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July 18, 2017

Chief Terry Jones  
Fort Collins Police Services  
2221 South Timberline Road  
Fort Collins, CO 80525

Chief Scott Harris  
Colorado State University Police Department  
750 Meridian Avenue  
Fort Collins, CO 80523

Re: Opinion concerning- LCSO #17-5505, FCPS #17-10928, CSUPD #17-1071,  
LPD #17-5427, and EPPD #17-753

Dear Chief Jones and Chief Harris:

The criminal investigation surrounding the July 1, 2017 death of Jeremy Holmes has been completed and submitted to my office for an opinion. As the District Attorney of the Eighth Judicial District, I am required to determine whether any person committed criminal law violations during this incident. The scope of this review is criminal in nature and necessarily limited by Colorado statutes to determine whether any criminal charge is legally prosecutable and provable beyond a reasonable doubt. My review also includes determining if the degree of force used by FCPS Officer Erin Mast and CSUPD Officer Phil Morris 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 Larimer County Sheriff's Department headed the CIRT team for this incident. Members of the CIRT team included personnel from the Larimer County Sheriff's Department, the Loveland Police Department, the Estes Park Police Department, the District Attorney's Office for the Eighth Judicial District, Fort Collins Police Services, and the Colorado State University Police Department. I have reviewed all of the reports, photos, videos, dispatch and communication records, witness interviews, ballistics, and findings made by the Larimer County Coroner's Office.

In determining whether the degree of force used by Officer Erin Mast and Officer Phil Morris 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 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, in fact produce death.*

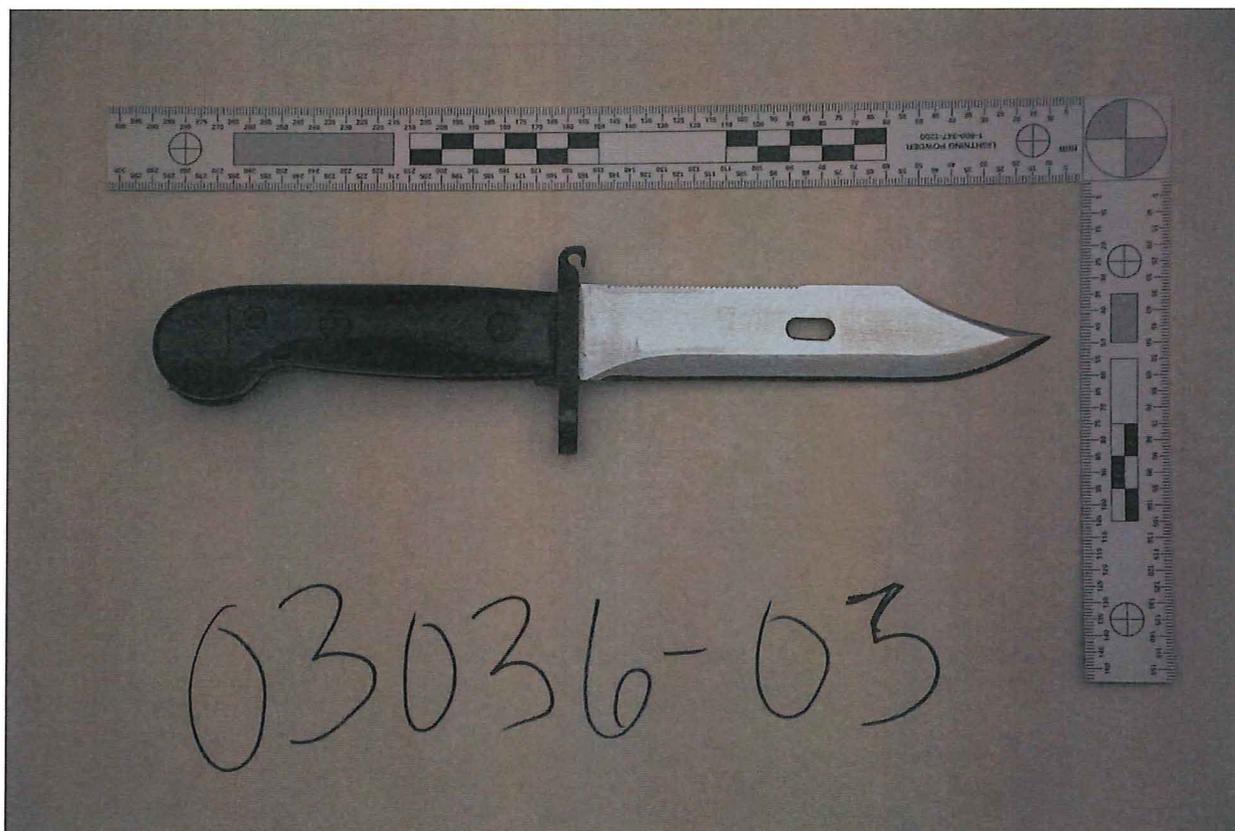
The following is a summary of the facts in this case as established by the above sources of information:

On July 1, 2017, at approximately 8:13 p.m., a relative of Jeremy Holmes called Fort Collins Police Services to report that Jeremy Holmes, who was armed with a knife, had just left their residence in the 2600 block of Leisure Drive, Fort Collins, Colorado. The relative told Fort Collins Police that Jeremy Holmes was on foot and was headed to Colorado State University’s Aggie Village Apartments. Jeremy Holmes had told the relative that he was going to kill his brother and sister-in-law who resided at the Aggie Village Apartments. Jeremy Holmes also told this relative that by the end of the day he and probably his brother would be dead. Jeremy Holmes also stated that he was going to charge at the police, if confronted, and thereby force the police to shoot him. Jeremy Holmes’ relative related that Jeremy Holmes had a documented history of mental illness. Fort Collins Police dispatchers obtained a description of Jeremy Holmes and immediately notified the Colorado State University Dispatch Center of all of the information they had just received.

Colorado State University Police (“CSUPD”) immediately responded to the area of the Aggie Village Apartments, located at 500 West Prospect Road, Fort Collins, Colorado. A CSUPD officer made contact with Jeremy Holmes’ brother and sister-in-law to ensure their safety and gather information about Jeremy Holmes. CSUPD Officer Phil Morris, who was in a fully marked CSUPD patrol car and wearing a full police uniform, took up a surveillance position by the Aggie Village Apartments so that he would be able intercept and contact Jeremy Holmes if he approached his brother’s apartment in the Aggie Village complex.

At approximately 8:38 pm, Officer Morris observed Jeremy Holmes walking westbound on Prospect Street approaching the Aggie Village Apartments. Officer Morris activated his police car’s red and blue emergency lights and pulled over on the south side of Prospect just west of

Jeremy Holmes' line of travel. Jeremy Holmes was carrying a 11 1/4 "bayonet knife", which the CIRT investigation revealed was purchased at a pawn shop in Fort Collins on June 27, 2017.



As Officer Morris was exiting his police car, Jeremy Holmes unsheathed the bayonet knife and brandished it towards Officer Morris. Officer Morris drew his Glock .40 caliber service pistol and immediately began giving loud verbal commands for Jeremy to drop the bayonet knife. Jeremy Holmes refused to drop the bayonet knife and continued to walk towards Officer Morris with the bayonet knife. Officer Morris was wearing a body camera which captured his interaction with Jeremy Holmes. A review of that video reveals that Officer Morris was pleading with Jeremy to drop the bayonet knife. Due to the fact that Jeremy Holmes was continuing to close the distance between himself and Officer Morris, Officer Morris began walking backwards away from Jeremy as he continued to implore Jeremy to drop his bayonet knife.

The investigation reveals that Officer Morris backed up more than 113 feet over a period of approximately two minutes. During that time, Officer Morris told Jeremy to "Drop it!" or "Drop the knife!" thirty-six (36) times. Jeremy Holmes refused to drop his bayonet knife and continued to advance on Officer Morris. While threatening Officer Morris with the bayonet knife, Jeremy Holmes can be heard saying "Kill me now" (three times), "My life is over" (two times), "This is

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the end” (one time), “I want you to kill me” (one time), “Shoot me right now” (one time), and, “I don’t want to live here anymore” (one time).

As Officer Morris was beseeching Jeremy Holmes to drop his bayonet knife, FCPS Officer Erin Mast was in her marked FCPS police vehicle with its siren and emergency lights on, proceeding to an unrelated burglary call in the area of North Shields and Mountain Avenue. Officer Mast had a body camera which was operating. As Officer Mast was racing westbound on Prospect Street approaching Whitcomb Street, she observed a CSUPD officer out of his police car, with his weapon drawn, as a male was approaching the officer with a bayonet knife. Officer Mast immediately notified FCPS dispatch that she was stopping to assist a CSU police officer who had a suspect at gunpoint in the 500 block of west Prospect. She made an emergency U-turn, parked her patrol car adjacent to Officer Morris, and exited her patrol car while drawing her .40 caliber Glock service pistol. Officer Mast also began giving commands for the suspect to drop his bayonet knife. Due to the arrival of Officer Mast and her providing lethal cover, Officer Morris announced to Officer Mast that he was going to try to deploy his Taser. As soon as Officer Morris began to holster his firearm, so that he could pull his Taser, Jeremy Holmes charged at Officer Morris with his bayonet knife. Crime scene analysis indicates that Jeremy Holmes was only 11.6 feet away from Officer Morris when Jeremy Holmes began his armed charge towards Officer Morris.

Officer Mast fired her weapon two times at Jeremy Holmes as he ran towards Officer Morris. Officer Morris abandoned his attempt to pull his Taser, re-acquired his service weapon, and fired four times at Jeremy Holmes. Jeremy Holmes was struck by all six rounds and fell to the sidewalk at the feet of Officer Morris.

Based upon the totality of the evidence, I find that Jeremy Holmes committed the only criminal offenses during this incident. Had he survived, sufficient evidence exists to have charged Jeremy Holmes with three counts of Attempted First Degree Murder and two felony counts of menacing with a deadly weapon.

Based upon all of the evidence, I find that Jeremy Holmes made a deliberate attempt to stab Officer Morris with the bayonet knife. Officer Morris showed amazing restraint in not utilizing lawful deadly force earlier in the confrontation with Jeremy Holmes. Officer Morris’ decision to abandon the cover of his patrol car by backing up as Jeremy Holmes continued to approach with his bayonet knife increased the risk to Officer Morris’ life. Despite the fact that Jeremy Holmes had closed to within 11.6 feet of Officer Morris while brandishing the bayonet knife, Officer Morris attempted to use his Taser in a last ditch effort to avoid shooting Jeremy Holmes. That decision nearly cost Officer Morris his life. Officer Morris indicated in his interview with CIRT team investigators, that he was afraid that Jeremy Holmes was going to kill him and the Fort Collins officer who came to his assistance. The body cam videos of both Officer Morris and Officer Mast clearly demonstrate that Officer Morris’ fear of being stabbed and killed was totally justified. To believe otherwise, one would have to totally disregard clear evidence to the contrary.

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Officer Mast indicated to CIRT Investigators that she believed that Jeremy Holmes was going to kill Officer Morris. While Officer Morris was able to fire his own weapon in self-defense, it is fair to say that Officer Mast's courageous actions helped save Officer Morris' life. Officer Mast's situational awareness, which allowed her to observe Officer Morris with his weapon drawn as she was running emergent to a burglary call, is amazing. Her split second decision to abandon her response to the burglary call, make an emergency U-turn, and come to the assistance of Officer Morris is above commendable.

I find the lethal force used by Officer Morris and Officer Mast was clearly justified pursuant to C.R.S. section 18-1-704.

Respectfully,



Clifford E. Riedel  
District Attorney

Cc: Lt. John Feyen, LCSO  
CIRT-Incident Commander