



OFFICE OF THE DISTRICT ATTORNEY

GEORGE BRAUCHLER, DISTRICT ATTORNEY

23RD JUDICIAL DISTRICT

SERVING DOUGLAS, ELBERT AND LINCOLN COUNTIES

April 15, 2025

Sheriff Tim Norton
Elbert County Sheriff's Office
751 Ute Avenue
Kiowa, Colorado 80117

Re: Report of Findings Regarding the Officer-Involved Shooting at 175 Spruce Street on October 15, 2024

Dear Sheriff Norton,

On October 15, 2024, deputies from the Elbert County Sheriff's Office were serving a "high-risk" search warrant at 175 Spruce Street, Apt. 11, Elizabeth, Colorado. The warrant ordered the deputies to retrieve weapons inside Mr. Athey's apartment that had been used in a felony menacing. The deputies were required to force the front door when Mr. Athey refused to open it. Mr. Athey then fired a handgun multiple times at the deputies as they entered. Deputy Shane Johnston was struck in the chest but survived. Deputy Mike Waters and Sergeant Mike Saunders returned fire as they retreated with Deputy Johnston. The rounds they fired did not strike Mr. Athey. Mr. Athey then took his own life.

I reviewed all the evidence provided by the Critical Incident Response Team to determine whether there was any illegal use of force by the officers who fired their weapons.

SUMMARY

Applying the law to the facts of this incident, as described in more detail below, I conclude that Sergeant Saunders and Deputy Waters were legally justified in attempting to use lethal force against Mr. Athey. The use of force by the deputy sheriffs was reasonable, necessary, and appropriate to defend themselves and others from the threat posed by Mr. Athey.

STATUTORY FRAMEWORK

C.R.S. § 16-2.5-301 governs investigations into police officer-involved shootings. This statute provides, in relevant part:

Each police department, sheriff's office, and district attorney within the state shall develop protocols for participating in a multi-agency team, which shall include at least one other police department or sheriff's office, or the Colorado Bureau of Investigation, in conducting any investigation, evaluation, and review of an incident involving the discharge of a firearm by a peace officer that resulted in injury or death. The law enforcement agencies participating need not be from the same judicial district.

The investigation into this shooting incident was conducted by the 23rd Judicial District Critical Incident Response Team (CIRT). The lead investigator was Detective John Hastings with the Lone Tree Police Department. Other investigators from the District Attorney's Office participated, as well as numerous police departments and sheriff's offices throughout the jurisdiction.

C.R.S. § 20-1-114 provides, in relevant part:

The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request.

This document constitutes a report of the findings of the District Attorney for the 23rd Judicial District and includes the basis of the decision not to charge the involved deputies with any criminal conduct.

MATERIALS REVIEWED AND INFORMATION CONSIDERED

I reviewed all materials provided by the lead investigator and members of the CIRT, including body-worn camera video, surveillance videos, drone video, forensic analysis, reports of investigating officers and crime scene technicians, the interview of the involved officers, all reports and recorded interviews with witnesses, and photographs and video of the scene.

SUMMARY OF FACTS

Prior to the officer-involved shooting on October 15, 2024, officers from the Elizabeth Police Department (EPD) were investigating Mr. Athey for recent criminal incidents. In two of these incidents Mr. Athey was suspected of pointing a handgun at juveniles. In another incident, Mr. Athey was suspected of firing a shotgun from his apartment window at another apartment unit. EPD officers applied for a search warrant that was issued by an Elbert County judge. The signed warrant ordered the officers to search Mr. Athey's apartment at 175 Spruce Street, Unit 11, Elizabeth, Colorado, for the weapons believed to have been used in these crimes.

Due to Mr. Athey's criminal history and access to weapons, EPD requested the assistance of the SWAT team from the Elbert County Sheriff's Office (ECSO) to assist in the service of what was deemed a "high-risk" search warrant on October 15, 2024.

EPD officers conducted surveillance at the apartment complex in the early morning hours on October 15 in preparation for serving the warrant at 8:50 am. The officers observed Mr. Athey moving around the apartment until approximately 3:00 am. The officers also observed his partner leave later that morning for her scheduled work at a nursing home facility in Castle Rock. Officers did not observe any other individuals leave or enter the apartment. They believed – and confirmed with Mr. Athey's partner – that he was alone in the apartment.

At approximately 8:50 am, EPD officers and ECSO deputies assumed positions at the apartment complex. The ECSO SWAT deputies formed a tactical "stack" and made their way from the parking lot to the second floor of the apartment complex at 8:54:51 am. From 8:55:09 am through 8:56:00 am, SWAT deputies attempted to contact Mr. Athey at the front door of apartment 11. The deputies knocked loudly and identified themselves as police officers executing a search warrant for nearly one minute.



(Still from body-worn camera of deputies announcing their presence and demanding Mr. Athey open the door.)

Mr. Athey did not respond. At 8:56:00 am, Deputy Shane Johnston was directed by Sergeant Mike Saunders to use a ram to force the door of the apartment.



(Still from body-worn camera of Deputy Waters using a ram to force the door.)

At approximately 8:56:02 am, as the front door of the apartment swung open from being struck by the ram, Deputy Johnston was immediately fired upon by Mr. Athey. Mr. Athey was lying prone on the floor and partially concealed behind a couch as he fired a handgun at Deputy Johnston. Struck in the chest, Deputy Johnston fell to the ground. (It was later confirmed that Deputy Johnston sustained a gunshot to his chest, but the bullet only partially penetrated his protective vest). As Deputy Johnston fell, the door to the apartment swung shut, apparently rebounding off the interior wall.



(Still image from body-worn camera of Deputy Johnston falling back after being hit in the chest with a bullet fired by Mr. Athey).



(Image of wound to Deputy Johnston's chest where the impact of the bullet penetrated his ballistic vest).

Mr. Athey continued to fire at the deputies through the door, wall and window. One bullet struck the ballistic shield being held by Deputy Watters. Both Deputy Watters and Sergeant Saunders returned fire. Sergeant Saunders fired four rounds from a rifle into the apartment. Deputy Waters fired 5 rounds with a handgun. As they retreated with Deputy Johnston to the parking lot, their

body-worn cameras recorded the sound of a single and distinct gunshot. None of the deputies were firing at this time. It is believed that this is when Mr. Athey took his own life.

ECSO deputies and EPD officers evacuated neighboring residents and assumed stationary positions around the apartment complex. Many announcements were made through a PA system for Mr. Athey to surrender and exit the apartment. There was no response from Mr. Athey.

ECSO Sergeant Turner gave a command for EPD Officer Myers to deploy “ferret rounds”, which contains oleoresin capsicum, more commonly known as pepper spray, into a rear window of the apartment. The ferret rounds were deployed from a 40 MM launcher. Officer Myers ultimately deployed between 1-2 rounds into each window. There was no response from within the apartment.

The Douglas County Sheriff's Office (DCSO) SWAT team was asked to respond to the scene. It was decided that DCSO SWAT would take over the tactical responsibilities. Upon arrival, DCSO SWAT personnel relieved the ECSO SWAT team members from their positions, including Deputy Shane Johnston who, despite his wound, had stayed with the team and assumed a perimeter position.

A video-equipped drone was deployed through a broken out window. Mr. Athey was observed lying on the floor in the living room. An explosive breach was used on the front door and the Douglas County SWAT personnel made entry into the apartment. Mr. Athey was found deceased on the floor in the living room.

DCSO Detective Mackenzie Cataffo submitted and was granted a search warrant for the apartment. Members of the 23rd Judicial District CIRT team entered the apartment. They observed Mr. Athey lying on the floor of the living room, located adjacent to the front door of the apartment. He was lying on his right side and his arms were partially covering his head. There was a large pool of blood on the green carpet, located around Mr. Athey's head.

The CIRT investigators observed a black nylon handgun holster next to Mr. Athey's coat. They also observed an empty handgun magazine lying next to the body. Nearby were scattered shell casings on the floor. Mr. Athey had a black semi-automatic handgun clutched in his right hand with his index finger partially in the trigger guard.



(Image of Mr. Athey's hand holding a 9mm handgun).

Upon clearing the handgun, the investigators found there was a 9mm round in the chamber and the magazine contained 12 rounds of 9mm ammunition.

There was also a yellow notepad next to Mr. Athey's body. The writing was difficult to read as it was saturated with blood but a third page was legible. It read, "I hate this shit, can't wait till I leave this shithole if it don't work out there's only 1 option left, I'm old n tired too much bullshit to deal with I have nothing, nobody but I guess I did it too myself, Every one switched up went left or right while I'm well, [here the note ends]"

The coroner's report stated that there was only one entry wound from a single gunshot wound to Mr. Athey's neck. The trajectory was front-to-back, slightly right-to-left. A bullet was recovered from the head/brain area of Mr. Athey. This was found to be consistent with suicide and likely occurred when the retreating officers heard a final gunshot from within the apartment.

APPLICABLE LAW

The ethical obligation of prosecutors and the policy of the District Attorney's Office is to only prosecute a case when 1) there is a good faith basis to believe the individual to be prosecuted has committed the crime, and 2) there is a reasonable likelihood of conviction at trial. This is a higher standard than the probable cause standard used by police officers making arrest decisions. Criminal liability for charging is established when there is a good faith basis to believe the individual committed the crime, and there is sufficient evidence to prove all the elements of the crime beyond a reasonable doubt, to include the criminal conduct and the criminal mental state. Additionally, the prosecution must disprove any statutorily recognized justification or defense beyond a reasonable doubt.

The District Attorney's review of an officer-involved shooting event is guided by the statutes pertaining to the affirmative defenses applicable to use of force by peace officers, specifically C.R.S. § 18-1-707:

(1) 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.

(2) When physical force is used, a peace officer shall: (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense; (b) Use only a degree of force consistent with the minimization of injury to others; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) 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; (b) The suspect poses an immediate threat of death or serious bodily injury to the peace officer or another person; (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) 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.

ANALYSIS AND CONCLUSION

The question presented to the District Attorney's Office for the 23rd Judicial District is whether the two ECSO deputies, Sergeant Saunders and Deputy Waters, were justified in attempting to use deadly force when firing their weapons at Mr. Athey's location within the apartment.

Sergeant Saunders and Deputy Waters, as well as the witness officers who did not fire their weapons, were all wearing body-worn cameras. These cameras recorded both audio and video. The recordings were collected and reviewed by the CIRT investigators. The recordings and the

statements of all the deputies involved gave a consistent and accurate account of what occurred throughout the entire incident.

All of the involved ECSO deputies were individually interviewed by CIRT team investigators in the aftermath of the shooting. The deputies described fearing for their own lives and the lives of their fellow officers when Mr. Athey fired at them, striking Deputy Johnston and striking the ballistic shield held by Deputy Waters. The statements of both deputies who fired their weapons, and the other witness deputies, were entirely consistent with the images and sound recorded by their body-worn cameras as well as the evidence found within the apartment.

In conclusion, Mr. Athey fired a handgun multiple times at ECSO SWAT deputies attempting to serve a search warrant. Mr. Athey was attempting to murder the deputies. One deputy was struck in the chest and another in the ballistic shield he held. Sergeant Saunders and Deputy Waters returned fire as they retreated with the wounded deputy. Mr. Athey then took his own life.

The actions of both deputies who returned fire were reasonably justified. The deputies had loudly identified themselves as police officers serving a search warrant multiple times before ramming the door. Mr. Athey ignored their commands to open the door and began firing on the deputies as soon as the door was breached. There was no opportunity for the deputies to attempt to use a lesser amount of force before returning fire.

Mr. Athey, by his actions, placed the deputies in imminent fear for their own lives and the lives of other officers. Mr. Athey's actions were the proximate cause for the attempted use of deadly force by both deputies who fired their weapons. Those deputies clearly fired at Mr. Athey to defend themselves as well as other officers.

I find that Sergeant Saunders and Deputy Waters reasonably believed that Mr. Athey posed an imminent threat of deadly physical force to themselves and others in the vicinity. The deputies were justified in attempting to use deadly physical force against Mr. Athey to defend themselves and others from the unlawful use of deadly physical force Mr. Athey was using against them. Sergeant Saunders and Deputy Waters did not commit any crime and criminal charges will not be filed against them.

Clinton McKinzie
Chief Deputy District Attorney
23rd Judicial District