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RE: Investigation of the May 18, 2016 Officer-Involved Shooting of Andrew Joseph Gerold

Chiefs:

The investigation into the shooting of Andrew Joseph Gerold 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 officers who discharged their weapons. Included with this report is a summary of the investigation and the pertinent Colorado law.

INVESTIGATIVE SUMMARY

On May 18, 2016 at 12:39 a.m., a reporting party called 911 to report his wife's son was going berserk, was on drugs, and had a gun at 764 Saddleback Drive, Milliken. While the reporting party remained on the phone with dispatcher, he reported a gunshot at 12:40 a.m., a second gunshot at 12:42 a.m. and a third at 12:44 a.m. He further advised dispatch the suspect was in the house and had now shot his wife and was trying to kill her.

Officers arrived at the residence and confirmed the suspect, Andrew Joseph Gerold, was in the basement of the residence with his wife, Ashley Gerold, who he had reportedly shot. Officers staged at the top of the stairs and attempted to get the wife to come upstairs as she stood at the bottom of the stairs. Only a portion of her body was visible to officers and they saw her

arm was covered in blood. She was crying and said she could not come upstairs as she was injured and needed medical assistance.

Ashley Gerold used non-verbal signals toward officers to warn them the suspect was right behind her; and waved her hand toward herself as if to indicate she wanted the officers to come to her. The suspect's shadow was observed by the officers which established his close proximity to the victim. The suspect then warned the officers not to come downstairs and asked to see his children one more time. Ashley was then dragged out of the officer's view and a door was shut. The officers heard what they believed to be the suspect barricading the door with furniture. The female was heard screaming and shortly thereafter officers heard a gunshot fired from the basement. The officers heard the woman begin frantically screaming followed by the suspect yelling in an agitated tone. One officer estimated within thirty seconds after the shot was fired, the suspect partially presented himself in the opening at the bottom of the stairways at which time officers fired at him resulting in wounds which ultimately disabled him.

Once the officers determined the suspect had been shot, they entered the basement using ballistic shields and found the suspect incapacitated from gunshot wounds. The victim Ashley Gerold was in close proximity to the suspect suffering from a gunshot wound to her lower leg. A handgun was found lying at the suspect's feet. Officers handcuffed the suspect and began administering first aid to him and the victim. Medical personnel were summoned and provided medical care and transport to the hospital for both parties.

Michele Benson, the mother of Andrew Gerold was interviewed by an investigator with the CIRT team. She stated she had gone downstairs at 12:30 a.m. to check on Gerold and his wife because they were fighting earlier. She observed her son sitting on top of Ashley and attempted to separate them and discovered he was armed with a handgun. She ran to call 911 and Andrew Gerold took the phone from her and went back downstairs. Ms. Benson went back downstairs and to get Gerold's children to safety and saw the Gerold was armed. Gerold followed them upstairs and pointed a gun at Ms. Benson then at Ashley and shot her in the leg. Gerold picked up Ashley and returned to the basement claiming he was going to kill Ashley and then commit suicide. When police arrived she went next door to her other son's house.

Ben Benson, Michele's husband, was interviewed by a CIRT investigator and stated he was able to call 911 after Michele awoke him and told him to. He went into the living room and stated Gerold was agitated and ranting. He went back to the bedroom so Gerold would not know he was calling police. While on the phone with dispatch he heard three or four gunshots and then heard his wife exclaim, "You shot her!" He returned to the living room and saw his wife banging on the door downstairs and saw blood smeared on the hallway wall. He then took the Gerold's children to the house next door.

Officer Helbig of the Platteville Police Department was interviewed by CIRT investigators and stated the call was dispatched as a disturbance in which a male party was armed with a gun and was reportedly on drugs. He learned at least one shot had been fired by the suspect. He stated by the time he arrived on scene he had learned a female victim inside the residence had been shot.

While in the house and stationed near the basement entrance he heard the suspect state they didn't need the police and for them to go away or he would "blow her head off."

He stated, while the female was standing in the doorway at the base of the stairway, he could see her from the chest up and her hand and forearm were bloody. The female was saying everything was okay, but she was giving the officers hand signals by pointing toward the wall which he believed indicated the suspect was standing near her. She was also waving at the officers indicating she wanted them to come down the stairs toward her. He never saw the suspect, but did see the suspect's shadow cast onto the wall.

The female abruptly disappeared into the room and the door was closed. Within 30 seconds he heard a gunshot, followed by a second gunshot and thought the suspect had just killed the female. He heard the female screaming in terror and the suspect had started yelling in an agitated manner. He believed the first round was fired up through the floor at officers.

Shortly after the shots were fired, the suspect opened the door at the base of the stairs. Officer Helbig believed the suspect was coming out to engage officers which he stated scared him. He stated he believes he fired 3-7 rounds at the suspect when Gerold appeared at the bottom of the stairs. He stated he fired at the suspect with his Sig Sauer Model 400 rifle. The crime scene investigation conducted by members of the CIRT would later determine Officer Helbig had fired 9 rounds from his rifle.

Officer Desmond of the Evans Police Department was interviewed by CIRT investigators and stated he responded to the call of a suspect that was on drugs and in possession of a firearm. Further, he learned that a female had been shot, possibly in the head. Upon arrival he entered the residence with the other officers after obtaining a ballistic shield from his vehicle.

When he entered the residence he saw the female at the bottom of the stairway crying and asking for medical assistance and water. He noticed blood on the walls leading to the basement. One of the officers asked the female to come upstairs, but she replied she couldn't as she was injured. A couple of times the suspect poked his head out and warned officers not to come down the stairs. The suspect asked to be allowed to see his children one more time.

The female appeared to be drug back through the doorway and the door was closed. He could hear the female screaming and what sounded like the suspect moving furniture to barricade the door. He recalled seeing a spent shell casing on the floor as they positioned themselves at the top of the stairway. He recalled Officer Helbig told him the suspect was armed and someone had told him the female was being held at gunpoint.

Officer Desmond said while officers were clearing the other rooms in the house he heard a gunshot from the basement and the female screaming. He said the gunshot was very loud as if the suspect was firing up through the floor at officers. He believes he heard a second shot and the female continued with a blood curdling scream which he believed meant the suspect was killing the female. A few moments later the suspect opened the door at the bottom of the stairs, partially presented himself, at which time he fired at the suspect. He felt the suspect was coming out to get into a gunfight with them. Officer Desmond also believed the male would retreat back into the room and finish the female off.

Officer Desmond believed he fired 4-5 rounds from his Glock Model 21, .45 caliber pistol. The crime scene investigation conducted by the CIRT determined he had fired 5 rounds.

Sergeant Torrez of the Platteville Police Department stated the call was initially dispatched as a disturbance, but while he was en route, dispatch advised the suspect had a gun and had shot a female. Upon arriving at the address he saw Officer Tope speaking with a larger male outside of the residence who told them where the suspect was. Shortly after, a female came running toward them and he asked her if anyone had been shot. He did not recall what she said, but believed it was no or I don't know. The four officers entered the residence and the suspect could be heard screaming. He sounded agitated and as if he was under the influence of something. He recalled the suspect yelling, "This is it, this is the last time you are going to see me."

He recalled seeing a spent shell casing at the top of the stairs and blood spatter on the wall. He believed the suspect was preventing the female from coming upstairs and recalled her crying.

The female appeared at the bottom of the stairs and he saw a shadow behind her of what he believed was the suspect holding something. Each of the officers had announced they were with the police department and Sergeant Torrez said the suspect clearly knew they were police officers and made remarks such as "I'm not fucking around," and "I will see you in Heaven."

Sergeant Torrez stated as officers finished clearing the rooms on the upper level of the house he heard two gunshots. He felt the suspect was shooting through the floor at the officers. He described the suspect as being very angry and agitated and recalled the suspect stating, "I'm not fucking around with you guys," and "you're starting to piss me off." He heard the voice of the suspect coming towards the door and then the suspect appeared revealing a portion of his body and head at which time Sergeant Torrez stated he fired 3 to 4 rounds at the suspect. He said based on all the information he believed the suspect was going to confront the officers when he presented himself at the bottom of the stairs, and felt his life was in danger when he fired at the suspect. The crime scene investigation conducted by the CIRT determined he had fired 4 rounds.

Officer Tope of the Milliken Police Department stated he was dispatched to a disturbance involving a man who was high on something and was running around the house with a gun. Dispatch also fired a round off inside the residence.

When he arrived he contacted Mr. Benson outside of the residence and had him get his wife, Michele, out of the house. Michele, the suspect's mother, told him the suspect had shot his wife and they were in the basement of the house. When the officers entered the house he recalled the suspect yelling at them to "Get out of my fucking house."

Officer Tope recalled seeing a spent shell casing lying on the floor at the top of the stairway which he believed to be a .380 or 9MM caliber. He described the suspect as yelling and clearly agitated. The suspect was demanding to see his children and his mother to say goodbye, appearing as if the suspect was planning to kill himself and his wife. Shortly

thereafter, the female victim presented herself at the bottom of the stairway and asked for bandages. He could not tell if she was injured as it was dark.

Officer Tope stated the suspect fired a round off in the basement and believed the round had been fired up through the floor toward officers. The suspect was upset and yelling and moved toward the door. Shortly thereafter the suspect presented himself at the bottom of the stairs. Officer Tope stated he was scared as he believed the suspect was prepared to fight or engage them in a gun battle. Other officers began shooting at the suspect however he does not believe he fired his weapon at the suspect.

Officer Tope was armed with a Noveske 5.56 rifle. He said he could not recall firing, but stated it was possible. Evidence at the scene indicates he fired 1 round.

Officer McCall of the Evans Police Department was inside the residence during the shooting, but did not fire his weapon. He stated he responded to the disturbance and was aware one shot had been fired at the residence. He also learned the suspect was in the basement and may have shot a female in the head.

The officers and McCall entered the house and he recalled partially seeing the female at the bottom of the stairway to the basement. He could see her arm was covered in blood. They tried to get the woman to come upstairs but she couldn't and she was pointing behind her as if to indicate the suspect was behind her. He said he could see a shadow which confirmed for him the location of the suspect. The suspect was yelling and asked to see a priest and wanted to speak with his children. Officer McCall suggested the officers should back out of the house and Sergeant Torrez stated that was not going to happen.

Ms. Gerold was interviewed and stated she and her husband were arguing that day because he thought she was cheating on him. She stated later that day the fight escalated in the kitchen with the suspect and her mother-in-law, Michele Benson. The suspect had a gun so she hid behind her mother-in-law believing she would be able to calm her son down. The suspect pushed her mother-in-law out of the way and then fired two rounds, one which struck her in the leg. She said her mother-in-law and her husband were struggling for control of the gun

The suspect then carried her down to the basement and the police arrived. She said her husband heard the police walking around upstairs, which made him uneasy so he fired the gun toward the dog kennel in the basement.

Ms. Gerold's recall of the shooting seem confused. She stated she and her husband were lying on the floor when the officers began shooting. She said he was walking around after he got shot as she recalled hearing the blood from his leg wound sloshing around with a swishing sound similar to a sound a colostomy bag would make. He then laid down behind her and she saw he had been shot in the shoulder. He dropped his gun between his legs so she grabbed it and placed it on a "Frozen" pillow so he could not reach for it. Police made their way downstairs and rendered aid to her and her husband. The gun was recovered during the processing of the scene by the CIRT from the pillow as described by Ms. Gerold. The firearm was a Hi Point 9MM semi-automatic pistol with a live round chambered.

The suspect, Andrew Gerold, was interviewed by members of the CIRT team and stated he had been having an argument with his wife, Ashley Gerold over Ashley's ex-boyfriend, Casey Gonzales with whom he believed his wife might be having an affair. He stated during the argument he had the gun and his mother tried to take it from him and it accidentally discharged, striking Ashley in the leg. He carried Ashley to the basement.

Later he heard police officers walking around upstairs. He was upset so he fired the gun to buy himself more time. He said he did not shoot at police officers, but fired into a basement wall. He said it sounded like the police were moving all around the house. He fired the gun to get their attention. He said it was fired into the wall and never meant to harm anyone.

About "15 minutes" after firing the shot he went to the basement door and the officers shot him which he did not believe they should have done. He said he had never pointed a gun at the officers and when he opened the door it was the first time he had actually seen the police that night. Gerold suffered a gunshot wound to his left shoulder and a gunshot wound to his left thigh.

Gerold stated he had drank about four Vodka drinks, and had some cocaine and marijuana that night. He believes the cocaine was responsible for his actions. He claimed he had fired his gun twice that night; the accidental discharge in the kitchen, and when he fired at the basement wall. CIRT investigators located alcohol, drugs and drug paraphernalia in when the scene was processed. Further, investigators located 4 spent 9MM casings, three in the residence and one in the backyard of the residence.

The officer's body camera recordings corroborate the involved officers' statements regarding the suspect's actions and his agitated state. The victim's exchange with the officers at the base of the stairway preceding the officer involved shooting is also captured by the audio portion of the recording.

In addition, officers' audio recordings captured the moments immediately leading up to the officers' firing their weapons at the suspect. The suspect fired his gun in the basement and then begins yelling in the distance with the volume of the suspect's voice increasing as he approaches the stairway; "You wanna move around? Huh? I'm not fucking kidding! You wanna play? Come on! Fuck with me one more time! Come on! I'm not fucking kidding!" The door can be heard opening and Gerold continues, "You wanna fucking move around? The officers immediately began firing.

It is clear the yelling got louder and was at maximum volume after the suspect was heard opening the door at the base of the stairway and continued to yell; "You wanna fucking move around?" The suspect's yelling abruptly ended as officers began firing. 18 seconds had passed from the point the suspect fired the shot and began yelling and then opened the door.

The above summary is based on the extensive investigation conducted by the Weld County Critical Incident Response Team. The Weld County District Attorney's Office utilized recorded statements from all officers, witnesses, and victims, body camera footage and audio, as well as reports from the Weld County Critical Incident Response Team, the Dispatch and radio traffic recordings, and relevant evidence reports in the review of this incident.

As a result of the incident Gerold was charged with Assault in the First Degree, Felony Menacing, and Possession of a Weapon by a Previous Offender.

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 that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting at another human being is generally prohibited 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 Gerold was shot by officers, the determination of whether their conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707(2) establishes when a peace officer can use potentially 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...OR to effect an arrest...of a person he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.**

C.R.S. § 18-1-901(3)(d) of the Colorado Revised Statutes defines the term "Deadly Physical Force" as follows:

(2)(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 Gerold intended to use deadly force against the officers. The issue is whether or not it was reasonable for the officers to believe that he was about to use deadly physical force against the officers or another person with a deadly weapon. In this case the firearm is a deadly weapon.

In this case, the officers were attempting to prevent Gerold from shooting at them or potentially shooting Ms. Gerold. Officers were told by dispatch and witnesses present at the scene the Gerold had shot Ms. Gerold before they arrived. Further, there was blood on the walls leading to the basement. While officers were there, they heard a gunshot in the basement

followed screams from Ms. Gerold. Thus, Gerold had committed a felony with a deadly weapon in their presence.

Throughout the course of the incident, Gerold refused to comply with the commands of the officers. He refused to show them his hands and put down his weapon. Gerold would have clearly known that the individuals giving him commands were police officers because they were in uniform and he told the officers to leave numerous times.

The officers reasonably believed, at that time, based on all of the surrounding facts and circumstances known to them that Ms. Gerold or they were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the officers were justified in discharging their firearms at Gerold because they reasonably believed that it was necessary to defend themselves and Ms. Gerold from Gerold's threatened use of deadly physical force and further, Gerold had just committed a felony with a deadly weapon.

CONCLUSION

Under C.R.S. § 18-1-707(2)(a) and (b), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the lawless and dangerous actions of Mr. Gerold. In fact it is likely the officers' actions prevented serious bodily injury or death. As a result, the Weld County District Attorney's Office will not file charges against the Officers for discharging their firearms in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael J. Rourke".

Michael J. Rourke
District Attorney