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May 14, 2018

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

Re: LCSO 18-2735

Dear Chief Jones:

The criminal investigation surrounding the March 29, 2018 arrest of Natasha Patnode has been completed and submitted to my office for an opinion. In order to avoid any appearance of impropriety, Fort Collins Police Services requested that the Larimer County Sheriff's Office investigate whether the use of force employed by FCPS Officer Todd Hopkins was justified pursuant to Colorado state statutes.

In determining whether the degree of force used by Officer Hopkins was legally justifiable, my review is based on whether the following Colorado statutes involving the use of force were 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.*

Section 18-1-707 of the Colorado Revised Statutes provides:

- (1) ... a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:*
- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or*
 - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.*

The following is a summary of the facts in this case.

On March 29, 2018, Target Loss Prevention Officer, Nicholas Leibold, observed Natasha Patnode shoplifting merchandise from the Target Store located on Troutman Parkway in Fort Collins. Loss Prevention Officer Leibold attempted to detain Ms. Patnode as she left the store without paying for the items she had taken. Ms. Patnode began to run from Loss Prevention Officer Leibold to avoid apprehension. Following a brief chase, Loss Prevention Officer Leibold, who had repeatedly identified himself as Target Security, was able to grab Ms. Patnode. Ms. Patnode immediately began physically resisting in an attempt to escape. As Loss Prevention Officer Leibold moved Ms. Patnode into the loss prevention office, Ms. Patnode continued to physically resist. Loss Prevention Officer Leibold also attempted to handcuff Ms. Patnode, but was only able to attach one of the handcuffs due to Ms. Patnode's resistance.

Assistant Target Store Manager, Michael Whitrock, began monitoring store security cameras so that Loss Security Officer Leibold could contact Ms. Patnode as she left the store. Mr. Whitrock stated that Ms. Patnode began fighting immediately upon being detained by Loss Prevention Officer Leibold. Mr. Whitrock observed that Loss Prevention Officer Leibold was unable to fully handcuff Ms. Patnode due to her active physical resistance. Mr. Whitrock also observed, via security cameras, a male accomplice in the parking lot who attempted to pick up Ms. Patnode when she exited the store. Mr. Whitrock placed a 911 call to Fort Collins Police Services advising them that Target security officers were dealing with a physically resistive subject. Mr. Whitrock also continued to monitor the male accomplice's movements outside of the store.

Officer Todd Hopkins was off-duty, heading home, after completing his tour of duty. During his shift, Officer Hopkins dealt with a suicidal subject who threatened to hurt Officer Hopkins as well as other officers. This subject actively resisted arrest and kicked out a window of Officer Hopkins' patrol car. One of Officer Hopkins' last calls, before ending his shift dealt with a transient person who was threatening people with a small hatchet. At the end of his shift, Officer Hopkins placed his body-worn camera in a charging stand at the station which is standard procedure. Officer Hopkins then proceed home, southbound on College Avenue.

As Officer Hopkins was approaching Horsetooth and College, he heard on his police radio that the Target security officers were in a physical struggle with an alleged shoplifter. Officer Hopkins was the closest officer to the scene, so he responded to assist until other on-duty officers could arrive. Officer Hopkins was still in full FCPS uniform, minus his body camera, which was re-charging at the station. Officer Hopkins entered the Target store and proceeded down a short hallway to the Loss Prevention Office. When Officer Hopkins arrived at the Loss Prevention Office, Ms. Patnode was still physically resisting Loss Prevention Officer Leibold at the entrance to the office. Ms. Patnode had one handcuff attached to her wrist with the other handcuff dangling. At this point, Ms. Patnode had been engaged in a physical struggle with store personnel for over two and a half minutes.

Officer Hopkins stated that as he was approaching Ms. Patnode, who was physically resisting with the loss prevention officer, he announced "Fort Collins Police. You're under arrest."

Officer Hopkins stated he grabbed Ms. Patnode's wrist and elbow in an escort hold. Officer Hopkins noted that Ms. Patnode appeared to be wearing multiple layers of clothing, which diminished the efficiency of his escort hold. Ms. Patnode immediately pulled away from Officer Hopkins. In an effort to secure Ms. Patnode and to protect the store security officer, Officer Hopkins stated he grabbed Ms. Patnode's collar area with one hand and her arm with the other and took Ms. Patnode to the ground. Ms. Patnode continued to resist, so Officer Hopkins deployed his OC spray in an attempt to subdue Ms. Patnode.

Officer Hopkins noted that Ms. Patnode had a black purse in her possession and saw Ms. Patnode thrust her un-handcuffed hand into the purse. Officer Hopkins had no idea what was in the purse and was concerned that it may contain a weapon. In today's society, Officer Hopkins' concern that a shoplifter may be in possession of a weapon is a sad reality. On April 26, 2018, a Dallas police officer was shot and killed and a second police officer and a Home Depot loss prevention officer were shot and critically injured by a shoplifter who was attempting to avoid arrest. The investigation reveals that Officer Hopkins had a sincere belief that Ms. Patnode may have a weapon in her purse. Indeed, during Ms. Patnode's interview with Lieutenant, John Feyen, the Larimer County Sheriff's Office's lead investigator, Ms. Patnode stated that she knew the officer thought she had a weapon.

The purse and Ms. Patnode's free hand were under her body as she was lying on the floor. Ms. Patnode ignored repeated demands that she bring her hand out from underneath her. Ms. Patnode claimed that she was unable to free her hand due to the position of her body and the officer's position. Officer Hopkins stated that Ms. Patnode was actively preventing him from gaining control the hand which was hidden from his view under her body. Both Loss Prevention Officer Leibold and Mr. Whitrock stated that Ms. Patnode could have removed her hand as directed by Officer Hopkins. Target security video also documents that Ms. Patnode was actively resisting Officer Hopkins' attempts to gain control of her free hand.

A review of the security footage from the Target store shows that Officer Hopkins used an escalation of force in an attempt to gain access to Ms. Patnode's free hand. For over five minutes, Officer Hopkins physical struggled with Ms. Patnode in an effort to gain control of her hand which the suspect repeatedly refused to bring out from underneath her. Officer Hopkins was using one of his hands to control the right arm of the suspect so that she could not swing the handcuffs which were dangling from it. Therefore, Officer Hopkins only had one of his hands available in his attempts to gain control of the hand that Ms. Patnode was hiding under her body. To that end, Officer Hopkins utilized closed hand strikes to Ms. Patnode's arm and leg area in an attempt to have the suspect comply with Officer Hopkins' commands to remove her hand from underneath her. Due to the layers of clothing that Ms. Patnode was wearing, those strikes were unsuccessful. Officer Hopkins then utilized his expandable police baton to strike the arm and leg areas of Ms. Patnode. While disturbing to watch, it should be noted that Ms. Patnode repeatedly ignored commands, refused to remove her hand from underneath her, and refused to surrender the purse, which was also underneath her. Those actions by Ms. Patnode only reinforced Officer Hopkins' concerns that the suspect may have a weapon of some type in her purse.

After five minutes of physical struggle with Ms. Patnode, FCPD Officer Mike Natalzia, who was wearing a police issued body camera, finally arrived to assist Officer Hopkins. Review of that

officer's body camera video confirms that Ms. Patnode continued to refuse commands to remove her free hand from under her body. Ultimately, the officers had to utilize a Taser before they were able to finally remove Ms. Patnode's free hand and purse out from under her body. The officers were then able to fully handcuff Ms. Patnode. Even with both hands handcuffed, the body camera shows Ms. Patnode grabbing her purse again.

Ms. Patnode told Lt. Feyen that Officer Hopkins slammed her head into the wall immediately upon his arrival, and that after that she went into "straight rage mode" and did not remember much else of what happened. A review of the Target security video documents that Officer Hopkins never slammed Ms. Patnode's head into the wall. Similarly, Officer Hopkins never struck any blows to Ms. Patnode's head area in his attempts to gain control her free hand. Despite the prolonged struggle to get control of Ms. Patnode's free hand, Ms. Patnode only sustained bruising from the various strikes utilized by Officer Hopkins. Fort Collins Police Services had Ms. Patnode examined at the hospital prior to her transport to the Larimer County Jail. When asked by medical personnel how she got injured, Ms. Patnode stated she was "fighting with a cop."

Less than two weeks after Ms. Patnode's arrest by Officer Hopkins, Ms. Patnode allegedly was involved in two high speed chases with authorities up in Wyoming. During Ms. Patnode's arrest, following the second high speed chase, Ms. Patnode allegedly fought with officers and refused to produce her hands for cuffing. Authorities in Wyoming allege that Ms. Patnode placed her hands under her body, refused to bring them out, which prompted Wyoming law enforcement personnel to utilize body strikes to gain compliance. In essence, Ms. Patnode is alleged to have engaged in the exact same type of behavior with law enforcement officers in Wyoming that she engaged in during her arrest by Officer Hopkins.

A review of the Target security tape and Officer Natalzia's body-cam video clearly show that Officer Hopkins employed physical force against Ms. Patnode. Officer Hopkins used verbal commands, physical contact, OC spray, closed hand strikes, baton strikes and eventually, a Taser in his attempts to gain control of Ms. Patnode's hand. Tactical decisions made by Officer Hopkins are an administrative matter to be reviewed by Fort Collins Police Services.

Pursuant to Colorado statutes, Officer Hopkins can utilize reasonable and appropriate force in effecting the arrest of a suspect. Additionally, C.R.S. 18-1-704(1) provides that Officer Hopkins "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." If Officer Hopkins were criminally charged with assaulting Ms. Patnode, the People would have to prove to a jury, beyond a reasonable doubt, that Officer Hopkins knew that his use of force was unnecessary and unreasonable. That is a burden of proof that the People do not believe they can sustain.

Ms. Patnode repeatedly refused to pull her free hand out from under her body and away from the purse that she was also hiding under her body. In today's society, it was not unreasonable for Officer Hopkins to be concerned that Ms. Patnode may have a weapon in that purse, which she could access unless both of her hands were properly handcuffed. Ms. Patnode's purse could

Chief Terry Jones

Page 5

reasonably hold any number of weapons such as a gun, a knife, or a dirty syringe just to name a few. Ms. Patnode's claims that she could not physically remove her hand due to the manner in which Officer Hopkins was restraining her to the ground is contradicted by the video, witness accounts, and the fact that she also is alleged to have engaged in similar conduct during an arrest in Wyoming less than two weeks later. Therefore, I find that criminal charges against Officer Hopkins are not sustainable.

Ms. Patnode, who is facing misdemeanor charges of Theft, Resisting Arrest, Obstructing Police, and Third Degree Assault, is presumed to be innocent of all charges until and unless the People can prove those charges beyond a reasonable doubt in a court of law.

Respectfully,

Clifford E. Riedel
District Attorney