



201 West Colfax Avenue
Dept. 801
Denver, CO 80202
720-913-9000
Fax 720-913-9035

State of Colorado

OFFICE OF THE DISTRICT ATTORNEY
DENVER

October 12, 2004

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting of Alfonso Galvin, aka Alfonso Galvan, DOB 2/28/80, DPD # 554443, by Officer Jaime Lucero, 98061, on July 5, 2004, in the 800 block of South Wolff Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting of Alfonso Galvin have been completed, and I conclude that, under applicable Colorado law, no criminal charges are fileable against Officer Lucero. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed and redressed, or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this shooting by a peace officer and the applicable Colorado law is attached to this letter. The complete file of the investigation will be open to the public at our office upon final resolution of the criminal case filed against Galvin, and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

In the early morning hours of July 5, 2004, Denver police officer Jaime Lucero was working in a uniformed, off-duty capacity at the MGM Bar, 4801 Morrison Road, Denver, Colorado. At about 2:00 a.m., closing time, Officer Lucero was in the parking lot monitoring the crowd leaving the bar when he heard what he believed to be gunshots emanating from north and east of the bar in the area of the 800 block of South Wolff Street. He walked through the parking lot to that area and saw two parties engaging in a gunfight. He saw one person on the east side of Wolff Street, standing near the rear of a vehicle, "wildly" firing a handgun across the street toward a party on the west side of the street. That party, who was in or near a crowd of other people, was either wielding or firing a handgun. Officer Lucero quickly concluded that those in the crowd were at risk. Officer Lucero identified himself by shouting, "Police! Police!" He began ordering the man on the east side of the

street, later identified as Alfonso Galvin, aka Alfonso Galvan, DOB 2/28/80, DPD # 554443 (“Galvin”), to drop his gun and cease firing. Officer Lucero then fired his pistol once at Galvin. Galvin, who had been facing west, turned toward Officer Lucero, holding his handgun in his right hand. When he turned, Officer Lucero fired his service pistol again. One bullet fired by Officer Lucero struck the car next to where Galvin was standing. The evidence suggests that the other bullet struck Galvin in the left calf. Galvin went to the ground either upon being shot or in compliance with Officer Lucero’s commands. The party with whom Galvin had been exchanging shots fled. Most of those in the crowd at the time of the shooting dispersed before the cover officers arrived and began contacting witnesses. Officer Lucero approached Galvin, placed him in custody, requested an ambulance and advised the police dispatcher that he had been involved in an officer-involved shooting. The CAD [computer-aided dispatch] records reflect that the ambulance was requested at 2:04:39 a.m., and then at 2:05:03 a.m., the dispatcher advised that Officer Lucero had been involved in an officer-involved shooting.

Galvin was taken to Denver Health Medical Center where he was successfully treated for gunshot wounds to the left leg and right big toe.¹ Upon his recovery he was delivered to the custody of the Denver Sheriff. On July 8, 2004, the Denver District Attorney filed charges of Possession of a Weapon by a Previous Offender (F-6) against Galvin. Those charges are pending in the Denver Courts.

STATEMENT OF INVESTIGATION

This investigation involves the shooting and wounding of Alfonso Galvin by uniformed Denver Police Officer Jaime Lucero, 98061, who was working in an off-duty capacity at the MGM Bar, 4801 Morrison Road (the “MGM” or the “bar”). Just after 2:00 a.m., Officer Lucero heard gunshots in the street behind the bar. He went to investigate and saw two men engaged in a gunfight, one of whom was shooting “wildly” in the direction of a crowd. Officer Lucero became concerned that a bystander might be shot and wounded or killed or that one of the bullets might penetrate one of the houses on the block. He immediately yelled “Police! Police!” at the gunman who was firing toward the crowd, then fired one shot at the party. When that man – Galvin – turned toward him with his gun still in hand, Officer Lucero fired again. Galvin dropped to the ground and Officer Lucero immediately ceased firing. He approached Galvin, placed him in handcuffs and secured the revolver that Galvin had been firing.

Officer Lucero was dressed in a full blue Denver Police Department uniform. He was armed with a Glock model 17, 9mm semi-automatic pistol. This weapon has a magazine capacity of 17 rounds and may be carried with an additional round in the chamber. Officer Lucero told investigators that it is his practice to load the magazine with 16 rounds, so as to place a little less tension on the magazine spring, and carry an additional round in the chamber. At the time of the incident, Officer

¹ As the projectiles that injured Galvin were not recovered at the hospital, we are unable to state with certainty how the wounds were caused. However, Galvin told investigators that he was shot in the right big toe by the unknown male at whom Officer Lucero saw Galvin shooting. He stated that he did not feel the wound to his leg when he received it. However, Officer Lucero’s description of his and Galvin’s position at the time he fired his weapon and the bullet strike to the vehicle next to where Galvin was standing when Officer Lucero fired, compel the conclusion that the gunshot wound to Galvin’s leg was caused by Officer Lucero. We note that, although Officer Lucero told investigators he believed his first shot missed Galvin, there is insufficient forensic evidence to support a determination whether his first or second shot was the one that struck Galvin in the back of his leg.

Lucero's weapon was loaded in the described fashion with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, the weapon was given to Denver police crime lab personnel for appropriate testing.

Officer Lucero recovered the weapon he had seen Galvin shooting. He maintained it in his possession until he was taken to Denver Police headquarters by a supervisor. At headquarters, prior to meeting with his attorney and giving a voluntary statement to investigators, he tendered this weapon to Lieutenant Sylvia Sich. Lieutenant Sich took possession of the handgun in the presence of Officer Lucero's attorney and Denver police homicide Sergeant Michael Fetrow. Lieutenant Sich then delivered it to crime-lab investigators for appropriate testing. This weapon was determined to be a Charter Arms .44 Special five-shot revolver. Firearms examiners determined that, at the time of recovery, four live rounds and one spent shell casing were in the cylinder.

Investigators documenting the scene noted that there was a working street-light pole on the north side of Kentucky Avenue next to the north side of the bar and another working streetlight on the west side of the bar's parking lot. These lights provided fair illumination for the intersection of Kentucky Avenue and Wolff Street (Officer Lucero fired his pistol from this area). Investigators noted that the area toward which Galvin was shooting was somewhat shrouded in shadow. Investigators recovered two spent shell casings in the area where Officer Lucero indicated he had been firing.² Two additional shell casings were recovered on the west side of Wolff Street, across the street and about 30 feet north of the car Galvin was standing behind. These items were recovered and delivered to Denver police firearms examiners for testing. A possible bullet strike was documented to the back of the vehicle where Galvin was standing, a blue BMW, Colo. Lic.# 975DMC (the "BMW"). The BMW was towed to an impound area by investigators who later obtained a search warrant for this vehicle. Investigators searched the car and found that the bullet that struck the back of the BMW passed through the trunk, through the passenger compartment and lodged in the front passenger door. It was recovered from the door and submitted to Denver police firearms examiners for appropriate testing.

Firearms examiners test-fired both the revolver recovered from Galvin and Officer Lucero's service pistol. The two shell casings recovered at the scene in the intersection of Kentucky Avenue and Wolff Street were "identified to each other and to the test fired cartridge cases" fired from Officer Lucero's Glock semi-automatic pistol. The two shell casings found on the west side of Wolff Street were determined to have been "fired in the same unknown firearm." The firearms examiners stated conclusively that these latter two shell casings were not fired in or ejected from Officer Lucero's pistol. The bullet recovered from the BMW was "consistent with being a 9mm JHP [jacketed hollow-point] bullet with a weight of 110.74 grains." Examiners determined that the bullet was "consistent" with those bullets they test-fired in Officer Lucero's pistol, but was

damaged and lack[ed] sufficient individual characteristics for identification purposes. This bullet cannot be identified nor eliminated as having been fired from [Officer Lucero's] firearm.

² A diagram of the scene is attached as Appendix 1. The car Galvin was standing by is denoted as bearing Colo. Lic. # 975DMC.

Neither of the bullets that struck Galvin was recovered. The bullet that struck him in the left leg (which the evidence suggests was fired by Officer Lucero) passed through the back of his calf and exited near the front of the leg. Galvin's medical privacy rights precluded investigators from garnering any additional information regarding the nature and extent of the wound other than its existence.

Investigators attempted to contact all possible witnesses to the shooting, but it is clear that numerous individuals left before police arrived and failed to come forward at a future date.³ Investigators did, however, locate several area residents who were able to provide some relevant information. Frank Martinez, 11/19/73, and Stephen Martinez, 7/3/67, both of whom live at 890 South Wolff Street and Liliana Rodriguez, 11/11/35, of 880 South Wolff Street, heard people in the area and also heard the sounds of gunfire. Investigators obtained written statements from them and from one area resident, Mr. Harold Brewer, 11/20/34, who heard the gunfire and saw a party running from the scene and carrying something in his right hand. Two patrons who were leaving the bar did remain to provide aid and serve as witnesses. These individuals, Mr. Phillip Varela, 1/19/72, and Mr. Daniel Jaquez, 12/30/72, provided written and video-taped statements.

Immediately after firing his pistol and placing Galvin in custody, Officer Lucero advised the police dispatcher that he had been involved in an officer-involved shooting and that an ambulance was needed, "CODE 10 [traveling with emergency lights and siren activated]." Galvin was transported to Denver Health Medical Center by ambulance. Both paramedics who attended and transported Galvin, Scott Bookman, #0053, and James Robinson, #9315, provided written statements to investigators. Denver police officer George Volger, 96040, rode with Galvin and the paramedics and, during the drive down to the hospital, he obtained a brief statement from Galvin regarding his actions and the facts leading up to the shooting incident⁴ Officer Vogler documented his actions and those statements made by Galvin to him in a written statement.

Upon his arrival at Denver Health Medical Center, Galvin underwent surgery. In the early afternoon of July 5, 2004, investigators received word that Galvin was out of surgery and Denver police homicide detective Mark Crider responded to Denver Health Medical Center and spoke with him. Detective Crider met with Galvin at about 1:40 p.m. He advised Galvin of his constitutional rights and Galvin waived his rights and agreed to provide a statement. This statement was audio-taped. During the course of the interview, Galvin told Detective Crider that he was not feeling well and requested that they continue the conversation at a later time. Detective Crider terminated the interview at that point. This first conversation lasted approximately ten minutes.

Detective Crider returned to the hospital at about 5:30 p.m. on July 5, 2004, in an attempt to continue the conversation. Although Galvin expressed a willingness to continue the conversation, he was physically ill and Detective Crider chose to wait until Galvin was no longer nauseous before continuing the conversation. Accordingly, Detective Crider left and returned to the hospital the

³ In his written statement, Stephen Martinez told investigators that he was home when he heard voices and then heard "4 shots, a short pause, [then] more shots. After that I heard a female voice stating, "Just everyone bounce [contemporary slang for "leave"]" or something similar. Many cars started leaving the area immediately thereafter.

⁴ Paramedic Robinson notes, in his statement, that they responded to the scene "CODE 10" but transported Galvin "CODE 9." This fact and the fact that they allowed Officer Vogler to speak with Galvin suggests that, although any gunshot wound is serious, the paramedic team did not view Galvin's wounds as life threatening.

following morning at about 9:00 a.m. At that time, Detective Crider again advised Galvin of his constitutional rights. Galvin agreed to continue their conversation and provided another statement. This statement was also audio-taped.

Following the shooting, Officer Lucero was brought to Denver Police Headquarters in accordance with the protocol established for officer-involved shootings. After conferring with his attorney and relinquishing possession of the handgun he had taken from Galvin to investigators, he provided a voluntary, video-taped statement regarding the incident.

The facts surrounding this incident are largely uncontroverted. To the extent that there are factual issues, they revolve around Galvin's point of aim when he was firing his pistol. In his statement, Galvin provided information regarding the facts leading up to the shooting. In his first statement, he told investigators that at closing time he left the bar in the company of a woman named Jasmine. He stated that he and Jasmine were talking in his truck when "all of a sudden this guy came out of nowhere, with his gun like this." The man demanded "everything." Galvin said that he had been wearing a chain and the gunman said, "If you don't give it to me, I'm gonna shoot you right here." Galvin stated that the gunman claimed to know where he lived and where his mother lived and, in fear for his life, Galvin gave the robber his chain and his keys, whereupon the gunman ran off. Galvin stated that he began to pursue the gunman at which time the man got behind a car and started shooting at him. Galvin stated, "I think he's the one that shot . . . that shot my toe right here."

Galvin admitted having a weapon and shooting it. He claimed that he had the gun in his truck under the passenger side front seat. In his first statement, he said that he did not know to whom the gun belonged: "It was just, uh, it was like my friend put it in the truck." However, he would not provide his friend's name. He stated that he took that gun when he started to chase the man who robbed him. When asked to describe the gun, he said "I think it was a revolver – like Clint Eastwood, the spinning ones." He said that he "shot one in the air," but that when the police officer arrived, "I dropped my gun and [unintelligible] down like this. He told investigators that the officer was yelling "don't move! Don't move." When asked how he knew the person yelling commands was a police officer, he stated that he knew because the officer was yelling "drop the gun! Lay on the ground," and because he "saw his badge." He stated that when he went to the ground, the other gunman ran off. Detective Crider began inquiring about Galvin's position when he first saw a police officer and Galvin stated that he wasn't feeling well and asked to cease the interview. Detective Crider immediately stopped the interview.

As noted previously, on July 6, 2004, Detective Crider returned to Denver Health Medical Center and, again, met with Galvin. During this conversation, Galvin confirmed much of the information he provided the previous day. However, he now stated that he had left the bar with Jasmine and a man named Miguel and all three of them were at his truck when the gunman stepped out of the bushes and said,

"Give me all your money and your chain and I won't kill you – and if you call the cops I know where you live – I'll go kill your mom!"

Galvin confirmed that he handed over his neck chain and some \$200.00 in cash that he was holding in his pocket. He stated that, rather than hand over his car keys, he tossed them away and it

was at this point that the gunman took off running. He confirmed that he gave pursuit, but now admitted that he possessed a gun and “grabbed the gun ... from underneath my seat.” He described the handgun as a revolver with a brown handle and stated that he had kept the gun “in between” the driver’s seat and the passenger’s seat. Galvin claimed that he had purchased the gun “like two days ago” for “protection.” He, again, claimed that he fired his gun once in the air while he was chasing the gunman. Describing the gunman’s actions, Galvin stated:

I seen him, he fired at me, he fired one at me and hit my foot right here [indicating] where my toe’s at.

INVESTIGATOR – he hit your right big toe?

GALVIN – yeah, and that’s when I shot in the air, cause I heard “just drop it.” And the officer said, uh, . . . I don’t know if the officer shot me? ‘Cause he said “freeze!” and I threw the gun down on the floor [ground] and I hit the floor right away.

During this part of the conversation, Galvin indicated that the robber was near a vehicle when he turned to face him. When asked why he believed the man had turned back toward him, Galvin stated that he had yelled “Hey stop! Get him!” to a crowd of people in the area in the hope that someone would assist. In answer to a follow-up question regarding the number of people in the area toward which he was running he responded, “quite a few. . . just walking around, just like right there in the street. . . .” He confirmed that he had reached Wolff Street at this point.

In his second statement, Galvin confirmed most of what he said in the first statement, but provided greater detail. The one area of discrepancy was his point of aim. Ultimately, he stated that “everything happened so fast” and that although he believed he was firing in the air, the gun might have been pointed “straight out” or parallel to the ground.

INVESTIGATOR: Could you have shot this way, . . . and my arm is pointing straight out from my body like you were shooting at the person.

GALVIN: I could have.

Based on information provided by Galvin, investigators were able to locate Jasmine Rivera, 1/12/85, the woman with whom Galvin walked to his truck. She agreed to meet with investigators and, on July 6, 2004, she provided a video-taped statement at Denver Police headquarters. In her statement, Ms. Rivera indicated that she knew Galvin as “Ponch” and confirmed that she had gone to the bar with him on the evening of July 4th, stating that they had arrived “late,” and that they had been in the company of a friend of hers named Mary Cordova, and a friend of Ponch’s whom she believed was named “Miguel.” Ms. Rivera stated that they walked to Galvin’s vehicle, indicating that all four of the parties named had gone to the car. She told investigators that she was sitting in the front seat, Ms. Cordova had gotten into the back seat, Miguel was standing next to the vehicle, and Galvin was getting into the driver’s seat when the robbery began. As Ms. Rivera described matters:

That’s when the guy popped out [unintelligible] and was like ‘put your hands up and gimme your chain’ and Ponch gave him his chain. He’s like ‘what else do you want? What else do you want? He’s all ‘any money you have, any money?’

Ms. Rivera told investigators that she heard Galvin say that he only had a couple of dollars and then heard the gunman say that “he knew” that Galvin had more. She then heard the gunman order Galvin and Miguel to lift up their shirts. The gunman also threatened Mary, ordering her to remain seated. Ms. Rivera stated:

The guy was like, “if you think I’m bluffing, or something like that, he’s like, I know where you live, I’ll kill your mom, I’ll kill your family!” He’s like, you’d better not say nothing,’ about . . . something like that.

Ms. Rivera told investigators that after Galvin surrendered his valuables, the gunman backed away, keeping his gun trained on them. Galvin told the woman to “get out of the car” and get to safety. She and her friend started to move away from the car and she heard a gunshot. She insisted that she did not see Galvin arm himself, did not see the shooting, and did not know that Galvin had a gun.

Both Ms. Rivera and Galvin describe the gunman similarly. Galvin told investigators that he was stocky with black hair, standing about 5’9” or 5’10” and having a somewhat “Indian” appearance. Rivera told investigators that the man was Hispanic and “look[ed] kind of Indian.” She stated that he wore his hair shaved on the sides and long with a single braid or ponytail in the back, and that he was stocky and 5’7” or 5’8.”

Officer Lucero told investigators that he arrived at the MGM at about 11:45 p.m. and that the bar was “exceptionally packed,” but that generally, the evening was “pretty uneventful” before the incident. He stated that he was out in the north end of parking lot asking people to leave when he heard “popping” noises, then he heard screams and people saying, ‘they’re shooting! They’re shooting’!” He looked north toward South Wolff Street and saw “muzzle flashes.” He noted several people in the area. He then looked to his right and saw one party, at “least ten yards” south of the crowd, standing or crouching near a vehicle. Officer Lucero directed his attention toward this party, later identified as Galvin, and saw him fire a shot. Officer Lucero unholstered his gun and began yelling verbal commands for him to “drop the gun. Lay on the ground! Police! Police!” Officer Lucero described the next events as follows:

“So [Galvin] takes the shot and ducks back down. This is while I’m yellin’ at him. Um, he doesn’t look at me. He gets back up. Shoots, I believe two more times, towards the direction, meanwhile the other guys are shooting back at him as well, or the other, at least one guy is shooting back at him. I waited until the last possible moment, the last possible second . . . I didn’t want to shoot, I did not want to shoot at all. I felt, by this point I had no choice, he’s not even aiming. There’s a ton of people leaving the bar, there’s 30 people around us . . . he’s shooting wildly. . . . At this point, I decided to take a shot. And I shoot, and I’m assuming the first shot probably missed him. But it got his attention, because he turns towards me, doesn’t drop the gun, though, and I do see it in his right hand. He turns towards me and starts to stand up...

Officer Lucero told investigators that it was at this point that he fired his second shot. It was his belief that this second shot did hit Galvin, because he saw him turn and fall to the ground. Officer

Lucero approached Galvin and, out of his peripheral vision, saw the other combatants run toward a car. He heard what he believed to be tires squealing and formed the conclusion that the others had fled the scene.

Galvin's statement that he was confronting another gunman is corroborated by Officer Lucero and by uninvolved witnesses. In a written statement, neighborhood resident Harold Brewer of 871 S. Wolff Street told investigators that he had arisen to get a glass of water when he heard "3 shots and about a minute & a half later this small Spanish guy came running down sidewalk." He stated that the party was carrying "something in his right hand but [he didn't] know what it was." In his written statement, Phillip Varela advised investigators that he left the bar at about 1:45 p.m:

My car was parked on Wolf[f] St. Heard yelling, turned and seen [sic] a tall, heavysset Mexican with a blue shirt with a gun running east on Wolf[f]. The police closed in quick but there was about 5 or 6 shots.⁵

While there is some discrepancy in the descriptions of the second gunman, in view of the witness statements and forensic evidence, there can be no doubt as to his existence.

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 injury is generally prohibited as assault in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force or physical force by a peace officer is justified. As the evidence establishes that Alfonso Galvin was shot by Officer Jaime Lucero the determination of 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 physical 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:
 - (a) **To defend himself or a third person** from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:

⁵ Galvin described his assailant as wearing a white shirt and tan pants.

1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
2. Is attempting to escape by the use of a deadly weapon.

(7) A **private person** acting on his own account is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest, or to prevent the escape from custody of an arrested person who has committed an offense in his presence; **but he is justified in using deadly physical force for the purpose 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.**⁶

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.

In the instant case, while a firearm is, by definition, a “deadly weapon” under Colorado law, *see* C.R.S. § 18-1-901(e)(I), the force used by Officer Lucero constitutes only physical force, rather than “deadly physical force.” This is because Colorado law defines “deadly physical force” as “force, the intended, natural, and probable consequence of which is to produce death, *and which does, in fact, produce death.* C.R.S. § 18-1-901(d) (italics added). In the instant case, Galvin survived.

Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance. The degree of force required may be different in different situations. (*Boykin v. People*, 22 Colo. 496, 45 P. 419). This, of course, does not mean that an officer cannot retreat, if he or she chooses to do so.

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

⁶While, based on the totality of the facts developed in this investigation, Alfonso Galvin was the apparent victim of an aggravated robbery, the law does not permit a private person to use deadly physical force to attempt to effect the arrest or prevent the escape of the assailant. In Section 18-1-707(2) of the Colorado Revised Statutes, Colorado law does give this authority to peace officers. In Section 18-1-707(7), Colorado law specifically prohibits such action by private persons. This case is an example of the inherent danger of private persons armed with firearms attempting to apprehend criminal suspects, rather than calling upon law enforcement to do so. In this case, as a direct result of Galvin’s actions, Galvin was first shot by the unidentified criminal assailant and was then shot by Officer Lucero, who under the specific circumstances of this case reasonably perceived Galvin to be a direct threat to innocent bystanders and to Officer Lucero.

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 Lucero fired the shots that injured Galvin, he reasonably believed that Galvin was directing or was about to direct deadly physical force against him or another person or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing injury to 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

Officer Lucero was attempting to protect the citizens in the area and himself when he fired the shots that wounded Galvin in the calf. By his own admission, Galvin knew Officer Lucero was a police officer. He said he knew this because of the commands Officer Lucero was directing at him and because he saw his badge. Officer Lucero saw shots being fired by both of the combatants. The gunfight between Galvin and the other unidentified gunman was in an outdoor setting. There were numerous innocent bystanders in the parking lot. These individuals were clearly in harm’s way as a result of the conduct of Galvin and the other gunman. Officer Lucero was also in close proximity to the two non-compliant armed and dangerous assailants.

From the beginning, Officer Lucero was faced with circumstances that were tense, uncertain, and very rapidly evolving. It was the already occurring gun battle that drew Officer Lucero’s attention. The actions of Galvin and the other gunman clearly presented a deadly threat to everyone in the vicinity. Officer Lucero did not instantly fire, but rather attempted to stop the deadly confrontation by the rapid delivery of forceful verbal commands. The actions of Officer Lucero reflect a clear intent on his part to attempt to avoid having to use deadly force. Galvin did not comply with Officer Lucero’s quickly repeated commands to drop the gun. Time was clearly of essence. Although Galvin was the apparent victim of the previously committed aggravated robbery, Officer Lucero was unaware of that event, and the deadly circumstances facing Officer Lucero did not permit the luxury of time for dialogue with the gunmen or further reflection, but rather called for decisive action to protect lives. It was not unreasonable for Officer Lucero to hold this belief. Officer Lucero controlled his fire to two shots that were fired when he perceived an imminent threat to the assembled crowd and then to himself. The second shot effectively ended the deadly confrontation. Galvin was then taken into custody and was provided immediate medical attention.

Under the facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for Officer Lucero to perceive that Galvin was an imminent deadly threat to him or the

other citizens present at the instant he fired. Therefore, no criminal charges are fileable against Officer Lucero for his conduct in causing the injury to Galvin.

As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,

Bill Ritter, Jr.
Denver District Attorney

cc: Officer Jaime Lucero
Craig Silverman, Esq.
John W. Hickenlooper, Mayor
All City Council Members
Alvin J. LaCabe, Jr., Manager of Safety
Cole Finegan, Denver City Attorney
Marco Vasquez, Deputy Chief
Michael Battista, Deputy Chief
Dan O'Hayre, Division Chief
Dave Fisher, Division Chief
Steve Cooper, Division Chief
Mary Beth Klee, Division Chief
Dave Abrams, Captain, Crimes Against Persons Bureau
Jim Haney, Lieutenant
Jon Priest, Lieutenant, Homicide
Mark Crider, Detective, Homicide
Martin Vigil, Detective, Homicide
John Lamb, Commander, Civil Liability
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Doug Jackson, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission

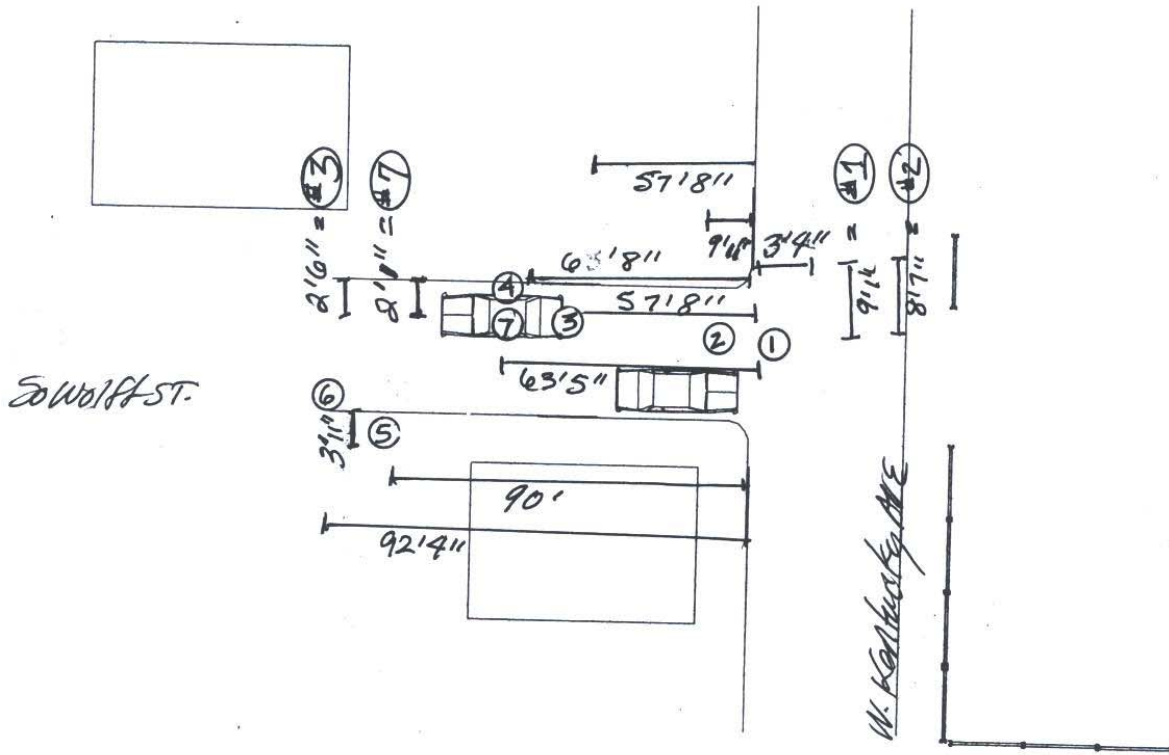
Appendix 1

NOT
DRAWN TO
SCALE

200430371



MEV 86012
07.05.04
Police Shooting
So. Wolff St
W Kentucky Ave.



G-1

**CRIME SCENE MEASUREMENTS
SOUTH WOLFF ST. AND WEST KENTUCKY AVE.
POLICE SHOOTING
CASE # 200430371**

MEV 86012

ITEM # 1- SPENT SHELL CASING
9'1" WEST OF THE EAST CURB LINE
3'4" SOUTH OF THE NORTH CURB LINE

ITEM # 2- SPENT SHELL CASING
8'7" WEST OF THE EAST CURB LINE
9'11" NORTH OF THE SOUTH CURB LINE

ITEM # 3- DEFECT ON CAR TRUNK
2'6" WEST OF THE EAST CURB LINE
57'8" NORTH OF THE SOUTH CURBLINE
HEIGHT - 2'

ITEM #4- BLOOD EVIDENCE ON CURB LINE
0" - ON EAST CURB LINE
63'8" NORTH OF SOUTH CURBLINE

ITEM #5- SPENT SHELL CASING
3'11" WEST OF THE EAST CURBLINE
90' NORTH OF THE SOUTH CURBLINE

ITEM # 6- SPENT SHELL CASING
0"- ON WEST CURB LINE
92'4" NORTH OF SOUTH CURB LINE

ITEM #7- CUP WITH LIQUID ON TOP OF CAR
2'1" WEST OF THE EAST CURBLINE
63'5" NORTH OF SOUTH CURB LINE

WIDTH OF SOUTH WOLFF ST. 36'2"

WIDTH OF WEST KENTUCKY AVE. 35'10"

THE EAST WEST MEASUREMENTS ARE TAKEN FROM THE SOUTH WOLFF CURB LINES
THE NORTH SOUTH MEASUREMENTS ARE TAKEN FROM WEST KENTUCKY AVE.

G-2

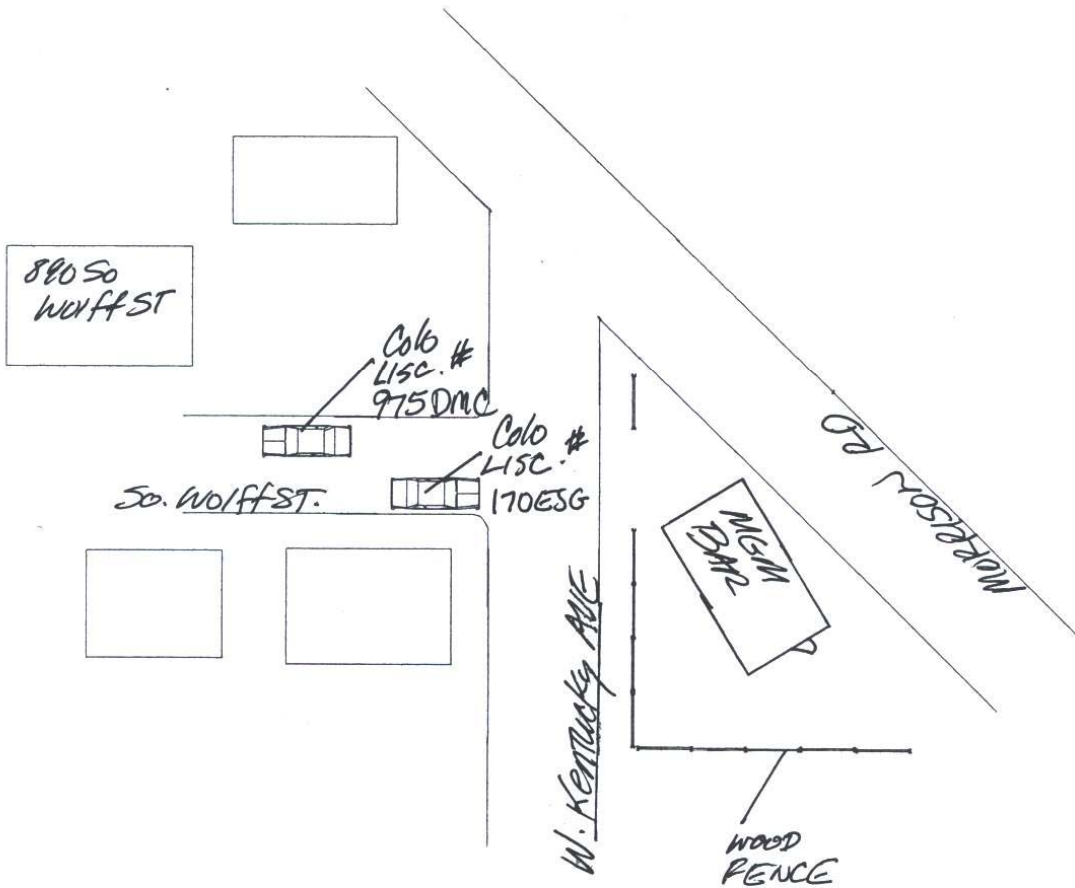
Appendix 1
Continued

NOT DRAWN
TO SCALE

200430371



MEY 8602
070504
Police shooting
So. Wolff St.
W. Kentucky Ave.



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