



OFFICE OF THE DISTRICT ATTORNEY
21ST JUDICIAL DISTRICT OF COLORADO

PETE HAUTZINGER
DISTRICT ATTORNEY

MESA COUNTY JUSTICE CENTER
P.O. BOX 20,000
GRAND JUNCTION, COLORADO 81502-5031
TELEPHONE (970) 244-1730

December 10, 2009

Stan Hilkey
Mesa County Sheriff
215 Rice Street
Grand Junction, CO 81502

RE: MCSO case # 09L10468; November 1, 2009 shooting at 3007 Rood Avenue

Dear Sheriff Hilkey:

As you know, your agency has conducted an investigation into a fatal shooting that took place at 3007 Rood Avenue in Mesa County in the very early morning hours of November 1, 2009. That investigation has now been completed and has been submitted to my office for review and determination of whether any criminal charges ought to be filed. I have now completed my review and I am declining to file any criminal charges.

In reviewing this investigation I have carefully considered all evidence which was gathered by the MCSO. I have reviewed the entire case file and all reports which were authored by anyone involved in the investigation. I have viewed all of the videotapes and photographs which were taken in connection with this case. Chief Deputy D.A. Richard Brown and Chief Investigator Gil Stone have also reviewed all of these materials. Finally, this morning all of us sat down with MCSO lead Investigator Pete Burg to thoroughly discuss the situation. I believe we are all unanimous in our belief that no charges should be filed.

I am convinced that the investigation proves that the following took place. Tom Jarvis lived at 3007 Rood Avenue. Crystal Nash lived essentially across the street at 438 Colorow. During the late evening hours of October 31 crossing over into the early hours of November 1 a rather loud and raucous party was taking place at Ms. Nash's home. Two MCSO patrol deputies were dispatched to that location at approximately 0117 on a report of a potential domestic violence incident at the party. The Deputies were unable to contact either of the persons allegedly involved in the domestic violence incident. They were also unable to contact the homeowner of 438 Colorow (Crystal Nash), as they were told by other individuals at the party that she was asleep in bed. This assertion later proved to be untrue. While on scene the Deputies also noticed Tom Jarvis standing outside in front of his house, 3007 Rood. They walked over and had a conversation with

Mr. Jarvis, in plain view of all the persons at 438 Colorow. The Deputies ultimately concluded they did not have enough evidence that a crime had taken place and left the scene.

The investigation revealed that Ms. Nash in fact was not in bed asleep but rather had been drinking heavily throughout the evening at the party. She apparently was in the restroom at the time the MCSO Deputies initially responded. After the Deputies left, Ms. Nash became very angry. She assumed that Mr. Jarvis must have been the person who had called law enforcement. She decided to go across the street and confront Mr. Jarvis. In doing so, she was carrying a Ruger .9mm handgun. As she headed across the street she was pursued by two other men who were at the party, who were apparently trying to dissuade her.

Mr. Jarvis saw Ms. Nash headed across the street being followed by two men. When she pounded on his door he opened it and saw that she had a gun in her hands. He grabbed a Walther .22 handgun he had on a table next to the door. Ms. Nash was yelling obscenities at Mr. Jarvis and accusing him of having called the police. He asked her if she had a gun and she told him that she did and that she was going to use it. Mr. Jarvis was holding his .22 gun behind his back. He told Ms. Nash to put her gun down. Ms. Nash responded with another obscenity and brought her gun up across her body toward Mr. Jarvis. At that point Mr. Jarvis pulled his gun from behind his back and shot Ms. Nash. The .22 had nine rounds in the clip and Mr. Jarvis fired all of them. All nine shots hit Ms. Nash. She died as a direct result of these shots. The toxicological examination done as part of the autopsy showed Ms. Nash had a blood alcohol level of 0.184%. Mr. Jarvis told investigators that as Ms. Nash raised her gun he thought he was going to die. The Ruger .9mm handgun was recovered from near her body.

Colorado's "Make My Day" law (C.R.S. 18-1-704.5) is not implicated here, as it requires that a person make "an unlawful entry" into a dwelling and there is no evidence or claim that Ms. Nash ever made any kind of an entry into the dwelling of Mr. Jarvis. My legal analysis is thus based on classic self defense law.

C.R.S. 18-1-704 (use of physical force in defense of a person states in pertinent part:

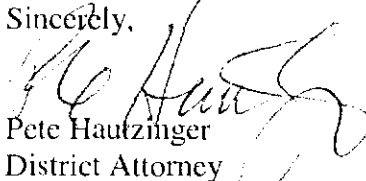
[a] person is justified in using physical force upon another person in order to defend himself . . . from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose. Deadly physical force may used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe, and does believe, that he is in imminent danger of being killed or of receiving great bodily injury.

A colorable claim of self defense can only be overcome by the prosecution if we are able to *disprove* beyond a reasonable doubt the claim. In other words, in order to file any charges against Mr. Jarvis I would need to be convinced I could prove he had **no** reasonable belief that he was in imminent danger of being killed or of suffering great bodily injury. My review of the entire investigation causes me to conclude this would be impossible. Given the actions of Ms. Nash, the indisputable fact that she was in fact

armed with a handgun and Mr. Jarvis' statement that he believed he was about to die. I see absolutely no likelihood of disproving self defense.

I sincerely regret the death of Ms. Nash and extend my sympathies and condolences to her family. By declining to file criminal charges here I do not intend to condone or endorse anything that happened; I certainly believe that neighborhood disputes are usually better resolved without firearms being involved. Under the totality of the circumstances present here, however, I cannot in good conscience file any sort of criminal charges.

Sincerely,



Pete Hautzinger
District Attorney
21st Judicial District

CC: Investigator Pete Burg, MCSO