

July 18, 2006

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

**RE: Investigation of the
shooting of Joey Ray Pena near
1225 26th Avenue, Greeley,
Colorado**

Dear Chief Garner:

The investigation and legal analysis of the shooting of Joey Ray Pena has been completed, and I conclude that under applicable Colorado law no criminal charges will be filed against the two officers who fired their weapons in this incident. A summary of the facts in this case and the applicable Colorado law are contained in this letter. The file of this investigation is open to the public at our office, and any interested party is welcomed to review the investigation and my decision in greater detail.

STATEMENT OF INVESTIGATION

On June 7, 2006, at approximately 1:23 a.m., Greeley Police Officers responded to a call of an auto prowl at 1225 26th Avenue, Greeley. A citizen reported that several males were taking items from a truck in the north parking lot of the apartment complex.

Two Greeley Police Officers responded to the call and observed several males whose actions led them to believe they were breaking into cars. The officers drew their weapons and approached the male suspects. At least one suspect was inside a vehicle in the parking lot, and the other suspects were either exiting or standing immediately outside the vehicle. The officers identified themselves as police officers and told the suspects to put their hands up. All the suspects immediately started running. Both officers gave chase.

One officer chased a male suspect who fell to the ground in the parking lot. The Officer also slipped on the ground but

attempted to arrest the suspect since he fell near him. The officer was assaulted by the suspect who then fled the scene on foot.

The second officer chased another male suspect who fell in an area of mulch near the parking lot. The officer arrested and handcuffed this suspect, who was physically resisting, with the assistance of the first officer. The suspect was later identified as Joey Ray Pena.

As the second officer was escorting Mr. Pena out of the parking lot, Mr. Pena slipped out of one of the handcuffs, struck the officer, and attempted to flee. As the officer grabbed Mr. Pena, he violently resisted and disarmed the officer. The officer attempted to hold Mr. Pena's hands which were around his service weapon and eventually fired the weapon in an attempt to jam it. As the struggle for the officer's weapon continued, the first officer arrived and fired several rounds at Mr. Pena who fled the scene with the officer's weapon.

Officers found blood on a fence in the yard of 1301 27th Avenue. Just outside that fence, they located the weapon taken by Joey Pena.

Officers Douglas Steinhour and Steven Soliday gave voluntary statements to Weld County Assistant District Attorney Phil Clark, Chief Investigator Tony Molocznik, and Greeley Police Department Detective Mike Zeller. Both officers were represented by David Bruno, an attorney with Bruno, Colin, Jewell & Lowe, P.C. The interviews took place at the Greeley Police Department and were audio and video taped.

Officer Steinhour responded to an auto prowler call at 1225 26th Avenue, Greeley, on June 7, 2006, at approximately 1:23 a.m. Officer Steven Soliday also responded to the call. Officer Steinhour observed several males whose actions led him to believe they were breaking into cars. The officers drew their weapons and approached the male suspects. The officers identified themselves as police officers and told the suspects to put their hands up. The suspects fled and both officers gave chase.

Officer Steinhour's suspect fell in an area of mulch near the parking lot. The suspect, who was physically resisting, was arrested and handcuffed with the assistance of officer Soliday. The suspect was later identified as Joey Ray Pena.

As officer Steinhour was escorting Mr. Pena out of the parking lot, Mr. Pena slipped out of one of the handcuffs, struck the officer, and attempted to flee. As the officer grabbed Mr. Pena,

he violently resisted and disarmed the officer. The officer attempted to hold Mr. Pena's hands which were around his service weapon.

At the time officer Steinhour realized that Mr. Pena had his service weapon, it was pointed at officer Steinhour's chest. Officer Steinhour forced the weapon up and away from his face and chest area and pushed the suspect backwards into a large planter area with bushes and dirt in it. Officer Steinhour pinned the gun down into the dirt area. Officer Steinhour attempted to disarm or incapacitate Mr. Pena by punching him. Mr. Pena violently resisted and struggled. Officer Steinhour decided to try and jam his weapon by firing it while he held the slide in a stationary position. Officer Steinhour was able to do this with his hands over Pena's hands. The weapon was fired into the ground. Officer Steinhour did not know if his maneuver was successful. Officer Soliday came to his assistance at this time.

Officer Steinhour yelled to Officer Soliday that Mr. Pena had his weapon and told Officer Soliday to shoot Mr. Pena. Officer Steinhour made this statement because Mr. Pena was gaining control of his firearm and felt Mr. Pena would try to kill him with it. Officer Soliday fired approximately five or six rounds at Mr. Pena as Officer Steinhour moved away from him. Officer Steinhour saw Mr. Pena transferring the gun to his left hand and into a firing grip toward Officer Soliday immediately before Officer Soliday fired. Mr. Pena ran south for a short period and stopped, turning with the handgun pointed in their direction. Officer Steinhour heard Officer Soliday shoot one more time. Officer Steinhour last saw Mr. Pena fleeing toward 13th Street and 26th Avenue.

Officer Soliday responded to this call with Officer Steinhour. He chased a male suspect who fell to the ground in the parking lot. Officer Soliday slipped on the ground and attempted to arrest the suspect. Officer Soliday was assaulted by the suspect who fled the scene on foot.

Officer Soliday then assisted Officer Steinhour in arresting a suspect later identified as Joey Ray Pena. Officer Soliday returned to the area where his suspect fought with him to look for evidence. Officer Soliday heard a muffled radio transmission and started toward Officer Steinhour's probable location when he (Steinhour) did not answer his radio. Officer Soliday heard a gunshot and started running toward the area where Officer Steinhour was last seen. Officer Soliday stated that Officer Steinhour yelled to him and he observed Officer Steinhour fighting with Mr. Pena in a large planter area. Officer Soliday was told that Mr. Pena had Officer Steinhour's gun, and Officer Steinhour stated to Officer Soliday that he should shoot the Suspect. Officer Soliday

could not shoot because of the close proximity of Officer Steinhour to Mr. Pena. At one point, Officer Soliday saw Mr. Pena with Officer Steinhour's gun in his (Joey Pena's) left hand and still struggling violently with Officer Steinhour. Mr. Pena brought his right hand over to his left hand to secure a position on the weapon to fire it. Officer Soliday fired four to five rounds at Mr. Pena when the weapon was pointed toward him (Soliday) and Mr. Pena was looking at him. Mr. Pena ran south. Mr. Pena slowed and started to turn toward the officers. Officer Soliday felt Mr. Pena was going to turn and fire at them so he fired once more at Mr. Pena. Mr. Pena continued south and was last seen at 26th Avenue and 13th Street.

Two suspects, Mark Montoya and Anthony Joseph Roybal, were arrested a short distance away after a search of the area. Mark Montoya was interviewed by Greeley Police officers and identified the third person with them as Joey Pena. Mark Montoya was positively identified by Officer Soliday as the person he chased and who assaulted him and escaped. Anthony Roybal was interviewed by Greeley Police officers and admitted breaking into cars and removing items from them at 1225 26th Avenue. Anthony Roybal admitted that Mark Montoya and another person were with him. He positively identified Joey Ray Pena from a photo lineup as the third person with them.

Officer Steinhour viewed a photo lineup and positively identified Joey Ray Pena as the suspect he fought with and who took his weapon. Greeley Police officers found evidence that a minimum of four vehicles were broken into in the south parking lot of the apartments located at 1225 26th Avenue and officers recovered CD's, a duffle bag, a stereo, drills, tool kits, a screw driver, a radar detector, and other items in the parking lot area.

Joey Ray Pena was located at 2120 5th Avenue and arrested at 9:04 a.m. on June 7, 2006. He had a gunshot wound to his upper left arm and other injuries and bruises to his body.

Scott Pinkstaff was interviewed by Greeley Police Officers. Mr. Pinkstaff told police officers that he observed several males looking into vehicles in the north parking lot of 1225 26th Avenue, Greeley. Mr. Pinkstaff observed several males taking items from a truck. Mr. Pinkstaff called the police. Mr. Pinkstaff later saw a Greeley Police officer "bear hugging" one of the suspects. The officer was telling the Suspect "Don't" and yelling "Don't" numerous times. It was Mr. Pinkstaff's impression that the Suspect was trying to take the officer's gun. The Suspect continued fighting the officer, and the Suspect appeared to be doing everything he could to get away from the officer. Mr. Pinkstaff started running down the apartment building stairs to assist the

officer when he heard five gunshots.

Evidence technicians recovered five .45 caliber automatic federal casings near a planter area of 1225 26th Avenue, Greeley. They recovered a Glock Model 21 .45 caliber handgun immediately west of 1301 27th Avenue. There was a spent .45 caliber casing in the weapon and 13 rounds in the magazine. There was blood on the trigger of the weapon when it was recovered.

LEGAL ANALYSIS

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.

CONCLUSION

Under C.R.S. 18-1-707(2) (a) and (b), the officers' actions in this situation were fully justified by the

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volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file any charges against Officer Doug Steinhour or Officer Steve Soliday.

If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck
District Attorney

cc:

Tom Selders, Mayor, City of Greeley
LeRoy Johnson, Councilmember Ward I
Ed Phillipsen, Councilmember Ward II
Don Feldhaus, Councilmember Ward III
Debbie Pilch, Councilmember Ward IV
Carrol Martin, Councilmember at Large
Pam Shaddock, Councilmember at Large
Rick Brady, Greeley City Attorney
Captain Mike Savage
Captain Jack Statler
Captain Juan Cruz
Lieutenant Brad Goldschmidt
Chairman William Jerke, Weld County Board of Commissioners
Bruce Barker, Weld County Attorney