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July 19, 2021

Chief John Fryar
Fort Lupton Police Department

RE: Investigation of the April 17, 2021 Officer-Involved Shooting of Smokey Crockett

Chief Fryar:

The investigation into the shooting of Smokey Crockett has been completed by the Colorado Bureau of Investigations (CBI) and the Critical Response Incident Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against Sergeant Jeremy Sagner for his role in the shooting death of Smokey Crockett. Attached hereto are the findings of the Investigations Unit of the District Attorney's office based on the entirety of the CIRT and CBI investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

However, this report does not address the conduct or decision-making of Sergeant William Carnes, and his potential criminal culpability remains unaddressed since he refused to cooperate with the investigation. The evidence establishes that Sgt. Carnes fired his weapon on two separate occasions at Crockett: he fired a shot (presumably at Crockett) before any other law enforcement arrived which is captured on his dashboard camera; and he later fired a number of shots at Crockett again, at or about the time of Crockett's death. The first shot is not captured on his body camera because he inexplicably turned it off shortly before firing. For unexplained reasons, Sgt. Carnes' body camera remained off until the conclusion of the incident. Again, no explanation for why he turned his body camera off has been offered to investigators by Sgt. Carnes. Unless and until he provides information to investigators regarding his role in this officer-involved shooting and his decision-making in all respects, the investigation into his actions will remain open.

Weld County Sheriff Deputy Gonifas and Dacono Police Officer Cooksey were cleared in a previous letter dated June 9, 2021 regarding this incident.

I have determined that, under the circumstances presented in this investigation, I will release the name of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act (CJRA) requires disclosure of records of official actions by criminal justice agencies.

These cases are not directly on point as the release of the officers' names alone does not fall squarely within the CJRA, but they are informative in analyzing whether such disclosure is appropriate. The cases require a "balancing test" by the custodian of criminal justice records prior to the disclosure of criminal justice records. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

Here, the balancing test shows that the privacy interests of the individuals who may be impacted by a decision to allow inspection do not outweigh the other four factors to be considered, particularly the public's interest in inspection. While the continued safety of the officers and their families is of significant concern in all cases, there does not exist a continuing or ongoing threat to the deputy, officers or other law enforcement officials based on the CIRT investigation. Therefore, I will release the names of the officers and the deputy in this report.

APPLICATION OF THE FACTS TO THE LAW

The District Attorney's office may ethically charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt the offense was committed without any statutorily recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. Because the evidence establishes that Smokey Crockett was shot and killed by law enforcement, the determination of whether the conduct was criminal is a question of legal justification.

Colorado Revised Statutes § 18-1-707, as amended by the Colorado General Assembly in 2020 by SB 20-217, establishes when a peace officer can use potentially deadly force to defend himself or others. The pertinent subsections of the statute read as follows:

C.R.S. § 18-1-707(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 to the peace officer or another person;
- c) The force employed does not create a substantial risk of injury to other persons

C.R.S. § 18-1-707(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...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.

C.R.S. § 18-1-707(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.

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

Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Crockett intended to use deadly force. The issue is whether it was reasonable for the officer and deputy to believe that he was about to use deadly physical force against the officer, the deputy, or another person with a deadly weapon.

Sergeant Sagner was off duty attending a training at the Fort Lupton police when a dispatch came out requesting assistance at a disturbance with weapons. When he arrived on scene other officers were present. He positioned himself near the rear of a patrol vehicle. Commands were directed at Crockett to drop his gun and get on the ground. He observed Crockett walking towards him and the other officers with a gun in his hand. Crockett reached a certain point in the roadway that Sagner predetermined it would be necessary to neutralize the threat. At that point Crockett began to raise the firearm with his finger on the trigger, believing Crockett was going to shoot at officers, Sagner fired his patrol rifle at him.

Crockett would have clearly known that they were police officers as they were in full patrol uniform or otherwise wearing equipment with the identifier “Police” clearly visible, and were driving marked patrol vehicles.

Sgt. Sagner reasonably believed when he fired his weapon that he, other officers, or citizens were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that Sgt. Sagner was justified in using lethal force against Crockett. The use of such force was reasonable based on Crockett’s threatened use of deadly physical force against both civilians and law enforcement officers.

CONCLUSION

Under C.R.S. § 18-1-707, the actions of Sgt. Sagner were justified and authorized by law to defend and protect themselves and others from the lawless and threatening actions of Smokey Crockett. As a result, the Weld County District Attorney's Office will not file charges against him for the use of deadly physical force in this event.

The criminal investigation into the conduct of Sgt. William Carnes remains open, as noted above.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Rourke". The signature is written in a cursive style with a large, stylized initial "M".

Michael J. Rourke
District Attorney



Officer Involved Shooting

April 17, 2021

Subject: Smokey Crockett

21DA00044

Investigator Dan Boyle

21W014705 – Weld County Sheriff's primary case number

21G028515 – Greeley Police CIRT

21EL02060 – Eaton Police CIRT

21WP06566 - Windsor Police CIRT

21DP03064 – Dacono Police primary case number

21PP01693 – Platteville Police primary case number

21FP04166 – Ft Lupton primary case number

Summary

On April 17, 2021 at 0834 hours Weld County Sheriff's Office (WCSO) was dispatched to 16241 Casler Avenue, Aristocrat Acres for a disturbance with weapons. The District 3 deputy was already responding to a separate disturbance call in the Hudson area, so the closest WCSO unit responded from District 4 near the LaSalle area.

Additional information gathered was that the reporting party, Valerie Crockett, advised her ex-husband, Smokey Crockett, arrived at her residence and went into her bedroom and got her loaded .380 caliber handgun from her nightstand drawer. He then said, "did you know today was going to be your last day?" He pointed the gun at her head, threatening to shoot her in the face, or to shoot any cops that show up. Valerie tried to leave out the front door, but Crockett stood in front of the door while pointing the gun at her. Valerie was able to escape out the back door of the residence and hid behind a shed on her property. While hiding, Valerie could see Crockett was in the back yard then went back inside and to the outside front of the house. Valerie said she heard a single gunshot come from the front of the house and looked and saw Crockett near a gate on the east side of the residence.

An AOA (Assist Other Agency) request was issued by WCSO and units from Ft. Lupton Police, Dacono Police and Platteville Police responded.

A single Ft. Lupton unit, Sgt. William Carnes, arrived on scene at 0851 hours and advised there was a male in the driveway at the residence. At 0853 hours Sgt. Carnes advised a shot had been fired in his direction and he returned fire with one round as the suspect that was hiding behind his pickup in the driveway. By 0902 hours additional officers arrived on scene and were positioned at the intersection of Casler Avenue and Flint Street.

At approximately 0902 hours Crockett began walking in the street towards the officers with a gun visible in his right hand. Multiple officers were giving commands to "drop the weapon, drop the gun." Crockett walked approximately 100 yards towards the officers and began to raise the gun at the officers who then fired their weapons at him. Crockett was struck five times and pronounced dead on scene.

DISPATCH TIMELINE

0843 hours – Reporting party (Valerie Crockett) called 911 and advised her ex-husband, identified as Smokey Crockett, was on scene with a gun in his hand.

0844 hours – Dispatch advised the suspect was at the front door not allowing Valerie to leave

0846 hours – Dispatch advised that Valerie was out of the house in the back yard but still on the property.

0847 hours – Dispatch advised that shots had been fired and may have been fired at the reporting party.

0849 hours – Dispatch advised that Crockett was threatening to shoot the reporting party in the head or shoot cops that show up.

0851 hours – First law enforcement agency on scene (Ft. Lupton—Sgt. Carnes)

0853 hours – Shots fired at law enforcement; law enforcement returned fire x 1

0901 hours – Suspect observed sitting on front porch

0902 hours – All other law enforcement officers on scene

0902 hours – Suspect walking towards law enforcement with gun in right hand, multiple commands given to suspect to drop the gun

0903 hours – Shots fired, suspect down.

0932 – CIRT response requested by WCSO. Crockett pronounced dead on scene.

INVESTIGATION

Relationship between Crockett and Valerie

Crockett and Valerie had been married for approximately 15 years but had no children between them. Crockett had two sons from previous marriage and Valerie has two daughters. Valerie said Crockett was a heavy alcoholic which was the reason for their separation in February 2020. Since their separation Crockett lived in his travel trailer at his job site in Commerce City. They still maintained an amicable relationship as Crockett would come to her house at least one day on a weekend to see the dogs. Valerie said that Crockett was a co-petitioner for the legal separation.

Valerie said Crockett has a “dark side” and approximately 18 years ago Crockett self-admitted himself into a 30-day mental institution. Approximately 2 months ago Crockett sent text messages to Valerie about some “dark things” and would not answer her returned texts or calls which lead Valerie to think he may have committed suicide. She drove to his trailer and found him passed out. Valerie also said that after that incident Crockett sent other texts that she interpreted were about killing himself or someone else even though he didn’t use the word kill.

WITNESS STATEMENTS

Valerie Crockett

On April 16, 2021 Valerie said she had gone on a date and during the date Crockett called her, but she did not answer. She was home by 2200 hours, Crockett called her again at 2345 hours which was unusual for him to call that late. She was talking to a friend, so she did not answer but texted him asking, “are you ok?” A few minutes later she called him back and he was angry and asking where she had been. After a brief discussion she ended up hanging up on him.

On April 17, 2021 at approximately 0445 hours Crockett called again waking her. She said he was still angry and called several more times demanding various documents and that he was on the way over to see the dogs.

At 0843 hours, she called 911 advising that her ex-husband showed up at her residence, walked into her house, to her bedroom and took her loaded handgun from her top drawer of her nightstand. She said Crockett then said, “did you know

today was going to be your last day” as he pointed the gun at her face. Valerie said she remained calm and gently pushed his hand with the gun aside. She said she tried exit out the front door, but he blocked her path and pointed the gun at her again and said, “I’ll shoot you or the cops will shoot me.”

She was able to eventually escape out the back door and hid behind a shed on her property. At 0846 hours a single gunshot from the front area of the house was heard leading her to believe Crockett had killed himself. She went to the east side of the house where she was confronted by Crockett who can be heard on the 911 recording saying, “come here, I got something for you.” She was able to get back to the shed and told the dispatcher that Crockett said he was going to “shoot her in the head or shoot a cop.”

At approximately 0851 Sgt. Carnes arrived and was at the intersection of Casler Avenue and Flint Street. Valerie said she could see it was a black SUV and could hear some type of commands. A few minutes later she saw more officers arrive then said she saw Crockett walking towards the officers and could hear loud commands “drop the gun,” and “stop.” She said that based on his previous statements and as he got closer to the officers, Valerie turned away from watching and heard numerous gunshots.

Tim Crockett

Tim stated that he first learned about the incident because his stepmother Valerie called him after the incident while she was in the back of a cop car. She told him that his father came to the front door, walked past her, through the living room into her bedroom and got her gun from her dresser. He said something to the effect of “this is going to be your last day” and that she didn’t know all the details but thought his dad is dead.

Tim stated that he was still at home when Valerie called but he also talked with his brother, Mike, and his mother Debbie Doty. He stated that his brother saw a post on Facebook because his (Mike’s) wife is friends with someone that lives in that area and the post said something to the effect of “my daughters just witnessed a shooting and someone is dead.” He said the person that posted the comment was Sabrina Dillon.

He said that his conversation with his mother was short and said he told her that he was on his way to Valerie’s house and dad is potentially dead. Tim said he called

Valerie two more times at 0957 hours and 1028 hours, but no new information was available.

He said his father is an alcoholic and a very broken individual since his and Valerie's separation. He stated he has not spoken to his father since the week before Easter and that he did not know if his father had a history of violence nor anger issues. He stated that in his opinion Crockett knew what he was doing when he got to Valerie's but did not know if he was going to hurt Valerie or just wanted the outcome that occurred today. He stated that after the separation his father became emotionally and mentally damaged and his drinking got extremely out of hand.

Tim stated that his father had his own handgun that he took with him in the separation and had recently purchased an AK rifle.

Anna Avena

Anna stated she was in bed and heard a gunshot. She went into the living room and looked out the window and saw a WCSO vehicle in the road and saw a deputy shoot his gun.

Sabrina Dillon

Sabrina stated that she was leaving the house to go workout and passed law enforcement driving towards her house with their emergency lights on but no sirens. She said a few minutes later her daughter, Savannah (age 12) called her and told her she thought she heard gun shots. Sabrina told Savannah to wake up Nana (Elisha) and Papa (John).

Savannah Dillon

Savannah stated that she heard two gunshots and looked out the front window and saw someone behind a shed in the distance. She then called her mom and went and woke up Nana and Papa. Savannah stated that they were all looking out the window and she then observed only one officer behind his vehicle and heard two more gunshots. Shortly after that after more officers arrived, she saw a male walking down the street towards the officers with a gun in his right hand. She said she heard the officer to tell the male to “put the gun down” multiple times.

John Dillon

John stated he saw the whole incident after he was awakened. He said that he saw the male walking towards the officers with a gun in his right hand and said that he seemed to be walking with a purpose. He heard the officers give multiple commands to drop the gun. The male never said anything and just kept walking at the officers, he then saw the officers fire their weapons.

Elisha Dillon

Elisha stated that she looked out the window, saw cops behind a couple of vehicles, heard officers giving multiple commands to “drop the gun” and saw someone walking towards the cops with a gun in his right hand. She said as he kept walking and got close to the cops, she saw multiple gunshots. Elisha then advised that she had recorded the incident on her phone.



PARAPHRASED LAW ENFORCEMENT STATEMENTS

Lieutenant Hempel (Ft. Lupton PD)

Lt. Hempel was not on duty but heard the request for an AOA (assist other agency) to a disturbance with weapons at the aforementioned address. He responded from the Ft. Lupton Police Department where he and other officers were attending a training session. He wore an outer ballistic vest with police insignia. Upon his arrival he positioned himself behind Sgt. Carnes's vehicle next to Officer Cooksey and Sgt. Carnes. He saw Crockett walking down the street with a gun in his right hand towards officers. He began giving commands over the P.A. system of "drop the gun, stop, put the gun down and put your hands up."

When Crockett was approximately 10-15 yards away, he slowed down slightly as he was walking then cocked his right wrist upward towards officers. As soon as the Crockett's hand cocked upwards, the officers fired their weapons at him. It appeared Crockett was focused on Sgt. Carnes and Officer Cooksey as he walked towards them holding his firearm. When Crockett raised his firearm, the direction would have been towards Sgt. Carnes and Officer Cooksey.

Lt. Hempel did not fire a weapon.

Sergeant Sagner (Ft. Lupton PD)

Sgt. Sagner also was not on duty, but also responded from the Ft. Lupton Police Department as he was attending the training session. On scene he wore an outer ballistic vest with police insignia and deployed his patrol rifle. He took a position to the rear of a patrol vehicle and heard several commands of “drop the gun, get on the ground” over the P.A. system.

He could see Crockett walking in the street towards officers with a gun in his right hand. As Crockett continued to get closer, the commands continued which Crockett did not comply with. He had a predetermined “no go zone” and if Crockett reached that spot he would “neutralize the threat.” He saw Crockett’s finger on the trigger when he reached the spot and he fired 3-4 times as Crockett raised the gun.

He estimated that Crockett was within 20 yards of the officers when he shot and there was no doubt in his mind that Crockett was going to shoot at the officers again.

Evidence collected later showed Sgt. Sagner fired 5 rounds from his patrol rifle.

Sergeant Carnes (Ft. Lupton PD)

Sgt. Carnes was on duty and was in full uniform and drove a marked patrol vehicle. He was the first officer on scene.

Sgt. Carnes refused to provide a statement to CBI agents.

Sergeant Carnes’ body camera was turned off shortly before he fired a round prior to any other officers arriving on scene. His dashboard camera did record his actions. The angle of the dashboard camera offered no view of Crockett at any point. What, where, or why he shot remains unknown given his refusal to provide a statement.

Evidence collected later showed Sgt. Carnes fired 5 rounds from his patrol rifle.

Officer English (Ft. Lupton PD)

Officer English was on duty and was in full uniform and drove a marked patrol vehicle. She was the second unit to arrive on scene followed by a WCSO unit. While enroute to the call Sgt. Carnes advised dispatch that the suspect had fired a

round in his direction and he had returned fire with one round. She said Sgt. Carnes was giving commands of “drop the gun, show me your hands” as she exited her vehicle.

She positioned herself in the back yard of the residence where Sgt. Carnes was parked. She saw Crockett at a residence pacing back and forth, at one point he threw his hands up in the air and she observed a gun. Crockett put his arms down to his side and began walking towards Sgt. Carnes. At one point Crockett walked out of her sight because of a fence. As she moved to another position, she heard the gunfire.

Officer English did not fire a weapon.

Officer Walker (Ft. Lupton PD)

Officer Walker was not on duty and responded from the Ft. Lupton Police Department where she and other officers were attending a training session. On scene she wore a ballistic vest with police insignia. Upon her arrival she heard commands being given of “show us your hands, drop the gun.” She positioned herself behind Lt. Hempel’s vehicle. From her angle she saw Crockett walking down the street towards the officers but could only see his left side. She saw Crockett continue to walk with his right hand down by his side and his left hand was moving freely as numerous commands were being given. Officer Walker then heard gunfire but did not know who shot and saw Crockett fall to the ground.

Officer Walker did not fire a weapon.

Officer Geerdes (Ft. Lupton PD)

Officer Geerdes was not on duty and responded from the Ft. Lupton Police Department where she and other officers were attending a training session. On scene she wore an outer ballistic vest with police insignia. Upon her arrival she positioned herself behind Sgt. Sagner’s vehicle and saw Crockett walking down the street with a gun in his right hand. She heard numerous commands of “drop the gun” while Crockett was walking towards the officers. She saw Crockett cock his right wrist upwards then heard gunfire by the officers towards Crockett and he fell to the ground. Officer Geerdes indicated it was her belief if Crockett’s arm would have continued upwards the firearm would have pointed directly at Sergeant Carnes.

Officer Geerdes did not fire a weapon.

PHYSICAL EVIDENCE



.380 Bursa handgun from nightstand drawer

This type of handgun can have a capacity of seven, eight, or nine. There were four live rounds in the magazine, one live round in the chamber and the safety was off.

* BWC (Body Worn Camera) did not provide any further evidentiary findings as they were occluded by clothing or objects because of the officer's body positioning. As noted, Sgt. Carnes inexplicably turned his camera off.

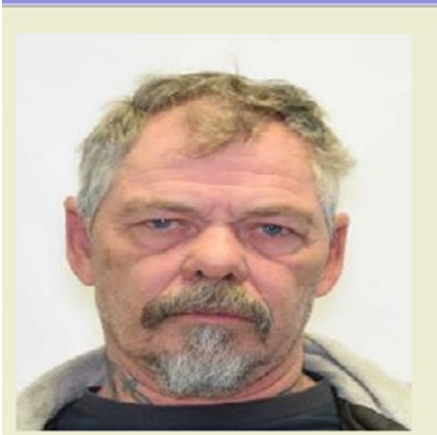
** Dashcams – There were 3 dashcams active during the incident.

Officer English's dashcam captured Crockett enter into the view from behind the fence walking towards the officers. Numerous shots can be heard, and Crockett fell to the ground. The vehicle was stationary and faced north which could not capture Crockett walking west on the street.

Sgt. Carnes' dashcam captured Sgt. Carnes on foot in the intersection of Casler and Flint looking east, and a gunshot can be heard. Sgt. Carnes appears startled yells, "get your hands up" and fired one shot from his patrol rifle and retreated back to his vehicle. The vehicle was stationary and faced north which could not capture Crockett walking west on the street.

Sgt. Sagner's dashcam captured only audio of gunfire, but neither Crockett nor the shooting officers are in view of the camera. The vehicle was stationary and faced north which could not capture Crockett walking west on the street.

AUTOPSY RESULTS



Smokey Lynn Crockett

Dr. Burson determined Crockett received five gunshot wounds including:

1. Abdomen, through aorta, bullet lodged in spine.
2. Left shoulder, downward left to right angle, heart, through left lung, and liver.
3. Left thigh, graze wound.
4. Right thigh, shattered femur.
5. Left forearm.

Toxicology revealed Crockett's BAC was .349