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Sheriff Tyler Brown
Arapahoe County Sheriff's Office
13101 E. Broncos Parkway
Centennial, CO 80112

RE: Report of Findings for the Officer-Involved Shooting on March 3, 2022, Involving Deputy Daniel Willmont (CIRT 22-003)

Dear Sheriff Brown,

The 18th Judicial Critical Incident Response Team ("CIRT") has completed their investigation, CIRT 22-003, into the March 3, 2022 fatal shooting of Jamarian McGhee by Arapahoe County Sheriff's Deputy Daniel Willmont. Douglas County Sheriff's Detective Corporal Brian Pereira was the lead CIRT investigator. I have completed my review of both investigations. Below is my summary of the facts, investigation, legal analysis, and conclusion.

EXECUTIVE SUMMARY

On March 3, 2022, Deputy Willmont responded to a report of a suspicious individual and suspicious vehicle in the parking lot of the Woodhaven Apartments, in unincorporated Arapahoe County. Upon locating the vehicle, Deputy Willmont observed the suspect, later identified as Jamarian McGhee DOB [REDACTED] asleep in the driver's seat with the vehicle running. Willmont determined the vehicle had been reported as stolen, and requested cover. Deputies Joshua Bandstra and Kenneth Foley responded. Deputies Bandstra and Foley attempted to contact McGhee. Deputy Willmont covered Deputies Bandstra and Foley with his department-issued AR-15 rifle, from a position behind the suspect vehicle, utilizing the front passenger door of a patrol vehicle as cover.

Foley and Bandstra repeatedly and loudly identified themselves and ordered McGhee to place his hands out of the window. McGhee, who had awakened during the contact, repeatedly failed to comply with those commands, but did make statements that indicated he was aware of the deputies. McGhee then placed the vehicle in reverse and drove backward, striking the patrol vehicle Willmont was using as cover. Deputy Willmont then fired three shots into the rear of the suspect vehicle. McGhee was struck by one of the rounds, which entered through the back of the driver's seat and lodged in his back.

McGhee then placed the vehicle in drive and drove forward for a short distance, before impacting an embankment and coming to a stop. Deputies removed McGhee from the vehicle and

provided emergent first aid. However, the wound to McGhee's back was fatal. After the incident, a loaded pistol was found in the right leg of McGhee's pants.

My review is limited to the question of whether Deputy Willmont committed a crime in the course of this incident. Based on my review of all materials, I find the evidence does not support criminal charges against Deputy Willmont. The evidence supports the conclusion that Deputy Willmont reasonably believed he was in imminent danger of death or serious bodily injury, which justified the use of deadly force.

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 Douglas County Sheriff's Office, the Arapahoe County Sheriff's Office, the Parker Police Department, and the 18th Judicial District Attorney's Office.

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 18th Judicial District, and includes the basis of the decision not to charge the involved officer with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I have been provided investigative materials produced by the 18th Judicial Critical Incident Response Team and the Douglas County Sheriff's Office into the shooting and related criminal activity. The materials I reviewed include:

- All reports completed by members of the Arapahoe County Sheriff's Office and the 18th Judicial Critical Incident Response Team.
- Body Worn Camera videos of Deputies Bandstra, Foley and Willmont.
- Photographs of the scene, involved vehicles, and physical evidence.
- Dispatch Recordings
- Recorded Interviews of Deputies Bandstra, Foley and Willmont.

SUMMARY OF THE FACTS

Deputy Daniel Willmont has been employed by the Arapahoe County Sheriff since 2019, and became a fully POST-certified deputy in June of 2021. Previously, Deputy Willmont had served in the Army for 12 years, primarily in a Military Police role.

On March 3, 2022 at approximately 7:39 a.m., Deputy Willmont was on patrol duty looking for an unrelated suspicious vehicle that had earlier fled an attempted contact. In so doing, Deputy Willmont drove through the parking lot of the Ivy Crossing Apartment complex. He was then flagged down by a woman in the parking lot, who informed him that a male had been seen sleeping in one of the hallways of the apartment complex the night prior, and that individual had then left the apartment and got inside a vehicle. The woman reported that the vehicle was running and the individual was still inside, and pointed out a 2017 bronze-colored Kia SUV, located in one of the parking spots.

Deputy Willmont drove his patrol vehicle to where the vehicle was located. The vehicle was parked nose-in to a parking spot, with the vehicle's front facing a bush and the front of an apartment building. There was a slight hill in front of the Kia, rising to the front of the apartment building. He then approached the vehicle, and noted that it was running and occupied by one individual, who appeared to be asleep in the driver's seat. This individual was later identified as Jamarian McGhee, DOB [REDACTED], and will be referred to as McGhee throughout this report although his identity was not determined until after the incident. Willmont noticed that the driver's side window had no glass and was covered by a fabric sun visor. Willmont attempted to rouse McGhee by knocking on the passenger side glass, but was unable to do so.

Willmont then conducted a clearance on the vehicle's VIN, and determined that it had been reported stolen. He then requested backup prior to attempting to recontact McGhee. Deputy Foley arrived first and Foley and Willmont had a brief conversation about how to best position their vehicles. Willmont repositioned his patrol car to the right of the suspect vehicle, while Foley parked his vehicle approximately 6 feet behind the suspect vehicle and slightly offset to the left. Deputy Bandstra arrived shortly thereafter and parked his vehicle to the right of Willmont's vehicle. The below photograph captures the location of the three patrol vehicles and the suspect vehicle. Note this drone photograph was taken post-incident, so the suspect vehicle is in a different

location than it was at the time of the contact, and a fourth patrol vehicle is now present that was not at the time of the shooting:



Deputy Willmont retrieved his rifle, a department issued AR-15, from his patrol vehicle and took up a position behind the suspect vehicle, utilizing the passenger door of Foley's patrol vehicle for cover.

Willmont is required to qualify annually on the use of the rifle, and his qualification was current on this date. In his interview, Deputy Willmont explained that his purpose was to provide cover to Foley and Bandstra, who would then approach the suspect vehicle. Willmont explained in his interview that it is part of their training for one deputy to provide "long cover" with a rifle when contacting an occupied stolen vehicle under these circumstances, while the other deputy or deputies attempt to contact the occupant. This is due to the fact that the rifle is more accurate at longer distances and thus better able to provide effective fire should it be needed. The below image from Bandstra's bodycam captures Willmont's location, with the suspect vehicle in the center of the image with its brake lights illuminated, and Willmont to the left of the image with his rifle trained on the rear of the suspect vehicle:



Foley and Bandstra initially took up positions near the other patrol vehicles. The deputies loudly issued commands, ordering the driver of the brown Kia to put his hands out of the window. They also utilized the airhorn to attempt to wake McGhee. The deputies observed no indications that McGhee heard them, and noted that he appeared to still be sleeping.

After attempting to wake McGhee from a distance, Foley and then Bandstra approached the suspect vehicle from the driver's side. Foley approached the driver window, with Bandstra to his right. The below image from Foley's bodycam captures the appearance of the suspect vehicle as he approached it:



After quickly assessing the situation, Foley removed the fabric covering the driver window. Foley then loudly identified himself as being from the Sheriff's office and ordered the driver to put his hands out of the window. McGhee appeared to wake up at that time, and sat up in the seat. As Foley and Bandstra continue to issue commands for the driver to put his hands out of the window, McGhee had his left hand out of the window, but did not comply with the deputies repeated commands to place his right hand out of the window. McGhee initially raised his right hand, but then put it back down by his side. McGhee can be heard speaking. Some of his statements are unintelligible and his voice is slurred, but it is possible to make out the phrase "I don't want to fight" and the word "please". During this interaction, Deputy Foley holstered his handgun and drew his taser, pointing it at McGhee.

After about 20 seconds of this interaction, McGhee placed the vehicle in reverse, and the vehicle began to move backward, striking Foley's patrol vehicle. Deputy Foley realized this had occurred, and yelled to "take it out of drive". Foley then deployed his taser. Simultaneously with the deployment of the taser, Willmont quickly fired three rounds from his rifle into the rear of the vehicle, as it reversed towards him. Foley can be heard yelling "don't shoot", immediately after the three shots. In his interview, Foley explained that he was not sure who had shot at the moment, and shouted "don't shoot" because he was concerned the vehicle was moving towards the front of the apartment complex and that further shooting might result in bullets going into the apartment buildings.

The below image from Foley's bodycam captures the deployment of the taser and the moment the shots were fired. The taser wires can be seen trailing from Foley's taser into the vehicle, and Willmont can be seen in the right side of the image, behind the passenger door of Foley's vehicle.



Deputy Bandstra was to the right and slightly behind Foley. When the vehicle began moving, Bandstra leapt backwards. The below image from Bandstra's bodycam captures this same moment. The image is distorted due to Bandstra's movement:



The suspect vehicle's left rear struck the right front push bumper of Foley's vehicle. Due to the location of Willmont's bodycam, at chest level rather than eye level, his bodycam's view is largely obscured by the patrol vehicle door. Thus, there is no clear image from Willmont's bodycam capturing his view at the moment he fired. However, it is clear from the other deputies bodycams and the audio from the bodycams that the vehicle reversed directly towards Willmont, and that Willmont fired three shots in rapid succession with his rifle, all towards the rear of the suspect vehicle as it impacted the vehicle he was using for cover. The Kia did not accelerate rapidly, though in the body-camera footage, the patrol vehicle can be seen rocking backwards after being struck, and there was damage to the patrol vehicle bumper consistent with that impact, as well as pieces of the Kia tail-light that had been shattered when it collided with the bumper.

In his interview, Willmont explained that he was using his rifle's optic, and sighted on the driver, while observing and listening to Bandstra and Foley's attempts to contact the driver. He heard Bandstra and Foley yelling at the driver to put his hands out the window, and could see that the driver was not complying. He then heard Bandstra yell to the driver to "take it out of drive", and saw the reverse lights of the vehicle come on indicating the vehicle was actually in reverse. He saw it reverse directly towards him, striking Foley's patrol vehicle, which then caused the door he was sheltering behind to close on him. Willmont explained that he fired because the vehicle was coming directly towards him, and he believed the vehicle could have struck him and pinned him or knocked him down. Willmont explained that he was in fear for his life when he fired.

When asked about the location of Foley's vehicle relative to the suspect vehicle, Willmont explained they were almost lined up with one another, with the right side of Foley's vehicle lined up with the left side of the suspect vehicle, as it reversed. Willmont further explained that the

suspect vehicle was parked against a slight hill, leading up to the apartment building itself, and that he aimed his fire slightly downwards to minimize the likelihood that any bullets would go into the apartment building.

Immediately after the shots were fired, McGhee placed the car in drive and steered the vehicle rapidly forward and to the left. After traveling a short distance the vehicle came to rest against a concrete step. No rounds were fired once the vehicle began to move forward. In his interview, Willmont explained that once the vehicle drove forward, he no longer perceived an active threat to himself, so did not continue to fire. The below image from Bandstra's bodycam captures the vehicle immediately after it came to rest:



The deputies removed McGhee from the car and handcuffed him. He can be heard moaning initially, but then became quiet and made no statements. The deputies determined he had suffered a gunshot wound to the back, and promptly administered first aid and requested that rescue respond emergent. The deputies noted McGhee had no pulse and was not breathing.

A subsequent autopsy and investigation determined McGhee had suffered a single, fatal gunshot wound to the back from a bullet fired by Willmont. The bullet penetrated the heart and lung, and caused damage to the spinal column. McGhee died on scene. McGhee was also noted as having injuries from a taser probe in his upper chest and left forearm, consistent with the probes fired by Foley. McGhee's blood also tested positive for methamphetamine.

A subsequent search of McGhee's person revealed a .38 caliber pistol in the right lower leg of McGhee's pants. None of the deputies were aware of or saw the pistol until after the shooting and it is unknown if the pistol was initially in McGhee's waistband, although that is the most likely explanation. Among other items, a baggie with suspected methamphetamine and a pipe commonly used to smoke drugs were recovered from McGhee's pockets.

An examination of the vehicle revealed it had been struck by three bullets, all fired by Willmont. The bullet which ultimately struck McGhee had passed through the rear of the Kia, into the back of the driver's side seat, out of the front of the seat, and then impacted McGhee in the back. The two other bullets impacted the Kia on the left side of the vehicle from the rear. The tracks of those bullets would have been close to the track of the fatal bullet. No bullets entered the apartment building in front of the Kia.

In addition to the bullet impacts noted above, a search of the Kia also revealed numerous items of drug paraphernalia, marijuana, methamphetamine, 8 live rounds of ammunition of different calibers, a counterfeit \$100 bill, 5 cell phones, mail belonging to 7 different individuals, numerous credit cards and ID cards belonging to many different individuals, and multiple sets of keys, among other items. These items were located throughout the vehicle, both in the open and in a number of different bags and containers.

It was determined that Foley's taser and Willmont's rifle were the only weapons discharged during the incident. Willmont was determined to have fired three total rounds from his rifle.

APPLICABLE LAW

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

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). The shots fired by Deputy Willmont constituted the use of deadly physical force, as that term is defined by Colorado law.

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

(4.5) Notwithstanding any other provision of this section, a peace officer is justified in using deadly physical force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

ANALYSIS AND CONCLUSION

The question presented is whether Deputy Willmont reasonably believed that the use of deadly physical force was necessary to defend himself or others from what he reasonably believed to be imminent danger of being killed or of receiving serious bodily injury. In this case, McGhee drove his vehicle backwards into the vehicle Willmont was partially sheltered behind. Although not at high speed, the force of the impact with Foley's vehicle was sufficient to damage both the patrol vehicle bumper and the Kia, and caused the patrol vehicle to rock backward and partially close the passenger door Willmont was using as cover. Although the backwards momentum of the vehicle was stopped by the contact with the corner of Foley's vehicle, Willmont could not have known with certainty whether that backward movement could have continued, and if it had, the vehicle could have run over Willmont or pinned him between the vehicles. Thus, I conclude that from the vantage point of Deputy Willmont it was reasonable for him to believe that it was

necessary to fire at the driver in order to prevent serious bodily injury or death to himself. His use of deadly physical force, therefore, does not support the filing of criminal charges. No criminal charges will be filed against Deputy Willmont.

Brian Sugioka #30856

Brian Sugioka
Chief Deputy District Attorney
18th Judicial District