



## OFFICE OF THE DISTRICT ATTORNEY

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Date: 8/5/19

Nicholas Metz, Chief of Police, Aurora Police Department.

RE: Officer-Involved Shooting at 1473 S. Kenton St. January 15, 2019. APD case #19-1891

Chief Metz,

This incident concerns the shooting death of Esmond Trimble by Aurora Police Officer Zachary Ploch, and the associated shooting death of Dean Heerdt by Mr. Trimble, on January 15, 2019. I have been asked to review this incident to determine whether Officer Ploch and a second officer, Officer David Kaufman, acted in conformity with Colorado law. My role is limited to a determination of whether criminal charges are warranted. It is not my role to opine on questions of training or law enforcement procedure. For the reasons set forth below, I conclude that no criminal charges are warranted against either officer.

### **EXECUTIVE SUMMARY**

On January 15, 2019, Aurora Police Officers responded to a report of a mentally disturbed individual, identified as Esmond Trimble, at 1473 Kenton Street in Aurora, Colorado. The report indicated that the suspect was armed, and had an individual in a bedroom with him who may be in danger. After arriving on scene and obtaining more information from the reporting party, E.T., the officers heard a gunshot from within the residence and made entry. Trimble was eventually located in a back bedroom along with a third party, Dean Heerdt. Trimble was armed with two handguns and wearing body armor. After Trimble ignored numerous orders to put down the weapons, and based on him pointing his guns in the direction of both the officers and Mr. Heerdt, officers opened fire, eventually hitting and killing Trimble. During this exchange of gunfire, Trimble also opened fire, killing Mr. Heerdt.

Based on the entirety of the information available to the officers at the time they opened fire, it is my conclusion that the conduct and decisions of the officers were permissible under the laws related to self-defense, defense of others, and use of force by law enforcement. Therefore it is my conclusion that no criminal charges are warranted against the officers.

### **THE STATUTORY FRAMEWORK FOR INVESTIGATIONS INTO OFFICER-INVOLVED SHOOTINGS**

C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shootings.

This statute provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Aurora Police Department and the Denver Police Department.

C.R.S. § 20-1-114 provides, in relevant part:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18<sup>th</sup> Judicial District, and includes the basis of the decision not to charge the involved officers with any criminal conduct.

### **MATERIALS REVIEWED AND INFORMATION CONSIDERED**

I have reviewed the materials given to my office by the joint Aurora Police Department/Denver Police Department investigation into the shooting. The materials I reviewed include: 911 and dispatch recordings, body-worn camera footage of the involved officers and other officers who were on scene, recorded interviews of the involved officers, reports prepared by various law enforcement personnel who were on scene, reports of ballistics testing conducted by the Denver Police Department, crime scene investigator reports, and reports from the autopsies of Esmond Trimble and Dean Heerd.

### **SUMMARY OF THE FACTS AND WITNESS INTERVIEWS**

On January 15, 2019 at approximately 1:58 a.m., APD officers Zachary Ploch and David Kaufman were dispatched to 1473 S. Kenton Street on a report of a disturbed family member with a gun. E.T. had called 911 to report that her husband, Esmond Trimble, was acting very oddly, making references to biblical verses and not making any sense. E.T. further indicated that Esmond was in a back bedroom with her father, Dean Heerd, and Esmond had a gun in his hands. E.T. expressed that she was concerned for Esmond and Heerd's wellbeing, and that E.T. had fled the house with her children due to Esmond's behavior. E.T. explained that three other family members, her mother and her grandparents, were also in the house, but were in a different area of

the house than Esmond and Dean, and were likely asleep. E.T. explained she was outside of the home with her two children, in cold temperatures, and not fully dressed.

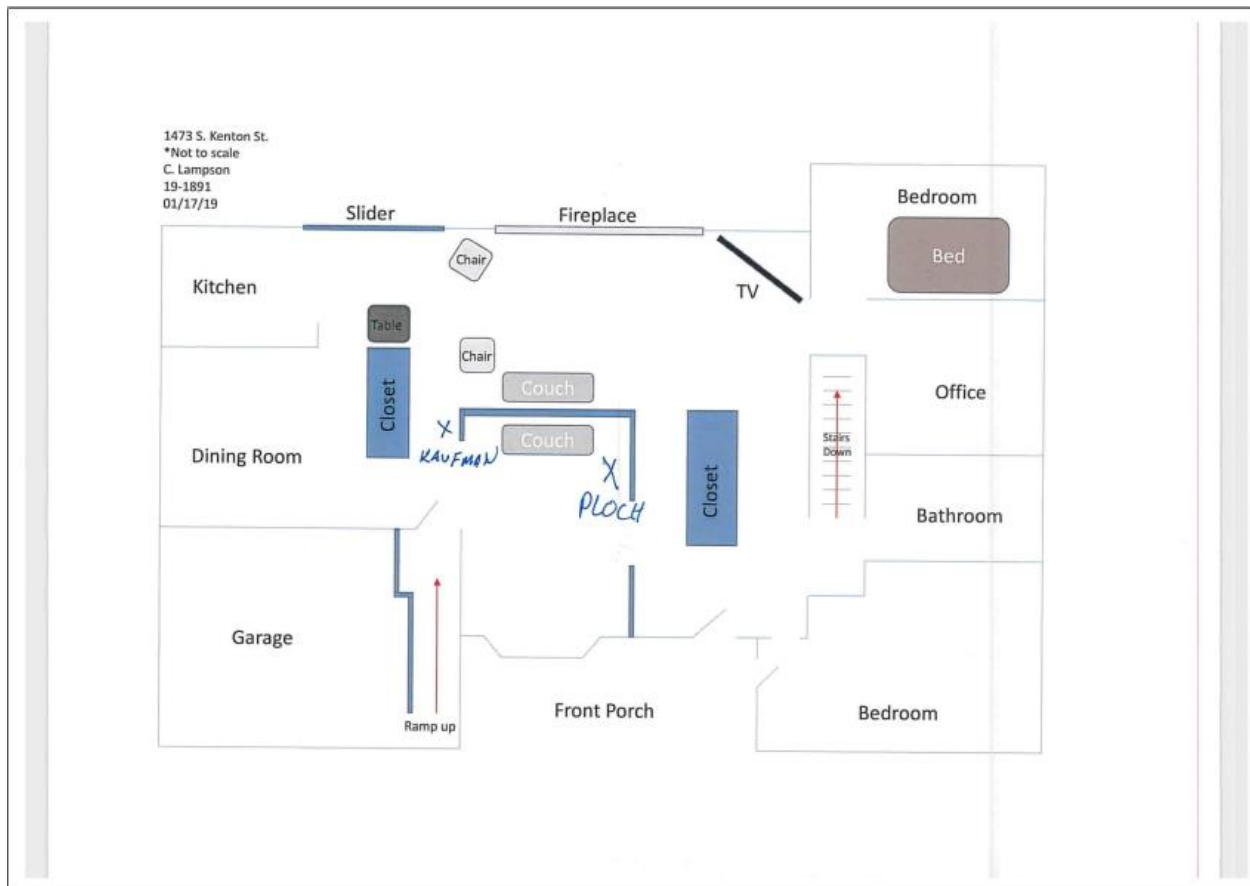
Officers Ploch and Kaufman were riding together in a single vehicle, and arrived within 3 minutes of the 911 call, at approximately 2:01 a.m. Outside of the home, they contacted E.T., who reiterated the same information she had earlier relayed in the 911 call, that Esmond was in a back bedroom with her father, Dean Heerdt, that Esmond was armed with a handgun, and that Esmond was making bizarre comments about God.

As Officers Ploch and Kaufman were speaking to E.T., they arranged for E.T. and the children to be placed in the back seat of their patrol vehicle due to the cold temperatures, where they remained for the duration of the incident. As Kaufman and Ploch were placing E.T. and her children in the vehicle, they heard a single gunshot from within the residence. They immediately aired to dispatch that shots were fired, which resulted in additional officers being dispatched emergently. Based upon the fact that a shot had now been fired inside the residence, Ploch and Kaufman decided to enter the residence.

1473 Kenton Street is a single family, detached ranch-style home located on a residential street. Ploch and Kaufman, with weapons drawn, first entered an open attached garage and then proceeded to a door from the garage into the residence. They announced several times that they were from the Aurora Police Department, and then entered the residence. As they were entering, there was an audible response to their announcements, that sounded like it came from the back of the house, but it was not possible to make out what was said.

A few seconds after Kaufman and Ploch entered the residence, Officers Bassil Hamid, Dylan Mann, and Sammie Wicks, who had arrived as Kaufman and Ploch were entering the house, also entered the residence through the same garage door. Hammid and Mann remained in the hallway and front den area, while Wicks, armed with a rifle, took up a position to Ploch's right rear. Hamid, Mann and Wicks did not discharge their weapons during this incident.

Upon Kaufman and Ploch entering the residence through the garage, there was a small den immediately to their right, and a short hallway directly in front of them leading towards a rear living room. The den and living room areas were separated by a wall. Ploch and Kaufman split up at that point, with Kaufman proceeding straight towards the back living room and taking up a position at the corner of the dividing wall, and Ploch proceeding across the front den and taking up a position at the opposite end of the dividing wall. Their attention was drawn to the bedroom in the northwest corner of the home, as the lights were on in that room, and the voice they had heard sounded like it came from that area. This bedroom was to the right rear of the home, in the northwest corner. The below diagram illustrates the layout of the house, and the initial positions of Kaufman and Ploch. The bedroom that was later determined to be occupied by Esmond Trimble and Dean Heerdt is in the top right of the diagram:



Officer Ploch in his later interview explained that the closet that is identified in the above diagram immediately to his right was in fact slightly further back towards the front porch, and did not block Ploch’s view of the bedroom door. Also, the diagram shows a wall to Ploch’s right. This was in fact a half-wall, approximately waist height, and did not block Ploch’s view. The below photograph captures the approximate view Ploch would have had of the bedroom entrance, with the half-wall in front of him and the closet to his right:



Both Ploch and Kaufman had body-worn cameras (BWCs) that were on during this incident. Ploch's BWC was knocked askew, to the right, at some point during the initial entry into the house. As a result, his BWC did not capture any activity to Ploch's front, but rather captured activity to his right. Kaufman's BWC was properly situated throughout, although the video captured is of limited value, as the sling of Kaufman's rifle blocked much of the view during the shooting. The audio from both Ploch and Kaufman's BWCs is of good quality and does capture the various statements and sounds during the incident.

Ploch was armed with a 9mm Glock pistol, equipped with a tactical flashlight. Kaufman was armed with a 5.56 mm semi-automatic rifle manufactured by Daniel Defense, also equipped with a tactical flashlight. Both officers had backup handguns as well, but these were not drawn or used during this incident.

From his vantage point, Ploch saw a white male, later determined to be Heerdt, inside the northwest bedroom. Ploch described the man as being approximately two to four feet inside the bedroom, standing with his arms raised, with nothing in his hands. At that point, Ploch did not see anyone else inside the bedroom. At that moment, Ploch heard Kaufman yelling commands to "put down the gun", at which point Ploch could see a black male, later determined to be Esmond Trimble<sup>1</sup>, in the bedroom peaking around the doorway entrance from the right side inside the bedroom. Ploch saw that Trimble had two handguns, one in each hand, holding them at waist or

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<sup>1</sup> Although the officers did not know with certainty the identities of Esmond Trimble and Dean Heerdt until after the incident had concluded, they will be referred to as Trimble and Heerdt respectively in this report for ease of reference.

stomach level, with arms bent at a right angle. The guns were pointed towards the white male (Heerdt), who by this time was on the ground. Ploch could also see that Trimble was wearing body armor on his torso and chest. Trimble peaked around the bedroom entrance three times, each time exposing himself for only a second or so. Ploch characterized this as “tactical peeking”, i.e. Trimble attempting to see out while still maintaining cover behind the wall.

Both officers continued to yell commands to Trimble to “put the guns down” and “show us your hands”. Trimble did not comply. Officers yelled at Heerdt to get on the ground, and he complied, lying face down on the ground with his hands at his head, with his head pointing towards the door. On the body-camera audio, Trimble can be heard saying “stay there” and “stay on the floor Dean” several times, presumably to Heerdt, although according to their interviews the officers at the time were not able to hear those statements.

Ploch articulated in his interview that his assessment at that moment was that Trimble was an imminent threat to others, specifically to Heerdt as well as the officers, and that Trimble was likely going to fire his weapons at Heerdt and the officers. This belief was based on the following factors that Ploch articulated in his interview:

- Trimble’s wife, E.T., had fled the house very quickly and was obviously very frightened of what Esmond might do.
- A gun had been fired inside the residence, presumably by Trimble, only minutes before this confrontation occurred.
- Heerdt was in the back bedroom with Trimble and did not appear to be free to leave.
- Trimble was equipped with body armor and had guns in both hands, held in a position where he could easily fire them at Heerdt or the officers.
- Trimble had not complied with repeated commands to put down the guns, get on the ground, and show his hands.
- Trimble appeared to be trying to maintain cover behind the bedroom wall while engaging in “tactical peeking” around the corner at the officers.

Based on all of those factors, Ploch made a decision to fire his handgun at Trimble, and fired one round. Ploch explained that he did not know immediately if he had struck Trimble, but after that shot was fired Trimble retreated momentarily further back in to the bedroom.

Following this shot, Ploch explained that Trimble resumed the same behavior as before, engaging in “tactical peaking” from behind the bedroom wall. Trimble was still armed and had the guns in the same position as before. Trimble appeared to Ploch to be uninjured. Ploch indicated he then made the decision to fire again, and discharged “two or three shots” at Trimble. A later round-count confirmed that Ploch had fired three shots in total, thus the second discharge was two rounds. Upon Ploch firing those rounds, the individual moved further back into the room and out of Ploch’s view.

As noted in the above diagram, Kaufman was on the other corner of the dividing wall between the front and back living room areas. Because of the angle from Kaufman’s location to the bedroom entrance, Kaufman was only able to see a sliver of the bedroom itself. The below still image from Kaufman’s BWC captures the approximate line of sight Kaufman had towards the bedroom, with the white-colored dividing wall to the right of this picture. The bedroom in question is in the top center of the image, circled in red, with the door open:



Once Officer Kaufman established his position, he was not initially able to see anyone inside the bedroom, due to the narrow angle. However, other officers, including Ploch, announced that they could see a male in the bedroom. Shortly after, Trimble became visible to Kaufman, standing to the right of the doorway into the bedroom. Kaufman observed that Trimble was wearing body armor and was holding a handgun. Kaufman explained that he placed the beam of his tactical flashlight on Trimble, and was able to clearly see him. According to Kaufman, Trimble seemed surprised to see Kaufman, and turned and pointed his handgun at Kaufman, with his left arm partially extended at approximately a 45 degree angle. Kaufman then began yelling commands for the individual to “drop the gun” and “get on the ground”. Trimble responded by saying “OK, OK, hold on”, then stepped further back into the bedroom out of Kaufman’s sight. Shortly thereafter, Trimble re-entered Kaufman’s line of sight, making what he characterized as “quick deliberate movements”, whereby he would expose himself long enough to see out of the bedroom, then return to concealment. Kaufman also characterized this behavior as “tactical moves” and “peeking”. Kaufman explained Trimble still held the gun at a 45 degree angle and still pointed at Kaufman. Kaufman again yelled for Trimble to drop the gun, and Trimble again said words to the effect of “OK”, and ducked further back in to the bedroom.

After three instances of this “peeking” by Trimble, Kaufman heard a gunshot. Kaufman believed the gunshot came from in front of him and to the left, from the vicinity of the bedroom. Based on where he perceived the gunshot had originated, Trimble’s prior behavior, and the fact Trimble had a gun in his hand, Kaufman believed Trimble had fired a shot at him and/or the other officers. A later review of BWC footage makes clear that this shot was not fired by Trimble, but actually was the first one fired by Ploch, who would have been to Kaufman’s right front, but not visible to Kaufman due to the dividing wall.

At the point Kaufman heard this gunshot, he did not have a clear view of Trimble, as Trimble had ducked further back inside the bedroom. Based on Trimble’s prior movements back in to the bedroom, Kaufman believed he had a good idea of where Trimble would be within the

bedroom, and decided to fire through the wall at the approximate location where he believed Trimble to be located. There was a television in front of that wall, and Kaufman fired through both the television and the wall. Kaufman fired five rounds from his rifle, aimed just to the left of the door entrance.

In addition to believing Trimble had just shot at him, Kaufman articulated the following facts in the interview which contributed to his decision to shoot:

- Trimble was wearing body armor.
- Trimble was armed with at least one handgun and had refused multiple commands to put the weapon down.
- Kaufman believed Heerdt had potentially already been shot prior to the officers entering the residence, based on the initial shot that had occurred before the officers entered and the other officers yelling out that they could see someone on the ground inside the bedroom.(it should be noted that Heerdt was initially observed by the other officers standing in the bedroom, but Kaufman recalls hearing officers describe him as being on the ground at some point)
- Trimble continued to engage in “tactical peeking” and appeared to be trying to determine the locations of the officers while maintaining cover himself.
- Kaufman was at least partially exposed to Trimble, and had no other location in the house he could move to while still maintaining his vision on the bedroom.

A few seconds after his first volley, Kaufman fired again, aiming very close to where his first volley had been placed. Kaufman fired four rounds in this second volley. The second volley from Kaufman overlapped with Ploch’s second volley of two shots. On the BWC audio, one can hear the second volleys of shots from Kaufman and Ploch, as well as shots that sound like they are coming from a third firearm, all overlapping with one another. This exchange lasted for approximately five seconds, and then ceased. No more shots were fired by anyone after that exchange of gunfire concluded. A subsequent review of the physical evidence confirmed that the third firearm that can be heard was fired by Trimble, as discussed in detail below.

The following is a summary of the timing of critical events:

1. 02:05:15- One shot heard within the house prior to the officers’ entry. Presumably fired by Trimble, unknown direction and impact.
2. 02:05:50- Ploch and Kaufman enter home, followed by Hamid, Wicks, and Mann.
3. 02:06:45- One shot fired by Ploch at Trimble, likely a miss.
4. 02:06:53- five shots fired by Kaufman into the bedroom at Trimble, none of them strike Esmond.
5. 02:06:55-02:07:00- Overlapping shots from Kaufman (four rounds) Ploch (two rounds) and Trimble (multiple rounds, likely 15 based on 16 total casings and one shot prior to officer entry). One of Ploch’s rounds strikes Trimble, eventually killing him.

Thus, the entire incident from the time the first shot is heard to the time all shooting ceased, was approximately one minute and 45 seconds.

After the firing ceased, Ploch and other officers could see that both Trimble and Heerdt were on the ground, and appeared to be wounded. Heerdt was not moving, but Trimble was. Ploch, Kaufman and Wicks approached the bedroom cautiously, with Hamid and Mann just



behind, while continuing to give commands to “stay on the ground” and don’t touch the gun”. From the bedroom door, they were able to see that Trimble was on the ground, with his legs and torso between the foot of the bed and the back wall, and his head and hands visible. Heerdt was on the floor, lying face down with his arms by his head, with his head pointing towards the open door. The following diagram captures the approximate locations of Trimble and Heerdt as the officers observed them after entering the bedroom:



Trimble’s hands could be seen still moving, and he still had at least one gun in his right hand pointed at the door. The officers continued to shout commands for him to “stop moving” and “don’t touch the gun”. After several minutes, with the assistance of a fellow officer utilizing a ballistic shield, the officers were able to make entry into the bedroom and secure Trimble and Heerdt. Both were determined to be deceased.

A Taurus 9mm semi-automatic handgun was found in Trimble’s right hand, and was found to be fully loaded with a round in the chamber. A Smith and Wesson 9mm semi-automatic handgun was found a few inches away from his left hand with the slide locked back, consistent with having been fired until it was empty. That firearm was empty. Numerous other firearms and firearms paraphernalia were also found in the bedroom, including two semi-automatic rifles. These other firearms were not utilized during the incident.

The source of Trimble’s firearms was investigated. All of the firearms were found to have been legally acquired over a period of time by Mr. Trimble. None of the guns were reported stolen or were otherwise improperly obtained.

Crime scene personnel conducted a detailed examination of the crime scene and the various firearms, shell casings, fired bullets, and bullet fragments located on scene. An examination of

the officers' and Trimble's weapons confirmed that Ploch's Glock pistol, Kaufman's Daniel Defense rifle, and Trimble's 9mm Smith and Wesson pistol were the only firearms discharged during the incident. Ploch was found to have fired three rounds, Kaufman was found to have fired nine rounds, and Trimble was found to have fired 16 rounds.

Autopsies were conducted of both Heerdt and Trimble. Trimble had a single, fatal gunshot wound to the chest. A bullet recovered from Trimble's chest was microscopically identified as having been fired from Ploch's handgun. Toxicological analysis revealed no alcohol or controlled substances in Trimble's blood.

Heerdt was found to have sustained eight gunshot wounds. Four of those wounds were to the left side of Heerdt's head, one was to the left side of his neck, two were to the left side of his back, and one was to the right forearm. The majority of the bullets that struck Heerdt passed through his body. However, one deformed bullet and four bullet fragments were recovered from Heerdt's brain, head, and back. These items were microscopically examined, and the deformed bullet recovered from Heerdt's back was confirmed as having been fired by Trimble's Smith and Wesson handgun. One of the bullet fragments was excluded from having been fired from Ploch or Kaufman's weapons, and consistent with having been fired from Esmond's Smith and Wesson, but could not be conclusively matched to Esmond's handgun. The other bullet fragments were of insufficient quality to allow for a determination. All but one of the wounds was to the left side, consistent with where Trimble would have been firing from. The exception is a single wound, to the right forearm. Heerdt had no alcohol or controlled substances in his blood. The believed source of all the rounds that hit Heerdt is discussed in further detail below.

In addition to the bullets and bullet fragments recovered from Esmond and Heerdt's bodies, a number of other shell casings, expended bullets, and bullet fragments were also recovered from the interior of the home. The locations of various bullet impacts within the home were observed and documented.

Shell casings from Kaufman's rifle were recovered in the vicinity of the front parlor and garage door area, consistent with having been ejected from the right side of Kaufman's rifle as he fired from his position. Shell casings from Ploch's handgun were recovered from the front door and parlor area, consistent with having been ejected from the right side of Ploch's handgun from his position. Sixteen shell casings from Esmond's Smith and Wesson were recovered from the interior of the bedroom. The number and type of these shell casings match up with the total rounds fired from each of the three guns that were discharged in this incident.

Based on the locations of various bullet impacts and bullets and bullet fragments recovered in the vicinity of those impacts, crime scene personnel were able to reconstruct the trajectories of the rounds that were fired by Kaufman, Ploch and Esmond. These trajectories are described and illustrated below.

Kaufman described firing two volleys from his rifle, one of five rounds and one of four. Based on ballistic evidence recovered from the wall and within the bedroom, in combination with Kaufman's known location at the time he fired the shots, the below photographs capture the trajectory of those shots, with green string used to approximate the direction and location of the shots from Kaufman's position:



As mentioned earlier, Ploch fired three rounds. One of those rounds struck and killed Trimble. It was not possible to recreate the precise trajectory of that shot. A definitive point of impact for one of the other rounds could also not be determined. A trajectory path for one of the rounds could be determined, based on the impact point and recovered bullet fragments, and is illustrated in the photograph below. Based on the BWC footage and Ploch's statement, the other two rounds would have been fired in a similar direction from the same or similar location:



Trimble fired a total of 16 rounds from his Smith and Wesson pistol. One of those rounds was fired prior to police entry, and the other 15 were all fired during the second exchange of gunfire. All of the rounds that could be traced were fired from within the bedroom. Some of those rounds impacted the floor within the bedroom, while others went through the wall separating the bedroom from the back living area and came to rest at various locations within the home, as illustrated below. With one exception, all of these rounds had a low trajectory. The below sequence of photographs illustrate the approximate direct and location of the shots fired by Trimble:

This photograph is taken from within the bedroom, and illustrated the points at which the bullets from Trimble's gun exit the bedroom, through the wall. The blood on the carpet is at the location where Heerdt's head was, and the blood spatter on the wall is consistent with having come from Heerdt, as he was shot on the left side of his head by Trimble, with the bullets traveling through his head and then the wall:



This photograph is taken from outside the bedroom, looking back at the wall through which the bullets traveled. The orange string illustrates the points at which the bullets from Trimble's gun exit the wall. It should be noted that the single red string that can faintly be seen in the upper right portion of this photo is the shot from Ploch's gun, going into the bedroom, and was not from Trimble's gun, and the green strings at the center are the shots from Kaufman's rifle:



This photograph is taken from the bedroom door entrance, looking out from the bedroom, and illustrates the impact points of the bullets from Trimble's gun that exited the bedroom through the wall. There are four distinct impact points, one on the floor in the middle of the living area, one just above the baseboard in the half-wall that Ploch was behind, one to the corner of the couch in the living room, and one higher in the dividing wall between the back and front living areas. Each of those impact points is circled in red:



The trajectories of all of the bullets fired by Trimble are consistent with Trimble being on, or near, the floor at the base of the bed and firing in the general direction of both Ploch and Kaufman, as well as Heerdt, through the wall that divides the bedroom from the back living room. Other bullet impacts could be seen on the floor of the bedroom near the door, having apparently been fired in a downward trajectory by Trimble, likely impacting Heerdt first, then traveling into the floor. Based on the locations of the wounds to the left side of Heerdt's head and back, and the presence of bullet impacts on the floor and low down on the dividing wall, it appears Trimble shot and killed Heerdt while standing or lying down to Heerdt's left. Many of those rounds passed through Heerdt and either impacted the floor of the bedroom or passed through the dividing wall into the living room, as illustrated above.

In summary, Ploch fired three times, into the bedroom, striking Trimble with either the second or third round. Kaufman fired nine times, and did not hit Trimble. It is possible, but unlikely, that one of Kaufman's rounds struck Heerdt in the right forearm, but that wound would not have been a contributing factor to Heerdt's death. Trimble fired 16 rounds, one before the officers entered the home and 15 while the officers were in the home. At least seven of those

rounds were fired into Heerdt's head, neck and back from close range. The other rounds either impacted the floor in the bedroom or traveled through the wall in the direction of Ploch and Kaufman.

### **APPLICABLE LAW**

The District Attorney's review of this event is guided by the following statutes pertaining to the use of force by peace officers:

Officer Ploch's use of his service weapon constituted the use of deadly physical force, as that term is defined by Colorado law. Deadly physical force "means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death." C.R.S. § 18-1-901(3)(d).

C.R.S. § 18-1-707(2) states in relevant part:

- (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.

Officer Kaufman's use of his service weapon constituted the use of physical force, as that term is defined in Colorado law. C.R.S. 18-1-704 states in relevant part:

- (1) A peace officer 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.

### **ANALYSIS AND CONCLUSION**

The legal questions presented as to the actions of Officer Ploch and Officer Kaufman are slightly different due to the distinction between use of deadly force by Officer Ploch, and the use of less-than-deadly force by Officer Kaufman. However, the factual analysis as to each is very similar. As to Officer Ploch, the legal question presented is whether Officer Ploch reasonably believed that the use of deadly physical force was necessary to defend himself or others from what he reasonably believed to be the imminent use of deadly physical force. As to Officer Kaufman the question is whether Officer Kaufman reasonably believed the degree of physical force he used was necessary to defend himself or others from what he reasonably believed to be the use or imminent use of force against himself or others. The actions of Officer Ploch and Officer Kaufman will be discussed separately.



As he articulated in his interview, at the point Officer Ploch fired at Trimble, he could see that Trimble was armed with two handguns and was wearing body armor, and had pointed the guns both at Heerdt and in the direction of Ploch and Kaufman. Ploch was aware that Trimble had already fired his weapon once inside the house, and had ignored orders to put down his guns and get on the ground. Ploch was also aware that Trimble was in an altered state of mind, and his wife was very concerned for the safety of both Trimble and Heerdt. Based on all of those factors, Ploch's conclusion that he, his fellow officers, and Heerdt were in imminent danger of being shot by Trimble was a reasonable one. Therefore his decision to fire at Trimble was justified under the laws related to use of force in self-defense and defense of others.

As to Kaufman, he articulated that the primary factor in his decision to open fire was his belief that Trimble had just fired a round at him or one of the other officers. It is clear from a review of the BWC footage that this belief was incorrect, and that the shot he heard was in fact from Officer Ploch. However, the question presented is whether Kaufman's actions were reasonable and justifiable when they were taken, given the information he had at the time. Kaufman was presented with an obviously dangerous situation. Trimble was armed, wearing body armor, and appeared to be holding an individual hostage in the bedroom, and had refused multiple orders to drop the guns and get on the ground. Trimble had already fired his gun once prior to the officers' entry, and Kaufman did not know whether Heerdt had already been injured. Further, Kaufman was aware that Trimble was not in a normal frame of mind, and that his wife was very concerned that he would hurt himself or Heerdt. Given all of these objective facts, coupled with his incorrect, though not unreasonable, belief that Trimble had fired at him or his fellow officers, Kaufman's decision to open fire was objectively reasonable.

For all of the above-stated reasons, it is my opinion that no criminal charges are warranted against either Officer Ploch or Officer Kaufman.

Respectfully,,

*Brian Sigiska #30856*  
Chief Deputy District Attorney