



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

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

June 19, 2014

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

RE: Investigation of the shooting of Raymond Eugene Garcia at the Comfort Inn, Greeley, Colorado on, May 21, 2014

Dear Chief Garner:

The investigation and legal analysis of the Raymond Garcia 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 21, 2014, the Greeley Police Department conducted a sting operation aimed at arresting individuals engaged in the solicitation of prostitution. Investigators involved in this operation used advertisements on the internet posing as a prostitute seeking customers. The advertisement contained a phone number by which individuals could make contact with the undercover detectives to arrange a meeting.

Once the initial contact was made through this phone number, text messages were sent to the individuals seeking these services, containing the name of the hotel, a specific room number, and a time for the meeting to occur.

Room number 107 at the Comfort Inn at 2467 29th Street in Greeley was used as the meeting room. This room was wired with audio and video recording devices, but in all other respects was a standard hotel room. The video camera was situated so that approximately half of the hotel room was visible and recorded. The portion of the room visible on the recording spanned from the hotel room door to the middle of the bed located in the center of the room. The adjoining room, #109, which was accessible via a common interior door with #107, was the room where investigators and the uniformed arrest team staged during this operation. In Room #109 was a video monitor which investigators used to view what was occurring in #107.

A female Greeley Police Officer played the role of the prostitute. When the target individuals would arrive at the designated meeting time, the undercover officer would engage these individuals in conversation and ultimately negotiations for sexual favors in exchange for money. Once the target

individual produced the money for sex, the undercover officer would excuse herself to the bathroom under the guise of “needing to freshen up.” These words and actions would serve as the signal to the investigators and arrest team that the money had been provided by the target individual. The arrest team, made up of four officers, whose specific roles will be discussed in more detail below, then entered Room #107 via the adjoining door with #109, and make the arrest of the individual for Solicitation of Prostitution.

The operation plan specified that the arrest team would consist of four uniformed Greeley Police Officers. The four officers would enter Room 107 in a single file formation. The first officer was designated as the contact officer, whose role would be to take the individual into custody. This officer would enter the room with no weapon in their hands. The second officer was armed with a Tazer, and was assigned to use less than lethal force if necessary in order to effectuate the arrest of the perpetrator. The third officer in line was also designated as a contact officer to assist with taking the suspect into custody, and also would enter the room with no weapon in their hands. The final officer was a cover officer, who entered with a firearm in order to provide cover to the other three officers.

During the operation on May 21, four individuals were arrested without incident prior to the arrival of Raymond Garcia.

Surveillance officers located outside the Comfort Inn observed an individual later identified as Raymond Eugene Garcia arrive at the hotel at approximately 5:30 pm. Garcia was a passenger in a car and was dropped off at the hotel. Garcia entered the hotel and proceeded directly to Room 107 where he was allowed in the room by the undercover female officer. Garcia was seen carrying a black laptop carrying case, which he set on the floor of the hotel room.

Once he entered the room, Garcia walked to the far end, or north end, of the room, and was no longer visible on the surveillance camera. However, the conversation which he had with the undercover officer was audible. During his conversation with the undercover officer, he discussed the use of controlled substances, stated that he brought controlled substances with him, and suggested that he could sell some to the undercover officer following the sexual acts which they then discussed. He also expressed concern on several occasions that the undercover police officer was in fact law enforcement. Most of the fifteen minute conversation involved attempts by the undercover officer to establish a rapport with Garcia. Finally at 5:46 p.m., Garcia produced a \$100 bill, the amount he and the undercover officer agreed on, and set it on the nightstand next to the bed. The undercover officer excused herself to the bathroom, and closed the door.

The arrest team entered the room just seconds later, with Officer #3 in the lead position. Immediately he said to Garcia “police, let me see your hands.” Officer #3 later described in an interview making eye contact with Garcia and then seeing him reach for a gun in his waistband.

The second officer in the room, Officer #4, entered the room with his Tazer pointed at Garcia. Officer #4 saw Garcia with a gun in his hand, and fired his Tazer at Garcia. Officer #4 can be seen on the surveillance video ducking and then diving onto the bed as he is looking in the direction of Garcia.

The third officer into Room 107, Officer #1 can be seen on the video drawing his gun as he is entering the room and looking in the direction of Garcia.

As the last officer to enter the room, Officer #2 entered the room and immediately discharged one round in the direction of Garcia.

All four officers were interviewed in the evening hours of May 21 by investigators from the District Attorney’s Office and the Greeley Police Department. Officer #3, the first officer into Room

107, stated when he saw Garcia reaching for the gun in his waistband, Officer #3 immediately drew his weapon. He then saw Garcia turn his attention to Officer #4, and saw Garcia begin to raise his handgun in the direction of Officer #4. Officer #3 fully believed that Officer #4 was going to be shot, so he began firing his weapon at Garcia in order to stop this threat.

Officer #4 told investigators that he observed Garcia reaching for a handgun in his waistband as soon as he entered the room. Officer #4 fired his Tazer at Garcia's head, but that this Tazer discharge had no effect. Officer #4 then drew his handgun, however did not fire any rounds as the threat to himself and others had ended by that point.

Officer #1, the third officer into Room 107 stated that as soon as he and other officers entered the room to make the arrest, he saw Garcia by the window reaching for a handgun in his waistband. Officer #1 drew his handgun and fired two to three rounds at Garcia, believing he was about to shoot at the officers.

Officer #2, the last officer into Room 107, entered the room with his handgun drawn. He observed Garcia raising his gun in the direction of other officers, and discharged his firearm at Garcia, believing that he and the other officers were about to be shot by Garcia.

Garcia was pronounced dead at the scene, and a subsequent autopsy was conducted by a forensic pathologist. Seven .45 caliber rounds were recovered from Garcia's body. Garcia sustained gunshot wounds to both his head and torso. Preliminary toxicology testing indicated that Garcia had 270ng/mL of Amphetamines and 1700 ng/mL of Methamphetamines in his blood at the time of his death. In Garcia's left front pants pocket investigators found 3.7 grams of Methamphetamines bound in a napkin.

Crime scene investigators also searched and documented the evidence found in Room #107. A .45 caliber Model JHP semi-automatic Hi-Point handgun was found next to Garcia's body. There was not a round in the chamber, however the magazine was loaded with eight rounds of ammunition.

Seventeen (17) spent shell casings were located and collected by investigators. All seventeen were identified as "Federal .45 Auto Plus P" shell casings, consistent with the ammunition used by Greeley Police Officers.

The black laptop carrying case brought to the room by Garcia was also searched. Investigators found .8 grams of Cocaine, .5 grams of Methamphetamine, two glass pipes commonly used for smoking controlled substances, a box of thirty .45 caliber Blazer brand bullets and six additional loose bullets of the same caliber and brand.

Subsequent investigation into Garcia's criminal history revealed that at the time of his death, there were several warrants active for his arrest: a warrant for a failure to appear in a Violation of Protection order hearing in case number 13M1385; a failure to appear for a motions hearing in case number 13CR1749 in which he was charged with Possession with Intent to Distribute a Controlled Substance, Attempt to Influence a Public Servant, and Possession of a Weapon by Previous Offender; and a warrant for a failure to appear at a status conference in Boulder County case number 13CR1411 in which he was charged with a Violation of the Colorado Organized Crime Control Act.

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 Garcia was shot by Officers #1, #2 and #3, the determination whether the Officers' 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.

In this case, Greeley Police Officers were attempting to take Raymond Garcia into custody for Solicitation of Prostitution based on the actions and statements made by Garcia to the undercover female officer in Room 107. Each of the four officers was dressed in standard issue Greeley Police Officer uniforms, and Officer #3 clearly identified himself as a police officer when he entered the room. Garcia immediately pulled a handgun from his waistband and began pointing it in the direction of officers as they entered the room. Officers #1, #2 and #3 reasonably believed at the time they fired their weapons, 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 Officers #1, #2 and #3 were justified in using deadly force against Garcia because they reasonably believed that it was necessary to defend themselves and others from Garcia's threatened use of physical force.

CONCLUSION

Under C.R.S. 18-1-707(2)(a), 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 #1, #2 and #3 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