



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

June 27, 2016

Chief Greg Testa
Boulder Police Department
1805 33rd Street
Boulder, CO 80301

Dear Chief Testa,

This office has completed its review of the circumstances surrounding the shooting of Bryson Fischer in Boulder County, Colorado on May 22, 2016. During that incident, Officers Ryan Austin and Ross Maynard fired their weapons, striking Mr. Fischer, who died a short time later from his wounds. The Officers' actions were reviewed with regard to whether the use of deadly force was legally justified under the circumstances. Because we have concluded that the use of force was justified, no criminal charges will be filed in this matter.

Prosecutors and investigators from this office have been involved in the investigation since the day of the shooting, as have representatives of several local law enforcement agencies. Consistent with Colorado law, this matter was investigated by the Boulder County Investigation Team (BCIT), which is comprised of members of several independent law enforcement agencies. In addition to being involved in the investigation, members of the District Attorney's office have reviewed reports associated with the investigation as well as transcripts and video recordings of witness interviews, diagrams and photographs of the scene, the Use of Force Policy for the Boulder Police Department, and the Officers' training records. The following is a brief synopsis of the facts as investigated by the BCIT:

On May 22, 2016 around 2:15 in the afternoon, a gunshot was heard by a large number of people in the area of the Broadway Bridge, where Broadway crosses over Boulder Creek. The weather was warm and there were a large number of people in the area. Boulder 911 immediately received several calls. Witnesses reported having seen a white male in a black t-shirt, who was later identified as Bryson Fischer, under the Broadway Bridge with a semi-automatic handgun. It was reported that he had shot one round into the water, that he looked nervous, maybe "not in his right mind," and that he continued to cock and aim the weapon. One of the calls came from the library on Broadway and Arapahoe, where a number of people had come in to seek shelter after hearing the shot.

One witness, who initially believed the shot was a car backfiring, saw Mr. Fischer pacing back and forth with the weapon, and heard clicking sounds as if he were continuing to pull the

trigger. Another witness, who was fishing downstream, heard the shot and looked up. He saw a man with a gun on the opposite side of the creek, standing against the concrete wall under the bridge. The witness watched as the man continued to point his gun at the water, then moved it up and pointed it at the witness. The witness ran from the area and borrowed a cell phone to call 911.

Officers Austin and Maynard were on foot in full police uniform when dispatch aired the call. They immediately ran to the area where the shots had been fired. The officers approached the bridge and went down an incline toward the creek, where they saw a man, later identified as Bryson Fischer, standing in the water. He was on the same side of the creek as the officers, approximately 25 yards from their position, and was holding a handgun. Another unidentified person ran out of the creek and up the opposite embankment. The officers identified themselves as police, and began shouting commands like "drop the gun," which were heard by many nearby witnesses. Mr. Fischer did not drop the gun. Instead, he raised it and pointed it at the officers. One witness recounted, "I know for a fact he pointed that gun at those, he raised that gun toward them police. . . it was like, as soon as he raised they opened fire."

Both officers fired, but shooting conditions were difficult. The officers were standing in the full sun on a bright day, up on the bank of the creek, while Mr. Fischer was lower, partially submerged in the water, and in the shadow of the bridge. Also, Mr. Fischer stood between the reinforcing concrete pillars that protruded from the wall. According to a witness, Mr. Fischer fell to a sitting position at one point, but even then continued to point his gun at the officers. The officers stepped behind a bush to reload. When they stepped back into view, Mr. Fischer was again holding up his pistol as if to fire. The officers continued to shout commands to drop the weapon, which were again ignored. The officers fired until Mr. Fischer finally dropped the weapon and fell down into the water. In total, each officer fired 31 times. While this is a large number of rounds, witness testimony is clear that the officers ceased firing immediately once Mr. Fischer no longer presented a threat.

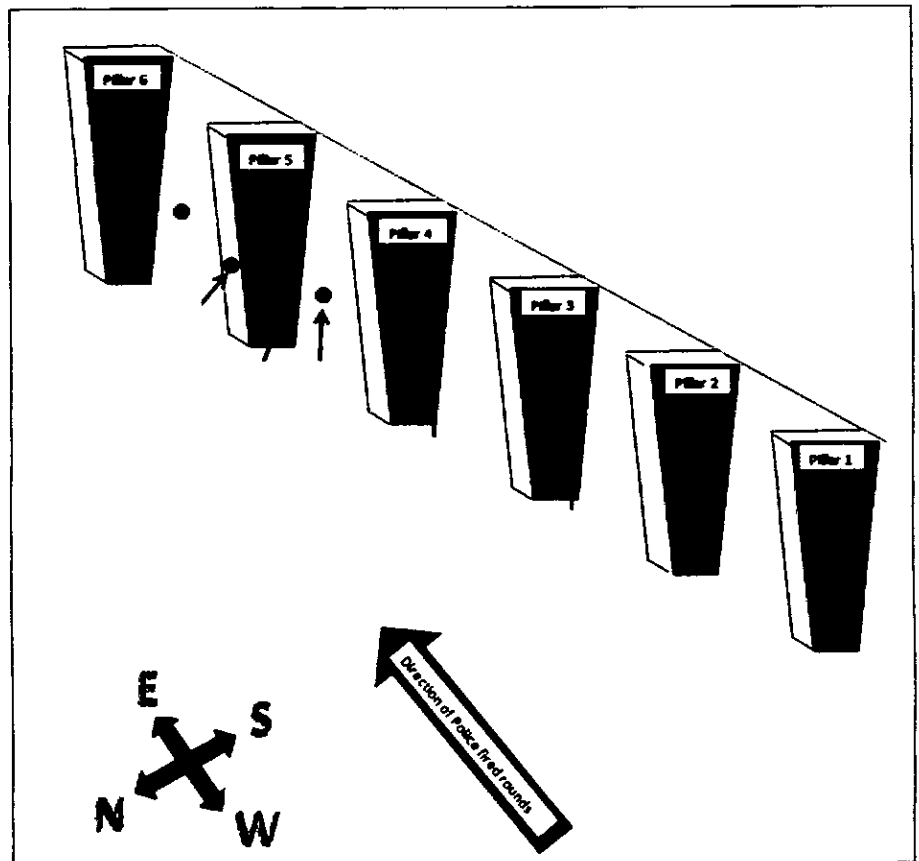


Diagram showing location of bullet impacts from police rounds.

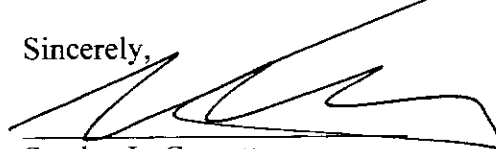
The officers then yelled at Mr. Fischer to keep his hands up, and Mr. Fischer was largely compliant, though his hands would sometimes go below the water level. Both officers approached and Officer Austin applied pressure to a wound in Mr. Fischer's neck, as they brought him up onto a bank where he could begin to receive medical treatment. While some of Mr. Fischer's injuries were obviously very serious and ultimately caused his death, none were immediately incapacitating. As police radioed for help, one of the officers could be heard to say "stay with us buddy, you're going to be ok." At autopsy it was determined that Mr. Fischer had been shot 11 times. Also at autopsy, toxicological tests revealed the presence of methamphetamine, amphetamine, demoxipam, alprazolam, THC, and morphine.

Shortly after Mr. Fischer was transported to the hospital, his weapon, a 9mm Beretta Parabellum, was recovered from the creek. Although it was loaded, the magazine was not properly seated in the frame of the weapon. As a result, it was temporarily incapable of firing. This may explain the "clicking" sound heard by a bystander, as well as the fact that Mr. Fischer, despite aiming his weapon at officers for some period of time, fired no rounds.

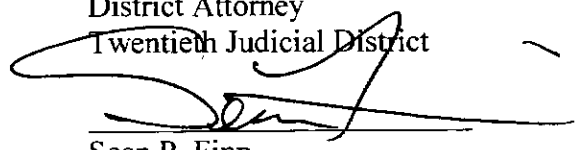
While it is never simple to determine what someone may have been thinking after a situation like this, we find it relevant that Mr. Fischer had a history of suicide attempts. This seems particularly relevant in light of a text conversation he had with a friend on the day before he died. The conversation largely involved Mr. Fischer's escalating drug use. It also involved an exchange in which the friend said "You never answered me. . . why do you have a gun and where did it come from." Fischer replied, "Robbing of course! I'm never going back to jail, so I don't plan on living long!" Another of Mr. Fischer's friends separately reported that, in addition to his battles with drug addiction, a number of things were not going well in Mr. Fischer's personal life; she believed he had committed "suicide by cop."

The use of force by Officers Austin and Maynard was justified pursuant to §18-1-704, C.R.S. and §18-1-707, C.R.S. Those sections provide that a peace officer is justified in using physical force upon another person when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use, or imminent use, of physical force. Here, the officers' use of force was reasonable. Because the use of force by Officers Austin and Maynard was legally justified, no criminal charges will be filed in this matter.

Sincerely,



Stanley L. Garnett
District Attorney
Twentieth Judicial District



Sean P. Finn
Chief Trial Deputy
Twentieth Judicial District