



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

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

December 18, 2013

Sheriff John Cooke
Weld County Sheriff's Office
1950 O Street
Greeley, CO 80631

**RE: Investigation of the shooting involving
Jeffrey Plahn at 961 Dove Hill Road, LaSalle,
Colorado**

Dear Sheriff Cooke:

The investigation and legal analysis of the Jeffrey Plahn shooting is complete, and pursuant to applicable Colorado law, I will not file criminal charges against the deputies who fired their weapons 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 October 12, 2013 at approximately 10:26 p.m., the Weld County Dispatch center received a call that Jeffrey Plahn had threatened to commit suicide and had sent the reporting party various text messages stating he was going to “pull the trigger and kill himself.” He also sent to her a picture message of a .44 Magnum Revolver. Officers from the LaSalle Police Department, the Evans Police Department and the Weld County Sheriff's Office responded.

When officers and deputies arrived at the home, they encountered Mr. Plahn's father, who opened the front door for them. As officers stepped inside the home, Mr. Plahn ran upstairs to the second floor landing area. Officer Charles Lindsey of the LaSalle Police Department recognized Mr. Plahn as being an employee of the Valero gas station in town, and began talking with Mr. Plahn to try and control the situation. Mr. Plahn was seen to have “jerky movements,” was holding a bottle of alcohol in one hand and had a silver colored object tucked under his arm. The officers and deputies, while standing at the bottom of the stairs, identified themselves as police officers, and had their firearms aimed at Mr. Plahn. Officers were also giving him commands to show them his hands. In response, Mr. Plahn pointed the silver colored revolver at officers and then retreated into an upstairs bedroom.

The officers and deputies pulled out of the house and set up at positions of cover behind police vehicles parked in the street in front of the home. Officer Lange of the Evans Police Department took up a position outside the home where he could see into the interior of the home. At approximately 11:40 p.m., Officer Lange observed Mr. Plahn discharge the handgun in a downward direction, causing Officer Lange to believe that it was an accidental discharge. Moments later, Officer Lange observed

Mr. Plahn point the handgun down the stairs at the front door where officers and deputies previously were positioned, and fire one round.

At 11:55 p.m., the Weld County SWAT Team was paged to the scene. Negotiators were able to make intermittent contact with Mr. Plahn by telephone. Mr. Plahn told Deputy Chapman that he just wanted to see his girlfriend one last time, that he wanted to talk to her and that this would all end, and repeatedly stated that he wanted to kill himself. He also asked Dep. Chapman “What if I come out shootin’, will you shoot me?”

As the SWAT Team arrived on scene, several officers and deputies utilized patrol cars which were parked in front of the residence as cover. Specifically, Deputy Tanner was positioned at the front passenger door of a patrol car, and Deputy Graves was positioned at the driver’s side of the same car. Both Deputies were armed with their SWAT rifles. At 2:31 a.m., Mr. Plahn opened a door on the south side of the home which led into the garage, stuck his hand out the door, pointed the handgun at the deputies, and fired one round. In response, Deputy Tanner fired between 4 and 6 rounds at Mr. Plahn and Deputy Graves fired three rounds. Ultimately none of these rounds struck Mr. Plahn directly.

After firing his handgun, Mr. Plahn went back upstairs to his bedroom. Deputy Armstrong, who was positioned behind his marked patrol car south of the residence, then saw Mr. Plahn pull up the blinds of an upstairs window. Mr. Plahn pointed his handgun at Deputy Armstrong’s patrol car and fired two rounds. Deputy Armstrong saw a “puff of dust” near the passenger side of his patrol car, and later observed a bullet hole in the front passenger side bumper of his vehicle. Efforts to obtain Mr. Plahn’s compliance in exiting the house peacefully were unsuccessful. These efforts included the firing of wooden baton rounds and deployment of CN and OC gas canisters by SWAT officers.

Mr. Plahn was placed into custody by a SWAT entry team at 6:46 a.m. He was first examined by SWAT medics, and then taken by ambulance to the North Colorado Medical Center as Mr. Plahn had several red marks on his back, knee and arm, possibly caused by the deployment of the less lethal munitions during this standoff. While in route to the hospital, in the presence of a Sheriff’s deputy, an EMT asked Mr. Plahn if he was homicidal or suicidal, to which Mr. Plahn replied “yes.” When asked if he knew why he was there, Mr. Plahn stated “I shot at the cops.”

During a subsequent interview of Mr. Plahn by Sheriff’s investigators, Mr. Plahn initially stated that he did not remember doing anything wrong. He later stated that his initial thought was to consume alcoholic beverages and then jump off the house, however officers arrived so he didn’t. He later recalled going into the basement and arming himself with a .44 Magnum handgun. He recalled firing several rounds inside the home, including the round fired down the stairs at a time when he believed that LaSalle officers were still outside the door.

Mr. Plahn also recalled seeing the red and blue emergency lights of the patrol cars when he opened the side garage door, and believed that he would get a response from officers by shooting at those lights. After initially failing to recall the two shots being fired from the upstairs window, Mr. Plahn stated “I was trying to hit the lights, but apparently I suck at shooting.” He believed that he fired a total of 3 or 4 shots at the lights of the patrol cars, knowing that the officers would shoot back.

During the subsequent search of Mr. Plahn’s home, a .44 Magnum Ruger Redhawk with a scope was located in the basement of the residence.

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 attempting to shoot 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 Deputies Tanner and Graves fired their weapons at Mr. Plahn, the determination whether their 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.

Further, Assault in the First Degree, Section 18-3-202 (1)(e) of the Colorado Revised Statutes provides:

- (1) A person commits the crime of assault in the first degree if:
 - (e) With intent to cause serious bodily injury upon the person of a peace officer...he or she threatens with a deadly weapon a peace officer...engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer...acting in the performance of his or her duties.

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

- (2)(e)(I) “**Deadly Weapon**” means a firearm, whether loaded or unloaded.

In this case, officers and deputies attempted to contact Jeffrey Plahn as law enforcement had received reports that he was suicidal. In response to these attempts to contact Mr. Plahn, he repeatedly indicated that he wanted to kill himself, and threatened to come out of the home shooting in an effort to commit “suicide by cop.” On two separate occasions Mr. Plahn fired his .44 Magnum revolver at the

patrol cars, knowing that officers and deputies were present at the time he fired. Deputies Tanner and Graves reasonably believed at that time, based on all of the surrounding facts and circumstances known to them, including the previous statements of Mr. Plahn, that they or other officers or deputies were in imminent danger of death or serious bodily injury.

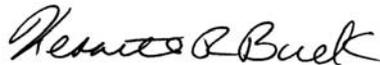
There is no doubt Mr. Plahn knew that these individuals were police officers because several of them had clearly identified themselves as officers and deputies, and following the shooting, Plahn admitted to Sheriff's investigators that he knew the individuals outside his home were officers, and actually hoped that law enforcement would shoot him.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Deputies Tanner and Graves were justified in using force against Jeffrey Plahn because they reasonably believed that it was necessary to defend themselves and others from Mr. Plahn's use of physical force.

CONCLUSION

Under C.R.S. 18-1-707(1)(b), the deputies' actions in this situation were justified and authorized by law in order to defend and protect themselves 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 Deputy Dustin Tanner nor Deputy Christopher Graves for the use of physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,



Kenneth R. Buck
Weld County District Attorney