

NEWS FROM THE  
ATTORNEY



OFFICE OF THE DISTRICT

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FOR IMMEDIATE RELEASE  
April 30, 2019

Lee Richards  
Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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January 12, 2019 CSPD Officer-Involved Shooting Ruled Justified

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The 4th Judicial District Attorney's Office has completed its review of the Colorado Springs Police Department's officer-involved shooting that occurred on January 12, 2019, in Colorado Springs, Colorado. Pursuant to Colorado Revised Statutes 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team.

Shortly after 4:00 am on January 12, 2019, Colorado Springs Police Officer Brock Lofgren responded to a call for service regarding a disturbance at an apartment complex located at 340 Crestone Lane. Officer Lofgren cleared the call just after 4:30 am and, because he was aware that the complex's parking lot often contained stolen vehicles, he began running license plates. At the end of the parking lot he spotted a Jeep that was backed in and did not have a front license plate. Parked next to the Jeep was a gold GMC pickup truck with no front license plate and a blanket covering most of the windshield.

Officer Lofgren, who was wearing a standard police officer's uniform and driving a marked CSPD police vehicle, parked near the vehicles in order to check and see if both vehicles had rear license plates. He approached the truck first, since it appeared someone was in it. The truck, which was occupied by a sleeping man, had a rear Texas license plate. Officer Lofgren observed that the bed of the truck was full of property, the cab was full of backpacks, and the keys were in the ignition. He ran the license plate, which did not come back to a gold GMC truck. Standing outside the truck he was able to read the VIN number, which he ran and discovered that the truck had been reported stolen in Fountain on the night of January 2nd or the morning of the 3rd, 2019.

Officer Lofgren called in to report the stolen truck, requested backup, then moved his cruiser so that it was parked directly in front of the truck to prevent it from driving away. Colorado Springs Police Sergeant Shawn Peterson arrived as backup and parked his marked CSPD SUV to the left of Officer Lofgren's car, to further box in the truck. The two officers devised a plan to safely remove the man from the truck after more officers arrived.

The suspect awoke and sat up, looking at Sgt. Peterson, who was on the passenger side of the truck. Officer Lofgren opened the driver's side door, grabbed the suspect's left arm and began

giving commands for him to get out of the truck. Sgt. Peterson ran around the back of the truck to help Officer Lofgren. The suspect started the truck and, with both officers inside the door, backed up and then rammed Officer Lofgren's cruiser. Sgt. Peterson, concerned that he would be dragged under the truck if the suspect tried to back up again, reached over and turned off the truck, then removed the keys and threw them into the parking lot. Officer Lofgren attempted to tase the suspect, but was unable to get a good impact stun. The suspect tried to take the taser away, but Officer Lofgren threw it out of the truck.

Sgt. Peterson, who was still bent over in the cab of the truck, was struggling to gain control of the suspect. Officer Lofgren was outside the truck and saw that the suspect was fighting with one hand and reaching around with his other hand. Officer Lofgren then saw the suspect raise an axe or hatchet up in the air, threatening Sgt. Peterson. Officer Lofgren shouted, "Axe, axe, axe," then fired what he believed were three shots, although Sgt. Peterson only heard one. Officer Lofgren saw that the suspect had dropped the axe and stopped fighting so he stopped shooting. Four shell casings were recovered from the scene, and a hatchet was recovered from the truck.

The suspect, who was later identified as Bill Akes (DOB: 7/1/70), was pronounced dead at the scene. An autopsy revealed 1889 ng/ml of methamphetamine in his system.

Both officers were wearing body cameras during the incident; however, sometime during the struggle the audio was muted.

Colorado Revised Statutes §18-1-707 provides that an officer is justified in using deadly physical force if he or she reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The District Attorney's Office reviews incidents involving a discharged weapon by an officer. The facts and evidence from this investigation show that Colorado Springs Police Officer Brock Lofgren acted reasonably when he fired his weapon, striking the suspect. Thus, based on the law and facts, the investigation has determined that his actions were justified under the law of the State of Colorado. No criminal charges will be pursued.



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FOR IMMEDIATE RELEASE  
May 31, 2019

Lee Richards  
Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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### January 23, 2019 Officer-involved Shooting Ruled Justified

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The 4th Judicial District Attorney's Office has completed its review of the officer-involved shooting that occurred on January 23, 2019 in Colorado Springs, Colorado. Pursuant to Colorado Revised Statute 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team. As a case against the defendant remains open and pending, this will be an abbreviated review.

On January 23, 2019, at 7:12pm, an anonymous 911 caller reported hearing shots fired at an apartment complex located in the 2500 block of Verde Drive, in Colorado Springs, Colorado. The caller stated that they had heard several men arguing and that the gunshots were fired from the third floor of the apartment building.

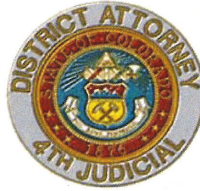
Officers with the Colorado Springs Police Department, including Officers Mathew Waldera and Max Nevarez, responded to the scene. When Officer Nevarez arrived on the north side of the building citizens who were outside reported that the gunshots were coming from the third floor. As Officer Nevarez moved closer to the apartment building he could see that glass had been shot out of the windows in the stairwell. Officers Waldera and Nevarez entered the building together and as they climbed the stairs to the third floor they could see a man at the end of the hall, leaning against a wall. The suspect, who was not wearing a shirt, had an object in his hand, which both officers realized was a gun. Officer Waldera began giving the suspect commands to show his hands. The suspect raised his hand and Officer Nevarez could see the clear outline of the gun and then just the barrel. Officer Nevarez says he thought the gun was pointed at him so he dove into the stairway as Officer Waldera fired his pistol at the suspect. After looking down the hallway and seeing the suspect still holding the gun, Officer Nevarez fired twice at the suspect. The suspect fell on top of the gun. Citizens in a nearby apartment looked out into the hallway. One picked up the gun and tossed it away from the suspect, while another kicked it farther down the hallway. Officers with shields arrived and took the suspect into custody. The suspect, Thomas Christopher McGeorge, 32, had one superficial scratch or scrape on his hip and was treated and released from the hospital. Investigators were not able to confirm whether the minor injury was the result of a gunshot, or a previous altercation prior to contact with the officers.

Thomas McGeorge has a current criminal case pending. His next court appearance is a review hearing, which is set for June 13, 2019 at 9am. Please keep in mind that these charges are merely allegations. All defendants are presumed innocent unless and until they are found guilty beyond a reasonable doubt.

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he 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.

The facts and evidence from this particular investigation demonstrate that Officers Nevarez and Waldera acted reasonably and were justified in defending themselves or others from the imminent use of deadly force. Because the officers' actions were justified under Colorado law, there are no grounds for criminal charges.





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FOR IMMEDIATE RELEASE  
Richards  
July 8, 2019

Lee

Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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### April 24, 2019 Officer-Involved Shooting Ruled Justified

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The 4th Judicial District Attorney's Office has completed its review of the Colorado Springs Police Department's officer-involved shooting that occurred on April 24, 2019, in Colorado Springs, Colorado. Pursuant to Colorado Revised Statute 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team.

At 4:26 P.M on Wednesday, April 24, 2019, Colorado Springs Police Department's communication center received a call for service regarding a domestic disturbance at the Arbor Pointe Apartment Homes located at 2475 Hancock Expressway. A 57-year-old female victim, Dina Franklin, had fled her apartment and reported through a neighbor that she had been slapped, choked and threatened with a butcher knife by a male suspect, identified as Jonathan Patzel. Officers Colton Graham, Thomas Walling, Ryan Levichi and Sergeant Patricia Turechek responded separately to this location. All officers were in marked Colorado Springs Police Department patrol vehicles, wearing the duty uniform for Colorado Springs patrol officers.

At approximately 4:46 P.M., officers arrived and contacted the victim in unit 95, the neighbor's apartment. Officers performed a criminal background check on Mr. Patzel, and learned that he had an outstanding warrant for his arrest related to a Department of Corrections sentence for an escape charge. Officers attempted to contact Mr. Patzel at unit 92 but were unsuccessful in getting him to answer the door. Officers established a containment position around unit 92, and proceeded to interview Ms. Franklin about what had occurred between herself and Mr. Patzel. While this interview was occurring, officers observed the door to unit 92 open, saw a person stick his head out, and then close the door. As officers attempted to re-contact this person, they confronted a locked door, and heard the sound of a lighter being flicked from inside the unit. Additionally, they began to smell something burning. Officer Walling attempted to shine his flashlight under the entry door, and officers observed smoke coming from the unit. The fire alarm located in the hallway also began to go off. Multiple efforts to get Mr. Patzel to unlock the door or speak with officers were unsuccessful, so officers initiated efforts to break the unit door down. After multiple strikes, the door gave way, and after a brief pause, Mr. Patzel yelled at the officers, and charged at them with his hands above his head.

Officers Graham and Walling discharged their firearms at the suspect, striking him in the process and causing him to fall back into the apartment. Officers located the blade of an approximately 7" butcher knife adjacent to the entry area of unit 92, the same area where Mr. Patzel had charged at the officers. Officers applied handcuffs to Mr. Patzel, and then proceeded to simultaneously remove him from the vicinity of the apartment, and employ a hand-held fire extinguisher to fight the flames that were now visible. Officers were unsuccessful in stopping the rapid spread of the fire, and they initiated evacuation of the entire apartment complex in response. Colorado Springs Fire Department personnel responded and were successful in extinguishing the blaze before destruction of the entire complex. Mr. Patzel was transported to a local hospital where he later died. Officer Graham was also taken to a local hospital and subsequently treated for injuries associated with smoke inhalation.

According to Colorado Revised Statutes §18-1-707 a peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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.

Based upon the obvious circumstances confronting the officers when they encountered the suspect, the District Attorney's Office has concluded that Officers Walling and Graham were justified in using deadly physical force, and no charges will be forthcoming.



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE  
September 30, 2019

Lee Richards  
Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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### May 18, 2019 Officer-Involved Shooting Ruled Justified

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The 4th Judicial District Attorney's Office has completed its review of the Colorado Springs Police Department's officer-involved shooting that occurred on May 18, 2019, in Colorado Springs, Colorado. Pursuant to Colorado Revised Statute 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team.

At approximately 5:27 pm on Saturday, May 18, 2019, Colorado Springs Police Officer Jennifer Fleury responded to a call for service regarding a domestic violence incident at an apartment located in the 4200 block of Forrest Hill Road in Colorado Springs, Colorado. At the location Officer Fleury met with the victim who reported that the suspect, Sean Michael Collins, had threatened her with death, using guns and knives, had hit her in the head with a shotgun, and had also attempted to take her infant daughter from her.

Officer Fleury contacted Collins, who stepped out of the apartment briefly and looked at the officers, but then went back inside and refused to come out. At that time, Officer Fleury called for back-up. She tried to contact Collins, first calling and leaving two messages and then texting, but he didn't respond.

Officer Lizet Castillo, a crisis negotiator with the Colorado Springs Police Department, arrived at the location and she also texted and called Collins, who responded by text, indicating he would not exit the apartment, would not surrender, and did not want to go back to prison.

At approximately 7:00 pm, Sgt. Robert Wolf of the Colorado Springs Police Department's Tactical Enforcement Unit (TEU) was notified that the TEU might have to deploy to the scene because the suspect was armed and refused to surrender. Soon after, the TEU was assembled and deployed to the scene with their armored vehicle, the BearCat. TEU officers surrounded the apartment building.

Colorado Springs Police Officers Christopher Laabs and Corby Slagle were assigned to the right front corner of the building with a view of the porch and the door to the apartment. Officer Laabs was armed with an H&K MP7 submachine gun, the standard duty weapon for all TEU officers.

Using the BearCat loudspeaker system, the TEU officers ordered Collins to come out peacefully, promising if he complied he would not be harmed. They warned him that if he refused to come out they could not guarantee his safety. Collins did not come out. Negotiators, through text messages, were continually in contact with Collins to convince him to peacefully surrender.

At approximately 9:00 pm, after search and arrest warrants were signed, the final message was delivered to Collins, advising him of the warrants and again calling on him to peacefully surrender. Approximately six minutes later, Sgt Troy Bauer authorized Officer Teresa Tomczyk to deploy a diversionary device on the exterior of the apartment building. These devices make a loud noise and emit a bright flash of light.

Immediately after the diversionary device went off, Collins fired two shots from a shotgun out of the left front window of his apartment, followed by numerous shots from a handgun. TEU responded by introducing chemical munitions into the apartment. As Collins shot at the BearCat, at least one round hit the driver's side window on a level with the driver's head, and Officer Jeremy Campbell, who was positioned near the BearCat, was struck in the hand by shrapnel. Collins was also shooting out the back of his apartment and officers responded by introducing chemical munitions into the back windows.

Directly across from the apartment complex was another apartment which was occupied by two women and two small children. Those residents, who refused to evacuate, were advised by TEU officers to close their windows due to the possibility of chemicals entering their homes, and to move to the back of their apartment and stay down. Both women chose to disregard the warnings and watch parts of the encounter. At least two bullets fired by Collins entered their apartment.

The chemicals took effect and at approximately 9:08 pm as Collins exited the apartment, he came out shooting. Officer Laabs and other officers could see the muzzle flashes from his handgun. Although very little can be seen on the body-worn camera footage due to the poor lighting, the lighter sounds of Collin's handgun can clearly be heard before the deeper sounds of Officer Laabs' weapon. Collins fired three to four shots and as soon as Officer Laabs saw him emerge from the apartment firing his weapon, he returned fire with his weapon. Officer Laabs fired six times, hitting the suspect six times. Although Collins dropped to the porch, he continued to move and refused to show his hands. Because he was armed, he was shot with a less-lethal round to see if he would react, but he did not. Collins was removed from the porch and was immediately assessed by advanced life support personnel, Tactical Emergency Medical Support (TEMS), from the CSFD. Collins was subsequently pronounced deceased on scene. According to the coroner's report, two bullets struck him in the back and four bullets entered from the front of his body.

Officers later discovered a .40 Taurus revolver in his right front pants pocket and a .40 Glock magazine in his left front pants pocket, containing twelve rounds of unfired ammunition. Inside his apartment, officers found at least twelve fired .40 semi-automatic shell casings inside and outside the apartment, as well as two fired shotgun shells. Immediately inside the front door of the apartment officers found a .40 Glock 23, and a Remington 12 gauge shotgun was located inside the front bedroom from which the TEU officers had been receiving fire. They also found guns and knives that



matched the description given earlier by the domestic violence victim. Body armor was also found in the apartment,

According to Colorado Revised Statutes §18-1-707 a peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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.

The facts and evidence from this investigation show that Colorado Springs Police Officer Christopher Laabs acted reasonably and was justified in using deadly physical force, thus no charges will be filed.



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE  
December 23, 2019

Lee Richards  
Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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### No Charges Filed in July 23, 2019 Officer-Involved Shooting

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The 4th Judicial District Attorney's Office has completed its review of the Colorado Springs Police Department's officer-involved shooting that occurred on July 23, 2019, in Colorado Springs, Colorado. Pursuant to Colorado Revised Statute 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team.

At 5:51 p.m. on Tuesday, July 23, 2019, Colorado Springs Police Department's communication center received a call for service regarding a suspicious person, who appeared to be intoxicated, holding a firearm outside of a residence in the 2200 block of Monterey Road. According to the reporting party, he was walking toward a red Mustang with a black stripe.

Officers located the individual, later identified as 38-year-old Joshua Vigil, at a park near the 2200 block of Ventura Drive. When officers arrived, Mr. Vigil was arguing with three females. The women were later identified as Mr. Vigil's daughters and estranged wife. Officers observed him enter and exit the Mustang several times and watched as Mr. Vigil exited the vehicle holding a firearm in his right hand, by his side. Officers drew their weapons and gave him multiple commands to drop the weapon, however, Mr. Vigil did not comply and instead told the officers he was not going to drop the gun. The three females went to the sidewalk and attempted to walk past the officers, who loudly and repeatedly told them to move back and away from the potentially dangerous situation.

Mr. Vigil, who was holding the firearm by the barrel, again entered the vehicle and then exited, holding a second firearm by the barrel in his right hand and at his side. He continued cursing at officers and refusing to follow their commands. He then re-entered the vehicle, threw a large glass bottle of Crown Royal out of the driver's side window, then drove away at a high rate of speed.

Vigil's daughters and estranged wife were contacted separately by officers and each provided statements, describing him as being under the influence and unpredictable. They also stated that his intentions were not known.

While officers were conducting interviews with the witnesses, they learned that Mr. Vigil had earlier menaced his family members with a gun and was now facing felony charges related to that incident. This information was relayed to officers prior to their contact with Mr. Vigil at the apartment complex.

At approximately 6:12 p.m., an officer spotted a red Mustang which had struck a cement barrier which belonged to a business in the 1200 block of Shasta Drive in Colorado Springs. The vehicle was unoccupied; however, multiple airbags had deployed, and the officer observed a black handgun on the driver's side floorboard. It was obvious that the vehicle had driven off the road and crashed at that location. The officer walked to the corner of Shasta Drive and E. Fountain Blvd and spotted a male matching the description of the suspect walking east on Fountain. Officer Aragon heard the suspect's description over his radio and at approximately 6:14 p.m. he spotted Vigil, who had jumped the fence, according to a witness and was in the locked courtyard of a senior living apartment complex located in the 3100 block of E. Fountain. Prior to being spotted, Vigil was in the southeast parking lot of the complex, where he menaced some apartment residents, including children, with his firearm. One witness stated he pulled a firearm and told the witness he needed a car and that if he didn't get one, bad things were going to happen, while another said he waved a gun around after she pushed him when he refused to move away from her vehicle.

At approximately 6:16 p.m., Vigil entered the vestibule, which is an all-glass foyer that leads to the lobby of the apartments. Once inside the glassed-in entryway, Vigil proceeded to pace back and forth, with a firearm in his right hand. The interior glass doors to the lobby were locked, denying entrance from the vestibule into the lobby area. When Vigil entered the vestibule, he spotted two women and tried to convince them to unlock the door. Both women spotted the gun in his hand and fled the lobby.

Three responding officers, Patrol Officers C. Jones and L. Aragon, and Sgt. M. Keller, had arrived at the scene and were in the apartment complex courtyard facing the vestibule. Officers Jones and Aragon gave repeated commands to Vigil to put his hands up, however, Vigil refused to comply and continued to pace with the weapon in his hand.

At approximately 6:17 p.m., Officer Aragon observed Vigil rotating his body and right hand, as if to either fire at, or take cover from, officers. An apartment resident who was walking through the lobby at the time of the incident corroborated the officer's account, and said he also witnessed Vigil rotate his body and right hand, which held a handgun. At that moment, Officer Aragon felt safety risks for himself and other officers on scene and he fired first, followed by Officer Jones. Sgt Keller fired when he saw the suspect raise his arm with the weapon and observed the smoke and muzzle flash from the suspect's gun.

After the shooting, the officers entered the vestibule and immediately rendered medical aid to Mr. Vigil. An ambulance transported him to the hospital where he was pronounced deceased.

When officers entered the vestibule, Mr. Vigil's weapon was recovered from his chest area.

Seven casings from inside the vestibule were tested and found to be consistent with having been fired from Mr. Vigil's weapon. Defects from bullets fired by defendant's weapon were located on a glass wall between the vestibule and the office area of the apartment complex. Projectiles found in the area were also associated with suspect's gun.

Eighteen casings were found to be associated with the officers' weapons, outside the vestibule area, in the courtyard.

According to the coroner's autopsy report, Mr. Vigil sustained multiple gunshot wounds. Toxicology results indicated he was under the influence of several narcotics and other drugs, including amphetamine, cocaine/benzoylecgonine, methamphetamine, thc-cooh, hydrozchloroquine, carmazapine and alcohol at the time of the shooting.

Prior to this incident, Officer Aragon made a statement which was captured on his body worn camera at 6:09 p.m. While sitting in his parked patrol car talking to another officer at Carmel Middle School, an unrelated domestic violence situation was aired over the police radio, involving a suspect with a knife. Officer Aragon said to the other officer, "Let's just go help, so if we can shoot this dude." While the officers were in the process of responding to that call, they were re-routed by police dispatch to the incident at the senior living complex. In a subsequent interview, when questioned about the statement, Officer Aragon stated that he was referring to the suspect with the knife, and that he meant that they should just go help, just in case they have to shoot the guy. He further stated that he never planned to shoot him.



According to Colorado Revised Statutes §18-1-707 a peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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;

In addition, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend others with deadly force if they reasonably believe another is in imminent danger of being killed or receiving great bodily injury and reasonably believe a lesser degree of force is inadequate.

The 4<sup>th</sup> Judicial District Attorney's Office found Officer Aragon's prior statement to be troubling, however, Joshua Vigil's increasingly erratic behavior – including menacing citizens with a weapon, repeatedly refusing to cooperate or follow officers' commands, then rotating his body and right hand, as witnessed by a resident, along with the fact that he was attempting to enter the lobby area of the senior living center, and was only prevented from doing so by a glass wall and door – presented the officers with a situation in which they believed either their safety, or the safety of the residents, was in danger. Officer Aragon indicated that he fired because he believed that the suspect had rotated his body and right hand as if to fire, or take cover from officers, and he believed his safety, as well as the safety of other officers, was in danger. A corroborating witness confirmed the officer's account. As such, no charges will be filed against Officer Aragon.

Officer Jones fired immediately following Officer Aragon because he believed that his safety, or the safety of other officers, was in danger, therefore no charges will be filed against Officer Jones.

Sgt Keller stated that he fired his weapon after seeing the suspect raise his weapon and then saw the muzzle flash of the weapon firing. No charges will be filed against Sgt. Keller.



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE  
January 2, 2020

Lee Richards  
Public Information Officer  
4<sup>th</sup> Judicial District  
(719) 520-6084

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### No Charges in September 29, 2019 Deputy-Involved Shooting

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The 4th Judicial District Attorney's Office has completed its review of the El Paso County Sheriff's Office deputy-involved shooting that occurred on September 29, 2019, in Monument, Colorado. Pursuant to Colorado Revised Statute 16-2.5-301 Peace Officer-involved shooting investigations – protocol, all officer-involved shootings that result in injury or death shall be reviewed by a multi-agency team, a Deadly Force Investigation Team.

At approximately 8:30 a.m. on Sunday, September 29, 2019, officers with the Monument Police Department were dispatched to 265-2nd Street in Monument, Colorado regarding a disturbance. It was reported to Monument Police Dispatch that banging and glass breaking could be heard from inside the apartment in question, and the call taker could hear yelling, and that the suspect had a machete. The suspect, who was known to have a history of violence, lived in the apartment with an adult relative.

At the same time, Palmer Lake Police Department officers were also dispatched to the address and responded as cover for the Monument police officers.

A "caution" was aired over police radios advising that 20 year old David Jaxon Page was a resident at that address and was known to be hostile to law enforcement. In addition, the caution advised that two officers were to respond to all calls as Page had previously threatened to kill law enforcement on December 25, 2018.

Monument Police Corporal R. Stewart responded to the call at approximately 8:30 a.m. and observed broken glass from the window and door in the front of the apartment as well as broken glass from a window in the back of the apartment. He also observed items that had been thrown out of the broken window. Corporal Stewart reported he could hear banging sounds from inside the apartment.

Prior to making contact, Corporal Stewart spoke with one neighbor who reported that David Page had been yelling, banging around and breaking things since early in the morning. She reported that she had seen Page in the apartment with a machete in his hand and that she had contacted the owner of the apartment regarding the broken glass. Corporal Stewart spoke with another neighbor who reported that the disturbance had been going on since 1:00 or 2:00 in the morning and said it sounded as if the walls of the apartment were being broken down. He explained that he has had confrontations with Page in the past, therefore he was reluctant to contact law enforcement.

Corporal Stewart, who had previously dealt with David Page, knocked on the rear door of the apartment, while an officer with the Palmer Lake Police Department provided cover in the front. David Page opened the door, then slammed and bolted it and refused to come out to speak with the officer. He did, however, respond to several questions, indicating that he was alone in the apartment, was not hurt, did not need medical attention and was not homicidal or suicidal. Corporal Stewart later reported that he didn't want to force the issue, but that he intended to return later, take a criminal mischief report and charge Page at that time. He felt leaving him alone in the apartment would allow time for the situation to de-escalate – and give Page the opportunity to cool down.

At approximately 3:00 p.m. on September 29, 2019, Monument Police dispatch began receiving 911 calls reporting David Page was firing what was believed to be an air assault rifle at people and vehicles passing by the front of his apartment. Two victims were struck, as well as several vehicles. One of the victims, a young child, was hit when the suspect fired at the vehicle she was riding in, shattering the window's glass and striking the child.

Officers with Monument and Palmer Lake Police Departments, as well as Colorado State Patrol and El Paso County Sheriff's Office, responded to the location to form a perimeter around the apartment complex and safely evacuate the building. As law enforcement began arriving at the scene, Page began firing at the officers and their vehicles, shooting out the window of an EPSO police cruiser and cracking the windshields of multiple other law enforcement vehicles.

El Paso County Sheriff's Office SWAT Unit was deployed at 3:50 p.m. The deputies had been advised that Page had broken windows and had fired at numerous civilians and law enforcement personnel using a suspected air assault rifle. The EPSO SWAT Unit drove their tactical enforcement vehicle to the front of the apartment, in order to shield the neighborhood and road in front of the apartment. Two deputies took positions outside of the tactical vehicle. Deputies

could see the suspect inside the apartment, because he had broken out the window of the front door and was throwing numerous objects out the broken window. He also threw a handsaw in the direction of law enforcement. Within two minutes of the tactical vehicle's arrival, Page retreated into the apartment, then returned to the door and raised his hand, holding what appeared to be a semi-automatic pistol, which he pointed directly at law enforcement. Two members of the SWAT team fired at Page. Deputy C. Wheat fired three shots, while Deputy R. Gonzales fired twice. David Page was struck three times, and after tactical entry was made into the apartment, he was pronounced deceased at the scene.

Police later recovered the suspected semi-automatic pistol, which was determined to be an inoperable airsoft bb gun, however, the orange safety cap had been painted black to make it resemble a real weapon.

According to Colorado Revised Statutes §18-1-707 a peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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.

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 facts and evidence show that the officers were acting reasonably at the time. Deputies Wheat and Gonzales discharged their weapons after seeing David Page point what appeared to be a firearm in their direction. No charges will be filed.



# FOURTH JUDICIAL STATUTORY GRAND JURY

## REPORT

### Investigation of the shooting death of De'Von Bailey by Officer Evenson and Sgt Van't Land

#### Scope of the Investigation

The 2019 Fourth Judicial District Statutory Grand Jury investigated the officer-involved shooting death of Mr. De'Von Bailey that occurred August 3, 2019 in the 2100 block of Preuss Rd, Colorado Springs, Colorado. The investigation focused on whether Officer Blake Evenson and Sergeant (Sgt) Alan Van't Land were justified in using deadly physical force against Mr. Bailey.

#### The Process

The El Paso County Grand Jury was selected from a random community jury pool in January 2019 and is comprised of local citizens with diverse backgrounds and experiences. The Grand Jury accepted this case for investigation on October 15, 2019. The evidence was presented by the Fourth Judicial District Attorney's Office. The Grand Jury utilized their authority to subpoena witnesses and request items deemed critical to gathering facts pertinent to the case. All witnesses testified under oath, and were questioned by District Attorney lawyers as well as Grand Jury members. All witnesses who were placed on the stand, cooperated with the investigation and answered questions asked of them. This included Officer Blake Evenson and Sgt Alan Van't Land, who agreed to testify voluntarily before the Grand Jury, even though it is their Constitutional right not to do so.

The Grand Jury moved to deliberate only after each member was satisfied that the vast set of evidence presented and the holistic set of witnesses had provided the needed details to adjudicate the case. The District Attorney's Office presented the evidence making sure that state and county employees were held to facts, refrained from expressing opinion, and did not press to sway a particular outcome. The Grand Jury made several requests for additional documents, evidence, and the ability to talk with additional witnesses. Each request was provided by the District Attorney's Office prior to deliberation. The role of the Grand Jury is to decide whether criminal charges or an indictment will be brought against a potential defendant. The Grand Jury unanimously decided to issue a No True Bill as well as issue a public report. A No True Bill is a legal procedure to decline to file charges against a target when the grand jury does not find enough evidence to charge the target with violating a law. This public report represents the independent conclusions of all members of the Grand Jury, and was drafted with the support of the District Attorney's Office.

## The Evidence

This case was presented during three Grand Jury sessions. The Grand Jury heard the testimony of Officer Blake Evenson, Sgt Alan Van't Land, various Colorado Springs Police Department and El Paso County Sheriff's Office patrol officers and detectives, forensic experts, ballistics laboratory personnel from the Colorado Bureau of Investigation and the Metro Crime Lab, and several lay and expert witnesses. They also heard testimony from an independent use-of-force expert from outside the state of Colorado and not associated with any law enforcement agency. The Grand Jury also requested to get a better understanding of Colorado's use-of-force policy and specific subject training that is mandated and provided to all CSPD officers. A senior officer with extensive use-of-force training experience was subpoenaed, testified and questioned. The officer provided the Grand Jury with a detailed understanding of use-of-force training materials, methods, and techniques to include classroom, simulator as well as field training. The officer detailed all initial as well as periodic/annual refresher training that is required of each member of the CSPD police force. It was also identified how use-of-force training materials and methods are reviewed and updated using real-world case studies and post-event analysis. In addition to the testimony, the Grand Jury reviewed numerous photographs, diagrams, police body camera videos, witness interview videos, audio tapes, lab results and written documents. The Grand Jury was also provided the Colorado Springs Police Department's use-of-force policy (General Order 705).

## Report in the Public Interest

The Grand Jury finds that it is in the public interest that this report be released. This report is permitted pursuant to two statutory provisions found at C.R.S. 16-5-205.5 (5)(b) & (d), because this investigation addresses "allegations of abuse of authority by a public servant or commission of a class 1, class 2, or class 3 felony."

## Findings of Fact

As part of this report, the Grand Jury has agreed to release the body worn camera videos of Sgt Van't Land and Officer Evenson, along with the responding police team's radio communication tape and the 911 call. The 911 call and police team radio communication tape depict what officers knew at the time leading up to and immediately preceding the use-of-force incident. The police body cameras are operating throughout the entire engagement without any missing segments and provide a visual and audible record of the encounter. The Grand Jury makes the following findings of fact based on a review of all evidence presented:

In the early evening of August 3, 2019, an individual called the Colorado Springs Communication Center to report they were a victim of a robbery involving a firearm. Dispatch relayed this information to patrol officers.

Officers arrived at the location of the reporting party and conducted an in-person interview. The reporting party indicated they had been assaulted by two men, robbed at gunpoint, and was concerned that the assailants were still in the vicinity. The individual indicated that he was familiar with the assailants and provided names, physical characteristics, and very detailed specifics regarding the firearm used in the reported robbery.

The reporting party, an African American male, described suspect number one as a black male, skinny with a light afro hairstyle and facial hair. Suspect number two was described as a black male who was shorter and heavier set.

The officer interviewing the reporting party took several breaks to relay information and detailed updates to patrol officers that had simultaneously spread out to canvas the local area. Near the reported location, Sgt. Van't Land saw two people matching the suspects' descriptions. Since initial and updated police communication highlighted that both suspects may possess a firearm, but that the taller suspect had just recently brandished and was likely still in possession of a firearm, Sgt. Van't Land took precautions when engaging the suspects in line with his training. Sgt. Van't Land parked his vehicle and approached both individuals on foot. He was joined by other officers and they took non-threatening positions and provided both suspects with calm and specific reasons why they were being approached and questioned.

As the officers approached, the suspects stopped and turned. Suspect number two stepped in front of suspect number one (later identified as Mr. Bailey), blocking Sgt. Van't Land's view of Mr. Bailey's hands. Since the police officers had received information that Mr. Bailey was in possession of a firearm, they took precautions to keep both suspects hands in sight. During the first moments of the encounter, Sgt. Van't Land saw Mr. Bailey put his hand in his pocket and instructed both suspects to "keep your hands out of your pockets" and "put your hands up for me". Both suspects were also specifically told, "Don't reach for your waists." Several times after being instructed to raise his hands, Mr. Bailey continued to fidget and move his hands towards his shorts pocket. At this point, Sgt Van't Land said, "We're gonna just check and make sure you don't have a weapon, alright." Officer Evenson was present and overheard the interactions between Sgt. Van't Land and the two suspects. As another officer approached to search suspect number two, Officer Evenson approached to search Mr. Bailey. As Officer Evenson got close to him, Mr. Bailey turned, disobeyed the officer's direct orders and attempted to escape. Both Sergeant Van't Land and Officer Evenson drew their weapons, gave chase and provided audible warnings.

After his initial steps Mr. Bailey's hands started to reach to the front of his waistband and were not swinging as one would expect from someone attempting to run quickly. Both officers shouted commands to Mr. Bailey. Sgt Van't Land shouted three times "Hands up!" Officer Evenson shouted, "Let me see your hands!" Mr. Bailey chose not to comply with these commands and continued to run while reaching in front near his waistband. Officer Evenson could clearly see that Mr. Bailey's hand was by his waistband. Pursuant to their training and experience, both officers perceived these

actions to be consistent with Mr. Bailey's reaching for a gun in his waistband. When Mr. Bailey failed to comply with their commands to show them his hands, both officers believed he was reaching for a firearm and believed themselves and others were in danger. During his twelve years of police service, Sgt Van't Land has experience with suspects that flee. These fleeing suspects were either pumping their arms or holding up baggy pants by the side(s) of their waistband. His experience and police training indicate when someone runs with their hands at the front of their waist area they could be reaching for a firearm. In response to what they were seeing and consistent with police training, both officers discharged their firearms. When Mr. Bailey started to stumble, both officers stopped shooting. Only after Mr. Bailey was on the ground, did he comply and put his right hand in the air.

After securing the scene, Sgt Van't Land, Officer Evenson, and a third officer on scene began providing first aid to Mr. Bailey, including providing direct pressure and application of bandages designed to stop bleeding as well as cardiopulmonary resuscitation (CPR). Other officers worked to help expedite ambulatory services and hospital transportation. First aid was performed until medical teams arrived and took over treating Mr. Bailey and transported him to the hospital. Mr. Bailey was pronounced dead at the hospital from the gunshot wounds he sustained during this incident.

### Relevant Law

Police officers are chartered with providing for the safety and security of the general population and members of our community. To best provide these protective services, police officers have the unique responsibility and ability to use appropriate force. The progression of use-of-force culminates with CSPD officers having the authority and permission to use lethal force when authorized by the situation, Colorado and Federal law, policy, training, and experience.

The United States Supreme Court in *Graham v. Conner*, 490 U.S. 386 (1989) found that any use of force by a law enforcement officer must be "objectively reasonable" given the "totality of the circumstances." Factors to consider are summarized to include:

1. The level or severity of the crime that was committed or suspected to be committed.
2. The information that was known to the officer when the shooting occurred.
3. Whether the individual was resisting arrest or trying to escape.
4. Whether the situation was a fast moving, dynamic incident that placed the officer and/or others in a position of being the victim of deadly force or suffering great bodily harm.
5. Whether other options were available to the officers to employ or to effect an arrest.



Colorado Revised Statute 18-1-707 states that a police officer is justified in using deadly physical force upon another person when he reasonably believes that it is necessary:

1. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force, or
2. To effect an arrest or to prevent the escape from custody of a person whom he reasonably believes has committed a felony involving the use of a deadly weapon or is attempting to escape by the use of a deadly weapon or otherwise indicates that he is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

### CSPD Use of Force Policy

Colorado Springs Police Department General Order 705 provides guidelines for the lawful use of deadly as well as less than lethal force. The policy includes a non-exhaustive list of seventeen factors to consider in determining when the use of force by an officer is reasonable. Some factors include:

1. Seriousness of the suspected offense or reason for contact with the individual.
2. Immediacy and severity of the threat to officers or others.
3. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
4. Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
5. The risk and reasonably foreseeable consequences of escape.
6. The apparent need for immediate control of the subject or a prompt resolution of the situation.
7. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
8. Proximity of weapons or dangerous improvised devices.
9. The availability of other options and their effectiveness.
10. Potential for injury to officers, suspects, and others.

Expert witnesses testified that the Colorado Springs Police Department policy is to aim for center mass when deadly force is appropriate. Officers are never allowed to shoot in the air and are not instructed to aim for an appendage. It is embedded in training that targets other than center of mass are too difficult to hit and do not prevent a fleeing suspect from using his own firearm against officers or others. Officer use-of-force training does not recommend the use of less than lethal force, such as a taser, club or hand-to-hand combat when a suspect has in their possession the means to use deadly force.

## Conclusions

The Colorado State Legislature enacted a statute 16-2.5-301 in 2015 setting out the requirements for how officer involved shootings must be investigated. The purpose was to ensure that law enforcement agencies would not investigate their own officers, but rather that a multi-agency deadly force investigation team (referred to as the D.F.I.T. team) would conduct all investigations. Pursuant to that statute and in compliance with that statute, the Fourth Judicial District's law enforcement agencies entered into an agreement to form a deadly force investigation team. This investigation was conducted by that team. The Grand Jury found this investigation was all-encompassing, thorough, methodical and included forensic testing of the evidence collected. The team interviewed every witness who would speak to them who either witnessed the alleged robbery or the shooting. The team did not work toward a pre-determined conclusion but followed all investigative leads to determine and assess facts. The Grand Jury maintains its own investigative powers and conducted its own investigation. Ultimately, it is solely the Grand Jury which decided whether this shooting was in the line-of-duty, followed policy and training and whether the use-of-force was justified.

The Fourth Judicial District Attorney's Office sought review by an independent expert in use-of-force. That expert testified before the Grand Jury. This individual has been involved in numerous cases. Over the course of his career, he has made determinations in several cases where officer involved shootings were not justified. He has no connection to Colorado Springs nor the State of Colorado. He concluded that the officers acted reasonably when they used lethal force to subdue Mr. Bailey. The officers' discernment that Mr. Bailey posed a high-risk of imminent use of deadly force was objectively reasonable because he had his hands at his waist and refused commands to show his hands to officers. The officers had received credible information that Mr. Bailey had committed an armed robbery and was in possession of a firearm. In fact, after the shooting, officers located a firearm in Mr. Bailey's shorts that matched the detailed description provided to officers prior to the engagement. The firearm was fully loaded with one round in the chamber.

The Grand Jury was not tasked to make findings regarding the reported armed robbery and assault that police officers were investigating prior to the incident. The reported assault did, however, provide detailed information to patrol teams and gave Sgt Van't Land and Officer Evenson critical information to perform their duties. Both police officers had a reasonable belief, based on information given by a citizen and relayed to them by fellow officers, that Mr. Bailey had just committed armed robbery and was in possession of a firearm.

As part of our investigative process, the Grand Jury inquired about the training program at the Colorado Springs Police Department. They learned that it is very intensive, performed by experts, requires periodic refresher training, includes national, state and local policy directives and has a built-in feedback mechanism to keep current and up to date with lessons learned throughout the nation. Officers receive training on the case law and statutes. They are given many tools to use in their interactions with

the public. They are taught a variety of de-escalation techniques. They are exposed to various scenarios, both on computer models and live action drills, in which they must make rapid judgments about proper use-of-force and escalation actions. They are continually critiqued and evaluated. Patrol officers are taught to always be aware of where a suspect's hands are. Training teaches officers a strong indicator that a suspect may be reaching for a weapon is when a suspect will not keep their hands in sight after being told repeatedly to do so. Officers are trained to evaluate and react to that indicator. The actions of Sgt Van't Land and Officer Evenson on August 3, 2019 were consistent with their use of force training and the Colorado Springs Police Department use of force policy.

In applying the law to the facts in this situation, there are two grounds upon which an officer is justified in using deadly physical force; one is commonly referred to as "fleeing felon", the other is self-defense and defense of others. The Grand Jury finds Sgt Van't Land and Officer Evenson were legally justified on both grounds.

With regard to the "fleeing felon" statute, officers must have a reasonable belief that the suspect is committing, has committed or is about to commit a felony and is in possession of a firearm. These officers had a reasonable belief that Mr. Bailey had committed the felony of aggravated robbery and was in possession of a firearm. The law requires that officers take necessary steps to protect innocent bystanders and themselves from a fleeing felon in possession of a firearm. The law does not require that a suspect point a firearm at officers or others before they may use deadly force. Their obligation to protect the public is heightened in situations such as the one they faced on August 3, 2019 when the suspect was fleeing toward a public park and elementary school during daylight hours.

Regarding self-defense and defense of others, police officers have the crucial and momentous responsibility to maintain the peace and protect the public at all times. They also have the right to protect themselves. They often must make real-time decisions in highly stressful situations about the level of force necessary to meet this responsibility. In this situation, officers had seconds to react. They were informed that Mr. Bailey had just committed an armed robbery and was still in possession of a firearm. When officers first approached him, the expert noted that Sgt Van't Land spoke to him in a calm, professional manner. He gave Mr. Bailey clear instructions not to put his hands at his waist. Mr. Bailey began to flee as soon as he was approached for a pat down search, which further indicated to officers that he was armed. He was in a residential neighborhood and running towards a public park and elementary school. He refused to show his hands and instead reached towards the front of his waistband, disobeying direct and repeated orders. The officers were understandably concerned that he intended to draw his firearm which would put innocent civilians or officers in danger of serious bodily injury or death. The actions of Sgt Van't Land and Officer Evenson in using deadly force against Mr. Bailey were determined by the Grand Jury to be reasonable and justified according to law.

The events of August 3, 2019 were tragic. The family and friends of Mr. Bailey have suffered an immeasurable loss. The community, witnesses and officers have all been deeply affected by this incident. None of this changes the fact that Mr. Bailey chose a course of action on August 3, 2019 that led Sgt Van't Land and Officer Evenson to make a real-time judgment to use deadly force to protect the community and law-abiding citizens they are sworn to protect.

Adopted this 25<sup>th</sup> day of October 2019  
2019 Fourth Judicial District Statutory Grand Jury  
(Signature Page of Foreperson and Other Grand Jurors Follows on Separate Page)

Dated 25 OCT, 2019



Foreperson