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December 20, 2019

Chief Robert Ticer  
Loveland Police Department  
810 E. 10<sup>th</sup> Street  
Loveland, CO 80537

Re: Opinion concerning— LCSO #19-9942, FCPS #19-17016, CSUPD #19-1687, WPD #19-21208, EPPD #19-1506 and LPD #19-9656

Dear Chief Ticer:

The criminal investigation surrounding the November 11, 2019 shooting of Tammy Pierce has been completed and submitted to my office for an opinion. As the District Attorney for 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 provable beyond a reasonable doubt. My review also includes determining if the degree of force used by Loveland Police Officers Paul Ashe, Mathew Grashorn, and Philip Metzler were 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 team during this incident. Members of the CIRT team included personnel from the Larimer County Sheriff's Office, Fort Collins Police Services, Colorado State University Police Department, Windsor Police Department, Estes Park Police Department, District Attorney's Office for the Eighth Judicial District, and Loveland Police Department. I have reviewed all reports, photos, videos, dispatch and communication records, witness interviews, and ballistics in this case.

In determining whether the degree of force used by Officers Ashe, Metzler and Grashorn 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. section 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 in this case as established by the above sources of information:

On November 11, 2019, Margaret Harding, having concerns for the welfare of her 60-year-old son, Samuel Thomas Harding, called the Loveland Police Department (“LPD”) to report that she believed her son had been murdered by his wife, Tammy Pierce. Miss Harding reported that her daughter-in-law, Tammy Pierce, had called her on the evening of Friday, November 8, 2019, and during the conversation, indicated she had killed her husband. Samuel Thomas Harding and Tammy Pierce were married and lived together at 3376 Cuchara Court in Loveland, Colorado. Margaret Harding advised LPD that there were guns and a dog at the residence.

In the morning hours of November 11, 2019, LPD attempted to contact the residents of 3376 Cuchara Court to determine the welfare of Samuel Thomas Harding. Their attempt to contact Mr. Harding was unsuccessful. Later that day, at approximately 7:20 p.m., LPD Officer Scott Walker responded to the residence in a second attempt to contact Mr. Harding. Unable to contact the residents at the front door, Officer Walker walked around the exterior of the house knocking on doors and windows trying to get a response from the residents. Officer Walker located an unlocked entry door to the attached garage and looked inside the garage. In the garage, Officer Walker observed a male lying on the floor with what appeared to be multiple gunshot wounds. Officer Walker determined that the male was deceased and had been deceased for a period of time. Due to concerns that there might be an armed suspect or other victims in the residence, the Loveland SWAT team responded to the residence.

The decision was made to have the SWAT team attempt to contact any individuals in the residence and, if necessary, make a forced entry to search for a possibly armed suspect or any



other victims. The SWAT team was led by Master Sergeant Phil Metzler. Members of the SWAT team that evening was as follows: Officer Paul Ashe, Officer Matt Grashorn, Sergeant Phil Metzler, Officer Stephen Marchio, Officer Burke Baldwin, and Officer Andrew MacGeorge. At approximately 8:45 p.m., the Loveland SWAT team approached the front door of the residence.

Officer Paul Ashe, a seven-year veteran of LPD, was interviewed and explained that his role was to be the first officer to make entry into the home. Prior to entering the residence, Officer Ashe indicated he knocked three times very loudly on the front door and announced, "Loveland Police Department! Come to the front door!" He indicated he heard a dog barking but could not see any movement. He then waited five to ten seconds and knocked again announcing "Loveland Police Department! Come to the front door!" Following the third announcement, SWAT officers forcibly opened the front door.

Prior to crossing the threshold into the home, Officer Ashe made a visual inspection of the area inside the front door. From the open door, Officer Ashe could not see anyone, but did observe a bulldog sitting inside the residence, and he heard what he believed to be a female moaning. From his vantage point, Officer Ashe could not see the female, but he heard her state, "I am already dead." Not knowing if this moaning female was an armed suspect involved with the apparent gunshot victim in the garage, or another possible victim, he gave commands to "Come out! Let me see your hands! Come out!" The female remained hidden somewhere to the right of Officer Ashe; however, Officer Ashe observed a full-sized black revolver as it was tossed onto the floor of what appeared to be the living room of the residence.



At that point, Officer Ashe observed a hand being raised up and was able to determine it was a right hand. From the height of the hand, it appeared the person was crouching down and still hidden from view. Officer Ashe continued to give commands to "Show me your hands!" but the person refused to raise their left hand. Officer Ashe began to get a visual of the female as she started to crawl on all fours towards the revolver laying on the floor. The female was within grabbing distance of the revolver on the floor and refusing to comply with commands to raise her hands. At that point in time, Sergeant Metzler ordered the release of a police K-9 to prevent the female from obtaining the revolver on the floor. Up until this point, none of the police officers

had physically entered the residence.

The K-9 did not engage the female suspect and she continued to move closer to the revolver. As Officer Ashe was attempting to disengage the safety on his police rifle, the female grabbed the revolver and fired one round. Officer Ashe was not able to determine where that bullet went. Officer Ashe entered the front door and moved to his left, while still attempting to disengage the safety on his rifle.<sup>1</sup> Officer Ashe observed the female point the revolver at him, he saw a muzzle flash from the revolver, and he felt a bullet strike him in the head. If it had not been for the ballistic helmet, which Officer Ashe was wearing, Officer Ashe would have been killed or seriously injured.



Due to his police rifle being inoperable, Officer Ashe pulled out his police semi-automatic handgun and fired multiple times at the female who had just shot him. Officer Ashe recalls hearing other officers firing at the suspect as well. A short time later he heard someone call for a cease fire.

Officer Ashe was immediately removed from the home and fellow officers and emergency medical personnel attempted to determine the extent of Officer Ashe's injuries due to being shot by the female suspect. Thankfully, Officer Ashe was not seriously injured or killed due to his protective helmet, his quick response, and the quick response of his fellow officers.

Sergeant Metzler, a 25-year veteran with LPD, was the designated team lead for the SWAT team that evening. He was interviewed and told CIRT investigators that the plan was for the SWAT team to approach the front door of the residence due to a concern about going to the garage and contaminating a known crime scene. Not knowing what they may encounter in the residence, Sergeant Metzler had a police K-9 available as a less lethal option should it be needed. When there was no response to the series of announcements made by Officer Ashe, Sergeant Metzler called for the door to be breached by Officer Grashorn. After the door was breached and more commands were given by Officer Ashe, Sergeant Metzler heard a female voice saying, "I'm

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<sup>1</sup> Subsequent inspection revealed a defect in the safety mechanism which prevented Officer Ashe from being able to fire his rifle.



dead. I'm dead." Sergeant Metzler also heard the female say: "Kill me. Kill me." Though he could not see the female at this point, Sergeant Metzler heard Officer Ashe give the female commands, including a command to stay away from the gun. Sergeant Metzler could not see a gun, so he leaned towards Officer Ashe, who was on his left side, and observed a black revolver on the floor. At that point, Sergeant Metzler ordered the K-9 into the house. Sergeant Metzler first observed the female as she was leaning forward and going for the revolver. The female then disappeared around a corner with the gun. Sergeant Metzler heard a gunshot and realized it was not a gunshot from any of the SWAT rifles, because they all had sound suppressors on them. Sergeant Metzler heard a second, unsuppressed, gunshot and saw Officer Ashe buckle and heard him say, "Oh shit!" At that point, Sergeant Metzler realized that Officer Ashe had been shot. Officer Metzler moved between Officer Ashe and the incoming bullets. He took his rifle off safety and pulled the trigger. Officer Metzler, believing that his SWAT rifle had failed to fire, transitioned to his 9-millimeter semi-automatic pistol, and returned fire towards the female suspect. Sergeant Metzler heard a third unsuppressed gunshot from the female suspect but could not determine where that gunshot was aimed. Sergeant Metzler stated he observed Officer Grashorn returning fire towards the female suspect. Sergeant Metzler stated the police ceased firing once the threat to the officers ended. The female suspect was then secured with handcuffs.

Officer Grashorn, a five-year veteran of LPD, was the third involved officer. He was interviewed and stated that when the SWAT team reached the front door, Officer Ashe began knocking and pounding on the door yelling "Police! Come to the door!" multiple times. After no response, Officer Metzler gave him permission to breach the door. Officer Grashorn stated he was on the left side of the door behind Officer Ashe. He heard Officer Ashe give commands "Let me see your hands! Put your hands up!" Officer Grashorn described seeing the female crouched near an ottoman, not showing her hands. As she kept her hands down, he described Officer Ashe pleading with the female, "Don't grab that gun! Don't get that gun! Please don't get that gun!" Officer Grashorn then heard a gunshot coming from inside the house. He looked up at the suspect and saw a gun out of the corner of his eye. He could see something was happening with Officer Ashe. He was not sure if he had been hit, but he knew he was not engaged in the gunfire. Officer Grashorn then began shooting multiple times at the suspect to stop the threat. Officer Grashorn remembered seeing the female suspect pointing the black revolver at Officer Ashe.

Other than the shots fired at Loveland police officers by the female suspect, CIRT investigators were able to determine that only Officer Ashe, Sergeant Metzler and Officer Grashorn fired their weapons during this event.

The female suspect was later identified as Tammy Pierce. The Larimer County Coroner conducted an autopsy and determined that Ms. Pierce died as a result of multiple gunshot wounds. The black revolver that Ms. Pierce used to shoot Officer Ashe in the head was determined to be a .38 caliber. None of the police weapons used during this incident were .38 caliber.

The deceased male located in the garage was identified as Samuel Thomas Harding, the husband of Tammy Pierce. The Larimer County Coroner performed an autopsy of Samuel Thomas Harding and determined that Mr. Harding died as a result of multiple gunshot wounds. The

manner of death was ruled a homicide. During the autopsy, .38 caliber bullets were recovered. Those .38 caliber bullets are consistent with the .38 caliber revolver recovered from the residence, consistent with several other spent projectiles recovered from the immediate crime scene believed to have been fired by Ms. Pierce at Officer Ashe and the other SWAT officers, and consistent with other unfired .38 caliber ammunition found inside of 3376 Cuchara Court.

Based on these findings as well as several messages Tammy Pierce sent to family members, it was the conclusion of the CIRT investigation that Samuel Thomas Harding was shot and killed by Tammy Pierce using the .38 caliber revolver sometime between November 6th and November 8th of 2019.

Based upon the totality of the evidence, I find that Ms. Tammy Pierce committed the only criminal offenses during this incident. Had she survived, enough evidence exists to have charged Ms. Pierce with multiple felony offenses, including First Degree Murder, multiple counts of Attempted First-Degree Murder and multiple counts of Felony Menacing with a Deadly Weapon.

I further find the lethal force used by Officers Ashe, Officer Grashorn and Sgt. Metzler was justified pursuant to section 18-1-704, C.R.S. All three officers indicated that they were in fear for their own life and lives of their fellow officers. Less lethal force was attempted to prevent Tammy Pierce from grabbing the .38 caliber revolver that she had previously used to murder Samuel Harding. Nevertheless, Ms. Pierce gained control of that .38 caliber and deliberately fired that weapon at the police from mere feet away, striking Officer Ashe in his ballistic helmet. The officer's decision to fire their weapons in self-defense was legal, necessary, and appropriate.

Respectfully,



Clifford E. Riedel  
District Attorney