



Office of the District Attorney
Fifth Judicial District

Serving Clear Creek, Eagle, Lake, and Summit Counties
Heidi S. McCollum, District Attorney

September 19, 2023

Sent via e-mail

Agent Brooks Bennett, CBI Agent and Incident Lead Investigator
Colorado Bureau of Investigation
690 Kipling St., Ste. 3000
Lakewood, CO 80215

Re: Officer Involved Shooting – Decedent Joseph Leoni (1/6/66) (CBI File 2023-32)
Letter of Declination

Dear Agent Bennett:

Our office has conducted an internal review of all the available evidence in the above referenced case, and pursuant to C.R.S. §§16-2.5-301 and 20-1-114, is issuing this report and declination letter.

After a thorough review and analysis of the evidence, we find that the Eagle County Sheriff's Deputy's use of deadly force was legally justified to defend himself from the threat posed by Joseph Leoni. Moreover, the use of force by the deputy was not the proximate cause of the death of Mr. Leoni. Based on this conclusion, no criminal charges will be filed against the deputy.

We have reviewed voluminous pages of records, reports, audio recordings, videos, and photographs. This includes the body worn cameras (BWC) of the law enforcement at the scene, as well as videos taken by Michele Manheimer, who was the reporting party who called 911 when she was concerned about Mr. Leoni's actions.

Our office is charged with determining whether law enforcement committed any criminal offenses. No charges may be legally or ethically brought unless a crime can be proven beyond a reasonable doubt, the standard applicable to both law enforcement and civilians equally. A person may be criminally liable under Colorado law only when the evidence shows that an offense may be proven beyond a reasonable doubt. When a person intentionally shoots another person, causing his or her death, the crime of homicide is committed, unless a legal justification exists. If legal justification exists, no crime has been committed. Self-defense or defense of others are examples of such justification. These defenses are available to both civilians and law enforcement personnel. Law enforcement is specifically authorized to use deadly force under certain narrow circumstances.

A peace officer is justified in using deadly force if: (1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or receiving serious

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bodily injury; (2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or receiving serious bodily injury; and, (3) the officer has an objectively reasonable belief that a lesser degree of force is inadequate. C.R.S. § 18-1-707(4.5). Acting in self-defense or defense of others is subject to the same analysis. C.R.S. §§ 18-1-704(1), (2). In deciding whether the deputy was justified in acting in self-defense or defense of others, it is irrelevant whether Mr. Leoni was actually trying to injure the deputies on the scene as long as a reasonable person, under the circumstances would believe that deadly force was necessary to prevent imminent harm or death. The facts must be viewed as they appeared to the deputy at the time.

Accordingly, we must determine whether Deputy Josiah Maner had objectively reasonable grounds to believe, and did in fact believe that he or another person was in imminent danger of being killed or suffering great bodily injury, and whether he reasonably believed a lesser degree of force was inadequate. If so, the shooting is justified under Colorado law and no criminal charges can be filed.

Facts Established by the CBI Investigation

On January 31, 2023, Eagle County Sheriff's ("ECSO") Deputies Josiah Maner and Jason Kasper, along with their supervisor ECSO Sergeant Paul Pedersen, were dispatched to the Morning Star Apartments at 274 Beard Creek Drive, Apartment B2, Edwards, Eagle County, Colorado, for a "man with a gun" call. The call came from Michele Manheimer at 9:22 pm. She reported that she and her boyfriend, Joseph Leoni, had been involved in an argument, and that he had obtained his handgun. Ms. Manheimer remained on the phone with dispatch and provided information about his actions and location in the apartment.

The deputies arrived at 9:25 pm, within just a few minutes of the original call. The Morning Star Apartments are connected units in a row. Each unit is best described as a multilevel townhome. Unit B2 is located between Units B1 and B3.

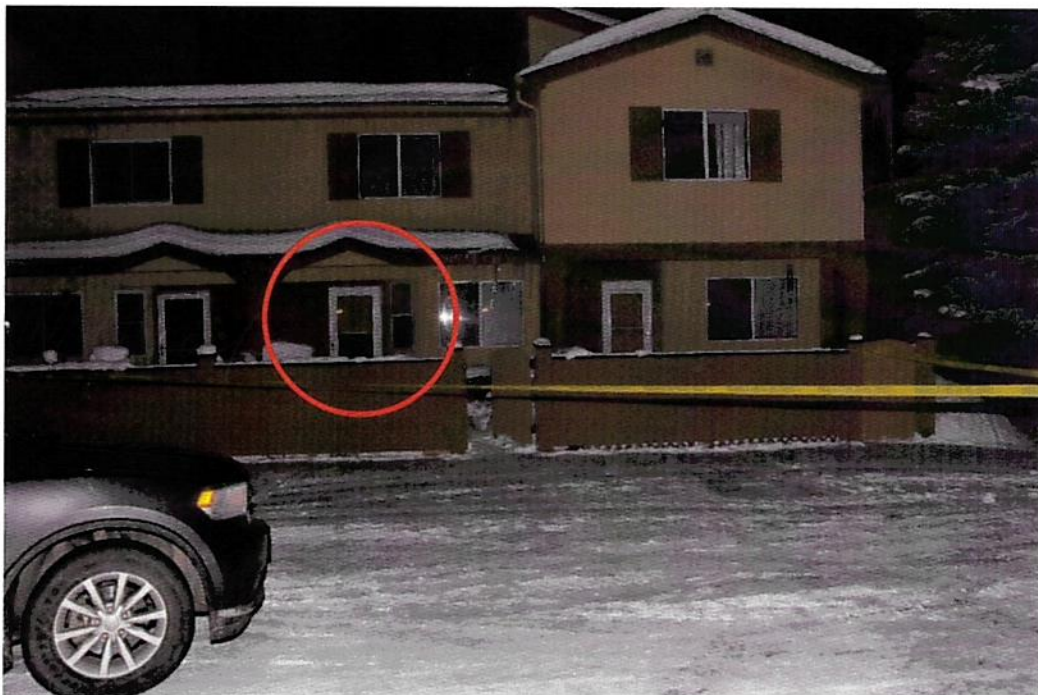


Photo of the front of the building – Apt. B2 is the middle door

The relevant evidence is summarized below.

A. The 911 Call

In the beginning of the 911 call, Ms. Manheimer was asked to describe what happened. She stated: “Boyfriend pulls out his gun, and his gun is in the back of his pants.” She denied Mr. Leoni threatened her with the weapon, but said she “feels threatened” because he “has it.” Ms. Manheimer explained she and Mr. Leoni “had a little argument”, and that he was downstairs “laughing.” When asked if the couple had drunk alcohol that night, she replied, “We had a few drinks, but that was it.” When asked if anything like this had ever happened before, Ms. Manheimer replied, “no...no.” She told the dispatcher Mr. Leoni had been living with her for approximately three months.

The dispatcher remained on the line with Ms. Manheimer after the officers arrived, and Mr. Leoni can be heard asking loudly “did you call the police?” Ms. Manheimer replied, “of course I did, you have a gun.” Ms. Manheimer instructed Mr. Leoni to go speak with the police, then stated, “Stop it.” Mr. Leoni is heard replying “there’s no stopping it” and “Do not enter the residence.” He can be heard saying “I’ll put a bullet through my head.”

Ms. Manheimer was instructed to secure herself in the upstairs room she was in, and she whispered that the door was “locked.” When asked, Ms. Manheimer said that Mr. Leoni had not previously expressed any suicidal thoughts. Ms. Manheimer then whispered that her 15-year-old son (J.H.) was sleeping in his bedroom, and she expressed a desire to go be with her son.

Ms. Manheimer can then be heard asking someone other than the dispatcher “did he come outside yet” – this was determined to be her speaking with Deputy Kasper out her bedroom window. Ms. Manheimer provided Deputy Kasper with the garage code in order to come inside. She can then be heard yelling at Leoni to “go outside and talk to the police.”

Ms. Manheimer then yelled “oh stop it, Joe, stop it, go out outside now, get out of there, get out of [J.H.]’s room now, stop it, don’t you dare, get out, get out of there, get out of my son’s room, get out, Joe stop, look at Rosy (her cat), don’t do that in my son’s room.” Mr. Leoni said something inaudible and Ms. Manheimer replied “oh my god.” Ms. Manheimer then spoke to the dispatcher again and stated “please come here, please come in here, please, its [she gives a four digit code] on my garage, please come in here.”

Mr. Leoni is heard making another statement about Ms. Manheimer calling the police, and Ms. Manheimer begged the dispatcher to have the police come inside her apartment. The dispatcher told Ms. Manheimer he would be transferring her to the Sergeant outside (Sgt. Pedersen), and while the call was being transferred, Ms. Manheimer continued to tell Mr. Leoni to “stop it.” Mr. Leoni made a statement in which the words “f---ing jail” is all that is audible, and after Ms. Manheimer again told Mr. Leoni to “stop it”, he can be heard making a second, mostly inaudible, statement that contained the word “jail.” Ms. Manheimer is then again heard telling Mr. Leoni to go outside, and he initially replied, “No.” Ms. Manheimer asked Mr. Leoni why he would “even do that,” and Mr. Leoni is then heard stating “fine,” followed by “let’s go.”

Sergeant Paul Pedersen, who had been merged into the call with dispatch, then began talking to Ms. Manheimer. At the same time, Mr. Leoni makes an inaudible statement in the background of the phone call. Sergeant Pedersen is then heard stating over the police radio that “Joe’s out front with a gun to... below his chin.” The sound of gunshots immediately followed. The call ended after the gunshots

occurred.

B. Dispatch and Police Radio Traffic.

The police radio traffic recording begins with the call for a “party with a gun” being assigned to Deputy Josiah Maner. At 9:22 pm, Deputy Maner responded that he, Sergeant Pedersen, and Deputy Jason Kasper were enroute. The officers then received additional information stating the caller’s boyfriend had “pulled out a gun on her” after an argument, but that he had “re-holstered.” The suspect was identified as Joe Leoni, and it was broadcast that the couple had consumed alcohol.

At 9:25 pm, the three deputies advised they were on scene, and dispatch told them the male party was upset and yelling because the police had been called. Dispatch also told the officers that Mr. Leoni had threatened to shoot himself.

Deputy Maner asked dispatch to have an Avon Police Officer assist, and Deputy Kasper stated he could see the female in the back upstairs window. Sergeant Pedersen then requested dispatch transfer the 911 call to his phone.

Dispatch told the deputies that Mr. Leoni had gone upstairs and entered the juvenile’s room. Deputy Maner acknowledged the information and again inquired about the availability of an Avon officer. When he was told one was responding, Deputy Maner stated they would form an IA (Immediate Action) team.

Sergeant Pedersen stated: “Joe’s out front with a gun to...below his chin”, and an unknown officer announced, “Shots fired, shots fired.” At 9:34 pm, Sergeant Pedersen requested dispatch to have medical assistance respond to the scene. Deputy Maner then stated, “it’s two gunshots center mass, we need uh...amby [ambulance] here.”

C. Videos provided by Ms. Manheimer.

Through her attorney, Ms. Manheimer provided several short video clips she took of Mr. Leoni on the night of the incident. One video depicts Ms. Manheimer confronting Mr. Leoni about having a gun but then hiding it. Mr. Leoni can be seen gulping a beer in that video. Another showed him with his hands behind his back. Ms. Manheimer is making statements that he just tucked his gun behind his pants.

D. Review of the deputies’ BWC and dash camera.

All three deputies parked near the garage of the Apartment B2 and walked around the building to the front door. The front door was closed, and all the blinds were shut except for the blind on the window next to the front door, which was open a few inches.

At 21:27:02 (timestamp on Dep. Maner’s BWC), the deputies enter the patio, knock on the front door, and announce themselves, with Deputy Maner loudly telling the occupants to come to the front door with their “hands up.” There is no response from Mr. Leoni.

After a few moments, the officers exit the patio and Deputy Maner asks Deputy Kasper to watch the back balcony. Sergeant Pedersen also leaves to move his vehicle. Deputy Maner, who remains just outside the front patio, continues to call into the apartment and asks “Joe” to step outside to talk.

At 21:32:12, Deputy Maner leaves his position to return to his patrol car, where he retrieves his patrol rifle and then returns to the front of the apartment. At 21:33:46, with his rifle pointed toward the apartment, Deputy Maner states “Joe, come down here now.” Dep. Maner’s voice becomes louder as he then states, “Come here now” and he begins backing away from the patio wall. Deputy Maner then yells, “Joe, drop it, drop the gun, drop the gun”, and as Deputy Maner moves away from the wall, Mr. Leoni can be seen inside the patio, walking towards Deputy Maner. Mr. Leoni is holding a gun, pointed at his chin, as he continues to take steps toward Deputy Maner. Mr. Leoni does not drop the gun or put his hands up.

At 21:33:56, there is a gunshot (later determined to be self-inflicted), and a cloud of smoke is seen around Mr. Leoni’s head. Immediately after, Deputy Maner fires two shots in quick succession from his patrol rifle in the direction of Mr. Leoni.

Deputy Maner retreats to the area of Sergeant Pedersen’s vehicle and states “I thought he was coming at me.” At 21:34:26, Deputy Maner, Sergeant Pedersen, and Deputy Kasper (who had come to the front after hearing the shots) approach the patio, giving Mr. Leoni commands to put his hands out to his side.

Deputy Maner is heard telling Deputy Kasper to go inside, and Sergeant Pedersen asked Deputy Maner if he fired. Deputy Maner replied that he had fired two (2) shots, hitting center mass. Sergeant Pedersen is soon seen checking Mr. Leoni’s neck for a pulse, and Deputy Maner states, “I think he shot himself too.”

Sergeant Pedersen checked for a pulse and they rolled Mr. Leoni over. They located the handgun, which Deputy Maner moved away from the body.

E. CBI Interviews and Investigation.

CBI reviewed the evidence summarized above. CBI agents used Faro technology as part of the scene processing. Using that technology, CBI estimated the distance from where Deputy Maner was when he fired, to the area where Leoni was (based on body camera footage), to be less than 30 feet. Because both parties were moving at the time of the shooting, determining an exact distance was not possible.

CBI also interviewed both responding deputies and their sergeant. Below is a summary of those interviews.

1. Deputy Kasper.

Deputy Kasper reported that all three ECSO deputies parked near the garage of the Apartment B2 and walked around the building to the front door. The front door was closed, and all the blinds were shut except for the blind on the window next to the front door, which was open a few inches.

Deputy Kasper stated that he looked in the window as Deputy Maner made commands for the occupants to exit the apartment. Deputy Kasper did not see anyone inside but heard a male voice yelling, saying he was angry the police were there, and stating something similar to “he was gonna blow his head off.” The officers decided to step away from the door to obtain a better position of cover, and he was asked to return to the rear of the building (i.e., where the garage area is).

After arriving at the rear of the apartment, Dep. Kasper began to call out to the apartment to have “Joe” step onto the rear balcony to speak with him. He soon saw Ms. Manheimer through the top floor window and could see she was on the phone (she was still speaking with dispatch), but she seemed to be alone in the room. Ms. Manheimer looked out the window at Dep. Kasper, and she opened the window to provide him the garage door code in case the deputies needed to make entry.

Ms. Manheimer then disappeared, and Dep. Kasper heard what sounded like people walking down the stairs. Dep. Kasper was still looking up at the window when he heard the officers in the front make contact with Mr. Leoni and then heard two shots. Deputy Kasper ran to the front of the apartment and joined Sergeant Pedersen and Deputy Maner as they approached the patio area. Once he saw that Mr. Leoni was on the ground and no longer a threat, he went inside to check on Ms. Manheimer and her son.

2. Sgt. Paul Pedersen

Sgt. Pedersen was having dinner with Deputies Maner and Kasper at the Edwards substation when dispatch aired the call. According to Sergeant Pedersen, all three officers initially all parked near the garage in the back of the apartment and then walked to the front of the apartment, knocked on the front door, and announced their presence. They received updates from dispatch and knew the male (now identified as Mr. Leoni) was walking around freely in the apartment.

Believing the incident could turn into a barricade situation, Sgt. Pedersen returned to his vehicle to drive it around to the front of the apartment so he would have his vehicle in a better location. Moving his vehicle involved driving on side streets to maneuver through the residential area and apartment complex. While he was moving his vehicle, dispatch advised that Mr. Leoni had pointed his weapon at himself.

Sergeant Pedersen requested dispatch connect the 911 call to his phone and he soon heard the caller, Ms. Manheimer, speaking to the dispatcher. It was not until he was arriving at the front of the apartment that Ms. Manheimer acknowledged him on the line. As Ms. Manheimer and he began to speak, he placed his vehicle in park and looked out the windshield to see Mr. Leoni near the front door of the apartment with a dark colored handgun under his chin. He also saw Deputy Josiah Maner, standing between his vehicle and the patio, holding his patrol rifle.

As Sergeant Pedersen was exiting his vehicle, which was pointed directly at the door of the apartment, he heard a gunshot and saw “smoke” around Mr. Leoni’s head prior to Mr. Leoni falling to the ground. Sergeant Pedersen stated he only heard one gunshot; he believed Mr. Leoni shot himself. After Deputy Maner had retreated to the area of Sergeant Pedersen’s vehicle and announced to dispatch that he had shot twice, Sergeant Pedersen knew Deputy Maner had fired.

Sgt. Pedersen and Deputy Maner then approached the body together and gave commands for Mr. Leoni to show his hands, but they received no reply. They rolled Mr. Leoni onto his side, and Sergeant Pedersen observed a model 1911 handgun near Mr. Leoni’s hand. Sgt. Pedersen directed Deputy Maner to move the gun to a safe location and also directed Deputy Jason Kasper, who had since come from the rear of the apartment and joined them, to go inside and check on Ms. Manheimer.

Sergeant Pedersen described Mr. Leoni’s head as suffering severe trauma. Sergeant Pedersen checked for a pulse but never located one. Even though he believed Mr. Leoni was deceased, medical personnel were requested to respond to the scene.

Sergeant Pedersen had Deputy Maner secure Dep. Maner's patrol rifle in Sgt. Pedersen's vehicle, and Sergeant Pedersen moved Mr. Leoni's handgun from the patio to his patrol vehicle.

3. Deputy Maner.

Dep. Maner described the events leading up to the shooting consistent with Dep. Kasper and Sgt. Pedersen, as well as the video evidence.

Mr. Leoni is visible on Dep. Maner's body cam walking toward Dep. Maner with Mr. Leoni holding the gun in his hand:



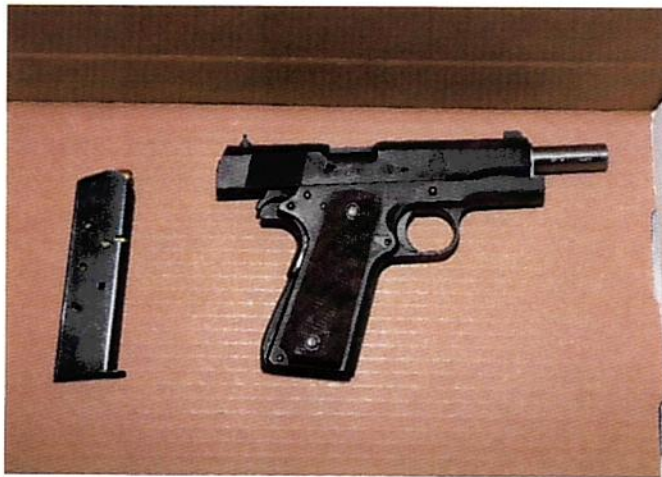
From Dep. Maner's body cam

When asked during his CBI interview what he was thinking as Mr. Leoni walked toward him, Dep. Maner stated: "I was pretty scared, I thought he was gonna come out to shoot me... 'cause he just looked so like fired up, and with everything we've been told, and for him to come outside, in my mind he was coming outside to shoot it out." Dep. Maner also said that had he not fired, he believes he would have been shot.

Deputy Maner explained that because Mr. Leoni was armed with a handgun, less lethal options were not appropriate for the situation.

4. Physical Evidence

The physical evidence recovered from the scene is consistent with the report of the deputies. Recovered from the scene was one handgun. A .45 caliber 1911 handgun was recovered from underneath Mr. Leoni's body. The gun was loaded, capable of firing, and was in fact fired by Mr. Leoni. When CBI examined it, the weapon had a round chambered and the safety off. The magazine was loaded with five rounds.



Mr. Leoni's 1911 firearm

F. Autopsy.

On February 2, 2023, Forensic Pathologist Dr. Casey Biting conducted the autopsy of Joseph Leoni.

The autopsy revealed a bullet wound to the head of Mr. Leoni, and one bullet wound to his torso. Specifically, the entrance gunshot wound to his head was a contact wound located at the base of his chin, and the exit wound was at the “left frontoparietal scalp.” This wound caused injury to Mr. Leoni’s “mandible, tongue, maxilla/hard palate, left zygomatic arch, left orbit, skull, left frontal lobe of brain, (and) scalp.” There were no bullet fragments associated with this injury.

The second injury was a bullet wound to the upper right abdomen, resulting in injury to his liver, ascending colon, cecum, and right psoas muscle. The path of the bullet was front to back, slightly right to left, and slightly downward. A jacketed bullet, consistent with a rifle round, was removed from the body at the end of this bullet path.

At the time of the autopsy results, Leoni’s blood alcohol was 193 mg/dL,¹ and he had marijuana metabolites in his system.

The autopsy report states as follows regarding the official cause and manner of death:

Although the injuries associated with the gunshot wound of the torso would be life-threatening, certainly without treatment, the injuries associated with the gunshot wound of the head would most likely be fatal within minutes, with or without treatment. The gunshot wound of the head was self-inflicted, occurred first, and was the apparent instigation for the officer pulling the rifle trigger. For these reasons, and for the purposes of vital statistics death certification and public health surveillance, the manner of death is suicide.

¹ An alcohol level of 193 mg/dL is equivalent to a Blood Alcohol Level of 0.193, which is more than twice the limit for a Driving Under the Influence per se charge in Colorado.

Analysis and Conclusion

Under the applicable standard set out above, Deputy Maner's use of force was reasonable and lawful. Deputy Maner that saw Mr. Leoni had a gun in his hands, pointed at his own chin. Deputy Maner was less than 30 feet from Mr. Leoni at that time, and Sgt. Pedersen was nearby. Ms. Manheimer and her 15-year-old son were in the home, Unit B2, from which Mr. Leoni had exited holding a gun, and it had a unit on either side.

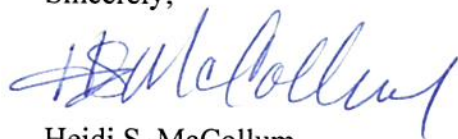
The handgun was in Mr. Leoni's hands as shown on the body cam and confirmed by the fact that it was immediately recovered under Mr. Leoni's body. Mr. Leoni failed to comply with lawful commands to drop his weapon. Dep. Maner was less than 30 feet away from Mr. Leoni as Mr. Leoni continued to approach Dep. Maner. Dep. Maner said he was scared and believed that Mr. Leoni was going to shoot him. He noted that Mr. Leoni looked "fired up," he had come outside with a gun to confront the deputies, and that "in my mind he was coming outside to shoot it out." Dep. Maner also said that had he not fired, he believes he would have been shot.

Deputy Maner explained that because Mr. Leoni was armed with a handgun, less lethal options were not appropriate for the situation. Our office agrees that, under the circumstances, there was no lesser degree of force that would have been appropriate. Finally, the autopsy concluded that the primary cause of Mr. Leoni's death was his self-inflicted gunshot wound that was immediately prior to the impact from the bullet that Dep. Maner fired from his weapon.

The physical evidence recovered is consistent with the reports and interviews of the law enforcement on scene, the 911 call from Ms. Manheimer, the body worn camera footage of Deputy Maner, and the autopsy findings by Dr. Biting. As such, it is the determination of this office that Deputy Josiah Maner had objectively reasonable grounds to believe, and did in fact believe that he was in imminent danger of being killed or suffering great bodily injury when Joe Leoni failed to comply with Deputy Maner's commands to put down his gun. Deputy Maner stated, "Joe, drop the gun, drop the gun", as Mr. Leoni continued to walk toward Deputy Maner. Under these circumstances, Deputy Maner had a reasonable belief that a lesser degree of force was inadequate. There is nothing to show that this tragic series of events was anything other than justified.

We will be notifying the family of the Mr. Leoni of this conclusion.

Sincerely,



Heidi S. McCollum
District Attorney

cc: James Van Beek, Eagle County Sheriff