



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

July 11, 2014

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 Coleman Stewart in Boulder, Colorado on May 30, 2014. During that incident, three Boulder Police Officers discharged their weapons after Mr. Stewart produced a replica handgun and pointed it at the officers. Fortunately, Mr. Stewart survived his injuries. The officers' actions were reviewed with regard to whether their use of force was justified.

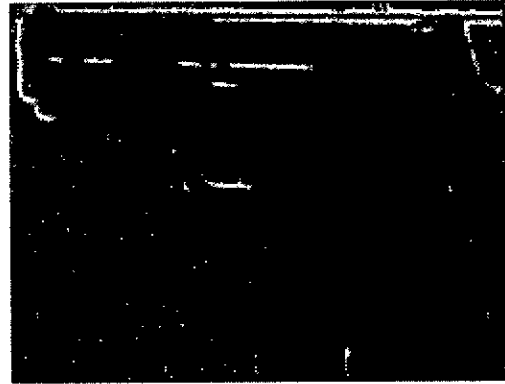
Representatives from my office have participated in this investigation and worked closely with the Boulder County Investigation Team (BCIT) since the day of the shooting. We were present for the on-scene investigation, and have reviewed the reports generated by members of the BCIT, transcripts and video 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. It is our conclusion that the use of force was justified.

The facts as determined by the Boulder County Investigation Team are as follows:

In May of 2014, Coleman Stewart lived alone in a ground-floor apartment on the corner of 11th Street and College Avenue in Boulder, Colorado. Mr. Stewart was not employed, but attended classes at the University of Colorado as a Continuing Education student. He did not own a firearm, but did possess a BB gun made by Smith and Wesson that he kept in his apartment. The BB gun did not have an orange tip on its barrel, or any other obvious indicator that it was not a firearm. In fact, the BB gun is a replica of a Smith and Wesson .40 caliber M&P, and while not identical in every respect, looks very similar to the firearm it is designed to replicate, as shown below.



Smith & Wesson BB Gun found on scene



Smith & Wesson .40 M&P

On the evening of May 29th, Mr. Stewart was in what his friends described as a “weird mood” as a result of separate ongoing arguments with his girlfriend and parents. At around 5:00 p.m., Mr. Stewart went with his friends to the Chop House at 921 Walnut Street in Boulder, where they consumed approximately two drinks each. From there, they went to a liquor store and bought a “fifth” of whiskey¹ and a six-pack of beer. They then went to a nearby apartment and continued to drink alcohol. According to one of Mr. Stewart’s friends, Mr. Stewart and one other person nearly finished the bottle of whiskey between them. Another friend reported that Mr. Stewart had consumed approximately ten whiskey drinks. The group then went to Conor O’Neill’s, a bar at 1932 13th Street where each bought a round of “Irish car bombs,” drinks consisting of Guinness beer, Bailey’s Irish Cream, and Jamison whiskey. By one account, Mr. Stewart had at least four drinks during this time. Words used to describe Mr. Stewart’s condition included “pretty intoxicated,” “incoherent,” and “drunk.”²

At around 1:00 a.m., Mr. Stewart exited Connor O’Neill’s and hailed a taxi cab driven by Joshua Worth. Mr. Stewart entered the front passenger seat of the cab and asked to be taken to 10th St. and College Ave. As they approached the intersection of 11th St. and College Ave., Mr. Stewart told Mr. Worth that he could let him out there. Mr. Worth indicated that the fare would be \$4.85, and told Mr. Stewart that he could pay by cash or credit card. Mr. Stewart opened the door and Mr. Worth recognized that he was preparing to exit the cab without paying. Before Mr. Stewart could exit, Mr. Worth turned the cab around, told Mr. Stewart to close his door, and headed back down College Ave. toward the Boulder Police Sub-Station located on 13th Street. Mr. Worth reported that during this time, Mr. Stewart said something to the effect of “I’m not paying you,” or “I’m not paying that.” Mr. Worth also warned Mr. Stewart that he was going to “push the red button that gets the cops.” Mr. Stewart responded “Push it. Get the cops. Whatever.”

As the cab approached the sub-station, Mr. Worth was honking his horn to get the attention of Officer Nicholas Frankenreiter, who had just exited the sub-station. As soon as the cab stopped, Mr. Stewart ran. Mr. Worth gave chase, and called out to the officer. Officer

¹ A “fifth” of whiskey typically contains 750mL.

² It should be noted that this description of Mr. Stewart’s condition is not unanimous. One of Mr. Stewart’s friends indicated that he did not drink much over the course of the evening, and he did not believe that Mr. Stewart had either.

Frankenreiter chased Mr. Stewart while identifying himself as a police officer and telling Mr. Stewart to stop.

Mr. Stewart opened a gate in the fence surrounding the patio of 1090 11th Street, Apartment # 1, and descended a small set of stairs to the door of his apartment. Officer Frankenreiter could not immediately open the gate, but looked over the fence, identified himself as a police officer, and asked Mr. Stewart to come talk to him. Officer Frankenreiter could not remember the exact epithet used by Mr. Stewart, but reported that Mr. Stewart mumbled "fuck you" or "go fuck yourself," and entered his apartment. Based on his observations of Mr. Stewart to that point, Officer Frankenreiter had the impression that Mr. Stewart was intoxicated.

Shortly thereafter, Officers Erin Starks, Jacob Vaporis, Ronald Perea, and Andrew Kirshbaum arrived on scene. The Officers again announced "Boulder Police" and ordered Mr. Stewart to come to the door. Officer Starks would later explain his expectations as follows: "At that point in my mind I didn't believe it was going to turn into what it turned into. I believe we probably had an intoxicated person that didn't want to pay a cab fare. I thought we could get him to come to the door, they would settle up, and that would be that."

There was a rectangular window in the upper portion of the door. There was also a large picture window facing the enclosed patio area. Both windows were covered by interior venetian blinds, but as the officers approached, they were able to see through the blinds and into the apartment at a downward angle. Officer Frankenreiter was moving between the door and the picture window as he called out to Mr. Stewart. Officer Kirshbaum approached the door and similarly announced that he was a police officer. He also said "We're not going anywhere so you need to come out and talk to us."

As he was looking through the picture window, Officer Frankenreiter saw Mr. Stewart approach the front door with what he believed to be a handgun, and point it at the window in the door. He believed the weapon was close enough to the door that the barrel might have come in contact with the glass. At that time, Officer Kirshbaum was shining a flashlight through window in the front door. Officers Kirshbaum, Starks, and Vaporis suddenly saw the blinds lifted by the muzzle of a handgun, which was pointed directly at them. Before the BB gun was found, Officer Kirshbaum was able to describe the weapon he saw as having a "tan or sand colored frame and a black barrel." The officer also described that the weapon "appeared to me to be tan, like sand dessert camo, without the camo just beige, tannish. And a black barrel, I could see the front sight because it was pointed right at my chest."

Officers shouted "GUN!" While quickly backing away, Officer Frankenreiter fired twice, Officer Starks fired 5 times, and Officer Vaporis fired 3 times. Bullets went through the front door and picture window. Bullets also struck a rock wall next to the door. Officer Kirshbaum felt an impact to his upper leg, which was the result of a fragment ricochet from the rock wall. Officer Starks was struck in the eye by breaking glass. Believing they were confronting an individual armed with a handgun, the officers retreated to take more defensive positions. No other shots were fired. Because the officers were unable to safely take cover within the patio area, a large tactical vehicle called a "Bear Cat" was brought in to knock down a portion of the fence, and allow them to observe the front of the apartment from a safer distance.

Several additional officers responded, including those from the Special Weapons And Tactics or SWAT team. Shortly thereafter, the officers involved in the shooting were taken from the scene to the Boulder Police Department, where they were interviewed by Detectives from the BCIT.

Mr. Stewart was shot in his right arm and right knee. He then went into his bedroom, where he removed his shirt and pants. SWAT Team members broke out the bedroom window of the apartment, at which time they heard Mr. Stewart say things such as "what are you doing?" and "leave me alone." Officers asked through the window if Mr. Stewart was hurt, and he responded "I don't think so, I don't know," though he was bleeding heavily from his wounds. Mr. Stewart was ordered to place his hands through the broken window, which he did. Mr. Stewart made additional statements at this time including "I didn't do anything", "I don't know what is going on" and "I'm scared." He also reported that his leg was hurting, but he didn't know why. He appeared surprised when told that he was injured and possibly shot.

An additional team of officers entered the apartment through the front door, and escorted Mr. Stewart outside, where his wounds were assessed. Mr. Stewart was then taken to the hospital. During the ambulance ride, Mr. Stewart told officers that he was drinking at Conor O'Neill's, then came home and went to bed. He claimed not to remember anything else. Shortly thereafter, while being treated at the hospital, Mr. Stewart was heard to say "Why am I handcuffed, who fucking shot me?" He also stated repeatedly that he "didn't even own a gun." He also told detectives that he owned a BB gun that he described as a "Smith and Wesson replica pistol." That pistol, which is pictured above, was later found near the door of the apartment during the execution of a search warrant.

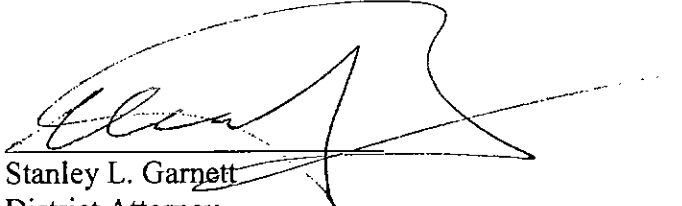
A blood sample was taken from Mr. Stewart at the hospital and sent to an independent laboratory for testing. The results revealed that when his blood was drawn at 3:50 a.m., Mr. Stewart's Blood Alcohol Content was .176.

The use of force by Officers Frankenreiter, Starks, and Vaporis 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 reasonable and appropriate 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, while the weapon was ultimately determined to be a BB gun, it closely resembles a real firearm. Having pursued Mr. Stewart into his apartment, the officers had no reason to believe that Mr. Stewart would threaten them with a BB gun, nor can they reasonably be expected to unnecessarily risk their lives to make such an assumption under these circumstances. Rather, these officers were reasonable in their belief that they were about to come under fire, and used their weapons only until they were no longer presented with an imminent threat.

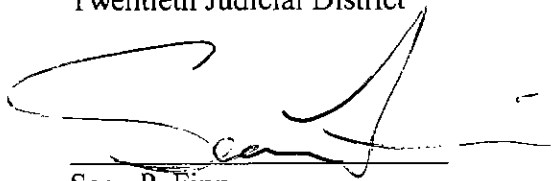
We also note that while the officers may have been legally entitled to enter Mr. Stewart's apartment without his consent to place him under arrest, they exercised restraint and attempted to get him to come outside voluntarily, and without further use of force. *See People v. Mendoza-Balderama*, 981 P.2d 150, 157 (Colo. 1999) (exigent circumstances may exist justifying a warrantless entry when the police are engaged in a bona fide pursuit of a fleeing suspect).

Because the use of force by Officers Frankenreiter, Starks, and Vaporis was legally justified, no 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