



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

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

July 15, 2014

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

RE: Investigation of the shooting of Victor Daniel Hernandez at the Clarion Hotel, Greeley, Colorado on, June 14, 2014

Dear Chief Garner:

The investigation and legal analysis of the Victor Hernandez 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 June 14, 2014 at 12:24 a.m., Weld County Communications received three separate 911 calls from 125 18th Street reporting a disturbance between an armed male, later identified as Victor Hernandez, and a female. When Greeley Police Officers arrived, they learned from a security guard at the Bucanas Bar that he had witnessed Hernandez standing over the female punching her in the face. When the security guard went to assist her, Hernandez yelled at him to "get out of my face, I have an AK-47." Hernandez was ordered to leave the premises. Hernandez ran to his car and retrieved an item out of the trunk. When he began walking back towards the bar, he had one hand near the waistband of his pants, leading the security guard to believe that the item was a handgun.

A second security guard also attempted to assist the female. He also observed Hernandez retrieve an item from the trunk of his car, placing that item in his waistband. He overheard Hernandez yell at the first security guard that he was going to shoot him. Hernandez then returned to the female, who was lying on the ground. This second security guard walked over to try and calm Hernandez down. Hernandez began shouting at him and punched him several times, knocking the security guard to the ground. Hernandez kicked him in the head and threatened to shoot him as well.

Hernandez and the female got into a silver 2011 Dodge Avenger with license plates registered to Victor Hernandez. Greeley Officers responded to Hernandez's address to attempt to contact him. Hernandez was not present at the home, but an officer obtained Hernandez's cell phone number.

The Greeley Officer called Hernandez and spoke to him by cell phone. Hernandez told him "F___ you, I don't have anything to tell you about that s___ over there." The officer asked if they

could meet somewhere so that officers could get Hernandez's side of the story. Hernandez responded, "f___ you. I am out on bond and I am not going back to jail. If you want to talk to me, you're going to have to f___ing find me. I am not f___ing going to jail, I am out on bond and this will f___ me over."

At 1:26 a.m., Weld County Communications received a 911 call from 1015 3rd Ave. reporting a "crazy guy with a gun outside." Several officers responded, and learned that a man fitting Hernandez's description was armed with a small black handgun and had pointed the gun at the woman telling her he was going to shoot her. He then grabbed her by the hair and pulled her into a vehicle and left the area.

At 1:32 a.m., the desk clerk at the Clarion Hotel called 911 to report a female in the lobby of the hotel bleeding from head wounds. The female told the clerk that she needed a room and that her boyfriend had a gun. Numerous Greeley Officers, including Officers #1 and #2 responded to the Clarion Hotel. Officer #1 located the silver Dodge Avenger from the previous call in the parking lot of the hotel, and at approximately the same time, a Greeley Sergeant aired over the radio that he located Hernandez in the lobby. Upon seeing officers, Hernandez ran out of the north exit of the hotel into the parking lot, where Officer #2 was positioned.

As Hernandez exited the hotel, he made eye contact with Officer #2, and then began fleeing to the east. Officer #2 saw that Hernandez held a black semi-automatic handgun in his right hand. Officer #2 drew his own handgun, and yelled "police, stop." Hernandez continued running to the east, turned his body, and pointed the handgun at Officer #2. Officer #2 fired eight to nine rounds at Hernandez as he fled.

Hernandez then turned north and ran down an alley in the 700 block between 6th and 7th Streets. Officer #2 got to the entrance of the alley at the south end, and took cover behind a building. He saw Hernandez again turn towards him and raise his gun, so Officer #2 fired three to four additional rounds at Hernandez. Officer #2 then saw Hernandez continue to run north down the alley.

Officer #1 also observed Hernandez run northbound down the alley. As Officer #1 reached the south curb of 7th Street, he took a few steps into the street, stopped, and fired one round at Hernandez.

Officers found Hernandez in the 700 block of 6th Street leaning against a building. Officer #2 saw Hernandez sit down at that location, raise his hands up, and then lie down at that location. A .40 caliber Glock Model 27 handgun was found at Hernandez's feet. There was one live round in the chamber of that weapon, and two live rounds in the magazine found inside the handgun.

Hernandez was transported to the North Colorado Medical Center where he was pronounced deceased. An autopsy was conducted on June 14, 2014 by a forensic pathologist. Hernandez suffered three gunshot wounds: one to his left hand; one to the upper left leg; and one to the left torso near his armpit.

Officer #1 was interviewed by the Weld County District Attorney's Office and Greeley Police Detectives. He was positioned on the east side of the Clarion Hotel when he heard on the radio Officer #2 say that the suspect was running towards Officer #1. Officer #1 immediately heard several gunshots in rapid succession coming from the north side of the hotel. He saw a male wearing dark clothing running north across 7th Street, and his thought was that Officer #2 had been shot as he did not hear Officer #2 on the radio after hearing the shots. As Hernandez reached the mouth of the alley, he saw another officer chasing after him. Officer #1 fired one round, believing that he and other officers were in danger of imminent death or serious bodily injury.

Officer #2 was also interviewed by the DA's Office and Greeley Detectives. He stated that he did not initially see a gun in Hernandez's hand when he exited the north doors of the hotel. As Hernandez ran east away from him, he yelled "Police, stop." He saw Hernandez turn and point the handgun at him, and saw the gun dipping up and down, causing Officer #2 to believe he was being fired at. He thought that Hernandez was trying to kill him, so he fired eight to nine rounds at Hernandez. He then chased Hernandez to the alley, where Officer #2 took cover behind the corner of the building. He again saw Hernandez raise the gun and point it at him, so Officer #2 fired three or four times, believing his life was in danger.

An extensive crime scene investigation was conducted. No .40 caliber fired rounds or spent shell casings were found. There were nine (9) .45 caliber spent shell casings located in the area of the north doors of the hotel in the parking lot area. These shell casings, both in location and in number, were consistent with the description given of his actions by Officer #2. An additional .45 caliber spent shell casing was located north of the south curb line in the 700 block of 7th Street, consistent with the location from which Officer #1 fired his handgun. Four additional .45 caliber spent shell casings were located at the south entrance of the alley in the 700 block of 7th Avenue.

Investigators also located a blood trail beginning on the sidewalk on the north side of the hotel oriented in an eastbound direction, then turning north through the parking lot, down the alley in the 700 block between 6th and 7th Streets, and ending in the 700 block of 6th Street where Hernandez was found leaning against the building.

Videotapes from surveillance cameras were also collected from the north door area of the Clarion Hotel and from Kings Storage. The Clarion surveillance video showed Hernandez entering the north doors of the hotel while adjusting an item in the waistband of his pants. The same camera showed Hernandez running out of the same doors into the north parking lot of the hotel holding a handgun in his left hand. The Kings Storage surveillance video showed Hernandez running from the area of the hotel, north across 7th Street towards the alley with an officer in pursuit. A second camera from the north side of Kings Storage showed Hernandez running in a northwest direction as he came out of the alley.

As part of this investigation, Detectives interviewed the female that Hernandez had assaulted earlier in the evening. On June 13, Hernandez had sent her a Facebook message in which he stated that he wished someone would take his life. Later on the 13th and into the early morning hours of the 14th, she stated that Hernandez had been drinking heavily at the Bucanas Bar, and they had gone outside together. She stated that he began yelling at her until security approached them. Hernandez then punched one of the security guards, and they got into his car and left. They drove to the Greeley Inn Motel where she got out of the car, and Hernandez left to go get a gun. Hernandez told her that he was going to get a gun to return to the bar and shoot the security guards. After he left, the female stated that she walked to a friend's house at 1015 3rd Avenue. Hernandez arrived shortly after she did, he had a gun, and according to her, Hernandez was angry. He began threatening people inside the home with the gun. She stated that she left with him, and as they were leaving he struck her in the head with the gun causing two lacerations to her scalp.

The female said that Hernandez then drove them to the Clarion Hotel, where he dropped her off and instructed her to get a room and "not to try anything." Hernandez entered the lobby through the north doors shortly after that, and when he saw the police in the lobby, he ran out of the north doors of the hotel.

A review of Hernandez's criminal history indicated that he was on bond for three separate criminal cases in Weld County: Disorderly Conduct in Greeley Municipal Court in which Hernandez posted a \$500 personal recognizance bond; 14CR711 in which Hernandez was charged with First

Degree Burglary, Robbery, Third Degree Assault, Child Abuse and Reckless Endangerment and posted a \$40,000 surety bond to be supervised by Pretrial Release Services; and 14CR987 in which Hernandez was charged with First Degree Burglary, Third Degree Assault and Violation of a Protection Order and posted a \$75,000 surety bond to be supervised by Pretrial Release Services.

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 Officers #1 and #2 fired their weapons at Hernandez, and that he died as a result of three gunshot wounds, 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 investigating a series of assaults and threats with a gun committed by Hernandez. Officers #1 and #2, as well as other responding officers, were dressed in standard issue Greeley Police Officer uniforms, and Officer #2 clearly identified himself as a police officer when he encountered Hernandez. Hernandez immediately ran from Officer #2, and in the process of fleeing, pointed the handgun at Officer #2. Hernandez, while wounded, continued to flee, and pointed his handgun at Officer #2 while in the alley. Officer #2 reasonably believed at the time he fired his weapon, based on all of the surrounding facts and circumstances known to him that he or other officers were in imminent danger of death or serious bodily injury.

Officer #1, having heard multiple gunshots coming from the direction of where Officer #2 was located, and having observed Hernandez continue to run with a firearm in his hand, also reasonably believed, at the time he fired one round, that he or other officers were in imminent danger of death or serious bodily injury.

Additionally, C.R.S. 18-1-707(2)(b)(I) provides in pertinent part:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary to effect an arrest...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.

The information known to officers in the early morning hours of June 14, 2014, indicated that Victor Hernandez had committed a series of felonies involving the use or threatened use of a deadly weapon against the security guards at Bucanas Bar in threatening to shoot them, against the female by threatening to shoot her and striking her in the head with a firearm, against the occupants of 1015 3rd

Avenue by threatening them with a gun, and against Officer #2 by pointing a firearm at him. Officers #1 and #2 reasonably believed that it was necessary to use such force in order to effect an arrest of Hernandez for the felonies noted above involving the use or threatened use of a deadly weapon.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that Officers #1 and #2 were justified in using deadly force against Hernandez because they reasonably believed that it was necessary to defend themselves and others from Hernandez's threatened use of physical force and to effect an arrest of Hernandez following the commission of several felonies involving the use or threatened use of a deadly weapon.

CONCLUSION

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