



Second Judicial District
303 West Colfax Avenue, Suite 1300, Denver, Colorado 80204
Phone (720) 913-9000 Email: Info@denverda.org

Decision Letter

October 30, 2001

Contact: Lynn Kimbrough, 720-913-9025

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

RE: Investigation of the shooting death of Richard V. Dutson, Jr., 6-24-62, in which Denver Police Sergeant Vince Lombardi, 89-31, Officer Joseph Duncan, 95-92, Officer Rop Monthathong, 95-103, Officer Todd Rounph, 95-105, Officer Michael Ryan, 97-20, Officer John Schledwicz, 95-54, and Officer Charles Wingard, 99-43 fired their weapons, on July 6, 2001, at 135 Park Avenue West, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Richard V. Dutson, Jr., have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against the involved officers. 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 addressed, 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, and any interested party is welcome to review the investigation and my decision in greater detail.

SYNOPSIS

Denver Police Officers responded to a radio simulcast of a "carjacking"¹ in downtown Denver at approximately 1:00 a.m., on Friday, July 6, 2001. The victim and witnesses reported a description of the car. Uniformed Denver Police Officers responded immediately and a

downtown motorcycle officer observed a car matching the description of the suspect vehicle in the 1400 block of Larimer Street. He and a uniformed patrol officer, driving a marked police car, pulled in behind the car, which was stopped at the light at the intersection of Larimer and 14th Streets. The car turned left onto 14th Street; the marked patrol car pulled in behind it and the officer turned on his emergency overhead lights and siren. The suspect vehicle stopped in a parking lot at the northwest corner of Lawrence and 14th Streets. As the officers watched, a female party was forced out of the vehicle. A man slid in behind the wheel and the car accelerated rapidly out of the parking lot, narrowly missing another motorcycle officer who was entering the lot from another driveway. The suspect vehicle drove to 15th Street, turned left on 15th Street and proceeded to Wazee Street with two marked patrol cars in pursuit. At Wazee Street, the suspect vehicle turned right, pulled over to the curb, and the driver turned off the lights. The first pursuit car drove past the "black-out" car. The second patrol car, driven by Denver Police Officer Charles Wingard, 99-43, pulled in behind the suspect vehicle. The driver of the suspect vehicle put his car in reverse, backed into Wingard's patrol car, and then drove forward. He did not turn his headlights on.

The suspect vehicle drove at a high rate of speed "outbound" on Wazee Street to 20th Street, turned right on 20th Street and continued eastbound. The pursuing officers estimated that at times the suspect vehicle approached speeds of 80 mph, and drove with no regard for traffic signals, other vehicles, or pedestrians. Twentieth Street is a two-way street for several blocks, but near Arapahoe Street it becomes a one-way street with only westbound traffic permitted. The suspect vehicle proceeded the "wrong way" on 20th Street. At this point, pursuing officers concluded that further pursuit was too dangerous and terminated the pursuit.

Among the officers who responded to the area of the pursuit was Sergeant Vince Lombardi, 89-31. In fact, he had been driving west on 20th Street when the suspect vehicle passed him going the other direction. At approximately 1:14 a.m., Sergeant Lombardi located the suspect vehicle in a parking lot at 135 Park Avenue West. He then saw the suspect, later identified as Richard V. Dutson, Jr., 6-24-62, hiding between some other cars in the parking lot. Upon being spotted, Dutson ran to the lobby of the apartment building at 135 Park Avenue West. He was able to pass through the outer-lobby doors, but the inner-lobby doors were locked. He then turned and reversed his tracks, running past Sergeant Lombardi. Sergeant Lombardi advised the police dispatcher that he was in a foot chase with the suspect. This call resulted in other officers responding "Code 10" (with overhead lights and siren activated). As Dutson approached the street, he veered to his left and ran to his car.² When Sergeant Lombardi arrived at 135 Park Avenue West, he parked his police car, a marked 4-wheel drive Durango, directly behind Dutson's vehicle. Dutson started his vehicle and accelerated backwards, smashing into the side of the Durango. Numerous other officers were arriving as these events transpired. Dutson had turned so that his car was now pointing out toward Park Avenue West. His car was now to the left of and facing in the opposite direction of Sergeant Lombardi's Durango. Officers were positioned behind and to the right side of the Durango. A police car that had stopped in front of and facing Dutson's vehicle was blocking his path to the street. Officers were positioned to the right and left sides of this police car. To Dutson's right were several unoccupied cars parked in the building's parking lot. There were no police officers and no cars behind Dutson.³

Officers repeatedly shouted commands for Dutson to turn off the engine and to get out of the car.

Rather than complying, Dutson intentionally drove forward toward officers and a patrol car that provided cover for them. Dutson forcefully rammed into the front "push-bumper" of the patrol car, which blocked his path to Park Avenue West. Officers in Dutson's path fired their service pistols at him. Dutson then put his car in reverse and backed up a short distance. There was a short pause, during which several officers continued to issue loud verbal commands to Dutson to stop and get out of his car. At least one officer started to approach the passenger side of Dutson's car. Again, instead of complying with the repeated commands, Dutson "gunned" the engine and, again, drove forward. Several officers now fired their service pistols. Dutson's vehicle came to a stop and officers saw him slump to the passenger side of the vehicle. Officers made a cautious approach to Dutson's car. He was removed, placed in custody and, almost immediately, placed in an ambulance and rushed to Denver Health Medical Center. He was pronounced dead at the hospital at 1:39 a.m., July 6, 2001.

STATEMENT OF INVESTIGATION

This investigation involves the shooting death of Richard V. Dutson, Jr., by uniformed Denver Police Officers. Officers responded to a "carjacking" in lower downtown and Dutson was observed in the suspect vehicle almost immediately after police arrived. He then led police on a high-speed chase through lower downtown. The chase was terminated because of the risk to officers and uninvolved citizens. However, shortly thereafter, Dutson's vehicle was found and he was located hiding nearby. Several officers were involved in the initial pursuit and additional officers were involved in the confrontation at 135 Park Avenue West. At that location, Dutson drove his car directly toward at least two Denver Police Officers, and struck two marked Denver police cars in the process. Numerous verbal commands were issued to Dutson before shots were fired, ordering him to turn off his car and get out of his car. Dutson never demonstrated any intent to comply with police orders. Seven Denver police officers discharged their weapons at Dutson: Sergeant Vince Lombardi, 89-31, Officer Joseph Duncan, 95-92, Officer Rop Monthathong, 95-103, Officer Todd Rounph, 95-105, Officer Michael Ryan, 97-20, Officer John Schledwicz, 95-54, and Officer Charles Wingard, 99-43.

Immediately after the shots were fired, a Metro-Swat Officer approached the vehicle and made a preliminary determination that Dutson no longer presented a threat. Other officers then went to the passenger side of the vehicle and removed Dutson from the vehicle. An ambulance was requested at approximately 1:15 a.m. and Dutson was immediately transported to Denver Health Medical Center. Despite the efforts of the medical staff, Dutson succumbed to his wounds and was pronounced dead at 1:39 a.m. All of the officers involved in the pursuit and in the confrontation at 135 Park Avenue West were dressed in blue Denver Police Department uniforms. Denver Police marked patrol cars and police motorcycle units were involved in the initial attempt to stop Dutson and the pursuit that followed. All of the vehicles were equipped with full emergency equipment and were marked with blue Denver Police badge emblems on the sides of the vehicles; elsewhere on the vehicles were other police insignia. The Durango driven by Sergeant Lombardi, that was used to block Dutson's vehicle in the parking lot at 135 Park Avenue West, was equipped with an overhead light bar, other emergency lights, and was marked with blue Denver Police badge emblems on the sides of the vehicle. Each of the officers who fired a weapon was armed with a Denver Police-authorized handgun and each weapon was loaded with Denver Police-issued ammunition. Following the incident, and in compliance with

the protocols established for officer-involved shootings, each officer's handgun was secured by Denver Police Crime Lab personnel for appropriate testing.

The following is a chart that details the weapon carried by each officer, the magazine capacity of that weapon, the number of shell casings recovered and identified to the weapon, and the number of shots fired by the officer based on the unloading sheet:

Officer	Weapon	Ammunition Capacity	Shell Casings (recovered and identified)	Shots Fired⁴ (per unloading sheet)
Sgt. Vince Lombardi 89-31	.45 Sig Sauer, model P220	Magazine: 7 Chamber: 1	4	6
Officer Joseph Duncan 95-92	.45 Colt	Magazine: 8 Chamber: 1	5	7
Officer Rop Monthathong 95-103	9mm Glock, model 17	Magazine: 19 Chamber: 1	3	5
Officer Todd Rounph 95-105	9mm Sig Sauer, model P226	Magazine: 15 Chamber: 1	8	12
Officer Michael Ryan 97-20	.45 Glock, model 21	Magazine: 13 Chamber: 1	4	4
Officer John Schledwicz 95-54	.45 Glock, model 21	Magazine: 13 Chamber: 1	13	15 ⁵
Officer Charles Wingard 99-43	.45 Glock, model 21	Magazine: 13 Chamber: 1	2	2

On July 6, 2001, Dr. Amy Martin, a forensic pathologist with the Denver Medical Examiner's office, performed an autopsy on Dutson's body. The cause of death was determined to be multiple gunshot wounds. Dr. Martin noted evidence of sixteen bullet wounds, but observed that one of the entry wounds, a wound to the left side of the chest, "actually appears to represent the entry of two bullets." Two separate wound tracks were noted; each emanating from a single "defect" on the skin, and two slugs or projectiles were recovered. It thus appears that Dutson was struck by seventeen bullets. Dr. Martin's report indicates that she found one bullet wound to the left side of the head, which caused a skull fracture and a graze wound to the brain. She found another bullet wound at the right lower neck, just above the clavicle. Dr. Martin also determined that Dutson received five gunshot wounds to the chest and thorax and suffered trauma to both lungs and to the area around his heart. Additional penetrating wounds were found on his right

bicep, right upper arm, left upper arm and left ring finger. Dr. Martin found two graze wounds, one at the top and back of the left shoulder, the other in the area "just behind and below" Dutson's left armpit. Dr. Martin also noted evidence of medical intervention including an orotracheal tube, a thorocotomy incision, a chest tube, and EKG (electrocardiogram) leads. Toxicological analyses of blood and urine samples obtained from Dutson's body were positive for the presence of cocaine and a cocaine metabolite known as benzoylecgonine. The cocaine level established at 509 nanograms per milliliter (ng/ml); the benzoylecgonine was determined to be 4,308 nanograms per milliliter.⁶

At autopsy, Dr. Martin recovered fourteen spent bullets from Dutson's body. Another slug was recovered during therapeutic efforts at the emergency room. These items were turned over to the Denver Police Department's crime laboratory for analysis. Crime scene investigators processed the scene at 135 Park Avenue West and the stolen Ford Taurus driven by Dutson. One live 9mm cartridge and six spent bullets were located in the area around the vehicles. One spent bullet was recovered from the driver's door of Sergeant Lombardi's Durango. Eighteen bullets and a number of bullet fragments were recovered from the Ford Taurus. Twenty-nine .45 caliber shell casings and twelve 9mm shell casings were recovered from the location. All of these items were taken to the Denver police department's crime laboratory for testing and analysis by firearms examiners. With the exception of those bullets and bullet fragments that were too damaged for comparison purposes, examiners identified all of the recovered bullets and shell casings to the weapons fired by the seven officers identified in this letter.

Dutson was driving a stolen maroon 2000 Ford Taurus. After the initial crime scene documentation was completed, the car was towed to the Denver Police Department's Traffic Operations Bureau garage so that investigators could pursue additional examination in a secured location. A temporary Colorado license plate was displayed in the rear window. By researching the vehicle identification number, investigators discovered that the Taurus had been the subject of a stolen vehicle report taken by the Arvada Police Department on June 29, 2001 (Arvada P.D. case # 01-17753). Investigators also determined that the temporary license plate found on the vehicle was not that assigned to the car by the Colorado Department of Motor Vehicles. The permanent Colorado license that was assigned to the car, C663BNM, was not found in the Taurus. A search of the Taurus resulted in the recovery of three syringes, two syringe caps, and one syringe plunger, items consistent with drug paraphernalia and illicit drug use. Trace evidence found in the syringes was tested and found to be positive for Cocaine. Also found on two of the syringes was "chemical indication of blood." Forensic scientists were able to obtain DNA results from one of the syringes. The DNA profile of that result matched the DNA profile of a post mortem blood sample taken from Dutson's body.

Because of the protracted and somewhat complicated nature of the incident, it may be of assistance to consider the events in three segments: the initial theft, the pursuit through lower-downtown Denver, and the confrontation at 135 Park Avenue West. Several citizens saw the initial "purse snatch." Written statements were obtained from these witnesses; video statements were obtained from Sarah Lohrman, 5-18-77, the victim of the theft, and Cheri Mills, 3-14-70, a woman who was in the car with Dutson when he first grabbed the purse and who Dutson forced out of the car at 14th and Lawrence Streets.

The witnesses to the pursuit of the suspect vehicle through downtown Denver were all members of the Denver Police department. Those who were later involved in the actual shooting incident provided video-taped statements; the others provided written statements detailing their observations and actions. Following the shooting incident, officers and detectives completed a neighborhood canvass to locate witnesses. Over fifty potential witnesses were contacted, over forty of whom advised investigators that they had heard sounds of gunfire and many of whom also stated that they had heard the sounds of a car crash and the sounds of voices before they heard gunshots. Investigators obtained written statements from each of these individuals.⁷ Six individuals, Michael Briscoe, 12-23-46, Michael Dawson, 7-8-55, Charlie Harrison, 3-23-55, Scott Hill, 8-8-53, Cheri McCreary, 11-8-44, and Jeannthaen Phoenix, 4-14-65, told police that they had seen various aspects of the actual shooting incident. Written and video-taped statements were obtained from these witnesses.

As noted previously, seven officers discharged their weapons. Each of these officers was separated at the scene and then transported to Denver police headquarters. Each officer was given an opportunity to speak with an attorney and each officer, thereafter, voluntarily provided a video-taped statement regarding his role in the incident. Two other officers, Sergeant John MacDonald, 86-68, and Officer Bret Starnes, 99-04, were witness to at least some of the actual shooting incident. Each of these officers also voluntarily provided a video-taped statements.

Based on the scores of witness statements and the review of the physical evidence, most of the facts can be established beyond dispute. While there are generally some variations in the witness accounts when there are so many witnesses, a fairly clear picture of the events emerges. The following is a composite presentation of the facts.

The incident began behind Blue 67, a nightclub in the "LoDo" section of Denver near the corner of 15th and Lawrence Streets. In the early morning hours of July 6, 2001, Sarah Lohrman was socializing with friends at the club. There is a plaza behind the club near the alley between Lawrence and Larimer Streets, which features a fountain and some areas where people may sit and relax. Lohrman had gone out to the fountain to place a telephone call to her mother. While she was speaking on the phone, a male approached her and asked her for a cigarette. She gave him a cigarette and noted that he seemed somewhat strange. She also noted that, after he begged the cigarette, he remained in the area, pacing back and forth in a manner that she thought unusual and disquieting. Lohrman then heard and felt the same man approaching her rapidly. He grabbed her purse, which she had placed beside her while she was on the telephone, and ran to what Lohrman described as a red car similar to a Mercury Sable. This car, she noted, was parked in the alley with the trunk up. Lohrman chased the man to the car and reached in the open driver's window in an effort to regain her purse.⁸ The driver, whom she described as a white male between 35 and 40 years old, began to drive forward, dragging her a short distance. Lohrman fell to the ground, but was not injured. (Lohrman also noted that there was a woman seated in the car.) Lohrman told her mother what had occurred and her mother told her to call 911, immediately. A friend of Lohrman's, Brian Freuck, 1/1/72, was sitting in the courtyard patio bar of Blue 67 when he heard Lohrman scream. He told investigators that he first ran to the street corner where he saw a red sedan speeding away with "a person who stole [Lohrman's] purse." Freuck then went to Lohrman and used her phone to call 911. Denver Police computer-aided dispatch (CAD) records reflect that the initial call was made at 1:03 a.m. The CAD record

describes the call as a "*carjacking in progress*." [Emphasis supplied.]

Freuck went back to the street, where he saw a police officer on a motorcycle. He told the officer what had occurred, describing the suspect vehicle as a red Taurus or Sable. In his written statement, Freuck states that the officer asked "is that the car?," apparently directing his attention to a vehicle. Freuck stated that he positively identified the suspect vehicle and the officers began to pursue the vehicle.

One of the first officers on the scene was Denver Police Officer Bret Starnes, 99-04. Starnes monitored the police dispatch of a carjack in progress and then saw a car matching the description of the suspect vehicle at the corner of 14th and Larimer Streets. Starnes advised the dispatcher that he had the car at 14th and Larimer Streets. There was a marked patrol car next to Starnes and Starnes communicated to that officer that he should initiate the stop, as the patrol car's emergency lights were more visible. The patrol officer did so and the suspect vehicle turned onto 14th Street and stopped in a parking lot at the northeast corner of 14th and Lawrence Streets. Other officers responded to this location, including Officer Rop Monthathong, 95-103, riding a DPD marked motorcycle, and Officer Charles Wingard, 99-43, driving a marked patrol car.

Matthew Newton, 4-15-72, a bystander in the area, saw a red sedan enter the parking lot "at the same time that police were arriving in response to a 911 call in regards to a purse snatching. A woman jumped out of the car and the car sped away with the door still open with police in immediate pursuit." The officers attempting to stop the vehicle also saw a female either jump or get pushed out of the car. Starnes told investigators that, in the parking lot, he saw a black female being forced or pushed out of the driver's side door and saw another party move from the passenger's side to the driver's side of the car. (It was Starnes's belief, at this time, that the female party was the victim of the carjacking.) Starnes was able to see the new driver whom he described as a white male with light colored, possibly gray, hair. The driver was later identified as Dutson. Monthathong told investigators that, upon his arrival, he saw a woman ejected from the car, but that he was unable to determine whether she jumped or had been pushed. Upon his arrival, Wingard saw the suspect vehicle being stopped by a patrol car and a police motorcycle. He was preparing to assist in a "felony [high risk] stop," when he saw a black female get out of the car and then saw the car take off at a high rate of speed.⁹

With officers in pursuit, Dutson drove to 15th Street and made a left turn onto that street. Wingard, initially the second car, told investigators that Dutson drove down 15th Street and turned right on Wazee Street. He saw the first patrol car turn "right behind" Dutson's car, but when he came around the corner, he saw

"the car parked with its lights out, blacked out right there, right past the sidewalk. The first [police] car had [driven] past it. I pulled up immediately right behind the car with my lights and everything on. The . . . I didn't see anybody inside the car. Then a guy popped up, put [the] car in reverse, slammed into my vehicle on [the] push bumpers and drove off toward, continued down Wazee toward 20th Street. I was unable to get on the radio at that point when he did that. He turned on 20th Street from Wazee towards Larimer . . . Lawrence. I was finally able to get on the radio and said I was behind the car. . . . The vehicle was accelerating. I got up to probably about 60, 65 miles an hour prior to hitting Arapahoe Street. Arapahoe then turned into a one way."¹⁰

There was one car that appeared to be turning onto Arapahoe. The [suspect] vehicle went around that car, continued the wrong way down 20th Street. That's when I got on the radio and told 'em I was backing off, I was not going to follow him any longer. He was probably in excess of 80 miles an hour, probably, and he was still accelerating close to a hundred in my opinion."

Other officers also ceased pursuit. One of those officers was Sergeant Lombardi. Lombardi had been near 20th Street when the initial "simulcast" was aired. He was "outbound" on 20th Street as Wingard followed Dutson from Wazee Street to 20th Street, and he saw Dutson driving toward him at a high rate of speed with one officer in pursuit. Lombardi later stated that the suspect vehicle drove toward him and that he was forced to take evasive action. He turned around, but the vehicles were moving so fast that he did not believe he would be able to catch up. He estimated that Dutson was driving in excess of 60 mph. When he made the determination that he would be unable to catch up to Dutson, Sergeant Lombardi turned off his emergency equipment and saw other officers taking the same steps, effectively terminating the pursuit. At 1:11 a.m., officers advised the police dispatcher that they were no longer in pursuit.

Although the chase had been terminated, a number of officers remained in the area to check the streets, alleys, and parking lots for the suspect. Sergeant Lombardi was engaged in this activity when he saw what he later described as possible skid marks leading into a parking lot at 135 Park Avenue West. He drove into the lot and saw a car that matched the description of the suspect vehicle. He parked his Durango behind the suspect vehicle, got out, checked the hood, and found that it was warm to the touch. At that time, he saw a white male "pop" up between the cars. Sergeant Lombardi yelled at him, "hey! Come here!" Dutson, instead, ran in the opposite direction to the lobby of the building at 135 Park Avenue West. There are double doors leading into the lobby – the first set was open, but the second set was locked. Sergeant Lombardi gave chase, approached Dutson at gunpoint and yelled, "Stop! Police!" He also advised the dispatcher that he was contacting the suspect. Dutson ignored Lombardi's commands and, as he was unable to enter the building, reversed his direction and ran past Sergeant Lombardi.

Several citizens saw this initial contact by Sergeant Lombardi. In a written statement, Jacqueline Smith stated that at approximately "1:15 a.m., a tall gentleman ran into the front entrance by the tenant intercom [and] kick[ed the] front door. He started banging on the front door. The gentleman ran back outside. I don't know where he went after that." A similar statement was obtained from James Fields, 1-24-49. Ms. Mary Parrish, 5-25-31, and Ms. Bassett, 2-16-59, provided brief written statements in which they advised that they were downstairs at 135 Park Avenue West talking together when they heard an individual pounding on the front door. According to Bassett, "a few minutes later" they heard gunshots.

Mr. Michael Briscoe, 12-23-46, told investigators that the sound of screeching tires drew his attention to the street. He looked out of the bedroom window of his second floor apartment and

"saw a tall thin guy walk up to the entrance of the building. Then a police officer came up to him and yelled for him to get on the ground. The guy hesitated for a moment and then began to run away from the building and across the parking lot. The officer was chasing him. It was dark and just as they got around my old pick-up truck I heard shots. Then I heard a crash and a bunch

more shots."

CAD records reflect that Lombardi advised the dispatcher that he had a "party running toward Park Avenue" at 1:14 a.m. Because of the nature of this call and the nature of the investigation, other cars searching in the area, responded "Code 10," some arriving in less than a minute.

Dutson ran to his car, got behind the wheel, started the engine and backed directly into the side of Sergeant Lombardi's Durango police vehicle, striking it near the driver's side door. Sergeant Lombardi had followed Dutson back to this part of the parking lot and taken a position behind and to the left of his Durango. Wingard was within one or two blocks when Sergeant Lombardi aired that he had a party running. He arrived within seconds and parked his police car left of and to the rear of Sergeant Lombardi's police car. As he arrived, he saw Dutson back out of a parking space, later telling investigators that "he slammed into the sergeant's car. He did this probably about two or three times."

A number of residents heard the impact. Indeed, the impact was such that investigators later removed some pieces of Dutson's car from the area between the driver's door and the left-rear door of the Durango. In his video-taped statement, Michael Dawson, 5-8-55, told investigators that from his seventh floor apartment he heard the sound of tires squealing and then heard what sounded to him like a car crash. He went to his window overlooking the parking lot. A tree in the lot blocked his view of the actual incident, but he was able to see one police car with its overhead lights activated. He then heard an officer shouting commands, among them "show your hands! Get your hands up! Get out – get on the ground." Dawson stated that although the officers yelled commands for some time, in his opinion, "somebody just wasn't listening."

In a written statement, another building resident, Mary Lynn Snyder, 9-3-39, provided the following information:

"[I was in] bed, heard car thud and another car thud, screeches. . . . [I] looked out window, police cars and other car cornered in driveway in front of building. [I] heard a single shot, then another shot and heard police say "get out of car, get out of car." Then a bunch of shots. POLICE WERE SHOOTING INTO CAR." [Emphasis supplied by witness.]

From his apartment on the 13th floor, Charlie Lee Harrison also heard the sound of a crash. He, too, looked out the window. In his written statement, Harrison stated that he saw

"Maybe 5 or [6] cops run up behind the Durango police cruiser – more like in front of it. There was some behind, but that was later. About the next 15 seconds there was screaming: "Put your hands up! Get out of the car!" I forgot to tell you something. When I first got up, I saw the car trying to go back and forth up against the police cars. So 15 seconds past [sic], then the firing started – about 5 to 6 seconds, rapid fire. It sounded like firing but I didn't see fire coming from the barrels. Then it stopped [and for] about 5 seconds they said, "Put your hands up! Get out of the car." Then they started firing again."¹¹ (Harrison also provided a video-taped statement in which he provided greater detail regarding his observations)

The noises and shouting heard by the witnesses were those of the officers responding to cover

Sergeant Lombardi. Starnes and Monthathong arrived almost immediately after Wingard. Starnes parked his motorcycle on the street and saw Wingard park next to the Durango. He was getting off of his motorcycle when he heard one shot. He ran to the left side of Wingard's patrol car where he heard "Lombardi and other officers commanding Dutson to 'shut the car off! Get out of the car! Stop the car!'" Monthathong told investigators that, as he arrived, he heard someone yelling "Hands! Hands! Show me your hands!" Monthathong saw officers standing near the suspect vehicle with their weapons drawn. He ran to that location and drew his weapon.

Starnes had taken a position just behind and to one side of Sergeant Lombardi. He saw Dutson back into the Durango and observed that the red car driven by Dutson was the same vehicle he had attempted to stop at 14th and Larimer Streets. After Dutson backed into the Durango, Starnes saw him drive directly at Wingard's patrol car. Starnes stated that Sergeant Lombardi continued to issue commands to "stop the car." Starnes now saw two other officers standing next to the other patrol car, in the parking spaces. Starnes told investigators that both he and Sergeant Lombardi had their pistols drawn. They were within 15 feet of the suspect and Starnes could see the suspect's eyes, which he described as "huge." While they were in the area behind the Durango, Sergeant Lombardi came into Starnes's line of fire. Accordingly, Starnes lowered his own pistol. At about the same time, he heard Sergeant Lombardi fire his pistol. He believed that Lombardi fired three times. There was a pause of a "couple" of seconds and then Starnes heard gunshots from both his right and his left. He was unable to say who was actually firing at this time. Starnes estimated that between ten and twenty shots were fired. As Starnes's described it, Sergeant Lombardi fired the first shots and the vehicle continued to move forward. There was a brief pause and then a second barrage of shots. Starnes believed that the suspect was driving toward the officers standing to his left and he feared for their safety.

Sergeant Lombardi's description of Dutson's flight from the apartment building is consistent with those of the other witnesses. When Dutson ran to his car, Sergeant Lombardi saw another police car pull up and to the left of his Durango. Sergeant Lombardi circled behind that car and took a position behind his vehicle and to the right of the other police car. Sergeant Lombardi told investigators that Dutson got into his vehicle and backed up, striking Sergeant Lombardi's Durango. Dutson then pulled slightly forward, turning the wheel so that his car was now facing out toward Park Avenue West. Dutson then drove forward into the police car by which Lombardi was standing. Lombardi, believing that Dutson was trying to hit him, fired his pistol at Dutson. He told investigators that he fired one shot and that he believed that he had hit Dutson. Lombardi recalled yelling commands at the suspect to surrender. From his vantage point, it appeared that Dutson had slumped or ducked down and remained down for about 15 seconds. During this time Sergeant Lombardi and the other officers continually repeated their commands. Dutson then sat up or, as Sergeant Lombardi described it, "popped" up. Dutson put his car in reverse and backed up a short distance. Sergeant Lombardi was able to see the suspect's face and told investigators that Dutson "had a total look of determination on his face."¹² Sergeant Lombardi told investigators that Dutson then gunned his car forward again. Lombardi fired his weapon at least two or three times. He also heard several other officers fire their guns. He estimated that between 15 and 20 rounds had been fired.

Monthathong and Wingard were already present and the other involved officers were arriving when Sergeant Lombardi fired the first shot. Schledwicz parked his patrol car in the median area

of Park Avenue West. As he got out of his car, he heard one gunshot. He saw Wingard stop in the parking lot and he ran over to Wingard's patrol car and took a position near the left front fender of that car. Rounph estimated that he arrived within 30 seconds of Sergeant Lombardi's dispatch that he was in a foot chase. Rounph parked his car "almost directly in front of the building" and, as he got out of his car, he heard gunshots. He estimated that he was about 20 to 25 feet from the shooting location and he rushed to that location and took a position just to Schledwitz's right. Rounph told investigators that it appeared to him that Schledwitz was in a position to the "far left" but that because of the parked cars they were unable to move any farther left. They were, thus, "sorta in the path of the vehicle." He stated that it "appeared obvious to me that, that the party was trying to make a getaway and I pulled my sidearm from my holster and trained on the suspect that was still behind the wheel of the vehicle and still had control of the vehicle."

Duncan and Ryan, were working together; Duncan was driving. They stopped forty to fifty feet away from the parking lot and, as they arrived, Duncan turned off the emergency equipment. Duncan told investigators that as they started to get out, he "heard a shot and told [his] partner 'it sounds like they're shooting.' I started running and then I hear some more, so it's like the first shot and then, I don't know, five or six more, maybe." Duncan stated that he saw the Durango, another patrol car and Dutson's car. He ran to Sergeant Lombard's left so that he was to the "left front" of Dutson's car and drew his service pistol.

Ryan, also heard the gunshot and he advised the dispatcher that shots were being fired. He saw Duncan go to Sergeant Lombardi's left side. He later stated:

"I began to go around to the, uh, to almost like a right flank area where there wasn't [sic] any other officers over there. [Dutson's] vehicle was still, it was still running, it was still moving. I could hear officers yelling "stop!" I heard somebody yell, "Show me your hands!" I had actually gone to the front of the Durango and, as I looked across, I could see . . . I believe it was Officer Wingard standing across, uhm, in the direct line of fire, so I didn't feel comfortable where I was at, so I actually moved back towards the center of [Lombardi's] Durango. "

Ryan was now standing on the passenger side of the Durango by the window. The windows of that vehicle were open and Ryan had a clear view of Dutson's profile. Ryan saw that Dutson had his "hands on the wheel, lookin' straight ahead, looking extremely agitated, he was very focused." The bullet strikes to the Durango, the bullet recovered from the Durango, and the fact that Dutson was hit on his left side by some bullets confirm Ryan's description of his position at the time he fired.

Wingard was the officer who Ryan was concerned about when he first moved to the front of the Durango. When Wingard first arrived, he got out of his car and drew his pistol in preparation for making a "felony stop." He heard Sergeant Lombardi yelling at Dutson to "stop the car!" and he, too, began yelling similar commands. Wingard told investigators that he heard Lombardi say "mace the vehicle." He thereupon moved away from the side of his car and started to approach Dutson. He told investigators that he approached

"passenger's side of the car, and the . . . both windows are rolled up. That's when the guy ducked

down, up under, towards the, uh, passenger's seat. He reached, reachin' down toward the passenger seat. I ducked down onto one knee. I didn't know what he . . . I couldn't see him at that point. I jus' ducked down on one knee. And then . . . right after that I heard the first gunshot."¹³

It is apparent from a review of all of the witnesses' statements and those of the involved officers that, after the first shot or shots were fired, Dutson was still in command of his vehicle. After the first shots were fired, Dutson backed his car up a few feet. Officers began, again, ordering him to turn off his engine and get out of the vehicle. While there is no way of knowing how long this pause lasted, it is clear that commands were repeated a number of times. What is also clear is that, after this interval, Dutson accelerated rapidly, driving directly toward Park Avenue West and directly toward one police car and several police officers. All of the involved officers fired their weapons in this second volley. Dutson finally slumped down and to his right. At this point, the officers determined that the threat had ended and ceased firing.

The ambient lighting in the area was provided by street lights and lights from the building. Additional lighting was provided by the police cars that had responded and had headlights and spotlights trained on Dutson's vehicle. The officers could clearly see Dutson in the car and Rounph, Ryan, and Sergeant Lombardi each would later remark, separately, on the expressions they observed on Dutson's face in that pause after the first shots were fired and before he drove forward again, one last time, toward the officers and the patrol car. Rounph said, "he got this determined look on his face and he just, you know, punched the accelerator again, trying to uh, go, uh push up between the two police vehicles. Lombardi described Dutson as having a "total look of determination." As noted above, Ryan stated that he looked "extremely agitated, he was very focused." Regardless of what perspective each officer had, what is apparent from a review of all of the statements is that Dutson never indicated any intent to surrender or to comply with the commands of uniformed police officers. In short, Dutson gave every sign of an individual who was intent upon making an escape regardless who was injured or jeopardized. This was the nature of the threat faced by the officers who responded to cover Sergeant Lombardi in his effort to apprehend Dutson.

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 and killing another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. Because the evidence establishes in this case that the officers shot Dutson, the determination whether their 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:

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

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 the officers fired the shots that caused Dutson's death, they reasonably believed that Dutson was or was about to direct deadly physical force against one or more of them 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 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

Based on the totality of the facts developed in this investigation, as summarized in this letter, there is no reasonable likelihood of proving beyond a reasonable doubt that any of the involved officers committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against any of the seven officers who fired shots at Richard V. Dutson, Jr. Because this shooting involved a significant number of shots being fired by the involved officers, I will discuss related matters in more detail. There were numerous opportunities for Dutson to peacefully surrender, but he chose not to.

From the moment Dutson snatched Ms. Lohrman's purse throughout the entire incident until the last shot was fired, Dutson never once exhibited any intent to comply with the lawful orders of the police and their efforts to apprehend him without incident. Instead, there was a continuous escalation by Dutson of criminal and behavioral misconduct that increased the threat he posed to the officers and the public.

Dutson was high on cocaine and driving a stolen vehicle. He stole the purse of a young woman. Then, as she attempted to get her purse back, he dragged her a short distance with his car until she fell to the pavement. He forced a woman he had met that evening, who was in his car, to assist him in his getaway. He eventually pushed this woman from the car. Officers initially believed this was a "carjacking." He fled recklessly at a high rate of speed, with his lights out, narrowly missing a motorcycle officer. After additional pursuit, he intentionally backed into the police car of an officer who was attempting to apprehend him. The police pursued him until he drove the wrong way down a one-way street, creating a universal threat to all citizens and officers in the area. After eluding the police, when they called off the pursuit, he attempted to enter a secured apartment building, posing a threat to the residents inside. When confronted at gunpoint, he refused to surrender. He again escaped the pursuing officer and got back into his car. Repeated commands by the officers to Dutson were ignored: "Turn off the engine! Show me your hands! Get out of the car! Get on the ground! Stop the car!" Instead, Dutson intentionally and aggressively rammed backward into one police car, then drove at another police car and the officers who were using it for cover. When this attack occurred, shots were fired at Dutson. Dutson then backed up the car. The shooting stopped. An officer attempted to approach Dutson's car in an effort to end the confrontation. Again, rather than comply with the officers' commands and surrender, Dutson gunned the engine and drove at the police car and officers again. The officers fired another volley of shots. Dutson finally leaned to the right and slumped to the seat. An officer approached the car with caution and determined it was safe to extract Dutson from the car.

During the final confrontation of this lengthy string of events, officers first used a "show of force" by the presence of a number of officers, by the use of strong verbal commands, and by drawing their weapons. Responding with a "show of force" is a tactical effort to gain compliance and avoid having to actually "use" the force. Dutson's steadfast refusal to comply and surrender, even when confronted with this "show of force," is further indication of the serious threat he

posed.

During the final frames of this life-threatening confrontation, Dutson's conduct turned from just using the car as a mode of transportation in his efforts to escape, to using the vehicle as a deadly weapon in an effort to escape at all cost, including causing potential serious injury or death to the officers' attempting to lawfully apprehend him. Dutson's threatening behavior became an armed attack when he closed distance on the officers by accelerating toward them with his stolen car. Using his stolen car as a deadly weapon, the intensity of his attack increased in both speed and force. His car was a blunt trauma weapon in the manner it was being used. A car cannot only move at great speed, but also with great destructive power. It is a formidable object to stop. You do not stop a car by shooting at it. In fact, Denver Police Department policy prohibits that action. If justified to use deadly physical force, you shoot at the person controlling the car. When one or more officers are in close proximity to an assailant's car, beginning and completing the attack against those officers can occur almost simultaneously. This means the officers' response time to perceive the threat, evaluate the response, and take defensive action is severely compressed. The officers must react quickly and with sufficient force to counter and repel the attack. Under the circumstances of this case, retreating or withdrawing to a more defensible position is not required by law, even if it were possible to do so, and may not be a proper tactic if it allows the subject to escape the scene and pose a continuing serious threat to citizens and officers.

An individual who engages in conduct as outrageous, destructive, and threatening as Dutson did here, both invites and ultimately forces a deadly force response by police officers. But there is generally the lingering question: "Why?" Why, when confronted by numerous police officers with their guns drawn and after repeated commands to stop and surrender, would he not comply? Why, instead, would he drive at the officers, not once, but a second time after being shot at and possibly already wounded the first time? It is not always possible to determine the motivation behind the conduct in cases such as this, but in this case there is certainly credible evidence that suggests this may have been what is often described as "suicide by cop." There is witness indication that he may have intended to force officers to kill him rather than face the prospect of going to prison for life as a habitual felony offender. His conduct in this case is consistent with that possibility. Nevertheless, the justification of the officers' self-defense response to Dutson's clearly life-threatening conduct stands independent of that issue.

If justified by an imminent threat to their life, officers are trained to shoot for "upper-body or center-body mass." The goal is to stop the actions of the attacker and thereby stop the threat. Officers may fire until they perceive and believe the threat is neutralized. This may take a single shot or it may take scores of shots, depending on the circumstances of the case. When the suspect is armed with a gun or knife, the threat is generally neutralized when the gun or knife is dropped or the suspect either stops the attack or goes down and is rendered incapable of using the weapon. In the case of an attack with a vehicle, which is being used as a deadly weapon, the threat is generally neutralized when the suspect is no longer attempting to run someone down or is rendered incapable of doing so. The use of a vehicle as a deadly weapon presents some conditions that differ from a firearm or edged weapon attack. These conditions may have an impact on the number of shots fired. The vehicle provides some degree of cover and the potential to deflect shots. For example, in this case, even though at relatively close range, only 34% of the shots fired by the seven officers struck Dutson. In a vehicle, the suspect is in a seated position,

which may mask the impact of the shots on the suspect, thereby delaying the officers' perception of when the threat is neutralized. A person who is standing or running may go down quickly when struck by a bullet. It may be more difficult to assess the impact of the shots on a person who is seated in a vehicle. A vehicle cannot be dropped or discarded by the suspect, as is the case with a firearm or edged weapon. Consequently, the vehicle may continue to be perceived as a threat and it may be difficult for the officers to quickly and precisely assess when the suspect has been neutralized. In this case, the first volley of shots clearly did not neutralize Dutson, or reduce the threat he posed.

The mere fact that seven officers fired, standing alone, increases the total number of shots. And, the semi-automatic weapons used by these officers are capable of discharging multiple shots per second. Finally, the fact that Dutson's conduct drew two separate volleys of shots from the officers increases the total number of shots fired. All of these factors and others may contribute to more shots being fired in a case such as this than under other circumstances. As a practical matter, the only individuals who know for certain whether each of the 50 shots fired in this case was necessary are the officers who fired them. In this case, there is no bright-line or conclusive indication they were not.

The high legal level of proof required under the law for a criminal prosecution can only control police conduct at the very fringes of acceptability. The number of shots fired in this case or any other case must be evaluated on a case-by-case basis. Where officers are justified at the inception to use deadly physical force, the pivotal issue necessarily becomes whether they stopped firing when they should have. The criminal law is generally not precise enough an instrument, except under the most clear-cut circumstances, to sever one shot or some shots out from among many, and establish beyond a reasonable doubt that that shot or those shots were unnecessary or unreasonable. To the extent it is ever possible to do so, those determinations are generally left to the administrative and civil arenas where different issues are addressed, and lower legal levels of proof apply.

Cases such as this, where numerous shots are fired, focuses the attention of all officers on the importance of ensuring that they use only the degree of force that is reasonable, necessary, and appropriate under the circumstances to protect the public and themselves. In the thousands of contacts between citizens and officers in Denver each year, the officers themselves are in the best position to control the proper use of force. While criminal prosecution, administrative discipline, and civil penalties may have some impact on controlling police conduct, as a practical matter, the individual and collective professionalism of the officers is the key. The officers themselves are clearly in the best position to know the degree of force that is necessary in a given situation and when to stop. To the extent they minimize the use of force while still accomplishing their lawful purpose, the reputation of the Department and the trust and confidence the public has in the Department will rise.

Equally as important in minimizing the use of force in our community is the conduct of every citizen. To provide the best quality of life in our community, the police need our help and cooperation. Officers receive a great deal of training in areas associated with the use of force. Citizens can also benefit from training in this area. I will use the term citizen in this discussion, although these comments apply more directly to offenders and assailants. In the overwhelming

majority of cases where force is used, the officer is responding to the non-compliant conduct of the citizen. Citizens have a responsibility not to place officers in the position of having to use force.

This case is yet another example of the devastating negative impact substance abuse and addiction can have on the life of an individual and on those who encounter him when he is in the grips of the addiction. While Richard Dutson may well have been an entirely different person when not under the influence of drugs, that is not the person the citizen victims and officers encountered on July 6, 2001. It is tragic that Richard Dutson by his conduct caused the officers to take his life. It is also unfortunate that his parents, family, and friends, who knew him as a different person in better times, have had this tragedy visited upon their lives. Unfortunately, these officers encountered Richard Dutson at his worst. It is fortunate that none of the citizens or police officers were seriously injured during the string of criminal acts committed by Richard Dutson that ultimately led to his death. All of these individuals and their families and friends have also been affected by this event. We expect a lot from our police officers, but we do not expect them to be seriously injured or die doing their job. Richard Dutson was given multiple opportunities over a lengthy period of time to avoid this result. Tragically, for reasons known only to Richard Dutson, during the entire episode he never once showed any sign of compliance or a desire for a peaceful conclusion. To the contrary, he seemed intent on forcing this result.

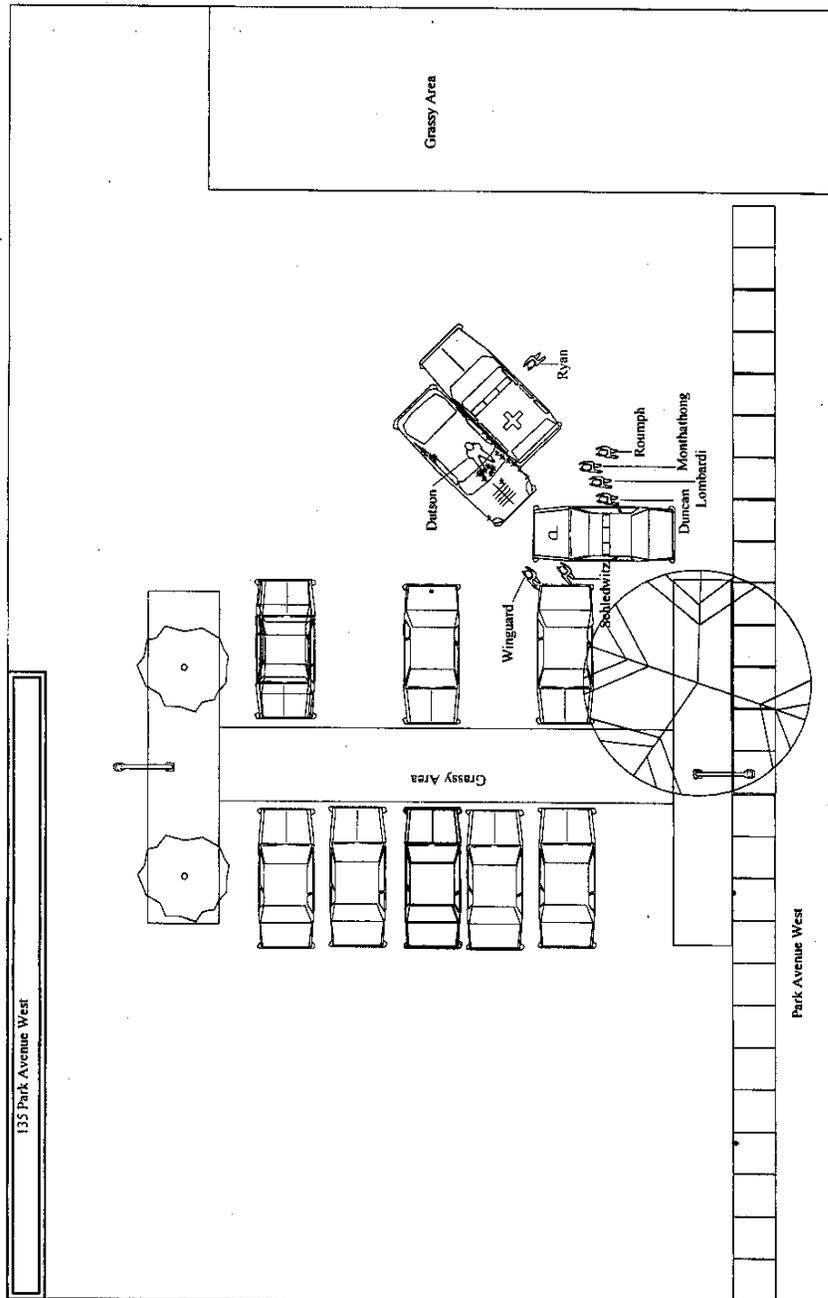
As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours

Bill Ritter, Jr.
District Attorney

cc: Sergeant Vince Lombardi
Officer Joseph Duncan
Officer Rop Monthathong
Officer Todd Rounph
Officer Michael Ryan
Officer John Schledwicz
Officer Charles Wingard, 99-43
David Bruno, Attorney at Law
Wellington Webb, Mayor
All City Council Members
Aristedes Zavaras, Manager of Safety
Dave Abrams, Deputy Chief
Mary Beth Klee, Deputy Chief
Dan O'Hayre, Division Chief
Armedia Gordon, Division Chief

Steve Cooper, Division Chief
Juan Maldonado, Division Chief
Tim Leary, Captain, Crimes Against Persons Bureau
Jon Priest, Lieutenant, Homicide
Joseph Delmonico, Homicide Detective
Joel Humphrey, Homicide Detective
John Weber, Captain
Chuck Lepley, First Assistant District Attorney
Lamar Sims, Chief Deputy District Attorney
Henry R. Reeve, General Counsel, Deputy District Attorney
Justice William Erickson, Chair, The Erickson Commission



Footnotes:

1. Although the actual crime which triggered the police response was a theft, the description of the incident as a "carjacking" necessarily resulted in a response different in nature and degree from that which would be occasioned by a theft or "purse snatch." A number of the officers who responded told investigators that based upon their experience, a "carjack" involved the taking of a vehicle at gunpoint with the further suggestion that the perpetrator

was likely to be both armed and desperate.

2. Although investigators later determined that Dutson was driving a stolen car, this fact was not known to officers at the time. For the sake of simplicity, the suspect vehicle will generally be referred to as Dutson's car or vehicle.

3. A not-to-scale diagram is attached to this letter

4. Based on the unloading sheet the total number of rounds fired by the seven officers adds up to 51. There were actually only 50 shots fired because one live round was recovered at the scene.

5. Although the Denver Police Crime Laboratory unloading sheet indicates that the magazine capacity is 13 rounds and states that the officer advised the crime lab that he carries the pistol with 13 live rounds, in his video-taped statement to investigators, Scheldwicz indicated that he carried the pistol with 13 rounds in the magazine and an additional round in the chamber. He stated that he fired all of the rounds in the magazine, executed a "speed" reload and fired one round from the new magazine. If his recitation was accurate, he would have fired 15 rounds.

6. Studies show that blood cocaine levels over 400 ng/ml are significant and consistent with behavioral changes by subjects ingesting the drug. See, e.g., Baselt, Disposition of Toxic Drugs and Chemicals in Man, 5th ed., 2000.

7. Sometime after the incident, an uninvolved individual who had some information regarding his previous contacts with Dutson came forward. That information is discussed below at footnote #12.

8. Msrs. Sean Bennet and Andrew Diamond found the purse and contents shortly before 2:00 a.m. in the 1400 block Lawrence-Larimer alley. These gentlemen turned the items in to a bartender at Blue 67.

9. The woman who the witnesses describe as being ejected from the suspect vehicle was Cheri Mills, 3/14/70. Ms. Mills provided investigators with a written statement, followed by a video-taped statement. Essentially, Ms. Mills claimed that she had been out drinking when she met the suspect who introduced himself as "Rick." He offered her a ride home and, while they were driving, he advised her that he needed to stop at a bar to "see someone." Thereafter, they

"returned to the same bar [as] he said he needed to pick up something. He got out of the car, opened the trunk [and] said he would be right back. . . . At that point, he went into the bar. On the way back, he grabbed a lady's purse, jumped in the car and drove off. He drove about 4 blocks and told me I was going to have to drive. I said, "no," but he told me I had to drive from downtown. I said okay. I drove about 2 blocks [and] that's when a police car got behind us. I turned the corner [and] that's when the cop car signaled me to pull over so I did. When I stopped the car, he reached across me, opened my door and pushed me out of the car and drove off.

10. Wingard probably meant to indicate that 20th Street becomes a one-way street.

11. A number of other witnesses in the neighborhood heard either the sound of the vehicles impacting, the officers issuing commands, or both. These observations are reflected in the statements of Jefferson Collins, Jr., (no date of birth given); Ola Chapman, 3-27-39; Dennis Harris; 5-3-60, Cheri McCreary, 11-8-44, Jeanthaen Phoneiz, 4-14-65, Francis Roetzel, 1-5-39, Jeffrey Shook, 7-28-55, and Christine Thomas, 3-14-61. Those who heard commands are in general agreement that they heard people yelling commands before they heard the gunshots.

12. A number of the officers remarked on the fact that Dutson had a clear escape path and, instead, apparently chose to drive forward toward the officers. A communication and affidavit received by DPD homicide investigators from Mr. William O' Rourke, dated July 9, 2001, may shed some light on Dutson's state of mind. Mr. O'Rourke stated that he had been Dutson's "12 step" sponsor during the period January, 1998, through March of 1999. Paragraph number five of Mr. O'Rourke's affidavit includes the following statements, here reprinted verbatim:

- a. Rick [Dutson] had a long arrest record and was twice convicted on felony charges.
- b. Rick [Dutson] was scared to death at the prospect of another felony conviction, which would result in an indeterminate to life sentence
- c. Rick [Dutson] was sure that if he ever relapsed again, he would immediately turn to crime to support his habit.
- d. Rick [Dutson] was adamant that he would never allow the authorities to arrest him again and that he would make sure that they killed him rather than arrest him and face the prospect of life imprisonment.
- e. On several occasions, Rick [Dutson] repeated his conviction to (have the authorities) end his life rather than face the prospects of life imprisonment.

13. Monthathong told investigators that when he heard the first shot, he ran to the officers standing by Wingard's patrol car. He saw Dutson in the driver's seat and stated "I couldn't figure out what he was doing but when I saw him, he was leaning down, reaching for something or doing something next to him down there."