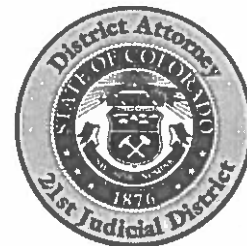


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DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE

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November 28, 2018

Detective Ed Prescott
Lead CIRT Investigator
Grand Junction Police Department
555 Ute Ave.
Grand Junction, CO 81501

Detective Prescott,

Below please find my findings of fact and conclusions of law relating to the Critical Incident Response Team (CIRT) investigation of the incident which occurred on October 18, 2018.

On October 18, 2018 at approximately 4:00 a.m., Deputy Troy Jones was at the sheriff's substation in Long's Park (31 ½ Road and F Road) when he overheard a trooper (later determined to be Trooper Ben Carnes) air that a vehicle he was following just "brake checked" him and he crashed into it. This occurred in the parking lot of the Rite Aid at 30 Road and F Road. Deputy Jones heard that the suspect vehicle was a gray truck with Colorado license plate number GOE 942 and that it had left westbound on F Road.

Deputy Jones, along with Deputy Taylor Conrad, located the vehicle which was parked and backed in at a dead end road. Upon approach by the deputies, they observed a female climb from the back seat to the front seat. Deputy Conrad was yelling at her to show her hands. Deputy Conrad also described that the female had a dazed look on her face and kept reaching into a backpack, which concerned Deputy Conrad, as she believed the female may have been reaching for a gun. Deputy Jones was attempting to break the front driver's side window out. The female then put the truck in gear and drove off nearly striking Deputy Conrad. She avoided being hit by jumping out of the path of travel of the vehicle.

The two deputies pursued the vehicle with lights and sirens. The driver, later identified as Deziree Fisher, ran the four-way stops at F ½ Road and 30 Road, as well as F ½ Road and 31 Road. The driver of the truck also "brake-checked" Deputy Jones causing him to slam on his brakes. Deputy Conrad nearly hit Deputy Jones patrol vehicle. The truck turned North on 31 Road to the dead end. Deputy Jones conducted a PIT maneuver (Pursuit Intervention Technique)

ramming the rear passenger side of the truck and disabling it. Deputies Jones and Conrad described the driver attempting to flee at this point, but the vehicle would not move. The wheels were spinning and flinging mud. Deputy Conrad positioned her patrol vehicle up against the front of the suspect vehicle to pin it there.

Deputy Jones approached the driver's side window. The driver refused to come out of the vehicle as commanded, so Deputy Jones broke the window utilizing one of his knives which contains a window punch. Deputy Jones repeatedly yelled at the driver to show her hands, but she continued to be uncooperative. Deputy Jones described that Ms. Fisher was repeatedly reaching into a black jacket on her lap and then into the back seat area concealing her hands. Deputy Conrad described that Ms. Fisher was repeatedly rummaging through a large black bag. Deputy Conrad had her gun out at this time, and Deputy Jones had out his Taser.

Deputy Jones deployed his Taser, which initially appeared to him to work, but ultimately did not have the desired effect of disabling Ms. Fisher. He deployed it again which had no evident effect and he did not know where the Taser darts went, despite his aiming it at center mass. Deputy Donald Love and Grand Junction Police Officer Shad LeFavre had arrived at this point and were attempting to break out the passenger side window.

Ms. Fisher continued to reach into her bag and under her seat. Deputy Nick Bouton had also arrived at this point. Deputy Bouton described that Ms. Fisher grabbed a bag from the back of the vehicle and was digging in it, disregarding commands and repeatedly pulling her hands out of the bag pointing them at Deputy Jones and telling him "shoot me." Deputy Love overheard her say "just shoot me, you are going to have to kill me." Officer LeFavre described her as screaming in a rage, crying and gnashing her teeth. Deputy Brandon Worley had arrived and took a position on the driver's side front corner. He described during this time that Ms. Fisher was repeatedly reaching in and out of the bags and pointing her fingers like a gun at Deputy Jones, and then returning her hands to the bag and digging around in the bag. Deputy Bouton also witnessed this.

At this point, Ms. Fisher pulled her hand out of the bag. Deputy Jones described that he believed he saw a flash of silver metal. Deputy Jones fired his duty weapon one time, and then ducked and moved to his right for cover behind the B-Pillar of the vehicle believing that she was about to shoot him. After pausing a moment and not hearing her fire a weapon, Deputy Jones readdressed her. She initially raised her hands, but shortly thereafter, became uncooperative. Deputy Love and Officer LeFavre, who had arrived on scene at this point, pulled the female from the truck and took control of her. Deputy Love described a baseball sized package of suspected methamphetamine fall out of the truck when they removed Ms. Fisher. This was later confirmed to be methamphetamine.

Ms. Fisher was transported to Denver for medical treatment and was interviewed there by CIRT members, Detective Jacob Steele and Parole Officer John Coffee. Ms. Fisher admitted that she had consumed a "handle" of cinnamon-type alcohol, used methamphetamine by the "hot rail" method, and had consumed mushrooms (believed to be psilocybin from the context). She

also admitted to possessing a couple of ounces of methamphetamine in the vehicle.¹ Ms. Fisher states that she remembers recognizing the person standing at her door of her vehicle to be in uniform; remembers him telling her he was going to shoot her; remembers telling him “so then shoot me;” and remembers digging in her purse believing she was doing it in attempt to hide the drugs. She states that she thought she was going to get raped.

The physical evidence at the scene supports Deputy Jones firing one shot at Ms. Fisher. The medical reports support that Deputy Jones hit her in the hand, resulting in serious bodily injury. The toxicology results from the hospital support that Ms. Fisher had consumed methamphetamine. Based upon my review, I could locate no physical evidence which disputes the recount of the law enforcement witnesses.

Application of the law

The law permits deadly physical force² to be used against a person as defined by statute. Colorado permits deadly physical force to be used only if a person reasonably believes that a lesser degree of force is inadequate, and the actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. § 18-1-704(2). There is no special exception or permission for law enforcement officers to utilize deadly force, although the nature of the job puts them in situations more likely to present the decision process of using appropriate and justifiable use of force at varying levels. Here, Deputy Jones attempted to utilize deadly force.

First, examining whether Deputy Jones had reasonable grounds to believe that he or another person was in imminent danger of being killed or receiving great bodily injury, I conclude that reasonable grounds existed to form this belief. This situation began with Ms. Fisher fleeing from Trooper Carnes, and in addition to simply fleeing, she conducted a “brake-check” maneuver disabling his vehicle. Upon locating her vehicle, Deputy Jones contacted the driver, Ms. Fisher. The vehicle appeared to be positioned both in a manner to conceal, as well as backed in to the location in a manner designed to flee quickly. Ms. Fisher was immediately uncooperative, and nearly ran over Deputy Conrad in her next attempt to avoid apprehension. Deputy Jones drew his pistol at this point, but this showing of possible force was unsuccessful in obtaining Ms. Fisher’s compliance. Deputy Jones then engaged, along with others, in a pursuit of Ms. Fisher where her driving evidenced the firmness of her determination to avoid apprehension. This included running stop signs, and another “brake-check” attempt. Every indication from Ms. Fisher up to this point indicated a strong willingness to evade apprehension even if it involved injury or death to a deputy.

In order to stop her, Deputy Jones resorted to a tactical driving maneuver, which disabled Ms. Fisher’s vehicle. Even after this, she still unsuccessfully attempted to flee, spinning her tires

¹ Ms. Fisher has 5 felony convictions ranging from 2004 to 2013. Three of which involve methamphetamine. Her most recent conviction is for Possession with Intent to Distribute Methamphetamine for which she received a 10 year prison sentence. That sentence was reconsidered down to 6 years. She was on parole for that offense at the time of this incident.

² “Deadly physical force” means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death. See C.R.S. § 18-1-901(3)(d).

in an attempt to continue to drive away. Upon approach, Ms. Fisher again continued to be non-compliant despite repeated commands from the law enforcement officers. Multiple times she reached into her jacket and into bags in the truck, held her hands up in the shape of a gun while pointing it at Deputy Jones, and persisted in her non-compliance despite two attempts to disable her with the Taser. Several deputies overheard her say that Deputy Jones would have to shoot her, further indicating that she was not going to comply under any circumstances.

Deputy Jones described the following events which occurred next:

She's screaming, no, no, no you're gonna have to kill me, la, la, I'm freaking out because I go, oh, shit, she's gonna make me kill her.... So, like I said I'm screaming, I'm yelling at her and finally she pulls her hands out and it looks like she's punching out and I see something... Punching out like she's, you know, drawing down a gun on someone....Uh, and I see something, silver, shiny, metallic, and instantly think gun. So, uh, I squeeze off the round and as I'm squeezing I'm kind of bailing because I'm thinking there's a bullet come back at me.

It is evident from these statements that Deputy Jones personally believed that he, or another person, was in imminent danger of being killed or receiving great bodily injury. It is similarly evident based upon the totality of the circumstances described above that this belief was reasonable.

Turning to the final question of whether Deputy Jones reasonably believed that a lesser degree of force was inadequate, I conclude that he did. At the time that the deadly force was attempted by Deputy Jones, he, along with multiple other deputies and a State Patrol Officer, had repeatedly attempted to gain compliance of Ms. Fisher, without success. The Taser, a lesser degree of force, also proved to be unsuccessful in gaining Ms. Fisher's compliance. Given the reasonable belief that Ms. Fisher was presenting a firearm, coupled with her statements that the deputies would have to kill her, it is reasonable to conclude that deadly force was required.

For all of the reasons stated above, I conclude that all of the force used by Deputy Jones in the above listed incident was both justified and lawful, and that criminal charges against any law enforcement personnel in this matter are not appropriate.

Respectfully,



Daniel P. Rubinstein
District Attorney
21st Judicial District, State of Colorado