006 robbery of the US Bank. On that same day, the District Attorney's Office filed two counts of 1st Degree Assault on a Peace Officer for his actions at 4 El Sereno Drive on November 7, 2006.



Will Bain
Senior Deputy District Attorney
December 18, 2006



News from the Office of the District Attorney

FOR IMMEDIATE RELEASE
DECEMBER 13, 2006

Contact: Lisa Kirkman ElizabethKirkman@elpasoco.com
Chief Deputy District Attorney
Public Information Officer
Denise Minish DeniseMinish@elpasoco.com
Deputy District Attorney
Press Secretary
4th Judicial District
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INVESTIGATION INTO OFFICER INVOLVED SHOOTING (November 7, 2006); DISTRICT ATTORNEY FINDS NO VIOLATION OF CRIMINAL LAW

The Office of the District Attorney has completed the investigation of the events of November 7, 2006 where Defendant William Gregg was shot during the execution of an arrest warrant.

Any time an officer fires his weapon and a person is injured, the Office of the District Attorney conducts an independent investigation. The sole purpose of that investigation is to determine if any criminal laws were violated by the law enforcement officer shooting his/her weapon.

C.R.S. §18-1-707 allows for a peace officer to use deadly force if he reasonably believes that it is necessary to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon. C.R.S. §18-1-704 further allows anyone to use deadly physical force if he reasonably believes that a lesser degree of force is inadequate and reasonably believes he or another person is in imminent danger of being killed or receiving great bodily injury.

After review of the investigation, District Attorney John Newsome concludes that the two Colorado Springs Police Officers who fired their weapons on November 8, 2006 used a reasonable amount of force to arrest an armed and dangerous bank robber. DA Newsome also finds that both officers reasonably believed they were in grave danger because of the actions of the Defendant and they used a reasonable amount of force in defending themselves and other members of the Colorado Springs Police Department.

The independent investigation consists of interviewing witnesses, to include those officers who shot their weapons. Physical evidence is carefully examined. Forensic evidence is reviewed. "We try to reach a complete investigation before making a determination," said DA Chief Investigator Larry Martin. "We look at the forensic evidence, the witness statements and the totality of the circumstances. Investigations into these matters take time."

"We were careful to compare the physical evidence to the witness statements. The physical evidence clearly corroborates the statements given by the police officers," continued Martin. "We were able to determine the following facts during our investigation:

On November 7, 2006, Colorado Springs Police Department detectives assigned to the Robbery Unit were trying to locate and apprehend William Gregg, who had been identified as the suspect in an aggravated robbery of a US Bank branch that had occurred on November 2, 2006. During that robbery, Mr. Gregg had threatened to shoot the bank teller if she did not comply with his commands.

Earlier in the day of November 2, 2006, Mr. Gregg had also failed to appear in court on three other bank robberies where he was facing charges. During the course of their investigation, detectives learned from Mr. Gregg's wife that Mr. Gregg wanted to commit suicide by having police shoot him during his apprehension.

On November 7, 2006, detectives received a call at 6:15 p.m. from a relative of Mr. Gregg's informing them that Mr. Gregg was at a particular house on El Sereno Drive. When detectives and a uniformed police officer arrived at 4 El Sereno Drive shortly after 7 p.m., they made contact with the home owner. The home owner informed police that Mr. Gregg was in the basement of his house. For the next thirty minutes, as police surrounded the house, Detective Eric Anderson made verbal contact with Mr. Gregg by identifying himself as a police detective and requesting that Mr. Gregg come upstairs with his hands up. Mr. Gregg did not respond in any way to this communication.

Shortly after 8 p.m., the Tactical Enforcement Unit (TEU) arrived and surrounded the house. Members of the TEU continued to request from the top of the stairs that Mr. Gregg surrender himself. After thirty more minutes of repeated requests to come upstairs and no response from Mr. Gregg, several members of the TEU walked downstairs to the basement. As the TEU began to search the basement, Mr. Gregg announced that he had a gun and that he would start shooting if the police did not leave. Immediately after the announcement, Mr. Gregg fired a handgun from behind the door of a small room he had hidden in. As it was dark in the basement, investigators did not learn until after Mr. Gregg was apprehended that Mr. Gregg had fired his gun into a concrete foundation wall.

Believing that Mr. Gregg had fired his gun at them, the TEU returned upstairs. The TEU immediately deployed tear gas down the stairs and through basement windows. Members of the TEU, now wearing gas masks, continued to issue commands for Mr. Gregg to come upstairs. Nearly thirty minutes after the gas had been deployed, a significant quantity of gas had emanated from the basement into the kitchen at the top of the stairs and out the back door into the backyard. It was dark and visibility was significantly reduced. In that open position, the back door partially blocked the exit from the basement.

At that time, the TEU could hear Mr. Gregg cough and begin to sprint upstairs. Upon reaching the main level of the house, Mr. Gregg darted from the top of the stairs, around the back door of the house, and out into the backyard. Several members of the TEU who

were inside the house observed that Mr. Gregg was carrying a semi-automatic handgun as he ran out of the basement and into the backyard. As Mr. Gregg exited out the back, K-9 Bosko was released from inside the house by his handler, Sgt. Steve Buzzell.

In the backyard, TEU officers Rafael Chanza and Rob McPike had positioned themselves to contain Mr. Gregg if he exited out the back of the house. Officers McPike and Chanza both observed Mr. Gregg lift his gun and aim in the direction of the officers as he ran out of the house and down a set of three stairs. Officer McPike fired several shots. One of Officer McPike's shots hit K-9 Bosko in the head as K-9 Bosko attempted to apprehend Mr. Gregg. As Mr. Gregg rolled on the ground, Officer McPike observed Mr. Gregg point the gun in his direction again. Officer McPike fired several more shots at Mr. Gregg. Medical examination later revealed that Mr. Gregg had been shot in the arm, in the lower left calf area, and in the hip/buttocks area.

Inside the house, as soon as Mr. Gregg had run out the back door, Officer Lazoff of the TEU, who had been inside the house, immediately followed Mr. Gregg. Officer Lazoff had also seen that Mr. Gregg was carrying a semi-automatic handgun in his right hand when Mr. Gregg ran from the basement and into the backyard. As Officer Lazoff approached the back door, he heard several shots being fired outside and heard K-9 Bosco cry out in extreme pain. Upon reaching the back door, Officer Lazoff felt K-9 Bosko run past him and felt a significant amount of blood on the dog. Having heard the shots and observing that K-9 Bosko had been shot, Officer Lazoff believed that Mr. Gregg had shot at officers outside and had shot K-9 Bosko.

When he reached the back door of the house, Officer Lazoff fired his rifle one time at Mr. Gregg, who was on the back patio at that point still in possession of his handgun.

Mr. Gregg was arrested immediately thereafter. Police at that time seized a 9mm handgun from Mr. Gregg. At the time it was seized, the handgun was in the cocked, ready-to-fire position. The events from the point of Mr. Gregg running up the basement stairs to the point of Mr. Gregg being placed in handcuffs lasted less than ten seconds.

Subsequent investigation by the Office of the District Attorney revealed that during the flurry of gunfire, Officer Rafael Chanza, who had been positioned in the back yard of the residence, had been hit in his bulletproof vest. This bullet shattered upon impact, causing superficial wounds to Officer Chanza's arm.

Mr. Gregg was subsequently treated for his wounds at Memorial Hospital and released into the custody of the Colorado Springs Police Department.

On November 30, 2006, the District Attorney's Office filed aggravated robbery charges against Mr. Gregg for the November 2, 2006 robbery of the US Bank and 1st Degree Assault on a Peace Officer charges for his actions at 4 El Sereno Drive on November 7, 2006.

-end-



John R. Newsome
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District
105 East Vermijo
Colorado Springs, CO 80903
ADMINISTRATION
(719) 520-6000 \ FAX (719) 520-6185



Amy Folsom Mullaney
Assistant District Attorney

February 16, 2007

Chief Richard Meyers
Colorado Springs Police Department
705 South Nevada
Colorado Springs, CO 80903

Dear Chief Myers:

In the early morning hours of December 5th, 2006, **Officer Joshua Hunter** of the Colorado Springs Police Department initiated a traffic stop of a suspected drunk driver in the neighborhood of Fountain Blvd. and Jet Wing Drive. in Colorado Springs. Upon contact, the driver of the vehicle, later identified as **Marco Lee**, exhibited signs of intoxication. As **Officer Hunter** conducted the preliminary evaluation of **Marco Lee** and began to determine charges, **Officer John Garza** arrived on scene to assist, parking his marked vehicle behind both the suspect vehicle and Officer Hunter's vehicle. Other than appearing intoxicated, the suspect did not threaten or exhibit signs of violence to **Officers Hunter** or **Garza**. Per CSPD protocol, the officers radioed dispatch for assistance from a "DUI" officer. **Officer Kenneth Jordan**, of the Colorado Springs Police Department, arrived shortly thereafter to conduct an evaluation of the suspect's sobriety.

After obtaining the preliminary information from **Officers Hunter** and **Garza**, **Officer Jordan** approached the suspect vehicle to contact **Marco Lee**. Statements from both officers on scene and within feet of the shooting describe immediately hearing gunshots from the suspect. As the officers turned their attention to **Officer Jordan**, they observed **Officer Jordan** lunge toward the suspect and then begin to slump to his knees as shots rang out from a handgun wielded by the suspect. As both **Officer Hunter** and **Officer Garza** drew their own weapons to return fire, **Marco Lee** stood over **Officer Jordan** and continued to fire into him at short range. **Officer Hunter**, seated in his vehicle behind the suspect vehicle, responded by drawing his weapon and firing several rounds at **Marco Lee** through his windshield. Officer Garza, positioned near the rear of the suspect vehicle, returned fire over the hood of the car. The suspect, **Marco Lee**, sustained injuries to his extremities from several gunshots fired by **Hunter** and **Garza**, but survived without permanent injury. **Officer Ken Jordan**, sadly, was pronounced dead from his injuries a short time later at Memorial Hospital in Colorado Springs.

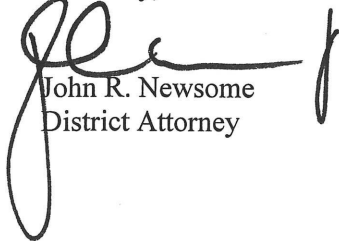
The 4th Judicial District Attorney's Critical Incident Team was activated immediately on December 5th, and conducted the investigation in association with Detectives from the Colorado Springs Police Department. I was assigned to review the case in order to determine whether the use of deadly force by **Officer Hunter** and **Officer Garza** against **Marco Lee** was justified under Colorado Law.

The investigation and legal analysis of the shooting of **Marco Lee** has been completed. On behalf of the 4th Judicial District Attorney's Office, I conclude that under Colorado law, **Officers Joshua Hunter** and **John Garza** were justified in using deadly force against **Marco Lee**.

A description of the procedure used in the investigation of this shooting and the applicable Colorado law will be promptly provided at your request. The complete file of the investigation, including all investigative reports made by my office, will also be made open to you and your agency if desired. At this time, due to the pending charge of Murder in the First Degree against **Marco Lee**, and the "gag order" issued by the court in that case, these reports may not be made available to the public.

I have enclosed a copy of Ms. Mullaney's report. Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Newsome". The signature is stylized with a large initial "J" and a long horizontal stroke.

John R. Newsome
District Attorney

February 5, 2007

OFFICER INVOLVED SHOOTING REPORT
RE: OFFICERS JOSHUA HUNTER AND JOHN GARZA
SUSPECT: MARCO LEE

FACTUAL SUMMARY

In the early morning hours of December 5, 2006, **Officer Joshua Hunter** of the Colorado Springs Police Department initiated a traffic stop of a suspected drunk driver in the neighborhood of Fountain and Jet Wing in Colorado Springs. Upon contact, the driver of the vehicle, later identified as **Marco Lee**, exhibited signs of intoxication. As **Officer Hunter** conducted the preliminary evaluation of **Marco Lee** and began to determine charges, **Officer John Garza** arrived on scene to assist, parking his marked vehicle behind both the suspect vehicle and **Officer Hunter's** vehicle. Other than appearing intoxicated, the suspect did not threaten or exhibit signs of violence to **Officers Hunter** or **Garza**. Per CSPD protocol, the officers radioed dispatch for assistance from a "DUI" officer, one who is specially trained to evaluate drunk drivers. **Officer Kenneth Jordan**, of the Colorado Springs Police Department, arrived shortly thereafter.

After obtaining the preliminary information from **Officers Hunter** and **Garza**, **Officer Jordan** approached the suspect vehicle to contact **Marco Lee**. Statements from both officers on scene and within feet of the shooting describe immediately hearing gunshots from the suspect. As the officers turned their attention to **Officer Jordan**, they observed **Officer Jordan** lunge toward the suspect and then begin to slump to his knees as shots rang out from the suspect. As both **Officer Hunter** and **Officer Garza** drew their own weapons to return fire, **Marco Lee** stood over **Officer Jordan** and continued to fire into his neck and back. **Officer Hunter**, seated in his vehicle behind the suspect vehicle, responded by drawing his weapon and firing several rounds at **Marco Lee** through his windshield. **Officer Garza**, positioned near the rear of the suspect vehicle, returned fire over the hood of the car. The suspect, **Marco Lee**, sustained injuries to his extremities from several gunshots fired by **Hunter** and **Garza**, but survived without permanent injury. **Officer Ken Jordan** was pronounced dead from his injuries a short time later at Memorial Hospital in Colorado Springs.

The 4th Judicial District Attorney's Critical Incident Team was activated immediately on December 5th, and conducted the investigation in association with Detectives from the Colorado Springs Police Department. I was assigned to review the case in order to determine whether the use of deadly force by **Officer Hunter** and **Officer Garza** against **Marco Lee** was justified under Colorado Law.

That investigation and legal analysis of the shooting of **Marco Lee** having been completed: on behalf of the 4th Judicial District Attorney's Office, I conclude that under Colorado law, **Officers Joshua Hunter** and **John Garza** were justified in using deadly force against **Marco Lee**.

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorney's Office Critical Incident Team as well as detectives from the Colorado Springs Police Department interviewed numerous witnesses, obtained written statements, collected physical evidence, conducted forensic tests on evidence and photo documented the scene.

All reports of the investigators and the results of physical testing were submitted to me for review, and will be contained and preserved for public view at a time, date and place consistent with the law.

INVESTIGATION

STATEMENT OF OFFICER JOSHUA HUNTER

On December 5, 2006, **Deputy Chief Investigator Linda Dix** of the 4th Judicial District Attorney's Office was contacted by **Chief Larry Martin** to assist in an officer involved shooting at Fountain Blvd. and Jetwing. **Investigator Dix** responded to the Police Operation Center at 705 S. Nevada where she was assigned to interview Colorado Springs Police **Officer Joshua Hunter**. The interview began at 2:55 a.m. on December 5th and ended at approximately 4:00 a.m. Present with **Investigator Dix** was **Detective Derek Graham** of the Colorado Springs Police Department, **Officer Hunter**, and his counsel, **Mark Barker**.

Officer Hunter stated he had been with the Colorado Springs Police Department since July 2005. He was currently assigned to the nightshift at Sand Creek Division. **Officer Hunter** stated it was his Friday of his work week. He stated his work hours were 2100 hours to 0700 hours.

Officer Hunter stated that at approximately 11:14 p.m. while on routine duty near the intersection of Jetwing and Fountain, he observed a vehicle leaving the Happy Hour parking lot at a high rate of speed. He stated that he estimated that he was going 30 to 40 mph. The suspect vehicle made a left turn onto Jetwing without slowing for a dip in the road and hit the dip hard and then proceeded south on Jetwing. **Officer Hunter** stated that as the suspect passed, **Officer Hunter** made a U turn and pulled in behind the suspect in order to run a check on the vehicle's plate. At that time, the suspect put his right turn signal on, pulled out around the vehicle in front of him, and turned right on to Fountain without stopping or even attempting to stop at the red light. **Officer Hunter** then put his lights on to initiate a traffic stop, but the vehicle did not pull over right away. Thereafter, the suspect turned his blinker on and pulled over to the right. Both vehicles came to a stop near a Safeway store located on Fountain, west of Jetwing.

As he got out of his vehicle to contact the driver, **Officer Hunter** stated he heard over the radio that **Officer Garza** was in route as cover. Upon contact with the driver, later identified as **Marco Lee**, **Officer Hunter** determined that the driver was exhibiting clear signs of intoxication and admitted to having a "pitcher of beer." During his contact with **Marco Lee**, **Officer Hunter** reports that the suspect was not acting unusual or threatening in any way; he was "just sitting there." **Officer Hunter** stated he asked the suspect for his license, registration and proof of insurance, and the suspect eventually complied by retrieving the documents from the glove compartment.

Officer Hunter said the suspect looked up at him and told him that he was on a suspended sentence. He then asked **Officer Hunter** if there was any way to please have this go away or forget about this. **Officer Hunter** explained that with the odor of alcohol coming from his car, the way he was driving, and running a red light it was doubtful. **Officer Hunter** told the suspect to hang on and stay there and he would be right back.

Officer Hunter explained that he went back to his own car as **Officer Garza** arrived and came to his front passenger window. **Officer Garza** had parked his patrol vehicle behind **Officer Hunter's**. They briefly discussed the information **Officer Hunter** had obtained. **Officer Garza** thereafter called for the "DUI" car, and even approached the suspect vehicle himself to obtain additional information.

Officer Hunter was sitting in his patrol car, behind the suspect vehicle, writing the ticket when **Officer Ken Jordon** arrived. **Officer Hunter** and **Officer Jordan** met briefly at **Officer Hunter's** vehicle to exchange information before **Officer Jordan** approached the suspect vehicle to conduct roadside sobriety tests

Officer Hunter stated that as **Officer Jordan** left his window, **Officer Hunter** resumed filling out his paperwork. At this time, **Officer Garza** was the cover officer with **Officer Jordan**. He stated he did not know how long he was working on the ticket when he heard several "pops." He stated that the suspect fired two volleys of shots. He stated he heard "pop- pop," and that got his attention. He stated he looked up and saw **Officer Jordan** standing, with his back to **Officer Hunter**, but starting to slump like he was kneeling. He stated he then saw the suspect **Marco Lee**, standing over the top of **Officer Jordan** with a black automatic weapon, continuing to fire. At that time, **Officer Jordon** was almost in a kneeling position with the suspect standing over **Officer Jordan** firing down on him. **Officer Hunter** does not recall how many times he fired, and estimates three or four rounds through the windshield, with a clear line of sight at the suspect. He did not know **Officer Garza's** position at this time.

When asked how far away he was at the time he fired, **Officer Hunter** estimated that from the point of the suspect's front door to his car was 10 to 15 feet. **Officer Hunter** stated he saw the suspect jerk. He stated he believed that he had hit the suspect but could not be certain because he imagined that **Officer Garza** was firing as well. I asked if **Officer Jordan** or **Officer Garza** were firing. **Officer Hunter** stated that he did not know. He stated the only one he knew was firing was the suspect and himself. The distance between **Officer Jordan** and the suspect was two to three feet.

Officer Hunter explained that after he shot the suspect the suspect went down, lying on his back by the open door of the vehicle. He observed a black semi automatic by the suspect's right hand. He stated that **Officer Garza** beat him over to the suspect and had the suspect covered with his gun as **Officer Hunter** approached. **Officer Hunter** stated he kicked the gun that was by the suspect's hand away from the suspect, five or ten feet. He then notified dispatch that there was an officer down.

STATEMENT OF OFFICER JOHN GARZA

On December 5th, 2006, at approximately 12:30 a.m., **Investigator Micah Rasner** of the 4th Judicial District Attorney's Office, was contacted at home to assist in the investigation. **Investigator Rasner** interviewed CSPD **Officer John Garza**, who was an eyewitness to the shooting of **Officer Jordan**. The interview began at approximately 3:00 a.m. at the Police Operations Center. Present were **Investigator Rasner**, **Detective Mike Happ**, of the Colorado Springs Police Department, **Officer Garza**, and attorney **Richard Radabaugh**.

Officer Garza has been a Patrol Officer with the Colorado Springs Police Department since January 2000. During his interview, **Officer Garza** reported that his shift on December 5th, 2006, prior to the shooting was relatively uneventful. At approximately 11:15, **Officer Garza** heard **Officer Joshua Hunter** make the call for backup for a potential DUI stop. Dispatch thereafter reported the location of westbound on East Fountain Boulevard, west of Jet Wing. Due to his close proximity to **Officer Hunter's** position, **Officer Garza** responded.

As he arrived at the intersection of Fountain and Jet Wing, **Officer Garza** observed that **Officer Hunter's** vehicle was behind the suspect vehicle, and that **Officer Hunter** was standing at the driver's side window of the suspect's vehicle. **Officer Hunter** was slightly crouched over as though he was talking to the suspect through the suspect's window. **Officer Garza** stated that he approached the suspect's vehicle on the passenger side with a flashlight, illuminating the interior of the vehicle. He observed the suspect open the glove box and retrieve some documentation.

At this time, **Officer Garza** could not hear the conversation between **Officer Hunter** and the suspect. **Officer Garza** stated that while **Officer Hunter** was talking to the driver, he requested that he (**Officer Garza**) request a DUI Officer.

Officer Garza stated that at that time, he and **Officer Hunter** broke contact with the suspect and walked to the back of **Officer Hunter's** vehicle to exchange further information while awaiting **Officer Jordan**. **Officer Hunter** then entered his vehicle to run the suspect's criminal history, while **Officer Garza** returned to his vehicle to send a car to car e-mail in which he provided **Officer Jordan** a better physical location than had been previously provided. He stated that **Officer Jordan** responded back that he had "one on board" which indicated that he had another DUI suspect with him.

While waiting for **Officer Jordan**, **Officer Garza** contacted the suspect a second time without incident. **Officer Garza** reported that during the brief contact, he observed distinct signs that the suspect was intoxicated.

Officer Jordan arrived shortly thereafter. At that time, all three officers on scene met briefly near **Officer Garza's** vehicle in order to exchange information. Thereafter, as **Officer Jordan** approached the driver's side of the suspect's vehicle, **Officer Garza** approached the vehicle on the passenger side with his flashlight. **Officer Garza** stated he could see the suspect talking on his cell phone. He saw **Officer Jordan** move into a crouched-down position, appearing to be talking to the driver. He also saw **Officer Jordan** with a hand on the suspect's door, as though **Officer Jordan** was attempting to open the driver's side door. **Officer Garza** stated there were no guns drawn by anyone, no perception of any threat and nothing had escalated at that point in time.

Officer Garza stated that as the suspect started to exit his vehicle, he positioned himself in order to cover **Officer Jordan** at the left rear bumper of the suspect's vehicle. He heard **Officer Jordan** say "my partner will pat you down for any weapons."

At that time, **Officer Garza** saw **Officer Jordan** drop his clip board and make a quick movement, appearing to lunge toward the suspect's mid section. When the suspect became fully upright, he saw the suspect's right hand coming up with a gun, and **Officer Jordan** appeared to back up. **Officer Garza** remembered hearing the first shot from the suspect's gun while standing at the left rear bumper. He estimated there was between two to four feet between **Officer Jordan** and the suspect. When he heard the gun shot, **Officer Garza** moved toward the right rear bumper, and as he did he saw the suspect with his right hand held up high and the gun pointed downward. He then heard three more shots. As **Officer Garza** moved to the rear bumper of the suspect's vehicle he returned fire over the roof of the suspect's vehicle. When the gunshots ceased, **Officer Garza** began to approach the suspect as the suspect was falling backwards with his head to the south, the gun still in the suspect's right hand with the "gun slide locked to the rear." **Officer Jordan** was at the suspect's feet in a crouched position leaning into the floorboard of the driver's side compartment.

Officer Hunter immediately came up and kicked the gun out of the suspect's hand, while **Officer Garza** maintained control of the wounded suspect. Dispatch was notified immediately that **Officer Jordan** was shot and that the suspect was also wounded.

EVIDENCE COLLECTED

The scene of the shooting was processed by Investigators from the 4th Judicial District Attorney's Office as well as CSPD Detectives. The entire scene was photo- and video- documented. Investigators discovered the following relevant items, including but not limited to:

- (a) Marked police units driven by **Officer Garza** and **Officer Hunter**
- (b) Bullet fragments; testing in process
- (c) .40 caliber Glock 23 Semi-automatic pistol; slide partially to the rear
- (d) Numerous .40 caliber shell casings near the suspect vehicle
- (e) Several .9mm shell casings, including 4 casings from the interior of **Officer Hunter's** CSPD marked unit
- (f) Items of police and medical equipment scattered

As of the current date, testing on the above mentioned items is not completed. I would note that testing under these factual circumstances is not dispositive to the legal question presented.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... 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.

Under Colorado law, the operative question in this case is whether, at the moments **Officer Hunter** and **Officer Garza** returned fire at **Marco Lee**, they reasonably believed that another person in the community was in imminent danger of bodily injury or death by **Marco Lee**.

CONCLUSION

Based upon all of the facts developed in this investigation, I conclude that the evidence in this case is, quite simply, overwhelming. Both Officers did, in fact, believe that that **Marco Lee** was using or threatening to use deadly force against **Officer Jordan**, and that that belief was reasonable. Both officers consistently describe that **Officer Jordan** did not have his weapon drawn as he approached **Lee's** vehicle, and that without provocation **Marco Lee** began to fire at **Officer Jordan** at close range, ultimately

causing his death. In this case, without question, **Officer Hunter** and **Officer Garza** were well within the bounds of Colorado law to respond with the use of deadly force.

2/10/07
Date



Amy Folsom Mullaney, #26338
Assistant District Attorney



John R. Newsome
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

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Amy Folsom Mullaney
Assistant District Attorney

Chief Richard Myers
705 South Nevada Avenue
P.O. Box 2169, Mail Code 1565
Colorado Springs, CO 80901-2169

Dear Chief Myers:

On the evening December 24, 2006, Officer Mark Abbotts of the Colorado Springs Police Department responded to 6345 Moccasin Pass Court regarding a call for assistance in relation to a man armed with a handgun and chasing an unknown male party and female party to the roof of the residence.

Upon arrival, Officer Abbotts armed himself with a department issued 12 gauge shotgun and observed a male and female taking shelter along the north side of the house. The suspect was screaming at these victims from an upstairs open window while armed with a handgun. The suspect, later identified as Michael Mihalyo, refused Officer Abbotts' verbal commands to put down the weapon. Officer Abbotts, even while attempting to gain the suspect's compliance, was able to successfully direct the male and female parties to a position of safety. From a distance of approximately 25 feet away, Officer Abbotts could see the suspect raise his gun in the officer's own direction. In response, Officer Abbotts fired a round from his shotgun, striking the suspect in the chest. As confirmed in the subsequent autopsy, Michael Mihalyo died as a result of his injuries.

The 4th Judicial District Attorney's Critical Incident Team was activated immediately on December 24th and conducted the investigation in association with Detectives from the Colorado Springs Police Department.

That investigation and legal analysis of the shooting of Michael Mihalyo has been completed, and on behalf of the People of the State of Colorado, I have concluded that under Colorado law, Officer Mark Abbotts was completely justified in using deadly force against Michael Mihalyo. I also am of the opinion that Officer Abbotts acted to not only protect himself, but his actions also protected the lives of others.

A description of the procedure used in the investigation of this shooting and the applicable Colorado law is attached to this report. The complete file of the investigation will be made open to CSPD and to the public at our office at this time.

Please contact me if you have any questions or concerns.

Sincerely,

John R. Newsome
District Attorney

February 20, 2007

OFFICER INVOLVED SHOOTING REPORT
RE: Officer Mark Abbotts/ SUSPECT Michael Mihalyo
SUMMARY FORM

MATERIALS REVIEWED

Investigators from the 4th Judicial District Attorney's Office Critical Incident Team as well as detectives from the Colorado Springs Police Department interviewed numerous witnesses, obtained written statements, collected physical evidence, conducted forensic tests on evidence and photo documented the scene.

All reports of the investigators and the results of physical testing were submitted to me for review, and will be contained and preserved for public view, including, but not limited to:

***CSPD case number 06-43236**

***DAO case number 2006DA486**

***Witness Statements of import:**

- (1) Officer Mark Abbotts
- (2) Gay Fenimore
- (3) Michael Knibbe
- (4) Bailey Fenimore
- (5) Micah Hampton
- (6) Linda Hampton
- (7) Karlla Dutton
- (8) Ryan Fenimore

EVIDENCE COLLECTED

The scene at 6345 Moccasin Pass Ct. was processed by Investigators from the 4th Judicial District Attorney's Office as well as Colorado Springs Police Department Major crimes detectives. The entire scene was photo and video documented. Investigators discovered several relevant items:

- (a) Broken Front door and storm door
- (b) Bullet holes and other ballistic evidence
- (c) Broken kitchen window

- (d) Upstairs NW window removed and screen removed
- (e) Body of suspect in NW bedroom window
- (f) Ruger 357 silver revolver (removed by officers from suspect's left hand)

I would note that the statement of Officer Mark Abbotts was consistent with not only other witnesses (including the victims) but was confirmed by the physical evidence and the scene itself. I would also make note that I responded to the scene myself and am familiar with it.

SUBSEQUENT INVESTIGATION

It is apparent that an estranged party (Mihalyo) had a troubled history and arrived at 6345 Moccasin Pass Court on 12/24/06 in a distressed state and posed a direct threat to Gay Fenimore, her new boyfriend, and several children. Mihalyo forcibly entered the house, fired several shots, chased the parties throughout the house and eventually to a rooftop, and refused verbal officer commands. Mihalyo also made it clear verbally that the officer would have to "shoot and kill him" before he would put down his weapon and deescalate. Victim Gay Fenimore stated that she was frustrated that that Officer Abbotts did not fire "sooner", which I consider to be evidence of deadly force being a last resort. Mihalyo raised his handgun at Officer Abbotts, who was in an exposed position. Officer Abbotts did shoot and kill Mihalyo, who died at the scene in possession of a handgun.

APPLICABLE LAW

Colorado Revised Statute 18-1-707(2) provides the following:

- (2) A peace officer is justified in using deadly physical force upon another person ... 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:
 - (1) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon

Under Colorado law, the operative question in this case is whether, at the instant the officer fired the shot, that he reasonably believed that he or another person in the community was in imminent danger of bodily injury or death by Michael Mihalyo or whether Officer Abbotts reasonably believed that deadly force was necessary to effect the arrest of a person he reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

CONCLUSION

Based upon all of the facts developed in this investigation, I conclude that the evidence supports that Officer Mark Abbotts did, in fact, believe that as Michael Mihalyo threatened two parties from an upstairs

window at the home at 6345 Moccasin Pass Court, and pointed his weapon at Officer Abbotts, Mihalyo presented an imminent danger to himself and to the community, and that Officer Abbotts believed that deadly force was necessary to protect himself and others or to effect the arrest of Michael Mihalyo, a suspect he believed had used or attempted to use a deadly weapon during the commission of a felony. I further conclude that based on the evidence, these beliefs were reasonable.

Therefore, it is my opinion that Officer Mark Abbotts' use of deadly force against Michael Mihalyo was completely justified under Colorado law. It is also my opinion, as supported by the evidence, that Officer Abbotts in fact had no other choice at the moment his weapon was fired, and acted to defend himself and others.

Date

John R Newsome, #24897
District Attorney