

## SHOOTING RULED ACCIDENTAL COP KILLED MAN WHO RAN FROM DEALERSHIP

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In a decision with wide-ranging political and legal implications, Oakland County Prosecutor David Gorcyca on Friday said the fatal shooting of an unarmed suspect by a Royal Oak police officer was an accident and does not warrant criminal charges.

Within an hour of Gorcyca's announcement, attorney Geoffrey Fieger, the Democratic gubernatorial candidate -- who is representing the family of **Dante Foster** in a federal wrongful-death suit -- said he will ask the U.S. Department of Justice and the Michigan Attorney General's Office to look into the March 27 shooting.

Gorcyca said convincing physical evidence and the eyewitness accounts of at least nine people supported Officer Mark Porter's statement that his 40mm semiautomatic handgun accidentally went off during a struggle with Foster.

He said Foster was inside a car he had rented and was trying to drive away from a downtown car dealership when he was killed.

Police had approached him and an accomplice whom they believed were trying to lease a car with false identification, Gorcyca said.

Foster, 25, of Detroit, was shot once in the chest and died at Beaumont Hospital in Royal Oak.

"It is my judgment that the officer's weapon discharged accidentally while in the lawful performance of his sworn duty," Gorcyca told reporters at a news conference Friday. "Nowhere in the investigation is there evidence suggesting the shooting was intentional in nature.

"This was an accident, and nothing more."

But Fieger and Foster's mother swiftly denounced Gorcyca's conclusion.

"Maybe it's an accident to the people of Oakland County when it's a white officer and a young African-American man," said Fieger, who was meeting with about two dozen black ministers in downtown Detroit Friday afternoon.

"As the governor of this state, I will not allow unarmed young African-American men to be killed, period."

Foster's mother, Rosselena Foster, told the crowd at the Ponchartrain Crown Plaza: "March 27, 1998, was the worst day of my life. Today is the second.

"He was murdered unjustly. An accident? Why did he have to shoot him in the first place?"

Gorcyca responded to Fieger's claims that the shooting was unjust by saying the Southfield lawyer has not reviewed any of the State Police report and is using Foster's death as a rallying cry in his campaign for the black vote.

The prosecutor also said he would welcome an independent review of his decision.

"I would hate to see Mr. Fieger use the tragic loss of life for political gain and financial profit," Gorcyca said.

"I encourage anyone at the Department of Justice or the attorney general -- whether it be Geoff's hand-picked attorney general -- to look at the facts of the case."

Porter, who has been on paid administrative leave since March, was informed of the decision by a reporter at his Royal Oak home Friday.

Comparing the five-month wait to "sitting under a giant thundercloud," Porter, 48, said: "It's a very big relief.

Although he would not comment directly about the incident, citing the pending federal lawsuit against himself and the city, Porter stood by what he told investigators hours after the shooting.

"I'm sorry it turned out the way it did," Porter said. "I never intended to shoot him. I was trying to arrest him."

Police said Foster was wanted on five outstanding felony warrants that could have landed him in prison for 10 years.

He had gone to Diamond Lincoln-Mercury on Main Street near 11 Mile with 52-year-old Elton Granger to lease a sport-utility vehicle with false identification. Royal Oak police, acting on a tip from Detroit police investigating a similar scam, moved in.

Granger surrendered to Porter without incident outside the dealership, but Foster bolted. He led officers on a brief foot chase in and around several stores before jumping into his rented car.

After handcuffing Granger, Porter several times ordered Foster out of the car, Gorcyca said, before reaching in with his left hand to try to remove the ignition keys. Foster fended him off, and appeared to be reaching for something on the center console.

Porter unholstered his weapon with his right hand, and had it inside the driver's-side window as he scuffled with Foster.

"During the course of the struggle, the car lurched, striking Officer Porter in the left arm and left leg, and spun him around," Gorcyca said. "It was during the course of the struggle that the gun discharged, striking Foster one time in the chest area."

Two witnesses said at the time that the shot appeared to come from outside the vehicle by a plainclothes officer.

But at least one witness recanted those statements, which were later contradicted by statements that day from Granger -- who was standing a few feet away -- and forensic testing, Gorcyca said.

Earlier, Oakland County medical examiners said a cursory examination of Foster's body and clothing did not reveal traces of gunpowder, and therefore the shot likely came from outside the vehicle.

Gorcyca said later microscopic chemical tests performed on Foster's body, clothing and car revealed what could not be seen by the naked eye -- traces of gunpowder and blood spattering consistent with a gunshot from less than three feet.

From the beginning, it was clear the Foster shooting would be a political minefield through which the Republican Gorcyca would have to wade.

The specter of charging a police officer who shot a suspected fleeing felon could have damaged his standing among police, who make the prosecutors' cases. It was even riskier against the backdrop of a maverick gubernatorial candidate raising racial issues on both sides of Eight Mile.

Before rendering a decision, Gorcyca and his senior aides combed through the 581-page State Police report for more than two months, analyzing forensic evidence and scrutinizing several statements from 66 eyewitnesses.

He said the conclusion was based on evidence and facts, not politics.

"I cannot base my charging decision on emotion, race, special interest groups, or a gubernatorial candidate," Gorcyca said. "I can't let my emotions get in the way, or my personal beliefs get in the way. I have to look at the facts as they were presented."

After Fieger addressed reporters, he led Foster and her family into a room where she met with several of the ministers that Fieger was courting.

"I think it's tragic," said the Rev. Tony Henderson, pastor of St. John's CME Church in Detroit. "I don't think we need to polarize this as a racial issue. I think the community needs to be calm and yet vigilant."

"Every legal resource that is available needs to be tapped extensively and fairly to make sure that justice is done."

The Rev. Wendell Anthony, president of the Detroit NAACP, which has led the charge on this issue, confined his remarks to a terse statement.

"It's unfortunate that lives have been lost," he said. "It begs for questions and cries out for a resolution. I would hope that the agencies charged with looking into deaths of people killed by the police department would in fact make certain that people are being protected and not being disrespected."

Oakland County political observers, though, predicted Gorcyca will receive wide support in Oakland County for his decision.

"Sure, there may be some political fallout, but heaven help us if the prosecutor starts making decisions based on public opinion," said James Alexander, an attorney and past chairman of the Oakland County Republican party.

"It shouldn't be a race issue. It should be an issue based on sufficient information, and in this case, it sounds as though they made the right decision."

But Cyril Hall, a prominent black attorney in Oakland County, called Gorcyca's decision "outrageous," speculating that if the shooting had been reversed, with Foster accidentally shooting Porter, the outcome would have been different.

"He'd be facing charges," Hall said.

Porter's future with the Royal Oak Police Department, where he has worked for the past 16 years of his 23-year law enforcement career, remained unclear Friday. His attorney, Ronald Wernette, said Porter will remain on administrative leave while Royal Oak finishes its own investigation of the shooting.

"No decision has been made on his status or when he'll return to work," Assistant Police Chief Bill Briggs said after the officer was cleared. "There's a process we follow, and there's no timetable for that."

Staff writers Peggy Walsh-Sarnecki and Lekan Oguntoyinbo contributed to this report.

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## CHRONOLOGY

March 27 -- Police say **Dante Foster**, 25, and an associate tried to buy a car at Diamond Lincoln-Mercury with false identification. Foster is shot by Royal Oak Police Officer Mark Porter as he flees in a car. He dies at Beaumont Hospital in Royal Oak.

Porter, 48, is placed on paid administrative leave.

March 28 -- Oakland County Prosecutor David Gorcyca says preliminary reports indicate Porter's gun accidentally went off as he struggled with Foster in the car. That conflicts with some witnesses who said the shooting occurred outside the vehicle.

March 29 -- Elton Granger, 52, Foster's associate, is charged with attempted false pretenses (larceny) over \$100. Several local chapters of the NAACP launch an investigation into the shooting because Foster is black and Porter is white.

April 1 -- Dr. L.J. Dragovic, the Oakland County medical examiner, says he found no gunpowder residue on Foster's blood-soaked shirt, which indicated the shot was fired from at least 2 feet away.

April 7 -- Geoffrey Fieger files a \$100-million civil rights lawsuit in federal court on behalf of Foster's family against Porter and the City of Royal Oak. He said the shooting was tantamount to murder.

April 30 -- Granger, who spent 34 days in jail, pleads guilty and is sentenced to one year of probation by Oakland County Circuit Judge Alice Gilbert.

June 4 -- After a 10-week investigation, State Police present their case to Gorcyca's office. The 581-page report shows the shooting was accidental.

Aug. 21 -- Oakland County Prosecutor David Gorcyca announces no charges will be filed against Porter.

Caption: **Dante Foster**

Rosselena Foster and her attorney, Geoffrey Fieger, meet with members of the Ecumenical Ministers Alliance on Friday in Detroit. Oakland County Prosecutor Dave Gorcyca ruled her son's shooting an accident.

(RAN IN STATE EDITION) Oakland County Prosecutor Dave Goryca fields questions Friday in Pontiac. He said **Dante Foster** was shot by mistake in March.

Memo: SIDEBAR ATTACHED; ONE OUTLINE RAN IN STATE EDITION, PAGE 4A

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Page: 1A

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