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October 7, 2013

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

Re: Opinion on Officer Involved Shooting of Jordan Tyler Koehn

Dear Chief Hutto:

The criminal investigation surrounding the September 29, 2013 shooting of Jordan Tyler Koehn 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 Brinton Deighton was justified under pertinent Colorado statutes.

In addition to having representatives from my office at the scene and participating in the interviews of Officers Deighton, Mainwal, and Beaumont, our investigation has included a review of police reports, 911 calls, dispatch tapes, photographs, videos of the scene, radio traffic, statements of Jordan Koehn's brother, findings from FCPS case number 13-14764, and Jordan Koehn's transport to Medical Center of the Rockies (MCR). 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 Deighton 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 as established by the above sources of information:

On September 29, 2013, at approximately 8:42 p.m., Donna Koehn called Fort Collins Police from her home in Willmar, Minnesota and requested a welfare check on her son, Jordan Koehn, who lives in Fort Collins. Donna told dispatch her other son, Ryan Koehn, called her and said Jordan sent him a text message indicating he was going to kill himself. Donna told dispatch Jordan had threatened suicide in the past but no actual attempts had been made. Donna further told dispatch there was no means of suicide mentioned in the text, but that Jordan does have guns.

Officer Mainwal, Officer Beaumont, and Officer Deighton went to the call at 3501 Stover #3-60 and came in contact with Ryan. Ryan expressed his concern to them for his brother's welfare and told the officers Jordan had been drinking and drinking was a problem for him. Ryan was concerned because he tried to knock on Jordan's door and he would not answer, but his car was at the apartment which led Ryan to believe Jordan should be home.

The officers spent some time knocking on the door and announcing they were police and wanted to check his welfare. Officer Mainwal also attempted to call Jordan's cell phone and there was no answer. Officer Beaumont went to the exterior balcony of the apartment with Ryan in an attempt to see inside. Ryan boosted Officer Beaumont up onto the balcony, and Officer Beaumont could see a gun and a bottle of alcohol on the kitchen table. Officer Beaumont aired this information over the radio to the other officers which prompted a phone call between Sergeant Clow and Officer Mainwal about how to proceed. The decision was made that the officers should try and get access to the front door to check Jordan's welfare.

The maintenance man was able to provide a key to the apartment which the officers used to open the door. Officer Mainwal unlocked the door and when they pushed it open, they could see who they believed to be Jordan lying on the floor with his upper body being out of their sight due to a kitchen wall. The officers remained in the hallway during the interaction, did not enter the apartment, and had the same limited visual during the interaction. Officer Deighton and Officer Mainwal began giving commands to show them his hand that was not visible to them. One of Jordan's hands was visible next to his leg. Officer Mainwal and Officer Deighton remember hearing Jordan giggle or chuckle during these commands. Jordan eventually sat up and both of his hands were visible. Officer Deighton and Officer Mainwal continued verbal commands urging Jordan to

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come to them and to keep his hands where they could see them. Jordan then lunged his body out of their view and appeared to be reaching for something while remaining in his seated position. When his upper body and hands came back into view, he was holding a semi-automatic handgun.

Officer Beaumont saw Jordan put the gun to his own head but then was out of view after that. Officer Mainwal and Officer Deighton saw Jordan put the gun to his head then move it to his lap and back up to his head then down to his lap again. Neither of the officers felt threatened at this time. Officer Deighton then saw Jordan move the gun from his lap pointing away from them to pointing at the officers. Officer Deighton said he was concerned for his and Officer Mainwal's safety and felt he needed to shoot Jordan to keep them from getting shot. He said he fired three shots and stopped when Jordan lay down which indicated to him the threat was over.

Medical was staged and called in as soon as the scene was determined to be safe after Jordan was in custody, and a protective sweep of the apartment was complete. Officers also performed lifesaving efforts applying their Quikclot Combat Gauze to Jordan's abdominal wound. Jordan was transported to MCR for treatment.

There is sufficient evidence that the actions taken by Jordan Tyler Koehn were contrary to Colorado criminal law and a decision on whether to charge Mr. Koehn will be made at a later date. A reasonable person in the position of Officer Deighton would have been in fear of being shot and killed by Jordan Koehn. Further, a reasonable person would also have feared that the other officers present were also in danger of being shot and killed. Based on the totality of the circumstances as they existed at the time of the shooting, no lesser degree of force could have been utilized by Officer Deighton. I find that the degree of physical force used by Officer Deighton was justified under applicable Colorado law.

Sincerely,



Clifford E. Riedel
District Attorney