



BUTTE COUNTY DISTRICT ATTORNEY



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December 10, 2015

Chief Gabriela F. Tazzari-Dineen
Paradise Police Department
5595 Black Olive Drive
Paradise, CA 95969

RE: Officer Patrick Feaster and the shooting of Andrew Nicholas Thomas, PPD #15-2996

Dear Chief Tazzari-Dineen,

After an extensive and careful review of the evidence gathered by the Butte County Officer Involved Shooting/Critical Incident Protocol Team related to the above shooting incident, it is this office's determination the facts and law do not support criminal charges being brought against your officer **Patrick Feaster** for his November 26, 2015 shooting of **Andrew Nicholas Thomas**. The evidence in this case tends strongly towards showing the shooting to be unintentional and possibly negligent, but not criminally so.

As you know, the objective of the team's investigation is not an administrative investigation to determine whether there was a violation of your departmental policy nor is it a critique of any involved officer's tactics. Its purpose is to determine whether there is any criminal liability on the part of any involved officer. The investigation, as was done here, is to be accomplished by uninvolved, professional investigators from separate agencies to supply a complete, unbiased and uncompromised investigation to be reviewed by my office. A finding of criminal liability can only be found if we would be able to find beyond a reasonable doubt your officer intentionally or with criminal negligence pulled the trigger on his weapon. We would not be able to sustain such a burden in this case.

The investigation established Officer Feaster was on normal patrol and had parked his assigned patrol vehicle off the Skyway near Foster Road in Paradise when he saw a SUV rapidly accelerate out of the parking lot of the nearby Canteena Bar without its headlights on and speed down the Skyway. The officer's dashcam was activated and it showed the officer begin to follow the SUV as it sped at high speed through the red turn signal at the intersection of the Skyway and Pearson Road and turn left (east) onto Pearson Road. As the officer was attempting to catch up with the speeding SUV, he saw it crash into the median just past Pearson Road's intersection with Black Olive Drive and overturn. The officer saw a female, later identified as Darien Ehorn, 23, thrown out of the vehicle as it overturned and impact the roadway in front of the officer. The SUV skidded to a stop lying on its driver's side just past Ehorn's body. The officer stopped his patrol vehicle and got out to approach Ehorn as she lay on the road.

As the officer got out, he saw Thomas begin to quickly pull himself out of the now-upward-facing passenger side window of the SUV. This startled Officer Feaster who felt Thomas was

possibly attempting to escape from a potential felony vehicular manslaughter incident. The officer pulled his .45 caliber semi-automatic pistol to cover Thomas as he would in a “high risk felony traffic stop.” It was at this time Officer Feaster’s weapon discharged and Thomas was struck in the left lower neck. Medical reports note Thomas’ C7 and T1 vertebra and spine were impacted by the gunshot.

A careful analysis of the dashcam video showed the officer’s gun was discharged only one time although there is a potential optical illusion of a second shot. It was determined the illusion of a second shot was as a result of the officer’s gun-mounted flashlight illuminating the expended gunshot gases in front of the pistol’s muzzle as it recovered from its recoil. Additionally the California Department of Justice (DOJ) CSI team found only one expended casing from Officer’s Feaster’s gun at the scene. The team also determined only one cartridge was missing from the officer’s gun when they inspected the pistol and its magazine.

Officer Feaster told responding officers that night he did not intentionally fire his weapon and that it was an accidental discharge. He later told protocol team investigators in a voluntary interview the next day that it was not his intention to discharge his weapon. The dashcam video also shows Officer Feaster was not prepared for and was surprised by the gun’s firing. The pistol discharges in mid stride and the officer both flinches his head to the right and does a “stutter step” indicative of an officer not prepared for nor intentionally firing his pistol. Additionally officers normally train to fire a minimum of two shots when they intentionally fire their sidearms at training. There was no second shot and the officer immediately holstered his weapon after the discharge.

In his interview with protocol team investigators, Officer Feaster noted, and his Paradise Police training records corroborated, that he has trained at least twice a year with the same firearm since his employment with Paradise Police in 2010. He stated, and police administration confirmed, he has had no other negligent/accidental discharges while with Paradise Police Department.

Officer Feaster’s sidearm, a department issued Glock model 21C semi-automatic pistol in .45 caliber, was found to be functioning properly when later test fired at the DOJ lab facility. The trigger-pull was normal for such a weapon. As you know, the Glock has an internal trigger safety which only allows the weapon to be fired by applying pressure to the safety and trigger at the same time. Officer Feaster’s pistol did have a custom addition of an under barrel mounted flashlight with a pressure activation button on the grip below the trigger guard. There had been some speculation by team investigators that there may have been some confusion over the flashlight button and the trigger when the officer was faced with the high stress situation he found himself in. However, Officer Feaster told investigators he did not believe such was the case as he has had the flashlight modification on his pistol for approximately a year and a half and had trained with it – including a department night pistol training just the week before.

Officer Feaster has been cooperative during the investigation, but cannot explain why his finger would be on the trigger of his pistol that night as he always trained to the police standard of “indexing” his finger until he was prepared to intentionally fire his pistol. His reaction on the dashcam video and his statements to protocol investigators confirm an honest belief that he did not intentionally fire his pistol. The delay in immediately reporting the “accidental discharge”

was also discussed with him and he explained that he was shock at the scene and not certain that his weapon had actually discharged. Interviews with responding officers confirm his confused state at the time. A review of Officer Feaster's personnel file did not reveal any instances of dishonest conduct or any sustained citizen complaints against the officer in his five years with Paradise Police.

In examining Officer Feaster's criminal liability, we note first that this, thankfully, is not a homicide case and we therefore only examine those Penal Code sections dealing with the discharge of a firearm. All of those sections, be it Penal Code section 245 (Assault with a Firearm), 246 (Discharge of Firearm at an Occupied Vehicle) or 246.3 (Discharge of a Firearm in a Grossly Negligent Manner), all require proof the trigger of the firearm was pulled "willfully" or under circumstances in which the display of the gun was unreasonable. As noted in Penal Code section 7, the word "willfully" when "applied to the intent with which an act is done, implies simply a purpose or willingness to commit the act (i.e. pull the trigger)". An unintentional or accidental pulling of the trigger, as long as the firearm was originally displayed in a legal and reasonable manner – i.e. an officer in the reasonable performance of his duty of making a felony vehicle stop – does not, under the law, allow for criminal charges.

Even a negligent pulling of the trigger would not allow for criminal charges unless the negligence reached the level of "criminal negligence." As noted in the jury instruction defining "criminal negligence" – "Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when: 1) He or she acts in a reckless way that creates a high risk of death or great bodily injury; and 2) A reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act." And any proof of criminal negligence is upon the prosecution to prove beyond a reasonable doubt. The facts here do not rise to that proof.

As always I thank the Butte County Officer Involved Shooting/Critical Incident Protocol Team for their excellent, professional and unbiased investigation into this case.

Very truly yours,

Michael L. Ramsey
District Attorney

Cc: Butte County Officer Involved Shooting/Critical Incident Protocol Team