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RE: Opinion Letter Regarding 01.07.24 CIRT

Case Numbers LCSO #24-258, FCPS #24-287, LPD #24-190, WPD 24-193, CSUPD 24-19, CSP 3C24-32, TPD #24-10, WCSO #24-119, SPD #24-4, APD #24-28, and Windsor/Severance Fire #24-79.

Dear Interim Chief Lopez,

On January 7, 2024, Windsor Police officers were involved in an exchange of gunfire with Damien Jackson in the parking lot of the AmericInn Lodge and Suites hotel, located at 7645 Westgate Drive in Windsor, Colorado.

This incident is outside of the statutory requirements of C.R.S. § 16-2.5-301 for a multi-agency investigation given that no party sustained any injury from the gunfire. The incident falls under the “discretionary invocation” parameters of the Eighth Judicial District Critical Incident Response Team (CIRT) protocol. While not required by law, due to the agreement of all parties involved and in the interests of transparency and investigative thoroughness, I authorized a “discretionary invocation” of the CIRT protocol. The purpose of a CIRT investigation is to provide an independent and comprehensive examination of law enforcement’s use of force to ensure there is accountability for any criminal conduct and those interests clearly served by conducting a full and complete CIRT review in this instance.

I. EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in greater detail below, I conclude Sergeant Stephen Cantin and Officer (now Sergeant) Siobhan McTighe were each legally justified in firing their weapons in order to defend themselves and others from the threat posed by Damian Jackson on January 7, 2024. Having concluded that these officers were legally justified, no criminal charges will be filed against them.

II. LIMITATIONS

As Damien Jackson has been charged with crimes related to this incident, the information in this letter will be limited to ensure compliance with the legal requirements of Colorado Rules of Criminal Procedure 3.6 and 3.8, and C.R.S. § 20-1-114. The breadth and depth of this letter is therefore intentionally and necessarily curtailed, as will public comment or answering of community questions, in contrast to CIRT cases where no open criminal cases exist.

Damien Jackson is charged in Larimer County District Court case 24CR34 with the following crimes:

- Criminal Attempt to Commit Murder in the First Degree (Cantin) (F2)
- Criminal Attempt to Commit Murder in the First Degree (McTighe) (F2)
- Criminal Attempt to Commit Murder in the First Degree (Chavez-Quezada) (F2)
- Criminal Attempt to Commit Murder in the First Degree (Civilian One) (F2)

Criminal Attempt to Commit Murder in the First Degree (Civilian Two) (F2)
Assault in the First Degree – Threaten Peace Officer with Weapon (Cantin) (F3)
Assault in the First Degree – Threaten Peace Officer with Weapon (McTighe) (F3)
Assault in the First Degree – Threaten Peace Officer with Weapon (Chavez-Quezada) (F3)
Felony Menacing (Cantin) (F5)
Felony Menacing (McTighe) (F5)
Felony Menacing (Chavez-Quezada) (F5)
Felony Menacing (Civilian One) (F5)
Felony Menacing (Civilian Two) (F5)
False Reporting (M2)
Resisting Arrest (M2)
Obstructing a Peace Officer (M2)
Reckless Endangerment (M2)

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

**Similarly, all facts and opinions contained in this letter which indicate criminal activity or misconduct are merely allegations and Jackson maintains the same presumption of innocence.*

III. 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.

It should be noted that although two peace officers discharged their firearms in this incident, no party suffered injury or death as a result and that the CIRT team was activated on a discretionary basis not required by law.

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from agencies within the Eighth Judicial District who are members of the district's Critical Incident Response Team (CIRT). Specifically, this investigation was led by the Loveland Police Department, with assistance from Fort Collins Police Services, the Larimer County Sheriff's Office, Colorado State University Police Department, Windsor Police Department (non-critical functions only), Timnath Police Department, Colorado State Patrol, and the District Attorney's Office for the Eighth Judicial District.

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(s) with any criminal conduct.

With respect to the limitations in this letter, our obligations include, but are not limited to:

(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. *C.R.P.C. 3.8.*

IV. MATERIALS REVIEWED

I have been provided with materials produced during the CIRT investigation. The information I have considered includes:

- Relevant body-worn camera footage of peace officers
- Another video from civilian sources
- Reports/summaries of the CIRT investigators
- Reports of other law enforcement involved in the incident response
- Recorded interviews of involved peace officers and the defendant
- Recorded interviews of lay witnesses and fire personnel
- Radio traffic from the incident
- Photographic evidence
- Physical evidence from the scene

At this time of this letter, laboratory tests (fingerprints, DNA, & ballistics) remain pending. Those results are not likely to alter the conclusions reached given significant evidence of the incident from the above sources. The interests of transparency are served by issuing this later at this time, rather than waiting many months for those results.

V. 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. Sergeant Cantin, Officer McTighe, and all other persons referred to as "officers," "peace officers," "deputies," "sergeants," or "law enforcement" in this letter are "peace officers" per statute. *See* §16-2.5-101-103, C.R.S.

By using their service weapons and shooting at Damien Jackson, Sergeant Cantin, and Officer McTighe's conduct implicates Colorado's peace officer use of force and self-defense statutes. As the shots fired did not

cause death, the deadly physical force provision of the statute does not legally apply to his actions. *See* §18-1-901(3)(d) (“Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death).

§ 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.
- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
 - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
 - (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person;
 - (c) The force employed does not create a substantial risk of injury to other persons.
- (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.
- (4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

§ 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, for a person to act legally to defend themselves or others requires the presence of “both reasonable belief and actual belief” 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.*

VI. 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 Sergeant Cantin and Officer McTighe reasonably believed that the use of physical force – and degree of force employed - was necessary to defend themselves or others from what they reasonably believed to be the imminent, or continued, use of physical force by Damien Jackson, and
2. Would “nonviolent means ... [have been] ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person” in this situation?

Additionally, the statute requires us to ask:

3. Did the officers identify themselves as officers and give a clear verbal warning of his intent to use their firearm, with sufficient time for the warning to be observed, and if not, is he exempted from having given that warning because it would have unduly placed him or his fellow officers at risk of injury or would have created a risk of death or injury to other persons?
4. Did officers ensure that assistance and medical aid were rendered to all injured or affected persons as soon as was practicable?
5. If Damien Jackson sustained serious bodily injury, did officers ensure that Jackson’s identified relatives or next of kin were notified as soon as practicable?

VII. SUMMARY OF RELEVANT FACTS

On January 7th, 2024, at approximately 1609 hours, Windsor Severance Fire Rescue (WSFR) personnel were dispatched to the AmericInn Lodge and Suites hotel, located at 7645 Westgate Drive in Windsor, Colorado for a fire alarm activation. Hotel staff advised that the fire alarm had been pulled by a guest, later identified as Damien Jackson. Staff further advised that Jackson was armed with a gun. This was all later confirmed by hotel surveillance footage.

At approximately 1620 hours, the WSFR Battalion Chief on scene requested that Windsor police respond emergent to the location. Windsor Sergeant Stephen Cantin, Officer Siobhan McTighe, and Officer Iris Chavez-Queszada responded to the call. All three officers were equipped with body-worn cameras which captured their actions on scene.

Upon arrival, Cantin spoke with a hotel employee who directed the responding units to Jackson who was standing in the parking lot, wearing a reflective vest, and reportedly armed with a handgun. The employee described Jackson as acting “sporadic” and stated that he was a danger.

Cantin directed Chavez-Queszada to retrieve a ballistic shield from his patrol vehicle. At approximately 1630 hours, the three units began to approach Jackson who was near one of the firetrucks parked in the lot. Cantin and McTighe had their duty weapons unholstered and Chavez-Queszada carried the ballistic shield. As officers approached, Jackson moved around the front of the firetruck to the driver’s side of the truck and started climbing up a ladder on the side of the truck. Officers issued multiple verbal commands telling him to “stop” and “get off the truck.”

As the officers continued to advance with their guns drawn, Jackson ascended to the roof of the firetruck, produced a firearm from his waist, and fired a single shot toward the three officers. The officers retreated

backward as Sergeant Cantin aired on the radio shots had been fired. The officers were able to seek cover behind a Honda sedan in the parking lot. There was a white Hyundai Kona parked between the Honda and the firetruck which was occupied by two civilians.

Sergeant Cantin and Officer McTighe each exchanged gunfire with Jackson while pinned down behind the Honda sedan. Cantin fired two shots, McTighe fired two shots, and Jackson fired two shots (in addition to his initial shot) during this time. Cantin aired on the radio that they were taking fire and needed the area locked down for an "active shooter."

In the midst of the exchange, the two female civilians in the Hyundai were able to exit that vehicle and take cover behind the Honda with the three officers. During the gunfire, the side of the Hyundai nearest the Honda was struck by bullets fired by Cantin and/or McTighe. At one point Cantin suspected that he had been shot and asked McTighe if he had been struck by Jackson's shots. McTighe confirmed he was not.

At approximately 1638 hours, additional officers from various agencies begin to arrive on the scene. These responding officers and deputies begin to issue verbal commands to Jackson (still atop the firetruck) utilizing a loudspeaker. They repeatedly advised Jackson that he is under arrest.

At approximately 1645 hours, Jackson climbed down from the firetruck and walked backward to these responding officers. Upon being told to stop and get on the ground, Jackson did not comply and ignored several more commands, continuing to move closer to the officers. An LCSO deputy attempted to tase Jackson, but the application was not successful. A second deputy successfully tased Jackson who was then taken into custody at 1648 hours. Jackson was evaluated by paramedics, the taser probes were removed, and he declined any additional medical treatment.

At the time of his arrest, Jackson was in possession of two handguns and was wearing two ballistic vests. A third firearm, a 9mm Sig Sauer, was recovered from the roof of the firetruck where Jackson had been located during the exchange of gunfire. There were 12 unfired 9mm cartridges remaining in the 15-round magazine of the Sig Sauer suggesting that three shots had been fired from the gun. A spent 9mm cartridge was located on top of the truck. Two additional spent 9mm cartridges were located on the ground near the firetruck. The location of these three spent casings indicated they were fired by Jackson and that he fired a total of three shots from the firetruck. Three suspected bullet defects were discovered atop the truck. The first was near the side of the truck and was consistent with Jackson firing toward the officers as they initially approached the firetruck from the side. Two more apparent bullet defects were located in the direction of the Honda where the officers took cover.

An inspection and inventory of Cantin and McTighe's firearms showed that each fired two shots during the exchange. Consistent with this, 4 fired 9mm cartridges were located by CIRT investigators just west of the vehicles where the officers had taken cover.

Review of the involved officers' body camera footage and other evidence shows that Jackson fired two shots toward three officers and two civilians as they sheltered behind the vehicles in the parking lot and officers fired all four of their rounds from that position behind the vehicles. It is unclear from the body camera footage the exact order in which these six total shots (two from Jackson, two from Cantin, and two from McTighe) were fired.

Jackson was interviewed following the incident. Because of the ongoing criminal prosecution, his statements will not be described in detail here.

In her interview, Officer McTighe described how Jackson walked “with intention” as officers initially approached him. She described how Jackson ignored all commands to get off the firetruck. She believed that Jackson climbed the firetruck to get the “high ground.” McTighe described seeing Jackson shoot at them when they were about 10 yards away and she saw the muzzle blast from his gun as he fired. She indicated that when she heard and saw the shot, she believed that Jackson was trying to kill them. She said she was unsure whether Sergeant Cantin returned fire after Jackson’s first shot. After the three officers retreated to a position of cover, she recalled seeing Cantin and Jackson exchange fire. McTighe recalled seeing Cantin fall backward, and she worried that he was shot. At one point, she observed Jackson standing and saw a muzzle flash from his gun. She recalled firing back at Jackson and temporarily losing her hearing after firing. McTighe observed two women in the vehicle next to them who were able to exit that vehicle and take cover with the officers. McTighe described the women as looking “very scared” and said the situation was a “scary predicament” expressing worry not only for the officer’s lives but also for the two women. According to McTighe, she was unable to yell commands at Jackson because she thought it would give away their position.

In his interview, Sergeant Cantin described how as officers approached Jackson, he started walking away from them and towards a fire truck. Cantin said had his gun out based on information received from hotel staff that Jackson was armed. Cantin recalled seeing Jackson climb onto the fire truck and he gave verbal commands to Jackson as climbed the ladder. Cantin said that Jackson turned and fired from what he described as a “kneeling firing stance.” When Jackson fired at them, Sergeant Cantin “feared for his life and his team’s lives” and knew they had to get in a better position than they were in. Sergeant Cantin was not sure if he returned fire or not at this point. Cantin recognized that Jackson was in a “far superior position of advantage” and as a result, the three of them retreated.

Cantin stated that while they were behind cover, Jackson resumed shooting at them. Cantin felt something go past his head and was unsure if it was a bullet or glass. Cantin stated that upon hearing the gunshots, he fired back but was unsure how many times he fired. Cantin said he had a difficult time getting a sight picture due to Jackson’s elevated position on the fire engine. At one point, Cantin thought he was shot and asked Officer McTighe if he was hit. Cantin said he noticed two bullet holes in the white SUV parked next to the car they were using for cover then saw two women inside the SUV. He yelled for them to get out and take cover with the officers. Cantin said he was concerned that Jackson would shoot at the occupants if he had them run away from them and expressed concern for the safety of his team and the women. Cantin stated he did not have time to give Jackson commands from behind the Honda as he was shooting and taking gunfire from Jackson.

VIII. CONCLUSIONS

Although not required by statute given no party was injured, this CIRT investigation comported with both the letter and the spirit of §16-2.5-301, C.R.S. The investigation was thorough, objective, and well-resourced, and all relevant materials were provided in a timely manner. Finally, the investigation yielded ample evidence from which factual and legal conclusions could be reached.

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

1. Did the officers reasonably believe that firing their weapons was necessary to defend themselves or others from what they reasonably believed to be the imminent, or continued, use of physical force by Jackson?
2. Would nonviolent means have been ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to officers or other persons in this situation?

3. Did officers identify themselves as a peace officer and give a clear verbal warning of their intent to use their firearm, with sufficient time for the warning to be observed, and if not, were they exempted from having given that warning because it would have unduly placed him or his fellow officers at risk of injury or would have created a risk of death or injury to other persons?
4. Did officers ensure that assistance and medical aid were rendered to all injured or affected persons as soon as was practicable?
5. Did officers ensure that any identified relatives or next of kin of all seriously injured persons 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) Conclusion: Sergeant Cantin and Officer McTighe each had both a reasonable belief that shooting was necessary, and that nonviolent means would have been ineffective in stopping Jackson.

The evidence is clear that Sergeant Cantin, Officer McTighe, Officer Chavez-Quezada, and the two female civilians all faced an imminent and deadly threat from Jackson. Prior to the law enforcement response, Jackson armed himself with three firearms and donned two ballistic vests. He pulled the fire alarm at the hotel which generated an emergency services response. As the officers attempted to contact Jackson in the parking lot, he ignored their repeated verbal commands and climbed on top of the firetruck to gain a specific position of advantage. Jackson fired the first shot in this encounter and all three officers reasonably feared for their own safety and the safety of their fellow officers. They were forced to retreat and take cover behind a vehicle in the parking lot. The officers were pinned down and faced a suspect with a high-ground advantage who had already fired at them. The officers recognized that Jackson presented a real threat to their own lives and the lives of the two civilians caught in the crossfire. They reasonably believed this to be an “active shooter” situation and were justified in attempting to eliminate the threat posed by Jackson. As they were pinned down, there were no reasonable alternatives to end the threat Jackson presented. Regardless of the subsequent order of shots fired, Cantin and McTighe were justified in firing at Jackson given his prior demonstrated resolve to fire at them when they initially approached the firetruck and his ongoing resolve to continue firing.

(Question 3) Conclusion: Officers were exempted from giving the verbal warning because it would have unduly placed them at risk of injury or would have created a risk of death or injury to other persons.

Officers Cantin and McTighe provided multiple instructions to Jackson as he moved towards and then climbed onto the firetruck. Once on top of the fire truck Jackson drew a firearm from his waist and fired at officers without warning. The officers had no choice but to quickly retreat to a position of cover behind a nearby vehicle. At this point, they were pinned down and unable to effectively communicate with Jackson who was still on top of the firetruck. Given the distance to Jackson, the noise associated with the running firetruck, and Jackson’s continuing gunfire, a verbal warning would have been unlikely to be audible. More importantly, providing verbal warning at this point would have further exposed their vulnerable position.

(Question 4) Conclusion: Officers ensured that assistance and medical aid were rendered to all parties as soon as was practicable.

None of the shots fired by officers in this case struck or injured Jackson. A taser was deployed by other responding units in order to take Jackson into custody. Jackson was immediately evaluated by medical units on scene and declined any further treatment.

(Question 5) Conclusion: Not applicable as no party suffered serious bodily injury.

None of the shots fired by officers in this case struck or injured Jackson and therefore he did not suffer serious bodily injury. As such, no notification of relatives or next of kin was required.

The totality of the evidence presented through the CIRT investigation reveals that the circumstances faced by Sergeant Cantin and Officer McTighe on January 7, 2024, justified their actions in discharging their firearms towards Damien Jackson. As a result, I find that no charges can, or will, be brought against either officer.

Further details of the investigation will not be released at this time due to our ethical obligations pursuant to Colo. R Crim. P. 3.6 and 3.8 to limit publicity on open cases in order to protect an accused's presumption of innocence and right to a fair trial. All charges against Damien Jackson are merely allegations and he is presumed innocent of all charges filed against him unless and until proven guilty beyond a reasonable doubt.

The District Attorney's Office thanks the Critical Incident Response Team for conducting a thorough and expeditious investigation of this incident.

Sincerely,



Gordon P. McLaughlin
District Attorney
Eighth Judicial District