



**OFFICE OF THE DISTRICT ATTORNEY
Jefferson and Gilpin Counties
Peter A. Weir, District Attorney**

April 2, 2020

Lakewood Police Department
Dan McCasky, Chief of Police
4455 S. Allison Parkway
Lakewood, CO 80226

**Re: Critical Incident Team Investigation 19-05 (Officer Involved Police
Shooting of Dr. Scott Johnson DOB 04/16/1962 on September 20, 2019)**

Dear Chief McCasky:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on September 20, 2019 to investigate the fatal shooting of Dr. Scott Johnson by Lakewood Agent Chris Hoeh. The CIRT was formed to investigate incidents in which any law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a human being while acting under the color of official law enforcement duties. A CIRT investigation was completed for determining whether criminal charges are warranted with respect to the conduct of any of the Lakewood agents involved in the incident.

At the time of CIRT activation in this case, I dispatched a Senior Chief Deputy District Attorney to respond and work in coordination with CIRT investigators and lend legal assistance as necessary. My Senior Chief Deputy observed key interviews of witnesses including Agents Hoeh, Ciarvella, and Sergeant Braley and Commander Mohr as well as the deceased's spouse Michelle Johnson.

CIRT investigators interviewed all witnesses, law enforcement and civilian, processed the scene of the shooting, conducted forensic examinations, and completed a background of Dr. Scott Johnson as part of a thorough and complete investigation into this incident. The investigative file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital media containing

recorded interviews, police communications, photographs, surveillance videos, photographs, and laboratory analysis.

An exhaustive review of the investigative file, including all CIRT reports and documentation has been completed by my office and I, along with members of my staff, have been fully briefed regarding this incident by CIRT commanders in charge of the investigation.

My findings, analysis, and conclusions of law with respect to the use of deadly force in this incident by Agent Hoeh:

Applicable Law

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes.

§ 18-1-704, C.R.S. Use of physical force in defense of a person

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

(2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

(a) The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

§ 18-1-707, C.R.S. Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsections (2) and (2.5) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

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

(b) To defend himself or a third person from what he reasonably believes to be the

use or imminent use of physical force while effecting 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.

§18-1-901, C.R.S. Definitions

(3)(d) "Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

§ 18-1-407, C.R.S. Affirmative defense

(1) "Affirmative defense" means that unless the state's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

§ 18-1-710, C.R.S. Affirmative defense

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

Summary of Opinion

Applying these statutes to the facts presented in this investigation, I find that the involved law enforcement agent is not subject to criminal prosecution for his actions on September 20, 2019.

In all cases, the law and ethical rules require that there is a reasonable probability of proving each and every element of an offense beyond a reasonable doubt in order to lodge criminal charges. Moreover, in cases where the evidence supports an affirmative defense of self-defense, there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time Agent Hoeh shot Dr. Scott Johnson, it was reasonable to believe that Dr. Johnson posed an imminent threat of death or serious bodily injury to Michelle Johnson. The evidence establishes Michelle Johnson and Dr. Scott Johnson were engaged in a domestic argument and Michelle Johnson was ordered to separate herself from Dr. Johnson. Dr. Johnson was armed with a handgun which he was repeatedly ordered to drop.

Michelle Johnson, having failed to leave as ordered, was therefore placed in a vulnerable position should Dr. Johnson act in a manner that reasonably could be perceived as threatening. In fact, Michelle Johnson reached/grabbed for Dr. Johnson's left arm at which time Dr. Johnson made a sudden upward motion with his right hand. In Dr. Johnson's right hand was a hand gun and the movement was up and towards Michelle Johnson. It was not unreasonable for Agent Hoeh to perceive this action as endangering Michelle Johnson. Agent Hoeh reasonably acted to protect Michelle Johnson.

Agents were presented with a loud argument between a male and female that was later observed to be physical in nature. The male party to the domestic had a gun and was yelling. Agents could not know if the female was unable to leave on her own or failed to leave for fear of being shot by the male. Michelle Johnson indicated that she advised an individual that she was fine, but she did not advise anyone that Dr. Johnson was potentially suicidal.

Therefore, there is no reasonable probability of disproving the affirmative defense of "Use of physical force in defense of a person" in the shooting of Dr. Scott Johnson and no criminal charges are appropriate against Agent Hoeh.

Summary of Facts

On September 20, 2019 Dr. Scott Johnson and his wife of approximately two months went to dinner at the Simms Landing Steakhouse in the City of Lakewood. The original dinner plans included two other couples, however the other couples were unable to attend dinner for various personal reasons.

During dinner both Dr. Johnson and Michelle Johnson consumed some alcoholic beverages. The Johnson's dinner reservation was scheduled for 5:00 pm. The Johnsons had additional plans of attending a show at the City of Lakewood Cultural Center at 7:30 that same evening. At some point during dinner a waitress advised the Johnsons that happy hour was about to end and the waitress inquired whether the Johnsons needed any additional drinks prior to happy hour ending.

Michelle Johnson reports that Dr. Johnson made a comment to the waitress. Whatever the exact statement was it upset Michelle Johnson.

After departing Simms Steakhouse Dr. and Michelle Johnson drove to the Lakewood Cultural Center parking structure which is located immediately adjacent to the Lakewood Police Department. As reported by Michelle Johnson, she and Dr. Johnson argued on the drive from dinner to the parking structure at the Lakewood Cultural Center.

Once the Johnsons arrived and parked Dr. Johnson proceeded to the Cultural Center to provide tickets for the show to their friends. Michelle Johnson did not accompany Dr. Johnson. Rather she attempted to get an Uber and go home but she was unable to get the Uber ride.

Dr. Johnson returned from delivering the tickets and the argument between the Johnsons continued. Michelle Johnson indicated that she could not let go of the issues, her concerns, and that she was mad. Dr. Johnson grabbed his gun that was in the car and got out of the car. Dr. Johnson left the parking structure and went across S. Allison Parkway in the direction of the Lakewood Police Department.

The City of Lakewood Cultural Center's parking structure is located directly across the street from the Lakewood Police Department sally port area. The sally port area of the Lakewood Police Department is not readily recognizable as a police department. The sally port area is generally used to bring prisoners in and out of the police department. The sally port also provides Lakewood agents with access to the Lakewood Police Department property evidence section.



Dr. Johnson could be seen with a handgun as he stood next to a garage bay door. Michelle Johnson follows Dr. Johnson at which time Dr. Johnson takes a position in the concrete utility alcove area. Dr. Johnson proceeds to sit against the concrete barrier such that he is facing the Lakewood Police Department. Michelle Johnson follows Dr. Johnson, initially standing over Dr. Johnson, but eventually she takes a seated position in front of Dr. Johnson.



As the Johnsons are seated in the alcove area, Lakewood Agent Ciarvella walks to his personal car that was parked in the cultural center garage. Agent Ciarvella was unarmed and off duty as he left the Lakewood PD. Agent Ciarvella was dressed in shorts and a shirt with no visible police markings. Agent Ciarvella's attention was initially drawn to a loud voice of a male. This is the first-time law enforcement was made aware of a disturbance. Surveillance cameras exist in the sally port area. Those cameras are not actively monitored but they do provide a limited recorded account of the events before, during and after the shooting.

At approximately the time Agent Ciarvella is leaving the police department Lakewood Agent Dougherty is also leaving the Police Department accompanied by a non-Lakewood Police employee acquaintance. Agent Dougherty's attention was also drawn to the loud sounds of a male voice, Dr. Johnson. Agent Dougherty non-verbally communicated with Agent Ciarvella to make sure something was being done regarding the situation such as notifying dispatch. In fact, Agent Ciarvella was on the phone with dispatch advising them of the disturbance.

At the time Agent Ciarvella calls dispatch Dr. Johnson places the muzzle of a gun into his mouth. This action was not observed by law enforcement agents but was done in front of Michelle Johnson. It is at this time Agent Ciarvella reports that he can now hear a female voice as well as the male voice.

After Dr. Johnson places the gun in his mouth he moves the gun to his right side and begins to manipulate the weapon. Dr. Johnson then gets up appearing to yell and pointing as he attempts to walk away. Michelle Johnson however grabs Dr. Johnson's left hand, which at the time held the gun, in an apparent attempt to prevent him from leaving. Dr. Johnson reacts by twisting his body and grabbing his gun with his right hand. It should be noted at the time of these events Agent Ciarvella is in the parking structure across the street from the sally port. Agent Ciarvella cannot see either Dr. Johnson or Michelle Johnson from his location.

Agent Ciarvella is then joined by Sgt. Braley who just parked in the same parking structure as did the Johnsons and Agent Ciarvella. Sgt. Braley hears the disturbance and non-verbally communicates with Agent Ciarvella to ensure that something is being done. Sgt. Braley is off duty and arriving for his shift. Initially Sgt. Braley is unarmed.

As Agent Ciarvella and Braley are communicating with each other, Michelle Johnson is still clutching Dr. Johnson's left arm. Dr. Johnson is eventually able to free his left arm from Michelle Johnson's grip. After temporarily freeing himself Dr. Johnson drops five live bullets and the magazine out of his handgun. The handgun had a live round in the chamber and was still operable and therefore capable of producing death or serious bodily injury. At this point Dr. Johnson and Michelle Johnson are in the drive area of the sally port adjacent to the end of the concrete wall and curb. After the live rounds and the magazine fall to the ground, Michelle Johnson once again grabs Dr. Johnson who reacts by putting the gun in his mouth.

As the struggle between Dr. Johnson and Michelle Johnson was continuing, Sgt. Braley and Agent Ciarvella walked across Allison Street to get a closer look at what was transpiring. At the point Sgt. Braley is visible Michelle Johnson, who is facing in the direction of Sgt. Braley, looks at Sgt. Braley and then Dr. Johnson immediately turns and places the gun under his chin.

Sgt. Braley, seeing the gun, advises Agent Ciarvella of the gun who then in turn notifies dispatch. Agent Ciarvella and Sgt. Braley retreat to the Cultural Center parking garage and Sgt. Braley goes to his personal vehicle to retrieve a firearm.

At the same time Sgt. Braley observes Michelle Johnson and Dr. Johnson with a gun, Agents Hoeh and Baggs were in the evidence section of the Lakewood Police Department completing paperwork. Agent Baggs initially hears information through dispatch. Both Agent Baggs and Agent Hoeh were on duty and in full Lakewood Police issued uniforms with clear markings indicating police. Agent Baggs and Agent Hoeh proceeded to the sally port to assist the male and female.

As Agent Hoeh and Baggs were making their way to the sally port area, Dr. Scott Johnson went back into the alcove area and kneeled with his gun in his right hand. Michelle Johnson once again followed Dr. Johnson. Michelle Johnson takes a kneeling position in front of Dr. Johnson.

Sgt. Braley, having retrieved his weapon, begins giving commands to Michelle Johnson to remove herself from the situation and to go to Sgt. Braley's location. Michelle Johnson refuses to leave. At one-point Michelle Johnson gets up and walks out of the alcove and looks at Sgt. Braley only to return to Dr. Johnson where she once again attempts to grab or reach for Dr. Johnson's left arm that was covering his face. As Michelle Johnson is reaching/grabbing for Dr. Johnson Sgt. Braley is continuing to give commands for Michelle Johnson to remove herself.

At this time Agent Baggs and Agent Hoeh have made their way to the sally port. As Agent Baggs and Agent Hoeh exit the pedestrian door of the sally port area, a white van is parked directly between them and Dr. Johnson and Michelle Johnson such that the agents cannot see Dr. and Michelle Johnson. To get a visual Agent Baggs and Agent Hoeh use the van as cover and fan or pie out from the van. The agents also use the concrete wall as cover. Agent Hoeh is nearest to the van and can see Michelle Johnson and Dr. Johnson. Agent Hoeh gives direct orders for Dr. Johnson to drop the gun. Both Dr. Johnson and Michelle Johnson look directly at Agent Hoeh who has his gun drawn.

Dr. Johnson does not drop his weapon nor does Michelle Johnson leave. Michelle Johnson remains with Dr. Johnson and, after looking in the direction of Agent Hoeh, she once again reaches and grabs Dr. Johnson's left arm. Dr. Johnson reacts by rotating his body in the direction of Michelle Johnson and Agent Hoeh. When Dr. Johnson makes this sudden movement, he raises his right hand. Dr. Johnson's right hand held the gun at his right side. The upward arm movement clearly exposes the weapon to the view of Agent Hoeh. Dr. Johnson's reaction to being grabbed is also such that the gun moves in the direction of Michelle Johnson's face and head. It was at this moment that Agent Hoeh discharged his weapon.

Agent Hoeh fired four rounds in succession with one of those rounds striking Dr. Johnson in the chest. The bullet struck Dr. Johnson in his center chest and traveled from Dr. Johnson's left to right.

Four shell casings that were fired from Agent Hoeh's weapon were recovered. Also recovered were live rounds from Dr. Johnson's gun, Dr. Johnson's gun, and a live round from Dr. Johnson's gun. The live round recovered from Dr. Johnson's gun

was recovered from the chamber of the firearm. No other law enforcement officers reported firing a weapon.



Agents immediately secured Dr. Johnson and Michelle Johnson had to be physically carried to a safe location. Emergency medical procedures began immediately once the weapon and Dr. Johnson were separated.



**Use of Force Officer Interview Summary:
Agent Chris Hoeh**

Agent Hoeh was on duty in full uniform armed with a Smith and Wesson, M&P 9mm handgun. Agent Hoeh was in the evidence property room finishing up reports and booking evidence when he was advised by Agent Baggs that there was a male outside in the sally port with a gun. Agent Hoeh did not initially hear the report because he was on a different radio channel from which the report was aired. Agent Hoeh and Agent Baggs agree to respond because they were close and "geared up". When Agent Hoeh was close to the pedestrian door he could hear yelling outside. Agent Hoeh was not able to hear whether the yelling was a male or female, but the sound made Agent Hoeh clear the area by looking out a small window before he stepped outside.

"When we came out the man door, um, the first thing I heard was, he's got a gun, he's got a gun, Chris he's over there, he's over there, and I, I saw Sergeant Braeley, um in civilian clothes across the street at the city's parking garage."

"Um, and he's, he's pointing, um, basically not at me, but um, it would have been...I would have been facing him, he was pointing to the left and there so, to kind, kind of come back a little bit, there was a uh, a van or a, or a truck parked in front of that window..."

"So when I came out, we had that as like, preventing us from viewing anything to our left. So I'm looking straight at him and he's pointing at that. So I, um Agent Baggs and I, we came around the van, um, and we looked into the deep corner towards the um, the main sally port door that we use as officers."

(Transcript Hoeh page 15)

"So I come around the van, and I don't see anything right away. And then I hear uh, Sergeant Braeley say something. I don't remember exactly what he said, but it was something to the

effect that, she's over there, or, or he, he has her, like it was something to the effect of there was someone else there. It wasn't just a person with a gun."

(Transcript Hoeh page 16)

"So, I recognize this, and so I began to kind of pie that pony wall and then I saw a female crouched down on the ground. And it, she was, and then I pried a little bit more and then I saw a male also crouched on the ground deep into that, into that um, back into that pony wall area."

"And then, so as they're crouching, um, they were hand fighting. Um, but the thing was, she had both of her hands involved in this, this pushing, shoving, like hand fighting that was going on."

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(Transcript Hoeh page 17)

"And I...police, show me your hands, police drop the gun and um, the, they continued to fight and the male kinda turned his head towards me. And then as his right hand came up, I very clearly saw the silhouette of a uh small compact pistol."

So he, he pulls it up, and as he's pullin' it up, the gun points at her, and that's when um, 'er as he's pulling the gun up, I had acquired my front side post.

Uh, through or with. Um, so when I acquired my front side post, he brought the gun up and I saw it pointed at her head. At, at that time, I thought he's gonna kill her. So, that's when I um, fired. Um, uh, I fired several times. Um and that, he uh, once I did that, he fell backwards into the um, into the kinda the utility area there."

(transcript Hoeh page 18 and 19)

“Ok. So as the arm is down, uh, they’re hand fighting, I’m giving commands, they’re ignoring me, there’s nothin’, they’re not comp...neither is compliant with any of my orders.”

“Um, he begins to raise his right hand and I see the uh silhouette of a pistol that I’m familiar with.

The pistol, uh, appears to be pointed at her, as it’s moving through the air, it points at her head.

And that moment and time, at that moment and time, I thought he was gonna shoot her in the head and kill her.”

“As he did that, um, I felt in that moment, that um, he was gonna cause uh, through his actions, he was gonna cause either serious bodily injury or death.”

(Transcript Hoeh page 43-44)

Agent Hoeh left the Lakewood Police Department to assist with a man who was in possession of a gun. When he gets outside Sgt. Braley further confirms that the male has a gun. Agent Hoeh has no information about who the individuals are or what they are fighting about. He only knows that there is a male and female engaged in what is commonly referred to as a domestic fight and that the male party has a gun.

Agent Hoeh was not permitted to watch the sally port surveillance video prior to this interview being conducted.

Lay Witness:

Michelle Johnson: After the shooting, Michelle Johnson was taken into the Lakewood Police department as her husband Dr. Scott Johnson was transported to St. Anthony’s Hospital. Michelle Johnson was asked questions and provided detailed information regarding what led up to her and Dr. Johnson being confronted by

Lakewood Police Agents. Michelle Johnson was upset and extremely concerned for the well fare of her husband Dr. Scott Johnson.

Michelle Johnson was none the less able to detail what started the fight between her and Dr. Johnson.

“ And um and I’m like stop, you gotta stop, like you’re just being ridiculous, you’ve had too much to drink. You know I mean he’s a big guy, he didn’t ... really, I didn’t think he drank that much, I mean it was over a long period of time. And um and so then I took the phone and I just hung it up and I texted Mitch, I said I’ll text you back in a few minutes. And he was very upset. And I’m like you gotta stop, like this is ridiculous, and then he had the gun. And he ... I don’t know he was like pulling the gun apart or something and I tried to grab like the pieces of it, you know, to like to take it away. And then he, he’s like just leave because I don’t want you to see this. And I’m like, stop, what are you doing. And, and then somebody came around the corner and I said call the police, like because he came around the corner and then Scott said you shouldn’t have done that. And then I was like just give me the gun, and he put it in his mouth. And I’m like stop. And then they ... somebody was like yelling at me, ma’am, ma’am, come out of there, something like that. And I said I’m fine. I didn’t know the police were already there. And um and then I went to look and then they’re like come out, and I’m like no, and then they shot him. Then three people came like around the corner and they shot him.”

(transcript Michelle Johnson page 7 and 8)

“And he sat there and I was leaning down and I’m just like what are you doing, he’s like upset, crying, and he’s like I’m done, I’m sick of it, and he wouldn’t calm down. And he had the gun and he ... and I’m like give me the gun. And he wouldn’t give me the gun, and that’s when some guy came by and I said go get the police.

CR: Do you know what that guy looked like?

MJ: No, I don’t. I have no idea. He just came by and he was like trying to see what was going on and I said just call the police is what I said. And, and then he said you shouldn’t have done that. And he put the gun, ...

CR: Who, who said you shouldn’t have done that?

MJ: Scott.

CR: Okay.

MJ: ... and he put the gun in his mouth.

CR: Was he seated at this point or was he standing up?

MJ: Yeah, he was sitting down. He put the gun in his mouth and I said stop it.
Like I still didn't think even though he did that I, I was like what are you ... It didn't seem ... okay I, I guess I'm an idiot. I, I just, ...

CR: I don't think you're an idiot.

MJ: ... I just didn't, I just was like stop. And then they came around or if they were yelling at me.

CR: Were you seated at that point?

MJ: Yeah. Well I was like this I think. I was like trying to talk to him I think like this. I think. I don't know. And, and they said ma'am, ma'am. I could hear them saying ma'am. And I said I'm fine, I'm fine. And then I ... like I said I'm fine and I still didn't see the police. And then they, they ... then they came around and they said, step away or they said something like that to me. And I'm like no, and they shot him.

CR: So were you still in a kneeled down position when you hear shots?

MJ: Yeah, because once I saw 'em I was like, no I'm not. Like I just, I just ...

CR: I guess what I'm trying to understand is did you, did you stand up at all, did you move away from Scott at all when, when the officers told you to, to move away or

No.

CR: ... did you stay right there

MJ: I, I stayed. I, yeah, I think I stayed because they said that and I, I remember saying no. And I stayed. I was gonna stay with him and then they started shooting the gun and he went over. And I didn't know what to do. I just ..." (sobbing)

(transcript Michelle Johnson pages 20-21)

Crime Scene Processing: The scene was processed with numerous photographs taken as well as FARO 3D terrestrial scanner was used to document the scene. Members of the Arvada Police Department assisted and oversaw the scene processing.

Scene photos depict the following items of evidence that were marked and collected.

- Placard 1: a bullet fragment at the entrance to the driveway.
- Placard 2: a suspected blood drip
- Placard 3: a spent WIN 9mm Luger casing
- Placard 4: a spent WIN 9mm Luger casing
- Placard 5: a spent WIN 9mm Luger casing
- Placard 6: a spent WIN 9mm Luger casing and a fragment
- Placard 7: a piece of copper fragment
- Placard 8: an empty Ruger six shot magazine
- Placard 9: five live rounds
- Placard 10: a Ruger LCP handgun (serial # 377-45412)
- Placard 11: fragment
- Placard 12: fragments
- Placard 13: fragments
- Placard 14: fragments
- Placard 15: a projectile

In addition, law enforcement collected the following items from Agent Hoeh as evidence:

- (1) black Smith & Wesson, M&P 9, 9mm handgun bearing S/N: NBJ3931 with an attached tactical light (L19030531)
- (1) black magazine removed from the firearm (L19030533)
- (13) live "WIN 9 MM LUGER" rounds removed from the firearm magazine (L19030537)
- (1) live "WIN 9 MM LUGER" round removed from the chamber of the firearm (L19030538)
- (2) spare magazines recovered from the utility belt (L19030541)
- (34) live "WIN 9 MM LUGER" rounds (L19030543) removed from the spare magazines; (17) each magazine

- (1) pair of green, tactical pants with suspected bloodstains (L19030546)
- (1) black, right boot with suspected bloodstains (L19030548)
- (1) black, left boot with suspected bloodstains (L19030550)

Members of law enforcement attended and collected items of evidence from the autopsy performed on Dr. Scott Johnson.

Law enforcement collected dispatch calls including the call placed by Agent Ciarvella wherein he describes his present sense impressions and observations that are then replayed to other on duty agents. The non-emergency dispatch call captures four distinct gun shots followed by a fifth yet to be identified noise. This call has been submitted to the FBI for definitive confirmation of the noise.

Additional significant evidence was obtained through surveillance cameras located in the sally port area of the Lakewood Police department.

Video of most of the direct events leading up the shooting and the actual shooting are depicted on this surveillance footage. There is no sound contained on the footage and no witness was permitted to watch the video prior to making a statement.

Legal Analysis

This office's review of the shooting of Dr. Scott Johnson is limited to an analysis of applicable criminal statutes and affirmative defenses which apply to the facts.

As is frequently the case and as documented in scientific literature, individuals involved in high-stress events such as a shooting may experience wide-ranging emotions and perceptual distortions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often, recall of particular details will differ from witness to witness, and those interviewed may not recall all of the same events in the same chronological order. Witnesses have different perspectives to an event and their statements will so reflect. In this case, each of the witnesses offered versions of the event from their perspective and some minor inconsistencies are apparent. While there are some inconsistencies regarding some recollections of this incident, there are no inconsistencies which are relevant to my determination of criminal culpability. The inconsistencies here are not consequential in the analysis.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, there is no question that Agent Hoeh intentionally shot Dr. Scott Johnson.

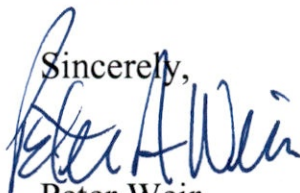
Agents Hoeh's statements and statements of fellow agents as well as all other evidence support that conclusion. Dr. Johnson refused lawful and direct commands of the agents to disarm himself. Michelle Johnson disregarded direct commands to remove herself. Michelle Johnson, rather than complying with agents' commands reached/grabbed at Dr. Johnson. In response Dr. Johnson raised his right hand that was hidden by his body exposing a handgun. Dr. Johnson's movement was up and in the direction of Michelle Johnson in such a manner to cause a reasonable law enforcement officer to believe Dr. Johnson was going to shoot Michelle Johnson. Dr. Johnson's actions gave every indication he was attempting to shoot Michelle Johnson and not submit to direct and unequivocal commands. The legal analysis then shifts to a consideration of Colorado law regarding the affirmative defenses and self-defense.

In Colorado, all citizens including police officers have the right to self-defense, including the right to use "deadly physical force" under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable grounds to believe, and does believe, that he, or **another**, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. A critical issue in self-defense is whether, from the standpoint of the person exercising their right to self-defense, the belief that there was an imminent danger of being killed or another being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

A peace officer is also justified in using deadly physical force upon another person as specified in § 18-1-707, C.R.S (2) only when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

I find in the review of this shooting, based upon the facts as determined in the investigation and the applicable law, that the actions taken by Agent Hoeh in this incident meet the legal requirements of the affirmative defenses as contained in C.R.S. Sections 18-1-704 and 18-1-707. I am certain there is not a reasonable likelihood that the District Attorney's office could disprove the affirmative defenses available to Agent Hoeh beyond a reasonable doubt. Therefore, I conclude that the conduct by Agent Hoeh did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir
District Attorney