



MICHAEL J. ROURKE
District Attorney

ROBERT W. MILLER
Assistant District Attorney

Office of the District Attorney
Nineteenth Judicial District

915 10TH Street
P.O. Box 1167
Greeley, CO 80632
Phone: (970) 356-4010
Fax: (970) 352-8023
www.weldda.com

June 7, 2021

Sheriff Steve Reams
Weld County Sheriff's Office

Chief Matthew Skaggs
Dacono Police Department

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

Sheriff Reams and Chief Skaggs:

The investigation into the shooting of Smokey Crockett has been completed by the Critical Response Incident Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against Deputy Simon Gonifas or Officer Kyle Cooksey. Attached hereto are the findings of the Investigations Unit of the District Attorney's office based on the entirety of the CIRT investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

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.

Also, please be aware that this letter only addresses the actions of Deputy Gonifas and Officer Cooksey. It is not intended to be, nor is it meant to, address the use of deadly physical force by Sergeant William Carnes (who refused to be interviewed by investigators from the Colorado Bureau of Investigation) or Sergeant Jeremy Sagner, both of the Fort Lupton Police Department. Such analysis will only occur in a separate and distinct investigation by my office.

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.

In this case, the Weld County Sheriff’s Office received a report of a disturbance with weapons from Valerie Crockett, Crockett’s ex-wife. Deputy Gonifas, who had with him a training deputy, Deputy Grijalva, were attached to the call. In route to the call, Deputy Gonifas learned that shots had been fired between Crockett and Sergeant Carnes of the Fort Lupton Police Department. When he arrived, he armed himself with his patrol rifle and took a position on the passenger side of his marked patrol unit. From that position, he heard commands being given to Crockett of “drop the gun.” Deputy Gonifas saw Crockett walking towards the officers and himself, at which time he also gave a command to drop the gun. Deputy Gonifas stated that as Crockett moved closer to the officers’ location, he began to raise the handgun towards Deputy Gonifas and Deputy Grijalva. Deputy Gonifas discharged his firearm, as he believed that Crockett was going to shoot him or his training deputy. Deputy Gonifas stated that he felt he had no other choice.

Officer Cooksey also responded to this disturbance call as an “AOA” (Assist Other Agency), and while on his way to the call, heard dispatch advise that the suspect had fired a shot or shots, and other officers on scene returned fire. When he arrived at the scene, Officer Cooksey deployed his handgun and a ballistic shield. He then took up a position next to two Fort Lupton officers. From that location, Officer Cooksey could see Crockett sitting on the front porch of a home, and within just a few minutes, Crockett began walking towards his location. He could see a handgun in Crockett’s right hand and described his approach as “calmly but with a sense of purpose.” Officer Cooksey saw Crockett begin to raise the handgun at one point, but no officers fired. Crockett continued to walk towards the officers, and Officer Cooksey saw Crockett again raise the gun a second time, which was when he fired two volleys of shots from his handgun.

Crockett would have clearly known that Deputy Gonifas and Officer Cooksey were police officers as they were both in full patrol uniform and driving marked patrol vehicles.

Deputy Gonifas and Officer Cooksey reasonably believed when they fired their weapon that they, 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 Deputy Gonifas and Officer Cooksey were 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 Deputy Simon Gonifas and Officer Kyle Cooksey 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 Deputy Gonifas or Officer Cooksey for the use of deadly physical force in this event.

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 Smoky 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)

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 the first officer 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

Deputy David Grijalva (WCSO)

Deputy Grijalva was partnered with his Field Training Officer, Deputy Simon Gonifas. He was wearing his standard patrol uniform and drove a marked patrol vehicle. Grijalva stated that they responded to a disturbance with weapons and while enroute dispatch advised that shots had been fired at an officer. He stated that when they got on scene, he parked the patrol vehicle on Casler Avenue just west of the intersection of Casler Avenue and Flint Street. He said both he and Deputy Gonifas deployed their patrol rifles and he was positioned on the driver's side front door. He said he could see a male matching the description of Crockett walking westbound in the road on Casler Avenue with a gun in his right hand. He said Crockett was walking at a little slower than a normal gait with the gun at his side.

Grijalva said multiple commands were being given of "stop, drop the weapon, drop the gun." He said as Crockett got closer, he began to raise the gun and was fired

upon by other officers. He said Crockett fell immediately, he dropped straight down and did not move.

Grijalva said he believed Crockett's intent was to fire upon officers as he raised the gun.

Deputy Simon Gonifas (WCSO)

Deputy Gonifas' primary assignment is as a patrol deputy and is a Field Training Officer. He was wearing his standard patrol uniform and drove a marked patrol vehicle. Deputy Gonifas was partnered with his trainee, Deputy Grijalva. They responded to a disturbance with weapons and learned shots had been fired between the suspect and a Ft. Lupton officer.

On scene he deployed his patrol rifle and positioned himself at the passenger side front door of his vehicle. He said that there were at least five Ft. Lupton officers and a Platteville officer on scene and could hear someone giving commands to "drop the gun." Crockett continually walked towards them and he also gave a command to "drop the gun."

Deputy Gonifas stated that as Crockett moved closer to their location, he began to raise his gun hand and appeared to be pointing at him and his trainee. He said Crockett raised the gun about halfway up when he (Deputy Gonifas) fired two to three rounds at him.

He did not see any others fire their weapons but did hear several other gun shots. He knew the suspect had already shot at law enforcement and thought he was going to shoot at him or his trainee and he felt he had no other choice than to fire at the suspect.

Evidence collected later showed Deputy Gonifas fired three rounds from his patrol rifle.

Officer Kyle Cooksey (Dacono Police Department)

Officer Cooksey was wearing his standard patrol uniform and drove a marked patrol vehicle. While enroute to the call Officer Cooksey remembered dispatch airing that shots had been fired and the officer on scene returned fire. He remembered being third on scene and approached the two officers at the black SUV with his ballistic shield.

Officer Cooksey stated he could see the suspect sitting on the front porch and within a couple of minutes he could see him start walking west on Casler Street. Officer Cooksey stated he could plainly see the suspect had a handgun in his right hand and he walked “calmly but with a sense of purpose.” He said someone was giving commands to “drop the gun.” He saw the suspect start to raise the gun the first time but quickly put back to his side. He said no one shot that time. The suspect continued to walk towards officers and raised the gun a second time and was shot by law enforcement. Officer Cooksey is not sure how many times he fired but remembered shooting in two volleys.

Evidence collected later demonstrated Officer Cooksey fired eleven rounds from his handgun.

Corporal Lago (Platteville PD)

On scene Cpl. Lago positioned himself with the WCSO unit facing east, at the southwest corner of Casler Avenue and Flint Street. He was approximately 70 feet from the intersection and could see a red pickup (described by the dispatcher) in the driveway of the address (approximately 200 yards away). He observed multiple officers behind a black full-sized SUV on Flint Street south of the intersection.

The suspect was starting to walk towards the intersection and the officers behind the black SUV identified themselves and were giving loud repetitive commands over the vehicle's loudspeaker, saying "show us your hands." The suspect did not comply and kept walking to the intersection. As he got closer, a handgun could be seen in his right hand. The repetitive commands changed to "drop the gun" as the suspect continued walking towards the intersection. He noticed that the suspect was not swinging his right arm as much as his left arm as he was walking toward them. The officers on Flint Street continued to command over the loudspeaker to the suspect to “drop the gun” the suspect continued to disregard the orders from the police.

At approximately 150 to 175 feet the suspect gently shook (wiggled) his right arm. Initially he thought he was going to toss the gun, instead he adjusted his grip. While the officers were still ordering him over the loudspeaker to drop the gun, he took a few more steps and swung his right hand from his side to in front of his right leg and started to raise the handgun up. He heard multiple shots that were fired by multiple officers. He saw a couple of bullets strikes on the ground to the

left of the suspect. The suspect went limp instantaneously and dropped his head and his right arm, falling face forward. He landed face down with his right arm and handgun underneath him.

PHYSICAL EVIDENCE



.380 Bursa handgun from nightstand drawer that Crockett was carrying

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 evidentiary findings as they were occluded by clothing or objects because of the officer's body positioning.

AUTOPSY RESULTS

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

Because the Fort Lupton Police Department is not a member of the 19th Judicial District Critical Response Team, the shooting and evidence of FLPD officers was conducted by CBI. That investigation will be considered as separate and distinct from this one.