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September 14, 2016

Chief John Hutto
Fort Collins Police Services
2221 Timberline Road
Fort Collins, CO 80525

Re: Opinion concerning- FCPS 16-13951, LCSO 16-6767, LPD 16-7028

Dear Chief Hutto:

The criminal investigation surrounding the August 25, 2016 death of Jerry Lee Jackson has been completed and submitted to my office for an opinion. As District Attorney, I am required to determine whether any person committed criminal law violations during this incident. The scope of this review is criminal in nature and necessarily limited by Colorado statutes to determine whether any criminal charge is legally prosecutable and provable beyond a reasonable doubt. My review also includes determining if the degree of force used by Officers Bryan Brown, Allen Heaton, and Nicholas Rogers was justified under pertinent Colorado statutes.

Larimer County's Critical Incident Protocol was in place and followed during this investigation. The investigation was conducted by the Critical Incident Response Team ("CIRT") for the Eighth Judicial District. The Larimer County Sheriff's Department headed the CIRT team for this incident. Members of the CIRT team included personnel from the Larimer County Sheriff's Department, the Loveland Police Department, the Timnath Police Department, Fort Collins Police Services, and the District Attorney's Office for the Eighth Judicial District. I have reviewed all of the reports, photos, videos, dispatch and communication records, witness interviews, ballistics, and findings made by the Larimer County Coroner's Office.

In determining whether the degree of force used by Officers Bryan Brown, Allen Heaton, and Nicholas Rogers was legally justifiable, my review is based on whether the following Colorado statute involving the use of force was violated.

Section 18-1-704 of the Colorado Revised Statutes provides:

(1) *... 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.*

> (2) *Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:*
> *(a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury...*

The definition of "deadly physical force" is set forth in C.R.S. 18-1-901(3)(d). It reads:

"Deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which, does in fact, produce death.

The following is a summary of the facts in this case as established by the above sources of information:

On August 25, 2016, at approximately 7:22 p.m., a 911 call was received from a female ("E.J.") reporting that she, her sister ("J.H."), and her female roommate ("A.T.") were in a car and that her estranged husband, Jerry Jackson, was armed with a knife attempting to get into their vehicle. Fort Collins Police Officers, Bryan Brown, Allen Heaton, and Nicholas Rogers were initially dispatched to the 900 block of North College Avenue, but later determined that E.J. was actually in the area of 925 N. Highway 287 in the parking lot of "JAX Ranch and Home." The officers made contact with E.J. and her two passengers. At the time of their contact with the three females, the suspect, Jerry Jackson, had left the area. A.T. told the officers that she had entered the home she shares with E.J. and was confronted by Jerry Jackson who was armed with a knife. A.T. knew that Jerry Jackson was under a court order not to be within 100 yards of this residence. She retreated to the car and the three ladies fled across the street to JAX Ranch and Home. It was at that location where Jerry Jackson, armed with a knife, began beating on the windows of their vehicle in an attempt to get to E.J.

Officers learned that Jerry Jackson was estranged from E.J. Jerry Jackson had been served with a protection order from the Larimer County Courts as the result of a previous arrest of Jerry Jackson for the criminal charges of harassment and domestic violence, which occurred in May of 2016. That protection order prohibited Jerry Jackson from having any contact with E.J. or her residence, which is located in the 900 block of N. Highway 287, across the street from JAX Ranch and Home. E.J. told the officers that she has made several previous police reports about Jerry Jackson violating the protection order.

A police records review reveals that E.J. made a police report with the Larimer County Sheriff's Department on May 5, 2016, alleging that Jerry Jackson had come to her residence and attempted to gain entry, contrary to the protection order, which had been issued by the Court earlier in the day. On August 23, 2016, E.J. made another police report, to the Larimer County Sheriff's Department, alleging a violation of the protection order. Deputies were able to verify that Jerry Jackson had violated the protection order by repeatedly calling E.J. and leaving voicemail messages. One of the messages stated "You want me dead. That's what's going to happen." In another message Jerry Jackson indicated that he would not let the police arrest him again and then stated that "I'll make them shoot me first."

Jerry Jackson's decision to make the police shoot him was reinforced by statements he made to his adult son, "J.J." In the week preceding this incident, Jerry Jackson told J.J. that he believed he would be arrested on outstanding warrants for violating the protection order and that he was going to die before he let the police take him in. At approximately 5:00 p.m. on August 25, 2016, Jerry Jackson called his son, J.J., and told J.J. that he should expect a phone call in the next hour or two. J. J. told investigators that he believed that his father, Jerry Jackson, had made the decision that "today was the day." Investigators were able to retrieve a sales receipt from JAX's Ranch and Home documenting that Jerry Jackson purchased a Gerber fillet knife, with a 6" blade, at 7:07 p.m. on August 25, 2016. At approximately 7:35 p.m., Jerry Jackson called J.J. again and stated that he had purchased a knife at JAX and had gone across the street to E.J.'s house. He told J.J., "If the cops take me down I am going to slit my throat." He told his son to come and get him before the cops arrive because, "If the cops get here before you, I am a dead man." According to police dispatch records, the report of shots fired by the police was made twelve minutes later, at 7:47 p.m. on August 25, 2016.

As officers were speaking with E.J., J.H. and A.T. in the JAX Ranch and Home parking lot, Officer Brown observed Jerry Jackson across the street at the residence of E.J. (*The timing of Jerry Jackson's last phone call to his son, J.J., reveals that Jerry Jackson probably made that call from E.J.'s residence when he observed the officers initial arrival at the JAX Ranch and Home parking pursuant to the 911 call.*) Upon observing Jerry Jackson, the officers decided to cross Highway 287 and speak with Mr. Jackson about threatening the ladies with a knife.

When the heavy traffic on Highway 287 permitted, Officers Bryan Brown, Allen Heaton, and Nicholas Rogers crossed Highway 287 and walked to the driveway leading to E.J's residence. Officer Heaton was in the lead and he was the first officer to speak with Jerry as he was walking up the driveway from E.J.'s residence towards Highway 287. Officer Heaton called "Jerry" by name and asked him to take his hands out of his pockets. Mr. Jackson lifted up his hands and displayed that he had the large fillet knife in his right hand.

When Jerry Jackson brandished his knife, all three officers pulled out their service weapons and began yelling: "Jerry drop the knife." "Don't come towards us." "Drop the knife, Jerry." "Drop it right now or you are going to get shot." "We will shoot you, don't make us do this man." No fewer than eighteen commands to drop the knife were given to Jerry Jackson. All

commands were ignored. Jerry Jackson continued to close the distance between him and the three officers, despite the officers' attempts to back up to gain more distance; and therefore, more time to bring Mr. Jackson into compliance with dropping the knife. As Jerry Jackson continued his advance towards the officers, Officer Brown attempted to subdue Mr. Jackson by deploying his Taser. Though Jerry Jackson continued to close in on the officers, the Taser deployment was at the edge of its effective range. One of the Taser probes made contact with Jerry Jackson's hand, but the second probe failed to make contact; and therefore, the Taser was ineffective. Officer Heaton also deployed his Taser, but it too failed to be effective. All three officers had now moved as far away from Mr. Jackson as was physically possible. Cars and trucks were driving within several feet of the officer's backs. Jerry Jackson continued his steady advance, with the knife, towards the officers despite their continued commands that they would shoot him if came closer. At one point, Mr. Jackson responded that the police would have to shoot him as he continued to close in on the officers.

Officers Bryan Brown, Allen Heaton, and Nicholas Rogers continued to plead with Jerry Jackson to drop the knife. When Jerry Jackson refused to drop the knife and closed to a distance that posed an unreasonable risk to the officers' safety, all three officers fired their semi-automatic service weapons within a fraction of a second of each other. For all practical purposes, they fired simultaneously. Each officer fired three times in less than a second. Jerry Jackson immediately fell to the pavement with the knife still in his hand.

Officers immediately made a radio call for an emergency medical response as they themselves approached Jerry Jackson to begin immediate first aid. The knife was secured and officers began emergency life saving measures. Those efforts were unsuccessful.

Based upon the totality of the evidence, I find that Jerry Jackson committed the only criminal offenses during this incident. Had he survived, sufficient evidence existed to charge him with multiple felony and misdemeanor offenses, including six counts of Menacing with a Deadly Weapon, Second Degree Burglary, Violation of a Protection Order, and Domestic Violence.

Based upon all of the evidence, I find Jerry Jackson unlawfully placed all three officers' lives at risk. The officers took all reasonable steps available to disarm Jerry Jackson before firing their service weapons. Through words and actions, it is clear that Jerry Jackson's intent was to force the police to shoot him. This decision by Jerry Jackson was the direct cause of his death and will have lasting tragic results for his family, the officers involved, and for our community.

Respectfully,

Clifford E. Riedel
District Attorney

Cc: Lt. John Feyen, LCSO
CIRT-Incident Commander