



NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE
May 22, 2012

Lee Richards
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Officer-involved Shooting Ruled Justified

The Fourth Judicial District Attorney's Office has completed an investigation into the officer-involved shooting that resulted in the death of Dominic Oliver on February 28, 2012. Following careful review of the facts and evidence surrounding the incident, it has been determined that the officer's use of deadly force against the suspect was reasonable and justified.

On February 28, 2012, at 11:40 a.m. the Colorado Springs Police Department received a 911 call for service to Urological Associates, a medical office located at 75 Printers Parkway, Suite #200. Initially officers were dispatched for a possible disturbance with an unknown male, however in a matter of minutes dispatch indicated that a man with a gun was inside the business. Shortly after that, further information was relayed to officers that the man was possibly taking hostages. Dominic Oliver was ultimately identified as the gunman. He had taken two female employees hostage. Dozens of other individuals fled or were evacuated by police from the building. Mr. Oliver ultimately released both hostages to police.

Officers were aware that additional individuals remained trapped and hiding inside the building. Oliver did not appear to have any knowledge of these people, though several were hiding under desks in his immediate area. Police had an open phone line with one of the individuals throughout the situation. After approximately two and a half hours, the officers received information that one of the individuals was in distress. All attempts to persuade Dominic Oliver to lay down his weapon and surrender had failed.

Officers hoped to reach the distressed individual and remove her from the area without alerting Mr. Oliver. However, they had to cross his line of sight in order to do so. They waited until Oliver was distracted by other officers and facing away from the hidden individuals before moving. Unfortunately, Oliver did become aware of officers. He turned and saw Officer Christopher Mace. He then turned back around, grabbed his gun and began turning again towards Officer Mace. Dominic Oliver was raising his gun into a firing position towards Mace and in the direction of other officers and civilians when Officer Mace fired a short burst of two rounds from his weapon. Both rounds struck Oliver.

Four individuals were safely removed from Oliver's immediate area. Oliver was treated on scene and then transported by ambulance to Penrose Hospital where he died as a result of gunshot wounds.

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force. Additionally, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend themselves or a third party with deadly force if they reasonably believe they are in imminent danger of being killed or of receiving great bodily injury and reasonably believe a lesser degree of force is inadequate.

The District Attorney's Office reviews all incidents involving a discharged weapon by an officer. The facts and evidence from this particular investigation show that Officer Christopher Mace acted reasonably and was justified in defending himself and others from the imminent use of deadly physical force by Dominic Oliver. Because the officer's actions were justified under Colorado law, no criminal charges will be pursued.

For further information, please contact Lee Richards at 520-6084.

MEMORANDUM
4TH JUDICIAL DISTRICT ATTORNEY'S OFFICE

TO: D.A. Dan May
Chief DDA Jeff Lindsey

FROM: Senior DDA Laurel E. Huston

CC: Chief Investigator Larry Martin
Investigator Chad Haynes

DATE: May 21, 2012

RE: Officer Involved Shooting – Officer Christopher Mace
(February 28, 2012 @ 75 Printers Parkway / CSPD case number 12-07747)

FACTUAL SUMMARY

On February 28, 2012, at 11:40 a.m. the Colorado Springs Police Department received a 911 call for service to Urological Associates, a medical office located at 75 Printers Parkway, Suite #200.¹ Urological Associates is located on the second floor of a large octagonal shaped two story medical building housing several other businesses and offices. Initially officers were dispatched for a possible disturbance with an unknown male, however in a matter of minutes dispatch indicated that a man with a gun was inside the business. Shortly after that, further information was relayed to officers that the man was possibly taking hostages.

The first uniformed patrol officers arrived on scene at 11:44 a.m. At that time, employees from inside the building were describing a black male, approximately 23 years old, with a tattoo on his neck. The male had a gun and was yelling, cursing, saying he was “fucking crazy” and holding two employees as hostages. The officers immediately began to locate and contain the gunman in the northwest corner of the second floor. As officers approached the male’s location they heard him yelling, “Don’t come in here, I have hostages!” The man also told officers to put their guns away and to “get back” and “get away.” He was telling people to “get down” and said, “I’m not playing.” He also identified himself to officers as “Dominic” and said, “Listen to me; I’m going to let them go. I’m going to write a letter to my mom....I’m going to give myself up. Hold on. I have two people in the room. I don’t want to hurt anybody.”² Police were able to determine that the gunman had taken Britney Bothwell and Cindy Carlton as hostages. Both women were employees at Urological Associates. Early reports indicated that the gunman had some sort of disagreement with Bothwell that seemed to have been the catalyst for the situation.

¹ The call screens associated with this incident: 12081049, 12081056, 12081055, 12081057, 12081061, 12081083, 12081084, 12081211, 12081819, 12082065.

² These exchanges were captured on the call screens and related in various officer reports and witness statements.

Due to the escalating and serious nature of this call, a large number of officers ultimately responded to the scene, to include members of SWAT, Tactical Enforcement Unit (TEU)³, Bomb Squad and Hostage Negotiation personnel⁴, and Sand Creek Patrol. As additional officers arrived they encountered a large number of people in the immediate area of the business. Dozens of individuals were exiting the building and many people were in the parking lots and the surrounding areas. Those officers not in the immediate area of the gunman concentrated on evacuating civilians from the building and moving everyone outside to a safer distance.

Within ten to fifteen minutes of the original dispatch, TEU officers had been paged and were arriving on scene. They entered the building and relieved all of the patrol officers except Officer Dale Lucky who had been and continued to serve as the person communicating directly with Mr. Oliver. Officers were deployed throughout the building and especially in the areas immediately adjacent to Dominic Oliver's location on the second floor of the building. Tactical officers continued to find and remove civilians throughout the building. Officers closest to Mr. Oliver were receiving regular updates from the command post. They were able to observe that Mr. Oliver had a gun in his right hand and that at times he placed it to his head. This information was relayed to everyone through the radio and posted on the call screen.

At 11:45 a.m., 911 received a call from a party inside the building.⁵ The caller identified herself as "Beth". She was hiding near the gunman and could not speak freely for fear she would draw attention to herself. She was able to give some limited information from time to time. The operator could also hear a male yelling in the background at times. Beth explained that she was with two other females hiding in the phone room directly behind the reception desk.⁶ All three of the women were hiding under desks. She indicated that all of them were fine but that one of them did have a heart condition. Beth did not think that the gunman was aware of them, though they were only about ten feet away from his location.⁷

At 12:04 p.m., 911 received another call from someone stuck inside the building. Eventually operators were able to determine that this person was "Christine," one of the ladies trapped in the same area with Beth. Operators were able to maintain an open phone line with "Christine" until 12:16 p.m.

Throughout the contact with Mr. Oliver, Officer Lucky urged him to release the hostages, set down his gun and come out. At various times Oliver indicated he would release his hostages. At

³ TEU officers received a page for a level one hostage situation.

⁴ Crisis Negotiator Team One was actually on call for this incident, but coordinators and team members from teams two and three were also present and assisting.

⁵ Call 12081061.

⁶ At the time the women with Beth were identified by 911 operators as Christine and Penny. However, their correct names are Tristine Meenan and Minnie Smith. They were not properly identified until after the incident was over.

⁷ Beth was later identified as Beth Ann Collins. Beth remained on the phone with 911 and/or other police personnel almost continuously from 11:45 a.m. until after 2:30 p.m.

approximately 12:15 p.m. Oliver allowed Britney Bothwell and Cindy Carlton to leave his control. Officers reported that Ms. Bothwell suddenly appeared near them and she was taken out of the building immediately. Very shortly afterwards, Ms. Carlton moved into the area of the officers and was also safely escorted away.

Once Bothwell and Carlton had been safely removed from Oliver's control, officers reinforced their efforts to identify and locate other civilians trapped in the building. Through 911 calls, interviews with civilians, and the officers' own observations, it was clear that additional individuals were missing and some were hiding in Oliver's immediate area. It appeared that Oliver had no knowledge of these individuals. Officers were concerned about the safety of the persons they knew were hiding just a few feet away from Oliver. They were worried he might take additional hostages and they were also concerned that if he fired his gun he could inadvertently injure someone else.

At approximately 12:30 p.m., Dominic Oliver's father, Grady Oliver arrived on scene, was identified and escorted to the Command Post. Detective Shawn Peterson interviewed him. Grady Oliver was able to provide Dominic Oliver's cell phone number. He also told Detective Peterson that his son called him earlier to tell him he had taken hostages downtown. Grady Oliver had actually spoken to one of the hostages on the phone and had also asked his son to give the gun to the hostage and turn himself into the police. Mr. Oliver didn't know why or how the situation had developed. He said his son had been unemployed for years and had recently also lost a temporary job. He thought his son had "fathered a child with some female" but he wasn't sure. Mr. Oliver also told Detective Peterson that his son had talked to a number of other friends and family members since this incident began. Mr. Oliver wanted to talk in person with his son, but was told that it was not safe to do so at that time.

During this time period Officer Jason Ragland spoke to Dominic Oliver's mother, Sandy Oliver, by phone. Mrs. Oliver told him that Dominic was bipolar and off his medications. She indicated he used methadone and possibly suffered from a traumatic brain injury.

Officers inside the building reported that Mr. Oliver's behavior was somewhat erratic over the course of events. At times he would be extremely loud, angry and threatening. At other times he would be relatively calm. Officer Lucky had a difficult time maintaining a conversation with him because Mr. Oliver was sending and receiving multiple phone calls and texts. He was also monitoring the internet for news related to this event. Some calls seem to calm him, but others agitated him. A decision was made to shut off Dominic Oliver's phone. Detective Peterson worked with Cricket and was ultimately able to accomplish this task.

At some point, Dominic Oliver told Officer Lucky that he wanted to speak to his therapist who was identified as Ken Pace. Mr. Pace is an addiction counselor with Colorado Treatment Services. Officers were able to locate Mr. Pace and bring him on scene to the command post. Pace told officers that Oliver was on methadone and he had seen him earlier in the day and Oliver had seemed fine.

Oliver was told that Mr. Pace would be calling him on the reception phone. Multiple call attempts were made to that phone but Oliver was unable to understand the phone system and

pick up the incoming calls. Oliver was then given a cell number to call Mr. Pace. Pace's phone rang and he answered it but no connection was established. Police then decided to use a "throw phone." They lobbed a cell phone onto the balcony near Oliver's location. The door opening onto the balcony from the inside was locked and key had to be located and sent in to Oliver by use of one of the bomb squad robots.

As officers were trying to establish phone contact between Dominic Oliver and Ken Pace, Officer Allison Detweiler was simultaneously speaking to Beth, the woman who had called 911 from inside the building.⁸ Beth told Officer Detweiler she was about to become sick and was afraid the noise would alert the gunman to their location. She said she was wearing out. She said her legs were numb and she had to use the restroom. Beth begged to have the SWAT team intervene.

Inside the building, Tactical Officers Carlos Sandoval and Christopher Mace had been slowly moving (over more than a two hour period) closer to where they believed additional civilians were hiding. They were directed by Sergeant Sheppard who was in contact and coordinated with the command center. As they moved into the reception area they were both heard and seen by Oliver. They ducked behind a partition that gave them a partial view of the waiting room, reception and multiple hallways.

As they moved into the waiting room closest to Oliver, they observed an older woman hiding near a toy box just out of his view. They motioned for her to stay hidden. Sergeant Sheppard asked Officer Mace if he was in contact with the individual they had identified over the phone as "Beth." Mace asked the woman her name by mouthing the question and she responded back in the same way, "Elizabeth." Mace then reported back to Sheppard that they were in visual contact with "Elizabeth." Mace received information that there was some issue, perhaps medical, regarding Elizabeth's welfare and that she needed to be removed from the area.⁹ In order to get to Elizabeth, Officers Sandoval and Mace would have move and return across a hallway or line of sight in front of Mr. Oliver.

A plan was developed to have tactical officers move the woman in the lobby (who they believed to be Beth) at the same time Oliver was opening the door and going outside on the balcony to obtain the cell phone. The hope was that Oliver would be too distracted to notice the extraction.

After Oliver received the key from the robot, he began attempts to open the door leading to the balcony. Oliver's back was turned away from Sandoval, Mace and the reception area. Sandoval and Mace were then instructed to move forward and extract the woman in the waiting area. The two officers moved together. Sandoval headed directly to the woman while Mace covered him. Before Mace could get across the open space and out of view, Oliver turned his head and saw him. He then turned back around towards the desk and door, picked up his gun from the desk

⁸ Officer Allison Detweiler was on scene as a negotiator. Dispatch had patched Beth's call over to Detweiler's phone earlier in the day and they had maintained communication by phone.

⁹ At the time, officers assumed that Elizabeth was the same person that Detweiler had on the phone. In fact, she was not. Beth was actually several feet closer to Oliver in a separately enclosed area. Elizabeth was unaware of Beth, Tristine and Minnie and they were also unaware of her.

and turned back towards Mace. As he turned back towards him, Mace saw Oliver raising the gun to a shooting position directed down the hallway at him.¹⁰ Once Mace saw the gun being raised and pointed towards him, he fired his own weapon at Oliver.

Mace explained that he felt certain that Oliver was about to shoot him or shoot in his direction which would place others in danger. He was aware that multiple people were hiding in the area of the hallway, between himself and Oliver. Mace also realized that Oliver knew police were there because he had seen and spoken to them earlier. Mace was in uniform. When Oliver turned and grabbed his gun upon seeing officers in the hallway, Mace felt his clear intention was to shoot him.

Officer Mace was carrying a fully automatic MP-7. When he squeezed the trigger a short burst fired rounds towards the suspect. He wasn't sure how many rounds were fired, but estimated two or three based on the usual functioning of the weapon.¹¹ Two shell casings were found in the immediate area of the reception counter.¹² A later inventory of Mace's weapon indicated only two rounds were fired.¹³

Both rounds fired by Officer Mace struck Dominic Oliver. He fell backward onto a chair and then fell off of the chair onto the ground. Mace immediately and repeatedly yelled, "suspect down." Other officers advanced into the area, removed the four individuals that had been hiding nearby and called the medical team in to care for Mr. Oliver. The Tactical Emergency Medical Services team treated Mr. Oliver for approximately ten minutes and then placed him in an ambulance.

Dominic Oliver was taken to Penrose Hospital and treated initially in the Emergency Room and then in the Intensive Care Unit. Dr. Butler pronounced Dominic Oliver dead at 3:39 p.m. Mr. Oliver was twenty-eight years old at the time of his death. His father, Grady Oliver was notified in person at Memorial Hospital by the treating physicians. Detective Shawn Peterson notified his mother, Sandy Oliver by phone.

The Coroner's report confirms that two rounds struck Oliver. One shot hit Oliver on the right side of his head (front to back). A second shot went through Oliver's right hand before continuing through his neck (right to left and slightly upward). The Coroner's report does not indicate the order of the shots. The Coroner found the wounds to be consistent with the reports of officers on scene with regard to the distance between Mace and Oliver and the movements of each just prior to the discharge of Mace's weapon. The official finding by the Coroner was that

¹⁰ Mace reported that Oliver was not sitting down at the time of the shooting, but he was initially in a crouched or squatting position just above a chair, as if he were rising from the chair as he raised his gun towards Officer Mace.

¹¹ Every officer and civilian on scene reported hearing a single shot.

¹² Extensive searches were conducted inside and outside of the building and in the surrounding area. No additional casings, projectiles or impact marks were found.

¹³ A weapons and ammunition inventory was completed of every officer that was in the immediate area at the time Oliver was shot. No other officers fired rounds and all ammunition was accounted for.

the cause of death was the gunshot wounds to the head and neck. The manner of death was homicide, as it was a death caused by another person.

Because Dominic Oliver was shot and died as a result of an officer involved shooting, the 4th Judicial District Attorney's Critical Incident Team was called immediately to scene for investigative purposes. I, Senior Deputy District Attorney Laurel Huston, was called to the scene and assigned to review the case in full to determine whether criminal charges should be filed against Officer Christopher Mace. I completed a review of the scene on the night of February 28, 2012. I also monitored a number of interviews, to include that of Officer Mace, immediately after the shooting. Additionally, I attended the autopsy of Dominic Oliver on February 29, 2012. I have since reviewed all of the associated reports in this matter.

APPLICABLE LAW

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force. Additionally, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend themselves or a third party with deadly force if they reasonably believe they are in imminent danger of being killed or of receiving great bodily injury and reasonably believe a lesser degree of force is inadequate. Under either standard, Colorado law allows an individual to act based on their subjective reasonable belief.

The determinative question in this case is whether, at the instant that Officer Mace fired shots at Dominic Oliver, Officer Mace reasonably believed that he or another person was in imminent danger of great bodily injury or death by Dominic Oliver. Criminal culpability is not tied to whether, in fact, Dominic Oliver was threatening Christopher Mace with deadly force. Colorado law allows a person in Mace's position to act on appearances. Therefore, the issue is simply whether Officer Mace believed that deadly force was necessary at the time he fired his weapon and further, whether that belief was reasonable.

CONCLUSION

On behalf of the 4th Judicial District Attorney's Office, I conclude that no criminal charges shall be filed as a result of this incident. The facts and evidence from this investigation clearly show that Officer Christopher Mace was acting reasonably at the time he employed deadly force against Dominic Oliver. All evidence supports the conclusion that he reasonably believed the use of deadly force was necessary to protect himself and others.

NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE
May 22, 2012

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April 7, 2012 Use of Deadly Force Incident

The 4th Judicial District Attorney's Office has completed an investigation into the vehicle pursuit incident on April 7, 2012, that resulted in the use of deadly force by officers from the Colorado Springs Police Department.

At approximately 9:13 a.m., CSPD Officer J. Harris attempted to contact a vehicle that been reported to police as suspicious in the area of a Radio Shack store located at 1887 S. Academy Boulevard. The investigation later revealed that the suspects were planning on committing an aggravated robbery of the Radio Shack. Upon attempting to initiate a traffic stop, the vehicle fled the scene at a high rate of speed. During the pursuit a passenger in the vehicle fired numerous rounds from an AK-47 assault rifle at two CSPD vehicles driven by Officers Harris and E. Price. Both CSPD vehicles that were fired upon had activated their emergency lights and sirens. Officer Price's vehicle was struck by the gunfire. Additionally, an occupied civilian vehicle traveling on the same roadway was struck by a bullet fired from the fleeing vehicle.

After the initial gunfire from the fleeing vehicle several CSPD units engaged in a circuitous pursuit of the vehicle that took place over several miles along the Powers Blvd. corridor of Colorado Springs. The pursuit at times had the fleeing vehicle traveling at approximately 100 mph. The shots fired at pursuing officers included numerous separate episodes of shooting. The pursuit eventually went through heavily populated business parking lots. During the chase, CSPD Officers R. Isaac and B. Worstell, fearing for the lives of the public, themselves, and fellow officers, exited their stationary vehicles and discharged their duty weapons in an effort to disable the suspect vehicle. The vehicle was struck but was not disabled and none of the three occupants were hit.

The suspect vehicle continued to elude the pursuing officers and headed west on Constitution Ave. at a high rate of speed. After determining there was not additional vehicular traffic in the immediate area, Officer Price performed a tactical vehicle intervention that caused the suspect vehicle to roll. The driver of the suspect vehicle received a broken arm as a result of the crash. No other significant injuries were reported. The occupants of the vehicle were all apprehended and later identified as Michael Peyton, Parice Daily, and Travis Broadway.

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he or she reasonably believes that is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force, or to effect an arrest of a person he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or otherwise indicated that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay. In addition, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend themselves with deadly force if they reasonably believe they are in imminent danger of being killed or receiving great bodily injury and reasonably believe a lesser degree of force is inadequate.

The facts of this case support that the officers involved in the pursuit reasonably believed that they, along with other law enforcement officers and the community at large, were in imminent danger of being killed or receiving great bodily injury and were reasonable in their belief that a lesser degree of force would have been adequate. Additionally, the officers were reasonable in their belief that the persons in the fleeing vehicle had attempted to commit a felony involving the use of a deadly weapon and were attempting to affect an arrest of those persons. Finally, the conduct of the occupants of the fleeing vehicle clearly indicated that they were likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay. Under any and all of the above standards permitting the use of deadly force, the officers were justified in using deadly force by firing upon the suspect vehicle and in utilizing a maneuver to disable the suspect vehicle.



NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE

October 12, 2012
4th Judicial District

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Officer-involved Shooting Ruled Justified

The Fourth Judicial District Attorney's Office has completed an investigation into the officer-involved shooting that occurred in Fountain, CO on August 12, 2012. Following careful review of the facts and evidence surrounding the incident, it has been determined that the officer's use of deadly force against the suspect was reasonable and justified.

On August 12, 2012, at 12:42 a.m., an emergency call was made to the Fountain Police Department indicating a gun had been fired inside a home located at 882 Daffodil Street.

Officers with the Fountain Police Department immediately responded. They learned that Stephen Payne had been drinking heavily that day, had a gun and was holding his wife and their two young sons (ages 4 and 6) hostage in their home. Payne had fired 1 shot but no one was injured. His teenage daughter fled the home and was communicating by text with her mother. One read, "He won't let me leave with the boys." Police set up surveillance. They could hear yelling and crying in the home and saw Stephen Payne holding a handgun. Just as officers were moving into containment positions, the victims (mother and 2 boys) left the house. She was yelling at the boys to run up the street. Mr. Payne came out of the home and began to follow them. Two officers approached him from behind and yelled "Police, Police, get on the ground." Mr. Payne turned towards them and began drawing his gun (9 mm Glock) on the officers, at which time Sgt. Tim Johnson fired twice, wounding Mr. Payne. Payne then aimed his gun at the officers and Sgt. Johnson fired two more times, further wounding Mr. Payne causing him to drop his gun and fall.

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he or she reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be imminent use of deadly physical force, or to effect an arrest of a person he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or otherwise indicated that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay. In addition, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend themselves with deadly force if they reasonably believe they are in imminent danger of being killed or receiving great bodily injury and reasonably believe a lesser degree of force is inadequate.

The District Attorney's Office reviews all incidents involving a discharged weapon by an officer. The facts and evidence from this particular investigation demonstrate that Sgt. Tim Johnson acted reasonably and was justified in defending himself and others from the imminent use of deadly physical force by Stephen Payne. Because the officer's actions were justified under Colorado law, no criminal charges will be pursued.

For further information, please contact Lee Richards at 520-6084.



NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE
March 12, 2013

Lee Richards
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Officer-Involved Shootings

The 4th Judicial District Attorney's Office has completed separate and distinct investigations into the officer-involved shootings that occurred on December 4, 2012 and December 21, 2012 involving Robert Kresky and Nicholas Titus. Following careful independent review of the facts and evidence surrounding each of the two incidents, it has been determined that the officers' use of force against the suspects was reasonable, appropriate and justified.

Prior to the first shooting on December 4, 2012, a Colorado Springs Police Department Task Force had identified a "Kresky Criminal Organization." At that time, it was known that the group was committing crimes across the Colorado Springs Police Department divisions. Specifically, it was learned that officers from every division had chased stolen vehicles driven by Robert Kresky or a member of the organization. The "Kresky Criminal Organization" took very specific evasive actions whenever they were involved in pursuits. The group was also involved in burglaries, narcotics, and had significant ties to Mexican nationals involved in large scale drug distribution. On the night of the shooting, at briefings and in line-ups, officers were informed of Robert Kresky's criminal behaviors. Information about that criminal activity will be elaborated on later in this report.

On December 4, 2012, at approximately 0108 hours, the Colorado Springs Police Department Emergency Communications Center received several calls for service regarding shots fired in the 3200 block of Tail Spin Drive. Officers responded to Tail Spin Drive, and a black truck (later determined to be driven by Nicholas Byron Titus, DOB 09/12/91) and a Jeep Liberty (later determined to be driven by Robert Jeremiah Kresky, DOB 08/15/89) thought to be connected to the shots fired were seen leaving the area. Officers immediately initiated a pursuit of the Jeep Liberty and black truck. The black truck was able to elude officers, but a pursuit of the Jeep Liberty ensued. During the pursuit officers fully activated their marked police vehicles' emergency lights and sirens. During the pursuit, the Jeep Liberty was operated without lights and almost hit another officer by driving in the opposite lane directly at him. As the pursuit ensued, the Jeep Liberty's Colorado license plate 723OHS was checked and came back as belonging to a stolen vehicle. The Jeep eluded pursuing officers for several minutes and at times traveled at an estimated 50 miles per hour in residential neighborhoods. The Jeep ran through stop lights and stop signs. The pursuit covered a distance of 9.1 miles through business and residential areas of Colorado Springs. Some of the officers involved in the pursuit recognized these tactics as to what they had been briefed on earlier that evening. After determining there was risk to the public and getting

permission from Lieutenant Anderson, officers were able to complete a successful pit maneuver where the Jeep was struck and spun in order to disable it. This occurred on East Bijou Street.

The sole occupant of the vehicle, Robert Kresky, immediately exited the passenger side of the vehicle and began to run in a southwest direction toward Iowa Avenue. Several officers began a foot pursuit. While running, Mr. Kresky had his right hand in his waist band and kept looking back at the officers in a defensive position. Officers yelled at Mr. Kresky, "Police, stop, let me see your hands!" Mr. Kresky responded by saying "Fuck you, I'll shoot you!" Mr. Kresky continued to keep his right hand in his waist band.

After chasing Mr. Kresky for several blocks, officers were able to confront him in an unlit parking lot located between 118 and 122 North Swope Avenue. Police were still yelling commands to Mr. Kresky, and Mr. Kresky was still yelling "Fuck you, I'll shoot you!" Mr. Kresky kept looking over his shoulder at the officers who were shouting commands. At this point Officer Wheeler drew his weapon because Mr. Kresky was looking at officers as if he were picking out which officer he would shoot. Mr. Kresky was still not obeying verbal commands and had his back to officers. Officer Van't Land also had his gun drawn and was certain that Mr. Kresky had a weapon and was going to shoot officers. Officer Van't Land believed there was going to be a shootout. Mr. Kresky was telling officers that he had a gun and was going to shoot them. At that point Officer Van't Land started shooting, and Officer Wheeler fired seconds after him. Mr. Kresky fell down by a vehicle, and officers could only see him from the waist down. Mr. Kresky's hands were still in his waistband, and Officer Wheeler said it looked like Mr. Kresky was reaching for something. Officer Van't Land was yelling "Get your hands up, get your hands up!" Officer Van't Land saw that Mr. Kresky was half on his back and half on his side and instead of complying with police commands Mr. Kresky was messing with something around his waist band while his hands were still not visible. Mr. Kresky was still yelling that he would shoot police. Both Officers Wheeler and Van't Land were approximately 15-25 feet from Mr. Kresky when they shot a second time. Officer Wheeler specifically shot at Mr. Kresky's feet and Officer Van't Land shot at his legs. After the second round of shots Mr. Kresky became compliant and immediately put his hands up. Mr. Kresky was placed in custody and transported to Memorial Hospital Central due to several gunshot wounds. Robert Kresky was pronounced dead four days later. An autopsy that was later completed would show that Mr. Kresky had been shot 14 times, with 11 of the entrance wounds in his lower extremities.

After the foot pursuit, officers observed a semi-automatic .40 caliber black handgun on the ground next to the front passenger side door of the Jeep Liberty. This was the same door that Mr. Kresky used when exiting the vehicle. The gun was later determined to be stolen during a burglary on December 1, 2012.

On December 21, 2012, CSPD Officers from various divisions and teams met to discuss an attempted contact and arrest of one of Kresky's associates, Nicholas Titus. Titus had four outstanding felony warrants. Officers were briefed that Titus may be located at 616 W. Kiowa Street #1, Colorado Springs, Colorado. Officers developed a plan to apprehend Mr. Titus on the warrant. Further briefing indicated that witnesses had seen Titus with a scoped rifle and a .45 caliber handgun. Mr. Titus was a known associate of Mr. Kresky, heavily involved with methamphetamines and was further reported to have made threats to retaliate against the officers involved in the Mr. Kresky's shooting. A witness

further reported that Mr. Titus had also stated he would not stop for the police and would shoot it out with the police if they attempted to stop him.

Around 10 am on December 21, Officers set up surveillance near the West Kiowa address. While maintaining a safe level of surveillance, officers observed a red truck driving through a back alley in close proximity to the Kiowa address. An officer with personal knowledge of Mr. Titus confirmed he was the sole occupant and driver as the truck was leaving the West Kiowa address. The truck was a red Chevrolet 2004 truck with a license plate of Colorado 363XDC. Officers determined the truck Titus was driving had been reported stolen in an earlier automobile theft case.

Titus left the Kiowa Street address eventually travelling south on Interstate 25 (I-25). He continued south on I-25 to exit 135, the South Academy Boulevard exit. He then turned left travelling north on Academy to Colorado Highway 85/87 where he exited and began travelling south. Mr. Titus drove south on 85/87, taking a left turn onto Fontaine Boulevard and then made a quick right turn onto Widefield Boulevard. Mr. Titus pulled into a parking lot north of the 7-11 store located at 5 Widefield Boulevard. He then drove west and south around the back side of the business towards the 7-11 store.

Officers decided to arrest him in the parking lot. The parking lot was towards the rear of the businesses and isolated from civilians and traffic. As Titus backed his truck into a diagonal parking stall, two police vehicles attempted to box in his car in an attempt to effectuate an arrest and investigate the stolen vehicle. Upon Mr. Titus not submitting to police authority and surrendering, officers deployed a "flash bang" device in an attempt to divert Mr. Titus and take him into custody. Mr. Titus ignored police contact and the flash bang device, driving directly at a CSPD vehicle ramming it head on. Officers were inside this vehicle. According to the officers in the vehicle, Mr. Titus was reported as having a "stressed look" on his face prior to crashing into the CSPD vehicle. After ramming the police vehicle, Mr. Titus put the truck in reverse and maneuvered around the damaged vehicle.

Shortly after being rammed, Officers Wingert, Van Ooyen and Tomczyk exited the vehicle. Officer Wingert approached the truck yelling "police" and "stop" several times. Officer Wingert saw Titus reaching down in the truck seat for a handgun. Mr. Titus drove directly towards Officer Wingert, seemingly trying to 'run over' Officer Wingert. Officer Wingert managed to avoid being struck while firing his gun toward the windshield area of the stolen truck. The truck continued towards Widefield Boulevard with officers pursuing the truck on foot.

Officer Carter, in the vehicle to the rear of Titus truck at the first contact, also began to pursue the truck on foot. Officer Carter also shouted he was a police officer and for Mr. Titus to stop. Mr. Titus continued driving east towards the 7-11, with other police officers and civilians in his path. Titus was unsuccessfully rammed by another police vehicle. Mr. Titus continued driving east towards the North side of the 7-11. Mr. Titus was eventually rammed by a vehicle driven by CSPD K9 Officer Genta and came to a stop at the northeast corner of the 7-11 building. In the process Mr. Titus also struck a third police parked vehicle head on. Detective Lantz was in the third vehicle and believed Mr. Titus was purposefully driving at him, threatening his life.

Officers Wingert and Carter pursued the truck on foot approaching it from the driver's side. Both officers noticed Mr. Titus was opening the driver's side door of the truck. Officers Wingert, Carter

and Genta noticed a handgun in Titus hand. The officers saw Titus bring the handgun up and point it in the direction of the officers. Officers Wingert and Carter fired bursts at Mr. Titus. Titus was unable to exit the truck.

Mr. Titus was removed from the truck and handcuffed. Rounds from Officers Wingert and Carter had struck him. After Mr. Titus was removed from the truck a .45 caliber Springfield Armory handgun was found in the driver's seat of the red truck. The handgun was checked and determined to have been stolen in a recent burglary. Medical personnel were standing by and attempted to render aid to Mr. Titus. He was pronounced dead at the scene. Approximately 10-12 rounds from Wingert and Carter struck Titus.

According to multiple witnesses, Mr. Kresky and Mr. Titus were associates and spent a great deal of time together. They were known heavy drug users. Investigation revealed that both regularly took automobiles, guns and other valuable items in burglaries to finance their methamphetamine use. Toxicology reports show that Mr. Kresky still had methamphetamine in his system at his autopsy four days after the incident. Upon the autopsy of Mr. Titus, a bag of suspected methamphetamine was found in his pocket. Toxicology reports show that Mr. Titus was under the influence of methamphetamine at the time of the incident on December 21.

Both individuals were also seen on multiple occasions with guns ranging in caliber from .38, .357, 9mm, and .45 (handguns), 12 gauge pump shotgun, 30 06 scoped rifle and a .50 caliber long gun. Some of these weapons were linked back to prior burglaries that were committed in the Colorado Springs metro area. A task force that was created due to a number of burglaries and motor vehicle thefts had connected Mr. Kresky and Mr. Titus to several of those burglaries and motor vehicle thefts. The span of these offenses includes El Paso County, the Cities of Colorado Springs, Falcon and Fountain.

The investigation also revealed many police contacts in which these two individuals were pursued by police. The pursuits involved very specific actions by Mr. Kresky and Mr. Titus. It is believed that they had access to the Colorado Springs Police Department's policy defining when officers would discontinue an active vehicle pursuit. Because of this knowledge, upon being pursued they would take actions that caused concerns to officers pursuing them. Upon these actions supervisors had to call off the pursuits. Mr. Kresky and Mr. Titus also told several witnesses that if they had to shoot it out with the police that they would. Neither wanted to go back to jail and said they would shoot a police officer if needed. Officers involved in the pursuit of Mr. Kresky were briefed on these statements before going on their patrol shift that night. Officers involved in the attempted contact of Mr. Titus had received a photograph of Titus and were aware that he was known to carry weapons, had made statements similar to Mr. Kresky's and had warrants out for his arrest.

Colorado Revised Statutes § 18-1-707 provides that an officer is justified in using deadly force if he or she reasonably believes that it is necessary to defend himself or a third person from what he or she reasonably believes to be the imminent use of deadly physical force. The District Attorney's Office reviews all incidents involving a discharged weapon by an officer.

The facts and evidence from the Robert Kresky investigation show that the officers were acting reasonably at the time. Officers knew of Robert Kresky and his tendency to get into pursuits. Officers

were responding to a shots-fired call indicating that a gun was involved. Furthermore, officers knew the vehicle was stolen and that Robert Kresky had almost hit another officer during the pursuit. Rather than listen to officer's commands, Robert Kresky was desperate to get away from officers and ran after the pit maneuver was completed. Officers were then forced into a situation with Mr. Kresky where they thought they would be shot. Thus, based on the law and the facts, the investigation has determined that the officers were justified under the law of the State of Colorado. No criminal charges will be pursued.

The facts and evidence from the Nicholas Titus investigation also show that the officers were acting reasonably at the time. Law enforcement knew of Nicholas Titus statements, his penchant for stealing cars and carrying guns and the likelihood he would rather 'shoot it out with the police' rather than go back to jail. They knew he had four felony warrants for his arrest and was likely driving a stolen truck. Officers acted on their experience, their training and their knowledge of the law to try and peacefully apprehend Nicholas Titus. Titus had several opportunities to surrender to police and rather chose to escalate the violence and create a situation that led to him being shot by the police. The officers matched Titus's force with their force still trying to apprehend him without injuring anyone. Titus tried to evade the numerous police vehicles that converged on the stolen truck. When the truck was disabled, Titus started to exit the truck with a gun in his hand, pointed at officers. Officers acting on Titus actions had to shoot him fearing that they would be shot. Thus, based on the law and the facts, the investigation has determined that the officers were justified under the law of the state of Colorado. No criminal charges will be pursued.