

Gordon P. McLaughlin  
District Attorney



201 LaPorte Avenue, Suite 200  
Fort Collins, Colorado 80521-2763

Phone: (970) 498-7200  
Fax: (970) 498-7250

March 5, 2024

**RE: District Attorney Opinion Letter --- February 7, 2024, Officer-Involved Shooting at Springfield and Southridge, Fort Collins, Colorado --- LCSO (lead agency) #SO24-1274; LPD #LP24-1072; CSUPD #CS24-216; and FCPS #FC24-1790**

Dear Chief Swoboda,

Pursuant to §16-2.5-301 and §20-1-114, C.R.S., and the 8<sup>th</sup> Judicial District Critical Incident Protocol, the District Attorney's Office reviewed the February 7, 2024, shooting of Colten Sirio, which occurred near Springfield Drive and Southridge Drive in Fort Collins. This legally mandated review is to determine whether Fort Collins Police personnel violated any Colorado criminal statutes with respect to the shooting.

## **I. EXECUTIVE SUMMARY**

Applying the law to the facts of this incident, as described in greater detail below, I conclude Officer Ryan Fandre was legally justified in his use of physical force to defend himself or others from the threat posed by Colten Sirio. Because I have concluded that Officer Fandre was legally justified in his use of physical force, no criminal charges will be filed.

## **II. THE STATUTORY FRAMEWORK FOR OFFICER-INVOLVED SHOOTING INVESTIGATIONS AND REVIEW**

C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shooting investigations. It provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from agencies within the jurisdiction who are members of the district's Critical

Incident Response Team (CIRT). Specifically, the Larimer County Sheriff's Office was the lead agency, and it was aided by other agencies, including the Loveland Police Department, Colorado State University Police Department, Fort Collins Police Services, and the District Attorney's Office.

C.R.S. § 20-1-114 provides:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

This document constitutes a report of the District Attorney's findings and includes the basis of the decision not to charge the involved peace officer with any criminal conduct.

As the defendant has been criminally charged with multiple felonies (including First Degree Kidnapping, Second Degree Kidnapping, Menacing, and other crimes),\* the District Attorney must abide by Colorado's ethical rules to protect the integrity of the criminal case and rights of the defendant. Specifically, Rule 3.8. (Special Responsibilities of a Prosecutor) provides in relevant part:

The prosecutor in a criminal case shall:

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c) and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Therefore, this report will be curtailed to comply with the letter and spirit of the ethical rules, and to protect the integrity of the ongoing case, while providing sufficient information to satisfy C.R.S. §§ 16-2.5-301 and 20-1-114.

***\*All charges against Colten Sirio are merely allegations and he is presumed innocent of all charges filed against him unless and until proven guilty beyond a reasonable doubt.***

### **III. MATERIALS REVIEWED**

I have reviewed materials produced during the CIRT investigation into the shooting of Colten Sirio. The agencies and case numbers were Larimer County Sheriff's Office (lead agency)–

SO24-1274; Loveland Police Department – LP24-1072; Colorado State University Police Department – CS24-216, and Fort Collins Police Services – FC24-1790.

The information I have considered includes:

- Relevant body-worn camera footage of the involved peace officers.
- Reports/summaries of the CIRT investigators.
- Interviews of Officer Ryan Fandre, Officer Benjamin Barenburg, and Officer Zachary Gladden.
- Recorded and/or otherwise documented interviews of witnesses.
- Photographic and video evidence, including but not limited to comprehensive scene documentation, and some residential surveillance footage.
- Physical evidence (*e.g.*, firearms, ballistics, items recovered from the scene, etc.)
- Limited medical evidence.

#### **IV. APPLICABLE LAW**

The District Attorney’s review of this event is guided by the Colorado statutes pertaining to the use of force by peace officers, including self-defense. Officer Fandre and all other persons referred to as “officers” in this letter are “peace officers” per statute. *See* §16-2.5-101-103, C.R.S. By using his police-issued rifle and causing injury to Mr. Sirio, Officer Fandre’s conduct implicates Colorado’s peace officer use of force and self-defense statutes.

Colorado’s relevant use of force statutes and legal definitions:

§ 18-1-707, C.R.S. (Use of force by peace officers—definitions), states in the relevant part:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
  - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
  - (b) Use only a degree of force consistent with the minimization of injury to others;
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
  - (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- (4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would



unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

§ 18-1-704, C.R.S., Colorado's general self-defense statute, states in the relevant part:

[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.

Under Colorado law, a person acts legally to defend themselves or others when both a "reasonable belief and actual belief" exist on behalf of the actor. *See Sanchez v. People*, 820 P.2d 1103, 1108 (Colo. 1991). The law requires the fact finder to "weigh all relevant circumstances to determine whether a person asserting the defense of self-defense has acted as a reasonable person would act in similar circumstances." *Id.*

## **V. SUMMARY OF LEGAL STANDARD AS APPLIED TO THIS EVENT**

Distilling the legal authority down to an applicable standard to apply to this event, we must determine:

- 1) Whether Officer Fandre reasonably believed that the use of physical force – and degree of force employed - was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Colten Sirio, and
- 2) Whether nonviolent means would have been ineffective in preventing an imminent threat of injury to Officer Fandre or another person in this situation.

Additionally, the law requires us to ask:

- 3) Did Officer Fandre identify himself as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it: a) would have unduly placed him or his fellow officers at risk of injury, or b) would have created a risk of death or injury to other persons?
- 4) Did Officer Fandre or his fellow officers ensure that assistance and medical aid were rendered to Mr. Sirio as soon as was practicable after the shooting?
- 5) If Sirio sustained serious bodily injury or death, did Officer Fandre or other officers ensure that Mr. Sirio's identified relatives or next of kin were notified as soon as practicable?

## **VI. SUMMARY OF RELEVANT FACTS (includes a review of body-worn camera footage, other media, scene investigation and documentation, and witness interviews)**

*Because there is a pending criminal case against Mr. Sirio, the following summary will include various sources of information without specific attribution to the person (or other source) of the information. The facts set forth in this section are corroborated or otherwise undisputable based on the evidence presented unless otherwise noted. All references to Mr. Sirio's conduct remain merely allegations and he retains his presumption of innocence.*

The evidence shows that on February 5, 2024, a victim reported to Fort Collins Police Services (FCPS) that her boyfriend, Colten Sirio, had stolen her handgun and damaged a window at her home on Southridge Drive in Fort Collins. The stolen firearm was reported as a Smith & Wesson SD40 VE. This is the same firearm that would ultimately be recovered from Mr. Sirio after the shooting on February 7, 2024.

On February 6, 2024, FCPS advised its officers that an arrest warrant was completed for the above-noted incident and advised that Mr. Sirio had stated he would shoot any police officer who tried to contact him, and that he was known to carry several firearms. An arrest warrant was ultimately issued for Sirio on February 6, 2024, for the above incident, with listed charges\* of:

- Possession of a weapon by a previous offender – Class 5 Felony
- Theft – Class 2 Misdemeanor
- Criminal Mischief – Class 6 Felony
- Domestic Violence Enhancer

*\*Mr. Sirio is presumed innocent unless and until proven guilty of any criminal charges.*

On February 7, 2024, shortly after 1:15 p.m., FCPS Communications received an anonymous 911 complaint regarding a male who had dropped a handgun while walking eastbound on West Elizabeth near the Taco Bell at 1527 West Elizabeth Street, Fort Collins. The male was reported to be wearing a white shirt and baggy blue jeans, with tattoos “all over.” The male was reported to be walking with a woman who was pushing a stroller.

Due to the description of the male and that he was alleged to have a gun, Officer Fandre looked at the bulletin photo of Mr. Sirio that he had seen earlier that day. FCPS Sergeant Langly also aired a reminder regarding Sirio over the police radio. Several uniformed Fort Collins police officers in marked patrol vehicles responded to the area to locate the male.

At approximately 1:32 p.m., Officer Fandre located the couple on Springfield Drive, just east of its intersection with Southridge Drive. Fandre visually identified the male as Colten Sirio immediately based on the information disseminated two days prior. The female, who was confirmed to be the victim in the February 5, 2024, investigation, was pushing a stroller with two young children inside. Sirio was walking right next to her. Officer Fandre emerged from his vehicle and acknowledged Sirio, stating, “Hey man.” Sirio responded immediately “Don’t come near us” as he continued to walk toward the officer with a gun pointed at the woman’s side. Officer Fandre drew his firearm, pointed it at Sirio, and commanded, “Show me your hands!” Officer Fandre immediately aired over the radio, “This is Sirio, he’s got a gun.” Sirio made several other statements warning Officer Fandre not to come near him, while his gun was pointed



into the side of the victim, including, "This is my baby, this is my wife, I'm on mental health," and "Don't fuckin' do this!" Sirio placed his left arm around the shoulders of the victim, as if to keep her between him and Officer Fandre, while simultaneously physically and verbally directing her to keep walking down the street.

Officer Fandre attempted to de-escalate by stating, "Okay, that's fine," and lowering his handgun while backing up a few feet further from Sirio. Officer Fandre relayed over the radio, "He's got the gun out," warning other officers that would be arriving to assist, and then told Sirio clearly, "Sirio, you're under arrest." Sirio responded, "No. I'm not going to prison." Officer Fandre stated, "You know you have a gun on her." Sirio responded, "Yeah, I know," and then told the female "Let's go."

Sirio continued walking with the female (who was still pushing the stroller) while yelling, "Don't fuck with me" to the officer. As he was walking away from the officer, Sirio was looking over his shoulder while using the female as a screen between himself and the officer.

Concerned about escalating Sirio's behavior, Officer Fandre did not immediately advance, but instead stayed back and aired, "We're going to consider this a hostage situation – Southridge – he's walking away with her and the two kids." Officer Fandre made another attempt to calm Sirio as he was turning the corner with the female at gunpoint, stating, "Sirio, don't." Sirio did not respond to the officer and instead told the female, "Let's go," multiple times, apparently urging her to continue walking down the street. Officer Fandre then aired that the next officer to arrive should "bring a long gun."

Officer Fandre walked slowly after Sirio but maintained a safe distance to avoid further agitating Sirio. Officer Fandre aired, "he's holding her at gunpoint with the two kids." Once Officer Fandre reached the corner of Springfield Drive and Southridge Drive and was able to see patrol cars were down the street (blocking Sirio from the North), he ran back to his car and retrieved his rifle, then ran back to the corner and took position behind a residential split rail fence. From that position, Officer Fandre could see and hear Sirio ignoring police commands from the other officers to drop his gun and could see him using the female as a shield – strategically moving her as he hid from the line of fire of the officers on both sides. Both of Officer Fandre's fellow officers also had their guns drawn and aimed at Sirio during the commands.

Officer Fandre lowered his stance, took position on the fence to stabilize his aim, and fired one shot, hitting Sirio. The bullet went through Sirio's right shoulder/back area and out his upper right chest. Officer Fandre then aired, "Shots fired, suspect down," as he and the other officers converged on Sirio's location.

The victim and her children were led to safety by one officer and, after determining the scene to be safe, the officers began to treat Sirio until paramedics arrived. Sirio was in possession of a loaded .40 caliber handgun. The handgun was pointed at the victim until Sirio was shot and he dropped the firearm in the street. The firearm was loaded with a 9mm magazine, which came free from the gun when the officers kicked the weapon away from Sirio as he lay on the ground.

Sirio's injuries meet the statutory definition of "serious bodily injury," which includes penetrating gunshot wounds. Sirio was treated and released from the hospital into law enforcement custody. Notifications were made to Sirio's sister and mother later on February 7, 2024. His family had apparently already been notified of the incident when the CIRT investigators contacted them.

## **VII. MEDIA - RECORDINGS**

The media reviewed in this case includes, but is not limited to, the anonymous 911 call referenced above, as well as the body-worn camera footage from Officers Fandre, Barenburg, and Gladden. The body-worn camera footage is consistent with the information provided by the officers in their respective interviews. The information from the various sources supports the facts set forth in the summary above.

## **VIII. RELEVANT WITNESS INTERVIEWS**

Officers Fandre, Barenburg, and Gladden were all interviewed by CIRT investigators about the events that took place on February 7, 2024. They all gave voluntary statements that were consistent with their body-worn camera footage and the other evidence gathered in the investigation. The totality of those interviews is reflected in the above "Summary of Relevant Facts" above.

The adult alleged kidnapping victim was also interviewed and provided information to the CIRT investigators regarding both the February 5, 2024, and February 7, 2024, events. The information she provided was consistent with the information FCPS and the CIRT had gathered regarding the events on both dates.

Mr. Sirio's mother was also interviewed and provided information to the CIRT investigators regarding the February 5, 2024, alleged domestic violence incident, as well as background information about Mr. Sirio. On a previous date, Mr. Sirio told his mother that he wanted to die like his brother. His brother was shot and killed by Greeley Police Officers in 2021 after he allegedly engaged in multiple carjackings and other crimes and then pointed a firearm at police officers.

Two additional witnesses from the neighborhood spoke to CIRT investigators about interacting with Mr. Sirio and the victim minutes before the shooting. Both witnesses described Sirio and the victim discussing the previous alleged domestic violence incident, including Mr. Sirio stealing a gun from the victim and throwing a rock through her window. The witnesses also said Sirio made statements about the police looking for him, and that the victim said that she wanted to walk alone but Sirio insisted on accompanying her to "protect her."

Several additional witnesses who were present during the incident near Southridge Drive were interviewed by CIRT investigators. The witness accounts are consistent with the body-worn camera footage and other evidence gathered during the investigation. The witnesses observed and heard verbal interaction between the officers and Mr. Sirio, including the officers giving loud verbal commands to Sirio, and saw and/or heard the shot fired by Officer Fandre. One of



the neighbor witnesses discussed seeing the male (Sirio) pointing a handgun back and forth between the officers and the female (victim).

## **IX. ADDITIONAL EVIDENCE**

### **1) Firearms and ballistics and weapons evidence:**

- a. Officer Fandre's firearm was a police-issued Rock River Arms LAR-15 5.56mm caliber rifle with a SIG Sauer Romeo4 Optic.
  - i. The firearm contained a single 223 REM round in the chamber and 26 live rounds in the magazine. The magazine originally contained 28 rounds.
  - ii. One shell casing was found on the scene near the fence line where Officer Fandre perched to shoot.
  - iii. The physical evidence supports Officer Fandre having fired one round – the round that hit Mr. Sirio.
- b. Sirio's 40 caliber Smith and Wesson handgun was recovered from the street where he was shot.
  - i. There was one 9mm round in the chamber of the weapon.
  - ii. The gun contained a 9mm magazine which was manipulated to fit into the .40 caliber firearm.
  - iii. The gun appeared capable of firing. It has been sent to the crime lab for functionality testing.
  - iv. The gun was not fired during this incident.

### **2) Medical/injury evidence:**

- a. Sirio suffered one perforating gunshot wound through his upper torso.
- b. Doctors treated and released him to the Sheriff's Office custody where he was detained on several felony charges.
- c. Sirio's injury constituted "serious bodily injury," as he suffered a penetrating gunshot wound.

## **X. CONCLUSION**

The CIRT investigation in this case conformed to the letter and the spirit of §16-2.5-301, C.R.S. The investigation was thorough, objective, and adequately resourced, and all necessary materials were provided in a timely manner. Finally, the investigation yielded ample evidence from which factual and legal conclusions could be reached.

Officer Ryan Fandre cooperated with the CIRT investigation and provided a voluntary interview. He appeared genuine in his responses and the independent evidence, including his body-worn camera and the statements of the other witnesses, substantially supported his version of events.

As stated above, in applying the law to the facts of this incident we must ask the following questions:



1. Did Officer Fandre reasonably believe that the use of physical force – and degree of force employed - was necessary to defend himself or others from what he reasonably believed to be the imminent, or continued, use of physical force by Colten Sirio?
2. Would nonviolent means have been ineffective in preventing an imminent threat of injury to Officer Fandre or another person in this situation?
3. Did Officer Fandre identify himself as a peace officer and give a clear verbal warning of his intent to use his firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it: a) would have unduly placed him or his fellow officers at risk of injury, or b) would have created a risk of death or injury to other persons?
4. Did Officer Fandre or his fellow officers ensure that assistance and medical aid were rendered to Mr. Sirio as soon as was practicable after the shooting?
5. If Mr. Sirio sustained serious bodily or death, did Officer Fandre or other officers ensure that Mr. Sirio's identified relatives or next of kin were notified as soon as practicable?

To avoid redundancy, questions 1 and 2 will be addressed together. Subsequently, questions 3, 4, and 5 will be addressed independently.

**(Questions 1 and 2) Officer Fandre had a reasonable belief that using his firearm was necessary, and that nonviolent means would have been ineffective in preventing an imminent threat of injury to the female victim, officers, or others.**

Upon emerging from his vehicle, Officer Fandre was immediately faced with a volatile situation, which required him to prepare to use his firearm. The body-worn camera shows Sirio walking within inches of the victim while pointing a handgun at her side while she was pushing two very young children in a stroller. Sirio used the victim, and to a lesser extent, the stroller, as a tactical screen as he was walking down the street past Officer Fandre. Officer Fandre gave appropriate commands and clearly told Sirio he was under arrest. The officer's actions and words were meant to de-escalate Sirio's obviously escalating behavior. Given the parties' proximity to one another and Sirio's erratic behavior, it was reasonable for Officer Fandre to perceive that the victim and both children were in danger of being harmed or killed and to consider it a hostage situation.

Officer Fandre's initial behavior was designed to show authority yet give Sirio enough space so he would not escalate further by choosing to use his firearm on the officer or the victim. Officer Fandre let Sirio create distance and when he saw the officers down the street, he appropriately ran back to his vehicle to get a more appropriate - more accurate – weapon in case Sirio did not surrender. Each second that passed presented an opportunity for Sirio to kill or seriously injure the victim, the children, or any of the three officers on the scene. Sirio was headed toward the victim's residence and allowing a barricade situation with hostages would create additional dangers for all involved. Officer Fandre took a strategic position at the corner, stabilized his weapon on the fence post, and when it was apparent that Mr. Sirio was not obeying commands to

drop his firearm and the victim and children remained in danger, Officer Fandre waited for a clear shot, then fired a single round which ended the standoff.

Given Sirio's refusal to put the gun down, separate himself from the victim and children, or surrender, the evidence shows non-violent means would have been – and were - ineffective, and that Officer Fandre had a reasonable belief that using his firearm was necessary. Regarding the possible use of less lethal options, anything less than the force employed by Officer Fandre would have likely increased the chances of injury or death to the victim or others in an environment where time was of the essence. This reinforces the fact that the use of that particular weapon was necessary.

**(Question 3) Officer Fandre was exempted from giving the verbal warning because it may have unduly placed him at risk of injury or may have created a risk of death or injury to other persons, to wit: the woman, two children, and the other officers.**

Facing the circumstances presented by Sirio holding a woman and two children hostage at gunpoint and using them as a screen, it would be unreasonable to require additional warnings before Officer Fandre fired his rifle. Had Officer Fandre announced that he was about to use deadly force, his tactical advantage would have disappeared, as Sirio likely would have at least pulled in closer to the victim. In a worst-case scenario, Sirio may have felt even more desperate upon hearing the threat of deadly force and decided to use his firearm on the victim or the officers. Such a risk was unwarranted under the circumstances. Additionally, Sirio knew that Officer Fandre and the other officers all had their weapons pointed at him and was given multiple other commands. Therefore, I find that the officer was exempted from giving the verbal warning of imminent deadly force.

**(Question 4) Officer Fandre and his fellow officers ensured that assistance and medical aid were rendered to Sirio as soon as was practicable.**

The officers provided Sirio with medical assistance as soon as Mr. Sirio was compliant and handcuffed. This was reasonable, and therefore legal, under the circumstances.

**(Question 5) Investigating peace officers notified relatives in a timely manner.**

The kidnapping victim is likely fairly characterized as a relative or "family" of Mr. Sirio for notification purposes. Additionally, Sirio's mother and sister were notified of the shooting by the CIRT investigators later that same day.

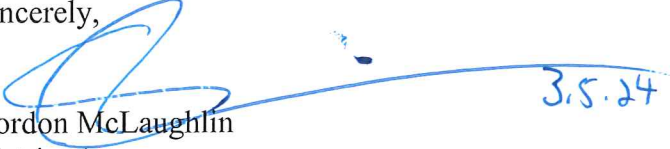
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The totality of the evidence presented through the CIRT investigation reveals that both the actual and perceived circumstances Officer Fandre faced on February 7, 2024, justified his actions in discharging his firearm. As a result, I find that no charges can, or will, be brought against Officer Ryan Fandre for the shooting of Colten Sirio.

The District Attorney's Office thanks the Eighth Judicial District Critical Incident Response Team for a thorough and expeditious investigation.



Sincerely,



Gordon McLaughlin  
District Attorney  
8<sup>th</sup> Judicial District

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