



Second Judicial District
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Decision Letter

December 31, 2002

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
Raymond Martinez, DOB 9/13/71, DPD
#346422, by Officer Leonard Huskey,
98033, on August 23, 2002, at the
intersection of West Warren Avenue and
South Bryant Street, Denver, Colorado.

Dear Chief Whitman:

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

SYNOPSIS

In the afternoon hours of Friday, August 23, 2002, Denver Police District 4 Impact Team officers, working in plainclothes, established surveillance on a dwelling in the 2600 block of West Warren Avenue. The previous day, the officers had received information from a "first-time informant" that a wanted party, Raymond Martinez, would be at that location. The information included the facts that Martinez would be holding a quantity of cocaine and that he would be armed with a handgun. At approximately 5:40 p.m., Officers James Mullins, 98045, and Leonard Huskey, 98033, saw a party matching Martinez's description walk out of the house they were watching. Both officers approached Martinez, identified themselves as police officers, and as they asked him to stop what he was doing and show his hands, Martinez, instead, turned and ran from the officers. Both officers immediately began chasing Martinez on foot. The officers followed Martinez around the back of the house, through another backyard and out onto South Bryant Street. Martinez ran east across South Bryant Street, with Officer Huskey a few steps behind him and Officer Mullins trailing Officer Huskey. At the south-east corner of the intersection of South Bryant Street and West Warren Avenue, Martinez stopped abruptly. He turned directly toward Officer Huskey, who had stopped and was trying to back away. Martinez pulled out a small-caliber handgun and pointed it directly at Officer Huskey. Officer Huskey, who had drawn his service pistol when he began chasing Martinez, saw Martinez raising the handgun. Officer Huskey fired four shots at Martinez from his service pistol. Martinez was wounded in the left arm and right calf. He fell to the ground and was quickly taken into custody. The officers immediately requested an ambulance, "CODE 10." Martinez was taken by ambulance to the hospital where he was treated and later released to the custody of the Denver Sheriff.

STATEMENT OF INVESTIGATION

This investigation involves the shooting of Raymond Martinez by Denver Police Officer Leonard Huskey ("Officer Huskey"), 98033, who was on-duty and working in a plain-clothes capacity. Officer Huskey, and his partner James Mullins ("Mullins"), 98045, were assigned to the District Four Impact Team, a patrol unit given the authority to engage in pro-active investigations. On August 22, 2002, officers Huskey and Mullins made a traffic stop and the individual they stopped advised them that he knew where they might locate a party named Raymond Martinez, DOB 9/13/71, DPD # 346442 ("Martinez").

The informant told the officers that Martinez was a fugitive who was in possession of approximately one ounce of cocaine and who, he believed, was armed with a handgun. The officers verified that there was a warrant outstanding for Martinez^[1] and took other steps to confirm the information that the informant had provided them. On August 23, 2002, officers Huskey and Mullins, dressed in plainclothes and using an un-marked vehicle, established surveillance on the address provided by the informant for Martinez, 2620½ West Warren Avenue. Uniformed officers in marked police cars were in the area to assist in contacting individuals as they left the target address.

Just before 5:30 p.m., officers Huskey and Mullins saw a man they believed fit Martinez's description walk out of the address carrying a briefcase. The man, who was in fact Martinez, walked around to the side of a car parked by the house. As he did so, officers Mullins and Huskey got out of their car and walked toward Martinez. They approached Martinez and identified themselves as police officers. The car was between the officers and Martinez and, because Officer Huskey could not see Martinez's hands, he drew his firearm and ordered Martinez to step away from the car and show his hands. It was a warm day and Martinez was wearing shorts and a tank top. As the officers approached, Martinez looked at them, looked around, and then ran. The address, 2620½ West Warren Avenue is on the south side of the street. Martinez ran behind the house and then turned and ran eastward. The officers followed him through the backyard, through a neighboring backyard, and out onto South Bryant Street. At some point during this chase, Officer Huskey advised the police dispatcher that officers were in a foot pursuit. Denver Police Incident Report records reflect that this call was made at 5:29 p.m. Martinez crossed South Bryant Street but, when he got to the south-east corner of the intersection of West Warren Avenue and South Bryant Street, he suddenly turned to face the officers.^[2] Martinez reached toward his back pocket, pulled out a small-caliber handgun and brought it to bear on Officer Huskey. Officer Huskey saw Martinez's weapon and fired shots at Martinez from his service pistol. Martinez fell to the ground and dropped his gun, which Officer Mullins quickly secured. Other officers arrived almost immediately to provide cover. One of those officers advised the police dispatcher that there had been an officer-involved shooting and requested an ambulance. The call that shots had been fired was made at 5:29 p.m. The ambulance was requested at 5:30 p.m. Martinez was transported to Denver Health Medical Center where he was treated for gun-shot wounds to his left elbow and his right lower leg.

Officer Huskey was dressed in blue jeans and a dark T-shirt with a colorful design on the front. A silver Denver police badge was suspended from a chain around his neck. Officer Mullins was also wearing blue jeans and a T-shirt and he, too, had his badge hanging from a chain around his neck. Officer Huskey was armed with a Para-Ordnance model P-14, .45-caliber, semi-automatic pistol. This weapon has a magazine capacity of ten rounds and may be carried with an additional round in the chamber. At the time of the incident, Officer Huskey's weapon was fully loaded with DPD-issued ammunition. Following the incident and in compliance with the protocols established for officer-involved shootings, Officer Huskey's weapon was given to Denver police crime lab personnel for appropriate testing.

Martinez fell immediately to the ground when shot by Officer Huskey. When he fell, he

dropped a small-caliber handgun. This gun was first secured by Officer Mullins and then later recovered by investigators at the scene. It was determined to be a Sterling Arms .25-caliber semi-automatic pistol. This weapon has a seven-round magazine. Denver police firearms examiners determined that the weapon was partially loaded with four live rounds in the magazine. Firearm examiners test-fired the weapon and determined that it would "fire and chamber the next cartridge from the magazine."

On August 23, 2002, Martinez was treated by physicians at the Denver Health Medical Center. Dr. Colwell completed a "serious bodily injury report," noting that Martinez had suffered serious bodily injury. The doctor specifically noted a gunshot wound to the left elbow and another gun-shot wound to the right leg. Any additional medical records are privileged and not available to investigators. While Martinez was being attended to by the ambulance paramedics, they checked his clothing and recovered suspected marijuana, suspected cocaine, and a small glass pipe with "residue." These items were tested by forensic chemists with the Denver Police Department's crime laboratory. Test results showed that Martinez had, in his possession, 8.5 grams of cocaine HCL, and .72 grams of marijuana. Analysts determined that the residue found on the glass tube was positive for "the presence of cocaine." On August 30, 2002, the Denver District Attorney's office filed the following charges against Martinez: 1st Degree Assault to a Peace Officer (F-3), Possession of a Weapon by a Previous Offender (F-6), Possession of Controlled Substances with Intent to Sell or Distribute (F-3), Possession of Controlled Substances (F-4), and a related sentence-enhancement charge. Those charges are pending in the Denver District Court.

Investigators found four spent shell casings near the street corner where the shooting took place. A spent bullet was recovered from a car parked in the area. These spent-shell casings and the spent bullet were submitted to the Denver Police Department's crime lab for analysis and comparison with Officer Huskey's weapon. Inspection of Officer Huskey's weapons disclosed that he had fired four times. The four spent shell casings and the spent bullet recovered at the scene were identified to Officer Huskey's weapon. There is no evidence suggesting that Martinez fired his pistol.

At the time of the shooting, three citizens were standing at or sitting in a car parked at a house on the south-west corner of the intersection. They were identified as Loretta Bartow ("Bartow"), 9/26/66, Daniel Sedillos ("Sedillos"), 11/1/57, and Valerie Williams ("Williams"), 12/7/64. All three individuals advised officers that they saw at least part of the foot chase and the shooting. Each witness provided written and video-taped statements. Another individual, Levi Young, 4/25/73, told investigators that he was a short distance away, heard the gunshots and saw officers place Martinez into custody. He also provided a written and a video-taped statement. Denver Paramedic Ralph Montoya ("Montoya"), Serial # 0059, attended to and transported Martinez. He recovered the controlled substances from Martinez and was present when Martinez made certain statements regarding his weapon. Montoya provided a written and an audio-taped statement. Uniformed police officer Michael Reichardt ("Reichardt"), 95007, was providing support to the surveillance team and heard Officer Huskey call out a foot chase. He arrived just as the shots were fired. He provided a written and video-taped statement. Although Officer Mullins did not fire his weapon, he participated in the initial attempt to

contact Martinez and the subsequent foot chase. He was just a few steps away from Officer Huskey and Martinez when the shots were fired. Officer Mullins was separated from other witnesses and provided a video-taped statement to investigators at Denver Police headquarters.

In accordance with protocol, Officer Huskey was separated from the other witnesses and taken to Denver Police headquarters by an un-involved supervisor. At headquarters, he voluntarily provided investigators with a video-taped statement concerning his role in the incident.

There is no dispute regarding the facts surrounding the initial foot chase, nor is there dispute regarding the shooting itself. While there are, as is to be expected, minor inconsistencies between the statements of eyewitnesses, none raise questions regarding the salient facts.^[3] As Reichardt told investigators, members of the District Four Impact Team had decided to establish a surveillance in the

“area of 2620½ West Warren Avenue. We had previously discussed that they were going to go in plainclothes and an unmarked vehicle to watch vehicles coming and going.”

Officers Mullins and Huskey had previously familiarized themselves with the arrest warrant issued for Martinez and the physical description provided in the file. They had also verified other information regarding addresses and descriptions of vehicles which Martinez used. When they saw a man fitting Martinez’s description leaving the target address, they got out of their car and started to approach him. As they did, they verbally identified themselves as police officers. Although they were both in plainclothes, both had Denver police badges prominently displayed from neck chains. The officers approached and hailed Martinez, whereupon Martinez turned and ran. In Mullin’s words:

“When I exited the vehicle I identified myself verbally as a Denver Police Officer and asked him to . . . show us his hands. He didn’t show us his hands. I then pulled my weapon and told him to show us his hands again, that we were Denver Police Department. Uh, my badge at the time was visible, just like it is now. I explain . . . my part[ner] I, I don’t know what he was doin’ but at that time the p . . . suspect, Mr. Martinez, turned and took off runnin’.”

Martinez led the officers behind and around 2620½ West Warren Avenue, through the neighbor’s backyard at 2600 West Warren Avenue, and out onto the street. Bartow, who lived at 2600 West Warren Avenue, had just returned from work and was standing in her driveway talking to Sedillos and Williams. The latter had arrived together to visit Sedillo’s cousin and Bartow’s husband, Floyd. Sedillos saw the men come running from his cousin’s backyard. He told investigators that he saw two men chase a Chicano man across the street. He also heard the two men identify themselves as police officers before they left the yard. As Sedillos described it:

Suddenly, there’s three gentlemen running. They said, “halt! Police officer!” The other guy, there’s two police officers and the other guy, the Chicano guy, he kept on running and then he stopped, he pointed, he pointed something off at the police officers, said “I’m

gonna shoot.” . . . the officer . . . told him to “lay down on the ground,” and he, the other guy, the Chicano guy had something in his hand, and that when the officer, I heard, boom, boom. Two shots.

Sedillos stated that the two men in pursuit were dressed in civilian clothes, “with the blue or black tee shirts.” However, he also told investigators that he saw one of the officers dressed in “a jean an’ the tee shirt an’ the badge. . . . Like on the chain.” Sedillos stated that after the man turned and faced the officers he heard the man say to the officers, “I’m going to shoot you,” or “I will shoot you.” According to Sedillos, the officers ordered Martinez to “put it down and lay down on the ground and I guess he didn’t do it an’ that when he was pointing, and then I heard ‘Boom! Boom!’” From Sedillo’s perspective, it appeared that officers Mullins and Huskey were no more than two or three steps from Martinez when he abruptly turned and faced them. Indeed, at first Sedillos believed that Martinez had shot one of the officers.

Williams, from her position inside the vehicle in which she and Sedillos had arrived, saw a man run through the back gate of their friend’s yard with another man in close pursuit. She told investigators that, at first, she thought the men were playing “chase.” As the two people ran by her she heard someone yell “police!” but was unable to determine who called out. She then heard two shots and told investigators that “next thing I knew that’s when the guy was on the ground.” Williams stated that she had her two young children in the car and her attention was focused on them much of the time. She stated that, perhaps because of these distractions, she did not see the actual shooting. She also told investigators that she did not see any of the parties wielding a gun nor was she able to provide a clothing description for either of the men she saw running through the yard and across the street.

Bartow, standing at Sedillo’s and Williams’s car, saw an Hispanic man “come running through my driveway and there was also a white guy chasing the Hispanic guy.” She saw the two men run out of her driveway, into the street and across the street to the opposite corner. She told investigators that it was at that point that the Hispanic man stopped and turned to face the officer. She then stated that she “heard the Spanish guy tell ‘em, ‘I got a gun.’ No, he said, ‘please don’t shoot me. I got a gun and I will use it.’” Bartow told investigators that at about the time she heard him utter these words, the man reached to his waistband “like he was going for something in his pants. . . . I seen him like that so I figured he was going to pull something out, you know.” Because of his statements and actions, Bartow got scared and started to run to her home. She had taken just one or two steps when she tripped and fell. As or just before she fell she heard two or three gunshots. She did not see the actual shooting, but she stated that when she last saw the two men they were not standing far from one another.

These witness statements corroborate descriptions of the chase provided by officers Mullins and Huskey. Officer Mullins told investigators that when they got to South Bryant Street, Officer Huskey was between 10 and 15 yards ahead of him. Officer Huskey was close to Martinez and Officer Mullins saw Officer Huskey reach out as if he was attempting to push Martinez. He then saw Officer Huskey move back and away from Martinez, as Martinez turned to face Officer Huskey. Officer Mullins stated that he got

closer to the two men and

he saw the suspect, Mr. Martinez, pointing the gun at Officer Huskey. I was maybe five-six yards away. Uh, that's when I heard the . . . I . . . I reached for my handgun to, to pull it out, an' that's when I heard the, the . . . I believe three shots.

From officer Mullin's perspective it appeared to him that Martinez was pointing his gun "directly at Officer Huskey."

Officer Huskey described the confrontation occurred as follows:

And I was about six paces away from him when he got onto the south – southeast corner of Warren and Bryant. And as he was running into that corner I give him the old "Stop! Stop! Stop!" And while I was yelling he actually did stop, which was kinda surprising 'cause most people that run from us don't. And he stopped, and as he was turning around he reached into his back pocket. And when he turned around and, I was . . . well, I don't know . . . I was still catching up to him at this point. And I guess it was registering he's reaching into his back pocket. I stopped too. And right as I stopped and I looked up I was looking at his handgun. And he had a silver handgun in his right hand, and his finger was on the trigger. And it's the scariest feeling I've ever had 'cause I really believed that he was gonna kill me.

It is symptomatic of the stress and excitement of the moment that Officer Huskey, when recounting the event, believed that he had fired his weapon three times. The evidence shows that he shot four times.

Martinez admitted to several individuals that he possessed a weapon, but he claimed that he had displayed it only to let the officers know that he had the gun. Among those individuals who heard Martinez's claims were officers at the scene, the Denver Health Medical paramedics who transported Martinez to the hospital, and some medical and law-enforcement personnel at the hospital. For example, in his written statement, Paramedic Montoya stated that Martinez was acting in an "extremely belligerent and non-compliant" manner when they were attending to him. He also wrote that while they were transporting Martinez to the hospital he

"continued to be belligerent and repeatedly stated "you didn't have to shoot me. I just pulled it out to show it to you." Pt. [patient] also continued to say, "yous[sic] will see. You'll get yours."

Similarly, Denver Deputy Sheriff Myron Alexander, S00074, was working at the hospital and was detailed to assure that Martinez was restrained while in the emergency room. He heard Martinez say, "I only pulled the gun out to show the officers that I had a gun." It is thus clear that Martinez knew that he was being chased by police officers and, further, that he was armed with and displayed a firearm.

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 another human being is generally prohibited as assault 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 Martinez, 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:

(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 Huskey fired the shots that wounded Martinez, he reasonably believed that Martinez was directing or was about to direct deadly physical force against him or another person or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing injury to another, the state must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

Officers Huskey and Mullins were clearly justified in seeking to arrest Martinez. When confronted by the officers, Martinez reacted in a manner consistent with the information the officers had previously obtained—he attempted to escape. Martinez did so, knowing that he was in possession of controlled substances and was armed with a firearm. Both of these facts were consistent with information possessed by the officers at the time they approached him. He also knew that as a previously-convicted felon, he was prohibited from possessing a firearm.

When confronted, Martinez refused to comply with the officers’ lawful commands to show his hands. His failure to comply alerted the officers to a potential heightened danger. The lengthy foot chase was a continuing refusal to submit to arrest and increased the risk to all involved. When Martinez abruptly stopped and turned on Officer Huskey, his conduct was totally consistent with an attempt to harm the officer. If Martinez was, in fact, attempting to surrender, his conduct clearly portended a different intent. The conduct by Martinez that led to this final confrontation suggested anything but peaceful compliance. Pulling a gun from your pocket under these circumstances, rather than raising your hands in surrender, is a clear sign of an imminent danger to the officer and others in the area. Officer Huskey’s response in shooting Martinez was clearly reasonable and appropriate under these circumstances. Officers have a right to act on reasonable appearances. A split-second delay by Officer Huskey, in the face of Martinez’s clearly threatening conduct, could have resulted in serious injury or death to him or others.

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 Officer Huskey committed any criminal act. Therefore, I conclude that under applicable Colorado law no criminal charges are fileable against Officer Huskey in the wounding of Martinez.

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 warrant, dated May 7, 2002, was issued by the Colorado Department of Correction's Fugitive Operations Unit. The information provided includes a caution that Martinez is to be considered an "escape risk." It also included a physical description, listing Martinez as being 5'4" tall and weighing 205 lbs.

[2] A diagram of the intersection, showing the approximate path of the foot chase, is attached as Appendix 1.

[3] For example, one of the citizen witnesses was slightly confused regarding the compass points of the intersection in question, another saw one plainclothes officer and one uniformed officer engaged in the foot pursuit, whereas it is clear from Reichardt's statement and Sedillo's account, that Reichardt— the first uniformed officer at the scene — arrived immediately after the shots were fired and that both Mullins and Huskey were in plainclothes.

Very truly yours

Original Hard Copy is signed

Bill Ritter, Jr.
District Attorney

cc:

Officer Leonard Huskey
Tina Habas, Esq.
Wellington Webb, Mayor
All City Council Members
Tracy Howard, 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
Joel Humphrey, Homicide Detective
Michael Martinez, Homicide Detective
Marco Vasquez, I.A.B. Commander
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