



Second Judicial District

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Decision Letter

March 28, 2003

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 of Thomas
Lee Dean, DOB 11-22-69, DPD # 496368, by
Officer Michael Buffard, 99-35, on November
4, 2002, in the 1200 block of 20th
Street, Denver, Colorado.

Dear Chief Whitman:

As you are aware, Officer Michael Buffard tragically took his own life on February 13, 2003. Officer Buffard was involved in this officer-involved shooting on November 4, 2002. Because we had not completed and released this decision letter prior to his death, we are doing so at this time in accordance with our officer-involved shooting protocols.

The investigation and legal analysis of the shooting of Thomas Lee Dean have been completed, and I conclude that under applicable Colorado law, if Officer Michael Buffard (“Officer Buffard”) were alive today, no criminal charges would be fileable against him related to this shooting incident. In fact, as described in detail in this letter, his actions were clearly legally justified under the facts of this case. The complete file of the investigation will be open to the public at our office, upon final resolution of the criminal case filed against Thomas Lee Dean (“Dean”), and any interested party will be welcome to review the investigation and my decision in greater detail at that time.

SYNOPSIS

On Monday afternoon, November 4, 2002, uniformed Denver police officers responded to a call of a shooting in the 1800 block of Lawrence Street in down-town Denver. Among the first officers to arrive were Michael Buffard and Steve Letendre, who were working together in car 623. When they arrived at the scene, they found a man lying on the sidewalk suffering from a gun-shot wound. Several witnesses directed the officers’ attention to a man who was walking north on Lawrence Street and identified him as the shooter. Officer Letendre remained with the victim. Officer Buffard got back in his patrol car and one of the citizen witnesses, Mr. Vernon Martinez, got in the passenger seat. Officer Buffard began following the man walking down the street. The individual, later identified as Thomas Lee Dean, walked down Lawrence Street to 20th Street. At 20th Street, Dean crossed the street and started walking west-bound on the north side of the street. As Officer Buffard turned the corner, Martinez said of Dean, “That’s him!” Officer Buffard pulled his patrol car alongside the suspect, armed himself with his shotgun and got out. He then began to order Dean to the ground. He repeated the order several times and Dean finally went down to the ground. Once on the ground, however, Dean did not remain compliant. After several seconds, he stood or jumped up abruptly, facing Officer Buffard. Officer Buffard saw Dean’s hands move toward his waist and saw that Dean had a handgun near his waistband. He fired the shotgun once. Dean continued to turn and Officer Buffard fired again. Neither blast appeared to have much impact on Dean. Dean ran north up the alley.

Other officers arrived just as Officer Buffard fired his shotgun and they immediately began pursuing Dean. Officer Gary Staab, 98032, chased Dean on foot down the alley and out onto Lawrence Street. Officer Staab caught and tackled Dean near 21st and Lawrence Streets. As Officer Staab and the other arriving officers placed Dean in custody, they realized that he had, in fact, been shot. An ambulance was called and Dean was taken to Denver Health Medical Center where he was treated for wounds to his abdomen. Dean responded to treatment and was ultimately released to the custody of the Denver Sheriff’s Department.

The individual officers saw lying wounded on the sidewalk when they first arrived was identified as Antonio Velasquez-Cruz. He was taken to Denver Health Medical Center and treated for a gun-shot wound to his upper-right side. Doctors determined that he had suffered serious bodily injury, but were able to treat him successfully.

STATEMENT OF INVESTIGATION

This investigation involves the shooting of Thomas Lee Dean by Denver Police Officer Michael Buffard, 99035, who was on-duty, working in a uniformed assignment and driving a marked police car. Officer Buffard and his partner, Officer Steven Letendre, 99036, were working a precinct car in Denver Police District 6 (which encompasses down-town Denver) on the evening of November 4, 2002, when they responded to a radio call of a shooting at 1825 Arapahoe Street in Denver. The two officers were near 16th and Market Streets when they heard the call and responded "Code 10." They arrived within two minutes and, when they got to 18th and Lawrence Streets, they saw people waving in the 1800 block of Lawrence Street. They drove to that location and found several people standing near a man on the ground. The man, Antonio Velasquez-Cruz, 6/13/72, was suffering from a gun-shot wound to the chest.

Several of the witnesses standing by the victim pointed toward a man with a ponytail who was walking north-bound on Lawrence Street. This man was later identified as Dean. Officer Letendre remained with the victim of the shooting while Officer Buffard got back in his patrol car. One of the witnesses, Mr. Vernon Martinez, jumped into the passenger seat and the two drove after Dean. Officer Buffard drove to the corner of 20th and Lawrence Street, where Martinez pointed to Dean, who was now mid-way between Lawrence and Larimer Streets on the north side of 20th Street. Officer Buffard pulled his patrol car alongside Dean, pulled his shotgun from the rack, got out of his police car and began ordering Dean to lie on the ground. As he did so, downtown motorcycle officers Gary Staab, 98032, and Officer Dave Albi, 95090, and District 6 precinct Officer Lori Ferris, 01078, arrived and began to provide cover. Dean was lying almost prone, but he was smoking a cigarette and looking around in a nervous manner. As Officer Buffard was ordering him to remain on the ground, Dean suddenly jumped or rose to his feet. It was at this point that Officer Buffard saw that Dean still had a weapon. He fired his shotgun once and when Dean continued to move as if the shot-gun round had no impact on him, he fired again.

Dean's gun dropped and he ran north down the alley. Officer Buffard started to pursue him, but Officer Albi told him to remain with Dean's weapon. Officers Staab and Ferris chased Dean on foot, while Officer Albi drove his motorcycle up Larimer Street to 21st and east to the alley to try to cut off Dean. Officer Staab tackled Dean on Lawrence, near 21st street. Other officers arrived just as he did so, including Officer Ferris and Officers Luke Palmatier, 00-25, and Wade Davis, 00-69. The officers placed Dean in custody. As they were doing so, Dean stated something to the effect of "you got me. I've been shot." Arresting officers recovered a loaded-handgun magazine and a knife from Dean's clothing. They also determined that he had been shot. Officers advised the police dispatcher that there had been an officer-involved shooting and requested an ambulance. Denver police computer-aided-dispatch (CAD) records reflect that the first 911 call was made at 4:59 p.m. and the first car dispatched at 5:00 p.m. The first car on scene was recorded at 5:02 p.m. At 5:05, a call that a "suspect has been shot/not officer

involved” was made. This reflects the determination by Officer Letendre that the call was a valid shooting call. About 30 seconds after that call was made, Officers Buffard and Albi separately advised the dispatcher that they were at 20th and Lawrence Streets. At 5:06:56, the dispatcher was notified that an ambulance was needed “CODE 10 for 2000 Lawrence for the suspect.” By 5:09 the officers on the scene had made it clear that they were dealing with two separate shootings and that the shooting in the 2000 block of Lawrence Street was an officer-involved shooting. Both Dean and the victim of the first shooting, Velasquez-Cruz, were transported to Denver Health Medical Center. Velasquez-Cruz was treated for a gun-shot wound to his upper-right side and doctors removed a bullet from a point near his trachea. Dean was treated for shot-gun wounds to his chest and abdomen. Doctors recovered at least four shotgun pellets from Dean’s wounds. Both men survived their injuries.

Officer Buffard was driving a fully-marked Denver police car. He was dressed in a full Denver police uniform and wearing a black DPD jacket with a cloth badge on the left chest. When he got out of his car, he armed himself with his departmental shotgun. This weapon is a DPD-approved model 870 Remington 12-gauge shotgun. At the time of the incident the weapon was fully loaded with Denver police-issue shotgun ammunition. The first three rounds were loaded with “tactical” 00 buckshot. The last three rounds were solid slug rounds. (Officer Buffard also had an additional six rounds in the “side-saddle.”) Following the incident and in compliance with the protocols established for officer-involved shootings, Officer Buffard’s weapon was given to Denver police crime-lab personnel for appropriate testing.

When he was shot, Dean turned and ran. As he turned, a handgun fell to the ground. This gun was first secured by Officer Buffard and other officers, then later recovered by investigators at the scene. The weapon was a Kel Tec .9mm semi-automatic pistol. There was a 10-round magazine with the weapon and investigators found seven 9mm Winchester cartridges and one unknown manufacturer 9mm cartridge in the weapon. Dean was apprehended in the 2000 block of Lawrence Street—near 21st Street. At the time of his arrest, he had a Mec-Gar 9mm-pistol magazine in his upper right jacket pocket (he also had a large folding buck knife in a knife case on his right hip). The Mec-Gar magazine contained 9 live 9mm rounds. Firearm examiners test-fired the weapon and determined that it would “fire and chamber the next cartridge from the magazine.” They also determined that the magazine Dean had on him at the time of his arrest was compatible with the Kel Tec pistol.

Dean was transported to the Denver Health Medical Center where he was treated for his injuries. Physicians there completed a “serious bodily injury report,” noting that Dean had suffered serious bodily injury as a result of a “shotgun wound to the chest.” Any additional medical records are privileged and not available to investigators. Dean was ultimately released to the custody of the Denver Sheriff. On November 12, 2002, the Denver District Attorney’s office filed the following charges against Dean: Criminal Attempt 1st Degree Murder (F-2); First Degree Assault (F-3); First Degree Assault to a Peace Officer (F-3); and a “Crime of Violence” count relating to the charge of Attempted Murder. Antonio Velasquez-Cruz was listed as the victim of the first two above-listed counts; Officer Buffard was listed as the victim of the third count. Those charges are pending in the Denver District Court.

For purposes of simplicity, hereafter the location at which Mr. Velasquez-Cruz was found -- the

1800 block alley of Arapahoe and Lawrence Streets—will be referred to as the “first” scene. The location where Officer Buffard confronted and shot Dean will be referred to as the “second” scene.

Investigators found a spent 9mm-shell casing at the first scene where the shooting took place. Investigators recovered two spent-shotgun shells at the second scene. The spent bullet removed from Mr. Velasquez-Cruz at the hospital was provided to investigators. These spent-shell casings and the spent bullet were submitted to the Denver Police Department’s crime lab for analysis and comparison to Dean’s handgun and Officer Buffard’s shotgun. The spent 9mm-shell casing and the spent bullet were identified to Dean’s handgun. The live-9mm round found at the first scene was consistent in caliber, manufacturer, and physical appearance with the seven Winchester-9mm cartridges recovered with Dean’s handgun. The spent-shotgun shells were determined to be “consistent” in gauge with the shotgun.

There were a number of citizens who were witness to some aspect of the shooting at the first scene and several citizens and officers who witnessed the confrontation between Officer Buffard and Dean. Chief among the witnesses at the first scene was the victim of the shooting, Antonio Velasquez-Cruz. Velasquez-Cruz was able to speak with investigators at the hospital on November 6, 2002. Witnesses to the immediate aftermath of Velasquez-Cruz’s shooting were identified as Scott Butler, 8/2/74, Matthew Daley, 4/4/70, David King, 5/11/63, Vernon Martinez, 12/5/67, and Robert Richards, 3/10/53. Written and video-taped statements were provided by each of these individuals. Witness to the events at the second scene were Denver police officers Albi, Ferris, and Staab. Martinez had ridden with Officer Buffard from the first scene to the second scene and also witnessed the confrontation between Officer Buffard and Dean from Officer Buffard’s police car. Other citizens who advised investigators that they had witnessed some aspect of the officer-involved shooting were Josh Robinson, 4/9/79, Tina Robinson, 1-8-83, Steve Schulte, 6/3/72, Cory Skuzak, 8/26/62, and Bryson Wertman, 2/17/54. Officers Albi, Ferris, and Staab each provided video-taped statements. The other witnesses, and several officers who were involved in the chase of Dean and his apprehension, provided written statements.

Velasquez-Cruz told investigators that he was in the 1800 block Arapahoe-Lawrence Alley when he was confronted by two men, a taller man with long hair and a shorter bald man. He stated that the taller man asked him for money and, when he stated that he had none, the taller man pulled out a handgun and shot him. The taller man then ran in one direction; the shorter man ran in the other. Several witnesses heard this shot. Richards, who had been doing some work at a nearby loft building, was leaving the building when he saw three people in the alley. Two of them were, he believed, white men – one was taller with long hair, the other was shorter and wearing a cap. He described the other man as being “darker” in complexion. Richards walked into the garage doorway and heard a noise which he likened to the sound of a firecracker. He looked and saw the taller man with the long hair run out to Lawrence Street and then start running north. The shorter, white man walked past him and said something like “did you see that shit?” That man then ran south on Lawrence. Richards then saw the Hispanic man walk out, sit down briefly, and then walk out to the mouth of a parking lot in the 1800 block of Lawrence Street. Richards saw another individual approach the man and ask him whether he was alright and heard the man reply that he had “been shot.” The man pulled up his

shirt and Richards saw what appeared to be a gun-shot wound.

Richard's recount of the incident is corroborated by Butler, King and Martinez. Each saw Velasquez-Cruz as he approached Lawrence Street. King was walking on 19th Street with a friend. When he passed the alley, he heard a gunshot. He looked back and saw a man "limping" away and "pointing toward another guy walking away." King told his friend to go call the police. He then went to the victim's aid and waited with him until police arrived. Butler heard a noise that he first thought was a firecracker. He then saw one man run out from the alley, followed by a second man. He saw the latter man holding his side and saw a little blood. He also saw the first man lift up his shirt and make a motion as if he was putting something in his waistband. He was unable to see the object. While Butler first thought that the two men were playing in some manner, he quickly realized that he had been witness to a shooting and he called 911. The first call came in at 16:59:09 (4:59 p.m.). The CAD (computer-aided dispatch) reports reflect that at 17:01:08 (5:01 p.m.), the dispatcher broadcast that a complainant reported a male in gray clothes was next to the fire station and had possibly been shot in the stomach. The suspect was described as a white male with long dark hair wearing Levis and a tan army jacket, who had been last seen, on foot, outbound on Arapahoe Street.

Martinez was in his car at the intersection of 19th and Lawrence Streets when he heard the shot. He saw Velasquez-Cruz walk to Lawrence Street and he saw other citizens come to his aid. He also saw the suspect, whom he later identified as Dean, walking quickly on Lawrence. Velasquez-Cruz was pointing at Dean and was "stating the man had shot him." Martinez followed Dean a short distance on Lawrence Street, noting that, as he walked away, he started putting his hair in a pony tail. Martinez then returned to Velasquez-Cruz's location where officers had begun to arrive. He made contact with the officers and provided them with the information he had. He then got into Officer Buffard's police car and, in his words, "went back to find [the] suspect." Martinez directed Officer Buffard down Lawrence Street and, at the intersection of 20th and Lawrence Streets, pointed to a man in mid-block between Lawrence and Larimer Streets and said, "that's him." Martinez, in his written statement, describes the encounter as follows:

After turning onto 20th Street approx. 1/2 block down on the eastside of the street I spotted the suspect. The officer stopped the car and got out and told the suspect to stop and get down on the ground. At that time, the suspect resisted but complied after officer pointed weapon[sic] at him and asked him two more times.

At some point early in this confrontation, Officer Buffard advised the police dispatcher that he had a party at gunpoint. Officer Ferris, in her patrol car, arrived and pulled in behind Officer Buffard's car and saw Dean on the ground. She got out, drew her handgun, and then returned it to her holster in preparation for placing handcuffs on Dean. Downtown motorcycle Officers Albi and Staab arrived and saw Dean prone on the sidewalk.

It is clear from all witness statements that Dean was complying reluctantly, when at all, with Officer Buffard's commands. In his written statement, Schulte told investigators that he was

stopped at a traffic light when he heard someone say:

“get down!” I turned my head to the right and saw the officer pointing his shotgun at the suspect. The suspect, around 5-feet tall, long straight hair pulled back in a ponytail, wearing a semi-long coat, looked as if in shock or on drugs. The officer repeated himself several times: “get down! Get down! Put your hands down!” Finally the suspect [illegible] down on the ground in a hesitant manner. What concerned me was the suspect would not keep his hands & arms still.

The traffic light changed and Schulte drove off. He stated that he was a block or two away when he heard the shots.

Wertman was the passenger in a vehicle, driving outbound on 20th Street. He saw a police car pass the vehicle he was in and he noted that its over-head lights were flashing but that the siren was not activated. He saw the police come to a stop near Arapahoe Street and then his car stopped, in traffic, “directly adjacent to two armed officers with a white-male subject lying down on the sidewalk.” In his written statement, Wertman stated that officers had the individual at gunpoint and were “yelling loud verbal commands” at the person on the sidewalk. Wertman was struck by the fact that the man on the ground was “smoking a cigarette rather rapidly. His right arm was hidden at his side and was entirely out of view.” As Wertman described things, “the man [was] on the ground smoking and ignoring the officers.” As the traffic began to move, Wertman saw “movement on the sidewalk” but he was unable to determine what the motion was. He then heard the shot-gun blast.

Although Wertman was not able to see what Dean was doing on the ground, Martinez, Officer Albi, and Officer Buffard were in a better position. Martinez was with Officer Buffard when he stopped Dean. Officers Albi and Staab pulled up on their motorcycles while Dean was on the ground. Officers Albi and Staab both recall hearing Officer Buffard yell “Stay down! Stay down!” Martinez stated that Officer Buffard ordered the suspect “to stop and get down on the ground” three times. Martinez told investigators that the suspect went to the ground but

refused to spread his hands. He proceeded to put one hand out and put one hand in his jacket going for his weapon [sic]. At that time the officer gave him a warning but suspect refused his request, going to his feet, still going for his weapon [sic]. The officer fired two shots at the suspect. At that time the gun fell from the suspect and he started to run . . .

Officer Albi pulled up and saw the suspect looking around in a nervous manner on the ground. He then saw Dean “jump up” and heard the gunfire. He then saw an object fall from the area around Dean’s waist and heard it hit the ground. At that point he realized that it was a gun. Dean continued to turn to his left and Officer Albi heard another gunshot. He saw Dean run to the mouth of the alley leading to 21st Street. Officer Albi had not dismounted from his motorcycle and he rode up Larimer Street to 21st Street to attempt to intercept Dean. Officer Staab stated that Dean stood up just as he arrived and he heard the gunshots. When Dean ran, Officer Staab dismounted his motorcycle and pursued Dean on foot down the alley.

Officer Ferris told investigators that she responded to the first scene and spoke briefly with

Letendre. She then heard Officer Buffard call out that he had a suspect at gunpoint. She was about a block away when she heard that call and she drove down Lawrence Street, turned the corner and stopped directly behind Officer Buffard's car. She saw Officer Buffard's police car with its emergency lights on, saw Officer Buffard standing in the middle of the block between Lawrence and Larimer Streets, and then saw that he had Dean "proned out" on the sidewalk. Officer Ferris got out of her car and circled around behind Officer Buffard with her gun drawn. She, too, noted that Dean was smoking a cigarette. Concluding that Officer Buffard had Dean in custody, Ferris reholstered her gun and began to approach Dean to handcuff him. As she did so, she saw Dean "flick" his cigarette and then "he was up on his feet" facing Officer Buffard and about "six to eight feet" away from him. She heard someone yell, "he's got a gun," but from her position she was unable to see one of his hands and could not determine whether he had a weapon. She then heard Officer Buffard fire his shotgun once. She told investigators that she could tell that Dean had been hit because he "kind of flinched." However, Dean continued in his turn and ran down the alley. Officer Ferris followed as Dean ran part way down the alley where she saw him turn right, run through a parking lot and out onto Lawrence Street. Dean was taken into custody near 21st and Lawrence Streets. Officer Ferris arrived just as other officers placed him in custody.

Officer Buffard's description of the confrontation at the second scene is consistent with and supported by the statements of the officers and citizen witnesses discussed above. He told investigators that he got out of his patrol car and, from a distance of just under "two-car lengths," ordered Dean to get on the ground. He had armed himself with his shotgun but, initially, he did not have it cocked. He stated that he approached Dean and started "yelling at him to get on the ground!" adding that he issued these command several times but "at least, initially, he didn't get on the ground." Officer Buffard confirmed that Dean finally got on the ground, but that Dean's behavior seemed "unusual" in that Dean "kept smoking a cigarette and looking around." Because of his concerns, Officer Buffard "racked the shotgun." Officer Buffard then saw Dean

Jump up. And as he jumps up, his hands come to a, a waist kinda position. And it, it startled me. So I drew my gun up and, at this point, the party turned this way an' I saw the gun. That startled me and I thought to myself, oh ... whatever Um, at this point, during this entire action I went into a shooting, shooting platform. I fired . . .

Officer Buffard told investigators that "The part I regret is that I let him stand up. Um, because when I saw the gun, by the time I saw the barrel of the gun at his waist, it was approximately in my direction, and I said to myself, 'no.' I was scared shitless at that point." It was at this point that he fired. Officer Buffard saw Dean flinch when he fired the shotgun but Dean continued to turn. As the first shot appeared to have no effect, Officer Buffard fired again. Despite both shots, and as recounted above, Dean ran from the location. Officer Buffard saw Dean run down the alley. He went to the corner of 20th and Lawrence Streets and saw other police officers in the area of 21st and Lawrence Streets. He then got on his radio and advised the dispatcher that he had been involved in a shooting and requested that the dispatcher "initiate the officer-involved shooting protocol."

On November 12, 2002, Dean spoke with a detective at Denver police headquarters. The interview was videotaped. Dean claimed that at the first scene a man attempted to rob him. He

disarmed the man and ran from the first scene with that gun and an extra magazine that his alleged assailant dropped. He confirmed that an officer with a shotgun ordered him to the ground at gunpoint near the 2000 block Lawrence-Larimer alley. He also confirmed the fact that he was smoking a cigarette as he got face down on the ground. Dean told investigators that, when he went to the ground,

I got real scared at that point and I thought ‘fuck it, man, I’d rather just have ‘em shoot me’ ‘Cause I’m fucked! And that’s why I got up off the ground and ran. I did not draw a gun on the officer. Matter of fact the gun was where I got up off the ground, I think, when they recovered it. I mean I know it wasn’t on me. . . .I did not draw a gun on the officer, I just simply got up and ran. He shot me, I heard the second shot - I was running down the alley, I was screaming, I don’t know, I was screaming something like ‘ya gotta kill me, motherfuckers’ or something like that.’ I didn’t want to (unintelligible) to jail. . . .

Later in the interview, Dean stated that he was “hoping” that he would be shot and killed when he got up and ran. He also admitted that the gun was in his waistband when he jumped up in front of Officer Buffard. In short, Dean’s description of the confrontation confirms the recitations of all of the other eyewitnesses with the exception that he denies reaching for or toward the handgun when he sprang from the ground. As discussed below, that issue is not, in view of Dean’s other actions and the facts known to Officer Buffard at the time he fired the shots, determinative.

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 wounding or killing another human being is generally prohibited as assault or 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 Officer Buffard shot Dean, the determination whether his conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly 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:

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.**

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term “Deadly weapon” as follows:

(2)(e) “**Deadly Weapon**” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) **A firearm**, whether loaded or unloaded; (II) A knife; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

- (1) A person commits the crime of assault in the first degree if:
 - (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the “Assault in the first degree” statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

“The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable.”

Therefore, the question presented in this case is whether, at the instant Officer Buffard fired the shots that caused the injuries to Dean, he reasonably believed that Dean was **directing or was about to direct deadly physical force against him or another person**; or was attempting to escape after he had **committed or attempted to commit a felony involving the use or threatened use of a deadly weapon**; 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 injury or 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

The justification for the use of force against Dean by Officer Buffard is provided by both CRS 18-1-707(2) (a) and (b), as described above. Minutes prior to being shot by Officer Buffard, Dean had shot and seriously wounded Antonio Velasquez-Cruz. Officer Buffard was aware of this fact as he pursued Dean. He knew that Dean was likely still armed with the weapon. Dean was, in fact, in possession of the firearm when Officer Buffard confronted him two blocks from the scene of the shooting of Velasquez-Cruz. Initially, Dean reluctantly complied with Officer Buffard's commands to lay prone on the sidewalk. It quickly became apparent to Officer Buffard and others that Dean's compliance would be short-lived. After refusing to comply with the repeated commands of Officer Buffard to show his hands, Dean abruptly sprang to his feet, while still in possession of the firearm, and at a minimum with the clear intention to attempt to escape. Under the totality of the facts developed in this investigation, as summarized in this letter, Officer Buffard was justified under the statute to use deadly physical force to defend himself and others from the imminent deadly threat posed by Dean, as well as to keep Dean from escaping custody. The facts of this case support Officer Buffard's belief that Dean was intending to shoot him as he sprang to his feet and spun around. Fortunately for all those in the vicinity, Officer Buffard responded quickly and decisively to this unwarranted and potentially life-threatening action by Dean and the clear threat he posed. As a result of Officer Buffard's actions, Dean was apprehended and no other citizens or officers were injured.

Therefore, I conclude that under applicable Colorado law Officer Buffard's actions were clearly legally justified.

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

[1] The down-town streets are not aligned with the compass rose. The named streets are referred to by the witnesses, variously, as being either north or east bound, when referring to the streets outbound from downtown, i.e. proceeding from 17th Street toward 20th Street. For the sake of consistency we will refer to the named streets as being north-south streets unless a witness is being quoted.

[2] On November 12, 2002, investigators met with Dean. After he was advised of his constitutional "Miranda" rights, he provided a statement. As the focus of this investigation is on the actions taken by Officer Buffard and as Dean is still awaiting trial, we will not discuss his statement as it relates to the first shooting other than to note that he claimed that he was not armed and did not seek to rob or assault anyone. Dean told investigators that Velasquez-Cruz was armed and was shot during a struggle over the gun. He further asserted that he wrestled the gun away in self defense. His statement as it relates to his shooting by Officer Buffard is addressed below.

[3] The actual report is far more cryptic. It appears, verbatim, as follows:

"COMP REPORTS MALE-GRAY CLOTHES-NEXT FIRE STATION- SHOT IN POSS STOMACH—SUSP W- M-LONG DARK HAIR-LEVI WITH TAN ARM JKT—W-M LS ON FOOT EB ARAPAHOE.

[4] Officer Ferris did not see a weapon until she returned to the scene after Dean had been placed in custody.

[5] Dean's own account of the incident, if believed, would justify Officer Buffard's actions.

Very truly yours

Original Hard Copy is signed

Bill Ritter, Jr.
District Attorney