

DISTRICT COURT, SUMMIT COUNTY, STATE OF COLORADO 501 N. Park Avenue, PO Box 269 Breckenridge, CO 80424 Telephone: (970) 453-2272	DATE FILED: 2020 AUG 16 2020 FILED IN THE DISTRICT COURTS SUMMIT COUNTY
<p style="text-align: center;"><b>IN RE THE MATTER OF THE 2020-2021 GRAND JURY</b></p>	<p style="text-align: center;">AUG 06 2020</p>
Bruce Brown, Attorney Registration # 24294 District Attorney, Fifth Judicial District 504 Airport Road, PO Box 488 Breckenridge, CO 80424 Telephone: (303) 679-2448 E-mail: bbrown@da5.us	Case Number: 20CR1  Division: T
<p style="text-align: center;"><b>2020-21 FIFTH JUDICIAL DISTRICT GRAND JURY REPORT REGARDING MAY 9, 2020 OFFICER INVOLVED SHOOTING IN CLEAR CREEK COUNTY</b></p>	

Of the term of the District Court in the year 2020-21, the Fifth Judicial District Grand Jurors, chosen, selected, and sworn in the Fifth Judicial District, in the name and by the authority of the People of the State of Colorado, upon their oaths, present the following report of the Grand Jury:

**Introduction**

The Grand Jury issues this report in compliance and pursuant to Colorado Revised Statutes § 20-1-114, where the law states:

If the district attorney refers the matter under investigation to the grand jury, the district attorney shall release a statement at the time the matter is referred to the grand jury disclosing the general purpose of the grand jury's investigation. If no true bill is returned, the grand jury shall issue and publish a report.

This Grand Jury investigation involves an officer involved shooting which occurred in Clear Creek County on May 9, 2020. On July 2, 2020, the Grand Jury was referred this matter by Bruce Brown, District Attorney, Fifth Judicial District, and accepted the matter for an investigation. This *2020-21 Fifth Judicial District Grand Jury Report Regarding May 9, 2020 Officer Involved Shooting in Clear Creek County* will, in compliance with Colorado Revised

Statutes § 20-1-114, disclose the Grand Jury's findings and the basis for the decision not to return a true bill.

### **Factual Findings**

Over three sessions, the Grand Jury heard from seven witnesses and reviewed forty-seven exhibits, including officer body cam footage, and audio tapes, as well as were instructed and provided pertinent legal provisions. Here, the Grand Jury summarizes the facts, and this is not intended to be a verbatim recitation of all evidence presented.

Darrin Patterson (herein "Patterson"), a 57-year-old man, resided in or near the town of Idaho Springs for approximately a year prior to May 9, 2020. Prior to May 9, 2020, Patterson had contacts with the Idaho Springs Police Department (hereinafter "ISPD") where he expressed paranoid thoughts and behaviors that may have been an indication of ongoing bouts of mental illness. Several of these police encounters were initiated by Patterson where he explained to officer's paranoid delusions of people spying on him, voices that he heard, and the belief that people were following him. Patterson was never able to substantiate any of these claims to any Idaho Springs officers. Patterson was never aggressive or showed any signs of violent tendencies during any of these encounters predating May 9, 2020.

On the afternoon of May 9, 2020, Officer Richard Sonnenberg of the Idaho Springs Police Department was dispatched to a 911 call by Patterson that he was being followed by various people and was in fear for his safety. Sonnenberg responded to this call and spoke to Patterson, who explained what appeared to be paranoid and delusional thoughts to Sonnenberg. Sonnenberg told Patterson that his beliefs were delusional and told him that if he continued to contact 911 with these complaints he would "lock him up in the nut house." Patterson was not aggressive or violent towards Sonnenberg. No attempts at this time were made to get Patterson mental health assistance and it did not appear that he was a danger to himself or others.

Officer Ellie Summers (hereinafter "Summers") is an ISPD officer who also had two contacts with Patterson prior to May 9, 2020. During these contacts, Patterson expressed paranoid thoughts and delusions and various levels of confusion which Summers believed evidenced mental illness. Summers became aware through these contacts that Patterson routinely carried in his automobile large knives and bear mace.

On May 9, 2020, Summers was on routine patrol in Idaho Springs at around 9:15 p.m. Summers witnessed Patterson driving a silver Saturn make several abrupt turns as well as commit several other traffic violations. Summers activated her emergency lights and attempted a traffic stop and the vehicle turned into a parking lot abutting a hostel called the Lodge of the Rockies in Idaho Springs. Summers was aware that the driver was Patterson from her prior encounters and familiarity with the silver Saturn he was driving. When Patterson entered the parking lot for the Lodge of the Rockies, he began to drive around in circles through the lot several times and did not stop in response to the emergency lights of Summers. Summers could hear Patterson screaming unintelligibly within the vehicle while he was driving. Patterson eventually stopped in the parking lot and Summers ordered him out of his car several times. Patterson continued to yell and scream unintelligibly and saying that he had not done anything wrong. Shortly after Patterson stopped in the parking lot Summers radioed for her safety for additional law enforcement to assist with the stop.

Deputy Nicholas Dibiase (hereinafter "Dibiase") of the Clear Creek Sheriff's Office (hereinafter "CCSO") as well as Deputy Kyle Gould (hereinafter "Gould") CCSO responded to the call. Dibiase was the first to arrive on the scene and exited his vehicle to assist Summers. Both Dibiase and Summers tried, using verbal commands, to coax Patterson into exiting his vehicle without success. Summers then concluded that she would extricate Patterson using pepper spray and went to the back of her vehicle to retrieve spray and face protection and Dibiase went to his vehicle to also get face protection. Patterson then fled from the scene by driving away and Summers and Dibiase, in separate vehicles, gave chase. Gould had arrived on the scene during the time that Patterson began to flee, and he also joined the chase. Summers, Dibiase, and Gould followed Patterson at low speeds for approximately ten minutes through the City of Idaho Springs, Clear Creek County, and onto State Highway 103, into unincorporated Clear Creek County. Summers' supervisor, Lieutenant Mark Hanschmidt was informed by dispatch of the incident and directed Summers to discontinue the chase. He concluded that pursuant to the ISPD pursuit policy, the minor nature of a traffic infraction, the safety risk to the community, and the ability to locate Patterson after termination of the chase justified discontinuing the chase.

After the low speed chase by Summers, Dibiase and Gould was terminated, Clear Creek

County Sheriff Rick Albers, who was monitoring the situation, concluded that Patterson should be re-contacted by the Sheriff's office because he posed a danger to the citizens of the county, and that re-initiating a pursuit was in compliance with the CCSO pursuit policy.

Sheriff Albers directed Gould and Dibiase, traveling separately in marked patrol cars, to re-initiate the pursuit of Patterson which then focused on an area south of the City of Idaho Springs on State Highway 103. SH-103 is a paved rural road with intermittent homes. Neither Deputy had ever had any prior contacts with Patterson but Gould did obtain general information about Patterson from Summers and dispatch, prior to heading back up SH-103, regarding prior contacts where Patterson appeared delusional, and that he carried bear mace and a machete in his vehicle. Dibiase had been told by Summers of the fact the Patterson carried pepper spray and knives in his vehicle.

Gould and Dibiase drove back up SH-103 to see if they could locate Patterson. Dibiase traveled southbound on SH-103 and went to turn right onto West Chicago Creek Road. As he was turning Patterson came speeding out of West Chicago Creek Road and narrowly missed colliding with Dibiase's patrol cruiser. Dibiase gave chase south on Highway 103 and activated his emergency lights. Patterson was driving between 25 and 35 miles per hour before Dibiase activated his lights. After Dibiase activated his lights Patterson accelerated, Dibiase radioed that he was reinitiating the pursuit of Patterson. Patterson accelerated to 85 or 90 miles per hour at that time, swerving across lanes of traffic. Patterson then started reaching around in the back seat of his vehicle as he was being pursued by Dibiase, almost crashing several times while doing this. Gould was ahead of Patterson's vehicle on SH-103 at this time and was waiting there for the pursuit, curbing several vehicles as the chase approached. Gould pulled out in front of Patterson, to protect any vehicles which were oncoming from being involved in an accident with Patterson's vehicle.

Before Patterson reached Gould's vehicle, Patterson had started a fire in the back seat of his vehicle, igniting a blanket that had been doused with gasoline. Dibiase thought at first it was coming from Patterson's engine and could see flames coming from Patterson's vehicle. Ultimately, Dibiase realized that flames were coming from Patterson's back seat. Swerving all over the road and traveling at approximately 80 miles per hour, Patterson then slammed on his brakes and turned onto Peaceful Valley Lane, speeds lowering to between 15 and 25 miles per

hour on rough and unpaved roadway. The only nearby residence maintained a motion activated camera on the property that depicts each of the three vehicles momentarily passing by, before Patterson pulled into a dirt circle area as Deputies Dibiase and Gould jockeyed to maintain contact with Patterson and slow his getaway.

Along the road bordered on each side by thick tree stands Gould received supervisory permission to attempt a P.I.T. maneuver in his attempt to stop Patterson by impacting Patterson's rear bumper with Gould's front tire; the maneuver was unsuccessful. Fifteen to 30 seconds later Patterson stopped his vehicle.

Gould exited his vehicle and got behind his door for cover, 8 to 10 feet behind Patterson's and illuminating it with overhead lights and headlamps, while Dibiase's vehicle stopped directly behind Gould's. Gould drew his firearm and was giving commands to Patterson yelling to see his hands. Dibiase then got out of his vehicle and got behind Gould's passenger side door for cover and had his weapon drawn, also yelling at Patterson to show his hands, an accepted tactic when detaining a non-compliant person. Patterson was seen by Gould "digging around" in his car. Gould then confirmed that Dibiase was to provide defensive cover and went to retrieve a tool to break Patterson's window so that they could more clearly see inside through smoke and fire.

As Gould approached the driver side window with tool in hand Dibiase continued to yell to Patterson, who was yelling and cursing, to see his hands. Dibiase at the right passenger side rear wheel and approximately five or six feet from Patterson, kept eyes on Patterson as Gould broke Patterson's driver side window.

Dibiase then saw Patterson with a silver handgun at his head while rolling his head around and scratching his cheek with the barrel. When Patterson looked left and pointed the gun in Gould's direction, Dibiase shot believing that Patterson was going to shoot Gould, firing 18 times, and reloading once, stopping only when he believed the threat to Gould abated. Gould heard Dibiase yell "gun", retreated from next to Patterson's car and fired 12 shots, believing his life was in danger. Patterson fired none and he died at the scene.

Two firearms were found in Patterson's vehicle: a silver and gray semi-automatic .45 caliber pistol fully loaded with a round in the chamber under Patterson's left leg and a .22 caliber rifle on the front passenger seat.

Agent Kellon Hassenstab (hereinafter "Hassenstab"), Colorado Bureau of Investigation, an expert in law enforcement procedure concerning use of force and police pursuits testified. His conclusions were that agency police pursuit policies were appropriately followed by Officer Summer's, and Deputies Gould and Dibiase, validating public safety concerns after Patterson eluded the initial stop.

Hassenstab opined that the initial ISPD pursuit in the more densely populated area posed a public safety risk and was appropriately discontinued. The pursuits re-initiation, authorized by Clear Creek County Sheriff Albers, was also appropriately based on separate public safety concerns that Patterson's driving actions could endanger the public upon SH-103, outside the territorial limits of the City of Idaho Springs but within unincorporated Clear Creek County.

Hassenstab evaluated that the use of force situations by Gould and Dibiase was appropriate, despite resulting in Patterson's death. Hassenstab opined that reasonable suspicion existed at the time Officer Summers effected the stop and multiplied as Patterson eluded police, drove recklessly, started a fire within a moving vehicle, and displayed and pointed a firearm at Deputy Gould. Hassenstab explained that each use of force must be measured by the situation and the possible danger to officers and others, as well as all other attendant circumstances to determine what level of force employed is reasonable.

Agent Traci Dowd (hereinafter "Dowd"), of the Colorado Bureau of Investigation, investigated the shooting of Patterson, at the request of the Clear Creek County Sheriff's office. As part of her investigation, Dowd investigated Patterson's background and learned that Patterson had substance abuse issues and possibly suffered from bi-polar disorder. During Agent Dowd's search of Patterson's car documents were located indicating hospitalization and mental health treatment months before.

Patterson was a known gun owner, and with training had become a "crack shot." He resided at Lodge of the Rockies in the City of Idaho Springs, adjacent to the parking lot from which he eluded officers.

An autopsy was performed on Patterson revealing that he had been shot six times, and that his wounds were consistent with the testimony of Gould and Dibiase. The cause of death was those gunshot wounds.

A toxicological analysis of Patterson's blood showed the presence of methamphetamines in the blood at a level of 1700 nanograms, an extremely high level that can cause violent and irrational behavior.

ISPD prior contacts with Patterson revealed several instances where Patterson demonstrated traits associated with psychiatric issues, including auditory hallucinations and acute paranoia. Those contacts did not amount to a situation where he was able to be detained as a danger to self or others and no referrals to any mental health counseling were given. Clear Creek County has no identifiable mental health or counseling resources within the County which might enable for law enforcement to direct citizens to.

### **Applicable Law**

A peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

The evidence presented in this case has raised the affirmative defense of "deadly physical force in defense of person," as a defense to using force against Patterson.

Any person is legally authorized to use deadly physical force upon another person without first retreating if:

1. he used that deadly physical force in order to defend himself or a third person from what he reasonably believed to be the use or imminent use of unlawful physical force by that other person;
2. he reasonably believed a lesser degree of force was inadequate;
3. he had a reasonable ground to believe, and did believe, that he or another person was in imminent danger of being killed or of receiving great bodily injury;
4. he did not, with intent to cause bodily injury or death to another person, provoke the use of unlawful physical force by that other person; and

5. he was not the initial aggressor, or, if he was the initial aggressor, he had withdrawn from the encounter and effectively communicated to the other person his intent to do so, and the other person nevertheless continued or threatened the use of unlawful physical force.

### **Conclusions**

After considering all the witness testimony and the exhibits including the audio and videotape exhibits the Grand Jury concludes as follows: Deputies Dibiase and Gould acted appropriately and properly under the circumstances on the night of May 9, 2020. They were justified in using the force which was used when they reasonably believed that Patterson, when armed with a fully loaded handgun with a chambered round, intended to shoot Gould during the attempt to effectuate his arrest and stop the flight of Patterson.

### **Recommendations**

1. The Grand Jury recognizes there exists insufficient resources and facilities available to address individuals who suffer from various types of mental illness in the Clear Creek County community. That being said, the Grand Jury is troubled by the repeated responses by the Idaho Springs Police Department, prior to the evening of May 9, 2020, and their failure to take any affirmative steps to facilitate assistance to Darrin Patterson, a person obviously experiencing profound mental illness, which contributed to this unfortunate series of events. Mental health resources should be made more available in the community including, funding by Clear Creek County and the municipalities within the County, to address the mental health issues which afflict community members.
2. The Grand Jury recommends the Clear Creek Sheriff's Office review, "Clear Creek County Sheriff's Office, Specific Policies: Pursuit Guidelines and Procedure, Subsection X: Interjurisdictional Considerations" and evaluate in light of this Grand Jury Report, Factual Findings whether the policy should be amended regarding intergovernmental communication between initial contacting officers and any subsequent contact by other jurisdictions and its effect on their respective pursuit policies with appropriate training changes to address these issues and avoid similar situations.



3. The Grand Jury encourages the municipalities and County to address these issues, enabling law enforcement officers with resources that do not currently exist, in hopes of preventing another tragedy like this from occurring. In the near term, the Grand Jury recommends to local governments in Clear Creek County, that they identify mental health resources, whether in or outside the county, that can immediately be made available to law enforcement to assist those individuals in mental health crisis.

I, [REDACTED], the Foreperson of the 2020-2021 Fifth Judicial District Grand Jury, do hereby swear and affirm that each and every Report returned in by the 2020-2021 Fifth Judicial District Grand Jury was arrived at after deliberation and with the assent and agreement by at least nine members of the 2020-2021 Fifth Judicial District Grand Jury.

Dated this 6<sup>th</sup> day of August, 2020

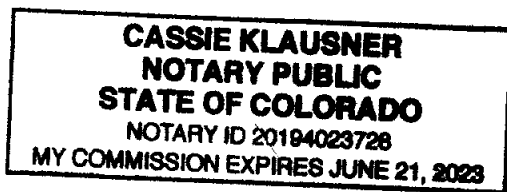
[REDACTED]

FOREPERSON

Subscribed and sworn to before me in the County of Summit, State of Colorado, the 6<sup>th</sup> day of August, 2020.

Cassie Klausner

NOTARY PUBLIC



My Commission Expires: 6/21/23

Bruce Brown

BRUCE I. BROWN, District Attorney

Fifth Judicial District