Clifford E. Riedel
District Attorney

201 LaPorte Avenue, Suite 200
Fort Collins, Colorado 80521-2763

Phone: (970) 498-7200
Fax: (970) 498-7250

1st ASSISTANT DISTRICT ATTORNEY
Mitchell T. Murray

2nd ASSISTANT DISTRICT ATTORNEY
Emily A. Humphrey

CHIEF DEPUTY DISTRICT ATTORNEYS
Katharine J. Ellison
Andrew J. Lewis
Daniel M. McDonald

April 14, 2016

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

Re: Opinion concerning- FCPS 16-4752, LCSO 16-2428, LPD 16-2471, CSUPD 16-637

Dear Chief Hutto:

The criminal investigation surrounding the March 29, 2016, critical incident involving Officer Thomas Colvin 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. My review also includes determining whether the degree of force used by Fort Collins Police Officer Thomas Colvin 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 CIRT team for this incident was headed up by the Larimer County Sheriff's Department. Members of the CIRT team included personnel from the Larimer County Sheriff's Department, the Loveland Police Department, the Colorado State University Police Department, the District Attorney's Office for the Eighth Judicial District, and Fort Collins Police Services. I have reviewed all of the reports, photos, and videos taken of the scene, dispatch and communication records, witness interviews, and ballistics.

In determining whether the degree of force used by Officer Colvin 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.*

The shooting involved in this case did not result in injury or death to Mr. Mark Bade or any other person.

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

On March 29, 2016, at approximately 5:08 a.m., Fort Collins Police Services received a citizen's complaint regarding yelling, screaming, and very loud banging noises coming from Apartment C29 at 1025 Oxford Lane in the City of Fort Collins. The citizen complainant indicated that a very loud bang shook the walls and ceiling of his apartment in the same unit of the complex.

Officer Colvin was dispatched to this call at approximately 5:11 a.m. As Officer Colvin was in route to 1025 Oxford Lane, the citizen complainant called Fort Collins Police Services a second time to report that the loud bang was consistent with a small explosion or possibly a car hitting the building. Additionally, the complainant indicated that small bangs, yelling, and loud music was still coming from Apartment C29.

Officer Colvin arrived at 1025 Oxford Lane (an apartment complex) at approximately 5:26 a.m. Officer Colvin was not equipped with an officer body camera. As Officer Colvin entered into the main door to building "C," he could hear loud music coming from Apartment 29, which was located at the top of a flight of stairs, immediately to the left. Officer Colvin ascended the stairs to a very small landing, which was approximately seven feet wide and four feet deep.
The door to Apartment 29 was on the left side of the landing at the top of the stairs, and the door to Apartment 30 was on the right side of the landing across from the stairs. The landing was illuminated with a light, and Officer Colvin noted that the door to Apartment 29 was equipped with a peep hole. Officer Colvin knocked on the door. The Officer noted that the door knob moved back and forth indicating that someone was on the other side of the door; however, the door did not open and he heard no response over the loud music coming from the apartment. Officer Colvin knocked a second time and once again observed that the door knob again moved. Officer Colvin was in a clearly marked Fort Collins Police Services uniform and it was apparent that the occupant(s) of Apartment 29 were at the door and probably looking at him through the peep hole. Due to the nature of the call, as well as the concerning movement of the door knob, Officer Colvin had his hand on his holstered police handgun. The door to Apartment 29 suddenly jerked open and Officer Colvin was confronted by Mr. Mark Bade. Mr. Bade was armed with a large sword in his left hand, at approximately waist height, in a thrusting position with the blade pointed directly at Officer Colvin.

Mr. Bade was extremely agitated and screamed, "What the fuck do you want?" Officer Colvin could see that Mr. Bade was squeezing the handle of the sword so hard that Mr. Bade's knuckles were white. Due to the confined space of the landing, Officer Colvin had no means of escape and was clearly within reach of the large sword being wielded by Mr. Bade. Officer Colvin stated, "I felt I was going to become a shish kabob. I knew my vest wasn't going to stop what he had in his hand. I felt like I was just going to die." Officer pulled and fired his handgun one time. The bullet passed through the steel apartment door at an angle, due to the fact that Mr. Bade tried to slam the door as Officer Colvin was in the process of drawing and firing his weapon. Mr. Bade was not struck by the shot, which lodged in an interior wall of the apartment after passing through a television in the room.

Following the arrest of Mr. Bade, he gave a statement to the CIRT Team of what had occurred. Officers observed that Mr. Bade was acting very aggressively at the police station and appeared to be talking to non-existent people in the interview room. Mr. Bade told investigators that he turned his music up loud at approximately midnight and he was angry that it took over five hours before the police arrived. At one point in the interview, Mr. Bade stated that he thought the person knocking on his door was a neighbor. Mr. Bade stated, "They knocked a barely quiet knock and I was like, ah I got it, it was one of those neighbor pukes, but it was the cops." Prior to answering his door, Mr. Bade told investigators he picked up the large sword and went to the door. Mr. Bade told the investigators that he was holding the sword in a "thrust position." He stated, "Yeah, I was just about to 'castle law,' that's what I was just about getting to. I was just about to castle law and it was a fucking cop." When asked what 'castle law' meant, Mr. Bade responded, "Make my day."

Investigators asked Mr. Bade what he saw when he looked out the peep hole and he stated, "A silhouette, all I could see was a silhouette. Seriously, that guy was in the worst case scenario, I almost cleaved him and he almost shot me." When asked if he shut his door, Mr. Bade stated, "Well yeah, I shut the door and then the bullet hit the door, because he had the barrel in my face. I stuffed him good. I stuffed him with the door. I got him good; I could have cut him in half. I was yelling obscenities at the lawyer, 'Get the fuck out.'"

The investigation clearly reveals that Officer Colvin was in a "worst case scenario." Officer Colvin was confronted by a highly agitated male, armed with a large sword, in a very confined space. Clear evidence exists to believe that Mr. Bade was attempting to provoke some sort of a confrontation with either his neighbors or the police. When Mr. Bade angrily jerked open his

door, armed with his sword in a thrusting position, Officer Colvin had every reason to believe that Mr. Bade presented an imminent threat to his life. Officer Colvin's belief that he was going to become a "shish kabob" was not only reasonable, but was shared by Mr. Bade himself who stated "I almost cleaved him." The Officer's split second decision to draw and fire his service weapon was a reasonable use of force.

The only alleged criminal violations were committed by Mr. Bade. His criminal charges are only allegations, and he is entitled to the presumption of innocence until proven guilty in a court of law.

Sincerely,

Clifford E. Riedel
District Attorney

cc: Lt. John Feyen
LCSO CIRT-Incident Commander