



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

**Kenneth R. Buck - District Attorney
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March 14, 2007

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

**RE: Investigation of the
shooting death of Brian Scott
Croissant at 701 8th Street
#119, Greeley, Colorado**

Dear Chief Garner:

The investigation and legal analysis of the Brian Scott Croissant shooting is complete, and pursuant to applicable Colorado law I will not file criminal charges against the two 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 February 17, 2007, at approximately 4:58 p.m. Greeley Police Officers were dispatched to a "suicidal party" call at the Best Western Ramkota Inn, 701 8th St, Greeley. The call originated as an "other agency assist" for the Evans (CO) Police Department. Two Greeley Police Officers arrived at the Ramkota in response to the call.

Officer Number Two was the primary officer on the suicidal party call; Officer Number One was dispatched as a backup officer. Officer One read the call history from his patrol

vehicle computer. The call history originated from the Evans Police Department and stated that a male subject, later identified as Brian Croissant, had made suicidal statements. The call history indicated that Mr. Croissant had access to guns and knives, but the person reporting the incident thought they had all been accounted for.

Officer One and Officer Two met at the Ramkota Inn where a desk clerk reported that Mr. Croissant was located in room 119. The officers approached the room to check on Mr. Croissant's well being.

Officer Two stated that he and Officer One knocked on the door to room 119 and announced that they were Greeley Police Officers. Officer One said they received no response. After knocking louder, Officer One heard a male subject inside the room ask who it was. Officer Two announced that they were Greeley Police Officers and needed to speak with him. Officer Two asked if they could enter the room but was told "no" by the subject. Officer Two stated that the male subject said he was not going to come out and did not want to talk to them. The door to the room was locked. Officer Two advised the male subject that they were there to make sure he was okay and needed to speak with him. Officer One told the male subject that they had to check on his well being and again requested that he open the door. Officer Two stated that both officers continued trying to get the male subject to open the door. Both officers then stated that they heard noises inside the room near the door handle and the door started to open slowly.

Officer One stated that as the door was opening he saw a male subject inside the room walking away from both officers. The male subject had a fixed blade kitchen-type knife in his right hand. The officers stood at the threshold of the hotel room. Officer Two stated that as the door started to open he heard Officer One yelling at the male subject to drop the knife. Officer Two could not see the knife at that time because of the angle of the furniture in the room.

Officer One drew his weapon, assumed an arms-extended firing position, and continued to command the subject to drop the knife. Officer Two stated that both officers then started giving commands to the male subject to drop the knife, face away from the officers, and get on his knees.

Officer One stated that the subject placed the knife on top of an entertainment center. Officer Two also stated that he saw

the subject put something on top of the TV stand. Both Officer One and Officer Two stated that almost immediately the subject turned around and picked the knife back up. Officer Two stated that the knife was approximately one foot long. Officer One stated that the subject started walking toward the officers as they continued to command him to drop the knife and stop. Officer One noted that there was fresh blood around the neck area of the subject which led Officer One to believe that the subject had deliberately cut himself.

Officer One continued to give the subject commands such as "get your hands up" and "drop the knife". Officer Two stated the subject made no statements after the door was opened, demonstrated an unusually emotionless and blank expression while looking at the officers and did not drop the knife.

The officers were trained to regard a person twenty-one feet away to be a potential threat as that person could be upon them in as soon as two seconds. Officer Two stated that the subject slowly walked toward both officers until he was approximately four to five feet away from the officers' position at the doorway. Officer One stated that at this point he fired his weapon. Officer One was aware that Officer Two was also firing. Officer Two stated that both officers started firing their weapons until the subject started falling backward into the room. The officers stated that they rolled Mr. Croissant over to place handcuffs on him but otherwise did not move him from where he fell.

After the shooting, investigators interviewed Jacob McKiernan, a 13-year-old boy who was in the room immediately to the west of room 119. Jacob was playing a video game in his room when he heard what sounded like arguing in the hallway. Jacob heard someone say "drop the knife". Between 15 and 60 seconds later Jacob heard gunshots.

Investigators interviewed Jim and Denise Pinegar who were in room 121, just east of room 119. Jim Pinegar heard four or five loud bangs but did not hear anything prior to that. Denise Pinegar heard five or six loud bangs. Mrs. Pinegar stated that a train was going through the area at the time. The train tracks are approximately one-half block east of the hotel.

Investigators interviewed Douglas Bullock who made the police report to the Evans Police Department on February 17, 2007, regarding Brian Croissant. Mr. Bullock reported that on

February 15, 2007, he returned to his house in Evans where Brian Croissant was staying. Mr. Bullock located a loaded shotgun and a knife on the floor of his garage. Mr. Bullock found Mr. Croissant drunk and passed out inside the house. Mr. Croissant later told Mr. Bullock that he (Croissant) was suicidal and contemplated shooting himself with the shotgun. Mr. Bullock found numerous suicide letters near a stairwell in the house, which he later turned over to police officers. Mr. Bullock stated that Brian Croissant talked about suicide constantly for the next two days.

Douglas Bullock stated that on February 17, 2007, Brian Croissant came into his bedroom and stated "I'm sorry, I appreciate everything you've done for me, but I'm done". Mr. Croissant then left the bedroom. When Mr. Bullock went to check on Brian Croissant, he saw him leaving in a taxi. Mr. Bullock called police dispatch and made the report including the statement that he overheard Brian Croissant telling his girlfriend earlier in the day by phone that he (Croissant) was going to kill himself. Mr. Bullock stated that Brian Croissant had a closed head injury, was an alcoholic and was separated from his wife and children.

Investigators contacted and interviewed Chastity Linnebur. Ms. Linnebur met Brian Croissant at the Island Grove Treatment Center where Mr. Croissant had been taken for alcohol problems. Ms. Linnebur stated that Brian Croissant told her he was suicidal a number of times but the statements were general and not specific. Ms. Linnebur stated that she and Brian Croissant had once watched a movie where the actor pulled a toy gun on police officers and was shot. Brian Croissant told her "that was the way to go out".

Investigators interviewed Michelle Croissant, the ex-wife of Brian. Ms. Croissant stated that Brian had locked himself in a Fort Collins hotel room in November, 2006, and threatened to kill himself. Brian Croissant was committed on a 72 hour psychiatric hold and treatment followed by a five day alcohol hold. Ms. Croissant stated that the family then petitioned the court and Brian received a 45 day hold for alcohol treatment. Brian was released on January 24, 2007, from that hold. Ms. Croissant stated that Brian was arrested for DUI by Greeley Police and Weld County Sheriff's Officers on January 25, 2007. Ms. Croissant stated that she would not be surprised if Brian threatened police in order to kill himself. Ms. Croissant stated that in May of 2005 Brian had received a head injury after falling from a horse and was in a coma for three weeks.

Michelle Croissant stated that the head injury accident involved alcohol.

Crime scene investigators processed room 119 at the Best Western Ramkota Inn. In the room they recovered a knife that measured a total of 13 inches long. A significant amount of blood in the form of heavy drops was found approximately four to five feet inside the threshold. A blood path away from the heavy drops led to where Mr. Croissant's body was found further into the room.

Doctors Carver and Allen performed the autopsy on the body of Brian Scott Croissant at McKee medical center on February 18, 2007 at approximately 10:00 a.m. They determined the cause of death was multiple gunshot wounds to the body. There was a long, deep knife wound on Mr. Croissant's neck. Brian Croissant's blood alcohol level was .222.

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. In this case, the determination whether the police 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 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.

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.

Section 18-1-901(2)(p) of the Colorado Revised Statutes defines the term "**serious bodily injury**" as follows:

(2)(p) "**Serious bodily injury**" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, [or] a substantial risk of protracted loss or impairment of the function of any part or organ of the body...

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 uniformed Greeley Police Officers arrived at the Ramkota Inn possessing information that Mr. Croissant had made numerous suicidal statements and had access to guns and knives. Mr. Croissant presented a potential threat when he was observed in room #119 with a knife in his possession. Mr. Croissant presented an "imminent" threat that he would use "deadly physical force" against one or both officers when he demonstrated a blank expression, ignored repeated police commands to put the knife down and moved to within four to five feet of the officers.

Although the officers were trained to regard a person twenty-one feet away to be a potential threat, the officers allowed Mr. Croissant to move to within four or five feet of where they were standing before they opened fire. This is corroborated by the blood pattern on the floor of the room. "Four to five feet" would place Mr. Croissant and his knife within easy reach of the extended arms and weapons of the officers. This distance would also place Mr. Croissant and his knife within close range of the officers.

CONCLUSION

In light of the analysis contained in this report, I find that Officers One and Two reasonably believed that it was necessary to defend themselves and each other from the imminent use of deadly physical force against them. I also find that Officers One and Two reasonably believed that Mr. Croissant was attempting to commit the felony of Assault in the First Degree against one or both of them and that the officers were entitled to affect his arrest through the use of deadly force. I therefore find that Officers One and Two were justified in using deadly force against Mr. Croissant pursuant to C.R.S. 18-1-707(2)(a) and (b). As a result, the Weld County District Attorney's Office will not file any charges against Officers One or Two for the use of deadly force in this matter. 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