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June 12, 2014

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

Re: Opinion on Officer Involved Shooting of Richard Kevin Ivey

Dear Chief Hutto:

The criminal investigation surrounding the June 5, 2014 shooting of Richard Kevin Ivey 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 Mathew Brough was justified under pertinent Colorado statutes.

In addition to having representatives from my office at the scene and participating in the interview of Officer Brough, our investigation has included a review of police reports, dispatch tapes, photographs, radio traffic, surveillance video, medical information and other documentation contained in FCPS case number 14-7986. 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 Officer Brough 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:*

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*(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 shooting involved in this case did not result in the death of Mr. Ivey, therefore; section (2) of C.R.S. 18-1-704 dealing with deadly physical force is inapplicable to this case.

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

On June 5, 2014, an unknown male called Fort Collins Police dispatch and advised there was a male running around Poudre Valley Hospital (PVH) with a knife. Fort Collins Police officers were dispatched via an alert tone call to this location at approximately 5:13 a.m. While officers were enroute and arriving on-scene, dispatchers were calling the hospital back to try and obtain more information. Police dispatchers spoke with hospital dispatch who were unaware of an incident at the hospital, but said they would check and call back. Police dispatchers then spoke with a hospital security employee who advised that there was a male in the Emergency Room (ER) with a knife on his hip. This male was later identified as Richard Ivey. The investigation revealed that two security officers had contacted Mr. Ivey and requested that he relinquish the knife while in the emergency room. Mr. Ivey refused repeated requests that he relinquish the knife. As a result, Mr. Ivey was asked to leave the emergency room. Prior to leaving, Mr. Ivey asked a nurse to use a phone so that he could call the police. Mr. Ivey did in fact call the Fort Collins Police Department and he is the one who reported that a male was running around the hospital with “a big ole knife.”

Officer Brough arrived on-scene at approximately 5:15 a.m. and parked his vehicle to the south of the ER entrance. Officer Brough approached the ER entrance on foot and observed a male, later identified as Richard Ivey, walking out of the ER towards the east being followed by a hospital security guard. Officer Brough attempted to contact Mr. Ivey, but Mr. Ivey ignored him and continued walking. Officer Brough attempted to contact Mr. Ivey again after he had walked past him. Mr. Ivey turned around in a sweeping motion to face Officer Brough with a fixed blade knife raised in his right hand. Officer Brough gave Mr. Ivey repeated commands to drop the knife, drew his firearm and backed up quickly to the west. Despite Officer Brough’s attempt to back up and provide a safe distance between himself and Mr. Ivey, Mr. Ivey quickly advanced towards Officer Brough with the knife still extended in his right hand and did not comply with Officer Brough’s repeated commands to drop the knife. Officer Brough fired two rounds while

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backing up, striking Mr. Ivey in the torso and right arm. Mr. Ivey dropped the knife and fell to the ground. Officer Brough advised "shots fired" at approximately 5:17 a.m.

The security officer who was escorting Mr. Ivey out of the emergency room confirmed that Officer Brough gave Mr. Ivey multiple commands to drop the knife. The security officer said that Mr. Ivey refused to drop the knife and, in fact, rushed towards Officer Brough with the knife in a threatening manner. The security officer observed Officer Brough backing up and firing two shots which appeared to strike Mr. Ivey.

Other officers responded to Officer Brough's location and placed Mr. Ivey in handcuffs. Officers called for medical assistance and asked security guards to go into the emergency room and bring out a gurney.

Crime scene detectives recovered the knife that Mr. Ivey was holding at the time of the shooting.



There is sufficient evidence that the actions taken by Mr. Ivey were contrary to Colorado criminal law. Mr. Ivey clearly intended to initiate a confrontation between himself and members of the Fort Collins Police Department. Mr. Ivey knowingly attempted to place Officer Brough in fear of death or serious bodily injury by threatening him with a knife, refusing to drop the knife and by rapidly approaching Officer Brough while brandishing the knife. A reasonable person in the position of Officer Brough would have been in fear of being stabbed, slashed or killed by Mr. Ivey. Due to the extreme injuries that a knife can produce and the mere seconds that Officer Brough had to react as Mr. Ivey rapidly approached him with the knife, it is naïve to believe that a lesser degree of force would have been reasonable or effective. Based on the totality of the circumstances as they existed at the time of the shooting, I find that the degree of physical force used by Officer Brough was justified under applicable Colorado law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Clifford E. Riedel". The signature is fluid and cursive, written over a white background.

Clifford E. Riedel  
District Attorney