



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

**Kenneth R. Buck – District Attorney
Michael J. Rourke - Asst. District Attorney**

October 11, 2013

Chief Jerry Garner
Greeley Police Department
2875 W. 10th Street
Greeley, CO 80634

**RE: Investigation of the shooting of Kelly
Lynn Ryan at 609 8th Ave, #304 Greeley,
Colorado**

Dear Chief Garner:

The investigation and legal analysis of the Kelly Lynn Ryan 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.

SUMMARY OF INVESTIGATION

On September 12, 2013 at approximately 10:40 a.m., the Greeley Police Department Dispatch center received a call that a Kelly Lynn Ryan had active warrants for his arrest, was high on methamphetamines, and was located in “the tallest building by the Greeley Tribune by the library.” Officers Zakavec and Roush responded to the area, and identified the Oasis Towers building located at 609 8th Avenue as the only tall building in the vicinity. Officer Roush provided a description of Ryan to the building manager. The building manager believed that an individual fitting that description had been seen coming and going from apartment #304. Attempts to locate Ryan at apartment #304 were unsuccessful.

At 1:30 p.m. that same afternoon, the Greeley Police Department received a follow-up phone call from the Building Manager at the Oasis Towers indicating that Ryan had returned to the building. Officers Zakavec, Weeks and Law responded to apartment #304, knocked on the door and announced their presence. In response, Ryan told officers that he was “strapped” (indicating he had a firearm) and threatened to shoot. Upon hearing this, additional officers responded to the Oasis Towers to assist. Within minutes, Officer Zakavec reported to dispatch that he heard what he believed to be two gunshots coming from inside apartment #304. Officer Weeks also heard two loud bangs, but believed that an occupant of the apartment was kicking the door. Ryan continued to yell at officers, and appeared to become more agitated as officers attempted to negotiate his exit from the apartment. Ryan yelled on several occasions that he was armed and would shoot at officers.

Greeley Officers began setting up a perimeter around the building, with Officers Pfeiler, Corliss, Barber and Dice located at the southwest corner of 9th Avenue and 6th street. Each of these
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officers was dressed in standard Greeley Police Department patrol uniforms. Several of these officers were armed with long guns. The Watch Commander also paged out the SWAT team, which included a sniper team.

At approximately 4:20 p.m. officers outside of the building saw Ryan break the large exterior window which faced to the north, throwing out pieces of furniture and debris. Officer #1, who was the shooter on the SWAT sniper team, was positioned at 9th Avenue and 5th Street, and had a clear view of the north side of the Oasis Towers. Once the window was broken, Officer #1 had a clear view of Ryan inside of apartment #304. Within a few minutes of their arrival, Officer #1 saw Ryan pop up and down through the window, and appeared to be holding a black semi-automatic handgun. Ryan held the object with both hands, and extended the object in the direction of the officers staged at the southwest corner of 9th Street and 6th Avenue. Believing that Ryan was going to fire at the officers below, Officer #1 called out "I have a visual of a white male and he has a gun." Officer #1 fired one round from his .308 sniper rifle. Officer #1 saw Ryan fall backwards and get back up, so Officer #1 fired a second round.

When Ryan exited apartment #304, medical personnel described Ryan as having a high caliber injury to his left bicep, and bruising and bone fragments on the left side of his neck. Ryan was transported to North Colorado Medical Center for treatment.

Following the shooting, detectives from the Greeley Police Department interviewed several other occupants of the apartment who were present at the time of the shooting. Samantha Jackson stated that Ryan began barricading the front door to the apartment with a bicycle, furniture and mattresses after officers first announced their presence. She also heard Ryan make several statements to the officers that he was armed with a weapon, and if they tried to enter, he was going to shoot them. She did not recall seeing Ryan with a gun, nor was there a gun in the apartment that she was aware of.

John Thompson was also inside the apartment during this incident. He said that Ryan appeared to be "stressed out" and believed that the police were following him because of his outstanding warrants. Thompson stated that Ryan "didn't want to go to jail, but wanted to stay with his girlfriend." Thompson recalled seeing Ryan grab an item from the apartment and holding it so that it looked like a gun. Thompson however never saw a firearm in the apartment.

A search warrant was obtained for apartment #304, and was executed by crime scene investigators during the evening hours of September 12, 2013. Investigators saw numerous items of furniture, mattresses and a refrigerator had been pushed up against the front door to apartment #304. They also located several bullet holes and impact marks consistent with two rounds having been fired from the area where Officer #1 was located. A firearm was not found inside apartment #304.

Ryan remained at North Colorado Medical Center for several surgeries and treatment. On September 25, 2013, Ryan asked to speak to the lead investigator on this case. Detective Robert Cash interviewed him that same day. During the course of that interview, Ryan stated that he was aware on September 12, 2013 that there were active warrants for his arrest. He believed that they were for felony drug related behavior, and believed that he would be going to jail. Ryan recalled as he was barricading the door telling the officers outside that they would have to "bring in the task force" to remove him from the apartment.

Ryan also stated that he had injected methamphetamines via a syringe prior to the officers arriving at apartment #304: "I shot one of them (a syringe) up and I went to talk to them, and at that time I told them I had a gun." He later clarified that there was no gun inside the apartment. When asked about the two bangs heard by officers, he admitted that he was throwing items of broken furniture at the door out of frustration.

When asked if he recalled looking out the broken window at any time, Ryan stated that he was trying to figure out where the officers were. He told Detective Cash “I saw them down there on the corner of the street with rifles.” He then clarified that he was looking at the corner of 9th Street and 6th Avenue. Ryan said that he held a case that contained his drugs and needles in his hands, and “I guess it could be considered a firearm. I could have been simulating a gun towards them, or I couldn’t have been, I was really high, I probably did do that.” When asked if his actions were intended to result in “suicide by cop,” Ryan said “Yeah, was I thinkin’ that that day? Yeah, I was.”

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 assault or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified. As the evidence establishes that Mr. Ryan was shot by Officer #1, the determination whether his conduct was criminal is primarily a question of legal justification.

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

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...to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force.

Also pertinent to the facts and circumstances of this case is Section 18-3-206 (1)(b), Menacing, of the Colorado Revised Statutes, which reads as follows:

- (1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury:
 - (b) By the person representing verbally or otherwise that he or she is armed with a deadly weapon.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term “Deadly weapon” as follows:

(2)(e) “**Deadly Weapon**” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

In this case, the Greeley Police Officers attempted to contact Kelly Ryan for purposes of acting on several outstanding warrants for Ryan’s arrest. In response to these attempts to contact and arrest Ryan, he repeatedly indicated that he was armed with a firearm, and would shoot the officers if they came inside the apartment. Ryan then became agitated, broke out a window to the apartment, and held

an object which could reasonably appear to be a firearm, and pointed that object at four Greeley Patrol officers located at street level. Officer #1 reasonably believed at that time, based on all of the surrounding facts and circumstances known to him, including the previous statements of Ryan, that he or other officers were in imminent danger of death or serious bodily injury.

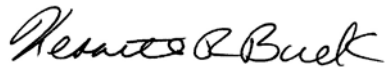
There is no doubt Ryan knew that these individuals were police officers because they clearly identified themselves, and following the shooting, Ryan admitted to Detective Cash that he knew the officers were both outside his apartment door as well as on the street outside the Oasis Towers.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officer One #1 was justified in using force against Kelly Ryan because he reasonably believed that it was necessary to defend himself and others from Mr. Ryan's threatened use of what reasonably appeared to be 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 potentially volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file any charges against Officer #1 for the use of physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kenneth R. Buck". The signature is written in a cursive style with a large, prominent initial "K".

Kenneth R. Buck
Weld County District Attorney