



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

**Kenneth R. Buck - District Attorney
Philip M. Clark - Assistant District Attorney**

January 3, 2007

Chief Jerry Garner
Greeley Police Department
919 Seventh Street
Greeley, CO 80631

**RE: Investigation of the
shooting death of Isaac Ramon
Aragon at 1117 11th Ave #7,
Greeley, Colorado**

Dear Chief Garner:

The investigation and legal analysis of the Isaac Ramon Aragon shooting is complete, and pursuant to applicable Colorado law I will not file criminal charges against the four 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. 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.

SUMMARY OF INVESTIGATION

On December 5, 2006, at approximately 3:00 p.m., Greeley Police officers were driving past 1865 Tenth Avenue in Greeley and recognized Isaac Aragon, a known Norteno gang member wanted for Attempted Murder and Kidnapping. The officers observed Mr. Aragon enter the passenger side of a dark colored Toyota Camry which immediately left the area. The officers followed the vehicle and called for a marked police unit to stop the Camry. Greeley Police Officer Number 5 arrived and activated the red and blue emergency lights on his marked patrol unit in the 1200 Block of 12th Avenue. As the Toyota Camry pulled to the east side of the road, the passenger door opened; and Mr. Aragon, wearing a red hooded sweatshirt, fled the vehicle northbound on the sidewalk and then eastbound in the alley between 12th and 13th Streets and 11th and 12th Avenues.

Mr. Aragon stopped or slowed in the alley, pointed a large frame handgun at Greeley Police officers, and fired at them.

Greeley Police Officer Number 2 and Officer Number 5 returned fire, one round each. Mr. Aragon continued running east in the alley. Mr. Aragon fired another shot from a point further east in the alley at officers who were pursuing him. Mr. Aragon then turned northbound mid-way in the alley. Officers reported via radio that the above exchange had taken place.

Shortly thereafter, responding Greeley Police officers were advised through contact with several witnesses that an individual wearing a red hooded sweatshirt and carrying a black handgun ran toward the apartment building at 1117 11th Avenue. One of those witnesses was at that time on the phone with a female occupant of 1117 11th Avenue #7 and was told that someone had just broken into her apartment building. Greeley Police officers surrounded the building and soon observed a screen being pushed out of a top floor window on the north side of 1117 11th Avenue #7. Officers observed Mr. Aragon lean out of the window holding a large frame semi-automatic pistol in plain view.

A female resident of 1117 11th Avenue #7 called Greeley Police Dispatch and advised that she was locked in her bedroom after hearing someone break in through her front door. The apartments at 1117 11th Avenue #7 have common areas that residents share but each bedroom locks individually.

While officers were negotiating with Mr. Aragon on the north side of the apartment building, the female in contact with police dispatch was given instructions to exit on the south side of the apartment where officers were waiting. Greeley Police Officers escorted her to safety.

Officer Number 2 made verbal contact with Mr. Aragon attempting numerous times to talk him into surrendering and dropping his firearm out the top floor window. Numerous officers in the immediate area overheard this conversation. Mr. Aragon told Officer Number 2 that he didn't want to go back to jail for the rest of his life and he knew there were warrants out for his arrest. Officer Number 2 stated that he continued trying to talk Mr. Aragon into surrendering when Mr. Aragon disappeared into the apartment and fired the gun. Mr. Aragon came back to the window and told Officer Number 2 that he had been checking the chamber and the gun discharged. Officer Number 2 stated that Mr. Aragon came to the window numerous times always with the gun in his hand and sometimes pointed it at his (Aragon's) head.

Greeley Police negotiators took over from Officer Number 2 at 4:28 p.m. by use of a bullhorn. Mr. Aragon made statements during the negotiations that he wanted to die and that he wanted to kill himself. He stated that he was not going back to jail.

Mr. Aragon told negotiators that he had a letter for his mother and a letter for his wife. He dropped two pieces of paper

from a window. Police officers retrieved the letters (see attachments 1 and 2).

Mr. Aragon indicated that he knew there were many police officers surrounding the building and he knew there were police officers just outside the front door of the apartment he was in. Greeley Police negotiators told Mr. Aragon many times to drop his firearm out of the top floor window and he would be given a phone to call his mother and father as he had been requesting during the on-going negotiations. Greeley Police negotiators repeatedly advised Mr. Aragon that the situation could end peacefully if he would only drop his firearm out of the top floor window. Mr. Aragon refused each time.

Greeley Police negotiators succeeded in making cell phone contact with Mr. Aragon at 5:22 p.m. and continued to try to talk Mr. Aragon into giving up. At approximately 5:46 p.m., with no progress in the negotiations having occurred, the decision was made to use chemical munitions because the on-scene commander believed Mr. Aragon was a threat to public safety. Tear gas was fired into the apartment.

Greeley Police S.W.A.T. officers were positioned at the front door of 1117 17th Avenue, Number 7. Other S.W.A.T. officers fired numerous tear gas canisters into the apartment through side windows in an effort to have Mr. Aragon surrender peacefully. The decision to deploy tear gas included a strategy of starting with the upper floor and moving downward in the structure. Officer Number 1 and Officer Number 4 were kneeling behind ballistic shields at the front door of the apartment which is at ground level. The door had already been broken open when officers arrived. The door was wedged open by S.W.A.T. officers to ensure an unobstructed view of a landing area. Immediately inside the front door is a foyer and a short stairway leading to a small landing. From the landing, the stairwell disappears to the right with another flight of stairs that could not be seen by the officers at the front door. Officer Number 1 stated that during the time they were in position at the front door of the apartment, Mr. Aragon yelled down the stairs that he knew the police were there. Officer Number 1 stated that Mr. Aragon alternated between challenging them to "come in and see what happens" and telling them that they had better not come in. Officer Number 1 stated there were numerous verbal challenges made by Mr. Aragon during the time they were positioned at the front door. S.W.A.T. officers positioned at the front door were rotated regularly due to the physical exertion required to stay in position at the front door.

After tear gas canisters were deployed, Officers Number 1 and Number 4 heard coughing inside the apartment, close to them. Officer Number 1 stated he heard a sound on the stairs and immediately observed Mr. Aragon coming into view on the landing with a semi-automatic pistol in his right hand. Officer Number 1

stated that Mr. Aragon was coughing and that he squared off facing officers at the front door, a short distance away. Officer Number 1 stated that he fired a burst from his .223 caliber rifle through a small window next to the front door. Officer Number 1 fired through the window because there was not room for two officers in the doorway. Officer Number 1 saw Mr. Aragon fall and observed the pistol at Mr. Aragon's feet. When Mr. Aragon's pistol was later recovered, there was a large depression on the frame of the handgun indicating that it may have been hit by one of the rounds fired.

Officer Number 4 stated that he was with Officer Number 1 at the front door of the apartment. After numerous rounds of tear gas were deployed, he heard coughing which sounded very close. Officer Number 4 saw Mr. Aragon coming into view on the landing with a handgun in his right hand. Officer Number 4 observed Mr. Aragon face officers and begin to bring the gun up toward the officers. Officer Number 4 stated he fired two bursts from his .223 caliber rifle. Officer Number 4 saw Mr. Aragon fall and saw the gun near Mr. Aragon's feet.

The driver of the dark colored Toyota Camry was Cesar Rubio. Mr. Rubio was interviewed by Greeley Police officers. Mr. Rubio stated that during the time between 1865 Tenth Avenue and when Greeley Police officers pulled him over in a marked police car he heard Isaac Aragon say several times "I'm not going to jail." Mr. Rubio heard officers yelling drop the gun at least two times immediately after Mr. Aragon got out of the vehicle and started running.

A passenger in the backseat of the dark colored Toyota Camry was Kaylee Robbins. Ms. Robbins stated that when the Greeley Police officers pulled over the vehicle, Isaac Aragon jumped from the vehicle and ran. Ms. Robbins stated she heard shots but could not tell who was firing.

The weapon found at the feet of Mr. Aragon was a .45 caliber Hi-Point semi-automatic pistol containing one (1) live Winchester round in the chamber and two (2) live Winchester rounds in the magazine. A spent .45 Winchester shell casing was found in a closet at 1117 11th Avenue #7. A spent .45 Winchester shell casing and a live Winchester bullet were found in the pants of Mr. Aragon during the autopsy. A .45 caliber Winchester shell casing was found in the yard behind 1118 12th Street.

Dr. Stephen Cina performed the autopsy on the body of Isaac Ramon Aragon at 1:50 p.m. on December 6, 2006. He determined the cause of death was multiple gunshot wounds to the body. Fluids taken from Mr. Aragon's body tested positive for amphetamine and cannabinoids. Amphetamine usually indicates the use of Methamphetamine. Cannabinoids usually indicates the use of marijuana.

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 and/or causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. As the evidence establishes that Mr. Aragon was shot 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.

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.

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.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

(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 or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the "Assault in the first degree" statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

"The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable."

In this case, the Greeley Police Officers pursued Mr. Aragon because they were aware of outstanding warrants for his arrest and because they reasonably believed he was committing a felony. After police attempted to stop Mr. Aragon, Mr. Aragon attempted to kill police officers at least two times. He then broke an entrance into a residence during his flight from the officers.

There is no doubt Mr. Aragon knew his pursuers were police officers because it was daylight, Mr. Aragon's vehicle was stopped by a marked police car using blue and red emergency lights, and pursuing officers identified themselves as police officers to Mr. Aragon. Mr. Aragon was later surrounded by a large number of uniformed officers and indicated that he was aware that they were police officers.

Finally, Mr. Aragon abruptly approached officers by appearing on the landing with a handgun. Officers present described Mr. Aragon as squaring off against them at a time when officers knew that Mr. Aragon had shot at other officers before. Mr. Aragon had not indicated an intent to surrender before he appeared on the landing, a short distance away from the officers at the front door.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officers 1, 2, 4, and 5 were justified in using deadly force against Mr. Aragon because they reasonably believed that it was necessary to defend themselves and others from Mr. Aragon's use of deadly physical force. These officers were also justified to use deadly force because they were attempting to effect an arrest and reasonably believed that Mr. Aragon was trying to escape by the use of a deadly weapon.

CONCLUSION

Under C.R.S. 18-1-707(2)(a) and (b), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves from the 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, Four, or Five for the use of deadly force in this event. If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck
District Attorney

cc:
Tom Selders, Mayor, City of Greeley
Roy Otto, Greeley City Manager
Rick Brady, Greeley City Attorney