



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

December 5, 2017

Colorado State Patrol  
Colonel Scott Hernandez, Chief  
700 Kipling St  
Lakewood, CO 80215

**Re: Critical Incident Team Investigation 17-03 (Officer Involved Police Shooting of Dale Sisson on October 6, 2017)**

Dear Colonel Hernandez:

The Critical Incident Response Team (CIRT) for the First Judicial District was activated pursuant to protocol on October 6, 2017 to investigate the fatal shooting of Dale Sisson by Colorado State Patrol Trooper John Stark. 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. In this instance, CIRT conducted a thorough investigation into the use of deadly force by Trooper John Stark on October 6, 2017. The investigation was conducted for the purpose of determining whether criminal charges are warranted with respect to Trooper John Stark's conduct.

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. He observed key interviews of witnesses and has reviewed the entirety of the investigative files.

CIRT investigators completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and multiple compact

discs. These discs contain recorded interviews, police communications, photographs, and video recordings related to the incident.

A review of CIRT reports and documentation filed with my office has been completed 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 Trooper John Stark's use of force in this incident are as follows:

### **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.

#### **§ 18-1-704, 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 through this investigation, I find that the involved law enforcement officer is not subject to criminal prosecution for his actions on October 6, 2017.

In all cases, to lodge criminal charges against an individual the District Attorney's Office requires that there is a reasonable probability of proving each and every element of the offense beyond a reasonable doubt. 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 Trooper Stark shot and killed Dale Sisson it was reasonable to believe that Sisson posed an imminent threat of death or serious bodily injury to the Trooper. The evidence also establishes that Trooper Stark was justified in using deadly physical force upon Dale Sisson to affect an arrest of a person he knew had committed a felony involving the use or threatened use of a deadly weapon.

Therefore, there is no reasonable probability of disproving the affirmative defenses in the shooting death of Dale Sisson and criminal charges against Trooper John Stark are not warranted.

## **Summary of Facts**

The following summary was derived from CIRT reports, interviews of witnesses, transcripts, and a briefing by CIRT command staff regarding the incident of October 6, 2017.

On October 6, 2017 at about 9:50 p.m., the Colorado State Patrol (CSP) dispatch center received multiple Report Every Drunk Driver Immediately (REDDI) reports from motorists on eastbound I-70 in the area of mile marker 239. Mile marker 239 is located west of Idaho Springs, Colorado. The reports received by CSP were that a blue pickup truck bearing license 9HT343 was weaving across lanes of traffic and driving erratically.

At about 9:57 p.m. the Jefferson County Sheriff's Office dispatch center received two REDDI reports from eastbound motorists on I-70, in the area of mile marker 257. These motorists reported that the same blue pickup truck struck signage at a runaway truck ramp and had driven onto the runaway lane before speeding off.



In response to the numerous REDDI reports, CSP Troopers moved to positions along I-70 in an attempt to intercept the blue pickup truck. CSP Trooper John Stark, who had been at the Troop 1A office, responded to the REDDI reports and eventually proceeded to a position on eastbound I-70 west of the Youngfield Street exit. Trooper Stark was driving a fully marked CSP Dodge Charger patrol car.

At approximately 10:15 p.m. Trooper Stark observed a blue Ford F-150 pickup truck bearing license 9HT343 pass by him eastbound on I-70. Trooper Stark began to follow the pickup truck and activated his overhead lights to initiate a traffic stop. The truck, driven by Dale Sisson, took the exit from eastbound I-70 to the flyover onto westbound Highway 58. Dale Sisson did not stop immediately, but drove to the western edge of the flyover before stopping. Trooper Stark stopped behind the pickup truck and got out of his patrol car to approach the driver.

As Trooper Stark began to approach the driver of the Ford F-150, Dale Sisson, Sisson opened the driver's door and stepped out to face Trooper Stark. Dale Sisson immediately raised a handgun, later determined to be a 9mm Glock, and pointed it at Trooper Stark. Trooper Stark retrieved his firearm, a .40 caliber Smith and Wesson M&P, and fired it multiple times at Dale Sisson.

Dale Sisson reentered the Ford F-150 and sped away westbound on Highway 58. Trooper Stark was able to pursue Sisson and report what had occurred over his radio. Trooper Stark announced he was in pursuit of the pickup truck and traveling in excess of 110 miles per hour.

With Trooper Stark in pursuit, Dale Sisson approached and took the exit from westbound Highway 58 onto McIntyre Street. Sisson was unable to successfully negotiate the turn northbound onto McIntyre, apparently due to his speed, and traveled across the median and intersection coming to a rest in a grassy area to the northwest of the intersection. Trooper Stark maneuvered his patrol car to a position in the westbound lanes of McIntyre and stopped a short distance behind Dale Sisson. Trooper Stark retrieved his CSP issued 12-gauge Remington 870 shotgun and got out of his patrol car. The pickup began to back up in the direction of Trooper Stark at which time he discharged his shotgun three times in the direction of Dale Sisson. Dale Sisson was struck with the shotgun and was pronounced deceased on scene.

It was determined at autopsy that Sisson sustained three gunshot wounds. He received a grazing wound to the outside of his left calf, a penetrating wound to his right shin below the knee cap, and a wound to the back of his head. Dale Sisson's death was a result of the shooting.

Trooper Stark was interviewed and indicated that when Dale Sisson emerged from his truck on the I-70 flyover and brandished a firearm he believed he was about to be killed so he fired his handgun multiple times at Dale Sisson. Trooper Stark related that at the time he discharged his shotgun at Dale Sisson it was because Sisson was armed and had not given any indication of an intent to surrender. Trooper Stark also believed that if Sisson continued driving he presented a threat to others.

Trooper Stark's patrol car was outfitted with a dash camera capable of video recording. The dash camera captured many of the events related to this investigation.

### Trooper John Stark Interview

Trooper Stark responded with his counsel to the Jefferson County Sheriff's Office for an interview on October 7, 2017. The interview was conducted by investigators assigned to the CIRT.

The investigators initiated the interview by obtaining background information regarding Trooper Stark to include; prior law enforcement experience, details concerning his present assignment with the CSP, details of his shift on October 6<sup>th</sup>, and firearms training.

Trooper Stark was questioned concerning the REDDI reports and his initial contact with Sisson. He stated:

“... Um, we were working on paperwork for a little while, maybe 15 minutes, not, not too long, and uh, we uh, had a vehicle coming down 1-70 eastbound that was getting REDDI reports. We had multiple on this vehicle and I heard my sergeant call to have uh, Trooper Zuhl uh, respond towards 1-70 from, she was down south in Littleton, like 470 maybe, uh, close to Bowles or Wadsworth or something like that. And so he had called her to come down and see if she could find this REDDI report. Um, and then one of our senior troopers, uh, Piney Harris, he was uh, he was up 1-70 a little ways, um, and he lost, he also was assigned to the REDDI report. It was a pickup that was getting multiple REDDI reports. Um, after a couple more came in, I realized I would be in a good position being down in Golden that if I went and sat on 1-70 I might be able to intercept it as it was traveling eastbound towards Denver. Uh, so I left the office, um, and the mile marker in Golden we're at Colfax and 1-70 is where our office is at, is approximately mile marker 260. So I got on from Colfax, westbound 1-70 and then went directly to a median, uh, facing perpendicular to Interstate, um, facing so I could see uh, with my headlights, all of eastbound traffic. Like all three lanes of 1-70 passing me. And then I was just looking uh, at the call, um, 'cause I have my computer assisted dispatching pulled up and I'm kinda reading through some of the REDDI reports and seeing a, kinda of a description of the vehicle. Um, we have uh, you know, I perceived to be five REDDI reports, I later found out it was seven

REDDI reports on this truck and we had different descriptions but, general description was a dark colored pickup truck. Uh, some of them were saying Chevy, um, so what I was doing is whenever a dark colored pickup truck came by, I would get on and follow it. I didn't activate my lights, um, gave the license plate to dispatch to see if it matched anything that we were looking for so, uh, that's when I initially started my recording was the first vehicle I pulled out on. I believe it was a, uh, like a dark green um, pickup truck and it was a Ford. And I followed that for about two miles, give the plate to dispatch; they said no it doesn't match anything. I didn't see any driving behavior so I pulled over on I-70 um, on the right shoulder and I waited for another dark colored pickup truck to come down. Um, and it, actually the second one that I went after was uh, had ended up being the, uh REDDI report..."

Trooper Stark explained that after he observed the Ford F-150 pickup go by him on I-70 he pulled in behind him and activated his overhead lights. As Trooper Stark followed the Ford F-150, Sisson took the exit for Highway 58 and began to slow as he crossed over I-70. Sisson eventually pulled over to the right of the roadway and stopped. Trooper Stark gathered his flashlight and got out of his patrol car to approach the driver of the Ford F-150.

Trooper Stark described the following events to the investigators:

"... Um, but I took the flashlight out of the center console, um, got out of my vehicle and approached the vehicle normally as I would on a regular traffic stop. I did not have my gun drawn at that point. Um, as I'm walking up I notice his door opens and he gets out. Um, his body is close to me, it's kind of a basketball term but if you can imagine, I'm kinda like you are where your body's facing me squared up. He's like this, getting out of his car and as he opens up, I see a gun come up and I recognize what I believe to be a, a, like a, 1911 Colt 45 type handgun. Pretty large handgun, uh, come up, and everything slowed down from that point. Um, as I see it coming up, I'm already walking up towards his vehicle, I would say we're within approximately 10-15 feet. It's very easy for me to identify the gun. Um, everything in my mind is I need to get my gun out of the holster as soon as I can and put down fire because at that point I believed I was about to get shot and killed. Um, so I immediately go for my gun, my door has already been shut I believe. Um, there's no cover between me and him and I'm looking, I mean his gun's right there and draw my gun and I return fire immediately uh, while retreating to the back of my patrol car for cover. Um, it felt like an eternity, um, I can only imagine um, how blessed that I am not to have been shot. Um, but at that time I didn't know whether or not I had been shot. My, my gun was very muffled when I shot it and I've been trained that this a normal response your body will have if uh, psychological response that you won't hear your firearm go off. I did hear my firearm go off, but it was very muffled so, I don't know if he shot. Um, I, at that point I believed I may have been shot. Um, just based upon where his gun was pointed and how close we were and how easy it would have been for uh, uh, him to make a shot on me. Um, so, I returned fire,



while retreating to the back of my patrol car. Uh once I got to cover, I aired to dispatch, um, shots fired, shots fired, 10-33! Um, I, I recognized that he's getting back in his vehicle. At that point I did not see um, him throw the gun away. I believed he still had the firearm with him and that um, he was very much still a danger to me and others. Um, it was instantaneous, my decision, um, when I saw him get in that car and begin to leave, my decision to pursue was instantaneous. I did not delay that at all. Um, got in my patrol car, I immediately um, went after him..."

Trooper Stark pursued Sisson westbound on Highway 58. Trooper Sisson was able to maintain visual contact with Sisson because Sisson's right turn blinker was activated and flashing, which distinguished him from other traffic that was also westbound. Trooper Stark announced his speeds over the communications radio and at one point indicated he was travelling in excess of 110 miles per hour. As Trooper Stark was catching up to the Ford F-150 he observed Sisson take the McIntyre Street exit at approximately 70 miles per hour.

Trooper Stark described the events from that point as follows:

"...And uh, he's going way too fast to make that right turn I think you would have to go about 20 to safely uh, 15-20 mile per hour to safely make that turn and I, I would guess we're going between 50 and 70 still. Um, the next thing I realize is that his car, uh, goes over the uh, raised median. Um, it's a triangle there that, the uh, stoplight sits on. He went over that into the right of the stoplight and then he went over a raised median and then up on to uh, up on to the dirt, curb and dirt on the other side. Um, and then I was able to slow down, um, safely and then maneuver around the uh, triangle and then on, I went um, on to McIntyre southbound and then parked my uh, patrol car around the median um, in the uh, it would be the southbound lanes of McIntyre and I was facing um, west mostly, but you know a little bit cantered to provide myself cover through my v-, vehicle so... Um, at that point, I could not see through the back of his, uh, the back of his car, um, his vehicle, uh, the amount of stuff that he hit, I believe it, it was still drivable and that he was still a threat to uh, take off. Um, we're only about a half mile from Golden at this point, I mean this is in the city of Golden, but you know, downtown Golden, I'd say we were about, you know pretty close in proximity that you know, we're only what, a little after 10 at night and I believed he, he would be a great risk to pedestrians, uh, other traffic if he was able to take off again. Also, I had never seen um, I'd never seen him relinquish the firearm. Um, based on my training and experience I know that if he has one firearm, there's a great likelihood that he has, uh another firearm or other weapons with him. Um, was not able to see in the back window, um, of his vehicle. Um, I never saw any, any signs of surrender so my uh, first thought, you know there was, in my perception of it, there was no other traffic around, no other people. Got out of the car, looked at his vehicle, reached back in the car, hit the unlock for my shotgun, pulled out my shotgun. Um, again, he had several seconds that he could have you know put his hands out the vehicle, out of the side window, that he could have uh, surrendered. Um, and at that point I uh, my



shotgun was at cruiser ready, which means we don't have a round in the chamber so I pumped the shotgun, loading a round. Um, had good site picture, was aiming through the back, um, driver's side window, that's all one window I believe but through that back portion where the driver, um, got good site picture on there and never saw anything. Um, at this point I was not going to give verbal commands because I did not have any backup on scene and I did not want to give him a target based upon verbal commands of where he could, um, identify where I was. And so I pumped the shotgun and laid a round through the back window. Pumped it again, laid a second round, pumped it again, laid a third round down. And sometime in between those, those three rounds, the back window shattered out and I saw a head drop down. At that point I stopped firing, retreated to the back of my patrol car uh, to get cover. Got on to dispatch, um, shortly after and asked for an ambulance to respond emergent, uh, for his care. Um, another Jefferson County Deputy arrived. He was getting out of his car and I told him hey, hey that guy's got a gun, get cover and he, he uh, he grabbed his assault rifle and he got to a position of cover. And then I was just waiting for um, more backup to arrive at that point. Um, and I, I didn't know whether or not I had been shot, but once uh, once we had enough units on scene, one of the troopers came up to me and said hey, have you been hit, and I, I looked around on my body and he was checking me too and I was like uh, I didn't see anything, but I, I didn't know so..."

Trooper Stark was specifically asked what was going through his mind as he retrieved his shotgun and got out of his patrol car. He stated:

"...What's going through my head is that he's still an immediate threat to my life and the safety and lives of others."

"Um, and so I am still thinking that I have deadly force um, coming my way, that there's a good chance that he's um, getting ready to return fire on me. Um, so I believe I still have an active threat and my life's still in danger at that point. And..."

### Deputy Michael Struckhoff Interview

Deputy Struckhoff, of the Jefferson County Sheriff's Office was on duty the night of October 6, 2017 and was a witness to the events at McIntyre and Highway 58. Deputy Struckhoff recalled he was on duty at around 10:00 p.m. and was driving his patrol vehicle southbound on McIntyre in the area of a sports bar known as "In the Zone." Deputy Struckhoff reported he was enroute to a call for service when he observed a blue truck that "...flew in front" of him. Deputy Struckhoff knew nothing of the prior REDDI reports or the pursuit up to that time. He said he saw the truck cross the intersection of the Highway 58 off-ramp and McIntyre Street and then come to rest in a field. Deputy Struckhoff observed the Colorado State Patrol car following right behind the truck so he assumed the Trooper was conducting a high-risk traffic stop.

Deputy Struckhoff said he positioned his vehicle to assist with the traffic stop and as he was preparing to assist the Trooper he heard shots and saw the Trooper with a shotgun. Deputy Struckhoff said the Trooper fired at least two rounds from a position near the CSP patrol car that shattered the back window of the truck. As the Deputy was attempting to approach the Trooper, the Trooper yelled to him that the driver, Sisson, had a gun and to take cover. Deputy Struckhoff recalled asking the Trooper if he was alright. The Trooper responded that he was and that the driver of the truck pulled a gun on him. The Trooper also told Deputy Struckhoff that the driver did not fire his weapon. Deputy Struckhoff told the Trooper to wait for additional cover officers to arrive.

At no time did Deputy Struckhoff discharge his firearm.

### Lay Witness

A civilian witness, Mr. Morgan, was contacted by law enforcement and interviewed. Mr. Morgan reported he was driving eastbound on Highway 58 and as he approached the flyover to I-70 he saw a patrol car with its emergency lights activated stopping a truck. Mr. Morgan stated he saw the male driver of the truck exit, take one step, and immediately draw a handgun. Mr. Morgan said the driver held a handgun with both hands extended out in front of him. Mr. Morgan informed the officers that he thought the driver fired the handgun three times at the officer who had pulled him over. Mr. Morgan was uncertain if the stop officer was out of his car at the time of the shooting. Mr. Morgan did not recall seeing the officer at any point during the traffic stop.

Mr. Morgan believes he called 911 at 10:16 p.m., shortly after his observations of the shooting.

### Scene Investigation

Two primary scenes were identified and processed by crime scene analysts. The scenes were located at the flyover for Highway 58 and the intersection of the Highway 58 off-ramp and McIntyre Street. The Ford F-150 driven by Dale Sisson was also processed for evidence.

### Flyover

The area on the flyover where Trooper Stark engaged Dale Sisson was processed and documented by CIRT members from the Arvada and Lakewood Police Departments. Criminalists inspected the area where Trooper Stark engaged Dale Sisson. The scene was documented, photographed, and FARO 3D scanning was completed.

A total of eight .40-caliber Speer casings were recovered on the north shoulder (Placards 1-8 as noted in the investigative reports). A total of five projectiles were recovered (Placards 9-12 and 14 as noted in the investigative reports). An area of bloodstaining was also located and documented (Placard 13 as noted in the investigative reports).

### Off-Ramp of Highway 58 and McIntyre Street

The intersection of the westbound Highway 58 off-ramp and McIntyre Street was photographed, documented, and scanned using the FARO 3D scanner. Two plastic Federal brand 00 buckshot shell casings were observed and recovered in the street. One plastic shot cup/wadding was observed blowing across the street in gusting winds. It was collected. An additional spent shell casing was found in the Trooper's Remington shotgun when it was examined by lab personnel. This evidence indicates that Trooper Stark discharged his shotgun three times during the incident.

Gouge marks were noted in the raised medians and pavement of the intersection consistent with the reported observations of the Ford F-150 by the witnesses.

### Ford F-150

The Ford F-150 was approached by law enforcement personnel. The vehicle's engine was running and the truck was in drive, although not moving. A detective on scene turned off the ignition and placed the truck in park. The driver, Dale Sisson occupied the driver's seat and was deceased. The handgun used by Dale Sisson during the incident was located on the floorboard on the driver's side of the Ford F-150. It was determined to be a Glock Model 17, a 9-millimeter. The handgun had one round in the chamber and 12 live cartridges in the magazine.

Dale Sisson's pockets were searched. Two loaded handgun magazines were located in Dale Sisson's coat, one in each exterior pocket. The magazine from the right pocket was loaded with 14 live cartridges. The magazine from the left pocket was loaded with 12 live cartridges.

### Autopsy

The autopsy was conducted on Dale Sisson on October 8, 2017 at the Jefferson County Coroner's office. The previously mentioned injuries to Dale Sisson were noted during the autopsy. The cause of death was determined to be the gunshot (shotgun) wound to his head.

## Background

Dale Sisson's record shows multiple contacts with law enforcement for burglary, assault, robbery, intoxicated assault with a vehicle, unlawful possession of a firearm, in Kansas and Texas. Most recently he had been sentenced to forty years for robbery in Texas. Dale Sisson had absconded from parole in Texas and a warrant was issued for his arrest September 5, 2017. The warrant was active on October 6, 2017.

## Legal Analysis

This office's review of the fatal shooting of Dale Sisson is limited to an analysis of applicable criminal statutes and affirmative defenses which apply to the facts.

As is frequently the case, individuals involved in a shooting may experience profound emotions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often times, 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. Mr. Morgan observed Dale Sisson firing his weapon at Trooper Stark. There is no independent evidence to support that Mr. Sisson actually fired his handgun. In addition, Trooper Stark did not remember the Ford F-150 backing up toward him after it had crossed into the field on the west side of McIntyre. The dash camera video mounted in Trooper Stark's patrol car clearly shows the Ford F-150 backing toward him prior to discharging his shotgun.

Based upon the investigation conducted by investigators and detectives assigned to the CIRT, there is no question that Trooper Stark intentionally shot Dale Sisson. Trooper Stark indicated he fired his weapons intentionally and the evidence supports that conclusion. 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 ground 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



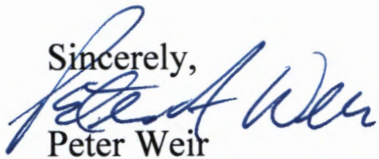
the standpoint of the person exercising his right to self-defense, the belief that he was in imminent danger of being killed or receiving great bodily injury was reasonable. Absolute certainty is not required under the law and what is reasonable is based upon all known information and circumstances.

State statute also provides that a peace officer is justified in using deadly physical force upon another person for a purpose specified in § 18-1-704, C.R.S (1) 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; or 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.

Dale Sisson was armed with a deadly weapon and brandished it in a threatening manner during the initial contact with Trooper Stark. Sisson remained a serious threat throughout this incident and at no time demonstrated a willingness to surrender. Trooper Stark was attempting to arrest Dale Sisson and by the time of the shooting it was reasonable for Trooper Stark to believe that Dale Sisson committed attempted murder, first degree assault, felony menacing, and vehicular eluding. Sisson made it clear by his actions that the well-being and safety of those around him was not of concern. He was clearly prepared to take whatever steps necessary in order to avoid arrest. Consequently, it was not unreasonable for Trooper John Stark to respond to Dale Sisson threats and actions in the manner that he did.

I find in the review of this shooting, based upon the facts as determined in the investigation and the applicable law, that Trooper Stark's actions during 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 Trooper John Stark beyond a reasonable doubt. Therefore, I conclude that Trooper Stark's conduct did not violate any criminal statutes nor involve criminal conduct.

Sincerely,



Peter Weir

District Attorney

First Judicial District Attorney