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February 26, 2018

Sheriff Steve Reams
Weld County Sheriff's Office
1950 O Street
Greeley, CO 80632

RE: Investigation of the December 31, 2017 Officer-Involved Shooting of Michael Nash

Dear Sheriff Reams:

The investigation into the shooting of Michael Nash has been completed by the Critical Response Incident Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the deputy who discharged his weapon. Attached hereto are the findings of the Investigations section of the District Attorney's office based on the entirety of the CIRT investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

As you are aware, charges have been filed against Mr. Nash for the acts committed in the early morning hours of December 31, 2017. Those charges specifically identified Deputy Nicholson as being the named victim of the Menacing charge. This identification served to release the Deputy's name to the public and media. As such, further analysis and engaging in the requisite balancing test for disclosure purposes is not necessary.

APPLICATION OF THE FACTS TO THE LAW

The District Attorney's office may ethically charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. Because the evidence establishes that Nash was shot by Deputy Nicholson, the determination of whether their conduct was criminal is a question of legal justification.

C.R.S. § 18-1-707(2) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...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...**

C.R.S. § 18-1-901(3)(d) “Deadly Physical Force” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Nash intended to use deadly force. The issue is whether it was reasonable for the deputy to believe that he was about to use deadly physical force against the deputy or another person with a deadly weapon.

In this case, Deputy Nicholson was attempting to conduct a traffic stop on Nash after observing high speed and dangerous driving. Rather than comply with the attempts to conduct this stop, Nash engaged in conduct constituting Vehicular Eluding and Reckless Driving, placing both Deputy Nicholson and the motoring public in significant danger. It is important to note that the excessively high speeds documented in the attached report occurred at a time when winter driving conditions existed and Nash was intoxicated. When he ultimately did stop his vehicle, Nash existed his car carrying a firearm. Deputy Nicholson ordered him to drop the gun. Instead of complying, Nash turned towards Deputy Nicholson, pointed the gun in his direction, yelled “F___ you” and fired a single round. Believing that he was in danger of imminent serious bodily injury or death, Deputy Nicholson fired approximately 10 rounds at Nash, striking him multiple times.

There can be no question that Nash would have clearly known that the individual attempting to conduct a traffic stop on him and giving him commands was a police officer or deputy sheriff as he was in uniform and driving a marked patrol car equipped with emergency lights and sirens.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that Deputy Nicholson was justified in using this force against Nash because he reasonably believed that it was necessary to defend himself and others from Nash’s threatened use of deadly physical force. Further, Nash had committed a felony when he menaced Deputy Nash with a deadly weapon.

CONCLUSION

Under C.R.S. § 18-1-707(2)(a) and (b), the Deputy's actions in this situation were justified and authorized by law in order to defend and protect himself and others from the lawless and dangerous actions of Mr. Nash. As a result, the Weld County District Attorney's Office will not file charges against Deputy Nicholson for the use of physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Rourke". The signature is written in a cursive style with a large initial "M".

Michael J. Rourke
District Attorney



Officer Involved Shooting (OIS) - December 31st, 2017
Subject: Michael Nash
Fort Lupton, Colorado
District Attorney Investigator Joe DeAngelo, M.A.

PREAMBLE

The following summation is related to the Weld County Sheriff's Office (WCSO) officer (deputy) involved shooting (OIS) of subject Mr. Michael Nash (hereafter referred to as Mr. Nash) on December 31st, 2017. The information for the summation was taken from the investigation conducted by the members of the Weld County Critical Incident Response Team (CIRT), of which I am a member. There are three witnesses to the actual OIS: Deputy Nicholson, Deputy Carter, and Mr. Nash. Both deputies provided a statement to CIRT investigators. Mr. Nash, through his attorney, has declined an interview to date.

The WCSO deputies do not wear body cameras and as such there is no video of the OIS. However, shortly after the OIS a Dacono police officer arrived on scene. The Dacono officer had a body camera and obtained an audio/video record of the events. The video is of good quality but provides no additional material information specifically related to the OIS. That video is part of the CIRT case file.

MR. MICHAEL NASH

Name:	Michael Dwayne Nash
DOB:	September 8 th , 1963
Residence:	16136 WCR 18, Fort Lupton, CO 80621
Occupation:	Commercial truck driver – owner/operator of NCR Construction LLC
Criminal History:	1998 DUI (Adams County), 2008 Animal Cruelty (Weld County)

SUMMARY

Mr. Nash resides in unincorporated Weld County on a family owned farm/ranch property with his live-in girlfriend of approximately two years, Ms. Anita Russell (hereafter referred to as Ms. Russell). Ms. Russell's adult daughter, Ms. Heather Russell (hereafter referred to as Heather), along with her boyfriend, Mr. Miles Bland (hereafter referred to as Mr. Bland), and Mr. Bland's seven-year-old son live in Missouri. At the time of the OIS the three were staying with Ms. Russell and Mr. Nash at Mr. Nash's residence for the holiday.

On December 30th, 2017, at approximately 1830 hours, the above group of people went to a crab boil at a friend's house in Fort Lupton. Heather, Mr. Bland and Mr. Bland's son went in one vehicle while Mr. Nash and Ms. Russell went in another vehicle. At the crab boil all the adults except Heather and Mr. Bland consumed alcoholic beverages throughout the evening. Mr. Nash consumed large amounts of his alcoholic beverages of choice: Fireball Whisky and Coors Light. Heather, Mr. Bland, and Mr. Bland's son left the crab boil and returned to Mr. Nash's residence at approximately 2145 hours. Ms. Russell and Mr. Nash remained at the crab boil until approximately 0130 hours. According to witness accounts Mr. Nash was extremely

intoxicated by the time he arrived home.¹ Ms. Russell explained that Mr. Nash consumed Fireball Whisky and Coors Light nearly every night to the point of intoxication.² Typically, according to Ms. Russell, Mr. Nash is a very “lovie dovie” (happy drunk) when intoxicated, although Ms. Russell noted past incidents in which she had to call Mr. Nash’s brother, Mr. Ryan Nash (hereafter referred to as Ryan), to assist her to calm Mr. Nash down when he (Mr. Nash) had been intoxicated. Upon his arrival home from the crab boil Mr. Nash’s intoxicated demeanor and behaviors were notably different from his past intoxicated states. The exact chronology of events from when Mr. Nash returned home to when he drove away from the residence immediately preceding the OIS is unclear due to minor discrepancies in witness statements. However, the statements were consistent and complete enough to determine the material events.

Residence

The outlay of Mr. Nash’s one-story house is atypical in that Mr. Nash and Ms. Russell’s bedroom door opens directly outside to the porch. In order to get to the kitchen or back bedroom (where Heather and Mr. Bland were asleep) one needs to walk through Mr. Nash and Ms. Russell’s bedroom. It appeared that their bedroom doubles as a living/general room type area. Mr. Nash owned numerous firearms. Some of those firearms were continuously left out in the open. Both the interior and exterior of the house are aged and parts are in disrepair.

Mr. Nash Returns Home

Upon Mr. Nash and Ms. Russell’s return to their residence Heather, Mr. Bland, and Mr. Bland’s son were asleep in the back room of the house. The room they were sleeping in was separated from Mr. Nash and Ms. Russell’s bedroom by the kitchen and a closed door to the bedroom.

Mr. Nash was so intoxicated that when they arrived home Ms. Russell needed to assist Mr. Nash out of the vehicle, walk into the residence, relieve himself in the bathroom, and get changed. Around the time of their arrival home, Mr. Nash experienced and/or displayed hallucinations, paranoia, and physical/verbal violence primarily directed at Ms. Russell. In response to Mr. Nash’s behavior Ms. Russell unsuccessfully attempted to give Mr. Nash his “nighttime” medication, which included Ambien and his heart medication, in an effort to get Mr. Nash to calm down and go to sleep. Ms. Russell did initially get Mr. Nash into bed, but shortly thereafter he got out of the bed. Once out of bed Mr. Nash ratcheted up his aggressive

¹ I base Mr. Nash’s *extremely intoxicated* state on the statements made to investigators by Ms. Russell, Heather, and Mr. Bland, in context with all other evidence within the OIS casefile to date. Quoting Ms. Russell, Mr. Nash “was very intoxicated...way way intoxicated.” However, other adult members present at the crab boil were later interviewed via telephone and indicated Mr. Nash was not as intoxicated at the crab boil as depicted by the above three. The other partygoers’ statements conflict with Ms. Russell’s statement in which she advised that one of the party hosts had to assist her (Ms. Russell) in getting Mr. Nash to his vehicle at the end of the night due to his extremely intoxicated state. As of the writing of this report Mr. Nash’s toxicology reports are pending. As of the writing of this report there is no evidence within the CIRT case file that Mr. Nash consumed any non-pharmaceutical (recreational) drugs. Mr. Nash was on several pharmaceutical drugs. At the time of this report it is unclear what, if any, impact the pharmaceutical drugs had on his intoxicated state.

² Large quantities of both Fireball Whisky and Coors Light were inside the residence. The items were photographed and those photos are part of the CIRT case file.

behavior. At one-point Mr. Nash expressed concern for the safety of Heather and Mr. Bland and accused Ms. Russell of trying to hurt them. Ms. Russell attempted to assure Mr. Nash that Heather and Mr. Bland were fine. Mr. Nash did not accept Ms. Russell's reassurances and stumbled into the bedroom where Heather and Mr. Bland had been asleep to check on their safety. Once inside the bedroom Heather confirmed to Mr. Nash that they were not in any danger. Mr. Nash left the room; however, Heather's reassurances did not alleviate Mr. Nash's anxiety and he continued to express concern for their safety. Heather and Mr. Bland, fully awake as a result of Mr. Nash's behavior, monitored Mr. Nash out of concern for Ms. Russell and themselves. Heather followed Mr. Nash and Ms. Russell back to their (Ms. Russell and Mr. Nash's) bedroom while Mr. Bland monitored the situation from the next room, while he occasionally peeked in the bedroom of Mr. Nash and Ms. Russell.

After Mr. Nash returned to his bedroom, he was so agitated with Ms. Russell that he put Ms. Russell into a headlock on the bed and held her down against her will for between one to two minutes, while he accused her of hurting Heather and Mr. Bland. Mr. Nash released the headlock only after Heather again assured Mr. Nash, in an impassioned manner, that she was ok. Mr. Nash then told Ms. Russell to "back the fuck away." At one-point Mr. Nash thought his shadow on the wall was a dinosaur and he began to fight the shadow.³ Mr. Nash, still in a heightened state of agitation, got partially dressed, went outside and drove around the property in his white 2001 Buick Century. While Mr. Nash was driving around the property at 0207 hours, Ms. Russell called Ryan and requested his help to get Mr. Nash under control. At 0208 hours, Ryan telephoned his and Mr. Nash's father, Mr. Thomas Nash (hereafter referred to Thomas), a retired Colorado State Patrol (CSP) trooper. Ryan asked Thomas to also assist in an effort to calm Mr. Nash down. Thomas agreed and both Ryan and Thomas drove towards Mr. Nash's residence.

Prior to their arrival at Mr. Nash's residence, Mr. Nash stopped driving around the property, parked the car and returned inside. A short-time later Thomas arrived at the residence and pulled up to the closed gate which was approximately 40 yards from the house. Mr. Nash believed Thomas was a potential intruder. Mr. Nash took a .45 caliber semi-automatic handgun out (later identified as an American Tactical Import [ATI] FXH-45) which had been holstered inside the bedroom, apparently for protection from what he believed was an intruder. Ms. Russell explained to Mr. Nash the headlights were from Thomas's vehicle and not an intruder. Mr. Nash went outside onto the porch and yelled at Thomas to leave and that everything was fine. After a few verbal exchanges between Mr. Nash and Thomas, Thomas drove away from the residence to meet up with Ryan a short distance down the road on WCR 18, to discuss how to handle Mr. Nash. At 0228 hours, Ms. Russell texted Ryan the following:

³ Based upon the totality of Mr. Nash's actions towards Ms. Russell at their residence that evening/early morning, as detailed from the initial statements provided by Ms. Russell, Heather and Mr. Bland, Mr. Nash was charged with domestic violence/harassment against Ms. Russell. Ms. Russell later recanted the domestic violence portions of her statement in a follow-up interview with another investigator who was specifically addressing the domestic violence portion of the incident.

1. 0228 hours – “he has a gun”
2. 0228 hours – “don’t come up yet”
3. 0229 hours - “he is putting it away I hope”

Ryan texted Ms. Russell the following:

1. 0230 hours – “does he still have it”
2. 0232 hours – “what is going on”

Near the time Ms. Russell and Ryan’s texting exchanges Mr. Nash went to the front porch with the firearm in hand and attempted to clear the firearm by cycling the slide. During this process Mr. Nash discharged a round into the air; it is unclear if the discharge was intentional or accidental.⁴ Mr. Nash then went inside the residence and told Ms. Russell that he had to leave because he had “hurt” her. Ms. Russell again tried to calm Mr. Nash and get him to go back to bed to no avail.

Mr. Nash left in the Buick with the firearm in hand. Ms. Russell called Ryan and told him that Mr. Nash had left. Mr. Nash drove past Thomas and Ryan at a high rate of speed. Thomas and Ryan pursued Mr. Nash in their respective vehicles while Ryan remained on the phone with Ms. Russell. Ryan told Ms. Russell that Mr. Nash was driving erratically westbound on WCR 18 and then south on WCR 31. At that time Deputy Nicholson was near the WCSO southeast sub-station in preparation to end his shift and saw Mr. Nash’s headlights southbound on WCR 31 from WCR 16. Deputy Nicholson, through a visual estimate, determined that Mr. Nash’s vehicle was traveling at rate of speed well above the posted speed limit. Deputy Nicholson clocked the Buick on radar at 64 MPH in a 45 MPH zone. Deputy Nicholson observed a second vehicle, with the driver flashing the vehicle’s headlights, immediately behind Mr. Nash’s vehicle. Deputy Nicholson believed the driver of the second vehicle, through the flashing his headlights, was attempting to report the first vehicle for erratic driving. Mr. Nash drove southbound past Deputy Nicholson who was about a ¼ mile north of Highway 52 on WCR 31. Deputy Nicholson pursued Mr. Nash for approximately two minutes. Throughout the pursuit Mr. Nash drove through the grass at Koshio Park, knocked over a street sign, struck a fence, failed to stop at a stop sign and ultimately came to a stop in front of 212 S. McKinley, Thomas’s residence. At points in the pursuit speeds exceeded 100 mph.

Deputy Nicholson was interviewed by CIRT investigators and stated that upon Mr. Nash stopping, Deputy Nicholson intended to conduct a high-risk traffic stop and aired this over the radio. As Deputy Nicholson exited his vehicle he observed Mr. Nash exit his vehicle with the firearm in his right hand. Deputy Nicholson ordered Mr. Nash to drop the firearm as Mr. Nash turned toward Deputy Nicholson and pointed the firearm in Deputy Nicholson’s direction. Mr. Nash responded to Deputy Nicholson, “Fuck you!,” followed by Mr. Nash discharging a single

⁴ There was no evidence the round caused any damage. The casing was located near the porch. The round was not located.

round. Deputy Nicholson was not sure where the firearm was pointed at the time the round was discharged. Deputy Nicholson believed Mr. Nash had intended to kill him and perceived Mr. Nash was an imminent threat. Deputy Nicholson fired approximately 10 rounds at Mr. Nash from his issued Smith and Wesson M&P service pistol.

Deputy Nicholson and Deputy Carter tactically approached Mr. Nash, secured him and made the scene safe. The two deputies along with other arriving officers administered first aid to Mr. Nash until medics arrived on scene.

Deputy Carter was interviewed by CIRT investigators and stated he attempted to catch up with Deputy Nicholson on Highway 52 after Mr. Nash passed him at over 90 MPH. Deputy Carter turned onto McKinley Avenue and saw Mr. Nash and Deputy Nicholson turning around and stopping. Deputy Carter then observed Mr. Nash exit the car holding a firearm in his right hand pointed upward. While Deputy Carter was still driving toward them he began to hear gunshots and as Deputy Carter stopped and got out, Mr. Nash dropped the firearm and fell to the ground. Deputy Carter described how the two deputies gave Mr. Nash commands to show his hands before they approached. Very soon after the OIS a civilian car arrived at the scene. The man who had been operating the vehicle said he was Mr. Nash's father. A second vehicle arrived shortly thereafter. The operator of that vehicle identified himself as Mr. Nash's brother, Ryan.

Radio Traffic

- 02:40:01 Deputy Nicholson aired his attempt to stop the vehicle traveling 100 MPH.
- 02:40:36 Deputy Nicholson aired the vehicle is failing to stop for him.
- 02:40:50 Deputy Randy Carter (W0079) aired out with Deputy Nicholson.
- 02:41:23 Deputy Nicholson aired that the vehicle is driving through the park.
- 02:41:41 Deputy Nicholson aired Mr. Nash's vehicle struck a fence.
- 02:41:59 Deputy Nicholson aired gunshots.
- 02:42:04 Deputy Nicholson aired shots fired and one suspect is down.
- 02:43:32 Deputy Nicholson aired efforts to make the arrest and family on scene.
- 02:44:29 FLPD Officer Helbig (FP346) arrived on scene.
- 02:45:17 Officer Helbig aired first aid started and Deputy Nicholson aired in custody.
- 02:45:48 to 02:51:29 agency assistance and medical response to include a Dacono PD officer's arrival with a body camera.
- 02:51:41 Medical arrived.
- 03:06:00 CIRT activated.
- 03:31:50 Air Life arrived at Fort Lupton Fire Station 1.
- 03:37:29 Mr. Nash transported to Denver Health via Air Life.

Crime Scene

All of Deputy Nicholson's rounds were accounted for. During the initial crime scene investigation neither a round nor the casing from Mr. Nash's firearm were located. Thomas claims to have later found a .45 casing in his yard and he turned that casing over to the lead CIRT investigator. That casing is at the Northern Colorado Regional Forensic Laboratory (NCRFL) for analysis and as of the writing of this report no determination has been made if the casing was from the purported round Mr. Nash discharged.

Mr. Nash's Injuries

Mr. Nash was struck five times in the following areas: the mid abdomen, left arm (the bullet apparently striking his left forearm and exiting the back of his upper arm), a grazing wound to the inside of his upper left arm, the right rear hip, and right lower back. Mr. Nash has since been released from the hospital and charges have been filed. Mr. Nash is currently out on bond.