



**U.S. Department  
of Justice**

*The Criminal  
Investigation into  
the Shooting Death  
of Michael Brown*

**U.S. Department of Justice**

# **The Criminal Investigation into the Shooting Death of Michael Brown**

**Department of Justice Report**



Published by Good Press, 2022

[goodpress@okpublishing.info](mailto:goodpress@okpublishing.info)

EAN 4064066064808

# TABLE OF CONTENTS

[I. Introduction](#)

[II. Summary of the Evidence, Investigation, and Applicable Law](#)

[A. Summary of the Evidence](#)

[B. Initial Law Enforcement Investigation](#)

[C. Legal Summary](#)

[III. Summary of the Evidence](#)

[A. Darren Wilson's Account](#)

[B. Physical and Forensic Evidence](#)

[C. Witness Accounts](#)

[viii. Witness 129](#)

[IV. Legal Analysis](#)

[A. Legal Standard](#)

[B. Uses of Force](#)

[C. Willfulness](#)

[VI. Conclusion](#)



# **I. Introduction**

## [Table of Contents](#)

At approximately noon on Saturday, August 9, 2014, Officer Darren Wilson of the Ferguson Police Department ("FPD") shot and killed Michael Brown, an unarmed 18-year-old. The Criminal Section of the Department of Justice Civil Rights Division, the United States Attorney's Office for the Eastern District of Missouri, and the Federal Bureau of Investigation ("FBI") (collectively, "The Department") subsequently opened a criminal investigation into whether the shooting violated federal law. The Department has determined that the evidence does not support charging a violation of federal law. This memorandum details the Department's investigation, findings, and conclusions. Part I provides an introduction and overview. Part II summarizes the federal investigation and the evidence uncovered during the course of the investigation, and discusses the applicable federal criminal civil rights law and standards of federal prosecution. Part III provides a more in-depth summary of the evidence. Finally, Part IV provides a detailed legal analysis of the evidence and explains why the evidence does not support an indictment of Darren Wilson.

The Department conducted an extensive investigation into the shooting of Michael Brown. Federal authorities reviewed physical, ballistic, forensic, and crime scene evidence; medical reports and autopsy reports, including an independent autopsy performed by the United States Department of Defense Armed Forces Medical Examiner

Service ("AFMES"); Wilson's personnel records; audio and video recordings; and internet postings. FBI agents, St. Louis County Police Department ("SLCPD") detectives, and federal prosecutors and prosecutors from the St. Louis County Prosecutor's Office ("county prosecutors") worked cooperatively to both independently and jointly interview more than 100 purported eyewitnesses and other individuals claiming to have relevant information. SLCPD detectives conducted an initial canvass of the area on the day of the shooting. FBI agents then independently canvassed more than 300 residences to locate and interview additional witnesses. Federal and local authorities collected cellular phone data, searched social media sites, and tracked down dozens of leads from community members and dedicated law enforcement email addresses and tip lines in an effort to investigate every possible source of information.

The principles of federal prosecution, set forth in the United States Attorneys' Manual ("USAM"), require federal prosecutors to meet two standards in order to seek an indictment. First, we must be convinced that the potential defendant committed a federal crime. *See* USAM § 9-27.220 (a federal prosecution should be commenced only when an attorney for the government "believes that the person's conduct constitutes a federal offense"). Second, we must also conclude that we would be likely to prevail at trial, where we must prove the charges beyond a reasonable doubt. *See* USAM § 9-27.220 (a federal prosecution should be commenced only when "the admissible evidence will probably be sufficient to sustain a conviction"); Fed R. Crim

P. 29(a)(prosecution must present evidence sufficient to sustain a conviction). Taken together, these standards require the Department to be convinced both that a federal crime occurred and that it can be proven beyond a reasonable doubt at trial.<sup>[1]</sup>

In order to make the proper assessment under these standards, federal prosecutors evaluated physical, forensic, and potential testimonial evidence in the form of witness accounts. As detailed below, the physical and forensic evidence provided federal prosecutors with a benchmark against which to measure the credibility of each witness account, including that of Darren Wilson. We compared individual witness accounts to the physical and forensic evidence, to other credible witness accounts, and to each witness's own prior statements made throughout the investigations, including the proceedings before the St. Louis County grand jury ("county grand jury"). We worked with federal and local law enforcement officers to interview witnesses, to include re-interviewing certain witnesses in an effort to evaluate inconsistencies in their accounts and to obtain more detailed information. In so doing, we assessed the witnesses' demeanor, tone, bias, and ability to accurately perceive or recall the events of August 9, 2014. We credited and determined that a jury would appropriately credit those witnesses whose accounts were consistent with the physical evidence and consistent with other credible witness accounts. In the case of witnesses who made multiple statements, we compared those statements to determine whether they were materially consistent with each other and considered the timing and circumstances

under which the witnesses gave the statements. We did not credit and determined that a jury appropriately would not credit those witness accounts that were contrary to the physical and forensic evidence, significantly inconsistent with other credible witness accounts, or significantly inconsistent with that witness's own prior statements.

Based on this investigation, the Department has concluded that Darren Wilson's actions do not constitute prosecutable violations under the applicable federal criminal civil rights statute, 18 U.S.C. § 242, which prohibits uses of deadly force that are "objectively unreasonable," as defined by the United States Supreme Court. The evidence, when viewed as a whole, does not support the conclusion that Wilson's uses of deadly force were "objectively unreasonable" under the Supreme Court's definition. Accordingly, under the governing federal law and relevant standards set forth in the USAM, it is not appropriate to present this matter to a federal grand jury for indictment, and it should therefore be closed without prosecution.

## **II. Summary of the Evidence, Investigation, and Applicable Law**

[Table of Contents](#)

### **A. Summary of the Evidence**

[Table of Contents](#)

Within two minutes of Wilson's initial encounter with Brown on August 9, 2014, FPD officers responded to the scene of

the shooting, and subsequently turned the matter over to the SLCPD for investigation. SLCPD detectives immediately began securing and processing the scene and conducting initial witness interviews. The FBI opened a federal criminal civil rights investigation on August 11, 2014. Thereafter, federal and county authorities conducted cooperative, yet independent investigations into the shooting of Michael Brown.

The encounter between Wilson and Brown took place over an approximately two-minute period of time at about noon on August 9, 2014. Wilson was on duty and driving his department-issued Chevy Tahoe SUV westbound on Canfield Drive in Ferguson, Missouri when he saw Brown and his friend, Witness 101,<sup>[2]</sup> walking eastbound in the middle of the street. Brown and Witness 101 had just come from Ferguson Market and Liquor ("Ferguson Market"), a nearby convenience store, where, at approximately 11:53 a.m., Brown stole several packages of cigarillos. As captured on the store's surveillance video, when the store clerk tried to stop Brown, Brown used his physical size to stand over him and forcefully shove him away. As a result, an FPD dispatch call went out over the police radio for a "stealing in progress." The dispatch recordings and Wilson's radio transmissions establish that Wilson was aware of the theft and had a description of the suspects as he encountered Brown and Witness 101.

As Wilson drove toward Brown and Witness 101, he told the two men to walk on the sidewalk. According to Wilson's statement to prosecutors and investigators, he suspected that Brown and Witness 101 were involved in the incident at



Ferguson Market based on the descriptions he heard on the radio and the cigarillos in Brown's hands. Wilson then called for backup, stating, "Put me on Canfield with two and send me another car." Wilson backed up his SUV and parked at an angle, blocking most of both lanes of traffic, and stopping Brown and Witness 101 from walking any further. Wilson attempted to open the driver's door of the SUV to exit his vehicle, but as he swung it open, the door came into contact with Brown's body and either rebounded closed or Brown pushed it closed.

Wilson and other witnesses stated that Brown then reached into the SUV through the open driver's window and punched and grabbed Wilson. This is corroborated by bruising on Wilson's jaw and scratches on his neck, the presence of Brown's DNA on Wilson's collar, shirt, and pants, and Wilson's DNA on Brown's palm. While there are other individuals who stated that Wilson reached out of the SUV and grabbed Brown by the neck, prosecutors could not credit their accounts because they were inconsistent with physical and forensic evidence, as detailed throughout this report. Wilson told prosecutors and investigators that he responded to Brown reaching into the SUV and punching him by withdrawing his gun because he could not access less lethal weapons while seated inside the SUV. Brown then grabbed the weapon and struggled with Wilson to gain control of it. Wilson fired, striking Brown in the hand. Autopsy results and bullet trajectory, skin from Brown's palm on the outside of the SUV door as well as Brown's DNA on the inside of the driver's door corroborate Wilson's account that during the struggle, Brown used his right hand

to grab and attempt to control Wilson's gun. According to three autopsies, Brown sustained a close range gunshot wound to the fleshy portion of his right hand at the base of his right thumb. Soot from the muzzle of the gun found embedded in the tissue of this wound coupled with indicia of thermal change from the heat of the muzzle indicate that Brown's hand was within inches of the muzzle of Wilson's gun when it was fired. The location of the recovered bullet in the side panel of the driver's door, just above Wilson's lap, also corroborates Wilson's account of the struggle over the gun and when the gun was fired, as do witness accounts that Wilson fired at least one shot from inside the SUV.

Although no eyewitnesses directly corroborate Wilson's account of Brown's attempt to gain control of the gun, there is no credible evidence to disprove Wilson's account of what occurred inside the SUV. Some witnesses claim that Brown's arms were never inside the SUV. However, as discussed later in this report, those witness accounts could not be relied upon in a prosecution because credible witness accounts and physical and forensic evidence, *i.e.* Brown's DNA inside the SUV and on Wilson's shirt collar and the bullet trajectory and close-range gunshot wound to Brown's hand, establish that Brown's arms and/or torso were inside the SUV.

After the initial shooting inside the SUV, the evidence establishes that Brown ran eastbound on Canfield Drive and Wilson chased after him. The autopsy results confirm that Wilson did not shoot Brown in the back as he was running away because there were no entrance wounds to Brown's back. The autopsy results alone do not indicate the direction

Brown was facing when he received two wounds to his right arm, given the mobility of the arm. However, as detailed later in this report, there are no witness accounts that could be relied upon in a prosecution to prove that Wilson shot at Brown as he was running away. Witnesses who say so cannot be relied upon in a prosecution because they have given accounts that are inconsistent with the physical and forensic evidence or are significantly inconsistent with their own prior statements made throughout the investigation.

Brown ran at least 180 feet away from the SUV, as verified by the location of bloodstains on the roadway, which DNA analysis confirms was Brown's blood. Brown then turned around and came back toward Wilson, falling to his death approximately 21.6 feet west of the blood in the roadway. Those witness accounts stating that Brown never moved back toward Wilson could not be relied upon in a prosecution because their accounts cannot be reconciled with the DNA bloodstain evidence and other credible witness accounts.

As detailed throughout this report, several witnesses stated that Brown appeared to pose a physical threat to Wilson as he moved toward Wilson. According to these witnesses, who are corroborated by blood evidence in the roadway, as Brown continued to move toward Wilson, Wilson fired at Brown in what appeared to be self-defense and stopped firing once Brown fell to the ground. Wilson stated that he feared Brown would again assault him because of Brown's conduct at the SUV and because as Brown moved toward him, Wilson saw Brown reach his right hand under his t-shirt into what appeared to be his

waistband. There is no evidence upon which prosecutors can rely to disprove Wilson's stated subjective belief that he feared for his safety.

Ballistics analysis indicates that Wilson fired a total of 12 shots, two from the SUV and ten on the roadway. Witness accounts and an audio recording indicate that when Wilson and Brown were on the roadway, Wilson fired three gunshot volleys, pausing in between each one. According to the autopsy results, Wilson shot and hit Brown as few as six or as many as eight times, including the gunshot to Brown's hand. Brown fell to the ground dead as a result of a gunshot to the apex of his head. With the exception of the first shot to Brown's hand, all of the shots that struck Brown were fired from a distance of more than two feet. As documented by crime scene photographs, Brown fell to the ground with his left, uninjured hand balled up by his waistband, and his right, injured hand palm up by his side. Witness accounts and cellular phone video prove that Wilson did not touch Brown's body after he fired the final shot and Brown fell to the ground.

Although there are several individuals who have stated that Brown held his hands up in an unambiguous sign of surrender prior to Wilson shooting him dead, their accounts do not support a prosecution of Wilson. As detailed throughout this report, some of those accounts are inaccurate because they are inconsistent with the physical and forensic evidence; some of those accounts are materially inconsistent with that witness's own prior statements with no explanation, credible for otherwise, as to why those accounts changed over time. Certain other

witnesses who originally stated Brown had his hands up in surrender recanted their original accounts, admitting that they did not witness the shooting or parts of it, despite what they initially reported either to federal or local law enforcement or to the media. Prosecutors did not rely on those accounts when making a prosecutive decision.

While credible witnesses gave varying accounts of exactly what Brown was doing with his hands as he moved toward Wilson —*i.e.*, balling them, holding them out, or pulling up his pants up—and varying accounts of how he was moving—*i.e.*, "charging," moving in "slow motion," or "running"—they all establish that Brown was moving toward Wilson when Wilson shot him. Although some witnesses state that Brown held his hands up at shoulder level with his palms facing outward for a brief moment, these same witnesses describe Brown then dropping his hands and "charging" at Wilson.

## **B. Initial Law Enforcement Investigation**

[Table of Contents](#)

Wilson shot Brown at about 12:02 p.m. on August 9, 2014. Within minutes, FPD officers responded to the scene, as they were already en route from Wilson's initial radio call for assistance. Also within minutes, residents began pouring onto the street. At 12:08 p.m., FPD officers requested assistance from nearby SLCPD precincts. By 12:14 p.m., some members of the growing crowd became increasingly hostile in response to chants of "[We] need to kill these



motherfuckers," referring to the police officers on scene. At around the same time, about 12:15 p.m., Witness 147, an FPD sergeant, informed the FPD Chief that there had been a fatal officer-involved shooting. At about 12:23 p.m., after speaking with one of his captains, the FPD Chief contacted the SLCPD Chief and turned over the homicide investigation to the SLCPD. Within twenty minutes of Brown's death, paramedics covered Brown's body with several white sheets.

The SLCPD Division of Criminal Investigation, Bureau of Crimes Against Persons ("CAP") was notified at 12:43 p.m. to report to the crime scene to begin a homicide investigation. When they received notification, SLCPD CAP detectives were investigating an armed, masked hostage situation in the hospice wing at St. Anthony's Medical Center in the south part of St. Louis County, nearly 37 minutes from Canfield Drive. They arrived at Canfield Drive at approximately 1:30 p.m. During that time frame, between about 12:45 p.m. and 1:17 p.m., SLCPD reported gunfire in the area, putting both civilians and officers in danger. As a result, canine officers and additional patrol officers responded to assist with crowd control. SLCPD expanded the perimeter of the crime scene to move the crowd away from Brown's body in an effort to preserve the crime scene for processing.

Upon their arrival, SLCPD detectives from the Bureau of Criminal Identification Crime Scene Unit erected orange privacy screens around Brown's body, and CAP detectives alerted the St. Louis County Medical Examiner ("SCLME") to respond to the scene. To further protect the integrity of the

crime scene, and in accordance with common police practice, SLCPD personnel did not permit family members and concerned neighbors into the crime scene (with one brief exception). Also in accordance with common police practice, crime scene detectives processed the crime scene with Brown's body present. According to SLCPD CAP detectives, they have one opportunity to thoroughly investigate a crime scene before it is forever changed upon the removal of the decedent's body. Processing a homicide scene with the decedent's body present allows detectives, for example, to accurately measure distances, precisely document body position, and note injury and other markings relative to other aspects of the crime scene that photographs may not capture.

In this case, crime scene detectives had to stop processing the scene as a result of two more reports of what sounded like automatic weapons gunfire in the area at 1:55 p.m. and 2:11 p.m., as well as some individuals in the crowd encroaching on the crime scene and chanting, "Kill the Police," as documented by cell phone video. At each of those times, having exhausted their existing resources, SLCPD personnel called emergency codes for additional patrol officers from throughout St. Louis County in increments of twenty-five. Livery drivers sent to transport Brown's body upon completion of processing arrived at 2:20 p.m. Their customary practice is to wait on scene until the body is ready for transport. However, an SLCPD sergeant briefly stopped them from getting out of their vehicle until the gunfire abated and it was safe for them to do so. The SLCME medicolegal investigator arrived at 2:30 p.m. and

began conducting his investigation when it was reasonably safe to do so. Detectives were at the crime scene for approximately five and a half hours, and throughout that time, SLCPD personnel continued to seek additional assistance, calling in the Highway Safety Unit at 2:38 p.m. and the Tactical Operations Unit at 2:44 p.m. Witnesses and detectives described the scene as volatile, causing concern for both their personal safety and the integrity of the crime scene. Crime scene detectives and the SLCME medicolegal investigator completed the processing of Brown's body at approximately 4:00 p.m, at which time Brown's body was transported to the Office of the SLCME.

## **C. Legal Summary**

[Table of Contents](#)

### **1. The Law Governing Uses of Deadly Force by a Law Enforcement Officer**

The federal criminal statute that enforces Constitutional limits on uses of force by law enforcement officers is 18 U.S.C. § 242, which provides in relevant part, as follows:

Whoever, under color of any law,...willfully subjects any person...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States [shall be guilty of a crime].

To prove a violation of Section 242, the government must prove the following elements beyond a reasonable doubt:

(1) that the defendant was acting under color of law, (2) that he deprived a victim of a right protected by the Constitution or laws of the United States, (3) that he acted willfully, and (4) that the deprivation resulted in bodily injury and/or death. There is no dispute that Wilson, who was on duty and working as a patrol officer for the FPD, acted under color of law when he shot Brown, or that the shots resulted in Brown's death. The determination of whether criminal prosecution is appropriate rests on whether there is sufficient evidence to establish that any of the shots fired by Wilson were unreasonable, as defined under federal law, given the facts known to Wilson at the time, and if so, whether Wilson fired the shots with the requisite "willful" criminal intent.

***i. The Shootings Were Not Objectively Unreasonable  
Uses of Force Under 18 U.S.C. § 242***

In this case, the Constitutional right at issue is the Fourth Amendment's prohibition against unreasonable seizures, which encompasses the right of an arrestee to be free from "objectively unreasonable" force. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. "Careful attention" must be paid "to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively

resisting arrest or attempting to evade arrest by flight." *Id.* Allowance must be made for the fact that law enforcement officials are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. *Id.* at 396-97.

The use of deadly force is justified when the officer has "probable cause to believe that the suspect pose[s] a threat of serious physical harm, either to the officer or to others." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985); see *Nelson v. County of Wright*, 162 F.3d 986, 990 (8th Cir. 1998); *O'Bert v. Vargo*, 331 F.3d 29, 36 (2d Cir. 2003) (same as *Garner*); *Deluna v. City of Rockford*, 447 F.3d 1008, 1010 (7th Cir. 2006), citing *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003) (deadly force can be reasonably employed where an officer believes that the suspect's actions place him, or others in the immediate vicinity, in imminent danger of death or serious bodily injury).

As detailed throughout this report, the evidence does not establish that the shots fired by Wilson were objectively unreasonable under federal law. The physical evidence establishes that Wilson shot Brown once in the hand, at close range, while Wilson sat in his police SUV, struggling with Brown for control of Wilson's gun. Wilson then shot Brown several more times from a distance of at least two feet after Brown ran away from Wilson and then turned and faced him. There are no witness accounts that federal prosecutors, and likewise a jury, would credit to support the conclusion that Wilson fired at Brown from behind. With the exception of the two wounds to Brown's right arm, which indicate neither bullet trajectory nor the direction in which