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May 24, 2019

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

Re: Opinion concerning— LCSO# 19-3604, FCPS # 19-6135, CSUPD #19-619, WPD # 19-8281 and LPD# 19-3494

Dear Chief Ticer:

The criminal investigation surrounding the April 29, 2019 shooting of Gavin David Gamez 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 Officer Paul Ashe 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 Department led the CIRT team during this incident. Members of the CIRT team included personnel from the Larimer County Sheriff's Department, Fort Collins Police Services, Colorado State University Police Department, Windsor Police Department, the District Attorney's Office for the Eighth Judicial District, and the 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 Officer Ashe 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.*

The following is a summary of the facts in this case as established by the above sources of information:

On April 29, 2019, at approximately 4:41 p.m., Loveland Police Department 911 operators received two 911 calls regarding a robbery that had just been committed at the Subway Restaurant ("Subway") located at 256 East 29<sup>th</sup> Street. The callers were both Subway employees who stated they were robbed at gunpoint by a Hispanic male in a white hoodie with a black gun. The callers stated the suspect fled the store running east.

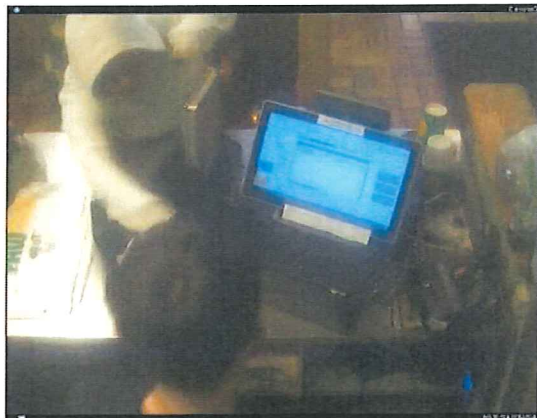
Based on the 911 calls, patrol officers were dispatched to 256 East 29<sup>th</sup> Street, Subway. The officers were aird information that the suspect with the gun had just left the restaurant running eastbound and was described as a Hispanic male, wearing a white hoodie and sunglasses. Officers were told the suspect had a small black gun.

Officers Paul Ashe, Tim Yunger and Zach Merson were en-route to the east side of the Subway. At 4:50 p.m., Officer Yunger spotted and aird that the suspect was running east behind the Conrad Ball Middle School. Hearing that information, Officer Ashe went to the Conrad Ball Middle School overflow parking lot. As Officer Ashe got out of his vehicle, he noticed Officer Yunger in the parking lot of 2890 North Monroe Avenue. Officer Ashe then saw the suspect pointing a gun at the SUV belonging to another officer. Officer Ashe commanded, "Stop, police!" The suspect turned to look at Officer Ashe and began pointing the gun in his direction. Officer Ashe shot his 9-millimeter Glock handgun one time. The suspect fell to the ground. The suspect was then handcuffed, and officers began to render aid to the suspect until emergency medical services arrived. The suspect was transported to the Medical Center of the Rockies with a single gunshot wound to the upper right chest. The suspect survived his injuries and was later identified as Gavin David Gamez.

Throughout the investigation, the CIRT team conducted many interviews and collected evidence at both the scene of the robbery and the scene of the shooting. Below is a summary of information collected.

The five employees from Subway present during the robbery were interviewed. Four of the five employees were behind the counter when Mr. Gamez came in and approached them demanding the register be opened. In the surveillance footage, Mr. Gamez can be seen pointing the gun, hidden in the sleeve of his sweatshirt, and demanding the money at the register. (*See still shot below.*) All five employees reported him yelling and swearing while demanding the contents of the register. Mr. Gamez became frustrated and began to aggressively try to take the computer register off the counter. He continued to point the gun at all four employees behind the counter. The register and the change machine both fell to the floor. (*See photo below.*) Mr. Gamez then picked up the change machine and ran out the door, pointing the gun at the fifth employee sitting in the customer section as he left. The employees reported being alarmed and frightened and

promptly called 911 to report the armed robbery.



Video footage was collected from various establishments that show the path travelled by Mr. Gamez after he left Subway. Surveillance from the Thompson Valley School District Service Center shows Mr. Gamez aggressively pointing a gun in the direction of the police SUV cruiser that Officer Merson was driving. The footage then shows Mr. Gamez turn in the direction of where Officer Ashe was located and pointing the gun in his direction. Mr. Gamez then falls to the ground after being struck by a single bullet fired by Officer Ashe.

Trina Whiting, an eye witness, was interviewed and indicated she was leaving work around the time of the shooting. She saw a man in a white, long-sleeved shirt and jeans with his back to her. She saw an officer in the upper parking lot and an officer to the right of her. She heard both officers yell "Drop the gun!" three to four times. She then saw the officer in the upper parking lot discharge his weapon and believed the officer to her right also discharged his weapon.

Mr. Gamez was taken to the Medical Center of the Rockies to be treated for a single, non-fatal gunshot wound to the right upper chest. He survived his injuries and was eventually released to the Larimer County Detention Center pending investigation of charges.

While at the hospital, Mr. Gamez made statements to hospital staff. He indicated he had been diagnosed with mental health issues in the past and he had not taken his medicine in the past two days. He indicated he currently was hearing voices and reported having hallucinations every day. He told staff, "I aimed at the officer, that's how I got shot. Just kind of a suicidal thing." He further told staff it was a fake gun, a squirt gun painted black. He indicated, "I just want to keep lashing out."

At the hospital, photographs were taken by law enforcement of his right hand that appeared to have black paint transfer on it. (See picture below.)



Officers Ashe, Yunger and Merson, who were at the scene at the time of the shooting, were interviewed.

Officer Yunger relayed that upon hearing the robbery call from dispatch, he put himself en-route to the initial scene at the Subway at 256 East 29<sup>th</sup> Street. He was given the description of the suspect. He learned through other officers over the radio that the suspect was running near Conrad Ball Middle School. He saw a man matching the description near the Thompson Valley School District Building. He described the man “bolting” after seeing him. Officer Yunger pulled east of the school district building and got out of his vehicle.

Officer Yunger began to follow the man on foot and realized that Officer Merson was now present in the Conrad Ball Middle School overflow parking lot. Officer Yunger had his handgun drawn and Officer Merson had his shotgun. Officer Yunger saw the suspect point his gun to his left out of his view. Officer Yunger then saw Officer Ashe to the left and the suspect was aiming at Officer Ashe. Officer Yunger saw the suspect then point the gun back to the right, directly at Officer Merson, and then point the gun back to the left once again. Officer Yunger was unable to take a shot at the armed suspect due to the location of Officer Merson and the possibility Officer Merson could be harmed by the crossfire. Officer Yunger then moved out of the way of Officer Merson’s line of fire. Officer Yunger heard a pop, but he was not sure whether Officer Ashe or Officer Merson had fired. After the shot, Officer Yunger saw the suspect’s gun on the ground and then holstered his own and approached with Officer Ashe to handcuff the suspect. Officer Yunger then began to perform life saving measures on the suspect until emergency personnel arrived.

Officer Yunger stated that if the suspect had not been shot, Officer Yunger believed the suspect would have shot Officer Merson or Officer Ashe. He also said if Officer Merson had not been where he was standing, he would have taken the shot. He said he saw “two officers’ lives in jeopardy”.

Officer Merson stated in his interview that he heard the call air about a robbery. He was given a description of the suspect over the radio. When he was northbound on Monroe Avenue, Officer Merson looked right and saw the suspect male in the parking lot of the Thompson Valley School

District. Officer Merson then jumped the curb and entered the Conrad Ball Middle School overflow parking and immediately turned his vehicle in the direction of the suspect, who was in the lower parking lot. The suspect got into a shooting stance, pointing a black handgun directly at him. Officer Merson reported that he thought he was about to get shot, so he put his patrol car in park. He then slid down in his seat to avoid being hit by any bullets and went to retrieve his patrol rifle. Officer Merson reported he believed that at any moment, shots were going to be hitting his patrol car and he was going to take at least one round by the suspect.

While he was charging his rifle and sliding out of his car, Officer Merson lost sight of the suspect. Officer Merson then saw Officer Ashe in the upper parking lot and saw him approaching the area where he had last seen the suspect. He reported hearing Officer Ashe giving commands to the suspect to stay on the ground. He then saw Officer Yunger approach from the parking lot where the suspect had just come from and saw him link up with Officer Ashe. Officer Merson reported seeing the suspect's gun on the ground about five feet from where the suspect was laying. Officer Merson reported he did not see the shooting.

Officer Ashe stated that he began to set up a perimeter to the east at the 2700 block of N. Monroe Avenue. He then re-positioned himself to the north side of the parking lot at Conrad Ball Middle School, when he learned through another officer that the suspect was running on the east side of the school in the field. Officer Yunger then aired that the suspect was westbound in the fenced area of the administration building at the Thompson Valley School District.

Officer Ashe said he got out of his marked patrol car and saw the suspect to the west of him. He saw the male suspect in a shooting stance, pointing a small black handgun at a marked SUV patrol vehicle with its lights on. Officer Ashe described the gun he saw Mr. Gamez point at Officer Merson and himself as a small black pistol with a really small caliber, similar to a sub-compact pistol. He compared it to a Ruger LCP .380 pistol. A small green water pistol that had been painted black was located a few feet from Mr. Gamez's body after he was shot. *(See below the actual weapon at the scene on the left and a picture of a Ruger LCP .380 pistol on the right).*



Officer Ashe stated, "I was afraid he was going to shoot that officer. At that time I feared for that officer's life and I knew I had to do something." He then drew his service weapon and yelled the command of "Stop! Police!" When he gave those commands, the suspect turned his attention to Officer Ashe and pointed the gun directly at him. Officer Ashe said he feared for his own life and shot one time to stop the threat. The suspect fell to the ground. Officer Ashe reported when the suspect was on the ground, the black gun dropped, but he could not see the suspect's hands. Then Officer Yunger and Officer Ashe approached the suspect on the ground and placed him in handcuffs.

Officer Ashe's gun was a Glock Model G17 (9mm) handgun with a magazine that has a capacity of 17 rounds. Upon examination, there was a round in the chamber and 16 rounds in the magazine. The gun was deemed fully functional.

Based upon the totality of the evidence beginning with the incident that occurred at Subway and ending with the shooting at the Thompson Valley School District Parking lot, I find that Gavin David Gamez committed the only criminal offenses during this incident. He has since been charged in case number 2019CR1066 with multiple felony offenses; Aggravated Robbery, 18-4-302(1)(d) C.R.S. and six counts of Felony Menacing, 18-3-206(1)(a)(b). Mr. Gamez is presumed innocent of all charges until and unless the People can prove those charges beyond a reasonable doubt in a court of law.

I further find the non-lethal force used by Officer Ashe was justified pursuant to section 18-1-704, C.R.S. Officer Ashe believed that his life and the lives of his co-workers, specifically Officer Merson, were at risk and appropriately fired his duty weapon a single time to stop the immediate threat. I find that the degree of force used by Officer Ashe was legally justified.

Respectfully,



Clifford E. Riedel  
District Attorney