



**Office of the District Attorney  
Fifth Judicial District**

*Serving Clear Creek, Eagle, Lake, and Summit Counties*  
Heidi S. McCollum, District Attorney

February 7, 2022

Agent Matthew Sailor  
Colorado Bureau of Investigation  
690 Kipling St., Ste. 3000  
Lakewood, CO 80215

**Re: Officer Involved Shooting – Decedent David Powell (CBI File 2021-100)**  
**Letter of Declination**

Dear Agent Sailor:

Thank you for your investigation regarding the officer involved shooting which occurred in Clear Creek County on March 21, 2021. My office has had an opportunity to consider all of your findings and results from your investigation, conduct internal consultation, and pursuant to C.R.S. §§16-2.5-301 and 20-1-114, is issuing this report and declination letter pursuant to same.

After a thorough review and analysis of the evidence, we find that the Clear Creek County Sheriff's deputies' use of deadly force was legally justified to defend themselves from the threat posed by David Oath Powell, Jr. Based on this conclusion, no criminal charges will be filed against the deputies.

We have reviewed voluminous pages of records, reports and photographs as well as audiotapes of interviews with the deputies as well as the interview of Craig Keltner who was with Mr. Powell at the time of the encounter with the Clear Creek County Sheriff's deputies.

Our office is charged with determining whether these deputies committed any criminal offenses. No charges may be legally or ethically brought unless a crime can be proven beyond a reasonable doubt, the standard applicable to both law enforcement and civilians equally. A person may be criminally liable under Colorado law only when the evidence shows that an offense may be proven beyond a reasonable doubt. When a person intentionally shoots another person, resulting in death, the crime of homicide is committed, unless a legal justification exists. If legal justification exists, no crime has been committed. Self defense or defense of others are examples of such justification.

These defenses are available to both civilians and law enforcement personnel. Law enforcement is specifically authorized to use deadly force under certain narrow circumstances.

A peace officer is justified in using deadly force if: (1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or receiving serious bodily injury; (2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or receiving serious bodily injury; and, (3) the officer has objectively reasonable belief that a lesser degree of force is inadequate. C.R.S. §18-1-707(4.5). Acting in self-defense or defense of others is subject to the same analysis. C.R.S. §§18-1-704(1) & (2). In deciding whether the deputies were justified in acting in self-defense or defense of others it is irrelevant whether Mr. Powell was actually trying to injure the deputies as long as a reasonable person, under the circumstances would believe that deadly force was necessary to prevent imminent harm or death. The facts must be viewed as they appeared to the deputies at the time.

Accordingly, we must determine whether Deputies Daniel Wilson and Noah Kowalewski had objectively reasonable grounds to believe, and did in fact believe that they or another person were in imminent danger of being killed or suffering great bodily injury, and whether they reasonably believed a lesser degree of force was inadequate. If so, the shooting is justified under Colorado law and no criminal charges can be filed.

### **Facts Established by the CBI Investigation**

On March 21, 2021, Clear Creek County Sheriff's (hereinafter "CCSO") Deputies Daniel Wilson and Noah Kowalewski responded to a report by a homeowner that there was someone on his property attempting to gain entry to the residence at 1091 Morrison Lane, Empire, Colorado at around 6:07 a.m. Deputies Wilson and Kowalewski were in separate marked patrol cruisers. Deputy Wilson had worked the overnight shift and Deputy Kowalewski had just began his shift. The area of 1091 Morrison Lane is a rural mountain community. There was fresh light snow covering the area, which had fallen during the night immediately preceding this incident. Deputy Kowalewski arrived first and Deputy Wilson shortly thereafter.

Upon arrival at the location, the deputies noticed two pickup trucks, one in front of the other, that appeared to be stuck in the snow near the residence. Deputies Wilson and Kowalewski got out of their vehicles and approached the two pickups. The Deputies then encountered two individuals near the pickups. It was subsequently determined that those individuals were David Oath Powell, Jr. (initially mistakenly identified as Christopher Albertson based on an identification card in Mr. Powell's possession), and Craig Keltner. As Deputy Wilson approached the two men, they told him that they were stuck and trying to get unstuck. Deputy Wilson asked where they were going and they told him that they were going to Idaho Springs and they thought the way they were going was a shortcut. They further told Deputy Wilson they were getting wood to get unstuck, and there was wood and a shovel near the two trucks.

Deputy Kowalewski then approached on foot from behind, and Deputy Wilson approached Mr. Powell near the front truck on the driver's side who was wearing a black jacket and blue jeans. Deputy Kowalewski approached Mr. Keltner on the side of the other truck. Deputy Kowalewski asked them if they had been at the residence and they said they had, to see if they could get wood to get unstuck. Kowalewski noticed that the individual who he was speaking with (Keltner) had a pocket knife so he asked him if he could pat him down for weapons. Deputy Kowalewski noticed that Mr. Keltner was moving away from him in an angular motion which led Deputy Kowalewski to believe that he was attempting to hide something and that there was a possible danger to himself and to Deputy Wilson. When Deputy Kowalewski went to pat down Keltner, Deputy Wilson's attention was drawn to Mr. Keltner and Mr. Kowalewski. Deputy Wilson heard Mr. Powell say "Officer". At that moment Deputy Kowalewski saw Mr. Powell raise a black hand gun and point it at Deputy Wilson. Deputy Wilson also saw the gun pointed at himself as he turned back towards Mr. Powell. Deputy Wilson immediately pulled his firearm and began to fire at Mr. Powell.

Deputy Kowalewski confirmed that when he arrived at the Morrison Lane address he could see fresh tire impressions in the snow. He noticed that there were no tire impressions leaving the area, so he chose to wait for Deputy Wilson to arrive. After Deputy Wilson arrived and he and Deputy Kowalewski approached the trucks on foot, Deputy Kowalewski noticed fresh footprints in the snow and those footprints led to the residence. Deputy Kowalewski reported that as he approached he could hear Deputy Wilson attempting to communicate with the two individuals. Deputy Kowalewski said that neither of these individuals acted like they wanted any assistance from law enforcement. Deputy Kowalewski was trying to interact with Mr. Keltner and find out why the two men were there and what they were doing.

Deputy Kowalewski was near Mr. Keltner but not within touching distance. Mr. Keltner was showing body language and behavior that clearly indicated he did not want to interact with Deputy Kowalewski. Deputy Kowalewski said he saw a knife in Mr. Keltner's possession and then was going to pat him down for weapons for purposes of officer safety. As Deputy Kowalewski approached Mr. Keltner, Mr. Keltner kept moving away. As soon as Deputy Kowalewski told Mr. Keltner that he was going to pat him down for weapons, Mr. Keltner turned and ran. Mr. Keltner ran past the front of the trucks in the direction of the gate at the end of the roadway. It was at this time that Deputy Kowalewski, in his peripheral vision, saw Mr. Powell with a gun.



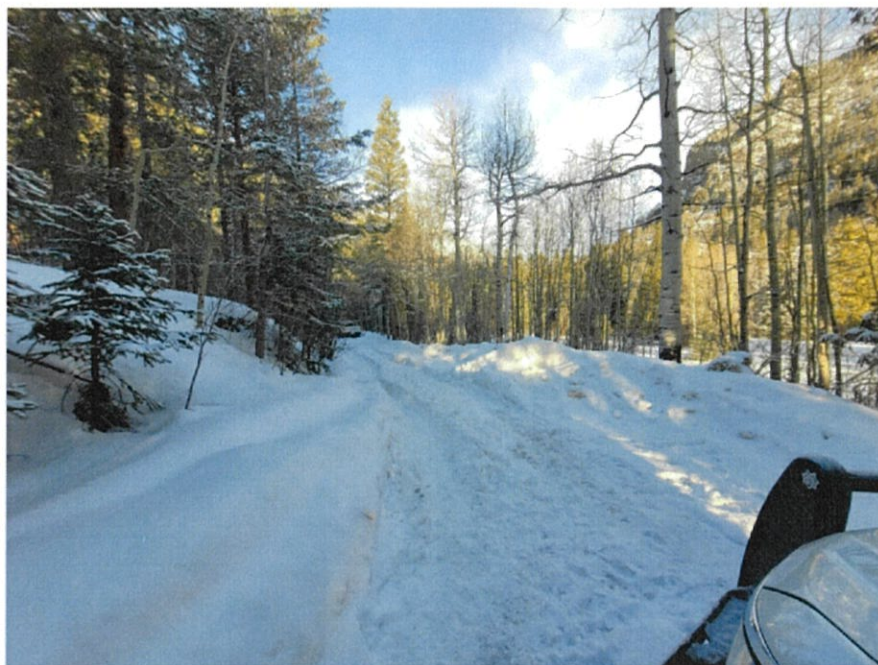
D0102021CR000042

DISCOVERY PAGE 122

Deputy Kowalewski Vehicle In Front Of Home



D0102021CR000042 DISCOVERY PAGE 124  
Rear Of Deputy Wilson Vehicle – In Front Of Deputy Kowalewski – Behind Stolen Trucks



D0102021CR000042

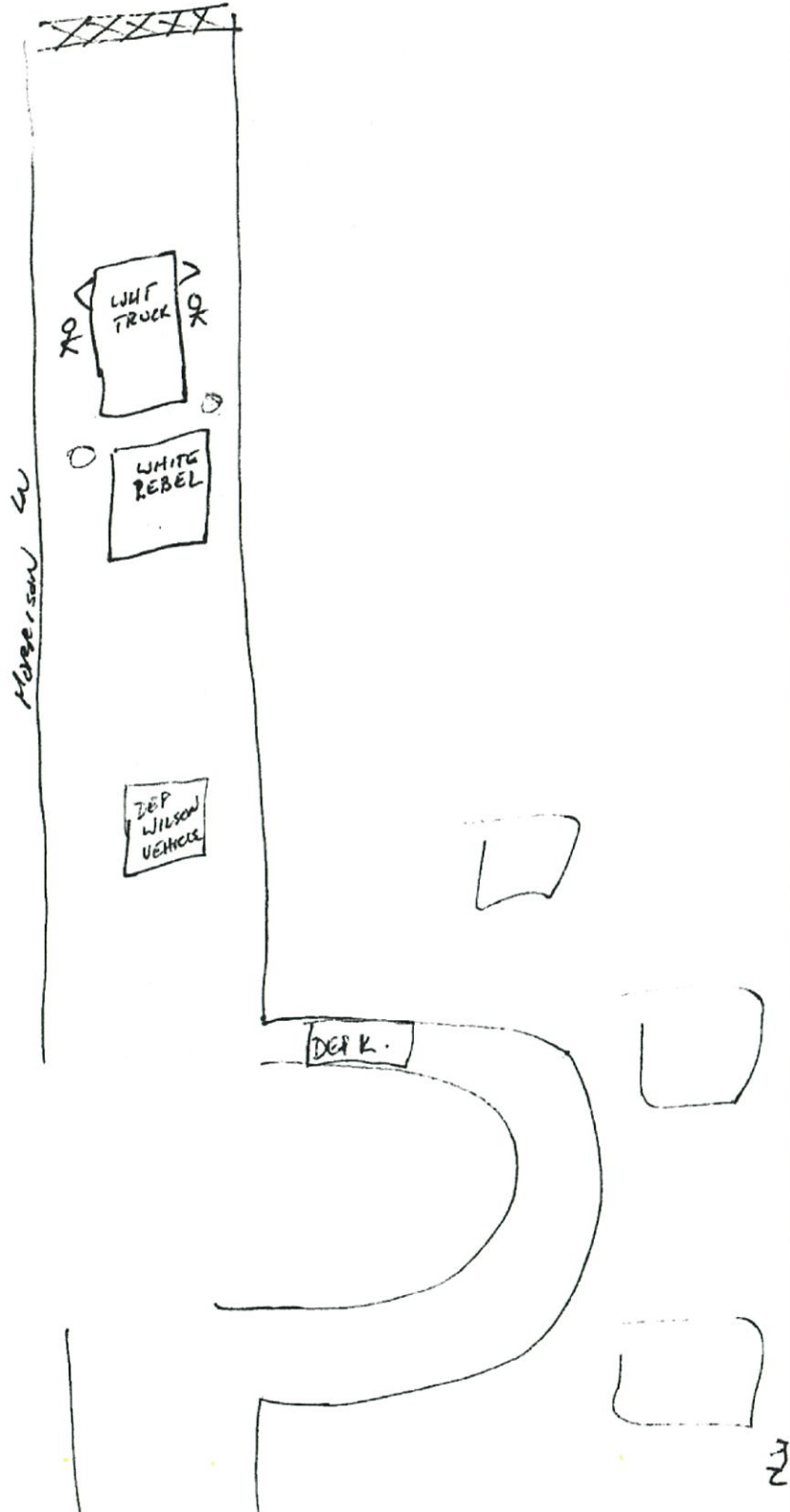
DISCOVERY PAGE 125

Front Of Deputy Wilson Vehicle – Behind Stolen Trucks in Background



Stolen Trucks In Front Of Deputy Wilson Vehicle – Powell Left Of Front Truck

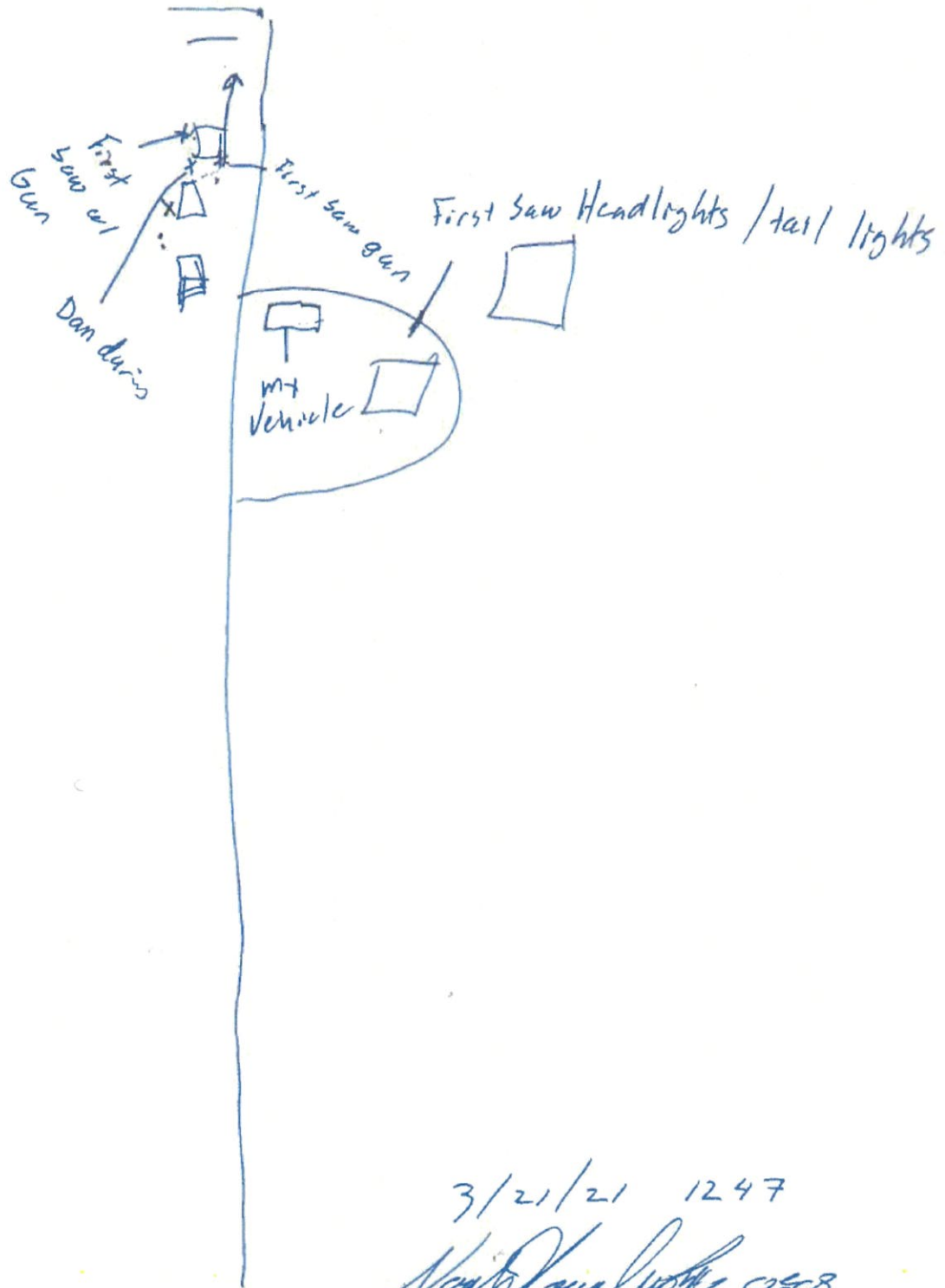
Page 1808  
03/21/21



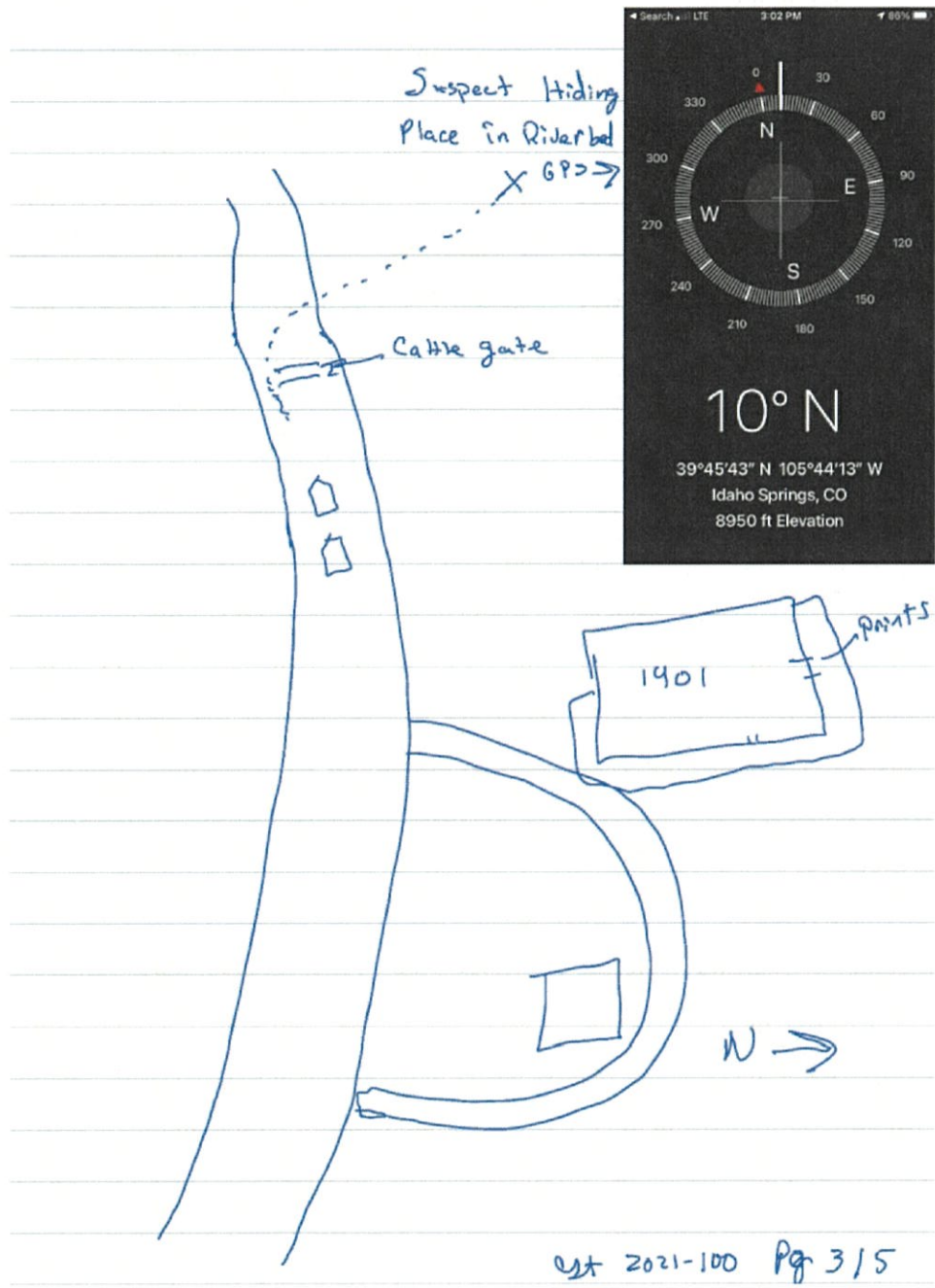
D0102021CR000042

DISCOVERY PAGE 291

Deputy Wilson Sketch



3/21/21 1247  
North Carolina 0508



D0102021CR000042

DISCOVERY PAGE 305

Deputy Kowalewski Sketch – Where Keltner Ran Away To

After Deputy Wilson began to shoot he saw Mr. Powell fall and he yelled commands for Mr. Powell, to show his hands. Deputy Wilson said Mr. Powell continued to move and appeared to be trying to get something from under his body. Deputy Wilson fired additional rounds until Mr. Powell stopped moving and he believed the threat was eliminated. Deputy Wilson reloaded his weapon dropping his empty magazine in the snow. Deputy Wilson reloaded and put his flashlight in the bed of the pickup. Mr. Powell never showed his hands to Deputy Wilson and never said anything additionally to Deputy Wilson. Both deputies remained by the vehicles until back up arrived after Mr. Keltner had fled the scene.

Deputy Kowalewski saw Mr. Powell have the gun outstretched in front of him pointing it at Deputy Wilson, but Deputy Kowalewski was unsure if Mr. Powell held the gun in one hand or both. Deputy Kowalewski reported that there was enough ambient light for him to see the gun in Mr. Powell's hand. Deputy Kowalewski said he turned towards Mr. Powell and shot at him because he thought Mr. Powell was going to kill Deputy Wilson. Deputy Kowalewski said it looked like Mr. Powell was trying to clear a malfunction of the gun he was holding. Deputy Kowalewski fired two or three rounds and Mr. Powell dropped out of his sight. Deputy Kowalewski's statements about what occurred after the shooting were generally consistent with Deputy Wilson's.

Deputy Kowalewski stated that after Mr. Powell had initially been shot, he turned back towards where Mr. Keltner was running. At that time, he believed that he saw Mr. Keltner turn towards him and raise his arm to fire a weapon at him. Deputy Kowalewski in response fired one or two shots in the direction of Mr. Keltner. He could not tell specifically if Mr. Keltner had something in his hand but he definitely thought what Mr. Keltner was doing was a threatening motion and a direct threat to him. Deputy Kowalewski did not know if Mr. Keltner actually fired at him because Deputy Wilson was still firing his weapon when Deputy Kowalewski turned towards Mr. Keltner. After Deputy Kowalewski fired Mr. Keltner fell. When he turned back to Mr. Powell, Mr. Powell was on the ground and appeared to be actively reaching for something and he fired again at Mr. Powell. Deputy Kowalewski then stated that Mr. Powell stopped moving. Deputy Kowalewski then turned his attention to Mr. Keltner who had gotten up and began running away again and Deputy Kowalewski lost sight of him. The deputies were then trying to formulate a plan about what to do about Mr. Keltner. They concluded that it was unsafe to attempt to render aid to Mr. Powell because Mr. Keltner was still on the loose and may pose a threat to them. Deputy Kowalewski believed that after he looked at Mr. Powell he believed there was a gun under Mr. Powell's leg.

Both deputies made statements to CBI. During those statements they both said that they thought Deputy Wilson was going to be shot and killed by Mr. Powell. Neither deputy was aware of whether Mr. Powell or Mr. Keltner had actually fired a round at either of them.

Mr. Keltner was eventually apprehended by other officers, hiding out in the area to which he had fled. A hand gun was recovered close to where he was found.



Location Where Keltner Was Found



Firearm Where Keltner Was Found

Mr. Keltner was interviewed by CBI. He said that he knew Mr. Powell as “DJ” and did not know him that well. He said that he was on the way to see Powell and that Powell was stuck in the snow. He went to meet Powell to help him to try to get unstuck. Mr. Keltner admitted that the truck he was driving was stolen. He denied that he attempted to make entry into the residence in question. Mr. Keltner stated that when the deputies arrived they asked questions and he was concerned because he had warrants. Mr. Keltner said he thought the deputies were being aggressive. He said the shooting just started. He said the deputies made him afraid and that they just started shooting. He then ran and thought the deputies were yelling orders at him and he hit the ground. Mr. Keltner then saw muzzle flashes and he thought they were shooting at him. He said he then dove into a snow bank and fell asleep. The next thing he remembered was the K-9 dogs biting on his arm and then he went to the hospital. Mr. Keltner said he knew Powell had a gun. Mr. Keltner denied having a gun. Mr. Keltner denied knowing who started shooting or why. Mr. Keltner said Powell said “fuck” when the deputies arrived and he tried to calm him down.

The physical evidence recovered from the scene is consistent with the report of both deputies. Recovered from the scene were two handguns. A Ruger LC9 recovered from underneath Mr. Powell’s body which was identified as a stolen firearm. Also, a Smith and Wesson handgun was recovered from the area of where Mr. Keltner was located and that was also a stolen firearm. Both guns were loaded and capable of firing.



Ruger Firearm



Smith & Wesson Firearm

Both trucks which Powell and Keltner were driving were found to be stolen vehicles and both vehicles were filled with numerous items of stolen property.

Subsequent investigation and autopsy disclosed that Mr. Powell died from multiple gunshot wounds. In addition, toxicology results showed that Mr. Powell had significant amounts of amphetamine and methamphetamine in his system at the time of the shooting.

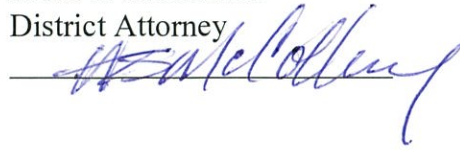
### **Conclusion**

Under the applicable standard set out above Deputies Wilson's and Kowalewski's use of force was reasonable and lawful. Both deputies saw Mr. Powell raise a hand gun and point it at Deputy Wilson which was subsequently recovered under Mr. Powell's body. Both deputies believed that Mr. Powell was intent on shooting Deputy Wilson. Under the circumstances there was no lesser degree of force that would have been appropriate. The physical evidence recovered from the scene is consistent with the report of both deputies and there is nothing to show that this unfortunate series of events was anything other than justified.

We will be notifying the victims of this conclusion.

Stephen F. Potts  
Deputy District Attorney  
/s/ Stephen F. Potts

Heidi S. McCollum  
District Attorney



cc: Rick Albers, Clear Creek Sheriff  
Kirby Lewis, CBI