



OFFICE OF THE DISTRICT ATTORNEY
JOHN KELLNER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

September 17, 2021

Sheriff Tom Nestor
Lincoln County Sheriff's Office
103 3rd Avenue
Hugo, CO 80821

Re: Officer-involved shooting on May 20, 2021 at Interstate 70 and US-287

Dear Sheriff Nestor,

On May 20th, 2021, the 18th Judicial District Critical Incident Response Team (CIRT) responded to investigate an officer-involved shooting in Lincoln County, Colorado.

At 3:14 a.m., a truck driver who was parked at a pull-out at Interstate 70 and US-287 called Lincoln County's dispatch center to report that a suspect was breaking into truck trailers. Lincoln County Sheriff's Office Deputy Michael Hutton responded at approximately 3:24 a.m. He and the truck driver approached an open trailer where the suspect was seen. As Deputy Hutton shined a flashlight inside the trailer, he was shot by the suspect who was hiding inside. Deputy Hutton was seriously wounded. He fell to the ground but then was able to stand and run for cover as the suspect continued to shoot at him. The truck driver, too, was fired upon but was only slightly wounded. Deputy Hutton fired back three times before he was able to get across the road, where he collapsed.

Deputy Hutton called for help on his radio. Additional officers arrived within twenty minutes but could not find the wounded deputy in the dark and heavy fog with an unknown armed suspect on the loose. Deputy Hutton fired one additional time into the ground so that the responding officers could locate him.

Deputy Hutton was struck by the suspect's bullets in the hand, arm and torso. He was transported first by ambulance and then helicopter to the Swedish Medical Center. Despite significant injuries, he is expected to recover.

Several hours later the El Paso County SWAT team found the suspect in a field 0.7 miles from the scene of the shooting. The suspect was dead from an apparent self-inflicted gunshot wound to his head. He was later identified as Tristan Ensinger, born [REDACTED] 1995.

I reviewed all of the evidence provided by the 18th Judicial District's Critical Incident Response Team to determine whether there was any illegal use of force by Deputy Hutton.

SUMMARY

Applying the law to the facts of this incident, as described below, I conclude that Deputy Hutton was legally justified in attempting to use lethal force against Mr. Ensinger. Deputy Hutton's attempted use of force was reasonable, necessary, and appropriate in order for Deputy Hutton to defend himself and the civilian truck driver from the threat posed by Mr. Ensinger on May 20, 2021.

STATUTORY FRAMEWORK

C.R.S. § 16-2.5-301 governs investigations into police 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. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by the 18th Judicial District Critical Incident Response Team (CIRT). The lead officers were Investigators Kristen Tinsley and Ronnie Dorrell of the Douglas County Sheriff's Office. Other investigators participated from the District Attorney's Office as well as numerous police agencies and sheriff's offices throughout the jurisdiction.

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

I reviewed all materials provided by the lead investigators and members of the CIRT, including body-worn camera video, dispatch notes, radio traffic, interviews of the involved officers, all reports regarding interviews with witnesses, and photographs of the scene. Additionally, on the morning of this officer-involved shooting, I responded to the scene of the incident to observe and provide advice to the investigation.

SUMMARY OF THE FACTS

On May 20, 2021, at 3:14 a.m., the Lincoln County Sheriff's Office received a 911 call from a truck driver named [REDACTED] who was parked at a pullout area near Interstate 70 and US-287. This location is a common place for truck drivers to park their tractor/trailers and sleep overnight. [REDACTED] reported that someone had removed the seal that secures the lock on his trailer. He then noticed another tractor and trailer nearby with one of the trailer's doors open. He could see someone using a flashlight while attempting to hide behind the open trailer door. He assumed this person was stealing from the trailer.

Lincoln County Sheriff's Office (LCSO) Deputy Michael Hutton arrived on the scene at 3:25 a.m. He was in full uniform, including a body-worn camera, and was driving a marked patrol car. The parking area was dark with no lighting and, due to heavy fog, visibility was reported to be as low as 15 feet to 100 feet. At the request of the radio dispatcher, who was still on the phone with [REDACTED] the driver turned on his hazard lights so that Deputy Hutton could find him. While parking, Deputy Hutton accidentally turned on his siren for a few seconds while reaching for his stationary lights. Deputy Hutton then got out of his patrol car and talked with [REDACTED] for a moment on the dirt outside his tractor. [REDACTED] pointed to the open trailer of the other tractor and followed Deputy Hutton as he walked toward the open trailer to investigate.



Overhead image of scene in daylight created from CBI Agent Erick Bryant's Main Scene Diagram.

Deputy Hutton held his flashlight in his left hand and illuminated the surrounding area as he approached the trailer. As Deputy Hutton reached the open door, he asked [REDACTED] "You didn't talk to this driver at all, did you?" [REDACTED] responded, "No." Almost simultaneously to [REDACTED] responding, the suspect, who was hidden behind the closed left door, appeared to lean out from behind the door to have a view of Deputy Hutton. The suspect took aim and fired one shot downward at Deputy Hutton.



Still image from Deputy Hutton's body-worn camera

Deputy Hutton was struck by the first bullet and fell to the ground. The suspect fired four more times while Deputy Hutton stood up and ran for cover. 9mm shell casings were later found by the back of the trailer. Deputy Hutton was hit by the suspect a total of three times: once in the left hand, once in the left forearm, and once in the left torso. Deputy Hutton ran south, from the back of the trailer, along its passenger side, and around its front to the east. As Deputy Hutton ran, he fired his handgun three times back at the suspect. He shouted over his police radio, "Shots fired! Shots fired! Officer down!" as he collapsed on the other side of the road.

██████████ called 911 and stated that the officer had been shot. He also stated that he had been shot at several times as he ran to get back in the cab of his tractor. ██████████ was wounded in the leg but he described it as just a graze from a bullet. He wanted to help the officer but the dispatcher ordered ██████████ to remain in his truck. At this point neither Deputy Hutton nor ██████████ knew where the suspect had gone, or if he was attempting to pursue them in the dark and heavy fog.

Deputy Hutton remained on the ground on the far side of the road for almost twenty minutes as other police officers arrived and tried to locate him. At 3:42 a.m., Deputy Hutton aired over the radio, "I'll fire one shot away from you." Deputy Hutton fired one shot from his handgun into the ground. Responding officers located Deputy Hutton a minute later and began rendering medical aid. He was eventually transported via ambulance to Lincoln Health Community Hospital and later airlifted to Swedish Medical Center.

Numerous law enforcement agencies from the surrounding counties and towns arrived to help search for the suspect. At 9:47 a.m., the El Paso County S.W.A.T. team located a body in a field 0.7 miles from the location of the initial shooting. The decedent appeared to have suffered a self-inflicted gunshot wound to the head. He was later positively identified as Tristen Ensigner, born

995. A turquoise-colored 9mm handgun was found next to him. Mr. Ensigner was the registered owner of the Nissan truck located near the trailers. Inside the truck were boxes of 9mm handgun ammunition. Investigators soon learned that Mr. Ensigner was the suspect of a murder that had occurred in Ohio a few days earlier.

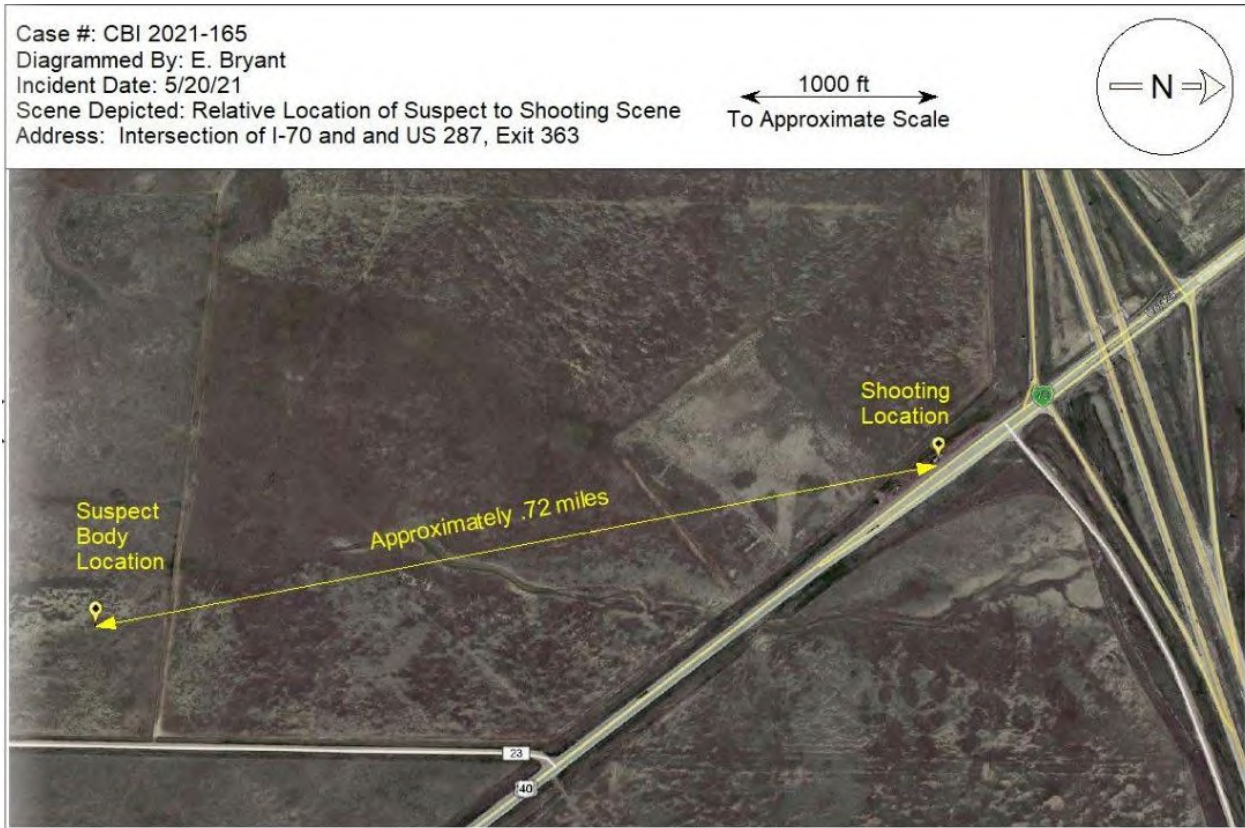


Diagram created by CBI Agent Erick Bryant

and Deputy Hutton were both shown pictures of Mr. Ensigner. Neither could identify him with certainty due to the darkness but he appeared to resemble the man who had fired at them. His features match what can be seen in images from Deputy Hutton's body-worn camera, especially the somewhat distinctive head of long, curly hair, which described in his initial interview.

APPLICABLE LAW

The ethical obligation of prosecutors and the policy of the District Attorney's Office is to only prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime, and 2) there is a reasonable likelihood of conviction at trial. This is a higher standard than the probable cause standard used by police officers making initial charging and arrest decisions. Criminal liability is established when there is a good faith basis to believe the individual committed the crime, and there is sufficient evidence to prove all of the elements of the crime beyond a reasonable doubt, to include the criminal conduct and the criminal mental

state. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt.

The District Attorney's review of an officer-involved shooting event is guided by the statutes pertaining to the affirmative defenses applicable to use of force by peace officers, specifically C.R.S. § 18-1-707:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When physical force is used, a peace officer shall: (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense; (b) Use only a degree of force consistent with the minimization of injury to others; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force; (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person; (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

ANALYSIS AND CONCLUSION

The question presented to the District Attorney's Office for the 18th Judicial District is whether Deputy Hutton reasonably believed his attempted use of deadly physical force was necessary to defend himself and/or ██████████ from what he believed to be the imminent use of deadly physical force by Mr. Ensigner.

In an interview, Deputy Hutton described the events of that early morning to the CIRT lead investigators. He stated that the suspect, later determined to be Mr. Ensigner, fired at him from behind the door of the trailer the moment Deputy Hutton saw him. His duty weapon was still in its holster. He believed Mr. Ensigner may have known he was a police officer because he was in uniform and had accidentally turned on his “rumbler” siren while parking. As Deputy Hutton was struck by suspect’s initial gunfire, he fell to the ground, then managed to stand and run around the side of the trailer. Deputy Hutton saw [REDACTED] flee in the opposite direction.

Deputy Hutton believed the suspect was pursuing him in order to kill him. He heard the more gunshots, which he believed were being fired at himself and [REDACTED]. Due to his wounds, he couldn’t raise his arms very high but he nevertheless tried to fire at Mr. Ensigner as the suspect came around the side of the trailer in apparent pursuit. At this point Deputy Hutton was near the tractor cab in front of the tractor/trailer. He fired three times, intending to either strike Mr. Ensigner and stop the threat he posed or, at least, “keep him at bay.” He believed his rounds struck the dirt in front of the suspect due to the fact he couldn’t raise his arms high enough to shoot him. He tried to “thumb on” his radio but realized his left thumb was mostly exposed bone from a bullet wound.

Deputy Hutton managed to get across the road where he collapsed. He stated his legs stopped working and he realized he had also been struck in the lung. He managed to roll into a prone position with his gun pointing towards where he had last seen Mr. Ensigner. He didn’t know where Mr. Ensigner had gone and believed Mr. Ensigner might still be pursuing him to kill him. In the roughly twenty minutes it took for other officers to respond and begin emergency medical procedures, Deputy Hutton believed he was going to die. Due to voice giving out, he fired one additional round into the dirt in order for the responding officers to find him in the darkness and heavy fog.

Deputy Hutton’s actions in firing at Mr. Ensigner were reasonable and justified based on Mr. Ensigner’s sudden attempt to murder the peace officer and a witness, [REDACTED] Mr. Ensigner, by his actions, was willing to seriously injure or kill an officer and a witness, presumably in order to escape arrest, and was actively attempting to do so. Mr. Ensigner’s actions were the proximate cause for the immediate and attempted use of deadly force by the officer. Deputy Hutton fired at Mr. Ensigner to save his own life and the life of [REDACTED]

I find that Deputy Hutton reasonably believed that Mr. Ensigner posed an imminent threat of deadly physical force to himself and [REDACTED]. Deputy Hutton did not have the time or the ability to use lesser force or even warn Mr. Ensigner of his intent to respond with deadly force. Deputy Hutton was justified in attempting to use deadly physical force against Mr. Ensigner to defend himself and [REDACTED] from the unlawful, imminent and actual use of deadly physical force against them. Deputy Hutton did not commit any crime and criminal charges will not be filed against him.

Clinton McKinzie
Chief Deputy District Attorney
18th Judicial District

