

Dave Young
District Attorney



17th Judicial District
Adams & Broomfield Counties
District Attorney's Office

March 1, 2013

Sheriff Doug Darr
Adams County Sheriff Office
332 N. 19th Ave.
Brighton, CO 80601

RE: Investigation of shooting incident
occurring on January 14, 2013

Dear Sheriff Darr:

In response to your request, the Office of the District Attorney for the Seventeenth Judicial District reviewed the investigation and evidence in case number 13-746 involving the shooting of a canine that occurred on January 14, 2013. Our office is only reviewing the evidence regarding your investigation for a potential filing of criminal charges for the conduct of Deputy Wilfred Europe for this incident. The factual findings of the investigation presented to the District Attorney consist of police reports, photos, audio and video recorded interviews, diagrams and video recordings of the scene, and a necropsy report. The Office of the District Attorney concludes that the investigation was thorough and complete. Based upon the evidence presented and applicable law, no criminal charges will be filed against the law enforcement officer involved in the incident.

SUMMARY OF THE CASE

On Monday January 14, 2013, at approximately 8:13 p.m., Adams County Sheriff's Deputies Wilfred Europe and David Slater were called to a burglar alarm at 5384 Tennyson Street. The dispatcher reported the alarm coming from a door on the "west side" of a business identified as Thoutt Brothers Concrete. Deputy Slater arrived on scene at 8:26 p.m., and Deputy Europe arrived one minute later. Upon arrival, the deputies parked at a building on Tennyson Street labeled as "Thoutt Bros. Concrete Contractors, Inc." and began to check the doors of the buildings on the property.

The deputies first checked the west side doors of the business office at 5460 Tennyson Street. They continued to walk inside the perimeter of the property, circling the office building in a counter-clockwise direction to check the remaining buildings. On the north side the deputies came upon a building directly to the north of the office building that had a standard door on the west side and two overhead garage doors on the south side. As Deputy Europe checked the west door, he found it to be unlocked and opened it. Both deputies heard noises inside the location that they identified as a person moving and a dog barking. Deputy Europe closed the door. The male later identified as Jeff Fisher, immediately reopened it. Because of the nature of the

dispatch call, the deputies not knowing who was behind the door and department protocol, both deputies had their handguns drawn as they checked the property.

The deputies then held Mr. Fischer at gunpoint at the threshold with the door open, commanding him to stop. While the door remained open, a black and white medium-sized dog ran past him out the door. The dog ran directly at Deputy Europe, who retreated approximately twenty feet from the west side door to get away. Deputy Europe kicked the dog in an effort to deter its aggressive behavior. As the dog persisted to charge at him, Deputy Europe fired his gun two times, shooting the dog and killing it. After the shooting, the deputies determined that Mr. Fisher leased space in the building from the business owner of Thoutt Brothers Concrete and was not a trespasser. Mr. Fisher identified the dog as his pet, "Ziggy."

Adams County Animal Control arrived and collected the dog. Deputies Europe and Slater took photographs and authored written incident reports.

ISSUE PRESENTED

Law enforcement officers of the Adams County Sheriff's Office ("ACSO") convened to conduct the investigation into the facts surrounding Deputy Wilfred Europe's use of force. Sergeant Kevin Currier was assigned to lead the investigation. The facts of the investigation were presented to the District Attorney on January 31, 2013, for a determination as to whether there is enough evidence to the file criminal charges.

The standard for filing a criminal charge is whether there is a reasonable likelihood of successful prosecution. In making this determination our office must decide if there is a reasonable likelihood that a jury would convict a person beyond a reasonable doubt. In addition, our office must determine whether we can disprove beyond a reasonable doubt to a jury any potential affirmative defenses, such as self defense. To determine whether criminal charges are warranted when a law enforcement officer uses deadly force, great care must be taken to understand the circumstances under which the officer acted. Unrelated instances of conduct or character are irrelevant to the determination of whether a crime was committed on this particular date and time.

Here, the question is not only whether the use of force was justified, but also whether the facts and circumstances surrounding the conduct are sufficient to prove the elements of a criminal offense—in this instance, the offense of aggravated cruelty to animals.

THE INVESTIGATION

On January 16, 2013, ACSO agents investigated the scene. The property belonging to Thoutt Brothers Concrete consists of multiple buildings and a construction yard located northeast of the intersection of 54th Avenue and Tennyson Street. The main office for the business is clearly identified and located at 5460 Tennyson Street. Two smaller buildings are situated directly to the north of the office, only one with a legal address of 5470 Tennyson. The building at 5386 Tennyson Street, the location of the alarm, is some distance east of the main office.

The building to the north of the main office without an address was identified as the location of the incident. An area of suspected blood pooling believed to be from the dog was found 7.96 feet west of the building and 18.67 feet southwest of the west door.

A review of the dispatch recording from that evening reveals that the deputies were not provided any specific details regarding the layout of the property. Further, there was no information relayed that anyone would be present, other than the responding business owner who was en route to the location.

The dog measured approximately 36 inches in length, 21½ inches in height, and 57 pounds in weight. On January 30, 2013, Dr. Chad Frank of Colorado State University conducted a necropsy on the dog. An external examination of the animal revealed one bullet wound. The entrance wound was located in its back, near the right shoulder blade. The exit wound was found at the abdomen. The bullet's trajectory was a downward angle of 43%, front to rear, right to left. An internal examination revealed subcutaneous muscle hemorrhage to the left upper leg region and left jaw of the dog, consistent with blunt force trauma.

WITNESS STATEMENTS

Deputies Wilfred Europe and David Slater prepared written incident reports. Deputy Slater also gave an interview. Deputy Europe retained an attorney and did not provide a further interview or statement. Among the lay witnesses interviewed were Jeff Fisher and Christopher May.

Deputy Europe stated in his report that he and Deputy Slater conducted a perimeter check of the business complex in response to a "business alarm." He described one of the buildings as a warehouse with a door on the west side. When Deputy Europe turned the doorknob, he discovered it was unlocked. As he opened the door, he heard a male voice and a dog bark. Deputy Europe stated that he felt someone pulling back on the door from the inside. He immediately pulled the door shut, backed away approximately 5 feet, and drew his handgun.

Deputy Europe stated that the male, later identified as Jeff Fisher, opened the door and began yelling. Deputy Europe held Mr. Fisher at gunpoint to stay back and show his hands. He could hear a dog barking and "trying to get out the door," so he ordered Mr. Fisher to grab the dog.

According to Deputy Europe, a 40-pound dog ran straight toward him. He describes the dog as "barking, growling, and snapping its teeth." He then ran backwards trying to get away from the dog. He further states that the dog ran towards him faster than he could move backwards, and that he kicked it in the chest as it lunged at him. Deputy Europe stated that although he had his weapon drawn, that he "tried to avoid using lethal force on the dog" but that "the dog was not deterred and continued advancing forward to bite [him]." Deputy Europe fired two rounds, stating that he would be bitten if he did not immediately incapacitate the dog.

Deputy Slater's written report also identifies a west entrance to a building that appeared to be occupied. He recalled Deputy Europe opening the door and closing it, and stated that he and Deputy Europe stood on opposite sides of the door waiting for the occupant to come out, not knowing if the person was lawfully on the premises. Once the door opened again, Deputy Slater

described the dog "charging out the door in an aggressive manner towards Deputy Europe." Slater stated that the male, later identified as Mr. Fisher, yelled at the dog, but the dog "continued to bark, growl, and charge at Deputy Europe." He further describes the dog's continued pursuit of Deputy Europe to bite him, and Deputy Europe's action of kicking the dog to avoid being bitten. Deputy Slater reports that Deputy Europe "had his firearm out and shot the dog to stop the attack."

Deputy Slater recalled the conversation with Mr. Fisher after the shooting to determine if he had permission to be on the property. As they discussed the shooting of the dog, Slater quotes Mr. Fisher as saying that the dog would have bitten Europe because the dog didn't know him.

On January 16, 2013, investigators conducted a follow-up interview of Deputy Slater. His interview largely confirmed the facts detailed in his report. Deputy Slater describes the dog "charging" at Deputy Europe in an aggressive manner, trying to bite him, and Deputy Europe retreating as he tried to kick at the dog.

Mr. Fisher refused an interview with ACSO investigators on January 16, 2013 and ordered them off of his property. The following day, January 17, 2013, Fisher and his lawyer appeared on KHOW and gave an interview to Peter Boyles concerning the incident. During the radio shows, Fisher repeatedly stated that the deputies forced entry into his business prior to shooting his dog.

Later that day, Fisher gave an interview to ACSO investigators at the location of his lawyers' office, in the presence of his lawyers, with the understanding that he would be interviewed as a victim and not a suspect. Mr. Fisher again stated that the deputies forced entry and pointed a gun at his face when the dog "slipped passed" him and ran out the door. He recalled that as he was at the threshold of the door, he saw the dog slowly "trot" outside the door 15 to 20 feet, turn around, and then start to come back toward the door when he was shot. Fisher estimated Deputy Europe to be a distance of 15 to 20 feet from the dog when he shot it. He claimed that the deputy fired numerous times in rapid succession, continuing to shoot the dog when it was already down. When asked about Deputy Europe having kicked the dog, Fisher responded "[h]e was twenty feet away from my dog. How could he kick him?"

On February 26, 2013, Jeff Fisher with his attorney present gave an additional interview to representatives of the District Attorney's Office. During that interview, Mr. Fisher stated for the first time that he believed Deputy Europe kicked the dog after the shots were fired. It should be noted that his attorney was allowed to be present during the necropsy and had knowledge of the bruising the canine had. He also reiterated that he believed Deputy Europe was at least 15 to 20 feet away from his dog when the shots were fired.

Christopher May lives in the building identified by address as 5470 Tennyson Street, just north of the Thoutt Brothers main office. He was interviewed on January 16, 2013 concerning his knowledge of the events. Though he was aware that the deputies were present during the evening of January 14, 2013, he did not witness any of the events that gave rise to the incident.

LEGAL ANALYSIS

The decision to file criminal charges involves an assessment of all known facts and circumstances and an evaluation of whether there is a reasonable likelihood of conviction under the applicable law. Criminal liability is based upon the standard of proof beyond a reasonable doubt that the evidence satisfies all of the elements of a criminal offense. In addition to proving the elements of a crime, the prosecution must also prove beyond a reasonable doubt that the crime was committed without a statutorily recognized justification or excuse.

The potential criminal offense that is applicable here is aggravated cruelty to animals, §18-9-202, C.R.S. (2012). The elements of this crime are that the defendant knowingly and needlessly kills an animal. Each of these elements must be proved beyond a reasonable doubt in order to have a conviction for this crime. There are no issues in proving that Deputy Europe knowingly killed an animal.

The issue in this investigation is the requirement that the prosecution establish that a person “needlessly kills” an animal. Given the facts and circumstances presented in this case, the evidence is insufficient to have a reasonable likelihood of success at trial in meeting our burden that Deputy Europe “needlessly” killed the dog beyond a reasonable doubt.

There are significant discrepancies between the deputies’ version of events and that of the dog owner, Jeff Fisher. The deputies were consistent in their statement of the facts that led to the shooting of the animal—both said they were prepared to confront an intruder with their handguns drawn when the dog charged at Deputy Europe in an aggressive manner and persisted in an attack. Both deputies describe Deputy Europe’s effort to retreat and attempt to use less lethal force by kicking the dog. Mr. Fisher, on the other hand, gives a much different recitation of events. In essence, he characterizes Deputy Slater of invading his home and sticking a gun in his face, after which Deputy Europe executed his rather “friendly” dog from a distance of 15 to 20 feet without any justification.

The facts and evidence gathered from the scene appears to corroborate the deputies’ version of events. The dog was shot one time in the upper back region. The entrance wound of the bullet is at an angle of 43%, with a trajectory from the front to the rear of the animal. The location and significant downward angle of the entrance wound leads to the inference that the dog was shot in close proximity as it tried to bite Deputy Europe, as opposed to Mr. Fisher’s statement that the dog was shot multiple times from a distance of 15 to 20 feet, including after it was down. Furthermore, the necropsy performed on the animal revealed signs of blunt force trauma to various anterior, or frontal, regions. Such evidence is consistent with the deputies’ statements that Deputy Europe kicked the dog in an effort to prevent an attack and it is certainly inconsistent with the theory that the dog was kicked after being shot as bruising would not be present after the death of the animal.

Aside from the discrepancies between the evidence and Mr. Fisher’s statements, of particular significance in this case is the fact that Deputy Europe was called to investigate a burglar alarm on private property after business hours in the darkness. Any law enforcement officer in that situation would have his or her handgun at the ready. The dispatch call advised him that the

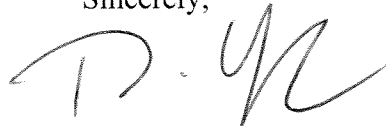
alarm originated from a door on the “west side” of a building. The deputies proceeded to check on an open door on the west side of a building. At the time Deputy Europe encountered the dog, he was confronted with circumstances that led him to believe that there was an intruder inside the building.

Another potential issue is whether there is sufficient evidence to prove that Deputy Europe did not act in self defense and more importantly whether or not our office can meet our burden of disproving self defense even if the evidence supported a reasonable likelihood of success in proving the “needlessly” element in aggravated cruelty to animals. There is no need to address this issue, since it is already established that we cannot meet our burden as to the elements of the offense.

Under Colorado law, a “deadly weapon” is defined as any object, animate or inanimate, capable of producing serious bodily injury. Here, not only was Deputy Europe presented with a situation in which he believed an intruder was present, the dog pursued him in an aggressive fashion, creating circumstances akin to the threatened use of a deadly weapon.

Due to the nature of the circumstances, Deputy Europe had his handgun drawn prior to the encounter. Europe’s attempt to kick the dog during his retreat is construed as an effort to utilize less lethal force. It cannot be proven beyond a reasonable doubt that Deputy Europe’s conduct under the circumstances establishes the element of “needlessly kills” as is required to prove the crime of aggravated cruelty to animals. As such, there will be no filing of criminal charges against Deputy Wilfred Europe as it relates to the January 14, 2013 shooting of the dog owned by Jeff Fisher. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Young", written in a cursive style.

Dave Young,
District Attorney