



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

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

September 21, 2007

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

**RE: Investigation of the
shooting death of Jimmy Joe
Trevino in the 2500 block of
First Avenue, Greeley,
Colorado**

Dear Chief Garner:

The investigation and legal analysis of the Jimmy Joe Trevino 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 August 15, 2007, at approximately 2:48 a.m. Greeley Police Officers were dispatched to 2446 1st Avenue # 1, Greeley, as a result of a request by Vince Nava to check on the well-being of his sister, Veronica Trevino. Mr. Nava told police dispatchers that he received a call from Veronica who told him that her husband, Jimmy Joe Trevino, was at her apartment, 2446 1st Avenue #1. Jimmy Joe Trevino was recently paroled from prison and was prohibited from having contact with Veronica. Nava reported that Veronica was crying over the phone and had told

him that Jimmy Joe informed her that he had held a gun to the head of his (Trevino's) sister earlier that night. According to Veronica, Jimmy Joe told her that when he started to pull the trigger someone hit his hand and he didn't know if he had shot his sister or not. Veronica told Nava that Jimmy Joe came to her apartment, went crazy, and choked her. Nava told Greeley Police Dispatchers that he thought Jimmy Joe still had the weapon.

Greeley Police Officer One was the primary officer on the call and he arrived at the residence of Veronica Trevino wearing his full police uniform. Greeley Police Officer Two, who was also wearing his full police uniform, was dispatched as a backup to Officer One. Officer One reported that he contacted Veronica Trevino who told him that Jimmy Joe Trevino said to her "I just shot my sister, and there's blood on the wall." Veronica reported to Officer One that Jimmy Joe showed her a gun which she described as a revolver. She stated that he had bullets in his pocket. Officer Two recalls being present for that conversation and remembers Veronica telling Officer One that Jimmie Joe had a small handgun with a long barrel and bullets for it. Officer One showed Officer Two a photograph of Jimmy Joe and told Officer Two that Jimmie Joe was wearing blue jeans and no shirt. Veronica told Officer One that when Jimmy Joe showed her the gun he also physically assaulted her before running off.

Officer Two reported that he observed a male matching the description of Jimmy Joe Trevino return to the parking lot as Officer One was speaking with Veronica Trevino. Officer Two challenged the person, identifying himself as a police officer and commanding the person to show his hands. The person identified as Jimmy Joe Trevino ran. Officers One, Two and other officers chased Trevino but lost him in the area of the Plaza Del Milagro Apartments in the 2500 block of First Avenue. As officers were checking the parking area, Officer Two asked Officer One to check out a nearby dumpster which was contained by a fence. The fence did not allow a view behind it and it included an opening on one side. The fence was spaced approximately two feet from the dumpster on all sides. Officer One had a flashlight attached on top of his weapon. Using the light from that flashlight, Officer One stepped into the enclosure and peered cautiously over the edge of the dumpster. As Officer One proceeded to look inside the dumpster, a person came into view hiding in the dumpster. The person was wearing blue jeans, no shirt, and had arms covered in tattoos. Officer One had been shown a picture of Jimmy Joe Trevino earlier and

had been given a physical description of him just prior to the chase. Officer One shouted "Police Department, let me see your hands" numerous times. Officer Two heard Officer One yelling "show me your hands" numerous times and joined Officer One, also looking into the dumpster. Officers One and Two recognized the individual as Jimmy Joe Trevino. Officer One observed Trevino's hands move up and then down towards his pockets, entering the pockets. Officer Two also observed Trevino's hands moving near his pants. Officer Two observed Trevino attempting to stand up while reaching for his waistband. Officer One continued yelling commands and stated "let me see your hands or I will have to shoot you". Officer One observed Mr. Trevino's hands going deeper into his pockets at which time he fired several rounds. Officer Two fired one round at approximately the same time. As those shots were fired, Mr. Trevino started moving toward the back of the dumpster and his hands came out of his pockets. Mr. Trevino then moved his hands back down towards his pockets and Officer One fired several more rounds. Mr. Trevino ceased moving. Officer One stated that he was convinced Mr. Trevino would pull out of his pocket the handgun that had been reported earlier and that Mr. Trevino would shoot either himself or other officers. Officer Two also reported that he thought Trevino was going to pull a gun and shoot them.

Greeley Police Officer David Brantner was on the call as a back-up officer. Officer Brantner chased the suspect with other officers and helped check the parking lot of the Plaza Del Milagro apartments. Officer Brantner heard Officers One and Two yelling at someone near a dumpster to "let me see your hands". Officer Brantner came around the dumpster enclosure and observed Officers One and Two with their weapons drawn, looking into the dumpster. Officer Brantner saw Officer One fire several rounds.

Greeley Police Officer O.J. Hunt was on the call as a back-up officer. Officer Hunt chased the suspect with other officers and helped check the parking lot of the Plaza Del Milagro apartments. Officer Hunt heard Officers One and Two yelling "show your hands" many times in loud voices near a dumpster.

Veronica Trevino was later interviewed by investigators and reported her interaction with her husband, Jimmy Joe Trevino. Ms. Trevino told officers that her husband came to her door very drunk, mad, and upset. Jimmy Joe had cut off his ankle monitors which he was wearing because he was on parole. Trevino punched her in the chest repeatedly, grabbed her by the neck, and banged her head against the door numerous times. Jimmy Joe had a small gun and it turned where the bullets went in (describing a

revolver). Jimmy Joe showed her the gun which he had in his pants pocket and showed her bullets for the gun which were also in his pocket. Veronica reported, and apartment security cameras supported, that Jimmy Joe Trevino left and returned to her apartment several times. Veronica told officers that the last time Jimmy Joe came back into the apartment she wasn't sure but thought he still had the gun. Jimmy Joe Trevino told her that he wasn't going back, meaning to prison. He stated that he wasn't going to let them take him alive and would rather die before he went back. Veronica Trevino stated that she thought her husband would "take himself out".

Greeley police officers interviewed Dolores Romero, the neighbor immediately next door to Veronica Trevino. Dolores was told by Veronica immediately before officers arrived that Jimmy Joe had a gun and may have killed his sister with it. Veronica told her that Jimmy Joe pointed a gun at his sister's head but someone knocked it away. Veronica told Dolores that Jimmy Joe didn't know if he shot his sister.

Greeley police Officers interviewed Gilbert Lopez who lives in the Plaza Del Milagro apartments. Mr. Lopez stated that he looked out a window and saw two police officers pointing guns at somebody by the dumpster. Mr. Lopez heard officers yelling at this person to get his hands out of his pockets and get on the ground. Mr. Lopez heard three shots and then four more shots. Mr. Lopez never saw the suspect. Mr. Lopez stated that he knew they were police officers because he saw them in uniform.

Crime scene investigators processed the scene. After checking the officer's weapons, a total of nine shots were fired. Crime scene investigators recovered seven shell casings consistent with the type of ammunition used by Greeley police officers and eight bullets were located. The area surrounding the scene was searched and no handgun was found.

The Dominic Apartments, which includes 2446 First Avenue, uses six security cameras at different locations which are motion activated. The tapes to those cameras were obtained later and reviewed by investigators. The camera angles show Jimmy Joe Trevino arriving at approximately 1:26 a.m. Trevino left the apartment a number of times going through a gate on the east side and returning. The tapes show officers arriving and contacting Joe Trevino, Jimmy Joe's Uncle. The tapes show Jimmy Joe Trevino returning and then running away with police officers pursuing him.

Doctor Patrick Allen performed the autopsy on the body of Jimmy Joe Trevino at McKee Medical Center on August 15, 2007 at approximately 4:00 p.m. Dr. Allen determined the cause of death was multiple gunshot wounds (8) to the chest and abdomen. Trevino's blood alcohol level was .187 and he tested positive for cannabinoids. Five live 9mm rounds were found in Mr. Trevino's right front pocket. A spent bullet was found in his left pocket.

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 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.

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, officers were presented with information that Jimmy Joe Trevino had assaulted and possibly murdered his sister

with a handgun. They were also told that Mr. Trevino then proceeded to the residence of Veronica Trevino, his wife, where he showed her a gun, physically assaulted her and ran off before the police arrived, apparently still in possession of the gun. He was reported to still have the gun by Vince Nava. Veronica also reported that he may still have the gun. The gun was described as "small" and the pants worn by Jimmy Joe were described as the "baggy" style. The pants had sufficient capacity to conceal a handgun.

The reported facts and circumstances gathered surrounding the incident indicated that Trevino was apparently willing to shoot and assault innocent persons including his own family members. The officers also knew that Jimmy Joe had recently been paroled from prison and had cut off his ankle monitor. He was apparently in an agitated and violent state of mind. Circumstances included darkness and physical surroundings that added to the danger of what became the abrupt discovery of Trevino who was reaching as if for a weapon. The officers were in an exposed position looking over the edge of the dumpster and would certainly lose control of the situation if they backed away and gave Trevino time to draw a weapon and shoot from behind the protection of the dumpster in the relative darkness. The extent of Trevino's reach into his pockets produced the possibility that he would quickly produce and shoot a gun at the officers before any of their shots could disable him. Given the other reported circumstances, the possibility that Trevino would rapidly shoot became a probability in the minds of Officers One and Two. The cumulative facts in this situation thus support the officers in their conclusion that they faced the imminent use of deadly physical force against them.

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 therefore find that Officers One and Two were justified in using deadly force against Mr. Trevino pursuant to C.R.S. 18-1-707(2)(a). 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