

<p>COURT OF APPEALS STATE OF COLORADO</p> <p>2 E. 14<sup>th</sup> Avenue, 3<sup>rd</sup> Floor Denver, Colorado 80203</p> <hr/> <p>Appeal from the District Court of Adams County Honorable Chris Melonakis Case No. 07CR3418</p> <hr/> <p>PEOPLE OF THE STATE OF COLORADO,  Plaintiff-Appellee,  v.  VU BA LE  Defendant-Appellant.</p> <hr/> <p>Attorney for Defendant-Appellant:  Forrest W. Lewis 1600 Broadway, Suite 1525 Denver, Colorado 80202 (303) 830-2190 Reg. No.: 5817</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No. 09CA1989</p>
<p><b>REPLY BRIEF</b></p>	

Vu Le submits the following reply to the answer brief:

The unique facts and issues of this case do not lend themselves to a clearly established standard of review. By default, a plain error analysis seems appropriate, as suggested by the attorney general. The complicity issue was not argued during the trial. The applicability of complicity was discussed in the jury instruction conference but the effect of the complicity voir dire was not.

This issue also requires a prosecutorial misconduct analysis. As the attorney general suggests, the prosecutor may have assumed that a complicity instruction would be given. Perhaps this case reminds us that we should be careful about advancing legal theories in voir dire, assuming the jury will be instructed on those theories. We do so at our peril. If the theory is not in the instructions, we run the risk, as here, of jury confusion and uncertainty.

The prosecutor knew what their chief witness would say. They knew the identity of the shooter was the central issue in the case. They may not have been malicious in the voir dire but they recklessly assumed the risk of leading the jury down a crooked path if they did not prevail in the jury instruction decision.

The attorney general's argument that a complicity based verdict would have applied to all counts is true in theory. However, the unlawful discharge of a firearm count is the only count which exclusively addresses the issue of who pulled the trigger. This, as the attorney general notes, was the "question [the jury] had to resolve . . ." (Answer Brief, p. 14).

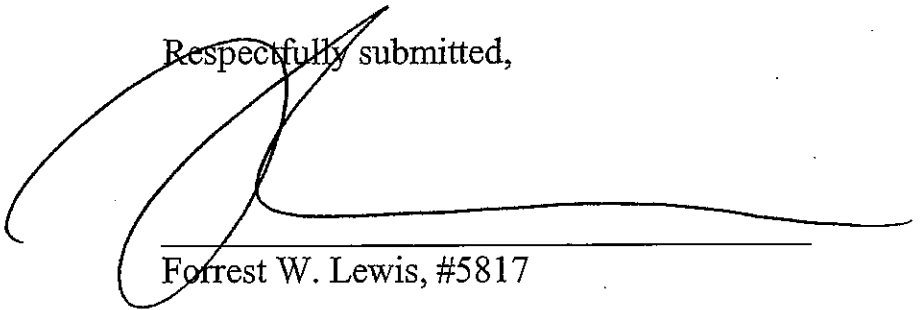
By its not guilty verdict on illegal discharge of a firearm, the jury found that the prosecution did not prove that Mr. Le was the triggerman. The only logical conclusion, then, is that the guilty verdicts on the other counts were based, at least in the minds of some jurors, on Mr. Le's aiding and abetting the shooter.

**SENTENCING**

Mr. Le agrees with the attorney general that the case should be remanded for an amended mittimus.

WHEREFORE, Vu Le, for the reasons discussed herein and in the Opening Brief, requests an order remanding this matter to the District Court for a new trial or in the alternative, on amended mittimus.

Respectfully submitted,



Forrest W. Lewis, #5817

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing **REPLY BRIEF** was placed in the U.S. mail, postage prepaid, on this 22<sup>nd</sup> day of November, 2010, to the following address:

Ryan A. Crane, AAG  
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