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July 12, 2013

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

Re: Opinion on Officer Involved Injury Accident with Cherrelle Cruz

Dear Chief Hutto:

The criminal investigation surrounding the June 6, 2013 injury accident involving Officer Will Biberos and Cherrelle Cruz has been completed and submitted to my office for an opinion. As District Attorney, I am required to determine whether any criminal law violations were committed by any person 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 fileable and provable beyond a reasonable doubt.

In addition to having representatives from my office respond to the scene and assist in the interview with Officer Biberos, our investigation has included a review of the reports from Fort Collins Police Services, Case No. 13-8090, photos and videos taken of the scene, dispatch and communication records, a witness statement and interview with Ms. Cruz, and a presentation from Officer Drew Jurkofsky, the lead investigator and member of the FCPD CRASH (Collision Reconstruction and Scene Handling) team. Larimer County's Critical Incident protocol was in place and followed during this investigation.

The following is a summary of the facts of this case:

On June 5, 2013, into the early morning hours of June 6, 2013, Officer Will Biberos was working late week power night shift, from 1800 hours until 0400 hours. Officer Biberos was working street patrol in area P8, was in uniform, and operating a Fort Collins Police Services marked patrol vehicle.

Officer Biberos took his "lunch" break at approximately 2345 hours on June 5th and drove to the King Soopers located at 2602 South Timberline Road to purchase something. Communication records show him on route to King Soopers at 2358 hours. Upon leaving the King Soopers store, Officer Biberos was driving west in the parking lot in order to exit the King Soopers' parking lot onto Timberline Drive and head north, back to FCPS.

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Officer Lindsay was also working this shift and had a civilian ride along passenger, Chris Kuntz. He had been trying to coordinate his break with Officer Biberos. Officer Lindsay came into the King Soopers' parking lot as Officer Biberos was departing that parking lot. Communication records show Officer Lindsay coming into the King Soopers' parking lot area at approximately 0006 hours on June 6, 2013.

Cherelle Cruz was working at the McDonald's restaurant located at the intersection of Timberline Road and Horsetooth Road on June 5, 2013. Ms. Cruz had ridden her bicycle to work. Ms. Cruz got off work at approximately 0000 hours on June 6, 2013. Upon leaving work, she headed home riding northbound on the sidewalk on the east side of Timberline Road. Ms. Cruz was wearing a gray jacket, black pants, and a red McDonald's shirt. Ms. Cruz did not have a light on her bike or any other form of illumination.

As Officer Biberos was exiting west out of the King Soopers' parking lot, attempting to turn right on to northbound Timberline Road, his vehicle struck Ms. Cruz as she rode her bicycle northbound in the crosswalk located at this exit. The collision involved very low speeds and caused very minimal damage to either the patrol vehicle or the bicycle. The push-bumper on the patrol vehicle caught and stopped the bicycle, pushing it and Ms Cruz over. As Ms. Cruz fell, she was struck in the throat by the bicycle's handlebar causing a visible injury to her neck. Officer Biberos immediately came to her aid and summoned medical assistance. It was later determined that Ms. Cruz suffered a fractured larynx, and an injury to her esophagus. Radio traffic records document that Officer Biberos reported the accident at 0007:26 hours.

Officer Biberos was interviewed and he stated that he stopped for the stop sign at the driveway access, looked in both directions, but did not see the bicyclist. After stopping, Officer Biberos stated he rolled into the crosswalk, looking to the left and right. As he rolled forward looking to his right and then back to his left, he first saw Ms. Cruz off the left front corner of his car. He braked, but because of the delay in perception and reaction, he could not stop before colliding with Ms. Cruz. Officer Biberos estimated he was going approximately 5 miles per hour when he first saw the bicycle. Officer Biberos denied being distracted by anything, including his computer and other vehicle equipment.

Ms. Cruz was interviewed and stated that she left her work at McDonalds between 0000 and 0005 hours. She rode her bike north on Timberline utilizing the east sidewalk. Ms. Cruz stated that as she approached the exit from the King Soopers' parking lot, she saw two police cars rolling west in the parking lot towards that exit onto Timberline. Ms. Cruz stated that the first police car was approximately 15 feet from the stop sign when she first saw it and that the second patrol car was 5 to 10 feet behind the first. Ms. Cruz stated that she assumed the police cars would stop at the stop sign, that she would get to the cross walk first, and that she could cross. Ms. Cruz indicated that as she entered the crosswalk she saw the Officer in the lead police car was looking to his right, possibly at his computer, possibly at the sidewalk to the right. She

stated that this officer did not stop at the stop sign and collided with her. Ms. Cruz also indicated that she did not believe the first police car had its headlights on.

Officer Lindsay was interviewed and stated that as he pulled into the King Soopers' parking lot, he saw Officer Biberos heading west towards the exit from the parking lot onto Timberline. Officer Lindsay indicated that he was briefly driving west, behind Officer Biberos' vehicle before turning north toward the King Soopers store itself. As Officer Lindsay was preparing to turn north towards the store his passenger, Chris Kuntz, advised Officer Lindsay that he believed Officer Biberos had been involved in an accident as he was exiting the parking lot. Chris Kuntz was interviewed. He stated that he observed Officer Biberos' patrol vehicle slowly approaching the exit onto Timberline. Mr. Kuntz stated that he looked away momentarily and when he looked back he observed Officer Biberos' brake lights were on. He looked away as Officer Lindsay began turning their car to the north and when he looked back, he saw a bicycle traveling north bound on Timberline. He looked away briefly and when he looked back, he saw a person limping or hopping in front of Officer Biberos' vehicle. He did not see the actual collision.

Officer Lindsay was interviewed about whether the headlights were illuminated on Officer Biberos' patrol vehicle as it was driving through the parking lot towards the exit onto Timberline. He stated that he did not specifically remember seeing the headlights themselves; however, he was able to see illumination to the front of Officer Biberos' vehicle and that the running lights on Officer Biberos' vehicle were also illuminated.

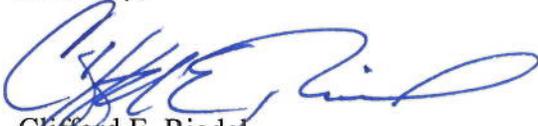
Officer Jurkofsky performed an examination of Officer Biberos' vehicle and the bicycle. He completed an accident reconstruction based upon the interviews and the minimal physical evidence. His findings were consistent with the reports of the various parties but fit best with a scenario in which Officer Biberos stopped at the stop sign, but continued into the crosswalk without seeing Ms. Cruz on her bicycle as it approached the crosswalk from the south.

Evidence concerning whether Officer Biberos came to a complete stop at the stop sign is conflicting and inconclusive. The stop sign in question is on private property, does not control travel on a public highway, and therefore is not an official traffic control device pursuant to Colorado law. As a result, even if it could be proven beyond a reasonable doubt that Officer Biberos did not stop at that stop sign, a charge of failure stop is not cognizable pursuant to state statute. Based upon the totality of the circumstances, the actions of Officer Biberos in failing to

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perceive and failing to react in time to avoid a collision with Ms. Cruz, a bicyclist traveling at night in dark clothing with no illumination, does not rise to the level of careless or reckless driving. While the facts of this case may support a traffic infraction for failure to yield to a pedestrian in a crosswalk, the facts do not support the filing of any criminal or misdemeanor traffic charges in state court.

Sincerely,



Clifford E. Riedel
District Attorney