



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

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

November 25, 2011

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

**RE: Investigation of the shooting of Jason
Collins at the Fairfield Inn, Greeley, Colorado
on October 28, 2011**

Dear Chief Garner:

The investigation and legal analysis of the Jason Collins shooting is complete, and pursuant to applicable Colorado law, I will not file criminal charges against either officer who fired a 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 October 28, 2011, Jason Collins was shot and killed by officers of the Greeley Police Department SWAT team. Department of Homeland Security/ICE (DHS) agents had arranged for an undercover agent to meet with Collins at the Fairfield Inn Hotel located at 2401 29th Street, Greeley, Colorado.

Agents of DHS had identified Collins as an individual engaged in the distribution of child pornography. During the investigation, Collins agreed to meet with an undercover DHS agent in Greeley to trade child pornography. Agents decided to arrest Collins once they verified Collins had brought child pornography to the meeting.

During email exchanges and phone calls between Collins and the undercover agent, Collins repeatedly stated he would be armed with a handgun when the meeting occurred. Collins told the undercover agent he had previously served time in prison and stated he was not going back to prison, when explaining the purpose of his being armed with a gun. Collins specifically stated "I will never be put in a pair of bracelets again, if you catch my drift...I spent 16 years of my life in there, I'm not going to do that again." Collins and the undercover agent set the date to meet in Greeley for October 28, 2011.

Since Collins made it clear he would be armed with a handgun, DHS agents contacted the Greeley Police Department and asked for assistance in the arrest of Collins. On the morning of October 28, 2011, a pre-operation briefing was held with DHS agents and Greeley Police officers. At the briefing, information was disseminated that Collins had stated repeatedly, in emails and recorded

phone calls to the undercover agent, he would be armed with a gun during the meeting with the undercover agent. Officers were also aware of Collins' criminal history. While his criminal history was non-violent Collins clearly intended to avoid further time in prison. After deliberation, discussion, and due regard for public safety, the Greeley Police Department SWAT Team Supervisors decided that Collins' arrest should be made in the hotel room rather than a public setting.

The undercover agent, wearing a concealed electronic listening device, first met with Collins at a coffee shop in Greeley. During this initial meeting, the undercover agent saw that Collins was attempting to conceal a holstered handgun on his right side. The agent questioned Collins about the gun so officers and agents covertly monitoring the conversation would be alerted to the fact that Collins was indeed armed. After the initial meeting, Collins followed the undercover agent to the Fairfield Inn Hotel to exchange the child pornography. The exchange was to occur from each other's laptop computers.

DHS agents had wired a hotel room with audio and video surveillance equipment to record the transaction. Agents and the arrest team made up of Greeley Police Officers, including Officer One and Officer Two, were positioned in a hotel room across from the wired room. A monitor was available in the room for the agents and officers to observe and listen to the transaction.

The undercover agent and Collins arrived at the Fairfield Inn Hotel and entered the wired room. Agents and police officers watched the transaction from the monitoring room and could see Collins was carrying what they believed to be a handgun in a holster on his right side.

When the undercover agent confirmed Collins was in possession of child pornography, he gave a pre-arranged "bust" signal for the officers monitoring the transaction to initiate the arrest sequence of the operation. As planned, the undercover agent entered the room's bathroom and left Collins alone in the bedroom area of the hotel room.

Once the "bust" signal was given, the DHS agents turned off the recording device, as per DHS policy, but continued to monitor the transaction. The Greeley Police arrest team, in SWAT uniforms, approached the room to make entry. A flash-bang grenade was set off outside the hotel room as a diversion to allow the arrest team to simultaneously enter while Collins was distracted.

Officers One and Two entered the room and advanced toward Collins, who was seated at a table in the corner of the room. Officer Two repeatedly gave the command "Police, get your hands up." Collins reached for the holstered gun on his right hip as if to draw it and was immediately shot by Officers One and Two.

During the processing of the crime scene, investigators learned, while closely examining the gun in Collins' holster, that the gun was an air pistol manufactured to closely resemble a semi-automatic handgun.

An autopsy was conducted and the cause of Collins' death was multiple gunshot wounds.

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 homicide in Colorado, the Criminal Code specifies certain circumstances in

which the use of physical force is justified. As the evidence establishes that Collins was shot by both Officer One and Officer Two, the determination whether each Officer's 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 physical 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 it necessary...to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

Also pertinent to the facts and circumstances of this case is Section 18-3-206 (1)(a), 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:
 - (a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is 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, assisting the Department of Homeland Security, entered the room occupied by Collins for purposes of effectuating an arrest supported by probable cause. At the time that Officers One and Two entered the room, it was known, as discussed above, that Collins was armed with what he represented to be a handgun. When given verbal commands identifying them as "police" and ordering him to "show us your hands," Collins refused to comply, and rather began reaching for what the officers reasonably believed to be a handgun strapped to his right hip. It was at this point that Officers One and Two fired at Collins. Officers One and Two reasonably believed at that time, based on all of the surrounding facts and circumstances known to them that they or other officers were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officer One and Officer Two were justified in using deadly force against Collins because they reasonably believed that it was necessary to defend themselves and others from Collins' threatened use of physical force.

CONCLUSION

Under C.R.S. 18-1-707(1)(b), the officers' 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 either Officer One or Officer Two for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck
District Attorney

cc:

Tom Norton, Mayor, City of Greeley

Roy Otto, Greeley City Manager

Rick Brady, Greeley City Attorney