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December 5, 2011

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

Re: Opinion on Officer Involved Shooting of Scott Raymond Mendias.

Dear Chief Hutto:

The criminal investigation surrounding the November 25, 2011 shooting of Scott Raymond Mendias 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 Mike Crosland was justified under pertinent Colorado statutes.

In addition to having representatives from my office at the scene and participating in the interview of Officer Crosland, our investigation has included a review of reports, witness statements and findings from Fort Collins Police Services, Case No.11-18176. Larimer County's Critical Incident Protocol was in place and followed during investigation of this shooting incident.

In determining whether the degree of force used by Officer Crosland was legally justifiable, my review is based on whether the following Colorado statutes involving the use of force were 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 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 in this case did not result in the death of Mr. Mendias; 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:

On November 25, 2011 at approximately 1:49 p.m., officers were dispatched to 300 Remington Street on a report of two transient men fighting with knives. Details were given to officers by dispatch that one of the suspects was wearing a plastic child's fireman hat and the other suspect was collapsed on the ground. Officers arrived almost immediately, and determined that Steven Kimsey, the individual collapsed on the ground, was intoxicated and was not injured. Due to his level of intoxication Mr. Kimsey was transported by ambulance to Poudre Valley Hospital. Officers learned that the other individual involved in the disturbance had fled on a bicycle wearing a plastic child's fireman hat.

At approximately 2:06 p.m., as the officers were clearing the scene at 300 Remington, dispatch alerted that a male near Laurel and College was seen loading a handgun. A 911 Caller was continually driving around the block updating dispatch on the location and actions of the male with a gun. The caller described the man as having blood on his chest and pants and she described his hair as "crazy", curly, and dark brown. The caller passed the person in question three times and each time gave a detailed account of his actions. She indicated her first time around the block the male was trying to break a surf board, the second time she described the man loading a gun and the final pass she saw that he was now seated in the doorway at the Nicol Building at 528 S. College, smoking a cigarette and reading something.

Three officers, Lt. Russell Reed, Officer Kennyberg Araujo and Officer Mike Crosland arrived at 528 South College within minutes of the call as it was only a few blocks from the original knife fight call at 300 Remington. Officer Mike Crosland, driving south on College, identified the man as being in the doorway at the Nicol building. Officer Crosland then parked his vehicle on the corner of Myrtle and College. Once at the location, Officer Crosland, Lt. Reed and Officer Araujo formed a "contact team." Lt. Reed had his rifle and Officers Crosland and Araujo had their handguns.

The "contact team" moved to within 15-20 feet of the Nicol building and then began moving at an angle until they could see the doorway where the man was sitting. Upon seeing the man, he matched the description given by the 911 Caller due to his appearance of being covered in blood. The man was also wearing a child's plastic fireman's hat which matched the description of the individual involved in the knife altercation minutes before on Remington Street. Lt. Reed was on the man's right, Officer Araujo was in the middle and Officer Crosland was on the far left. As the officers approached from the south, Lt. Reed began administering commands. He yelled "Fort Collins Police; show us your hands." Officer Crosland also shouted "Show us your hands." The man later identified as Scott Raymond Mendias commented to the officers that it was a toy gun and began to move from a seated position. As Mr. Mendias got to a kneeling position, officers saw what appeared to them to be a 1911 model semi-automatic handgun in his waistband. Officer Crosland yelled "Gun". Mr. Mendias said something that indicated he had a toy gun and Officer Crosland ordered Mr. Mendias not to touch the gun that was in his waistband.

Lt. Reed gave commands for Mr. Mendias to lay down with his hand up and away from his body. Mr. Mendias refused to obey the commands directed at him by Lt. Reed. Lt. Reed attempted to subdue Mr. Mendias by using pepper spray; however, due to the distance it did not appear that the pepper spray made contact with Mr. Mendias. After the attempted use of the pepper spray, Mr. Mendias continued to be argumentative, angry and aggressive. As Lt. Reid was looking down to put the pepper spray away in his belt, Mr. Mendias began to stand, throwing his fireman's hat on the ground and reaching in his waistband for the gun. Upon seeing Mr. Mendias attempting to pull the gun from his waistband Officer Crosland fired one shot from his service weapon at Mr. Mendias. Mr. Mendias fell to the ground with his gun landing on the sidewalk. Officer Arajuja handcuffed him and emergency services arrived minutes later. Mr. Mendias was transported to Medical Center of the Rockies for medical attention.

Officer Crosland was interviewed at the Police Services building by Detective Lenderts and Chief Deputy District Attorney Emily Humphrey. Officer Crosland described in his interview that once Mr. Mendias was pepper sprayed, he began to grab the gun from his waistband and that is when he fired one shot hitting Mr. Mendias in the abdomen. Officer Crosland acknowledged that he heard it was a "toy gun", but believed Mr. Mendias was "tricking them" in order to possibly get the first shot off. Additionally, Officer Crosland recognized the fireman's hat from the previous call and believed Mr. Mendias could also have been armed with a knife. Officer Crosland indicated that he believed that not only his life, but those of his fellow Officers Reed and Araujo were at risk. Based upon the erratic and aggressive behavior of Mr. Mendias, his refusal to follow police commands and the fact that he appeared to be the same individual who was previously reported to be armed with a knife, Officer Crosland's belief that Mr. Mendias was "tricking them" was not unreasonable.

Officer Kennyberg Arauja was interviewed at the Fort Collins Police Services building by Detective Jason Sutters with Chief Deputy District Attorney Emily Humphrey observing. Officer Arauja also stated that he observed Mr. Mendias going for his gun. Officer Arauja indicated that he had disengaged the safety on his weapon and was preparing to shoot when he heard the shot fired by Officer Crosland. Officer Arauja also stated that he has had prior dealings with Mr. Mendias and knows him to be erratic and aggressive and therefore "you don't want to let your guard down" when dealing with him.

Fort Collins detectives and evidence technicians processed the scene at 528 South College. Police located the weapon Mr. Mendias's had in his waistband and it was found to be a Colt 1911 Airsoft pistol. The color of the gun is opaque with a black handle grip and a black light rail mounting system attached to the middle of the barrel, and a fluorescent tip on the end of the barrel. It should be noted that at the time of the shooting the fluorescent tip on the end of the barrel was not visible to the officers. From the vantage point of the officers, this Air soft gun looked like a silver and black Colt model 1911 .45 caliber semiautomatic handgun which ironically was the same model of weapon carried and used by Officer Crosland. Also at the scene was one .45 caliber shell casing consistent with Officer Crosland's duty weapon. A plastic child's fireman's hat was also located at the scene.

Police conducted an extensive neighborhood canvas to locate any witnesses to the altercation. No less than 14 witnesses describe Mr. Mendias's behavior prior to the shooting as alarming and scary. Many describe his actions earlier that day as someone who was having a mental breakdown. Lee Stephens walked past Mr. Mendias prior to the shooting and Mr. Mendias handed him the Airsoft pistol and asked Mr. Stephens to load it. This alarmed Mr. Stephens and he returned the gun and walked away. He indicated he heard Mr. Mendias say he wanted to shoot somebody or something.

On November 26, 2011, Detective Jungmeyer interviewed Mr. Mendias at the Medical Center of the Rockies. Mr. Mendias indicate that he was "acting like a fool" and got shot by the officers. He acknowledged that he heard the officers say "Let me see your hands, let me see your hands, put the gun down." He said he pulled the gun from his waist band and the officer shot him.

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Officer Crosland, given all of the circumstances and the behavior of Mr. Mendias, believed that his life and those of his fellow officers were in immediate risk of harm or death. Based upon the totality of the circumstances, I find that the degree of physical force used by Officer Mike Crosland was justified under applicable Colorado law.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Abrahamson". The signature is fluid and cursive, with a long horizontal stroke at the end.

LARRY R. ABRAHAMSON
District Attorney