



**Weld County  
District Attorney's Office  
Nineteenth Judicial District**

**Kenneth R. Buck – District Attorney**

---

December 22, 2010

Chief Rick Brandt  
Evans Police Department  
1100 37<sup>th</sup> Street  
Evans, CO 80620

**RE: Investigation of the November 23, 2010, shooting of Rubeen Reyes on Coyote Lane,  
Evans, CO**

Dear Chief Brandt:

The investigation and legal analysis of the Rubeen Reyes shooting is complete, and pursuant to applicable Colorado law, I will not file criminal charges against the officer who fired his weapon in this incident. I have included a summary of the facts in this case and the relevant Colorado law in this letter. Within the summary of the investigation, references to specific times are taken from incident histories and dispatch recordings.

### **SUMMARY OF INVESTIGATION**

On November 23, 2010 at 9:37 a.m. the Fort Morgan Police Department received a report of a stolen vehicle from the Cargill parking lot. At 9:45 a.m., Officer Cory Cook contacted Ms. Amanda Rodriguez, the owner of the car. Ms. Rodriguez reported her boyfriend, Rubeen Reyes, had taken her car without permission. Ms. Rodriguez stated that Mr. Reyes had ripped the car keys out of her hands and then drove off in her vehicle. Ms. Rodriguez did not want to file a stolen vehicle complaint at that time, but simply wanted her car back. She also told Officer Cook that Mr. Reyes' driver's license was under suspension.

Officer Cook obtained the registration information on the vehicle which was a black 2006 Nissan Altima with Colorado tag 914UJY. Officer Cook requested that dispatch "BOLO" (Be on the lookout) the information on the car. He also asked dispatch to advise officers that the car was not stolen, but Mr. Reyes' driver's license was under suspension.

The Morgan County Dispatcher aired at 10:02 a.m. the BOLO as an attempt to locate an unauthorized driver who is also under revocation.

Officers received information from Ms. Rodriguez's mother, Cindy Perez, that Mr. Reyes had called the house and stated he was going to return the car and wanted to talk. At 10:09 a.m.

Post Office Box 1167 · 915 Tenth Street · Greeley, CO 80632 · (970) 356-4010 · FAX (970) 352-8023

**S E R V I C E**

Fort Morgan officers were parked in the area of Ms. Rodriguez's home, 1004 Ensign, Fort Morgan, when Mr. Reyes arrived at the house. The officers attempted contact with Mr. Reyes, but he fled in the vehicle as officers approached on foot. A short pursuit began, but was quickly cancelled by Officer Tim Malone because of his concern for public safety and the identity of the driver was known to be Mr. Reyes. During this short pursuit, Mr. Reyes drove through two yards and over some railroad ties in an effort to escape law enforcement.

Officer Cook contacted Ms. Rodriguez again and advised her that officers had been unsuccessful in contacting Mr. Reyes when he fled in her car. Ms. Rodriguez stated that she now wanted to file a stolen vehicle complaint. Ms. Perez was present while Officer Cook took the stolen vehicle report and offered information on Mr. Reyes. Ms. Perez reported that Mr. Reyes' grandmother had told her that Mr. Reyes was suicidal and had previously stated that he would rather die than go back to prison. Officer Cook updated this information to cars that were pursuing Mr. Reyes down Highway 34 toward Greeley. Officer Cook also advised Morgan County Dispatch that Ms. Rodriguez had changed her mind and wanted to press charges for Motor Vehicle Theft and to update the BOLO.

At 10:29 a.m. a Wiggins Police Officer spotted the vehicle traveling west on Highway 34 and Morgan County Road 4 and notified dispatch he was attempting to verify the plate on the car. Officer Cook, while speaking with Ms. Rodriguez and Ms. Perez, learned officers were pursuing Mr. Reyes west on Highway 34 and provided updated information to dispatch.

Officer Malone was contacted by Morgan County Communications Center and asked if he wanted Wiggins and Morgan County to continue the pursuit of the vehicle. Officer Malone advised the pursuing units over the radio it would be their call as to whether or not they continue the pursuit.

At 10:35 a.m., Morgan County dispatch contacted Weld County dispatch notifying them of the pursuit. They advised the pursuit was approaching 100 mph. Morgan County further advised the vehicle was stolen, the suspect driver was dangerous and possibly armed, but that was not known for sure. In fact, there was no evidence that Mr. Reyes was possibly armed.

At 10:36.40 a.m. a Weld County Dispatcher entered the call into the Computer Aided Dispatch (CAD) system as "Dangerous Possible Armed... High Speed Chase."

At 10:37:41 a.m. a Weld County Dispatcher updated the nature of the call to responding officers and deputies in the CAD system by indicating that the "suspect is armed and dangerous, armed robbery occurred in Morgan, speeds are 107 MPH."

At 10:37.42 Weld County Sheriff's Office Deputy Terry Reed was dispatched to assist in the pursuit, and Deputy Sam Brownlee was assigned as his backup deputy.

At 10:40 a.m. Colorado State Patrol dispatch advised Morgan County dispatch that troopers were heading toward the chase from both east and west Highway 34.

At 10:44 a.m. Deputies Reed and Brownlee arrived east of Kuner Feedlot to set up stop sticks, but Mr. Reyes had driven by before they could get set up. Deputies Reed and Brownlee began to pursue the stolen vehicle from that location.

At 10:46 a.m. State Patrol advised they set up stop sticks on Highway 34 at mile marker 120 and mile marker 114.

At 10:47.33 a.m. Weld County Sheriff's Commander Bill Spalding asked Weld dispatch what the suspect was supposed to be armed with. The dispatcher responded that he does not know. Morgan County dispatch, in response to Commander Spalding, advised that the party has spoken of suicide and that he did not want to go back to prison. Morgan County Dispatch also stated that at that time there was no information as to whether or with what Mr. Reyes was armed. Dispatch further stated that Mr. Reyes was affiliated with a gang. Commander Spalding then asked Morgan dispatcher if this is a suicide or armed robbery. The Morgan County dispatcher responded that this was a stolen vehicle out of Fort Morgan, but that Mr. Reyes, according to family members, had made suicidal comments that he did not want to go back to prison.

At 10:50.35 a.m. Mr. Reyes was able to avoid stop sticks placed on Highway 34 by crossing over the median into oncoming traffic and continued to elude officers by driving westbound in the eastbound lanes of Highway 34. As the pursuit entered the City of Greeley, Colorado State Patrol Troopers were ordered to no longer pursue out of concerns for public safety. At the same time, Greeley Police Department officers were ordered not to engage in the pursuit by the on-duty Sergeant. Mr. Reyes, still pursued by Weld County Deputies, continued his efforts to evade law enforcement. Once in the Cities of Greeley and Evans, Mr. Reyes took his efforts to flee to residential neighborhoods, past Farr Park and Jackson Elementary School at a high rate of speed. It was during this time, at 10:51.32 a.m. that Officer One began pursuing Mr. Reyes as well.

At 10:58.48 a.m. Officer One advised dispatch and other officers that the suspect vehicle stopped in 3200 block of Coyote Lane within the City of Evans. Deputy Reed, in the lead vehicle behind Mr. Reyes' car, pulled up to the location of the stopped vehicle on the passenger side and got out of his marked patrol unit. Deputy Reed walked to the front of the suspect vehicle with his gun drawn. Deputy Reed observed Mr. Reyes point his finger at him imitating a shooting action. Deputy Reed, using verbal commands, ordered Mr. Reyes to get out of the vehicle. As these verbal commands were being given, the horn on the suspect vehicle was blaring because of a malfunction to that vehicle. Additionally, air horns and sirens from the marked patrol units were activated and operational.

Officer One and Evans Police Officer Kauffman approached the suspect vehicle from the rear. Officer Kauffman armed himself with a shotgun. Officer One approached the driver's side of the vehicle and was armed with a Tazer and his duty firearm. Mr. Reyes opened the driver's door briefly but quickly closed and locked it upon seeing Officer One with a Tazer. Deputy Donnie Patch positioned himself near the driver's door with Officer One.

Deputy Patch and Deputy Reed then moved to the passenger side of the suspect vehicle while Officer One took a position at an angle off of the rear driver's side corner of the car. Deputy Reed opened the passenger door and the deputies begin shouting commands at Mr. Reyes. The suspect was seen concealing his right hand on his left side in a cross-draw position. Officers and deputies were shouting for Mr. Reyes to show his hands and to get out of the vehicle. The officers and deputies had their weapons drawn on Mr. Reyes while they issued the commands. Mr. Reyes was completely non-responsive to these commands.

Officer One joined Deputy Patch and Deputy Reed on the passenger side of the car. Officer One still had his Tazer in his hand. He stepped between Deputy Reed, who was on his right, and Deputy Patch, who was on his left, and announced he was going to use his Tazer. Officer One deployed his Tazer but it was ineffective against Mr. Reyes because of the baggy clothing that he was wearing.

After the Tazer was attempted, Mr. Reyes was seen slumping over to the passenger side seat and then lunged out of the passenger door and attacked the officers. Deputies Reed, Patch, and Brownlee all attempted to restrain Mr. Reyes. Officer One joined the deputies by lowering his shoulder and tackling Mr. Reyes to the ground. This action not only took Mr. Reyes to the ground but also all of the deputies and Officer One who fell to the ground in a pile.

Mr. Reyes landed face down on his stomach. Deputy Brownlee was described as lying on his right side next to Mr. Reyes. Deputy Reed was in a kneeling position at Mr. Reyes' left shoulder attempting to gain control of his left arm which was under Mr. Reyes' torso. Officer One was lying on top of Mr. Reyes' lower legs. Deputy Patch was described as lying across Mr. Reyes and Deputy Brownlee. Officer Kauffman, who had not joined the melee due to having a shotgun, had positioned himself at Mr. Reyes' feet and stepped on his ankle to immobilize it.

Officer One saw that Mr. Reyes' shirt had ridden up, exposing his lower back, and tried once again to deploy his Tazer by using a "drive stun" to the exposed area of skin. Deputy Reed, realizing the Tazer was being used, quickly released control of Mr. Reyes to avoid the effect of the stun. Officer One's other hand was still in contact with Mr. Reyes and he instantly felt the effect of the stun and released the trigger of the Tazer.

Deputy Patch observed Reyes' right hand draped around the waist of Deputy Brownlee as if he was reaching for Deputy Brownlee's holster. Deputy Patch immediately took control of Mr. Reyes' right hand and arm. As Deputy Patch grabbed Mr. Reyes' right hand Deputy Brownlee yelled two or three times "he's got my gun."

Deputy Patch, believing Deputy Brownlee was referring to the actions of Mr. Reyes' right hand, responded "he doesn't have your gun, I have his hand." Officer One also heard Deputy Brownlee yell "he's got my gun, he's got my gun." Officer Kauffman, still standing, stated that he heard three muffled shots but did not know where they came from. Officer Kauffman stated he wasn't even sure they were shots when he heard them. Officer Kauffman said he heard the shots and then saw Officer One immediately fire his gun into the back of Mr. Reyes.

Deputy Patch stated he heard the first shots and immediately saw Mr. Reyes had a gun in his left hand. Deputy Patch stated he grabbed for the gun and believes he yelled "shoot him." Deputy Patch said he was unable to get the gun from Mr. Reyes' hand. Deputy Patch said he heard more shots, and Mr. Reyes released the grip on the gun which allowed Deputy Patch to gain control of it and move away from the pile. It was later determined that the handgun Mr. Reyes used to shoot Deputy Brownlee was the .45 caliber Kimber handgun that Deputy Brownlee carried on duty.

Officer One stated shortly after Deputy Brownlee yelled "he's got my gun," he heard the shots and saw smoke rising from beneath Mr. Reyes and observed the gun. Officer One saw Deputy Brownlee had gone limp and immediately thought Mr. Reyes had just killed him. Officer One said he quickly fired three rounds into Mr. Reyes' back to stop him.

Deputies Patch and Reed immediately began performing CPR on Deputy Brownlee. Officer One and Officer Kauffman maintained watch over Mr. Reyes with their weapons pointed at him.

Greeley Police Officer Dan Czapenski, while in his patrol car and just entering the subdivision, heard over the radio "shots fired" and "Code 5." (Code 5 is a request for immediate assistance, officer in trouble.) Officer Czapenski arrived on scene and observed deputies

performing CPR on Deputy Brownlee. He saw Mr. Reyes lying in a pool of blood with two police officers standing guard over him. Officer Czapenski noticed that Mr. Reyes was not handcuffed so he immediately handcuffed him with the assistance of Officer Kauffman.

Both Deputy Brownlee and Mr. Reyes were transported to North Colorado Medical Center by Weld County Ambulance.

Deputy Brownlee suffered one gunshot wound to his right hand. Two additional rounds struck Deputy Brownlee in the left chest. The body armor worn by Deputy Brownlee captured one round. The second round also struck the body armor but appears to have been deflected by Deputy Brownlee's badge. This round appears to have followed the contour of the vest and then exited the vest before entering Deputy Brownlee's face resulting in the fatal wound. Examination of Deputy Brownlee's uniform shirt revealed the gun was fired within close proximity. Gunpowder was seen at the entry points of the shirt.

Mr. Reyes suffered three gunshot wounds to the lower torso. These wounds were along the waistline of his right side and are characteristic of contact or near contact wounds.

The crime scene was processed by Crime Scene Investigators. Six Winchester .45 caliber spent shell casings were recovered on scene. All six are in close proximity to the area where Deputy Brownlee and Mr. Reyes were shot. The caliber of the rounds is consistent with the semi-automatic handguns of Deputy Brownlee and Officer One.

## LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. As the evidence establishes that Mr. Reyes was shot and killed by Officer One, the determination whether his conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707(2)(a) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary...to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

Section 18-1-901(2)(d) of the Colorado Revised Statutes defines the term "Deadly Physical Force" as follows:

(2)(d) "**Deadly Physical Force**" means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

In this case, the officers were attempting to contact Mr. Reyes for purposes of conducting an investigation into the allegations of a domestic violence altercation, a motor vehicle theft, and a felony vehicular eluding in the late morning hours of November 23, 2010. Despite the efforts of multiple law enforcement agencies to stop the vehicle being driven by Mr. Reyes, and despite the verbal commands of officers and deputies to get Mr. Reyes out of the vehicle in a safe manner, Mr. Reyes continued his belligerent and evasive actions. Further, once being removed from the car, being subjected to multiple shocks from a Tazer, and being tackled to the ground by officers and deputies, Mr. Reyes was able to disarm Deputy Brownlee and use that firearm to shoot Deputy Brownlee three times, fatally injuring him. Officer One reasonably believed at that time, based on all of the surrounding facts and circumstances known to him that he and other officers and deputies continued to be in imminent danger of death or serious bodily injury. In fact, it would have been unreasonable for Officer One to believe otherwise and place himself, the other officers and deputies, and the public at large in significant risk.

Mr. Reyes would have also reasonably known that the individuals surrounding his vehicle were police officers. Mr. Reyes made every possible effort to avoid apprehension by numerous police officers, in both marked and unmarked vehicles during a chase which lasted 31 minutes and covered nearly 43 miles.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officer One was justified in using lethal force against Mr. Reyes because he reasonably believed that it was necessary to defend himself and/or others from Mr. Reyes' use and continued threatened use of deadly physical force.

### **CONCLUSION**

Under C.R.S. 18-1-707(1)(b), the officer's actions in this situation were justified and authorized by law in order to defend and protect himself and others from the volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file any charges against Officer One for the use of physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck  
District Attorney

cc:

Lyle Achziger, Mayor, City of Evans  
Aden Hogan, Jr., Evans City Manager  
Russ Anson, Evans City Attorney