

DISTRICT ATTORNEY

Brittney B. Lewton



13TH JUDICIAL DISTRICT

Counties of Kit Carson, Logan,
Morgan, Phillips, Sedgwick,
Washington & Yuma

OFFICER INVOLVED SHOOTING
LOGAN/MORGAN COUNTY
MAY 3, 2020

Materials Reviewed:

- Body worn camera footage from Sterling Police Department Officers Rank, Williams, Chromicz, McDaniel, and Molcyk, as well as body worn camera footage from Logan County Deputy Casey Swingle
- Electronic Data Recorder from the Blue 2006 Cadillac Sedan being driven by the deceased
- Diagrams from multiple sources, both quick, off-hand sketches and professional accident recreations
- A window tint reader used on the 2006 Cadillac and its results
- Drone footage of the crash/shooting scene
- Over 50 pages of training materials and certifications for Sterling Police Officer Austin Molcyk
- Relevant firearm qualifications for Sterling Police Officer Austin Molcyk
- Video of interviews with Sterling Police Officers Molcyk, Chromicz, McDaniel, and Sgt. Williams; in addition to video interview with Morgan County Sheriff Dave Martin
- Video footage of the entire crash/shooting scene
- Video footage of a re-creation of the shooting, using a trajectory rod, conducted by the Morgan County Sheriff's Office
- Pictures of the entire crash/shooting scene; the officers involved; the weapon belonging to Sterling Police Officer Austin Molcyk utilized in the shooting; the ammunition, both live and spent used by Sterling Police Officer Austin Molcyk in the shooting; the 2006 Cadillac driven by the decedent Tyler Kracht; the items subsequently found in the 2006 Cadillac driven by the decedent Tyler Kracht
- Autopsy pictures of the decedent, Tyler Kracht
- Autopsy report of the decedent, Tyler Kracht, authored by Dr. James Wilkerson
- Written reports from: all of the Fort Morgan Police Officers (except Commander Crone); from all of the Morgan County Sheriff's Department Officers (except Sheriff Martin); from all of the Brush Police Department Officers (except Chief Bos); from all of the Colorado State Patrol Officers; from Sterling Police Department Detective Marissa O'Toole pertaining to the shooting on May 3, 2020
- Written reports from Sterling Police Department Sgt. Williams, Cpl. Ryan Peterson, Officer Austin Molcyk, Officer Paul McDaniel, Officer Tyler Chromicz, Detective Marissa

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O'Toole, and Logan County Sheriff's Deputy Kyle Taylor about a shooting incident on April 30th, 2020 at 1161 Nottingham Ct., Sterling, CO. involving the decedent Tyler Kracht

- Recorded phone calls as well as text messages from the Logan County Detention Facility between Tyler Kracht and his girlfriend Alexis (Lexi) Kanatzer in the days prior to the shooting and during the pursuit on May 3, 2020
- ATF firearms trace on both firearms located in the 2006 Cadillac being driven by the decedent

Witnesses:

Fort Morgan Police Department:

Commander Loren Sharp
Commander Jaren Crone
Sgt. Kevin Miller
Detective Ted Thyne
Detective Will Bencomo
Code Enforcement Officer Robert Griffith

Morgan County Sheriff's Department:

Undersheriff Jon Horton
Commander Jon Holt
Investigator Tyler Price
Investigator Christopher Griggs
Investigator Kelvin Bernhardt
Deputy Shawna Barbee
Off-duty Deputy Nicholas Skiles
Kayla Babkiewich (staff)
Sheriff Dave Martin (primarily as a lay witness though)

Sterling Police Department:

Sgt. James Rank
Sgt. Matt Williams
Officer Tyler Chromicz
Officer Paul McDaniel
Officer Austin Molcyk
Investigator Marissa O'Toole

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Brush Police Department:

Chief Derek Bos
Cpl. Detective David Hosier
Officer Brandon Flecksteiner

Logan County Sheriff's Department:

Deputy Casey Swingle
Sgt. Denis Grischenko
Lt. Dennis Alston
Deputy Kyle Taylor

Colorado State Patrol:

Sgt. Robert Tate
Cpl. Ken Nelson
Trooper Joe Barco
Trooper Christopher Beaverson
Trooper S.A. Schlessman

Other:

Alexis Kanatzar
Morgan County Coroner Don Heer
Dr. James Wilkerson
Tyler Kracht (deceased)

Synopsis of Events:

On May 3, 2020 at approximately 6:08 PM, Officer Molcyk while driving his patrol vehicle on Road Q in Logan County, Colorado, and observed a vehicle believed to be involved in a shooting a few days prior. This same vehicle was, immediately prior to Officer Molcyk's contact, engaged in a high-speed chase with other law enforcement on I-76 that had been called off for the safety of citizens. Upon visual contact, Officer Molcyk reengaged in a high-speed chase of the vehicle. The vehicle was actively attempting to evade law enforcement, reaching speeds in excess of 115 miles per hour. The vehicle rapidly reduced speed and proceeded to turn abruptly and attempt to drive toward Officer Molcyk. Officer Molcyk drew his department issued handgun and held it above his steering wheel. Officer Molcyk then intentionally collided with the suspect vehicle to end the pursuit. Rendering the suspect vehicle immobile, Officer Molcyk exited his patrol vehicle, approached the suspect vehicle with his weapon drawn, and gave a series of loud, verbal commands to the driver, Tyler Kracht, to raise his hands. Multiple other law enforcement

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officers simultaneously arrived on scene, similarly, drew their weapons, approached the vehicle, and echoed those loud, verbal commands. Despite these clear, repeated, unambiguous commands, Mr. Kracht continued to drop his hands outside the view of law enforcement and attempted to drive the vehicle while officers surrounded the vehicle. Officer Molcyk fired several shots into the rear driver's side window and struck Mr. Kracht causing six gunshot wounds to Mr. Kracht. After life-saving efforts were attempted, Mr. Kracht was pronounced dead at the scene. The incident occurred in a non-residential, agricultural area just inside of Morgan County, CO.

Applicable Law:

§ 18-1-707(2), C.R.S.

§ 16-2.5-301, C.R.S.

§ 20-1-114(1), C.R.S.

The question to be answered via this report is: Was Officer Molcyk, an armed, sworn peace officer employed by the Sterling Police Department, justified in using deadly force against Tyler Kracht on May 3, 2020.

In answering this question, a review of C.R.S 18-1-707(2), C.R.S. must occur. The quoted statute provides in pertinent part:

A peace officer is justified in using deadly physical force upon another person...only when he reasonably believes that it is necessary (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes; (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or (II) Is attempting to escape by the use of a deadly weapon; or (III) otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

It should be noted that Colorado Senate Bill 2020-217 modified the aforementioned statute. However, those amendments did not go into effect until September 1, 2020. Because the change in the law occurred after the shooting at issue, the prior reading of this statute, cited above, must be utilized. The aforementioned statute sets forth the standard by which Officer Molcyk's actions must be measured.

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Relevant Background Information Known to Law Enforcement Prior to the May 3rd Shooting of Tyler Kracht:

At roughly 1600 hours (or 4 pm) on April 30, 2020, Sterling Police Officers were dispatched to 1116 Nottingham Ct., Sterling, Colorado, on report of shots fired. Among the officers responding to that call were Sterling Police Department Sgt. Matt Williams, Sterling Police Department Officer Paul McDaniel, Sterling Police Department Cpl. Ryan Peterson, Sterling Police Department Commander Russ Swingle, and Sterling Police Department Officer Austin Molcyk. As officers were on route, dispatch informed them that the reporting party stated there were unknown parties leaving the scene in a white Cadillac, and that the reporting party believed the shooter was in the white Cadillac. Just prior to arriving at the Nottingham address, Logan County Sheriff's Deputy Kyle Taylor encountered the white Cadillac driving the wrong direction on Nottingham Ct. and appeared to be attempting to leave the scene. Once joined by Officers from the Sterling Police Department a high-risk traffic stop was conducted on the white Cadillac. The car was found to be occupied by a male driver, Preston Chambers and a female passenger, Tara Mestas-Loft. Neither parties were cooperative with commands given by law enforcement, nor were they cooperative with questioning about the shooting. However, officers were quickly able to locate a bullet hole in the lower part of the left rear door that appeared to have passed through the vehicle into the passenger side of the Cadillac. Eventually, both occupants of the white Cadillac indicated they had been "shot at". However, it was upon further discussion with Mr. Chambers that they learned more details about the shooting. Mr. Chambers told the officers he arrived at that the Nottingham address intending to drop off an unknown female friend of Ms. Loft's, when a blue sedan pulled up and asked him if "he was Preston" and when Mr. Chambers said he was, the driver of the blue sedan said "fuck you" and pulled out a black handgun and fired on Mr. Chambers. The blue sedan then sped away. Upon a subsequent search of the white Cadillac, multiple contraband items were recovered including, a scale with residue on it, several ounces of marijuana, 9 unused syringes, several cellular telephones, a bag with a small amount of methamphetamine in it, and various other items of drug paraphernalia. Bullet fragments were also found inside the left rear door. Neither the occupants of the white Cadillac nor the people living in area of the shooting could identify the shooter.

During the investigation of the April 30th shooting, Sterling Police Department Detective Marissa O'Toole had occasion to speak to Alexis Kanatzar about the incident on Nottingham Ct., even though at the time of the shooting Alexis was being housed at the Logan County Detention facility after being arrested on April 27th for multiple drug offenses. Detective O'Toole learned that Alexis had received a text message on the Detention facility's paid texting application "Chirp", from "her boyfriend" on April 30th, however Alexis refused to identify who the boyfriend was. The text referred Alexis to an address belonging to "his mother" so that should anything happen to him, she could contact his mother at that address. When Detective O'Toole was able to pull the

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call log for inmate Kanatzar for April 30th she was able to single out the phone number that texted Alexis and then perform a trace on that phone number, which came back as belonging to Tyler Kracht. Furthermore, the address given in the text message did in fact belong to Tyler Kracht's mother. It was known at that time to officers in Logan County that Alexis Kanatzar had been in an on again, off again relationship with Tyler Kracht.

Finally, on May 3rd, just a few hours prior to the officer involved shooting that is the subject of this report, Sterling Police Department officers McDaniel, Molcyk, Peterson, O'Toole, and Sgt. Matt Williams ultimately arrested Preston Chambers after a brief scuffle, for offenses related to the items found in his white Cadillac which had been seized and searched shortly after the shooting on Nottingham Ct. At the time of his arrest Preston, who was booked into the Logan County Detention Facility and interviewed by Sterling Police Department Officer Peterson at roughly 1550 hours, finally identified the shooter in blue Cadillac as Tyler Kracht and gave a more detailed account of what occurred on April 30th at Nottingham Ct. At approximately 1745 hours (5:45 pm) the pursuit that ended in the officer involved shooting that is the subject of this report was beginning.

Tyler Kracht had lived in Sterling, Colorado for most of his life. He had been in and out of the criminal justice system since he was a teenager. He was very well known to law enforcement in the City of Sterling and the County of Logan and was a convicted felon. He was known to be involved in the drug trade and was the subject of an ongoing multi-jurisdictional drug investigation, in which an active cellular telephone "ping" warrant had been obtained for Mr. Kracht's cellular telephone number just prior to, and at the time of his death.

On May 1, 2020, based on continuing investigation by the Sterling Police Department into the shooting on April 30th, it was becoming more obvious that Tyler Kracht was involved and likely the shooter. Thus, officers with the Sterling Police Department "ran Tyler" through NCIC/CCIC for his criminal history and any active arrest warrants. They discovered that not only was there an active "ping" warrant in place for Mr. Kracht's cellular telephone, but there were also active arrest warrants for him out of Loveland, Colorado and Pueblo, Colorado. In addition, he was wanted for questioning by the Sterling Police Department with respect to the shooting on April 30, 2020 at Nottingham Ct.

Facts pertaining to the Officer Involved Shooting on May 3, 2020:

On May 3rd, 2020, Sgt. James Rank was at his residence preparing to start his shift for the day. His personal residence is located in Atwood, Colorado, which sits roughly 10 miles west of the City of Sterling. Sgt. Rank was preparing to begin his shift and decided to go and get in his car and head toward the office about 15 minutes early. Sgt. Rank, like most of law enforcement

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in Logan County, was 1) very familiar with the decedent Tyler Kracht, based on multiple previous law enforcement contacts over the last several years as an officer with the Sterling Police Department, and 2) also acutely aware of the very recent criminal activity involving the decedent, including that he was wanted for the questioning and likely arrest for the shooting that occurred on April 30th at Nottingham Ct. As Sgt. Rank was coming on duty and on his drive into the office, Sgt. Rank observed a blue Cadillac being driven by Tyler Kracht. Sgt. Rank began a pursuit of the suspect vehicle that resulted in the Cadillac driving in excess of 100 mile per hour and down the wrong side of Interstate 76. Based upon these actions and the danger posed to the general public by Mr. Kracht, Sgt. Rank terminated the pursuit. After the pursuit was terminated, law enforcement lost visual contact with the blue Cadillac.

Shortly thereafter, Officer Austin Molcyk was driving down County Road Q and observed the same blue Cadillac being driven by Tyler Kracht, who was the sole occupant of the vehicle. Upon making this observation, Officer Molcyk reengaged a pursuit of the Cadillac, again resulting in speeds in excess of 115 miles per hour. However, soon thereafter the vehicle rapidly reduced speed, turned around and proceed to drive toward Officer Molcyk. This portion of the chase through the shooting and life-saving measures performed on the decedent, was all captured via Officer Molcyk's bodyworn camera. The following is a summary of that bodycam footage. Officer Molcyk drew his department issued handgun and held it above his steering wheel as the suspect vehicle drove towards Officer Molcyk's patrol vehicle. Officer Molcyk then intentionally collided with the suspect vehicle to end the pursuit. Rendering the suspect vehicle immobile and knocked off the roadway slightly into a ditch, Officer Molcyk exited his patrol vehicle, approached the suspect vehicle with his weapon still drawn, and gave a series of loud, verbal commands to the driver, Tyler Kracht, to raise his hands.

It is important to note several observations of the blue Cadillac at this point. First, there is significant damage done to the driver side of the vehicle. The driver's front wheel is perpendicular and it is clear that the axel controlling such wheel is, at minimum, structurally compromised. Second, intermittently the rear driver side wheel, which appears structurally intact, is seen spinning. It is clear that the wheel is not spinning randomly, but is being done through pressure exerted on the accelerator of the vehicle in a clear attempt to dislodge the vehicle and drive away. The rear wheel turns but is unable to gain traction. This is likely due to a combination of terrain (grass and loose dirt) and the comparatively disabled condition of the vehicle. Third, the vehicle's windshield wiper blades are actively engaged, moving back and forth across the windshield. These two observations (wheel movement and wiper blades) indicate that the vehicle is still operable from both an electrical as well as a drivetrain point of view. While it appears unlikely to be capable of movement given the terrain and condition of the front wheel, in the moments directly prior to the shooting, the additional movement of the vehicle cannot be ruled out as a possibility by Officer Molcyk. Fourth, in these few moments just prior to the shooting, the vehicle's driver side door is

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ajar and the driver side window is rolled down approximately 1 or 2 inches. Said condition made it more probable that Mr. Kracht was able to hear the commands of Officer Molcyk who stood only a few feet from the door of the vehicle. Fifth, the vehicle's windows are significantly tinted, making it difficult to see clearly into the vehicle. Subsequent testing of the window tint of the intact remaining windows on the vehicle demonstrated a 6-7 percent light transmittance. In Colorado, § 42-4-227(1)(a)(I), C.R.S. states that "no person shall operate a motor vehicle registered in Colorado on which any window, except the windshield, is composed of, covered by, or treated with any material...that it allows less than 27 percent light transmittance."

As Officer Molcyk caused the Cadillac to run off of the road, multiple other law enforcement officers, including Officer Chromicz, Sgt. Williams, and Deputy Casey Swingle simultaneously arrived on scene. Those officers similarly drew their weapons, approached the vehicle, and echoed those loud, verbal commands. Despite these clear, repeated, unambiguous commands, Mr. Kracht continued to drop his hands outside the view of law enforcement and attempted to drive the vehicle, despite officers surrounding the vehicle. Officer Molcyk is heard screaming "show me your fucking hands! Hands up! Hands up! Keep your hands up or I will fucking kill you! Hands up! Hands up! I will kill you! If you move I will shoot you in the fucking head!" Mr. Kracht is seen by Officer Molcyk moving within the vehicle; the rear wheel begins to spin, signaling the driver's intention of driving away and thus, Officer Molcyk fired seven shots into the rear driver's side window, striking Mr. Kracht with a total of six gunshot wounds. Law enforcement then approached the vehicle and struck the driver's side window with a standard issue baton. Mr. Kracht then opens the driver side door and leans out, clearly wounded from the shots. Deputy Swingle and Sgt. Williams pull Mr. Kracht out of the vehicle, later assisted by Officer Chromicz. Once Mr. Kracht has been removed from the vehicle, a tourniquet is placed on Mr. Kracht's left arm by Officer Molcyk after blood is observed flowing from said arm. Law enforcement radios dispatch to send medical units to the scene, while Deputy Swingle and Officer Chromicz continue providing first aid on the scene until paramedics arrive. After additional life-saving efforts were attempted, Mr. Kracht was pronounced dead at the scene. Only 77 seconds elapse between Officer Molcyk's exit from his patrol vehicle and the seven shots are fired into the Cadillac.

All officers present during the shooting were subsequently interviewed. The verbal accounts of the officers were consistent with what is viewed and heard on their individual and collective bodycams, and consistent with the description of events discussed herein. Of importance to this evaluation, however, are the statements made by Officer Molcyk of his observations and beliefs at the time of the shooting. During his interview, conducted by Investigator David Hosier of the Brush Police Department on May 5, 2020, Officer Molcyk states that he had observed Mr. Kracht look at Officer Molcyk and look around the vehicle, making several furtive movements. Officer Molcyk also observed Mr. Kracht drop his hands into his lap,

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and stomp on the gas. Officer Molcyk also noted that Deputy Swingle was in front of Mr. Kracht's vehicle when these actions took place. Officer Molcyk indicated that he fired because he believed Mr. Kracht intended to run over Deputy Swingle and then flee the scene. This is corroborated by Officer Molcyk's bodycam which shows Deputy Swingle crouched down in front of the Cadillac and looking away when the vehicle attempts to move.

An autopsy was performed on Mr. Kracht by Dr. James Wilkerson, a well-respected forensic pathologist and medical examiner, in Fort Collins, Colorado on May 4, 2020. The autopsy revealed six gunshot wounds. A postmortem toxicological examination of Mr. Kracht revealed, among other things, 1800 nanograms per milliliter of blood of methamphetamine. The toxicologist wrote as follows: "A peak blood concentration of methamphetamine of 20 ng/mL was reported at 2.5 [hours] after an oral dosage of 12.5 mg. Blood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse and convulsions." The opinion of Dr. Wilkerson is as follows: "Based upon the history and autopsy findings, it is my opinion that Tyler Kracht, a 28-year-old White male, died of multiple gunshot wounds in a police action. The manner of death is homicide." It is important to note that in forensic pathology, there are five manners of death: natural, accidental, suicide, homicide, and undetermined. Homicide, for forensic pathological purposes, is simply defined as the action of one person directly causing the death of another. It is not a legal conclusion purporting to assign liability or guilty. Put another way, homicide in the forensic pathological sense is not the same as murder as codified in the Colorado Criminal Code; all murders are homicides, but not all homicides are murders.

A subsequent search of the vehicle revealed two loaded handguns, multiple cellular telephones, three detached car stereos, multiple syringes, drug pipes, and nearly 200 grams of methamphetamine in two separate bags. Notably, the handguns were located inside a black backpack which was located on the passenger's side front seat. For perspective, the possession of these items, together, would qualify for charging multiple level one drug felonies, which are punishable by a sentence to the Colorado Department of Corrections for a mandatory minimum of 8 years.

Trajectory analysis was performed on the vehicle, in an attempt at tracing the various points of entry for each of projectiles shot during this incident. Officers traced the points of impact on the blue Cadillac through the points of entry through the rear driver's side window. An officer dressed himself in a Tyvek protected suit which was covered in small black dots. These dots were the approximate location of entry wounds discovered on Mr. Kracht's body following the shooting. The Tyvek clad officer then positioned himself in the vehicle and the dots are lined up with the various points of entry described above. Comparing this after-the-fact positioning with the review

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of Mr. Kracht's actions observed on Officer Molcyk's bodycam, a more complete picture begins to take shape. While certainly not conclusive, the trajectory analysis strongly suggests that Mr. Kracht was reaching for the black backpack, which contained the two loaded handguns, when Officer Molcyk fired his weapon at Mr. Kracht.

Analysis of Facts and Law

Returning now to the statutory standard utilized in measuring the use of deadly force by a peace officer in these circumstances, the statute speaks in terms of "reasonable belief". Put more succinctly, the standard to be utilized in judging the officers' behavior in this circumstance is an objective one. Further, in measuring "reasonableness", the totality of the circumstances test applies, and information the officer was subjectively aware of regarding the suspect is relevant in determining whether the officers' actions were reasonable.

In the circumstances described by all the witnesses to this event, in consideration of the bodycam audio and visual evidence as well as the physical evidence collected on scene, Officer Molcyk had a reasonable belief that the use of deadly force was necessary to defend himself and the other law enforcement officers present in the immediate vicinity from what he reasonably believed to be the use or imminent use of deadly physical force, to wit: Mr. Kracht attempting to drive his vehicle into one or more of the law enforcement officers. Further, Officer Molcyk had a reasonable belief that such force was necessary to effect an arrest of a person whom they reasonably believed had committed or attempted to commit a felony involving the use or threatened use of a deadly weapon and was attempting to escape by the use of a deadly weapon. Finally, given the officers' knowledge of Mr. Kracht's criminal record, prior history with firearms, active felony warrants, the suspect's high speed flight from law enforcement, and the suspect's actions involving the firing of a weapon against other citizens less than one week prior, Officer Molcyk had a reasonable belief that the suspect was likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

A split screen view of the four officers' bodycams from the incident provides a complete picture of the shooting. What is clear from said bodycams is that despite several clear, loud and unambiguous commands, Mr. Kracht refused to keep his hands raised and instead, routinely dropped one or both hands below the collective view of the officers involved. Additionally, Mr. Kracht engages the vehicle in an attempt to drive it away from the scene, or worse, attempt to swiftly move the vehicle toward one or more of the officers surrounding the vehicle. It is true that the vehicle, utilizing the benefit of hindsight, appears to have been rendered incapable of further movement due to the preceding collision. However, given the slope of roadway, the fact that Mr. Kracht had just engaged law enforcement in a high speed chase, Mr. Kracht's continued furtive movements, and the passage of a mere 77 highly emotional seconds, it would have been reasonable

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