



OFFICE OF THE DISTRICT ATTORNEY

GEORGE H. BRAUCHLER, DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

6450 S. REVERE PARKWAY
Centennial, CO 80111
720-874-8500
FAX 720-874-8501

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Sheriff Tyler Brown
Arapahoe County Sheriff's Office
13101 East Broncos Parkway
Centennial, CO 80112

RE: November 15, 2018 - Officer Involved Shooting of Allen Llewelyn Fanning (DOB: [REDACTED] 1999)

Dear Sheriff Brown,

On November 15, 2018, the 18th Judicial District Critical Response Team ("CRT") responded to an officer-involved shooting in Centennial, Arapahoe County, Colorado. Arapahoe County Sheriff Deputies fired numerous rounds at Allen Llewelyn Fanning. Mr. Fanning did not survive his injuries.

EXECUTIVE SUMMARY

Applying the law to the facts of this incident, as described in detail below, I conclude Arapahoe County Deputies Robert Knudson, Christopher Donovan and Robert Bratsch were legally justified in their use of force to defend themselves and other officers from the threat posed by Mr. Fanning on November 15, 2018.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

Parker Police Department Detective Beverly Wilson is the lead CRT investigator. I reviewed all materials provided by Detective Wilson including recorded interviews with involved officers, recorded interviews with eyewitnesses, body camera footage, written reports and photographs.

SUMMARY OF THE FACTS

On November 15, 2018 at approximately 9:06 a.m., Arapahoe County dispatch received a 911 call from J.K., the manager of the Big-O Tires located at 6711 South Potomac Street. J.K. told dispatch that a male was chasing a female around a truck in the parking lot. The male appeared "very pissed off" and the female appeared terrified.

Arapahoe County Deputy Brett Robson was the first deputy to arrive at the Big-O Tires. Deputy Robson observed a black male and a black female screaming obscenities towards one another. Deputy Robson directed the parties to separate in order to investigate what had occurred. Deputy

Robson first spoke to the male, S.G. S.G. told Deputy Robson a person pointed a gun at him. S.G. described the person as a skinny black male wearing a hoodie. As S.G. described the male, a white Hyundai SUV pulled out of the parking lot. S.G. immediately identified the driver of the white Hyundai SUV as the male who pointed the handgun at him. Deputy Robson observed the white Hyundai head north on Potomac Street towards Arapahoe Road. Deputy Robson aired over police radio the suspect had a handgun and was leaving in the white Hyundai SUV.

Deputy Christopher Donovan arrived at the Big-O Tires shortly after Deputy Robson. Deputy Donovan parked his vehicle on Arapahoe Road facing eastbound about one hundred feet from Big-O Tires. Deputy Donovan ran up the embankment towards the store. As Deputy Donovan approached the store, Deputy Robson aired over the radio that the suspect had a gun. Deputy Donovan approached Deputy Robson and learned the armed suspect ran inside the business. Deputy Donovan ran into the Big-O Tires, but did not locate the armed suspect. As Deputy Donovan exited the Big-O Tires, he observed a male, later identified as Mr. Fanning, near a white Hyundai SUV. Deputy Donovan ordered Mr. Fanning to show him his hands. Mr. Fanning jumped into the white Hyundai SUV and drove off.

Deputy Robson remained on scene and continued to speak with S.G. Deputy Robson learned S.G. was married but separated from the female on scene, later identified as C.P. Earlier that day, S.G. learned from his cousin that C.P. checked in to the hotel with another male. S.G. arrived at the Woodsprings Hotel and observed C.P.'s vehicle with a flat tire. S.G. briefly went into the hotel. When S.G. walked out of the hotel, C.P.'s vehicle was gone. S.G. assumed C.P. went to the nearby Big-O Tires so he walked over to the store. S.G. observed C.P. and her boyfriend, later identified as Allen Llewelyn Fanning at the Big-O Tires. S.G. approached C.P. and Mr. Fanning. C.P. told Mr. Fanning to run. Mr. Fanning ran to the back of C.P.'s white Hyundai SUV and grabbed a handgun. Mr. Fanning pointed the handgun at S.G. S.G. told Mr. Fanning to shoot him. Mr. Fanning ran into the store while S.G. and C.P. screamed at each other until the arrival of Deputy Robson.

Deputy Robson then spoke to C.P. C.P. told Deputy Robson that she stayed at the Woodsprings Hotel with her boyfriend whom she identified as "Michael." Earlier that morning C.P. discovered her tire was slashed so she and "Michael" drove her vehicle to the Big-O Tires. At some point, S.G. showed up at the Big-O Tires and ran at them. C.P. told "Michael" to run. S.G. then chased "Michael" around the building. C.P. told Deputy Robson that "Michael" never pointed a gun at anyone and stated "Michael" did not own a gun.

Sergeant Cohn approached the left side of the Big-O Tires when he heard Deputy Robson state Mr. Fanning was leaving in a white Hyundai SUV. After hearing this information, Sergeant Cohn, in a marked patrol car, turned on his lights and sirens and followed the white Hyundai SUV. The white Hyundai SUV exited the Big-O Tires parking lot and headed northbound on Potomac Street towards Arapahoe Road. As the white Hyundai SUV approached Potomac, Sergeant Cohn confirmed over police radio that S.G. reported to Deputy Robson that Mr. Fanning pointed a gun at him. Deputy Robson also aired C.P. denied Mr. Fanning pointed a handgun at S.G. Based on that information, Sergeant Cohn confirmed Mr. Fanning faced a possible charge of felony menacing. Sergeant Cohn pursued the white Hyundai SUV, airing his location and speed over the radio as they headed westbound on Arapahoe Road. Deputy Donovan ran to his patrol car and followed the white Hyundai SUV and Sergeant Cohn.

Sergeant Cohn kept a safe distance between his vehicle and the white Hyundai SUV. Sergeant Cohn had concerns he would be in the line of fire if Mr. Fanning fired the handgun in his direction. Sergeant Cohn observed Mr. Fanning drive in lane one and in the center median as they headed westbound on Arapahoe Road. The white Hyundai SUV's speed averaged between fifty to sixty-eight miles per hour. The speed limit on this stretch of road was forty five to fifty five miles per hour. Traffic remained moderate as cars moved out of the way of the pursuit. At no point did Mr. Fanning stop his vehicle.

Deputy Robert Knudson joined the pursuit at Arapahoe Road and Peoria Street. Deputy Knudson observed the white Hyundai SUV heading westbound on Arapahoe Road. Deputy Knudson positioned his vehicle behind Sergeant Cohn's vehicle, heading westbound on Arapahoe Road. After crossing Havana, Mr. Fanning moved to the number two lane. Deputy Knudson moved to the number one lane and accelerated in order to pass the white Hyundai SUV. Deputy Knudson passed the white Hyundai SUV and moved into the number two lane in front of the white Hyundai SUV, forcing Mr. Fanning to slow down. Sergeant Cohn aired instructions over the radio to "box in" the white Hyundai SUV. Deputy Knudson hit his brakes, causing Mr. Fanning to hit Deputy Knudson's vehicle. Deputy Knudson felt the white Hyundai SUV drive into his patrol vehicle in an attempt to get away. Sergeant Cohn and Deputy Donovan stopped their vehicles directly behind the white Hyundai to prevent any escape.

Deputy Robert Bratsch was assigned as a School Resource Officer for Cherry Creek Academy. Deputy Bratsch heard the increased traffic over police radio as deputies responded to the call of a possible domestic violence involving a gun. Deputy Bratsch drove south on Dayton Road towards Arapahoe Road when he heard Sergeant Cohn's command to box in the white Hyundai SUV. Deputy Bratsch activated his overhead lights and observed the white Hyundai SUV vehicle facing westbound on Arapahoe Road. Deputy Bratsch observed one marked patrol vehicle in front of the white Hyundai SUV and two marked patrol vehicles behind it. Deputy Bratsch pulled into the open lane next to the white Hyundai SUV to prevent any possible avenue of escape.

Deputy Knudson, Deputy Bratsch, Deputy Donovan and Sergeant Cohn exited their vehicles with their weapons drawn. Deputy Knudson was concerned that Mr. Fanning posed a threat to deputies and others in the area. Deputy Knudson approached the front driver side of the white Hyundai SUV. Deputy Knudson repeatedly yelled at Mr. Fanning to show him his hands and to put his hands up. Mr. Fanning refused to show his hands. From the front of the vehicle, Deputy Knudson observed Mr. Fanning looking around at the other deputies on scene. Deputy Donovan approached the white Hyundai SUV from the driver's side rear and struck the driver's side window with the butt of his gun. The window did not break. However, Deputy Donovan's magazine broke, resulting in a number of live rounds falling to the ground. Deputy Donovan struck the driver's side window a second time with his handgun. Again, the window did not break. Deputy Knudson continued to order Mr. Fanning to put his hands up. Deputy Donovan attempted to open the driver's side door. At that moment, Deputy Knudson observed Mr. Fanning raise his right arm holding a semi-automatic handgun in his hand. Mr. Fanning initially pointed the handgun at Deputy Knudson but then moved the handgun towards Deputy Donovan. Deputy Donovan stood at the driver's side window, fully exposed. Deputy Knudson feared for his own safety and for Deputy Donovan's safety. Deputy Knudson began firing rounds into the driver's side front windshield. Deputy Knudson fired into the vehicle in a downward trajectory in order to prevent ricochet and cross fire, as there were other deputies and people in the area.

Deputy Knudson observed Mr. Fanning move to the left against the driver's side door. Deputy Knudson then retreated behind his vehicle to re-load his handgun. Deputy Knudson continued to hear gunfire and thought deputies continued to see an active threat. Deputy Knudson fired additional rounds into the lower portion of the driver area of the Hyundai.

While positioned at the driver's side door, Deputy Donovan observed Mr. Fanning raise a handgun. Deputy Donovan fired three to four rounds down into the area behind the driver's door panel in an attempt to ensure the rounds stayed within the vehicle. Deputy Donovan felt something hit his neck and thought Mr. Fanning was firing at him. Deputy Donovan stated he fired his handgun because he feared for his safety and the safety of Deputies Knudson and Bratsch.

Deputy Bratsch positioned himself near the passenger side window of the white Hyundai SUV. Deputy Bratsch observed Deputy Donovan attempt to break the driver's side window. Deputy Bratsch then observed Mr. Fanning raise his right arm with a handgun in his hand. At that point, Deputy Bratsch fired several rounds from his handgun. Deputy Bratsch said he believed Mr. Fanning intended to shoot Deputy Knudson and he feared for the safety of all of the deputies on scene. Deputy Bratsch thought Mr. Fanning might have fired a shot before deputies began shooting.

Deputy Donovan retreated to the rear of his patrol car where Sergeant Cohn was located. After learning that Deputy Donovan was not injured, Sergeant Cohn ran to the passenger side of the white Hyundai SUV. At this time, shots had ceased and Sergeant Cohn observed Mr. Fanning leaning to his left against driver's side pillar. Sergeant Cohn called for paramedics. Deputy Knudson and Deputy Bratsch observed Mr. Fanning moving slightly but were not able to see Mr. Fanning's hands or the location of the handgun. Sergeant Cohn retrieved a ballistic shield from his vehicle. Sergeant Cohn, Deputy Bratsch, Deputy Knudson and Deputy Brian Robinson approached the front passenger side of the white Hyundai SUV. Mr. Fanning's hands were empty, but a black, semi-automatic handgun was located on the floorboard near Mr. Fanning's feet. Deputy Donovan opened the driver's side door and picked up the handgun. Deputy Donovan rendered it safe and placed the handgun on the roof of the white Hyundai SUV. Deputies then pulled Mr. Fanning out the vehicle and began performing lifesaving measures.

The body cameras worn by the deputies corroborate their accounts of events. When Deputy Donovan's body camera speed is slowed down, the body camera shows what appears to be Mr. Fanning pointing a handgun in the direction of Deputy Knudson. Of note, a .40 caliber handgun was recovered from the white Hyundai SUV along with a box of ammunition from the center console, corroborating what I observed on Deputy Donovan's body camera footage. Immediately after Mr. Fanning pointed the handgun in Deputy Knudson's direction, Deputy Knudson, Deputy Bratsch and Deputy Donovan fired shots.

SCENE DOCUMENTATION AND EVIDENCE COLLECTION

Arapahoe County Sheriff's Office Criminalists CheyAnne Stjernquist processed and photographed the scene, including the white Hyundai SUV. Criminalist Stjernquist collected a Smith and Wesson M&P 40 caliber shield handgun from the front driver seat of the white Hyundai SUV. There were five live rounds in the magazine. Criminalist Stjernquist collected a box of 40 caliber bullets from the center console.

Arapahoe County Sheriff Investigator Roger Landeis collected the uniforms, equipment and firearms from Deputies Knudson, Donovan and Bratsch.

Investigator Landeis collected a Sig Sauer P220 .45 caliber handgun from Deputy Knudson. Deputy Knudson's handgun contained one round in the chamber and seven rounds in the magazine. Deputy Knudson informed investigators that he typically carried eight rounds in the magazine plus one round in the chamber.

Criminalist Stjernquist collected fourteen 45 mm casings from Arapahoe Road. Twelve of the casings were recovered from the road near the driver's side of the white Hyundai SUV. One 45 mm casing was recovered from the median area on the east side of Arapahoe Road. One 45 mm casing was recovered from passenger side hood of the white Hyundai SUV. Criminalist Stjernquist collected two 45 mm magazines from Arapahoe Road on the driver's side of the white Hyundai SUV. One magazine was empty (holds maximum of eight rounds) and the second magazine contained three 45 mm rounds.

The evidence collected from the scene and the ammunition count of Deputy Knudson's handgun are consistent with Deputy Knudson firing fourteen rounds.

Investigator Landeis collected a Glock seventeen 9 mm handgun from Deputy Donovan. Deputy Donovan's handgun contained one round in the chamber and twelve rounds in the magazine. Deputy Donovan advised investigators that he carried extended magazines that hold seventeen rounds plus one in the chamber.

Criminalist Stjernquist collected fourteen 9 mm casings from the scene. Four 9 mm casings and one empty 9 mm magazine were collected from Arapahoe Road on the driver's side area of the white Hyundai SUV. Twenty-two live 9 mm rounds were also collected from Arapahoe Road on the driver's side of the suspect vehicle.

The video from Deputy Donovan's body camera and the evidence collected on scene are consistent with Deputy Donovan firing four rounds.

Investigator Landeis collected a Glock 19 9 mm handgun from Deputy Bratsch. Deputy Bratsch's handgun contained one round in the chamber and five rounds in the magazine. Deputy Bratsch informed investigators that he typically carried fifteen rounds in the magazine plus one in the chamber. Ten 9 mm casings were collected from Arapahoe Road on the passenger side area of the white Hyundai SUV.

The evidence recovered from the scene and the ammunition count of Deputy Bratsch's weapon are consistent with Deputy Bratsch firing ten rounds.

The autopsy of Mr. Fanning occurred on November 16, 2018. Dr. Casey Bitting, forensic pathologist performed the autopsy. Dr. Bitting noted ten gunshot wounds to Mr. Fanning. Two gunshot wounds were to the torso with entry wounds near the right midaxillary line. The trajectory of those wounds were slightly front to back, right to left and upward causing injuries to the first and third ribs, right and left lungs as well as to the spinal cord. Two gunshot wounds were to Mr. Fanning's right upper back. The trajectory of those wounds were back to front and

downward. There was one gunshot wound to Mr. Fanning's right lower back. The trajectory was back to front. There were four gunshot wounds to Mr. Fanning's right arm and one gunshot wound to Mr. Fanning's right ring and middle finger.

Dr. Bitting concluded Mr. Fanning died of multiple gunshot wounds. Mr. Fanning's toxicology results tested positive for methamphetamine and amphetamine.

Four bullets were recovered from Mr. Fanning during the autopsy. Two 9 mm rounds were recovered: one bullet was recovered from the blood pressure cuff on Mr. Fanning's left arm and one bullet was recovered from Mr. Fanning's cervical vertebrae. Two .45 caliber rounds were recovered: one .45 caliber bullet was recovered from the sheet beneath Mr. Fanning and one bullet was recovered from Mr. Fanning's lower left abdomen near his diaphragm.

On November 19, 2018, Criminalists Stjernquist and McDonald examined the white Hyundai SUV in an attempt to determine bullet holes and trajectory. They documented twenty-one bullet holes originating from the exterior of the vehicle and fifteen bullet holes potentially originating from within the vehicle. However, those fifteen bullet holes originating from within the vehicle likely originated from the exterior of the vehicle due to the bullet travelling through open glass.

Criminalists Stjernquist and McDonald did not recover .40 caliber casings from the vehicle or the scene. Based on the evidence, it appears Mr. Fanning did not fire any rounds.

LAY WITNESS INTERVIEWS

Numerous witnesses were interviewed. The most relevant witness interviews are summarized below.

Douglas County Sheriff's Investigator Randy Allen interviewed witness M.M. At approximately 9:20 a.m., M.M. drove eastbound on Arapahoe Road just west of Dayton Street. He observed police vehicles box in a white Hyundai SUV. M.M.'s vehicle was approximately 70 to 80 feet away from the white Hyundai SUV. M.M. heard deputies yell at the white Hyundai SUV but he could not understand what was specifically said to the Mr. Fanning. M.M. looked into his driver's side mirror and observed the reflection of the driver's side mirror of Mr. Fanning's vehicle. M.M. initially observed Mr. Fanning's hands on the steering wheel. He then observed Mr. Fanning drop his right hand into the center console. M.M. then heard eight to fifteen gunshots.

District Attorney Investigator Matt Hanagan interviewed witness M.P. M.P. drove westbound on Arapahoe Road. At Arapahoe Road and Dayton Street, M.P. observed three to four police vehicles box in a white SUV. M.P.'s vehicle was almost parallel with the white Hyundai SUV. M.P. estimated he was about fifteen feet away from the white Hyundai SUV. M.P. heard deputies yell "show me your hands," "let me see your hands" and "don't reach for the gun." M.P. observed a deputy attempt to break the driver's side window of the white SUV. M.P. observed Mr. Fanning moving around the vehicle. Mr. Fanning appeared to reach into the center console. M.P. then observed Mr. Fanning's right arm move up towards the windshield with what M.P. believed to be a handgun in Mr. Fanning's hand. M.P. observed the deputy in front of the white SUV fire eight to ten rounds. M.P. then observed the deputy on the passenger side of the

white SUV fire a number of rounds. M.P. did not observe the deputy on the driver's side fire any rounds.

Greenwood Village Police Department investigator John Carr interviewed witness S.K. S.K. travelled northbound on Dayton Road. She was stopped at the Arapahoe Road intersection when she observed police cars chasing a white car. The police officer vehicles crashed into the white vehicle. S.K. heard officers yell "hands up" and "don't move." She then heard a number of gunshots. A bullet struck S.K.'s passenger side mirror. S.K. was not injured.

APPLICABLE LAW

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

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.

(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:

- (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - (II) Is attempting to escape by the use of a deadly weapon;

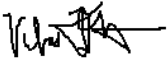
Deadly physical force "means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death." §18-1-901(3)(d), C.R.S.

ANALYSIS AND CONCLUSION

Based on my review of all the evidence in this case, I find no evidence establishing Deputies Robert Knudson, Robert Bratsch and Christopher Donovan committed a crime when they shot Allen Llewelyn Fanning on November 15, 2018. The totality of the evidence leads me to conclude Deputy Knudson, Deputy Bratsch and Deputy Donovan reasonably feared for their own lives and the lives of their fellow officers when they fired their weapons.

Pursuant to Arapahoe County Sheriff's department policy, deputies are authorized to pursue suspects facing person crimes. The independent witness statements, in particular M.P.'s statement, also corroborate the accounts given by Deputies Knudson, Bratsch and Donovan. Deputies Knudson, Bratsch and Donovan observed Mr. Fanning point a handgun at Deputy Knudson then Deputy Donovan. Deputies Knudson, Bratsch and Donovan fired their handguns to prevent what they perceived as great bodily injury to - or the death of - their fellow deputies.

Based on the law (as stated in §18-1-704 and 707, C.R.S.) and the facts summarized above, I find Deputy Robert Knudson, Deputy Robert Bratsch and Deputy Christopher Donovan reasonably believed that deputies' lives were in imminent danger. Moreover, I find, based on the law and the facts, that Deputies Knudson, Bratsch and Donovan were justified in their use of force to defend themselves, their fellow deputy sheriffs and civilians in the area.



Vicki Klingensmith
Chief Deputy District Attorney
18th Judicial District Attorney's Office
720-874-8488