



OFFICE OF THE DISTRICT ATTORNEY

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Colorado's 4th Judicial District - Serving El Paso & Teller Counties

August 17, 2023 Officer Involved Shooting

April 15, 2024

Release: #2024-004

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Colorado's 4th Judicial District Attorney's Office has completed its review of the officer-involved shooting that occurred on August 17, 2023, 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.

On August 17, 2023, at approximately 11:30 a.m., officers with the US Marshals tracked the location of wanted fugitive Benjamin Annaboli to the Days Inn Hotel on Aero Plaza Drive in Colorado Springs.

They had been seeking Mr. Annaboli, who was wanted for a parole violation in Idaho and, separately, for Felony Menacing with a Weapon during an altercation with deputies in Jefferson County, Colorado. Additionally, US Marshals were aware of Mr. Annaboli's criminal history of robbery, assault, and drug possession. Further, their information indicated that Mr. Annaboli was likely armed and motivated to flee.

Once US Marshals confirmed Mr. Annaboli's location in Colorado Springs, they enlisted the Colorado Springs Police Department's Tactical Enforcement Unit (TEU) to assist in his apprehension.

Law enforcement officers surveilled Mr. Annaboli, who was seen alone near his vehicle, which was parked in the hotel lot. They set up containment around the area to prevent escape and ensure public safety. A US Marshal took a position inside the hotel to prevent Mr. Annaboli from going inside and endangering civilians.



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While Mr. Annaboli stood outside his vehicle, officers blocked his car with their vehicles. Officers immediately exited their cars and announced themselves as police officers. Mr. Annaboli turned to his vehicle and retrieved two firearms from inside. He brandished a firearm as he ran towards the north side of the hotel, where CSPD Officer Brian Kelly had positioned himself with K9 Zev.

Seeing Officer Kelly, Mr. Annaboli turned and began running south, towards the front entrance of the hotel. Officer Kelly yelled, "Stop, police canine," announcing himself as a law enforcement officer and warning Mr. Annaboli of his intention to release a K9 unit. Officer Kelly then deployed K9 Zev.

K9 Zev quickly caught up to Mr. Annaboli and latched onto his backside. At the same time, Mr. Annaboli turned back and pointed one of his guns at Officer Kelly. As a result of the contact by K9 Zev, Mr. Annaboli lost control of one gun. Maintaining control of a second gun in his right hand, Mr. Annaboli turned and pointed his weapon towards CSPD TEU Officer Matthew Waters.

Officer Waters brought up his rifle but saw movement at the hotel door and realized a US Marshal was standing close enough to the scene, that it would be unsafe to fire his rifle. He was also aware that civilians were in the vicinity of this active police scene.

Officer Kelly, separately, made the same observations and both officers repositioned themselves to ensure a clear backdrop.

At that point, both Officers Kelly and Waters fired multiple rounds, striking Mr. Annaboli and rendering him incapacitated. Officers approached Mr. Annaboli, cleared the weapon from his possession, and provided medical aid on scene.

Mr. Annaboli was transported to Memorial Hospital where he was treated for multiple gunshot wounds. Medical staff attempted to resuscitate Mr. Annaboli, but he ultimately succumbed to his wounds. He was pronounced dead at 1429 hours on August 17, 2023.

Several CSPD officers involved, including Officer Waters, had their body worn cameras activated. Their recordings of this incident were successfully downloaded in their entirety. Officer Kelly's BWC did not activate during this incident. All available BWC recordings are incorporated into this memorandum by reference as video evidence of the facts of this OIS.

Additionally, the drone footage collected by TEU as well as surveillance videos collected from the Days Inn Hotel are incorporated into this memorandum by reference as video evidence of the facts of this OIS.

Officer Brian Kelly's Post-Shoot Interview:

Aside from the facts outlined above, there were multiple relevant statements made by Officer Kelly during his post-shoot interview.

- Officer Kelly was informed that the suspect in question had fired a gun at Denver police officers the day prior. The suspect had been located at a hotel in Colorado Springs.

- Sgt. Troy Bauer directed Officer Kelly to approach the suspect in a convoy of police vehicles and asked him to ensure the suspect was not able to make re-entry into the hotel or flee south.
- Once the contact block had been initiated, Officer Kelly came around the hotel and stopped his vehicle. As he exited, he said he believed he activated his BWC.
- Officer Kelly immediately saw the suspect fleeing northbound, but the suspect stopped and spun around upon seeing Officer Kelly and K9 Zev.
- When the suspect spun around Officer Kelly could readily identify two handguns being carried by the suspect and could see one of the firearms had an extended magazine.
- Officer Kelly dropped the lead holding K9 Zev because he identified the possible need for lethal force, and he was concerned the K9 would hinder his ability to respond effectively. Officer Kelly simultaneously gave a K9 warning and commanded the suspect to stop.
- As Officer Kelly began to run towards the suspect (and as K9 Zev ran towards the suspect), Officer Kelly saw the suspect turn and point the gun at him.
- Officer Kelly stated at the time he fired he was in fear for his own life, the lives of other officers involved, and the community at large.
- Officer Kelly said Mr. Annaboli did not comply with commands and was undeterred by the implementation of the K9 unit.
- Officer Kelly recounted “[...] at that point I was like, man, he’s gonna shoot me. I was afraid he was gonna shoot me. So, I fired. I can’t recall how many times I fired, but I fired, and then I saw him drop back to the ground.”
- Officer Kelly stated he did not hear gunshots from any other officers and that his decision to fire was independent of any other officer’s decision to fire.

Officer Matthew Waters’s Post-Shoot Interview:

Aside from the facts outlined above, there were multiple relevant statements made by Officer Waters during his post-shoot interview.

- Officer Waters was informed that the suspect was wanted for shooting at Denver cops. On the way to the Days Inn Hotel, Officer Waters viewed the US Marshal’s detail sheet that stated the suspect was wanted for parole violations, menacing, and POWPO with a criminal history of robbery, assault, and drug possession. Further, the sheet indicated that the suspect was likely armed and known to flee.

- Officer Waters arrived on scene in a Tahoe along with three other TEU members. The Tahoe was used to block the suspect's car and isolate the suspect. Sergeant Bauer turned on the emergency lights.
- Officer Waters exited the Tahoe and yelled, "police, you're under arrest."
- Officer Waters saw the suspect run north (away from Officer Waters but towards Officer Kelly) and then come back south (towards Officer Waters and away from Officer Kelly) with a gun in each hand.
- Officer Waters saw the K9 deploy and latch onto the suspect. He said the suspect continued to run, although the K9 continued its hold.
- Officer Waters saw the suspect turn his body and point one of his guns back towards the officers behind him.
- Officers Waters state the suspect ran as he pointed his gun at officers and "taking up a target," while looking where the gun was pointed.
- Officer Waters described being concerned about the safety of the officers behind him and the public further south (those inside the hotel).
- Officer Waters raised his rifle but saw movement at the hotel door that he believed to be a US Marshal. He determined it was unsafe to fire his rifle at that moment.
- Then, Officer Waters described the suspect looked at him and started to point the pistol in his right hand at Officer Waters. Officer Waters said he thought, "Oh, my God, he's gonna shoot me." Officer Waters was then worried about his safety.
- Officer Waters fired three rounds from his rifle at the suspect, while the suspect was pointing the gun at him. He stated he heard one shot before he fired his rifle.
- After Officer Waters fired three rounds, he said the suspect fell down. Officer Waters said while on the ground, the suspect maintained his right hand on the pistol while watching Officer Waters.
- As Officer Waters approached the suspect to render aid, he saw that the suspect's finger was still on the trigger of the gun that still pointed in Officer Water's direction.
- Officer Waters outlined the non-lethal options used: lights and sirens, presence, vehicle contact, canine, and verbal warnings.
- Officer Waters articulated that when he [suspect] presented the firearms and started pointing them at officers and Officer Waters, he didn't believe that lower force would be appropriate. He also stated that lower force would have led to someone else or himself being shot and killed.

Post-Shooting Investigation:

On scene, two firearms were found which belonged to Mr. Annaboli: a tan H&K .45 caliber handgun with defaced serial number and broken magazine, and a Century arms .45 caliber handgun with laser light attachment and extended magazine.

Upon review of the video footage relating to this incident, it appears the extended magazine affixed to the Century Arms handgun detached from the handgun during Mr. Annaboli's interaction with K9 Zev. The magazine affixed to the H&K handgun appears to have been damaged after Mr. Annaboli was rendered incapacitated and during the ensuing attempt to disarm him and provide aid. The H&K handgun had a round in the chamber, the hammer cocked, and the safety mechanism disengaged.

Several live rounds of .45 caliber ammunition were found on the ground where Mr. Annaboli fell. Video footage review shows that these rounds likely were ejected out of the bottom of the broken H&K magazine when officers disarmed Mr. Annaboli and provided aid.

Eight shell casings were found at the scene: five 9mm caliber shell casings (consistent with the caliber used by Kelly) and three 4.6x30 caliber shell casings (consistent with the caliber used by Waters).

Additionally, interviews were completed with several civilian witnesses on scene.

A man who witnessed the shooting from the parking lot stated in his interview that he saw Mr. Annaboli walking around his vehicle prior to police contact with nothing in his hands. Immediately upon police contact, this witness said he saw Mr. Annaboli reach back into the vehicle and pull out a handgun. The man stated he observed Mr. Annaboli running in his direction. Afraid of being taken hostage, the man said he ran to another hotel across the parking lot for safety.

A second man also witnessed the shooting from the parking lot. He stated he saw Mr. Annaboli running in his general direction with a firearm in his hand. The second witness said he heard police announce themselves as soon as they arrived on scene and before Mr. Annaboli began running towards him.

A third witness, an employee of the Days Inn Hotel, stated that upon hearing a loud bang she looked outside and saw the aftermath of the contact block. She said she watched Mr. Annaboli run towards the front of the hotel with a black handgun in his right hand and a brown handgun in his left hand. She stated the police then released the K9. After the K9 bit Mr. Annaboli, she saw him point the brown handgun at officers and then heard gunshots.

Further, during a search of Mr. Annaboli's vehicle, law enforcement officers recovered rifle-rated body armor, various calibers of ammunition, various types of drugs (pills, powder, chunks, marijuana) along with drug paraphernalia and packaging typically associated with drug distribution.

The autopsy toxicology conducted by Medical Examiner Dr. Megan Kliesner, of the El Paso County Coroner's Office, on August 18, 2023, revealed that amphetamine, methamphetamine, and fentanyl were present in Mr. Annaboli's system at the time of his death.

Analysis and Conclusion:

Benjamin Arthur Annaboli died as the result of a multiple gunshot wounds caused by five bullets fired by CPD Officers Brian Kelly and Matthew Waters.

This was a Homicide, but the use of deadly physical force by Officer Brian Kelly and Officer Matthew Waters was justified.

In making this determination the facts of this case must be analyzed in light of CRS 18-1-704 and CRS 18-1-707.

CRS 18-1-704 states in relevant part,

“a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose. Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.”

CRS 18-1-707 states in relevant part,

“Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person. A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force; [and]
- (b) The suspect poses an immediate threat to the peace officer or another person; [and]
- (c) The force employed does not create a substantial risk of injury to other persons.

The facts relevant to analysis under this standard of review include:

Officer Kelly was a sworn peace officer employed by and carrying out his official duties on behalf of the Colorado Springs Police Department, a law enforcement agency. Officer Kelly was in official police uniform and his police K9 cruiser. Upon exiting his vehicle, Officer Kelly immediately identified himself as law enforcement.

The initial information Officer Kelly had received was that the suspect had fired a weapon at law enforcement the day prior to contact.

Officer Kelly attempted to utilize nonlethal force by using verbal commands and employing the use of his K9 unit, Zev. However, Officer Kelly’s assertion that he was law enforcement, his warning that a K9 unit was present, and the releasing of the K9 unit did not cause Mr. Annaboli to come into compliance with commands.

Instead, Mr. Annaboli swung his body around and pointed his firearm directly at Officer Kelly, creating an imminent deadly threat.

Despite the suspect pointing a gun directly at him, Officer Kelly initially continued to attempt pursuit of Mr. Annaboli for a short period of time before firing his weapon.

Officer Kelly resorted to deadly force only after he perceived Mr. Annaboli was beginning yet another attempt to draw upon him with his firearm.

Officer Kelly feared for his safety, the safety of fellow officers on scene, and the community at large. Mr. Annaboli was fleeing in the general direction of the hotel entrance where another peace officer was located and where members of the public were likely to be found. There were also two civilian pedestrians walking in the vicinity of where Annaboli was running. One of those civilians recounted being fearful of being taken hostage.

Officer Kelly did not use deadly physical force in a manner that posed an immediate threat of substantial risk of injury to another person (other than Mr. Annaboli, who was the intended target of his justified deadly force). Officer Kelly was aware of other officers on scene and cognizant of the civilians occupying the area. At the time he fired, Kelly stated he had a clear backdrop which would not have posed a risk to anyone but his intended target.

In addition to the analysis above, one final relevant subsection of CRS 18-1-707 was satisfied in concluding that the use of deadly force by Officer Kelly was justified. Subsection (4.5) states,

“Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.”

Officer Kelly had an objectively reasonable belief that Mr. Annaboli did pose an imminent danger to himself, other officers on scene, and the civilians in the parking lot and inside the hotel.

Officer Kelly had an objectively reasonable belief that lesser degrees of force would be inadequate to neutralize the threat posed by Mr. Annaboli. He used a less-lethal option of verbal commands and deployment of the K9 unit Zev before turning to a lethal option. Due to the rapidly evolving situation, no less-lethal options were reasonably available to Officer Kelly to incapacitate Mr. Annaboli to the degree that he would no longer be a threat to the officers or the community at large.

As previously noted, the use of deadly physical force by Officer Waters was similarly justified.

In making this determination the facts of this case must be analyzed in light of C.R.S. §18-1-704 and C.R.S. §18-1-707.

C.R.S. §18-1-704 states in relevant part,

“a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use of unlawful physical force by that other person, and he may use a degree of force which he

reasonably believes to be necessary for that purpose. Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has a reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.”

C.R.S. § 18-1-707 states in relevant part,

“Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person. A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force; [and]
- (b) The suspect poses an immediate threat to the peace officer or another person; [and]
- (c) The force employed does not create a substantial risk of injury to other persons.

The facts relevant to analysis under this standard of review include:

Officer Waters was a sworn peace officer employed by and carrying out his official duties on behalf of the Colorado Springs Police Department, a law enforcement agency. Officer Kelly was in official training uniform. Upon exiting a TEU vehicle, Officer Waters immediately identified himself as law enforcement.

The initial information Officer Waters had received was that the suspect had fired a weapon at Denver law enforcement.

Officer Waters, and other law enforcement on scene, utilized nonlethal force with lights and sirens, contact block, presence, verbal commands, and employing the use of a K9 unit. Only after it became apparent that the suspect was first, not surrendering to law enforcement and second, introducing lethal weapons into the law enforcement contact, did Officer Waters resort to lethal force.

Officer Waters’ assertion that he was law enforcement, his call for the suspect to stop, and the use of a K9 unit did not cause the suspect to come into compliance with commands.

While continuing to flee, the suspect looked back and pointed one firearm at officers behind him (including Officer Kelly) and one firearm at Officer Waters.

Despite the suspect pointing a gun directly at him, Officer Waters initially continued to attempt pursuit of the suspect for a short period of time before firing his weapon.

Officer Waters repositioned himself and saw that the suspect continued to point a firearm at him. Only at that time did Officer Waters resort to deadly force.

Officer Waters feared for his safety, the safety of fellow officers on scene, and the community at large. The suspect was fleeing in the general direction of the hotel entrance where another peace officer was located and where members of the public were likely to be found. There were also two civilian pedestrians walking in the vicinity of where Mr. Annaboli was running. One of those civilians recounted being fearful of being taken hostage.

Officer Waters considered and used less lethal options and only turned to the use of deadly physical force after the suspect pointed his firearm at Officer Waters creating an imminent deadly threat. The suspect was also running in the direction of other civilians while carrying two firearms, creating a possible deadly risk to the greater community.

Officer Waters was careful not to use deadly physical force in a manner that posed an immediate threat of substantial risk of injury to another person (other than Mr. Annaboli, who was the intended target of his justified deadly force). At the time he fired, Officer Waters stated he had a clear backdrop which would not have posed a risk to anyone but his intended target.

In addition to the analysis above, one final relevant subsection of CRS 18-1-707 was satisfied in concluding that the use of deadly force by Officer Waters was justified. Subsection (4.5) states,

“Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.”

Officer Waters had, and articulated, an objectively reasonable belief that the suspect did in fact pose an imminent danger to himself, other officers on scene, and civilians in the parking lot and inside the hotel.

Officer Waters had an objectively reasonable belief that lesser degrees of force would be inadequate to neutralize the threat posed by the suspect. He used a less-lethal option of verbal commands and saw the deployment of the K9 unit Zev before turning to a lethal option. Due to the rapidly evolving situation, no less-lethal options were reasonably available to Officer Waters to incapacitate the suspect to the degree that he would no longer be a threat to officers, or the community at large.

After completing a thorough review of the facts and evidence, Colorado’s 4th Judicial District Attorney’s Office has determined the use of deadly physical force by Colorado Springs Police Department Officers Brian Kelly and Matthew Waters was justified based on all the facts and circumstance of this case under the law of the State of Colorado.

Note to Media: All updates will only come from Communications when available.

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