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June 21, 2013

Sheriff Justin Smith
2501 Midpoint Drive
Fort Collins, CO 80525

Re: Opinion on Officer Involved Shooting of Louis James Skelly

Dear Sheriff Smith:

The criminal investigation surrounding the June 3, 2013 shooting of Louis James Skelly has been completed and submitted to my office for an opinion. As District Attorney, I am required to determine whether any criminal laws were committed by any person during this incident. My review also includes determining if the degree of force used by Officer Shane Clymer was justified under pertinent Colorado statutes.

In addition to having representatives from my office at the scene and participating in the interview of deputies Clymer and Westerfield, our investigation has included a review of reports, dispatch tapes, photographs, ballistic reports, statements of neighbors of Mr. Skelly, findings contained in LCSO Case Number 13-3655 and findings from the Larimer County Coroner's Office. Larimer County's Critical Incident Protocol was in place and followed during the investigation of this shooting incident.

In determining whether the degree of force used by Deputy Clymer 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 following is a summary of the facts in this case:

On June 3, 2013 at approximately 1:05 pm, a neighbor of Mr. Skelly called the Larimer County Dispatch Center to report that he had heard yelling and a series of gun shots coming from what he believed to be the property of Mr. Skelly. Due to previous experience with Mr. Skelly, this neighbor did not feel safe going over to Mr. Skelly's property and therefore he called the Larimer County Sheriff's Department. It should be noted that Mr. Skelly's property is very remote and is accessible by four wheel drive only. The property has no electricity or running water.

Based upon this neighbor's report, Deputy James Westerfield, the assigned mountain deputy on duty, was dispatched to conduct a welfare check on Mr. Skelly. At approximately 2:49 pm, Deputy Westerfield arrived at Mr. Skelly's property which consists of a rustic residence, and various rustic out-buildings. Deputy Westerfield was familiar with Mr. Skelly and was aware of Mr. Skelly's past criminal history involving the use of alcohol and gun usage, as well as the fact that several neighbors in the area had obtained restraining orders against Mr. Skelly due to his aggressive behavior. As a result, Deputy Westerfield parked his marked patrol truck a couple of hundred yards away from Mr. Skelly's residence and walked up towards the residence in a manner that would protect the deputy as best as possible. Once the deputy arrived at the residence, he announced his presence and Mr. Skelly came to the door. Mr. James was completely nude when he answered the door and clearly appeared to have been drinking. Mr. Skelly was agitated with his neighbor for having called the sheriff's office and was irritated that Deputy Westerfield was on his property. Deputy Westerfield was able to calm Mr. Skelly down. Deputy Westerfield left the property once he determined that Mr. Skelly was not in any imminent danger.

Shortly after Deputy Westerfield left the property, Mr. Skelly, utilizing a cell phone, started making calls to the 911 dispatch center. Mr. Skelly made a total of thirteen calls to the 911 dispatch center. He averaged about one call every ten minutes. Mr. Skelly's demeanor was mercurial and would alternate between being angry at the sheriff's office for coming onto his property to being complimentary towards Deputy Westerfield by stating that "Westerfield was pretty cool through this deal." During these thirteen phone calls Mr. Skelly also grew more and more agitated at his neighbor who had placed the original welfare call to the sheriff's office. Mr.

Skelly accused his neighbor of wanting to shoot Mr. Skelly's dog, of wanting to steal Mr. Skelly's property and other various paranoid type ramblings. Ultimately, the calls escalated to the point that Mr. Skelly reported that his neighbor had in fact shot his dog and that Mr. Skelly was going to go and shoot his neighbor.

Based upon the erratic nature of Mr. Skelly and his threat to shoot his neighbor, Deputy Westerfield was once again dispatched to Mr. James' residence. For safety purposes, a second deputy, Deputy Shane Clymer, was also dispatched to assist Deputy Westerfield. Deputy Clymer did not have a four wheel drive patrol vehicle nor was he familiar with the Cherokee Park area and as a result, he and Deputy Westerfield agreed to meet up so that Deputy Westerfield could brief him on the situation and provide him transportation to Mr. Skelly's property. Deputy Westerfield briefed Deputy Clymer on the situation, showed Deputy Clymer a photograph of Mr. Skelly and advised Deputy Clymer that he should bring his departmental patrol rifle with him so that he, Deputy Clymer, could remain a safe distance from Mr. Skelly's residence and provide cover for Deputy Westerfield as he attempted to contact Mr. Skelly.

Deputy Westerfield and Deputy Clymer then drove back up to Mr. Skelly's property. The deputies arrived at 5:45 pm. Once again, Deputy Westerfield parked a safe distance from Mr. Skelly's residence so that the deputies could safely approach the residence on foot from behind a small ridge of rock and trees. When the deputies were approximately 75 to 100 yards away from Mr. Skelly's residence, they observed him coming in and out onto a small porch just outside of his elevated front door. Mr. Skelly was agitated and was yelling incoherently. Deputy Clymer took a position behind a rock out-cropping from which he could observe Mr. Skelly's front door and protect Deputy Westerfield as he worked his way down the ridge in an attempt to contact Mr. Skelly. As Deputy Westerfield was working his way down the ridge towards the residence, Deputy Westerfield and Deputy Clymer observed Mr. Skelly once again exit his residence onto the porch; however, this time Mr. Skelly was holding a dark colored rifle. Mr. Skelly raised the rifle to about waist high and fired three rapid shots towards the location where the deputies had parked their marked sheriff's patrol vehicle. At 5:49 pm, Deputy Clymer reported to LCSO dispatch that shots had been fired. These shots were very concerning but not an immediate threat to the deputies due to the circuitous route they had deliberately taken to approach the residence. Neither officer returned fire at this point in time. However, Deputy Clymer, from his position on the ridge observed Mr. Skelly then raise the rifle to his shoulder in a traditional firing position and begin firing shots directly towards Deputy Clymer and Deputy Westerfield. Deputy Clymer heard a bullet "wiz" past his head. At that point, Deputy Clymer returned fire utilizing his patrol rifle. Deputy Westerfield, who was working his way down the ridge, lost sight of Mr. Skelly after Mr. Skelly fired his first three shots toward the location where the deputies had parked. As a result, he did not see Mr. Skelly point his rifle directly at him or Deputy Clymer, however, he heard additional shots fired from the residence and then heard Deputy Clymer's return fire.

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Deputy Clymer fired two initial shots. One of those shots appeared to break out the glass in the door leading from the house out to the porch. Mr. Skelly remained standing and continued to point and fire his rifle at the two deputies. As a result, Deputy Clymer fired three additional shots and Mr. Skelly fell backwards through the broken door window and landed just inside the door. No additional shots were fired by either deputy once Mr. Skelly fell over.

Investigation at the scene revealed that Deputy Clymer was approximately seventy-seven yards from Mr. Skelly when Mr. Skelly began firing his rifle at the deputies. Deputy Westerfield was approximately fifty yards from the Skelly's residence when Mr. Skelly began firing at the deputies. The investigation revealed that Mr. Skelly was shooting a SKS 7.62 millimeter, Chinese semi-automatic assault style rifle. Inspection of this weapon revealed that it had been fired until it ran out of bullets. This weapon was clearly capable of killing the deputies when it was fired at them. Eleven 7.62 millimeter shell casings were recovered from the location where Mr. Skelly was firing at the deputies.

Deputy Clymer provided cover for Deputy Westerfield as he approached Mr. Skelly. The deputies radioed for medical assistance even though they observed no movement from Mr. Skelly. Deputy Westerfield also made a quick check of the residence to insure that no additional persons were present or in need of assistance. No additional people or animals were located.

Based upon Mr. Skelly's threats to kill his neighbor, Deputy Westerfield responded to the neighbor's residence to insure his safety. The neighbor and his family were unharmed. The neighbor denied shooting Mr. Skelly's dog as had been alleged by Mr. Skelly. In fact the dog appeared back at the Skelly residence, unharmed, while the deputies were processing the scene for evidence.

The Larimer County Coroner's Office performed an autopsy on Mr. Skelly on June 4, 2013. That examination revealed that Mr. Skelly was struck by three of the five shots fired by Deputy Clymer. Base upon the trajectory of the entrance and exit wounds, the coroner determined that the wounds sustained by Mr. Skelly would be consistent with Mr. Skelly holding his rifle in a shooting position and aimed in the direction of the deputies at the time he was struck by each of the three shots. Additionally, the autopsy revealed that Mr. Skelly had a blood alcohol content of .224 which is almost three times over the legal limit to drive in Colorado. Mr. Skelly also had THC, the active ingredient of marijuana in his system.

If Mr. Skelly had survived his injuries, I find that sufficient evidence exists which would have warranted felony charges being filed against Mr. Skelly. Those charges would have included attempted murder of the deputies, first degree assault of the deputies and felony menacing of the deputies.

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Any reasonable person in the position of Deputy Clymer and Deputy Westerfield would have been in fear of being shot and killed by Mr. Skelly. No lesser degree of force could have been utilized by either deputy due to the distances involved. Based upon the totality of the circumstances, I find that the degree of physical force used by Deputy Clymer was justified under applicable Colorado law.

Sincerely,



Clifford E. Riedel
District Attorney