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January 15, 2014

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

Re: Opinion Concerning FCPD #14-76

Dear Chief Hutto:

The criminal investigation surrounding the January 2, 2014 death of Justin Berger 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.

In addition to having a representative from my office respond to the scene and assist in the interview with Officer Lindsay, our investigation has included a review of the reports from Fort Collins Police Services, Case No. 14-76, dispatch and communication records, and a review of interviews conducted with the deceased's mother and girlfriend, both of whom were present in the home at the time of Justin Berger's death, and findings from the Larimer County Coroner's Office.

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

On January 2, 2014, at approximately 4:49 p.m., Taylor Mahaffey called 911 reporting that her boyfriend, identified as Justin Berger (11/06/1983) had a gun, was intoxicated, and was suicidal. Ms. Mahaffey reported that they were at 2245 Muir Lane, Fort Collins, Colorado, and that her infant son and Yvonne Berger, Justin Berger's mother, were also present at the home. During the call to 911, Ms. Mahaffey was distraught and yelling. As the call progressed, repeated gun shots could be heard in the background. As these gunshots occurred, Ms. Mahaffey became increasingly frantic, occasionally breaking off communication.

Fort Collins Police Officers were immediately dispatched to the Muir Lane address on the report of a suicidal male with a gun. At that time, Officer David Lindsay was working patrol and had been dispatched to an unrelated call. As he heard the dispatch, he realized that he was closer to the Muir Lane address than other officers and responded to the scene. As he drove to the Muir Lane address, dispatch provided additional information, including repeated reports of shots being fired and that the subject's mother and infant son were also present in the home.

Officer Lindsay was the first officer to arrive in the vicinity. He parked approximately one-half block away from the 2245 Muir Lane address. As he got out of his vehicle, he heard three shots being fired. Officer Lindsay deployed his AR-15 rifle, charged the weapon, and approached the area of the residence on foot. As he got close to the residence, he observed a large white Dodge truck parked on the street in front of the house and determined to use it for cover. As Officer Lindsay approached the truck, he heard an additional shot being fired in his direction and felt the bullet go by his left arm. Once behind the truck, he heard additional rounds strike the truck and pavement. As Officer Lindsay was maintaining cover, he observed additional Fort Collins Police Officers arriving and forming a contact team. Officer Lindsay gradually moved out from his cover to attempt to get a visual observation of the front of the residence and the shooter. As he did so, a woman exited the residence yelling words to the effect of, "he shot himself."

Officer Lindsay reported that he believed the front door was slightly ajar as he approached the residence. However, he never saw anyone inside the residence and never saw anyone with a gun while he was approaching or taking cover behind the truck. Officer Lindsay indicated that his sidearm remained holstered throughout this incident and that he did not fire his rifle.

An examination of Officer Lindsay's duty rifle, a Rock River LAR, and his handgun, a .40 caliber Springfield XDM, were conducted on 01/02/14. Both weapons were found to be clean and did not appear to have been fired. The physical evidence and witness interviews confirm Officer Lindsay's statements that he did not fire his rifle or handgun during this incident.

Yvonne Berger, the mother of the deceased, was interviewed following this incident. Mrs. Berger reported that Justin Berger had suffered from mental health problems since using drugs during his junior high years. She indicated that he was always depressed, frequently spoke of killing himself, and that she was thankful he didn't "take anyone with him." On this night, she had been called by Taylor Mahaffey, her son's girlfriend, and asked to come get Justin because he was drunk. She arrived at the Muir Lane address at about 4:30 p.m. She described Justin as being "really out of it." At some point after she arrived, Justin Berger got his gun. She and Taylor Mahaffey tried to wrestle it away from him but could not. Yvonne Berger reported that Justin Berger began shooting the house up, shooting the walls and windows. She did not believe he could see anything outside but was just shooting. After numerous rounds were fired, she retreated upstairs because she was scared. Yvonne Berger reported hearing a "thug boom" and going downstairs to find him on the floor. She reported that he had shot himself under the chin. Yvonne Berger was not aware the police had arrived until after Justin Berger was dead. She felt that if Justin Berger had known the police were at the residence, he would have forced them to shoot him.

Taylor Mahaffey was interviewed following this incident. She reported that she had known Justin Berger for just over eight years. Ms. Mahaffey and Justin Berger had been in a relationship off and on for most of those eight years. At the time of this incident, they had a six month old child and had bought the house on Muir Lane together. Ms. Mahaffey indicated that Justin Berger had serious mental health problems, had been diagnosed with bipolar disorder, and suffered from depression. She, too, related that these mental issues were caused by drug use.

Ms. Mahaffey indicated that Justin Berger had also been dealing with significant alcohol and prescription drug addiction issues, which had worsened over the past four months.

On the date of this incident, Ms. Mahaffey got home to the Muir Lane address at about 2:30 or 3:30 p.m. She reported that Justin Berger was drinking "moonshine" from a jar. She reported that he had not been sleeping well, was distant, unhappy, and hated everything. Ms. Mahaffey stated that she told Justin he could not drink in front of their son and begged him to get help. He continued to drink, switching to beer after the moonshine. She indicated that she read a text message on Justin's phone where he was saying "good bye" to his best friend. Justin Berger stated to Ms. Mahaffey that before he saw her pull up to the house, he was going to go out into the field to shoot himself in the head.

Ms. Mahaffey reported that Yvonne Berger arrived at the house and Ms Mahaffey asked her to take Justin to Mountain Crest. At some point, Justin Berger went upstairs and got his gun case. She and Yvonne fought with Justin, trying to take the gun case away, resorting to scratching, kicking, and pulling his hair. While they were able to get the gun case away from him for a time, he regained possession and removed the firearm from the case. At that point, Ms Mahaffey called 911. While on the phone with the 911 operator, she could hear Justin arguing with his mother. At one point she saw Justin with the gun pointed at his stomach. Ms. Mahaffey reported that she was upstairs when she heard the first gunshots and that she "freaked out." She could hear Yvonne and Justin Berger arguing and then would hear the gun go off "a bunch of times." Yvonne eventually came upstairs with her. They heard more gun shots and then one last gunshot. When she went downstairs, she saw Justin on the kitchen floor with a bullet hole in his chin. She went outside screaming and the police were there.

When Fort Collins Police Officers entered the residence, they found Justin Berger on the floor of the kitchen with a gunshot wound to the head. A Sig Sauer 9mm semi-automatic handgun was found lying between his legs.

The residence at 2245 Muir Lane and surrounding area were processed for evidence on 01/02/14 and 01/03/14. 39 fired 9mm cartridge casings were located within the home. 37 areas within the home were identified that appeared to have been struck by projectiles. Projectiles fired from within the home exited the east, north, and west sides of the residence. These projectiles were fired through the walls, windows with closed blinds, and the front door. Some of these

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projectiles struck surrounding houses and property. Three struck the white truck behind which Officer Lindsay took cover. A single projectile was found to have entered the ceiling in the kitchen above where Justin Berger was found. This projectile passed through the ceiling, through the upper flooring, and into the bedroom above the kitchen. A bullet fragment was located on the rail of the bed in that room. The area around where the projectile entered the ceiling had a significant amount of blood spatter and tissue.

A search was conducted to the east of the residence, including the vicinity of the white Dodge pickup. No rifle cartridges or cartridge cases were located. An examination conducted on the east side exterior of the home did not reveal any impacts or holes caused by a rifle round entering the home. All of the projectile holes appeared to be exiting the residence.

An autopsy was performed by Dr. James Wilkerson on 01/03/14. Dr Wilkerson found that Justin Berger died from a single, self-inflicted, gunshot wound fired from under Mr. Berger's chin, passing through the center of his brain and exiting the top of his skull. Dr. Wilkerson found significant discoloration at the entry point of the injury and indicated that the gunshot was a contact wound, meaning that the end or opening of the gun barrel was in contact with Mr. Berger's skin at the time the gun was discharged.

Based upon the totality of this investigation, I have determined that Officer Lindsay and other members of the Fort Collins Police Department acted in a professional and courageous manner. The only potential criminal charges would be the result of the actions of Justin Berger. While Justin Berger's decision to take his own life is tragic, his possession of a firearm while intoxicated and his reckless discharge of that firearm placed the lives of his family, police officers, and civilians at great risk. Your department and Officer Lindsay in particular should be commended for your efforts to protect the public's safety.

Respectfully,



Clifford E. Riedel
District Attorney