

June 2, 2005

Chief Michael Butler
Longmont Police Department
225 Kimbark Street
Longmont, CO 80501

**RE: Investigation of the
shooting death of Dianne Beth
Carlsten at 11145 Bluff Lodge
Lane, Longmont, Colorado.**

Dear Chief Butler:

The investigation and legal analysis of the shooting death of Dianne Beth Carlsten has been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against either of the two officers who fired their weapons in this incident. My summary of the facts in this case, a description of the procedure used in the investigation of this shooting and the applicable Colorado law are contained in this letter. The written file of the 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.

SYNOPSIS

In the late afternoon hours of Monday, January 10, 2005, Weld County Sheriff's deputies were dispatched to a single family residence at 11145 Bluff Lodge Lane, Longview Estates, in Weld County. Soon after arriving, a deputy observed Dianne Carlsten walk onto the porch of her residence with a handgun and fire a round into the ground. The Weld County deputy called for assistance and officers from other departments responded to the scene and took up positions.

Longmont Police Officers Kyle Miller, Sean Harper, and Todd Chambers were located across the street from 11145 Bluff Lodge Lane. On three or four occasions Dianne Carlsten stood on the porch and fired the gun, including one shot apparently fired at officers. Dianne Carlsten was on the porch and appeared to be reentering her home when she stopped, turned, and pointed the gun at Officers Chambers, Miller, and Harper. Officers Harper and Chambers each

fired once. Officer Harper's round hit Dianne Carlsten. Weld County paramedics responded immediately and transported Dianne Carlsten to Longmont United Hospital where she was pronounced dead.

STATEMENT OF INVESTIGATION

In the late morning of January 10, 2005, Janet Murphy visited Dianne Carlsten at Ms. Carlsten's home to help show it to a potential buyer. Ms. Carlsten was experiencing financial difficulties and had decided she needed to sell the house. Ms. Carlsten lived at 11145 Bluff Lodge Lane, in Longview Estates, a development near Highway 119 and Weld County Road 3.5 in Weld County.

Ms. Murphy thought Ms. Carlsten seemed depressed. The investigation revealed several factors that may have contributed to Ms. Carlsten's depression. Ms. Carlsten voiced concern about not having a place to live after she sold her house. Her common-law husband died approximately two years earlier. Ms. Carlsten suffered a stroke shortly after he died, which adversely affected her speech. She was homebound because she had given up driving after being involved in an automobile accident. According to Ms. Carlsten's sister, Ms. Carlsten had previously been treated for abusing alcohol. The autopsy report states that Ms. Carlsten's vitreous ethanol level was .182 mg/dL and her blood ethanol level was 0.115 g/dL.

Ms. Carlsten's friends and family noticed her depression. A neighbor, Ronna Adams, thought that Ms. Carlsten was very lonely and disappointed. Ms. Carlsten told her sister that she wanted to kill herself.

On January 10th, Ms. Carlsten took a nap from noon to about 3:00 p.m. while Ms. Murphy showed the prospective buyer the house. When Ms. Carlsten awoke, Ms. Murphy saw she was upset and crying. Ms. Carlsten said she wanted to commit suicide and that she was going to kill herself. Without any warning, Ms. Carlsten pointed a pistol at Ms. Murphy and ordered Ms. Murphy to leave. Ms. Murphy immediately complied and called the police, reporting what had just occurred. Ms. Carlsten owned a small black pistol, a .22 caliber semi-automatic, which her son had given her for protection.

Weld County Sheriff's Deputy Robert Roberts, who drove a marked patrol car and wore a full sheriff's deputy uniform, arrived at 3:33 p.m. As he stood outside talking to Ms. Murphy, Ms. Carlsten walked out of her home holding a pistol and fired a shot into the ground. Deputy Roberts repeatedly yelled at Ms.

Carlsten to drop her gun. She went back inside her house.

Deputy Roberts radioed for help. Officers from the Firestone Police Department, the Boulder County Sheriff's Office and many officers from the Longmont Police Department arrived. In an effort to persuade Ms. Carlsten to surrender, Weld County Sheriff's Deputy Ken Nelson telephoned Ms. Carlsten. She answered the call, yelled, "I just want to die," and hung up. A second call rang seventeen times before the receiver was picked up and then immediately hung up. A third call was not answered after repeated rings.

Ms. Carlsten then walked out on to the porch of her house, holding the pistol. Weld County Sheriff Investigator Alan Caldwell and Firestone Police Officer Carlos Ramirez were standing behind a pickup truck in the driveway of the house immediately to the South of Ms. Carlsten's house. Officer Carlos Ramirez was armed with a shotgun containing a "less lethal" round and ordered her to drop her gun. She pointed her gun in their direction. They ducked behind the pickup truck and immediately heard a shot fired from the porch. Officer Ramirez exchanged his "less lethal" shotgun for his AR 15 rifle at that time feeling that "less lethal" force was no longer an option.

According to various police witnesses, Ms. Carlsten repeated this sequence several times. She came out of her home with the weapon aimed at her head, fired a shot at the ground and then went back inside.

Several Longmont police officers, dressed in regulation police uniforms, positioned themselves in various places around Ms. Carlsten's home, between 130 and 140 feet from the porch. Officer Kyle Miller stood at the corner of a house across the street from Ms. Carlsten, 11130 Bluff Lodge Lane. Officer Sean Harper, carrying a shotgun loaded with a slug, knelt close to Officer Miller. Officer Todd Chambers, armed with a rifle, assumed a position on the roof of that house.

Officer Miller saw Ms. Carlsten come out on to the porch again, aiming the gun toward her head. He tried to negotiate with Ms. Carlsten by name and told her numerous times to put the gun down. Other police officers also pleaded with her to drop the weapon and surrender. According to Officer Harper, Ms. Carlsten, at one point, responded by saying, "just shoot me."

Ms. Carlsten, holding the pistol in her left hand, put the barrel under her chin on the left side of her face. It then looked as if Ms. Carlsten was going to reenter her home, when she stopped, turned, took a step and pointed her pistol directly at

Officers Miller and Harper. Officer Miller said he felt in danger and threatened when Dianne Carlsten pointed the weapon directly at him. Fearing that Ms. Carlsten was going to shoot these two men and wound or kill them, Officers Harper and Chambers each fired their weapons once at her.

Ms. Carlsten was struck by a slug from Officer Harper's shotgun, which killed her. The path of the wound was consistent with Ms. Carlsten pointing the pistol at the officers with her left hand. Her pistol was recovered and inspected. It was a .22 caliber black semi-automatic pistol, Jennings Model J-22. There were three live rounds in the magazine and one live round jammed in the chamber.

Several neighbors saw or overheard the events. Patsy Willis heard Ms. Carlsten shout that she was going to kill herself. Erin Griego heard the officers yelling at Ms. Carlsten to put the gun down and Ms. Carlsten reply with, "no," "leave me alone" and "get out." Ms. Murphy heard at least four shots, which she described as "little," consistent with those fired from Ms. Carlsten's small caliber pistol, and then a "big" shot, consistent with the shots fired by Officers Harper and Chambers. Tony Griego heard officers yelling at Ms. Carlsten to put her gun down, a few shots and then a very loud shot.

Immediately after the shooting and in compliance with the protocol for officer-involved shootings, both of the officers were taken separately to the Longmont Police Department and their weapons secured. The two officers remained separated and later gave voluntary video-taped statements to investigators.

I met with Michael Blanchard on the evening of January 10th and expressed my condolences for the loss of his mother. I also met with Mr. Blanchard and other family members on the afternoon of January 14th to give them an update of the investigation and to answer their questions.

Michael Blanchard refused to sign a medical records release for background information concerning his mother. Family members were contacted by an investigator from this office and asked for statements concerning this incident and for background information. Every opportunity was made to meet with them. Other than the meetings described in the preceding paragraph, each request was either denied or no response was received from family members.

Weld County Sheriff's Office crime scene investigators located a .22 shell casing on the deck of 11145 Bluff Lodge and one .22 shell casing on the kitchen floor of 11145 Bluff Lodge.

A spent shotgun shell was found outside of 11130 Bluff Lodge. One .223 spent shell casing was found in front of 11130 Bluff Lodge.

No prescription medications were found in Dianne Carlsten's home. No alcoholic beverages or drugs were found in her home.

Weld County Sheriff's crime scene investigators determined that Officer Sean Harper's shot was made at a distance of 138.7 feet and Officer Todd Chambers' shot at a distance of approximately 132.5 feet.

Weld County Sheriff's Detective Steve Reams retrieved both Officers' weapons from the Longmont Police Department and secured them in evidence for this investigation. One weapon was a Remington 870 shotgun, the other a Sig .223 rifle.

Weld County Coroner Doctor Stephen J. Cina performed the autopsy on the body of Dianne Carlsten at 2:00 p.m. on January 11, 2005. He determined that the cause of death was a perforating shotgun slug wound to the chest. The wound to Dianne Carlsten entered her left breast area, passed through her heart and lungs, and exited out the right back. The autopsy report states that Ms. Carlsten's vitreous ethanol level was .182 mg/dL and her blood ethanol level was 0.115 g/dL.

STATEMENT FROM OFFICER SEAN HARPER

Officer Sean Harper gave a voluntary statement to Weld County District Attorney Chief Investigator Tony Molocznik and Weld County Sheriff's Detective Ken Nelson. The interview took place at the Longmont Police Department and was video taped. Harper was represented by an attorney.

Officer Harper stated that he responded when he was told there was a shots-fired call in Longview Estates. He heard that Weld County Dispatch had lost contact with their deputy. After he arrived on scene took his shotgun and joined Officers Todd Chambers and Kyle Miller. Harper had a line of sight to the porch of Ms. Carlsten's house. He selected a slug round because of the distance between himself and Ms. Carlsten. He saw Ms. Carlsten come through the sliding glass doors with the gun pointed up at her neck. At that time, he was kneeling, taking cover behind the corner of a house across the street from Ms. Carlsten.

Officer Harper stated that numerous officers were constantly telling Ms. Carlsten to drop the gun and come out and talk to them but she did not respond to any of those commands. He heard the woman shout, "Just shoot me." He stated that Officer Miller attempted to negotiate with Ms. Carlsten while standing behind him as he was kneeling. At one point Ms. Carlsten came out onto the porch and raised the gun, pointing it right at him. He stated that he was sighting down his shotgun and could see her gun pointed directly at him. Officer Harper then fired.

Officer Harper stated that he was "really scared that she was going to shoot him" and she had already shot rounds off. He knew that Officer Miller was near him and was also concerned about his safety. Harper was taken to the Longmont Police Department, his weapon secured, and he was placed in a room and advised not to talk about the incident until investigators questioned him. He was wearing his full police uniform and did not have any doubt that the woman knew they were police officers. Officer Harper felt he had no other option than to fire at Dianne Carlsten.

STATEMENT FROM OFFICER TODD CHAMBERS

Officer Todd Chambers gave a voluntary statement to Weld County District Attorney Chief Investigator Tony Molocznik and Weld County Sheriff's Detective Ken Nelson. The interview took place at the Longmont Police Department and was video taped. Chambers was represented by an attorney.

Officer Chambers stated that he was in training at the Longmont Police Department and responded to a call involving a weapon in Longview Estates to assist a Weld County Sheriff's Deputy. Chambers heard what sounded like a gunshot as soon as he arrived. He retrieved his rifle and assumed a position on the roof of a house across the street from Ms. Carlsten. Below him were Officers Harper and Miller.

Officer Chambers saw Ms. Carlsten standing in the doorway holding something black in her hand. Numerous officers were giving loud verbal commands to drop the weapon, come out and talk to them. Chambers saw Ms. Carlsten enter his line of sight on the porch with a gun in her left hand. It appeared to be a black semi-automatic handgun. He thought Ms. Carlsten was going to kill herself. She then pointed the gun at him with her arm straight out and slightly elevated. Chambers felt that she was going to shoot him and he was in fear for his life. He also feared for the lives of Officers Miller and Harper when he fired.

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. As the evidence establishes that Dianne Carlsten was shot by Officer Harper, the determination whether his conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly force in Colorado. In pertinent part, the statute reads as follows:

- (2) A peace officer is **justified** in using deadly physical force upon another person...only when he reasonably believes that it is necessary:

To defend him 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)(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."

Therefore, the question presented in this case is whether, at the instant Officer Harper fired the shot that killed Dianne Carlsten, he reasonably believed that Dianne Carlsten was directing or was about to direct deadly physical force against himself or another person. In order to establish criminal responsibility for an officer knowingly or intentionally causing the death of another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

After reviewing the investigation of the circumstances surrounding Ms. Carlsten's death and the pertinent law, I have come to the following conclusions. Ms. Carlsten was depressed and informed several people she wished to kill herself. She pointed her gun at Ms. Murphy, she pointed a gun at officers and fired as they were obtaining cover, she fired other shots randomly and, she ultimately aimed a gun at Officers Harper, Chambers and Miller. Despite repeated pleas, commands and attempts at negotiations from uniformed officers to put her gun down, she continued to threaten those officers. Reasonably fearing that she would shoot again, possibly wounding or killing them, Officers Harper and Chambers fired their weapons at her. Officer Harper's use of deadly force was, therefore, justified and authorized by law in order to defend and protect him and the other officers present. Officer Chambers attempt to use deadly force against Ms. Carlsten was therefore justified and authorized by law for the same reasons. As a result, and based upon the information presented by the investigation, the District

Attorney's Office will not file any criminal charges against Officer Harper or Officer Chambers.

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

Very truly yours,

Kenneth R. Buck
District Attorney

cc:

Officer Sean Harper, Longmont Police Department
Officer Todd Chambers, Longmont Police Department
Officer Kyle Miller, Longmont Police Department
Mayor Julia Pirnack, Longmont
Councilman Doug Brown, Longmont
Councilwoman Karen Benker, Longmont
Councilman Martin Block, Longmont
Councilman Tom McCoy, Longmont
Councilman Fred Wilson, Longmont
Councilman Roger Lange, Longmont
Chairman William Jerke, Weld County Board of Commissioners
Sheriff John Cooke, Weld County
Senator Shawn Mitchell, Colorado District 23
Representative Dale Hall, Colorado District 48
Bruce Barker, Weld County Attorney
Clay Douglas, Longmont City Attorney