



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

Kenneth R. Buck – District Attorney

June 16, 2010

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

Chief David Montgomery
Firestone Police Department
151 Grant Ave.
Firestone, CO 80520-9000

Sheriff John Cooke
Weld County Sheriff's Office
1950 O St.
Greeley, CO 80631-9503

RE: Investigation of the shooting of Kenneth Yeager at 675 31st Street, Evans, CO on May 16, 2010

Dear Chief Garner, Chief Montgomery and Sheriff Cooke:

The investigation and legal analysis of the Kenneth Yeager shooting is complete, and pursuant to applicable Colorado law, I will not file criminal charges against the officers 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 May 16, 2010, at 1:29 a.m., Officer Riemer of the Evans Police Department was dispatched to 675 31ST Street in Evans, Colorado, for a welfare check of an individual. It was reported that a male was cussing and hitting vehicles with his fists; the reporting party described him as "unstable." Officer Riemer contacted Kenneth Yeager at the Double Clutch Café. Officer Riemer described Mr. Yeager as agitated. Mr. Yeager told Officer Riemer that he had served two combat tours in Vietnam and had Post Traumatic Stress Disorder; he further stated, "I wish people would just leave me the fuck alone." Officer Riemer attempted to calm Mr. Yeager by telling him he understood, to which Mr. Yeager responded "No, leave me the fuck alone." Officer Riemer backed away and heard a loud sound. He then observed the front passenger window of Mr. Yeager's Ford Bronco had been shattered. Mr. Yeager told the officer he had

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S E R V I C E

just thrown a rock at the window. In hindsight, Officer Riemer believes that Mr. Yeager had shot the window, but he did not see a gun at the time. Officer Riemer remained in close proximity to the Bronco Mr. Yeager was driving. He observed Mr. Yeager leave the café and park to the south in the parking lot at 675 31st Street. At that point, Officer Riemer returned to the police department to work on a different investigation. Then, at 3:54 a.m. shots fired were reported from the 31st Street location.

Detective Knott from the Greeley Police Department interviewed Levi Troxel. Mr. Troxel is an employee of the Double Clutch Café and had interacted with Mr. Yeager at the café earlier in the morning before the 1:29 a.m. dispatch. He stated Mr. Yeager asked him for coffee, water and a “motherfucking menu.” Mr. Troxel told Mr. Yeager that this language was not allowed at the restaurant. Mr. Yeager told Mr. Troxel that he was tired of “you motherfucking punks telling us that’s what to do,” and stated that he was Vietnam veteran. Mr. Troxel said he felt intimidated by Mr. Yeager. When Mr. Yeager left the restaurant, he remained outside the restaurant and repeatedly drove his car 20 feet forward and then back up 20 feet. Mr. Troxel continued to work and observed an Evans police car in close proximity to Mr. Yeager’s car between 1:30 a.m. and 2:00 a.m. Mr. Troxel then went outside around 4:00 a.m. to smoke a cigarette with two other people and saw Mr. Yeager’s car parked in the parking lot to the south. He became concerned because he thought that Mr. Yeager may be waiting for him to get off work. He then saw three flashes and heard three loud bangs come through the passenger window. The other parties that were smoking went back inside to call police.

At 3:54 a.m. the shots fired call was aired. Numerous law enforcement agencies, including the Evans, Greeley, Milliken, Ault and Johnstown Police Departments along with the Weld County Sheriff’s Office and Weld County SWAT team, responded to 675 31st Street in Evans, Colorado. The suspect, Kenneth Yeager, was in the driver’s seat of his Ford Bronco in the parking lot at the above address. Initially on scene were Evans Officers Riemer and Miramontes. Once on scene Officer Riemer confirmed this was the same party he had contacted earlier in the morning outside the café. In light of the previous contact, they awaited the arrival of other officers. Officer Haslett attempted to contact Mr. Yeager by calling his cell phone at 4:04 a.m., but the calls went directly to voicemail and the voice mailbox was full. After other officers arrived, numerous announcements were made using the police car’s PA system alerting Mr. Yeager to the police presence. He was given numerous instructions from law enforcement, including being asked to flash his car lights if he could hear them, being told that they were there to help, and being told to come out of his car. However, Mr. Yeager never responded nor complied with the commands by law enforcement. There were numerous uniformed officers and marked police cars surrounding the scene.

Mr. Yeager’s vehicle was parked in a parking lot facing west toward Highway 85. To the north, running parallel to Mr. Yeager’s vehicle is 31st Street and to the south is 32nd Street. Directly behind Mr. Yeager’s vehicle to the east is Randy’s Diner. Officers had been dispatched to the surrounding streets to control traffic in the area.

Weld County SWAT was called out at approximately 4:48 a.m. As they began to arrive and set up, officers had traffic blocked off from different directions. A perimeter had been established and a plan was in place to utilize stop sticks if Mr. Yeager was to attempt to drive away. Throughout the course of the incident, officers observed Mr. Yeager smoking cigarettes in a reclined position; however, he would sit up intermittently and then recline back in his seat. Shortly before 5:58 a.m. Mr. Yeager was observed rolling his window down. After rolling his window down he pointed a gun to the southwest, in the direction of officers. At that time, numerous shots were fired in quick succession by Mr. Yeager and law enforcement. Officers approached Mr. Yeager’s vehicle using OC gas, flash bangs and a K9 to ensure that they were no

longer in danger. Mr. Yeager was later pronounced deceased at 6:16 a.m. at North Colorado Medical Center.

An autopsy was conducted by the Weld County Coroner's Office on May 17, 2010. Dr. James Wilkerson preliminarily determined that the cause of Mr. Yeager's death was a single gunshot wound to his head, specifically located above the left eye in the temple region. Mr. Yeager suffered two other gunshot wounds; however, neither of these wounds would have caused his death.

The scene was secured, evidence was collected, and numerous interviews were conducted. Mr. Yeager's vehicle was searched and a .22 caliber handgun was found on the rear passenger floorboard. There were two live rounds in the magazine as well as a live round in the chamber. Several spent .22 casings were found, one was located near the rear driver's side tire, and two other spent .22 casings were found inside Mr. Yeager's Bronco during the initial search at the scene. During a second, more thorough search by Investigator Lemay on May 17, 2010, one more spent .22 casing was found inside of Mr. Yeager's Bronco.

During the course of the investigation, it was learned that four officers fired their weapons at Mr. Yeager when he pointed his handgun toward the south southwest where other officers were located. Officer One was situated to the south of Mr. Yeager's vehicle by a trash dumpster approximately 80 yards away. Officer One fired one round from a .308 sniper rifle at Mr. Yeager. Officer Two was to the west and north of Mr. Yeager's vehicle approximately 80-100 yards away. Officer Two fired one round from a .308 sniper rifle at Mr. Yeager. Officer Three was located on the roof of Randy's diner, positioned east and slightly south of Mr. Yeager's vehicle. Officer Three fired nine rounds from an AR-15 (.223 rounds) at Mr. Yeager. Officer Four was located to the west of Mr. Yeager's vehicle further north than Officer Two on 31st Street. Officer Four fired one round from a .40 caliber Glock handgun at Mr. Yeager. All of the casings were recovered when the scene was processed.

Officer One was interviewed on May 18, 2010. Officer One was called out to the scene to assist in apprehending the suspect. Upon arrival, Officer One set up to the south of the suspect by a trash dumpster with a .308 sniper rifle. Officer One overheard commands being given to Mr. Yeager by officers located behind Officer One and to the west. Officer One was able to observe the suspect through the scope on his rifle and saw him raise his right hand and point it at the officers giving commands. Fearing for their safety and believing that Mr. Yeager was about to shoot at them, Officer One fired at the suspect.

Officer Two was interviewed on May 18, 2010. Officer Two was called out to assist with the situation and was positioned on the east side of Highway 85 at the suspect's seven o'clock position. Officer Two noted that there was a male party in the vehicle that was reclined in the driver's seat but would sit up abruptly and look at the officers giving commands. Officer Two was able to observe the suspect's actions through the scope on the .308 sniper rifle. The officers giving commands were situated at the suspect's 4 o'clock position. The suspect eventually sat up and rolled his window down while the officers at the 4 o'clock position were giving commands. The suspect brought up his right hand holding a black handgun and pointed it toward the officers giving commands. Fearing that the officers' lives were in danger, Officer Two shot one round at the suspect, aiming between Mr. Yeager's right ear and eye.

Officer Three was interviewed on May 16, 2010. Officer Three was called to assist in apprehending Mr. Yeager. Officer Three went on the roof of Randy's Diner to observe the suspect vehicle, which was to the west of this location. From this vantage point, Officer Three was able to see the suspect as well as the other officers set up around the perimeter. Officer

Three set up to be able to see into the suspect vehicle through the driver's side door. Officer Three described that the suspect would be in a reclined position and then sit up and scan the area. Officer Three described hearing officers giving commands to the suspect, and at one point saw him roll down his window. Shortly after he rolled the window down, the suspect pointed one or both arms out of the window, there was a muzzle flash from the gun in the suspect's hand and other officers shouted "gun." Because the officers' lives were in danger, Officer Three fired nine rounds from his AR-15 at the suspect.

Officer Four was interviewed on May 16, 2010. Officer Four was initially involved in directing traffic on 31st Street north of the suspect. Officer Four observed the suspect to the southeast in the parking lot utilizing binoculars. Officer Four was aware the suspect may be armed and that he fired shots earlier. Officer Four overheard officers giving commands and observed that the suspect did not respond to the commands. Officer Four was becoming concerned because the sun was coming up and the suspect would be able to see where all the officers were located. Officer Four said that all of the sudden the suspect pointed something towards the officers located by the dumpster and saw a flash from the gun the suspect was holding. Simultaneously, Officer Grady Jackson, who was assisting Officer Four with traffic, yelled "gun." Believing the other officers lives were in danger, Officer Four shot one time at the suspect with a .40 caliber Glock handgun.

Gabe Morales was interviewed by Greeley Police Officer Zach St.Aubyn. He stated that a 2:00 a.m. on that date he had a confrontation with Mr. Yeager as he was arriving at the Double Clutch Café. When he parked, he heard a loud bang and thought someone hit his car with a rock. As he was entering the café Mr. Yeager confronted him and told him to "get the fuck out of here." Morales later observed that it appeared his car had been shot. Morales remained at the café and heard three or four gunshots around 3:45 a.m. He went to see what was going on and observed officers pulling in to the parking lot to the south. He heard officers giving commands to Mr. Yeager and telling him they were there to help but saw that Mr. Yeager was not complying with them. He said that Mr. Yeager then leaned out of the driver's side of his car and shot at police and the police immediately fired back with approximately ten shots.

Numerous officers were on scene and confirmed Mr. Yeager's lack of response to commands directed toward him. Many confirmed that the suspect was in a reclined position throughout the course of the incident but would occasionally sit up abruptly. They all heard multiple gunshots, but many did not see the shooting actually occur because they were being briefed or in positions of cover at the time. However, many officers did see Mr. Yeager's actions that lead up to officers shooting him.

Officer Miramontes with the Evans Police Department was initially on scene when the call was aired. He was positioned to the south of Mr. Yeager near the trash dumpsters, approximately 70 yards away. He described that at 5:55 a.m. the suspect sat up and looked to his right then leaned back into his seat. Then at 5:58 a.m. Mr. Yeager sat up and rolled his window partially down. Officer Miramontes looked through binoculars at that point and saw Mr. Yeager pointing a black handgun at the officers to the southwest. He then heard four to six gunshots and saw Yeager get "slammed" back into his seat.

Greeley Police Officer Grady Jackson was interviewed and stated that he was assisting with traffic control at State Street and Highway 85 with Officer Four. Officer Jackson described a perimeter being set up and that the suspect was given numerous commands and did not respond. Officer Jackson observed the suspect's movements with binoculars. Right before the shooting, he observed the suspect bringing a black automatic handgun up from his lap, pointing it at other officers and shooting. He heard the suspect shoot and saw a muzzle flash. He relayed

this information over the radio. He believed the suspect may have shot one more time after officers returned fire. Officer Jackson believed that the suspect was attempting to shoot the other officers.

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 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. Yeager was shot and killed by Officers, the determination whether their 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. Yeager for purposes of conducting an investigation into the citizen report of shots fired in the early morning hours of May 16, 2010. It was unknown to them at the time whether there were any individuals who had been injured or killed as a result of this shooting. It was also clear Mr. Yeager was likely in possession of a firearm. Officers called for backup and ultimately called for SWAT assistance to apprehend Mr. Yeager. Throughout the course of the incident, Mr. Yeager refused to comply with the commands of police officers to show them his hands and get out of the vehicle, among other commands. Rather, he did not respond at all, and ultimately rolled down his window and pointed a handgun at law enforcement. Further, it is likely, from the statements and evidence that he was also able to fire a shot at law enforcement with his .22 handgun. The officers reasonably believed at that time, based on all of the surrounding facts and circumstances known to them that they themselves or other officers were in imminent danger of death or serious bodily injury.

Mr. Yeager would have also reasonably known that the individuals surrounding his vehicle were police officers because they clearly identified themselves and there were numerous law enforcement vehicles surrounding him.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the Officers were justified in using lethal force against Mr. Yeager because they reasonably believed that it was necessary to defend themselves and/or others from Mr. Yeager's threatened use of deadly 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 Officers One, Two, Three or Four 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:

Tom Norton, Mayor, City of Greeley
Roy Otto, Greeley City Manager
Rick Brady, Greeley City Attorney
Chad Auer, Mayor, Firestone
Wesley LaVanchy, Town Manager, Firestone
Sam Light, City Attorney, Firestone
David Long, Weld County Commissioner
Douglas Rademacher, Weld County Commissioner
Barbara Kirkmeyer, Weld County Commissioner
Sean Conway, Weld County Commissioner
William Garcia, Weld County Commissioner
Bruce Barker, County Attorney, Weld County