



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

September 9, 2016

Chief Tim Carlson  
Westminster Police Department  
9110 Yates St.  
Westminster, CO 80031

Chief Nick Metz  
Aurora Police Department  
15001 E. Alameda Parkway  
Aurora, CO 80012

**Re: Critical Incident Team Investigation 16-10458 (Officer Involved Police Shooting of Nicholas Damon on June 16, 2016)**

Dear Chiefs Carlson and Metz:

The Critical Incident Team (CIT) for the Seventeenth Judicial District and members of the Office of the District Attorney for the First Judicial District were activated on June 16, 2016, pursuant to protocol, to investigate the fatal shooting of Nicholas Damon a.k.a. "Manik" (DOB 9-30-85) by law enforcement officers. The shooting occurred when officers with the Westminster Police Department Special Enforcement Team (SET) and the Aurora Police Department/FBI Rocky Mountain Safe Streets Task Force (RMSSTF) were attempting to arrest Nicholas Damon within the city of Westminster, Colorado. By agreement among the agencies, officer involved shootings in Westminster, Jefferson County, Colorado are investigated by the CIT for the Seventeenth Judicial District and legal analysis and review is conducted by the Office of the First Judicial District Attorney.

The CIT was formed to investigate incidents in which any law enforcement officer within the Seventeenth Judicial District uses deadly force, or attempts to use deadly

force, against a human being while acting under the color of official law enforcement duties. The investigation in this instance was conducted for the purpose of determining whether criminal charges are warranted as a result of the fatal shooting of Nicholas Damon. The investigation and review of this incident does not evaluate nor review the appropriateness of police tactics, or whether policies and procedures during the operation were followed.

At the time of the CIT activation an Investigator and Senior Chief Deputy District Attorney with the Office of the First Judicial District Attorney responded to work in coordination with CIT investigators and lend legal assistance as necessary.

CIT investigators completed a thorough investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes transcripts of witness interviews, numerous reports, diagrams, and digital video recordings, audio recordings, and photographs.

A review of CIT reports and documentation filed with my office has been completed and I, along with members of my staff, have been fully briefed regarding this incident by CIT Commanders in charge of the investigation. My findings, analysis, and conclusions of law regarding the use of deadly force in this incident are outlined below.

### **Applicable Law**

The legal framework for analysis in this case is found in the following sections of the Colorado Revised Statutes.

#### **§ 18-1-704, C.R.S. Use of physical force in defense of a person**

Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:

The actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

## **§18-1-901, C.R.S. Definitions**

(3)(d) “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

## **§ 18-1-407, C.R.S. Affirmative defense**

(1) “Affirmative defense” means that unless the state’s evidence raises the issue involving the alleged defense, the defendant, to raise the issue, shall present some credible evidence on that issue.

(2) If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense.

## **§ 18-1-710, C.R.S. Affirmative defense**

The issues of justification or exemption from criminal liability under sections 18-1-701 to 18-1-709 are affirmative defenses.

## **Summary of Opinion**

Applying these statutes to the facts presented through this investigation, I find that the involved law enforcement officers are not subject to criminal prosecution for their actions on June 16, 2016.

In all cases, to lodge criminal charges against an individual the District Attorney’s Office requires that there is a reasonable probability of proving each and every element of the offense beyond a reasonable doubt. Moreover, in cases where the evidence supports an affirmative defense of self-defense there must also be a reasonable probability of disproving the affirmative defense beyond a reasonable doubt before criminal charges will be brought against an individual.

The evidence in this case establishes that at the time police officers shot and killed Nicholas Damon it was reasonable to believe that Damon posed an imminent threat of death or serious bodily injury to the law enforcement officers that were attempting to take him into lawful custody. Therefore, there is no reasonable probability of disproving the affirmative defense of self-defense in the shooting of Nicholas Damon and criminal charges against the law enforcement officers are not warranted.

## **Summary of Facts**

The following summary is gleaned from CIT reports, interviews of witnesses, transcripts, and a briefing by CIT officers regarding the incident of June 16, 2016.

On June 16, 2016 multiple officers with SET and RMSSTF were tasked with attempting to locate and arrest Nicholas Damon on eight active and outstanding arrest warrants. Damon was wanted for First Degree Assault on a Peace Officer, Resisting Arrest, Dangerous Drugs, and Vehicular Eluding. He was known by law enforcement to have a criminal history, carry weapons, and associate with 211 Crew, a Colorado prison gang. In the early afternoon hours, officers were briefed concerning Nicholas Damon and were advised he was driving a black Dodge Charger Hellcat. A “wanted” bulletin regarding Nicholas Damon was distributed to some officers that contained additional information.

At approximately 4:00 p.m. the black Dodge Charger Hellcat and Nicholas Damon were located in the parking lot at the Guitar Center at 8601 Sheridan Boulevard, Westminster, Colorado. Nicholas Damon was observed loading his car and returning a shopping dolly to Guitar Center. Officers made a tactical decision to contact Nicholas Damon before he could return to his car and leave the area. Some officers knew the Dodge Charger Hellcat was a high performance vehicle with approximately seven-hundred horsepower. Several law enforcement officers drove unmarked police vehicles toward Nicholas Damon as he walked toward his vehicle from returning the dolly to the store. One police vehicle drove eastbound past Nicholas Damon and stopped next to the Dodge Charger on the passenger side. Two other police vehicles were positioned to the west and rear of the Dodge Charger. Officers got out of their cars to apprehend Nicholas Damon. The officers were in plain clothes but identifiable as police. Some officers displayed badges and others wore tactical vests with the word “Police” printed on the front and back.

Upon seeing one or more of the officers Nicholas Damon moved quickly toward his car. The officer closest to him was not successful in preventing Nicholas Damon from entering the Dodge Charger and getting behind the wheel. The officer struggled with Damon who was now in the driver’s seat. This officer believed Damon frequently carried firearms and that he may be trying to arm himself. This officer also knew the Dodge Charger Hellcat had over seven-hundred horsepower and was extremely powerful. The officer was also concerned Damon may attempt to start the car as he struggled with him in the passenger compartment. The officer tried to stop Damon from starting the car by grabbing at his hands and arms. The car was equipped with a push button ignition, and Damon was able to start the engine by gaining access to the button. Damon was able to get the car into reverse and backed up rapidly. The officer that was struggling with Damon believed he and other officers were at risk of serious bodily injury or death from being hit or run over with the car.

This officer believes he fired a round at Damon trying to get him to stop. The rapid backing of the vehicle threw the officer to the ground, and under the door and front wheel. By this time several other law enforcement officers had positioned themselves outside and to the rear area of the Dodge Charger. They observed the officer get thrown to the ground and run over by the car. They believed the officer was seriously injured or worse. Damon continued backing up at a high rate of speed and struck a tree in front of the Guitar Center. Damon revved the engine and began to accelerate toward the officers standing in the area and the one who remained on the ground. Several officers discharged their firearms at Nicholas Damon to eliminate the apparent danger. Damon rapidly accelerated northbound in the direction of the officers, who continued to shoot. Damon struck two vehicles, a monument sign, and then collided with a restaurant, the Yak and Yeti. Damon was struck with several bullets and died as a result of his wounds.

### **Police Officer Interviews**

Five police officers discharged their firearms on June 16<sup>th</sup>. Four of the officers are with the Westminster Police Department SET, and one officer is with the Aurora Police Department and assigned to RMSSTF. Due to safety concerns of the individuals the identities of the officers is not disclosed in this letter. The Chiefs of Police will be provided a legend and identifying information with respect to each officer. The officers will be designated officer 1-5 for purposes of reference.

- Officer #1 (WPD/SET)
- Officer #2 (WPD/SET)
- Officer #3 (WPD/SET)
- Officer #4 (WPD/SET)
- Officer #5 (APD/RMSSTF)

Each of the officers involved was interviewed by CIT investigators. The interviews were recorded and transcribed. Brief summaries of their statements follow.

#### **Westminster Police Officer #1**

Officer #1 is a police officer assigned to the Special Enforcement Team (SET) with the Westminster Police Department. He arrived to work the afternoon of June 16th and received a briefing from a Detective assigned to RMSSTF concerning an operation being conducted by RMSSTF regarding Nicholas Damon. Damon was known to Officer #1 from previous police operations and a prior arrest. Officer #1 knew Damon to associate with 211 Crew and run drugs and guns for the gang. Officer #1 knew Damon had a criminal history including violent offenses, several

warrants for his arrest, and that he personally carried weapons. Officer #1 had conducted surveillance of Nicholas Damon about a year prior and observed him with a short-barreled shotgun. At approximately 4:00 p.m. he and his partner, Officer #2, were notified that Damon was located in the area of 88th Ave. and Sheridan Blvd. in Westminster and that RMSSTF needed their assistance.

Officer #1, his partner, and other SET members went to the area to locate and arrest Nicholas Damon. As Officer #1 drove into a parking lot near the Guitar Center, his partner observed a black Dodge Charger believed to be driven by Nicholas Damon. From about one-hundred to one-hundred and fifty yards Officer #1 looked through binoculars and recognized Damon loading the Charger.

Officer #1 considered Damon's history of fleeing and did not want to give him an opportunity to get into the Dodge Charger because of the risks involved in attempting to make an arrest of him while mobile. Officer #1 believed that based upon Damon's history and past behavior he would not surrender without incident. Officer #1 thought that Damon would return the dolly to Guitar Center and it was safest to try and apprehend him as he made his way back toward the Dodge Charger. Officer #1 drove his undercover police vehicle toward the parking space to the south of Damon's Dodge Charger as Damon returned the dolly to the store.

Officer #1 pulled partially into the space next to the Dodge Charger and told his partner to get out in the hope he would be able to reach Damon before he returned to his car. When Officer #1 got out of his car he noticed Officer #4 and Officer #3 about fifteen to twenty feet east of and behind the Dodge Charger. They were shouting commands to Damon along the lines of "stop, you are under arrest."

Officer #1 described that Damon sprinted for the driver's side of his car. Officer #1 thought he had a good angle to intercept Damon, but Damon was able to get into the driver's seat of the Dodge Charger before he could stop him. Officer #1 thought that Damon was likely retrieving a gun. Officer #1 struggled with Damon while standing outside the vehicle and leaning in through the open driver's door. Officer #1 was focused on not letting Damon obtain a gun or get the car started. Officer #1 had his handgun in his left hand and despite his efforts; Damon was able to get the car started by use of a push button ignition.

Officer #1 believed he was vulnerable to serious bodily injury or worse given his position in relation to the car should Damon put it reverse. Officer #1 knew other officers were in close proximity to the powerful Dodge Charger as well. Officer #1 told Damon if you move the car "I am gonna kill ya." Nicholas Damon replied "then fucking kill me." Officer #1 believed Nicholas Damon would not comply with commands. At about that moment Damon got the car in reverse and Officer #1 could

hear the tires spin. Officer #1 described the car as “launching” backwards very rapidly. Officer #1 believed he was about to die and he was afraid for the other officers in close proximity. He thought other officers were in grave danger at that point and fired his handgun trying to stop Damon. Officer #1 does not remember how many times he was able to discharge his Glock 27. The evidence establishes that Officer #1 fired three rounds from his weapon.

Officer #1 was forcibly pushed back and to the ground as Damon continued to back up rapidly. Officer #1 believed the car door raked over his body and he felt pain throughout his body and head. He heard what sounded like a car crash and then an officer telling him to move. Officer #1 recalled back pedaling on all fours not knowing exactly where he was or where Damon was. Officer #1 then heard the Dodge Charger go past him very quickly, estimating the car missed his head by six inches.

After Officer #1 was able to gather himself, he noticed tire tracks across his legs, apparently from the front left tire of the Dodge Charger as it backed up and turned. Officer #1 was transported to the hospital and treated for his injuries.

### Westminster Police Officer #2

On June 16th Officer #2 was partnered with Officer #1. He also received the briefing and request for assistance from a Detective concerning an operation by RMSSTF. Officer #2 knew the person they were going to try and apprehend, Nicholas Damon, had a history of dealing in semi-automatic assault rifles and based upon intelligence considered him “highly dangerous.” Officer #2 recalled being informed at some point that Nicholas Damon was in the area of the Guitar Center. He and Officer #1 made their way to the area of Guitar Center.

Once he and Officer #1 were in the parking lot he believed one of the other officers involved in the operation spotted Nicholas Damon and the Dodge Charger Hellcat. Subsequent to a positive identification of Damon, he and Officer #1 drove by Damon as he returned a dolly to the store and parked on the passenger side of the Dodge Charger. As they parked he recalled Officer #1 saying “let’s go” and he got out to move around the back of his vehicle to approach Damon. Officer #2 was in plain clothes and was displaying a police badge.

By the time Officer #2 got to the rear of his vehicle he heard yelling “police, stop you are under arrest.” Officer #2 lost sight of Damon so he moved back around the front of his car then to the passenger side of the Dodge Charger. He observed Damon in the driver’s seat and continued hearing police commands being shouted. Damon did not comply with any police commands. Officer #2 believes he opened the passenger

door, and could see Officer #1 engaged with Damon and the car. Officer #2 heard the engine rev up and saw the car back up at a “high rate of speed.” Officer #2 stated his concerns about Officer #1: “But I knew that Officer #1 was still in the car and it looked like when it was taking off that he was, Officer #1 was getting drug. Um, I don’t know how to describe it, he looked like he was getting drug away with the car. He was moving; he wasn’t coming out of the car. He was going when the car was going, with it.” Officer #2 believed Officer #1’s life was in danger.

Officer #2 saw the Dodge Charger collide with a tree at the northeast corner of the Guitar Center. The car was then facing north and in the direction of the officers. Officer #2 had his weapon drawn at this time. The car then accelerated forward toward Officer #1 after hitting the tree. As the Dodge Charger accelerated Officer #2 thought someone was going to be run over and that deadly force was needed to prevent that from happening. Officer #2 fired his Smith and Wesson M&P 9mm at the car and driver as the car headed toward him and the officers on scene. He continued to fire his weapon as the Dodge Charger drove to the north of his location believing him to be a threat to the public.

Based upon the evidence and analysis it was determined that Officer #2 discharged his firearm five times.

### Westminster Police Officer #3

Officer #3, assigned to the SET, arrived for work and attended roll-call on June 16th at about 1:00 p.m. A RMSSTF member provided a briefing regarding an on-going operation to locate Nicholas Damon. Officer #3 was familiar with Nicholas Damon from prior incidents and contacts. Officer #3 was aware Damon had warrants for his arrest, had assaulted police officers in the past, was associated with 211 Crew, had access to weapons, and was likely to run from the police when contacted. SET members were advised to be ready to assist the RMSSTF should they get contacted regarding Damon’s whereabouts. Officer #3 was dressed in plain clothes and carried a tactical raid vest for making arrests.

Officer #3 said that around 4:12 p.m. he received a phone call from a member of the RMSSTF indicating that Damon was in the area of 88th Ave. and Sheridan. Officer #3 then notified members of his team that their assistance was requested regarding this operation and they traveled to the area of 88th Ave. and Sheridan.

Officer #3 and his partner observed Damon next to his black Dodge Charger Hellcat and communicated with other officers regarding the takedown. The goal was to apprehend Damon while out of his vehicle in order avoid any vehicle pursuits. Officer #3 knew Officer #1 was parking next to Damon’s car, on the south side.



Officer #3 drove his vehicle, a maroon KIA Sorento, behind Damon as he was walking in the direction of his Dodge Charger and stopped to the west of Damon and his car. Officer #4 stepped out of the vehicle and announced himself as the “police” and informed Damon he was under arrest. Officer #3, dressed in a tactical vest marked with police emblems, also stepped out of his vehicle to assist in the arrest. As soon as Officer #4 announced he was the police Nicholas Damon took off for his car. Officer #3 saw Officer #1 and Officer #2 in pursuit and he heard additional commands given to Damon.

Damon got to the Dodge Charger and was able to get in the driver’s seat before Officer #1 could stop him. Officer #1 jumped into the vehicle with Damon and the vehicle started. Officer #3 saw the “jolt” of the car as it went into reverse. Officer #3 described his thoughts, observations, and actions as follows:

“At that time I become very concerned for everybody’s safety. I, I know that moving vehicles are extremely dangerous, ah to Officers especially, ah when we’re trying to do anything. I start hearing commands for or, ah not commands but people saying, telling Officer #1 to get out, get out, get out ah so he doesn’t get hurt, but the vehicle starts moving backwards ah before he can get out. Ah, and then the next thing I know Officer #1 is, falls out of the car and goes underneath the car. I see him get run over by the car as it’s going backwards. Ah, at that point I’m ah, obviously I know Officer #1 is injured. I don’t know what the extent of his injuries are. Ah, and I’m very concerned for his life as well as my own. Um, I make the decision, at that point, that ah the suspect has to be stopped. That he’s behind the wheel of a, a moving vehicle and that one of my Officers is on the ground and it ah incapacitated as far as I’m concerned, and I’m also in a direct line at the front of the vehicle. Ah, if he puts it in drive; he’s gonna run over not only me but my other Officers as well. So I fire at the driver, ah tried to stop the vehicle from moving and stop him and stop the vehicle from moving. Um, I hear the engine rev and the vehicle accelerates at a high rate of speed backwards. Um, other Officers are firing as well. The vehicle accelerates backwards and rams into the, ah, into the Guitar Center building. Um, there’s no citizens, I don’t see any citizens at all and the Guitar Center’s a concrete building, so I can see that there’s no threat as far as backdrop goes. I continue to fire as I move lateral across the vehicle. Ah, until my weapon ah runs dry. I do a speed reload as I come perpendicular with the driver, the driver’s window and I come back on target. I think the vehicles incapacitated at that point. So we, there’s a pause and all of a sudden I hear the engine shift again and I see the vehicle jolt and I see it ah rocking. It’s particularly stuck on the wall, so it’s trying to pull itself free from the impact. So I, I know that the other Officers are still in front of the vehicle at that point. So I know that if he gets free and he goes forward he’s gonna run somebody over. So that’s my fear and I start firing again. So I, I. The vehicle gets clear and takes off. I have to cease fire because now ah the vehicle is crossing the path with the other

Officers, so I have to cease fire because they would be in my line of fire. At that time he strikes my vehicle, which was ah, in the road way, and he continues. North through the parking lot. I give foot pursuit. I can see the extent of damage on the back and then he hits my vehicle and I see all this fender, flairs and all the extent of the damage, on the front of his vehicle. So I'm thinking he's not gonna go very far, in that vehicle. So, I give ah chase on foot. I see Officer #2 as well, chasing on foot. We run north; ah suspect vehicle runs into the restaurant which is named "Yak and Yeti", at the north end of that isle. It goes through a fence and comes to a stop."

Officer #3 discharged his weapon, a SIG Sauer P226 9mm, at the Dodge Charger as it backed up because of the threat to all of the officers at the time. Officer #3 believed Officer #1 was injured after seeing him thrown from the car. Officer #3 believed all the officers continued to be in danger so long as the driver was not complying with commands even after hitting the tree. When the engine revved and he saw the car starting to come forward he fired additional rounds at the driver, to get the car to stop and to eliminate the threat. The CIT determined that Officer #3 fired twenty-one rounds.

#### Westminster Police Officer #4

On June 16th, and in the days preceding, Officer #4 received briefings and information concerning Nicholas Damon. He recalled being advised that RMSSTF had been conducting surveillance on Damon and that he had several warrants for his arrest. Officer #4 knew Damon was a 211 Crew member, trafficked in long guns, ran from police several times, and was violent. On June 16th Officer #4 learned that one arrest warrant for Damon concerned assault on a peace officer.

On June 16th Officer #4 was partnered with Officer #3. While on duty in the afternoon they were contacted by RMSSTF concerning the operation and then drove into the area of 88th Ave. and Sheridan Blvd. to look for the Dodge Charger Hellcat Damon was known to drive. Officer #4 and Officer #3 observed Nicholas Damon and his Dodge Charger Hellcat in the Guitar Center parking lot on the east side. The arrest team planned to apprehend Damon while he was out of the car and after he returned a dolly to the Guitar Center.

Officer #4, outfitted in a black tactical vest with badge, drove towards Damon and the Dodge Charger as Officer #1 pulled his vehicle in to park next to the Charger. Officer #4 reported that Officer #3 pulled their car up close to Damon and he jumped out of the passenger seat. Officer #4 yelled "police" and Damon looked at him before he "took off" towards the Charger. Officer #4 expressed concern that Damon may have access to firearms. Officer #4 recalled a Detective sharing that Damon may have just purchased a long gun.

Officer #4 saw Damon get into the Charger and Officer #1 in close pursuit. Officer #4 described the contact between Officer #1 and Damon as follows:

“Nicholas was able to start his car, I heard the engine rev up very loud um, I saw officer #1 reach into the car, I could see him fighting with Nicholas inside the car, it appeared, pushing or hitting each other um, it looked like officer #1 might have been trying to get the keys out of, out of the ignition, but I couldn’t tell exactly what he was doing in the car, I remember officer #1, yelled, yelling at the, at Nicholas inside not to, not to drive the car away or he was going to get uh, he was going to get shot or killed or something in that nature, you could tell officer #1 was, he was pretty much fully in the car over Nicholas, with just his feet on the ground in, in the car over on top him.”

Officer #4 was concerned that if Damon put the car in reverse both he and Officer #1 were in danger of being run over. Officer #4 tried to help Officer #1 but stepped back when the car started moving backwards. Officer #4 said Damon “stomped” on the gas and Officer #1 was “sucked” under the open car door. As the car began to turn it appeared it was going to run over and kill Officer #1.

The Dodge Charger continued backwards until it hit the tree next to the Guitar Center, and possibly the building. Officer #4 said the car was loud and sounded like “thunder “as the driver “stomped” on the gas pedal. After the car collided with the tree it was facing north toward Officer #1, who was on the ground and the others standing in close proximity. The driver was still in control of the vehicle and based upon noise from the engine was attempting to accelerate. The only escape route was in the direction of the officers.

Officer #4 described his thinking at this point:

“I thought officer #1 might have already been seriously injured by, by Nicholas, he wasn’t getting up, he wasn’t saying anything, he didn’t make any effort to, I don’t think he, I think he lost his, I think he lost his firearm cause I know he, he at least lost the, his uh, holster was somewhere over here um, I thought for sure he was going to kill Officer #1 so, I, I put several rounds into the window here to try and keep him from being able to run over Officer #1, before I could pull in the safety uh, a few seconds later the car uh, I was able to the pull, pull or, or get Officer #1 to, to move to the side just uh, couple of feet if that and the car ended up, the Charger ended up at, than a foot, Officer #1 I’d say I mean and it stomped on the gas it was just, yeah, it seemed like it was going forty miles an hour to me but uh, so, he took off, he continued uh, continued this way continued down here and ended up crashing over

here in the Yak & Yeti um, several officers followed the car and I stayed with Officer #1 to try to figure out what was going on with, if he was alive or dying or what.”

Officer #4 thought he fired five to seven rounds from his Glock 22 during the contact with Damon. The CIT determined that Officer #4 fired fourteen rounds.

### Aurora Police Officer #5

Officer #5 is an Aurora police officer assigned to the RMSSTF. On June 16th Officer #5 recalled that he attended a briefing at around 2 p.m. concerning the operation to locate and apprehend Nicholas Damon. Officer #5 knew Damon by the moniker “Manic.” Officer #5 also received a “wanted” bulletin that contained information about Damon. Officer #5 believed there were eight or nine arrest warrants for Damon and that he was surveillance conscience. Damon had a lengthy criminal history, including assault on a peace officer, and was associated with 211 Crew prison gang. Officer #5 believed Damon to be dangerous and possibly armed.

Officer #5 monitored radio transmissions concerning efforts to locate Nicholas Damon and eventually heard one of the Westminster SET officers advise that he found the Dodge Charger Hellcat in the parking lot near the Guitar Center. Officer #5 took up a position at the west end of the parking lot and had a view of the Dodge Charger and Damon. Officer #5 heard officers discuss apprehending Damon while out of his car. Officer #5 observed a “couple” of undercover police vehicles move toward Damon. Officer #5 had a difficult time seeing exactly what was happening but could tell Damon was running toward his car and a “scuffle” ensued. From his vantage point, Officer #5 observed the Dodge Charger go into reverse. As Damon backed the car he saw an officer engaged with the car and or driver, and then “fell stiff.” He believed the officer may have been seriously injured after being hit by the car. Officer #5 believed the Dodge Charger hit a tree or the building as it reversed and a group of officers nearby. The Dodge Charger started accelerating forward and by this time Officer #5 had made his way to an area west of the Charger near the driver’s side. Officer #5 knew there were officers in addition to himself exposed and vulnerable to injury from the car. Officer #5 explained this by stating there was a very narrow area for Nicholas Damon to escape and police officers, who were on foot, were in that area. Officer #5 referred to this as the “funnel.” Officer #5 heard the sound of gunfire, but did not know which officer was responsible for shooting. It appeared Damon was not surrendering and to eliminate the threat Officer #5 recalled firing his weapon (Colt .45) approximately five times into the “driver’s side door or window.” Officer #5 stated he believed that Damon was going to “kill somebody.” The CIT determined that Officer #5 fired six rounds.

The car continued to speed away, ultimately crashing into the Yak and Yeti restaurant. Officer #5 pursued the car on foot and assisted with securing Damon.

### **Lay Witness Interviews**

CIT officers located and interviewed a number of civilian witnesses that were in the area at the time of the shooting.

Mike Shire is an employee with the ARC Thrift store which is located on the west side of the parking lot where the incident occurred. Mr. Shire got off work at around 4:30 PM and was walking across the parking lot towards his truck when he heard what he thought to be “firecrackers.” Mr. Shire said he looked towards the Guitar Center and observed a man he believed to be a police officer, in a green vest. According to Mr. Shire, he heard the man yelling “stop.” Mr. Shire stated at this time he heard a vehicle “rev” its engine and saw a dark vehicle back into a tree. According to Mr. Shire, he then heard “pops” and saw a second officer wearing a blue vest. Mr. Shire stated he then walked towards the area as he saw the black car move forwards. According to Mr. Shire, he did not see what led to the shooting.

Janea Hunter lives to the south of the Guitar Center. Ms. Hunter stated she was in her backyard with her fiancé when they heard approximately six to seven gunshots. Those shots were followed by a short pause and then what she thought was approximately twenty additional gunshots. From where she was she could not see the events that occurred in front of Guitar Center. Ms. Hunter stated after a short discussion with her fiancé they drove to the area in front of the Guitar Center where they saw the area cordoned off by police.

Antoinette Moeder was driving southbound on Sheridan Blvd with her daughter. Her daughter saw what appeared to be an automobile accident in the Guitar Center parking lot. Ms. Moeder turned her car around and saw several people going to assist the person in the car. Ms. Moeder is CPR trained and was responding to render aid. Upon arriving in the lot, Ms. Moeder could see that the people approaching the car were police and had guns drawn. Ms. Moeder did not observe what occurred prior to the Dodge Charger colliding with the Yak and Yeti restaurant.

Kassandra Peters was a passenger in a car driven by her mother, Antoinette Moeder, on Sheridan Boulevard. As they were traveling southbound on Sheridan, Ms. Peters was looking down into the Guitar Center parking lot when she saw a black car hit a green car, then a sign and a fence. Ms. Peters told her mother what she observed. Her mother made a U-turn and responded to the scene to offer aid. As they arrived Ms. Peters observed five or six marked police cars drive into the parking lot and saw that

several officers had their guns drawn and were pointing them at the black car. Ms. Peters said she did not witness a shooting.

Herbert Neil lives behind and to the south of Guitar Center. On the afternoon of June 16th, Mr. Neil was outside of his home in the backyard throwing a ball to his dog. He heard what he thought were firecrackers, but then recognized as gunshots. He heard about eight paced shots, then a pause, then rapid fire, like a bunch of “Black Cats.” Mr. Neil saw a pickup truck driving down the railroad tracks. Mr. Neil thought the occupants were getting away from the gunfire, or were part of the gunfire. Mr. Neil heard sirens within two to three minutes.

Robert Banuelos stated that he is the construction superintendent for a gym that is being built next to the nearby Harbor Freight store. At the conclusion of his day he was traveling eastbound through the parking lot in front of the building he heard yelling and an engine revving. He then observed a black car backing up and crash into a tree at the corner of the Guitar Center. Then he heard gunshots and saw the windshield struck by multiple bullets. The black car then accelerated forward and collided with a red SUV. Robert Banuelos then saw the black car hit a green SUV, a monument sign, and finally the fence behind the Yak and Yeti restaurant. Mr. Banuelos saw police officers run up to the car announcing that they were the police and for the driver to get out of the car. Mr. Banuelos said that even though the officers were dressed in plain clothes, he clearly saw that they were the police wearing vests with white lettering and badges hanging from their necks. He said he could hear them yell “police” during the incident. Robert Banuelos was asked for additional detail concerning the incident. He stated:

“He was in reverse, going into drive and you hear the motor revving going into drive. That’s when they lit up, you know, cause he was pointed right at em, so...”

When asked if the officers were at risk from the vehicle moving, Robert Banuelos made several statements:

“Hell yeah, they were. Oh yeah, they were at risk.” “He didn’t slow down. He didn’t look, he wanted to leave. These cops around, you could see em, you know, go to the sides.” “After he came down off that tree and that sidewalk, I mean yeah, then I could see the guys running away.” “After he hit that big monument sign he went straight to the fence and that point it went slower. I’m speculating, but at that point I think he died right then.”

Shawn Owen-Jones stated that he was in his vehicle and getting ready to leave the parking lot of the Guitar Center at the time of the incident. Shawn Owen-Jones he began driving, but because it was hot outside he stopped to let the air conditioning

cool his vehicle. After stopping he stepped outside and observed a black colored Mustang or possibly a GT back up in the parking lot near the Guitar Center and strike a tree. Shawn Owen-Jones indicated that the tree was hit so hard that it was knocked over. Shawn Owen-Jones stated that he observed what appeared to be three undercover officers firing their weapons toward the vehicle and estimated that he heard approximately fifteen to sixteen shots. The vehicle then drove away from the officers and struck a sign in the parking lot. The vehicle continued to drive away even after hitting the sign and then appeared to crash into the back area of the restaurant Yak and Yeti. Once the vehicle stopped there Shawn Owen-Jones observed numerous law enforcement officers and firefighters begin to come into the area. Shawn Owen-Jones stated that he observed what appeared to be law enforcement remove a male party out of the vehicle and that he looked like he was deceased. Shawn Owen-Jones could not confirm if he did or did not hear the officers give commands to the person that had been shot. Shawn Owen-Jones stated that he observed a vest on at least one of the people he saw shooting and could identify them as law enforcement.

Rusty Rizzuto, who is hearing impaired, was interviewed with the assistance of a Westminster police officer able to communicate in sign language. Mr. Rizzuto advised he was at Harbor Freight when he saw the suspect vehicle speed by and hit cars, eventually coming to a stop after colliding with a building. Mr. Rizzuto stated he saw a number of police officers but he did not see any shots fired.

### **Scene Investigation**

The scene was documented and processed by law enforcement. A detective's report indicates that the scene began in the parking lot of Guitar Center and extended north terminating in an outdoor storage area, behind the Yak and Yeti Restaurant, located at 8665 Sheridan Blvd. The scene was delineated with yellow crime scene tape and protected by officers from the Westminster Police Department. Observations of the scene by members of my staff are consistent with the detective's description.

### **Vehicles**

A detective documented the vehicles involved in the incident that were on scene upon his arrival. He noted in his report the following:

“The involved vehicles were found in the following positions beginning directly north of the front doors of Guitar Center. Facing to the east with the engine running was a black and white in color, standard Westminster Police Department, four (4) door Ford Interceptor bearing State of Colorado government license plate 840MQC and vehicle identification number 1 FAHP2MK3EG159704. About ten (10) yards

directly east of the Ford Interceptor, facing to the east with the engine running, was a four (4) door, black in color, Dodge Durango bearing State of Colorado license plate 408MRJ and vehicle identification number 1 C4RDJDG6GC442055. Parked directly east of the Dodge Durango, facing east and in the parking spaces at the far east end of the parking lot was a silver in color Dodge Caravan, bearing State of Colorado license plate 109LBE and vehicle identification number 2C4RDGCG4ER214502. The vehicle was parked in the third space, south of a decorative planting box, with the vehicle parked atop the delineating line between the second space and third space. About two thirds (2/3) of the vehicle was parked in the space while the remaining one third (1/3) extended into roadway between the spaces. The vehicle engine was running and the doors on the drivers' side open. Immediately noticed were suspected bullet holes in the rear window, the rear "D" pillar and the open sliding door...Parked across from the decorative planting box facing north in the roadway between the parking spaces on the east side of the parking lot and the parking spaces immediately west of those spaces was a maroon in color Kia Sorento, bearing State of Colorado license plate 864T JM and vehicle identification number 5XYKTDA2XDG387261. The vehicle was running and passenger door was bent backwards extending towards the front quarter panel. About fifty (50) yards north of the Kia Sorento was a green in color Honda Element bearing State of Colorado license plate 197ZCL and vehicle identification number 5J6YH28523L030332. The vehicle was facing in a mostly west direction, with the rear tire in the decorative rocks of the sign for the mall. Damage was found on the passenger side rear quarter panel and rear bumper and those automobile parts were located on the ground behind the vehicle. The vehicle appeared to have been parked when it was struck by the suspect vehicle which was later found to have been traveling northbound, prior to crashing into the storage area. As no bullet holes were found in this vehicle, it was treated as an automobile accident and no further investigation was completed...

About twenty-five (25) yards north of the Honda Element was the Yak and Yeti Restaurant. The outdoor storage area for the Yak and Yeti restaurant was located in the rear of the building, facing southwest. A black Dodge Charger was found in the storage area and appeared to have crashed through the wooden fence surrounding the storage area. The vehicle was stopped in front of a small storage shed with numerous items between the vehicle and the shed proper. The doors of the vehicle were open and the emergency flashers had been activated. The air bags in the front quadrants of the vehicle had been deployed. Numerous bullet holes were noted in the vehicle body and windshield. The glass in the rear doors was missing as well as the rear window. On the roof of the vehicle was a wooden handle hammer. On the ground outside of the drivers' door were two (2) black in color extraction tools. I was later informed these tools were the property of the Westminster Police Department. Also outside of the drivers' door was a pair of black in color shorts and a twenty (\$20.00) dollar bill. I was informed the black in color shorts were worn by suspect and were removed by



medical personnel treating the suspect. The Dodge Charger bore a "Carmax" temporary license plate. A temporary State of Colorado license plate bearing 821608P was later found on the trunk of the vehicle. The vehicle identification number was 2C3CDXL91 H237112. Heavy damage was noted drivers' side rear quarter panel, drivers' side front quarter panel and entire front bumper area. The drivers' door window was in the "Up" position and numerous bullet holes were found in the glass."

The vehicles were towed for processing. The Dodge Charger Hellcat was processed on June 23, 2016. As documented in the photographs and reports the car sustained multiple bullet holes and defects as a result of the shooting. Specifically, projectiles were recovered in the Charger from under floor mats, the front and rear seats, inside containers within the vehicle, as well as in the doors and steering wheel.

Within the Dodge Charger a detective located other items of interest. A report states:

"The trunk area was examined. Inside was a black leather bag. A cursory search of the bag was conducted. Inside was a bundle of folded over \$100.00 bills and a stack of money surrounded by a page from a magazine. An electronic scale and a blue plastic wallet was located in a side pocket. Inside of the wallet, a \$100.00 bill was visible. A white in color envelope was also located. Inside of the envelope was another stack of money. Also found in the bag, was a baggie containing of a crystalline substance, consistent with methamphetamine, a glass tube with a white in color powdery substance and a small plastic baggie containing a substance consistent with heroin.

Also found in the trunk was black in color Sentry Safe lock box. When the box was later opened two handguns and a cell phone were found inside. The first handgun was a .45 caliber, Taurus model 145 Pro bearing serial number NER12550. The second handgun was a .22 caliber, North American Arms Magnum revolver. The serial number was Z38450. The cell phone was a white in color Samsung model number SM-J700P. No serial number was found on the phone.

Located on the floorboard of the drivers compartment was a white in color Samsung cellphone model SM-J700P. The phone bore no serial number. Inside of the center console between the front seats was a black in color wallet of the type usually carried in a female's purse. A clear plastic baggie of marijuana and the following identification cards:

1. Armed Forces card, bearing the name Steven R Clarke
2. United States Social Security Card bearing the name Josiah Isavel Ojeda...
3. State of Colorado identification card, bearing the name Steven Robert

Clarke, date of birth 02/27/1971...

Also in the center console were two (2) wrist watches, a white in color I Pod and a "Rockstar" energy drink can. The can was hollow and was used to conceal items. Inside of the can was a clear plastic bag containing a crystalline substance consistent with methamphetamine. The suspected methamphetamine was later tested and weighed and found to be 31.52 grams, (Net). The substance was tested using a Narcotic Identification Kit and was presumptive positive for methamphetamine. Inside of the black in color wallet was a State of Colorado identification card bearing the name Alicia Marlene Howard...

On the passenger compartment floorboard was a black in color plastic bag. Inside of the bag were three (3) clear plastic bags containing marijuana and five (5) black in color plastic containers each containing different brands of marijuana. Also found in the bag was a clear in color glass pipe, commonly used for smoking methamphetamine. In the glove box in the passenger compartment was a black in color plastic handgun magazine. The magazine was emptied and found to contain nine (9) Federal40 S&W cartridges and one (1) CCI NR S&W cartridge. On the passenger side rear compartment were two (2) State of Colorado Fleet license plates, (061QFD).

The suspected narcotics from the leather bag were weighed and tested. Inside of the large clear plastic bag were two (2) smaller clear plastic bags, each containing a crystalline substance. The large bag was weighed and was 419.56 grams, (Net). The next bag was weighed and was 138.79 grams, (Net). The last bag was weighed and was 119.68 grams, (Net). The substances in each bag was tested using a Narcotic Identification Kit and was presumptive positive for methamphetamine. The white powdery substance in the glass tube was weighed and was 45.01 grams (Net). The substance was tested using a Narcotic Identification Kit and was presumptive positive for cocaine. The substance in the small plastic baggie was weighed and was 13.29 grams, (Net). The substance was tested using a Narcotic Identification Kit and was presumptive positive for heroin. A small "Chap Stick" container was also found in the leather bag. Inside of the container was a crystalline substance. The substance was weighed and was 10.70 grams, (Net). The substance was tested using a Narcotic Identification Kit and was presumptive positive for methamphetamine.”

The money from the bag in the Dodge Charger was counted and totaled \$37,397.60.

### Cartridge Cases and Projectiles

Cartridge cases and projectiles were located at the scene, largely to the south and east of the entrance to Guitar Center in the parking lot. All casings and projectiles were

placarded, documented, and photographed. The following were recovered from the scene at the Guitar Center:

- Six Winchester 45 Auto Cartridge Cases
- Twenty-four Speer 9mm Luger +P Cartridge Cases
- Fifteen Speer 40 S&W Cartridge Cases
- Five Projectiles

A detective performed a round accountability for all weapons that were discharged in the incident. He found that forty-nine cartridges were missing from the officers' firearms and magazines, and that forty-five cartridge cases were recovered from the scene.

### Autopsy

Dr. John Carver, forensic pathologist, performed the autopsy on Nicholas Damon on June 17, 2016. His diagnoses reflect the following gunshot wounds:

- Gunshot wound of right parietal skull
- Gunshot wound of right cheek
- Graze wound of right forearm
- Gunshot wound of right upper chest
- Gunshot wound of right chest near axilla
- Gunshot wound of left forearm
- Gunshot wound of abdomen
- Gunshot wound of left upper arm
- Gunshot wound of left upper arm

With respect to Nicholas Damon's toxicology, Dr. Carver remarked as follows: Blood methamphetamine: 3000 ng/mL; amphetamine: 530 ng/mL, Blood delta-9 THC: >50 ng/mL; delta-9 carboxy THC: 230 ng/mL; 11-hydroxy delta-9 THC: 11 ng/mL.

Finally, Dr. Carver opined that the cause of death is multiple gunshot wounds and the manner of death is homicide.

### Legal Analysis

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

As is frequently the case, individuals involved in a shooting may experience profound emotions. It is not unusual for those involved to have incomplete recollections and for witness accounts to have some inconsistencies. Often times, recall of particular details will differ from witness to witness, and those interviewed may not recall all of the same events in the same chronological order. Witnesses have different perspectives to an event and their statements will so reflect. In this case, each of the witnesses offered versions of the event from their perspective and some minor inconsistencies are apparent. While there are some inconsistencies regarding some recollections of this incident, there are no inconsistencies which are relevant to my determination of criminal culpability

Based upon the investigation conducted by investigators and detectives assigned to the Critical Incident Team, there is no question that the officers involved intentionally shot Nicholas Damon. Each of the officers indicated they fired their weapons intentionally and the evidence supports that conclusion. The analysis then shifts to a consideration of Colorado law regarding the affirmative defense of self-defense.

In Colorado, all citizens including police officers have the right to self-defense, including the right to use “deadly physical force” under certain circumstances. A person may use deadly physical force in self-defense when (1) he has reasonable ground to believe, and does believe, that he, or another, is in imminent danger of being killed or of receiving great bodily injury; and (2) he reasonably believes a lesser degree of force is inadequate. The touchstone of self-defense is whether, from the standpoint of the person exercising their right to self-defense, his belief that danger was imminent was reasonable, meaning reasonable belief rather than absolute certainty. In other words, the question is whether the beliefs of the officers were reasonable based upon all known information and circumstances, and whether their actions were reasonable within the framework of the self-defense statute. Therefore, all relevant circumstances must be weighed and considered to determine whether a person asserting the defense of self-defense has acted as a reasonable person would act in similar circumstances.

Importantly, the officers had significant background information concerning Nicholas Damon. As noted above, they knew of his association with 211 Crew, criminal history, arrest warrants, access and involvement with firearms, and his prior assault on a peace officer. Furthermore, Damon’s actions on June 16, 2016 were consistent with what the officers knew about him. Nicholas Damon did not comply with police commands, but instead attempted to flee and evade arrest. The officers believed that Damon was armed and may be accessing a firearm in his car. Damon did in fact have guns within the Dodge Charger. Damon controlled what officers knew was a high performance muscle car that was more than capable of seriously injuring or killing nearby officers. Damon made clear by his actions the well-being and safety of those

around him was not of concern. Damon had multiple opportunities to end his efforts to escape and comply with police commands, but never did.

In viewing the totality of the evidence and all relevant circumstances, as well as the findings of the CIT, the officers specifically intended to thwart what they reasonably perceived to be a serious and potentially lethal threat by Nicholas Damon. The officers acted in self-defense and shot Nicholas Damon to prevent him from killing someone or inflicting serious bodily injury, with either a firearm they believed he may have had or with the Dodge Charger Hellcat. Their fears of imminent serious bodily injury or death were reasonable and the lethal actions used by the officers were not unreasonable.

Therefore, I find in the review of this shooting that the actions of Officers #1, Officer #2, Officer #3, Officer #4, and Officer #5 did not involve criminal conduct. It is the conclusion of my office, based on the applicable law and the investigation, that the actions during this incident met the legal requirements of the affirmative defense of self-defense as contained in C.R.S. Section 18-1-704 C.R.S.

Sincerely,

Peter Weir  
District Attorney  
First Judicial District Attorney