



OFFICE OF THE DISTRICT ATTORNEY

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Honorable Tyler Brown
Sheriff
Arapahoe County
13101 E Broncos Pkwy
Centennial, CO 80112

RE: May 28, 2020 – Officer Involved Shooting by Deputy James Stiltner

Sheriff Brown,

The 18th Judicial District Critical Incident Response Team has completed the investigation into the May 28, 2020 shooting of Steven Edward Ferguson by Deputy James Stiltner. Mr. Ferguson was killed during this incident. Detective Shannon Brukbacher, Parker Police Department, was the lead investigator. I have completed my review of the investigation. Below is my summary of the facts, investigation, legal analysis and conclusion.

EXECUTIVE SUMMARY

On May 28, 2020, Arapahoe County Sheriff's Deputy Draper was on routine patrol in the vicinity of the Days Inn at 9719 East Geddes Avenue in Centennial. Deputy Draper identified a stolen vehicle in the parking lot of the Days Inn and was preparing to impound the vehicle. Deputy Stiltner arrived to provide backup when they saw the stolen vehicle moving. Both deputies approached in their fully marked vehicles to prevent the stolen vehicle from leaving. Deputy Stiltner parked his patrol car behind the stolen car. The driver of the stolen car, Steven Ferguson, attempted to reverse and drive over the hood of Deputy Stiltner's patrol car. Mr. Ferguson quickly exited the stolen car and began to run away while Deputy Stiltner began to pursue him. Mr. Ferguson reached for his waistband, pulled out a gun and pointed it at Deputy Stiltner. Deputy Stiltner fired three times, striking Mr. Ferguson in the upper torso. Deputy Draper's K9 Kilo engaged Ferguson and bit him on the back of his head and neck. Deputy Stiltner immediately began lifesaving efforts, however, Mr. Ferguson died at the scene. It was determined that Mr. Ferguson was in "escape" status with an active warrant from the U.S. Marshalls after running away from a halfway house in Denver. Mr. Ferguson was serving a federal sentence for weapons and drug violations. Mr. Ferguson also had an active warrant from the Denver Police Department related to a domestic violence incident, robbery and carjacking that occurred on May 25, 2020.

My review is limited to the question of whether or not a crime was committed by law enforcement. Applying the law to the facts of this incident, as described in detail below, I conclude the evidence does not support that either Deputy Stiltner or Deputy Draper committed a crime on May 28, 2020.

The evidence supports Deputy Stiltner reasonably believed he was in imminent danger of the use of unlawful physical force by Mr. Ferguson and the use of deadly force was justified.

THE STATUTORY FRAMEWORK FOR INVESTIGATIONS
OF OFFICER-INVOLVED SHOOTINGS

C.R.S. § 16-2.5-301 governs investigations into peace officer-involved shootings.

This statute provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado bureau of investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

C.R.S. § 20-1-114 provides, in relevant part:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 18th Judicial District, and includes the basis of the decision not to charge the involved officer with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

Detective Shannon Brukbacher, Parker Police Department, is the lead CRT investigator. I reviewed all materials provided by Detective Brukbacher including all recorded interviews, body camera footage, written reports, and photographs.

SUMMARY OF THE FACTS

On May 28, 2020, at approximately 2:29 PM, Steven Ferguson and his girlfriend, [REDACTED] checked into the Days Inn at 9719 East Geddes Avenue in Centennial, Colorado. Mr. Ferguson was driving a white Jeep Cherokee.

At approximately 3:16 PM, Deputy Draper was on routine patrol in the area and located the white Jeep Cherokee in the parking lot. Deputy Draper suspected the vehicle was stolen due to a missing

plate and ran the VIN, confirming the vehicle was in fact stolen. Deputy Draper was in full duty uniform, with an exterior vest carrier that has “sheriff” on the front and back, and patches on both sleeves.

Meanwhile, Deputy Stiltner attached himself to Deputy Draper’s call and responded to the area to assist. Deputy Stiltner was also in full duty uniform, with his badge visible on the front and patches on both sleeves. Deputy Draper was parked across the street from the Days Inn, while he worked on paperwork for the stolen vehicle. Deputy Stiltner arrived and Deputy Draper informed him about the stolen Jeep Cherokee. The two deputies then noticed the white Jeep Cherokee was moving and they drove across the street to the Days Inn in an attempt to prevent the vehicle from leaving.

Deputy Draper was in a fully marked patrol car with his K9, Kilo. The white Cherokee was parked in front of the entrance to the Days Inn. Deputy Draper drove from the northern side of the Days Inn to block the Jeep, while Deputy Stiltner approached from the south side.



The driver of the Jeep Cherokee – later determined to be Mr. Ferguson – put the Jeep in reverse and backed over the hood of Deputy Stiltner’s vehicle. Deputy Stiltner stated he feared the driver was going to continue over the hood due to the lift on the vehicle.



Mr. Ferguson then quickly got out of the driver's side of the Jeep. Deputy Stiltner also got out of his marked patrol car.

Mr. Ferguson immediately began to run and grab for his waistband.





Deputy Stiltner reported seeing Mr. Ferguson reach for his waistband and pointing a gun towards him. This is supported by the body worn camera footage. Mr. Ferguson's companion, [REDACTED], was also at the scene and stated she saw Mr. Ferguson exit the Jeep, take two steps, pull a gun and point it at the deputy.

Deputy Stiltner fired three shots from his weapon, striking Mr. Ferguson. Deputy Draper was moving towards Mr. Ferguson from the north while his K9, Kilo engaged Mr. Ferguson. Kilo was released from Deputy Draper's vehicle nearly simultaneously with Deputy Stiltner engaging the

suspect. Kilo bit Mr. Ferguson on the back of his head and neck as Mr. Ferguson fell forward. These bites were non-fatal. Once it appears Mr. Ferguson is no longer a threat, Deputy Draper is heard on the body worn camera ordering Kilo to “platz,” which is the German word for “down.” Like many K9s, Kilo is trained to obey commands in the German language.

As Mr. Ferguson fell to the ground, the gun in his hand can be seen flying from his hand and impacting the ground. When the gun hit the ground the pistol grip broke apart, revealing it was a CO₂ gun.





Although the gun was revealed to be a CO₂ pistol, there is no reasonable way either deputy could have known that at the time Mr. Ferguson pulled the gun. Moreover, the CO₂ pistol appears designed to be unmistakable from a functioning firearm, including a cylinder loaded with what appears to be real ammunition.



Research into the Crossman SNR.357, revealed that it is a CO₂ powered, dual ammo full metal snub nose air revolver. The weapon is capable of firing BBs and .177 caliber pellets. Mr. Ferguson's gun was loaded with .177 caliber pellets. According to the Crossman website, the pellet velocity is up to 350 fps. It is documented on the website as heavy weight with a full metal body. The website says, "The best air pistol is the one you have with you, or so the saying goes. The new Crossman SNR357 ("SNR" = Snub Nose Revolver) has the heft and feel of a Saturday Night Special with none of the powder. Add dual ammo capabilities and realistic loading with the included reusable cartridges and the backyard becomes the ideal practice range." It should be noted that this is different from an "airsoft" gun in that an "airsoft" gun usually fire plastic BBs and "air" guns usually fire lead or steel BBs or pellets. Below is a picture from the website showing the intact pistol grip.



SNR357
CO₂ Powered, BB/Pellet Snubnose Revolver

- Dual ammo (BB/.177 cal. pellet)
- BB velocity up to 400 fps
- Pellet velocity up to 350 fps
- Heavy weight, full metal body
- Double or single action
- Front fixed blade sight and adjustable rear sight
- Silver trigger, hammer and cylinder release switch
- Removable grip for easy replacement of CO₂

Model SNR357 

 All guns on this page made in the USA with globally sourced components. fps (feet per second) calculated with alloy pellets.
 Compliant version available for Canadian customers

After the Crossman CO₂ gun was recovered and returned to the crime lab, the pistol grip was reassembled to demonstrate what the gun would have looked like before the handle broke off. See below.



Body worn camera shows Mr. Ferguson fell to the ground after Deputy Stiltner fired three times. Mr. Ferguson was handcuffed and Deputy Stiltner then began administering first aid to Mr. Ferguson until other deputies arrived. Mr. Ferguson died at the scene. Preliminary autopsy results indicate Mr. Ferguson died from multiple gunshot wounds. A complete autopsy report is still pending.

During the autopsy, a used hypodermic needle was located in Mr. Ferguson's pants pocket. In his wallet, which was removed from his pants while on scene, were two Buprenorphine and Naloxone sublingual films. One was used and one was unopened. Buprenorphine and Naloxone is also commonly known as Suboxone, which is a medicine used to treat opiate addiction. A toxicology report is pending the official autopsy report.

Mr. Ferguson is described as a 31 year old white male, approximately 5'7" and 165 pounds. Further investigation revealed the Mr. Ferguson is a multistate offender with a lengthy criminal history dating back to 2001, including burglary, drug crimes, sexual assault, identity theft, assault and vehicle theft. Mr. Ferguson was sentenced to 2 years in the Colorado Department of Corrections in 2012 after pleading guilty to Burglary of a Dwelling, a Class 3 felony in Denver District Court case 12CR1720. Mr. Ferguson was again sentenced to the Colorado Department of Corrections in 2017 for a period of 4 years in Denver District Court case number 15CR2960 after pleading guilty to Burglary of a Building, a Class 4 felony. This sentence was to be served in federal prison because Mr. Ferguson was also sentenced to 72 months in federal prison in September, 2017, after pleading guilty to charges of felon in possession of a firearm and distribution/possession with intent to distribute methamphetamine. Mr. Ferguson was serving the end of his federal sentence at the Independence House in Denver. Due to COVID-19, Mr. Ferguson was transferred to in-home detention with GPS monitoring on or about May 10, 2020. Mr. Ferguson was to check in with staff three times a day and submit to random urinalysis.

On May 25, 2020, Mr. Ferguson was involved in an alleged domestic violence assault followed by vehicular eluding (Denver GO 20-322274), immediately followed by an alleged carjacking in Denver (GO 20-322319). A warrant was issued for Mr. Ferguson's arrest. Mr. Ferguson was a self-admitted member of a prison street gang with connections to white supremacist ideology.¹ The warrant for Mr. Ferguson's arrest said he was considered "armed and dangerous." After the carjacking, Denver Police Department Officer Ivan Salazar Reyes reported that on May 25, 2020 he was able to hear Mr. Ferguson on the phone say that he would get into a shootout with police if they kept following him.

Mr. Ferguson removed his ankle monitor while fleeing from the Denver Police Department on May 25, 2020. A citizen reported seeing Mr. Ferguson throw it from the vehicle. Englewood Police Department recovered the monitor between Floyd and Cornell on northbound Broadway.

¹ During the autopsy it was noted that Mr. Ferguson had tattoos covering his body. He had "white" and "pride" tattooed on his wrists, a Confederate flag on left bicep, and "white trash" across his shoulder blades. Mr. Ferguson also had numerous tattoos paying homage to Denver; for example, there were road signs, Broncos logo, Denver cityscape, 5280, etc.

WITNESS INTERVIEWS

On May 28, 2020, ██████████ told DA Investigator Lord that Mr. Ferguson would have “definitely shot the cop if he had the chance to do it.” ██████████ also told DA Investigator Lord that she recalled Mr. Ferguson say regarding the police that “If they get me, I’m shooting it out with them.” ██████████ also said that Mr. Ferguson uses methamphetamine and believed he had been using “all day” on May 28, 2020.

Deputy Stiltner reported that when Mr. Ferguson reversed over the hood of his patrol car, Deputy Stiltner was concerned Ferguson would be able to run over and kill him or trap him inside the car due to the lift kit on the Jeep. When Deputy Stiltner got out of his car to pursue Mr. Ferguson he saw Mr. Ferguson reach towards his waist and point the gun towards Deputy Stiltner. Deputy Stiltner said he believed it was a real gun and feared for his own life and the life of Deputy Draper, so he fired his weapon at Mr. Ferguson. Deputy Stiltner noted that only after the Mr. Ferguson’s gun hit the ground and broke apart that he could see it appeared to be a CO₂ gun.

APPLICABLE LAW

The District Attorney’s review of this event is guided by the following statutes pertaining to the use of force – both generally and by peace officers:

Section 18-1-704(1) C.R.S. states in relevant part:

(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonable believes to be necessary for that purpose.

Section 18-1-707 C.R.S. states in relevant part:

(1) . . . a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

- (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
- (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

ANALYSIS AND CONCLUSION

Based on my review of all the evidence in this case, I find Deputy Stiltner did not commit a crime when he fired three rounds at Mr. Ferguson on May 28, 2020. Mr. Ferguson clearly pointed a gun at Deputy Stiltner, causing the Deputy to reasonably fear for his life and the life of Deputy Draper. This is true even though the gun was later determined to be a CO₂ pistol because there were no markings on the gun to make it appear like a CO₂ gun. Indeed, the gun appears designed to look real in every aspect, including being loaded with what appear to be real bullets. The body worn cameras of Deputy Stiltner and Deputy Draper clearly corroborate the deputies’ statements.

Moreover, the statement of [REDACTED] who witnessed the event corroborates that Mr. Ferguson pointed the gun at Deputy Stiltner.

As a result, I conclude the evidence does not support that Deputy Stiltner committed a crime. The evidence supports he reasonably believed he was in imminent danger of the use of unlawful physical force by Mr. Ferguson, which justified the use of deadly force on May 28, 2020.

Respectfully,



John E. Kellner
Chief Deputy District Attorney
18th Judicial District Attorney's Office