

December 7, 2005

Sheriff James Crone
Morgan County Sheriff's Office
801 E. Beaver Avenue
Fort Morgan, CO 80723

**RE: Investigation of
the shooting death of
Deborah Sue Miller at
100 WCR 37, Lochbuie,
Colorado**

Dear Sheriff Crone:

The investigation and legal analysis of the shooting death of Deborah Sue Miller has been completed and I conclude that, under applicable Colorado law, no criminal charges will be filed against any of the three officers who fired their weapons in this incident. A summary of the facts in this case and the applicable Colorado law are contained in this letter. The file of this investigation is open to the public at our office and any interested party is welcome to review the investigation and my decision in greater detail.

STATEMENT OF INVESTIGATION

On July 3, 2005, Wiggins Police Chief Leroy Dilka was paged at approximately 7:36 a.m. and advised that a 2005 Honda Accord being driven by Nicholas Vovos, accompanied by passenger Deborah Miller, was at the Stubs Oil and Gas Station in Wiggins attempting a money transfer. Chief Dilka was advised the Honda belonged to a woman named Carolyn Avdeef, who was missing from her home in California. Vovos and Miller were suspects in her disappearance and law enforcement authorities feared she had been murdered. Chief Dilka was advised the two individuals had been involved in a high speed chase with the Wyoming Highway Patrol on July 2, 2005. He was also

informed that both suspects had told people in California they were on the run, had a weapon in the car and would not be taken alive. Chief Dilka located both individuals and the vehicle at the Stubs Oil and Gas Station and watched them until other officers arrived.

Morgan County Sheriff's Deputies Dave Kallweit and Monty English and Wiggins Police Officer Les Jacobs were advised of the same information. The suspects left the gas station and drove westbound on I-76 as Morgan County Deputy Dave Kallweit arrived. Kallweit and Dilka followed the vehicle until English and Jacobs caught up with them on I-76. When the officers attempted to stop the suspects using emergency lights and siren, the Honda Accord accelerated rapidly. Speeds soon reached over 120 miles per hour.

Stop sticks were deployed by the Lochbuie Police at Mile Post 31 (Hudson). The suspect vehicle hit the stop sticks and both front tires immediately deflated. The suspects exited at Hudson, but immediately drove back onto westbound I-76. The pursuit continued westbound on I-76 with the suspect vehicle driving approximately 80 miles per hour, even though the front tires were gone and the metal of the front wheels was rolling on the road.

Colorado State Patrol Trooper Chad Gallegos joined the chase on I-76 near Lochbuie driving an unmarked Chevrolet Camaro. Trooper Gallegos observed the Honda driving on its front metal rims, with sparks coming from the wheels. Pulling up next to the Honda and using the Camaro's amplified public address system, Trooper Gallegos ordered the Honda's driver to pull over to the side of the road and stop. The Honda continued to drive down the highway. While next to the Honda, Trooper Gallegos noticed the female passenger was looking at a map. Trooper Gallegos formed the opinion she was navigating for the driver.

The Honda's driver exited the interstate at Lochbuie, where he drove onto a frontage road leading to a Shell gas station. Deputy English worried that the suspects would endanger citizens if they reached the gas station. English executed two patrol intervention technique (PIT) maneuvers by hitting the left rear area of the suspect vehicle with the front right area of his marked patrol car. On the second PIT maneuver, the suspect Honda started to turn sideways. As the Honda slid, Vovos pointed a black shotgun out of the driver's side front window directly at English,

who immediately took cover by lying down in his seat. As English started to lie down, he saw a puff of smoke and felt glass hit his neck and face when the shotgun round struck his windshield. English returned fire. Deputies Kallweit and Jacobs also fired their weapons. Vovos dropped the shotgun or lost control of it and it tumbled from the Honda. Now coasting, the Honda ran into a car parked at the gas station's pumps. Vovos raised both hands and surrendered. Vovos was not injured. Officers determined that Miller was dead.

There were five civilian eye witnesses to the incident. All were interviewed by agents of the Colorado Bureau of Investigation (CBI). Four witnesses saw the Honda being pursued by numerous police cars, at relatively slow speeds, on the Lochbuie frontage road. The witnesses saw the police car ram the Honda. They saw the driver of the Honda lean out of the driver's side window with a shotgun and fire directly at the officer whose car had rammed the Honda. The witnesses then saw several officers return fire. The driver eventually put his hands up and surrendered. The four witnesses felt the man in the Honda was shooting to kill the police officer.

The fifth witness did not see police ram the Honda, but heard a "firecracker type" sound, looked up and saw a man lean out of a car with a shotgun and fire at least three rounds at police officers. This witness saw the Honda being hit with bullets. The man in the Honda firing the shotgun eventually dropped it and raised his hands.

Colorado State Patrol Trooper Chad Gallegos also witnessed the exchange of gunfire between Vovos and law enforcement officers. Gallegos watched as a black-colored shotgun come out of the Honda's front driver's-side window, pointed toward the pursuing deputy's car. The man fired a shotgun round, which struck the windshield of the deputy's car. Gallegos thought the man in the Honda was trying to kill the deputy. The pursuing officers returned fire. As the Honda entered the gas station parking lot, the shotgun fell out of the car. Gallegos did not fire his pistol. He broke the passenger side window of the suspect vehicle with his baton when the door would not open. Gallegos saw a female in the passenger side seat with blood on her head.

The Colorado Bureau of Investigation agents discovered seven spent shotgun shells at the scene which Vovos had

fired. Three of the shotgun shell casings were birdshot casings and the other four were slug casings. One slug penetrated Deputy English's patrol car.

Deputy English, Deputy Kallweit and Officer English all gave voluntary statements to Weld County District Attorney Chief Investigator Tony Moloczniak and Agent Marc Micciche of the Colorado Bureau of Investigation. The interviews took place at the Morgan County Sheriff's Office and were audio taped. None of these men were represented by an attorney during their interviews.

In addition to the foregoing information, Deputy English said that, when he observed the Honda's driver point a black pump shotgun out of the suspect driver's-side window at him, he heard a bang and felt glass hit his face and head as he ducked down in the seat. English stated that a shotgun round went through his windshield and the dashboard immediately to the right of his steering wheel. He returned fire with his AR15 rifle, aiming at the man with the shotgun. English said he felt his life was in danger when he returned fire.

Right after seeing the shotgun, Deputy Kallweit heard two pops and saw the windshield on the car English was driving shatter and glass spray into the air. Kallweit felt certain English was shot and possibly killed. Kallweit fired his Glock 40 caliber handgun at the man with the shotgun. After the Honda struck the other car parked at the gas pumps, Kallweit yelled commands at the Honda's occupants. The driver surrendered and was apprehended. The female passenger did not respond.

Right after the PIT maneuver, Jacobs veered to the left of English's car, jumped out of his own car and took up a defensive position behind his driver's-side door. Jacobs saw the man driving the Honda point a black shotgun toward English and saw glass fragments flying off of Deputy English's windshield, as if rounds were hitting it. Jacobs stated the shotgun was pointed directly at English's windshield. Jacobs returned fire with his Glock 9mm handgun. He observed the man fire the shotgun at English's car again while the Honda rolled into a car parked at the gas pumps. Jacobs took cover behind another car, heard someone yell cease fire and saw the suspect surrender. Jacobs saw a woman in the passenger seat, bleeding and apparently dead.

Weld County Coroner Dr. Stephen J. Cina performed the autopsy on the body of Deborah Sue Miller at 10:00 a.m. on July 4, 2005. He determined the cause of death was a gunshot wound to the head. There was an additional superficial gunshot wound to the left side of Ms. Miller's back. Fluids taken from Ms. Miller's body tested positive for the presence of amphetamine and methamphetamine. The report states that her blood ethanol level was 0.053 grams per deciliter of blood.

A witness in California was interviewed, over the telephone, by a CBI agent. That witness spoke with Deborah Miller on July 2, 2005. Miller asked the witness if she had been following the news about the police chasing Vovos and Miller across the country. Miller told the witness that she would not be taken alive if found by the police.

The investigation into these events confirmed that Vovos and Miller were in Carolyn Avdeef's Honda. They were using her credit cards as they traveled east from California. They were both suspects in Ms. Avdeef's disappearance and possible murder. Ms. Avdeef's body was recently found, buried in a shallow grave in California.

PROSECUTION OF NICHOLAS VOVOS

As a result of the pursuit and the events at the Shell gas station, the Weld County District Attorney's Office filed a series of charges against Mr. Vovos. He has been charged with: the class two felony of attempted murder of a peace officer; the class three felony of first-degree assault on a peace officer; the felony of possession of a weapon by a previous offender; the felony of vehicular eluding; and a count of mandatory sentence for violent crime.

LEGAL ANALYSIS

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.

Under C.R.S. §18-1-707(2)(b), officers are also entitled to use deadly force:

To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes ... has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon ... or is attempting to escape by the use of a deadly weapon ... or otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

In this case, the officers pursued the Honda because they reasonably believed it could be stolen and its occupants were dangerous suspects in the disappearance and possible murder of a California woman. The chase, which covered many miles, reached extremely high speeds and the driver refused to stop, even after the Honda's front tires had been deflated. The officers were, at this point, obviously justified in believing the Honda's occupants were trying to escape.

When Deputy English tried to stop the Honda by using a PIT maneuver on the frontage road near the Shell Station, Nicholas Vovos produced a shotgun and began firing rounds at English. Once the shotgun appeared, it was immediately reasonable for the officers to conclude their lives were in danger. Once the shotgun was fired, it was reasonable for the officers to believe Vovos meant to kill them, especially because one of the rounds struck the driver's side of the windshield of Deputy English's car. It was also reasonable for the officers to conclude Vovos was trying to escape by using a deadly weapon.

As a result, the officers were fully justified in using deadly force by shooting at Vovos and at the Honda. The officers were entitled to protect themselves and others

from what reasonably appeared to be Vovos' attempt to murder his pursuers. They were also entitled to arrest or prevent the escape of possible killers who were effecting their escape by the use of a deadly weapon and who had demonstrated a willingness to endanger the lives of others.

The officers had no reason to believe Deborah Miller was an innocent passenger who was only along for the ride or who was in the Honda against her will. On the contrary, the information the officers had led to the reasonable conclusion that Miller was Vovos' active partner, a willing participant in the events in California and in assisting Vovos to avoid their pursuers.

CONCLUSION

Under C.R.S. §§18-1-707(2)(a) and (b), the officers' actions in this situation were fully justified by the volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file any charges against Deputy English, Deputy Kallweit or Officer Jacobs.

If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck
District Attorney

cc:

Chief Leroy Dilka, Wiggins Police Department
Deputy Monty English, Morgan County Sheriff's Office
Deputy David Kallweit, Morgan County Sheriff's Office
Officer Les Jacobs, Wiggins Police Department
Agent Marc Micciche, Colorado Bureau of Investigation
District Attorney Robert Watson
Commissioner Kenneth "Andy" Anderson, Morgan County
Commissioner Mike Harms, Morgan County
Commissioner Tony Carlson, Morgan County
Mayor Ron Uhrick, Town of Wiggins
Trustee Jim Scott, Town of Wiggins

Trustee Brad Weese, Town of Wiggins
Trustee Marilyn Bartlett, Town of Wiggins
Trustee Pat Rogers, Town of Wiggins
Trustee Frank Roehrich, Town of Wiggins
Trustee Mike Bates, Town of Wiggins
Sheriff John Cooke, Weld County
Chief Steve Davis, Lochbuie Police Department
Chairman William Jerke, Weld County Board of
Commissioners
Bruce Barker, Weld County Attorney