



**Weld County
District Attorney's Office
Nineteenth Judicial District**

**Kenneth R. Buck - District Attorney
Philip M. Clark - Assistant District Attorney**

October 29, 2007

Mr. Kelly Arnold
Town Administrator
Town of Windsor
301 Walnut Street
Windsor, CO 80550

**RE: Investigation of the
shooting death of Edward John
Cavaliere at 701 6th Street,
apartment 4D, Windsor,
Colorado**

Dear Mr. Arnold:

The investigation and legal analysis of the Edward John Cavaliere shooting is complete, and pursuant to applicable Colorado law I will not file criminal charges against Windsor Police Chief John Michaels who fired his weapon in this incident. I have included a summary of the facts in this case and the relevant Colorado law in this letter. The file of this investigation is open to the public at our office, and any interested party is welcome to review the investigation and my decision in greater detail.

SUMMARY OF INVESTIGATION

On September 6, 2007 a Windsor police officer was dispatched to King Soopers in Windsor to determine the well-being of an individual. Ed Cavaliere, while shopping at King Soopers, appeared to be confused and disoriented. Windsor police officers decided that a mental health evaluation was appropriate for Mr. Cavaliere. Cavaliere attempted to walk away from officers and had to be subdued through the use of physical

force. He was placed in handcuffs. Cavaliere sustained a minor injury to his arm.

On September 26, 2007 the Windsor Police Department received a call from a Northern Colorado Medical Center (NCMC) doctor concerning Ed Cavaliere. Mr. Cavaliere had been brought in for another mental health evaluation by a friend. The doctor reported that Cavaliere was making homicidal death threats against Windsor police officers. Cavaliere stated at the medical center that he was going to get a copy of the report concerning the King Soopers incident, kill the officer involved, and kill any other Windsor police officers who he might come in contact with. The apartment manager at Cavaliere's apartment complex had reported to Windsor police that Cavaliere owned two .45 caliber handguns. This information was disseminated at Windsor Police Department shift briefings as an officer safety item.

On Saturday, September 29, 2007 Windsor Police Corporal Gerald Beers was dispatched to the Safeway store in Windsor for a shoplifting complaint. The suspect, Ed Cavaliere, was well-known to employees at the Safeway store. Cavaliere tried to pay for \$25.74 in candy with a \$20.00 bill. At least three different clerks tried to explain that it was not enough money. Cavaliere appeared confused and angry and left the store with the candy and the \$20.00 bill. After obtaining information from Safeway employees, Beers discussed the incident with Windsor Police Chief John Michaels.

Chief Michaels was working in his office when he heard about the Safeway shoplifting complaint. Michaels also knew about the King Soopers incident with Cavaliere. Michaels reviewed an email about the doctor's call to the police regarding Cavaliere's NCMC mental health check, his homicidal threats against Windsor police officers and his ownership of two .45 caliber handguns.

Chief Michaels communicated with Corporal Beers. Due to a concern for officer safety, Michaels and Beers decided that a summons and complaint would be issued to Mr. Cavaliere and the contact with him would be non-confrontational and "low-key". The Safeway store manager did however request that Cavaliere be brought back to the store so they could advise him that he could no longer shop there. Beers and Sergeant Rich Higuera, both in full police uniform, arrived at Cavaliere's apartment building to contact him. Higuera brought a less-lethal taser with him in the event Cavaliere turned violent.

Corporal Beers approached the back door of Mr. Cavaliere's apartment. Beers stood slightly to the left of the door while Sgt. Higuera was to the right of the door and out of sight.

Beers knocked on the screen door which eventually was answered by Cavaliere. Cavaliere opened the inside wooden door approximately one-third of the way leaving the outside screen door closed. Beers explained that he would like to discuss the problem at Safeway. Cavaliere stated that there was not a problem at Safeway and he started to close the wooden door. Beers asked if they could come in and speak with Cavaliere. The wooden door opened again and Beers observed the barrel of a hand gun being pointed at him by Cavaliere. Cavaliere had bright sunshine behind him which made it difficult for Beers to see him during this incident.

Mr. Cavaliere immediately started shooting while Corporal Beers attempted to run for cover. Beers was shot in his left hip area, under his left forearm, in his right back area, and in his right thigh as he dove behind a brick wall out of the line of fire.

Shortly after Corporal Beers contacted Mr. Cavaliere, Chief Michaels was advised that Beers was "down". Michaels rushed from his office to the scene of the shooting, approximately 10 blocks, and observed Beers lying face down on the ground. Beers heard Michaels arrive. Michaels took a position between Beers and Cavaliere's back door while Sgt. Higuera covered the front door. Cavaliere appeared at the back screen door. Michaels yelled several times for him to come out and drop his weapon. Beers heard Michaels yell "show me your hands" and "drop your gun" several times. Michaels saw Cavaliere raise his right hand which held a large silver revolver. Michaels reported that Cavaliere stated "shoot me" or "just shoot me". Beers reported that he had heard Cavaliere say "do me a favor and just kill me now". Michaels continued to yell at Cavaliere to drop his weapon and come out. Beers also heard Michaels yell "drop your gun" several more times. Higuera heard the statements reported by Beers and reported that he heard Michaels yell "stop, put down the gun, stop". Cavaliere lowered the handgun until it was pointed in the direction of Michaels. Michaels felt that Cavaliere was going to shoot him. Michaels fired two rounds and Cavaliere immediately fell to the floor. Beers and Higuera confirm hearing the two shots. Beers reported hearing a thud as if the suspect fell.

Corporal Beers' protective vest stopped two of the bullets. The third bullet struck his mace canister and lodged in the belt of his pants. The fourth bullet entered Beers' right thigh and exited through his left buttocks.

Investigators interviewed Leonard Cooper Sr. who lives in the same apartment complex as Mr. Cavaliere. Mr. Cooper observed two Windsor police officers go to apartment 4D, Cavaliere's apartment. Cooper observed an officer knock on the door. Cooper immediately heard five or six gunshots coming from the door of apartment 4D. Cooper observed the officer at the door immediately fall to the ground and the other officer moved to help the fallen officer. Cooper stated another officer arrived later and fired two shots toward the door of 4D.

Investigators interviewed Guy Platt who lives in the apartment complex. Mr. Platt observed two officers approach the apartment building. He heard gunshots and walked over to see what was happening. Platt observed one officer on the ground and another officer pointing a gun at the door of an apartment. Platt observed a plainclothes officer arrive and point his gun at the apartment door. Platt heard the plainclothes officer yell "let me see your hands" several times. Platt stated the plainclothes officer fired twice after making those statements.

Numerous witnesses were interviewed and heard gunshots, "pops", or "bangs". Several of those witnesses observed a police officer on the ground and other police officers around him.

Crime scene investigators processed Mr. Cavaliere's apartment. They found a fully loaded and cocked .45 caliber revolver underneath him. Investigators found a .45 caliber semi automatic on a bed in the living room. The gun had the slide open, a magazine lying next to it which held bullets, and a live round lying next to it. Investigators found seven (7) spent .45 caliber shell casings on the floor near Cavaliere. Investigators found 14 boxes of .45 caliber ammunition in the apartment. Investigators located the two bullets that struck Cavaliere. Crime Scene Investigators also located two (2) spent .45 caliber shell casings in the area where Chief Michaels fired from.

Doctor John Carver performed the autopsy on the body of Edward John Cavaliere at McKee Medical Center on September 30th, 2007 at approximately 10:00 a.m. Dr. Carver determined the cause of death was multiple gunshot wounds (2) to the chest and neck. Mr. Cavaliere's blood alcohol level was 0.004.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all

of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being and causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force is justified. In this case, the determination whether the police officers' conduct was criminal is primarily a question of legal justification.

C.R.S. 18-1-707(2)(a) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary...to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

Section 18-1-901(2)(d) of the Colorado Revised Statutes defines the term "**deadly physical force**" as follows:

(2)(d) "**Deadly physical force**" means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

In this case, Chief Michaels possessed information that Ed Cavaliere had previously struggled with Windsor officers at the King Soopers. Michaels knew through NCMC staff that Cavaliere had made death threats against Windsor officers during a mental health check and that Cavaliere reportedly owned two .45 caliber handguns. Michaels knew that Cavaliere had an incident at the Safeway that day in which he was confused and angry and in which he shoplifted some merchandise. Finally, Michaels knew that Corporal Beers had been shot by Cavaliere and was "down" near the back door of Cavaliere's apartment.

Chief Michaels arrived at Ed Cavaliere's apartment and found his officer lying near the back door face down. Michaels had an exchange with Cavaliere in which Michaels repeatedly told Cavaliere to drop his weapon and show his hands while Cavaliere made statements to the affect of "just shoot me" and "just kill me". Cavaliere did not drop the weapon and in fact pointed the weapon at Michaels. Michaels then shot him.

It is clear that Chief Michaels reasonably believed that it was necessary to use deadly physical force upon Ed Cavaliere to defend himself and Corporal Beers from "the use or imminent use of deadly physical force."

CONCLUSION

In light of the analysis contained in this report, I find that Chief Michaels was justified in using deadly force against Ed Cavaliere pursuant to C.R.S. 18-1-707(2)(a). As a result, the Weld County District Attorney's Office will not file any charges against Chief Michaels for the use of deadly force in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Kenneth R. Buck
District Attorney

cc:
Ed Starck, Windsor Mayor
John Frey, Windsor Town Attorney
John Michaels, Windsor Police Chief