



Office of the District Attorney
Fifth Judicial District

Serving Clear Creek, Eagle, Lake, and Summit Counties
Heidi S. McCollum, District Attorney

August 29, 2023

Agent Gregg Slater (sent via email)
Colorado Bureau of Investigation
690 Kipling Street
Lakewood, CO 80215

Re: Officer Involved Shooting – deceased Charles Foster (CBI File 2023-252)
Letter of Declination

Dear Agent Slater:

Thank you for presenting your investigative findings regarding the officer involved shooting which occurred July 9, 2023 in the Summit Cove neighborhood of Dillon, Colorado. I have had an opportunity to review the investigation by your agency, to include written reports, dash-cam footage, body-cam footage, audio recordings, interviews, and physical evidence. Pursuant to C.R.S. §§16-2.5-301 and 20-1-114, I am issuing this report and declination letter. Herein is my determination based on information contained in your agency's investigation.

On July 9, 2023 at approximately 7:22am, Summit Dispatch received a 911 call from a resident in the 800 block of Summit Drive in Dillon. The 911 caller told dispatch that there was an armed male at the front door saying this was "his house". The caller also reported that the male was holding a gun in his hand pointing it down toward the ground. Dillon Police Officer Allen Jambor and Summit County Sheriff's Deputy Vincent Moquin each responded emergent to the report of a male with a gun. En route and upon arriving, both officers had their duty rifles deployed and at the ready when they contacted the male subject, (later identified as Mr. Foster),¹ walking in the 600 block on Summit Drive.

At approximately 7:29am, when Officer Jambor and Deputy Moquin arrived on the scene, they saw Mr. Foster walking toward their patrol vehicles. Officer Jambor gave him commands to raise his hands which he did. Officer Jambor asked him if he had a gun and he responded by putting his hand down at the side of his hip. Officer Jambor told him not to reach for a gun, but Mr. Foster did not comply and reached for it anyway. He grabbed the handgun from his side and both Officer Jambor and Deputy Moquin immediately began telling him to drop the gun.

¹ At the time of this incident up through and including the shooting of Mr. Foster, neither Officer Jambor nor Deputy Moquin knew Mr. Foster's name, and only learned of it after this incident.

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Mr. Foster very shortly thereafter complied; dropped the gun and began walking toward the officers per their commands.



Photo of Mr. Foster dropping gun on ground

While he initially complied with the commands he was being given by the officers, he stopped following those commands approximately one minute and thirty seconds later, when he walked back to the gun and picked it up. He ignored all further commands to put it back down. From the time Mr. Foster initially dropped the gun until he walked back and picked it up again, approximately one minute and forty-eight seconds elapsed.

Officer Jambor and Deputy Moquin then took cover behind a parked car closer to Mr. Foster (approximately 25 yards away). They each tried speaking with him in efforts to get him to put down the gun. During this exchange, Mr. Foster told Officer Jambor that the gun he (Mr. Foster) was holding was the same gun that had been used to kill his father.² Deputy Moquin also separately recalled Mr. Foster making a statement that the gun he was holding was the gun that had killed his father.

At the time Mr. Foster made the statement that the gun he was holding had killed his father, Officer Jambor could see the gun and believed it to be a handgun posing a real threat, capable of causing serious bodily injury or death to himself or others. Officer Jambor recalled Mr. Foster saying that the gun was not loaded. During an interview with Officer Jambor about this incident he explained that he was not able to verify whether the gun was loaded or not. Nor could he tell if there was a magazine in the weapon. He further explained that his training as a range instructor taught him to treat all weapons as if they are loaded, until he is able to verify that information himself. This incident did not provide Officer Jambor an opportunity to verify this information as Mr. Foster was not complying with commands to put the gun down. In his interview, Officer Jambor stated that he recalled telling Mr. Foster that if he pointed the gun at anyone, he would be shot.

² In a subsequent interview with Mr. Foster's Aunt, she stated that Mr. Foster's father had passed away from cancer when Mr. Foster was a baby.

Deputy Moquin recalled during an interview regarding this incident that he tried to get Mr. Foster to speak with him. Deputy Moquin asked him what his name was and gave his own name of Vince. Deputy Moquin said that the subject refused to put the gun down and that he seemed highly angry and agitated. Deputy Moquin was concerned for his own safety and the safety of others. Deputy Moquin told Mr. Foster that he was being given a lawful command to drop the gun – and that failure to do so might result in use of force against him.

In addition to telling Officer Jambor and Deputy Moquin that the gun had been used to kill his father, Mr. Foster also said there was no ammo. In Deputy Moquin's interview about the incident, he stated that he was not able to tell if the gun was loaded or not, and he was not going to take the man's word for it. Mr. Foster's statement about the gun not being loaded also gave further confirmation to Deputy Moquin that it was in fact a real gun.

Other officers and deputies arrived on scene after Officer Jambor and Deputy Moquin had contacted Mr. Foster. Summit County Sheriff's Sergeant Thad Hall arrived at the scene and witnessed that both Officer Jambor and Deputy Moquin had Mr. Foster at gunpoint. Sergeant Hall also saw that Mr. Foster appeared to be holding a handgun and he was refusing commands to drop it. Officer Jambor, Deputy Moquin, and Sergeant Hall each attempted speaking with Mr. Foster in attempts to de-escalate the situation and have Mr. Foster put down the gun.

Multiple residents' accounts confirmed that the officers and deputies on scene attempted and even "begged" Mr. Foster to put the gun down. Ultimately, these attempts at negotiating with Mr. Foster were unsuccessful.

In an interview with Officer Jambor, he recalled witnessing Mr. Foster point the gun at where Deputy Moquin was standing. Officer Jambor then fired his weapon at Mr. Foster. Deputy Moquin stated in an interview that he did not fully recall seeing the suspect raise the gun, but did remember the gun being pointed directly at him. Deputy Moquin then fired his weapon at Mr. Foster. Mr. Foster was shot four times in total.



View

from Officer Jambor's dash-cam looking southwest on the 600 Block of Summit Drive



View from Frisco Police Department's dash-cam looking northwest on the 600 Block of Summit Drive

The gun Mr. Foster was holding and pointed at Deputy Moquin, was a Smith & Wesson M&P40, cal 0177 (4.5 mm). This model BB gun is a replica of a Smith & Wesson M&P .40 cal, semi-automatic pistol. There were no BBs present within the weapon.



Mr. Foster's gun- "Smith and Wesson M&P 40", cal 0177 (4.5mm)



"Smith and Wesson M&P 40" Caliber .40 S&W

A timeline of events leading up to the shooting on July 9, 2023 follows:

While Sergeant Hall was en route to the Summit Cove area to assist, he received a phone call from Mr. Foster's mother, informing him that Mr. Foster had a gun. Sergeant Hall was also aware that the Summit County Sheriff's Office SMART Team (System-wide Mental Assessment Response Team) had been requested multiple times that night (7/8/23 – 7/9/23) by the family, regarding Mr. Foster's behavior.

On July 8, 2023 at approximately 9:19am, Mr. Foster's step-dad called for assistance from SMART reporting that Mr. Foster was not sleeping, having anxiety issues and delusions and was paranoid. The SMART Team responded and determined that Mr. Foster was not a danger to himself or others.

On July 8, 2023 at approximately 1:37pm, Mr. Foster's aunt and step-father were at Dillon Reservoir with Mr. Foster. They called the SMART Team and reported that Mr. Foster had run away. The SMART Team responded. Mr. Foster was ultimately cooperative and it was determined that he was not delusional or having auditory or visual hallucinations.

On July 8, 2023 at approximately 11:51pm, Mr. Foster's aunt requested assistance from the SMART Team in getting him admitted to the hospital. He had run away when his family tried to take him to the hospital. The SMART Team responded and determined that Mr. Foster was not a danger to himself or others. They assisted in making a safety plan for the night.

On July 9, 2023 at approximately 2:07am, Mr. Foster's aunt requested the SMART Team respond to her home and indicated that Mr. Foster was "getting violent" and hadn't been able to sleep for approximately two days. She told Summit Dispatch that Mr. Foster "won't hurt anyone". At this time of the night the SMART Team was no longer on duty and Sergeant Hall responded. Mr. Foster refused to go to the hospital, and it was determined that he was not a danger to himself or others.

On July 9, 2023 at approximately 4:43am, Mr. Foster's mother reported him missing. She indicated he could be suicidal. Sergeant Hall responded, but he and Mr. Foster's mother were unsuccessful in locating him.

On July 9, 2023 at approximately 7:01am - Mr. Foster was captured on surveillance camera at the Keystone Ranch HOA entrance hut. This is in the area of Dillon Cove.

On July 9, 2023 at approximately 7:06am - 911 call from a couple on Lichen Lane, reported a male knocking on their door. The husband briefly opens the door and hears the male (Mr. Foster) accuse them of killing his father. No one in the residence saw a weapon. SCSO Deputy Moquin and other deputies respond and attempt to locate Mr. Foster but are unsuccessful.

On July 9, 2023 at approximately 7:22am – 911 call from the 800 block of Summit Drive, stating that an armed male is at the front door, saying this is his house. The 911 caller witnesses Mr. Foster holding a gun and pointing it at the ground.

On July 9, 2023 at approximately 7:29am – Officer Jambor and Deputy Moquin arrive in response to the report of a male with a gun. They immediately contact Mr. Foster walking in the 600 block of Summit Drive.

Both officers see Mr. Foster has a gun in his hand. They give commands for Mr. Foster to put the gun down and slowly walk toward both officers who have him at gunpoint. The commands are initially complied with.

On July 9, 2023 at approximately 7:31am – Mr. Foster stops following commands and picks up the gun. Officer Jambor and Deputy Moquin move to a nearby vehicle in a driveway continuing to give commands for Mr. Foster to put the gun down. Mr. Foster continues to ignore the commands and law enforcement's attempts at negotiation with Mr. Foster continue.

On July 9, 2023 at approximately 7:35am – Additional deputies responding use binoculars to try to identify the gun Mr. Foster is holding, Sergeant Hall is on scene assisting with negotiations.

On July 9, 2023 at approximately 7:38am – Mr. Foster raises the gun with both hands, arms extended at shoulder height and points it at Deputy Moquin; both Deputy Moquin and Officer Jambor fire shots.

On July 9, 2023 at approximately 7:39am: Sgt Hall, Officer Jambor, and other officers move to secure Mr. Foster, who is lying on the ground after being shot; still holding the gun in his hand.

On July 9, 2023 at approximately 7:40am: The gun is removed from Mr. Foster's hand; he is handcuffed, life saving measures are begun.

On July 9, 2023 at approximately 7:43am: EMS arrive on scene.

On July 9, 7:44am: EMS officially pronounce Mr. Foster deceased.

A peace officer is justified in using deadly force if: (1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or receiving serious bodily injury; (2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or receiving serious bodily injury; and, (3) the officer has an objectively reasonable belief that a lesser degree of force is inadequate. C.R.S. §18-1-707(4.5).

Acting in self-defense or defense of others is subject to the same analysis. C.R.S. §§18-1-704(1) & (2) state in pertinent part that: (1) [...] a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent user of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose. (2) Deadly force may be used only if a person reasonably believes a lesser degree of force is inadequate and: (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

In deciding whether the deputies were justified in acting in self-defense or defense of others it is irrelevant whether Mr. Foster was actually trying to injure the deputies as long as a reasonable person, under the circumstances would believe that deadly force was necessary to prevent imminent harm or death. The facts must be viewed as they appeared to the deputies at the time.

The information obtained in the investigation in this matter, includes the recollections of the events from officers on scene and statements of other witnesses. These statements are consistent with one

another and are supported by 911 calls, in-car cameras and body-worn cameras. Mr. Foster's actions on July 9, 2023 posed an immediate danger to others, including the officers and deputies on scene as well as the residents of the Summit Cove neighborhood.

Mr. Foster had repeatedly failed to comply with the commands of both Officer Jambor and Deputy Moquin to put down the gun. Mr. Foster ultimately raised his gun to a position which could only have been interpreted to any reasonable person that he was intending on using deadly force against the officer and the deputy. Both Officer Jambor's and Deputy Moquin's use of lethal force by firing their respective rifles at Mr. Foster, was justified in using that deadly physical force, as they reasonably believed it was necessary to defend themselves and each other from what they reasonably believed to be the use or imminent use of deadly physical force by Mr. Foster. Both Officer Jambor's and Deputy Moquin's actions were a justifiable self-defense and a justifiable defense of others. In light of this determination, the Office of the District Attorney hereby declines to file any criminal charges in the fatal shooting of Charlie Foster.

Regards,



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cc: Jaime FitzSimons, Summit County Sheriff's Office
Chief Cale Osborn, Dillon Police Department