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December 24, 2019

Chief Robert Ticer
Loveland Police Department
810 E. 10th Street
Loveland, CO 80537

Re: Opinion Concerning LPD #19-10185, LCSO #19-10530, FCPS #19-17960, and CSUPD #19-1773

Dear Chief Ticer:

The criminal investigation surrounding the November 30, 2019 death of David Matthew Harper has been completed and submitted to my office for an opinion. As District Attorney for the Eighth Judicial District, I am required to determine whether any criminal law violations were committed by any person 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 fileable and provable beyond a reasonable doubt. My review also includes determining if the degree of force used by Loveland Police Officer Matthew Sychla 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 Office led the CIRT during this incident. Members of the CIRT included personnel from the Larimer County Sheriff's Office, Loveland Police Department, District Attorney's Office for the Eighth Judicial District, Colorado State University Police Department, and Fort Collins Police Services. I have reviewed all the reports, photos, videos, dispatch and communication records, witness interviews, and findings made by the Larimer County Coroner's Office.

In determining whether the degree of force used by Officer Sychla 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 does, in fact, produce death.

The following is a summary of the facts of this case:

On November 30, 2019, at approximately 11:38 p.m., Loveland Police dispatch received a 911 call from a citizen reporting a rollover vehicle accident in approximately the 1300 block of East Highway 402. The caller indicated the vehicle had struck a road sign, flipped over onto its side, and the driver was trapped in the vehicle.

Loveland Police Department, Thompson Valley Emergency Medical Services, and Loveland Fire Rescue Authority were dispatched to the motor vehicle accident. Loveland Police Officer Matthew Sychla, a K-9 Officer and four-year veteran of LPD, was on duty, in uniform, and driving a marked patrol car. Officer Sychla was interviewed as a part of the CIRT investigation and described his involvement. Officer Sychla saw the call for service for a motor vehicle accident with injuries on his mobile data terminal in his patrol car. He indicated that because of his assignment, he would not normally respond to a call for service such as this, but he was nearby and felt that he could respond quickly and render aid.

Officer Sychla was the first to arrive on scene at 11:41 p.m. The involved vehicle, a silver Subaru Forester, was resting on the driver’s side. A number of citizens were in the immediate area attempting to free the driver from the vehicle. As Officer Sychla approached the vehicle, he could see a male inside the vehicle sitting cross-legged on the driver’s side window. That male was eventually identified as David Matthew Harper. A citizen attempting to free the driver from the vehicle informed Officer Sychla “He’s got a weapon. He’s cleared it, but he’s holding it.”

Officer Sychla saw the weapon in Mr. Harper’s hand and believed it to be a full size 1911 style handgun. Officer Sychla drew his weapon to protect himself and the citizens in the immediate

area. He told Mr. Harper to drop the gun and instructed the citizens to move away from the vehicle. Officer Sychla saw Mr. Harper put the gun to his head and aired over his radio, "He's holding a gun to his head." Officer Sychla then saw Mr. Harper lower the gun down near his chest. As Officer Sychla backed away from the vehicle, his view of Mr. Harper became limited. He could no longer see the handgun being held by Mr. Harper but did not see him put it down. Officer Sychla repeatedly ordered Mr. Harper to drop the gun. As he was doing so, Officer Sychla saw and heard a gunshot come from within the vehicle. Officer Sychla, not knowing whether Mr. Harper had shot at him, at one of the other citizens in the area, or himself, returned fire, firing his weapon multiple times.

Loveland Police Officer Zachery Noble was the second officer to arrive on scene. As Officer Noble was exiting his vehicle, he heard Officer Sychla air over the radio that the male had a gun. Officer Noble heard Officer Sychla giving verbal commands to drop the gun. He then heard a muffled gunshot, followed by successive gunshots that sounded louder than the first. Officer Noble did not see the shooting take place. Once he arrived at the crashed vehicle, he held cover while Officer Sychla attempted to gain access into the vehicle to disarm Mr. Harper and provide medical aid. Officer Sychla was unable to gain access into the vehicle.

Loveland Police Officer Geoff Reeves was eventually able to break out a portion of the vehicle's window and removed a .45 caliber, 1911 style semiautomatic handgun from David Harper's hand.



After the scene was made safe, Loveland Fire Rescue Authority was able to remove the windshield and roof of the Subaru Forester and extricate Mr. Harper. Mr. Harper was deceased.

At the time of this incident, Officer Sychla was equipped with a body worn camera. That camera captured video and audio from the time Officer Sychla arrived at the scene of the accident through the shooting. The footage clearly shows Mr. Harper with the firearm in his hand, Officer Sychla's repeated commands to drop the weapon, and Mr. Harper firing the gun from within the vehicle prior to Officer Sychla returning fire.

A number of citizen witnesses who had stopped at the scene of the accident prior to the arrival of the police were interviewed and provided witness statements.

Marcus Cosby was the first to arrive on scene. He indicated that when he got to the overturned vehicle the driver was conscious but appeared disoriented. The driver would not respond when asked his name, but indicated he was not hurt. Attempts were made to free the driver from the car, but they were not successful. After the driver was told that the fire department or the police were on the way, the driver pulled out a handgun. Mr. Cosby and another gentleman who stopped to help repeatedly told the driver to put the gun down, put it away, or throw it into the back seat. The driver verbally refused, stating that he couldn't or wouldn't put it down.

Daniel Peasley indicated that he, along with other people, attempted to help the party in the crashed vehicle by trying to open the door or break out the windows. Mr. Peasley indicated the party in the crashed vehicle appeared to be "out of it," "dazed and confused," and it appeared he could have been on drugs. Mr. Peasley indicated that the party in the vehicle became more upset and "lost it" after being told that the "cops" were coming or almost there, and that is when he pulled out the gun.

Dennis Dyer indicated that when he came upon the scene, he went to the vehicle to try and help get the driver out. They were unable to break open the sunroof, open the passenger door, or open the back hatch. Mr. Dyer indicated the driver wouldn't really answer questions, appeared disoriented, and was breathing fast and heavy. Mr. Dyer told the driver to settle down and that police and fire were on the way. Mr. Dyer then saw the driver draw a semiautomatic handgun out of a holster. He and the other gentlemen repeatedly told the driver to put the gun down, but he would not do so. While they were telling him to put the gun down, the driver was manipulating the slide on the handgun. Mr. Dyer assumed he was unloading it or making it safe. Mr. Dyer believed he was the one who told the officer that the driver had a gun.

Interviews were conducted with Daniel Harper and Christine Theriault, David Harper's brother and sister. Both indicated that David Harper struggled with depression and alcohol abuse. Daniel Harper indicated that David had been on the run from law enforcement for about a year. David had expressed to the family, many times, that he would not go back to prison and that if he was stopped by the police, he would take his own life. Christine Theriault also indicated that David Harper had stated he would take his own life before going back to prison.

Christine Theriault stated that David Harper had been at her apartment on the night of this incident. She indicated he had been drinking alcohol "for a few hours" prior to leaving her apartment and that he usually drinks "at least a pint" when he drinks. Christine believed that David Harper left her apartment at about 11:00 p.m.

At the time of this incident, David Harper had three active warrants for his arrest. One was for Felony Escape, another for Felony Driving Under the Influence, and the third for failure to comply in a Felony Driving Under the Influence case. Mr. Harper had four prior felony convictions dating back to 1997.

The Larimer County Coroner performed an autopsy of David Harper on December 2, 2019. The cause of death was determined to be self-inflicted gunshot wound to the head. The manner of death was determined to be suicide.

Based on the totality of the circumstances, I find that David Harper committed the only criminal offenses during this incident. Had he survived, enough evidence exists to have charged Mr. Harper with Possession of a Weapon by a Previous Offender, Felony Driving Under the Influence, Prohibited Use of a Firearm, and Careless Driving.

I have determined that Officer Sychla acted in a professional and conscientious manner. Officer Sychla responded to a call for assistance for a motor vehicle accident with injuries. Instead, he found a suicidal party brandishing a firearm and refusing to obey commands to drop the weapon. Officer Sychla was faced with a life or death situation, threatening himself and the others who had stopped to render assistance to this motorist. Officer Sychla reacted to the discharge of the gun from within the crashed vehicle in an appropriate and fully justified manner. Officer Sychla should be commended for his efforts to serve the public and his quick reactions to save lives.

Respectfully,



Clifford E. Riedel
District Attorney