



## OFFICE OF THE DISTRICT ATTORNEY

GEORGE BRAUCHLER, DISTRICT ATTORNEY  
23<sup>RD</sup> JUDICIAL DISTRICT  
SERVING DOUGLAS, ELBERT AND LINCOLN COUNTIES

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February 19, 2025

Sheriff Darren Weekly  
Douglas County Sheriff's Office  
4000 Justice Way  
Castle Rock, Colorado 80109

Re: Report of findings Regarding the Officer-Involved shooting in Englewood on September 28, 2024,  
CIRT #24-02

Dear Sheriff Weekly,

The 23<sup>RD</sup> Judicial District Critical Incident Response Team (CIRT) has completed the investigation into the Officer Involved Shooting at 12660 Roosevelt Lane, Englewood, Colorado. I have completed my review of this investigation.

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

### SUMMARY

Applying the law to the facts of this incident, as described in more detail below, I conclude that the officers were legally justified in using lethal force against Mr. Cosby. The use of force by the police officers was reasonable, necessary, and appropriate to defend themselves and others from the threat posed by Mr. Cosby.

### 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." C.R.S. § 16-2.5-301(1).

The investigation into this shooting incident was conducted by a multi-agency team consisting of personnel from the Parker Police Department, the Castle Rock Police Department, the Littleton Police Department, the Lone Tree Police Department, and the prior 18<sup>th</sup> Judicial District Attorney's Office. The lead investigators were Detectives Beverly Wilson and Dawn Cashman with the Parker Police Department.

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.” C.R.S. § 20-1-114(1).

This document constitutes a report of the findings of the District Attorney for the 23<sup>RD</sup> Judicial District and includes the basis of the decision not to charge the involved officers 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, dispatch notes, radio traffic, 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 THE FACTS**

On September 28, 2024, Douglas County Sheriff’s Office was asked to assist Lone Tree Police Department with contacting Matthew Case Cosby, who had called Lone Tree Police Department dispatchers and advised that he wished to meet with an officer. At approximately 6:07 PM, Matthew C. Cosby (12/3/1978) phoned Lone Tree Police Department dispatchers. He advised the dispatcher that he wanted to drive to the station and asked if that was ok. The dispatcher told him that it was and gave him the address of the station. She asked Mr. Cosby what he needed help with, and he advised that he wanted an officer to shoot him. He told the dispatcher, “I’m tired. I’m very, very tired.” He said that he is an alcoholic and a drug addict. He explained that he had attempted suicide earlier in the day and that there was a gun hole in his ceiling. He told the dispatcher that “I’m just too afraid to take my own life, so I would like to show up and pull a gun on an officer and then he can take my life.” The dispatcher attempted to provide assistance to Mr. Cosby, but he refused any help, stating that he didn’t want any more mental health help. Mr. Cosby then hung up.

Law enforcement responded to 12660 Roosevelt Lane, Englewood, Colorado. A Lone Tree Police Department Crisis Intervention Team Officer and her clinician contacted Mr. Cosby to try to provide help and to convince him to come down without his weapon. However, Mr. Cosby advised them that he was coming down with his gun and that he wanted officers to shoot him.

When Mr. Cosby came down from his apartment and entered the parking lot where Deputies were positioned, he was carrying his handgun. The Lone Tree Police Department Crisis Intervention Team Officer asked Mr. Cosby, “Please put the gun down,” while other deputies issued multiple commands to Mr. Cosby to “Drop the gun.” Mr. Cosby then pointed his handgun at Douglas County K-9 Deputy Kyle at which time Deputies fired at Mr. Cosby. He was struck approximately six times. Deputies provided aid to Mr. Cosby, and he was transported to the hospital where he passed away. All deputies, the Lone Tree Police Officer, and all citizens were not harmed.

### **INVESTIGATION**

The following information was compiled from reports completed by numerous Law Enforcement Officers at the scene of the shooting, Lone Tree Police Department, and Douglas County Sheriff’s Office radio traffic and CAD notes. It was also collected through interviews completed with law enforcement officers at the scene of the shooting, interviews completed with the officers who were involved in the shooting, as well as statements obtained from witnesses with information related to this case.

At approximately 6:07 PM, on September 28, 2024, Mr. Cosby contacted Lone Tree Police Department dispatchers. Cosby asked dispatchers for the address to the station and if he could go to the station and speak to an officer. The dispatcher gave Mr. Cosby the address to the station and provided details on how



to contact her. She told Mr. Cosby that she would answer his call and that an officer would come out to speak with him. The dispatcher asked what he needed help with, and Mr. Cosby responded, "...I want you guys to shoot me." Mr. Cosby then said, "I'm tired. I'm very, very tired." Mr. Cosby told the dispatcher, "I'm an alcoholic. Well, I'm a drug addict and an alcoholic. I've always been something like that, and I'm, uh, very broken. And I had a suicide attempt earlier today and now there's a gun hole in my ceiling. Um, I'm just too afraid to take my own life, so I would like to show up and pull a gun on an officer and then he could take my life...I'd really prefer that." The dispatcher tried to offer him help and he refused stating, "...I don't want any more mental health shit...I've had multiple attempts at giving me help." When the dispatcher tried to get more information, he disconnected the call. The dispatcher was unable to confirm where Mr. Cosby was living and where he was calling from.

One of Mr. Cosby's friends had also called into dispatch expressing concern for Mr. Cosby. At approximately 6:34 PM, Mr. Cosby's friend, Daniel Werder, connected with the Douglas County Sheriff's Office. He later spoke with Deputy Derington. Mr. Werder told Deputy Derington that Mr. Cosby was drunk and had shot a gun off inside his apartment. Mr. Werder added that Mr. Cosby was "ready for it to end." Mr. Werder did not know if Mr. Cosby lived with anyone else or Mr. Cosby's address.

Dispatchers were able to locate two potential addresses for Mr. Cosby, one in Arapahoe County and one in Douglas County. The Douglas County Sheriff's Office was asked to assist in determining if the Douglas County address was the correct address. Douglas County Sheriff's K9 Deputy Kyle located Mr. Cosby's blue Chevy Colorado in the parking lot of the Windsor at Meridian apartment complex. This confirmed Mr. Cosby's address as 12660 Roosevelt Lane, Unit G#3, Englewood, unincorporated Douglas County, Colorado. Deputy Kyle established the location of Mr. Cosby's apartment and noted that the window shades were drawn and there was a light on in the apartment. Mr. Cosby lived on the third floor of the apartment building.

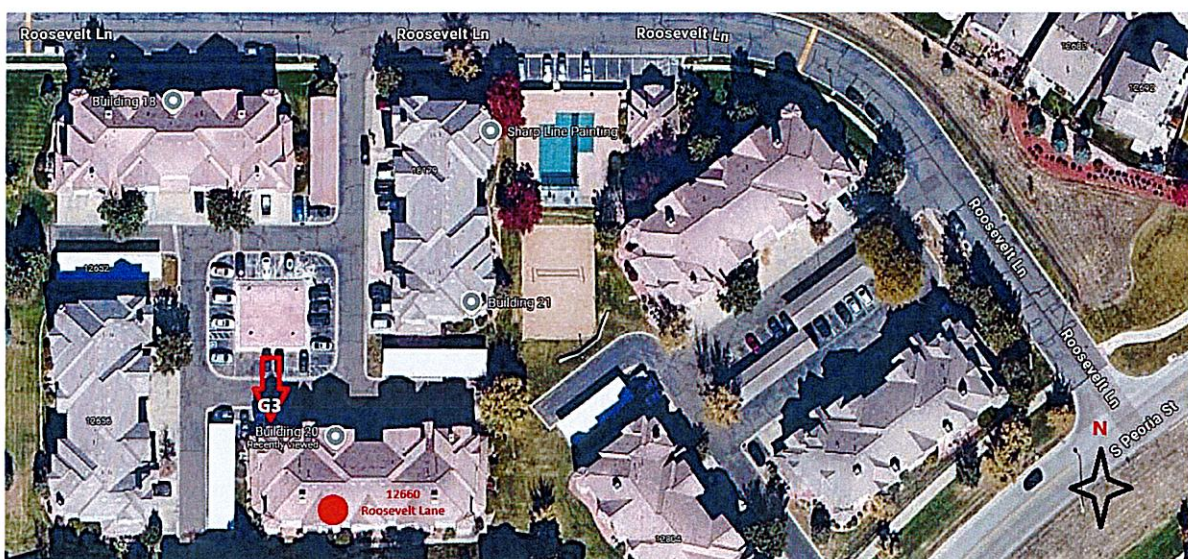
Lone Tree Police Crisis Intervention Team Officer Lindsay Sullivan then responded to the Roosevelt address. Officer Sullivan and her assigned All Health Clinician, Sophos Lind, contacted Mr. Cosby via phone. Mr. Cosby was intoxicated, and he told them that he was "broken" and "done." He also said that he was "tired of being an alcoholic" and he was "tired of being broken." During the discussion, he abruptly said, "...goodbye, I've had enough," and disconnected.

Lone Tree Police dispatchers notified the Douglas County Sheriff's Office of Mr. Cosby's statements and deputies were dispatched to Mr. Cosby's residence. Deputies were advised that Mr. Cosby was suicidal, that there was a gun hole in the apartment ceiling, and that he wanted "suicide by cop." Douglas County Sheriff Deputies Derington, Kyle (with K-9 Sig), Hosier, Pastore as well as Douglas County Sheriff Sergeant Swartz and Douglas County Sheriff Lieutenant Sanders responded to the apartment complex. Deputies then developed a plan to contact Mr. Cosby.

Sergeant Swartz and Deputy's Derington and Kyle first responded to the third story of the apartment building. Deputy Derington reported he could hear agitated yelling coming from inside unit G3, although he could not make out what was being said. Deputies were told that Mr. Cosby said he would come out of the apartment, but that he was not going to leave his gun behind. The team moved back to the parking lot to deescalate the situation and to give Mr. Cosby "room to breathe."

Officer Sullivan, Lieutenant Sanders, and Deputies Hosier and Pastore maintained a perimeter at the Northwest corner of 12660 Roosevelt Lane (just below and to the West of Mr. Cosby's G3 unit and near Cosby's truck). Upon moving back to the parking lot, Sergeant Swartz and Deputies Derington and Kyle positioned themselves on the North side (and just below) of Mr. Cosby's G3 unit.





At 7:05 PM, Officer Sullivan called Mr. Cosby. Mr. Cosby immediately said he was “going to bed” and that he would not come down. Officer Sullivan told Mr. Cosby that he was not in any trouble and that he could get assistance without being forced to go to the hospital. Officer Sullivan told Mr. Cosby that everyone was concerned about him, including some of his friends who had called in worried about him. Officer Sullivan again asked Mr. Cosby to either come down and meet with her or allow officers to meet with him at his apartment. Mr. Cosby told Officer Sullivan this was “not (his) first rodeo” and he would not “do any of that.” Officer Sullivan told Mr. Cosby that officers were there to ensure his safety and he repeatedly said, “no.” Mr. Cosby added “This is very bad. If you want me to ride or die, um.... I don’t like where this is going to go.” Officer Sullivan continued to try to get Mr. Cosby to meet with them. Mr. Cosby said that he looked outside and he did not see law enforcement. Officer Sullivan explained to him that because he was armed with a firearm and had fired a round through his ceiling, they would not expose themselves “like ducks in a pond.” Mr. Cosby responded with, “You really think I want to shoot someone?” Officer Sullivan was able to observe Mr. Cosby on his balcony and saw that he was wearing a yellow shirt. He seemed to be intoxicated and emotionally distressed.

Officer Sullivan continued to ask Mr. Cosby to come out with his hands visible. Mr. Cosby refused. Mr. Cosby then agreed to meet with officers and insisted that a patrol vehicle be parked “up front.” Officer Sullivan told him that officers would meet him out front as long as his hands were visible and he did not have a firearm. Mr. Cosby insisted, “I will be holding my firearm.” He then added, “I’d rather be put down.” At that time, Lieutenant Sanders aired (via police radio) that Mr. Cosby said he would come down, but he would not put his firearm away. Officer Sullivan continued to try to get Mr. Cosby to come down without his firearm. Deputies surrounding Officer Sullivan overheard the calls with Mr. Cosby and the statements he was making. Deputy Pastore reported that he heard Officer Sullivan tell Mr. Cosby to “put the gun down, come down and meet with deputies,” to which he said, “Nah,” and that he was going to go to bed. He also heard Mr. Cosby say something along the lines of, “I’m not coming down, you guys won’t like what will happen, it’s not gonna end well.” Eventually, Mr. Cosby said, “No, I’m gonna come down, but I’m not gonna put the gun down.” He added something along the lines of, “You guys need to put me down.” Deputy Hosier overheard Mr. Cosby indicate that he “had a gun and he wanted us to kill him.” Deputy Hosier said it sounded like Mr. Cosby had gone back and forth about coming out and about whether he was going to bring his gun with him.

Mr. Cosby eventually agreed to come down. At that point, Officer Sullivan said she heard a metallic sound over the phone, which she described as being similar to the sound of someone racking a firearm or



inserting a magazine into a firearm. Concerned for her own safety, she repositioned herself behind a dark-colored pickup truck (Mr. Cosby's truck) along with Lieutenant Sanders and Deputies Hosier and Pastore. She repeatedly asked Mr. Cosby if he had his firearm. Mr. Cosby confirmed that he had his firearm in his possession and stated, "You need to kill me." Lieutenant Sanders aired that as Mr. Cosby was coming down the stairs he said that he "wants us to kill him." Officer Sullivan told Mr. Cosby, "I don't want to kill you," to which Cosby replied, "(inaudible) just aim for my heart." He then asked, "Do you see me? Do you see me?" Officer Sullivan continued to plead with him to "please put the gun down." Mr. Cosby did not comply with her request to put the gun down.

Deputy Derington and Deputy Kyle with K-9 Sig re-positioned themselves at the bottom of the West side stairwell of Mr. Cosby's apartment building. They used a white truck which was backed into a parking space as cover. Deputy Kyle was near the front passenger side of the truck and Deputy Derington was near the driver's side taillight of the pickup. Sergeant Swartz moved North into the parking lot and used a car as cover.

Mr. Cosby then came down the stairs and entered the parking lot. Deputy Derington said, "...then, all of a sudden, I heard aggressive stomping down the stairs - like, 'boom, boom, boom....' Like somebody was running quickly down the stairs. At that point, I didn't see the subject (Mr. Cosby) until he made it out of the stairwell, so I didn't catch him as he was in that, like, open cut through window to see into the stairwell, until he was past the front pillar of the stairwell making his way into the parking lot." Douglas County deputies and Officer Sullivan all reported that Mr. Cosby walked into the driveway area in between his apartment building and the parking spaces located several feet directly North of his building. Officer Sullivan said she believed Mr. Cosby had a gun in his left hand. Officer Sullivan described the firearm as appearing metallic with a circular barrel. Sergeant Swartz and Deputy Derington described the gun as being a long-barreled gun, possibly a revolver. Lieutenant Sanders and Deputy Pastore observed Mr. Cosby holding a handgun in his right hand.

Deputy Kyle reported he activated the rail mounted light on his handgun to get Mr. Cosby's attention and began issuing repeated verbal commands of, "Drop the gun," and, "Get on the ground." He also told Mr. Cosby, "You're gonna get bit by a dog." Deputy Derington ordered Mr. Cosby to, "Drop the gun, do it now!" Sergeant Swartz fired a single less lethal 40mm round at Mr. Cosby. No one on the scene that night was able to advise whether the 40mm round struck Mr. Cosby, but they all noted that if it did contact him, it had no effect on him.

Deputy Kyle continued to issue verbal commands as Mr. Cosby walked towards him and explained, "At that point, he was kind of aimlessly, like, all over the place, stumbling (like he was intoxicated), like, with his gun in his hand." Deputy Kyle said Mr. Cosby looked directly at him and said something like, "Fuck you, kill me!" Mr. Cosby then raised the gun up and waved it around. Deputy Kyle explained, "while he was out here, he was either raising it towards me or he was raising it towards Swartz.... it was so randomly, like, waving that I like - I couldn't tell you for sure if he was, if he was leveling it to point at one of us or what, but he was, he was definitely, like, acting almost like a drunk man with a firearm."

When asked why he fired his weapon at Mr. Cosby, Deputy Kyle clarified, "I heard the first shot; he was still on his feet. It appeared he was still moving in a direction towards me, or at least towards the East.... and he still had a gun in his hand. And so, I fired once; I repositioned and I wanna say I only shot two more rounds after that, and then he fell. But I was concerned (that) if this continues, I don't know the status of his gun, I don't know what's going on, but he's holding onto it. I have more people down here (he pointed on a drawing to the East) potentially, that are in buildings. Hindsight, 2020 - I had put Swartz away from me over here (he pointed on a drawing to Swartz's location) - if he goes that way, Swartz had switched back from his handgun to that less lethal; he has only a less lethal at this point unless he switches back to his firearm. So.... we have to react at this point and my only option was - I don't wanna send the dog out there. We already have active gunfire going on; I have to react with lethal threat because he's holding a lethal threat towards me and a danger not only to potentially Swartz, me, and Derington,



but anybody that may have been out here that I didn't see prior to him coming down the stairs because I wasn't worried about what was going on back here as he came down. Because we knew he was in the stairwell. I was worried about him and him alone." Deputy Kyle further noted his concern for the people who resided within the apartment complex, citing that when the gunfire ceased, people had come out onto their balconies to see what was happening. Deputy Kyle also added that he had threatened to send the K9 to bite Mr. Cosby, which also did not seem to illicit a reaction from Mr. Cosby and that Mr. Cosby was "very dedicated to whatever it is going on his life that brought him to this point." Deputy Kyle added that he was concerned that if he did not take action, as Mr. Cosby had already advanced on him with a gun in his hand, that "he (was) going to shoot an Officer to cause the shooting to happen."

Deputy Kyle was asked if he was concerned for his own life, to which he responded, "Yes, absolutely," and continued, "I was concerned for my own life, Derington and Swartz's, because those were the two other guys that I knew exactly where they were... I was very concerned for what can happen in here, being that we didn't say shelter in place to anybody - nobody was told to 'stay in their apartment - don't come out.'"

Deputy Derington stated, "(He) turns to his right as I can hear commands being given by Travis Kyle (to drop the gun and that he would be bitten by the dog), and I think maybe Sergeant Swartz, telling him to drop the weapon. He does not drop the weapon and continues to walk and face towards where I last saw Sergeant Swartz, and more towards Deputy Travis Kyle, the canine deputy. He turns and faces that direction. I hear more commands for him to drop the gun." At approximately that same time, Mr. Cosby yelled something at deputies, however Deputy Derington did not know what he said. He then heard a less lethal 40mm weapon system go off, and then he "screamed" at Mr. Cosby to "drop the gun," which Mr. Cosby did not obey and "continued to proceed forward" with a gun in his right hand. He then took steps into a "shooting stance," as his feet were wide and split apart. Deputy Derington stated, "... and the muzzle of that pistol goes from pointing directly at the ground and starts to go up. And he brings it to shoulder level and into a firing or shooting position into the direction I last - or pointing it in the direction I last saw Sergeant Swartz..." When asked to further discuss his reason for shooting his weapon at Mr. Cosby, Deputy Derington explained, "Because I was in imminent fear that Sergeant Swartz would be killed if I didn't take action. So, he had already previously discharged his firearm to our knowledge inside of an occupied structure. He was intoxicated. His behavior from the onset was aggressive and hasty and kind of unpredictable. So, at that moment in time, immediately following Sergeant Swartz discharging a less lethal at him, is where I saw the weapon being pointed. So, I felt in that moment that if I didn't take action that Sergeant Swartz could have been killed."

On Deputy Derington's body worn camera, Mr. Cosby is heard stating, "I'm not trying to kill you," to which Deputy Kyle added, "We don't want to kill you." Then gunfire erupts. Deputy Derington only had one iteration of gunfire and said he stopped firing at Mr. Cosby because "... he was down. He was no longer a threat to us."

Deputy Pastore also noted that Mr. Cosby was holding a handgun out to the side. Deputy Pastore described Mr. Cosby holding the firearm like an "airplane." Deputy Pastore pointed his firearm at Mr. Cosby and when he observed Mr. Cosby point his gun at Deputy Kyle, he fired his duty weapon at him. When asked why he fired his weapon at Mr. Cosby, Deputy Pastore stated, "Well, when he comes down, I don't initially see the gun. When he turns around and I see the gun, I get pretty aware of what's gonna happen next. When he pointed the gun here (while pointing to a drawing he'd completed), I knew he was suicidal and I was scared of what he was gonna do to try to get us to shoot him - I was scared he was going to shoot this, the K9 officer." Deputy Pastore also said he was afraid Mr. Cosby was going to shoot and kill Deputy Kyle right in front of him.

Deputy Hosier reported that when Mr. Cosby first appeared at the bottom of the stairwell, he initially only observed him from the shoulder area up, as a nearby truck, being used as cover, obstructed the lower portion of Cosby's body and he could not immediately determine if Mr. Cosby had a firearm. When Mr.



Cosby stepped out toward the middle of the parking lot, however, Deputy Hosier observed Mr. Cosby had a black barreled handgun in his right hand.

Deputy Hosier said Officer Sullivan was still pleading with Mr. Cosby to "put the gun down so we can help him," to which Mr. Cosby said some variation of "shoot me or kill me." Sergeant Swartz then deployed the less-lethal 40mm, which appeared ineffective, as Mr. Cosby stayed "exactly how he was." Deputies Kyle and Derington issued multiple commands for Mr. Cosby to "drop the gun and get on the ground." Mr. Cosby was facing the direction of Deputy Kyle and Deputy Derington. Per Deputy Hosier Mr. Cosby raised his firearm and pointed it at them in a "very deliberate fashion and aimed it towards them." Deputy Hosier thought Mr. Cosby was going to "kill them." He then heard one or two rounds being fired, and he, too, discharged his firearm. He believed he fired two rounds and reiterated that he "absolutely thought that (Mr. Cosby) was gonna kill (Deputy Kyle)." Deputy Hosier stopped firing his weapon because "the threat had stopped." He also noted his fear that the public in general was also in "danger." Finally, Deputy Hosier reiterated, when asked, "So, I knew Deputy Derington and Deputy Kyle were there; Deputy Derington had the shield, and through our training, he should have had the shield up and being deployed. And I knew both of them were over there, but my thought in my head was that he was gonna kill Deputy Kyle. I don't know why it was him over Deputy Derington; likely because he had the shield and had some level of protection if it was deployed properly. Um, but Deputy Kyle likely would've been right in the middle of his fire. And, and I absolutely thought that he was gonna kill him."

Sergeant Swartz said he observed Mr. Cosby raise the gun he was carrying up to "level" and he pointed it in the direction of the deputies who fired their weapons at him. He said he then saw Mr. Cosby fall.

Lieutenant Sanders stated deputies were still giving verbal commands to Mr. Cosby when he raised the pistol towards Sergeant Swartz and Deputies Kyle and Derington, who he said were on the East side of the stairwell. Lieutenant Sanders explained he was in fear of the imminent safety of those deputies and feared that Mr. Cosby was going to shoot them.

It should be noted that due to ambient lighting conditions at the time of the shooting and the use of cover and concealment behind ballistic shields and/or vehicles, there is no clear, unobstructed video footage of the use of force in its entirety on any of the law enforcement body worn cameras. There is mostly clear audio in much of the video, and there are brief glimpses of Mr. Cosby on a couple of the cameras prior to him falling to the ground. Specifically, on Deputy Hosier's body worn camera, Mr. Cosby can be seen standing in the driveway area while Officer Sullivan begged him to put his gun down. Mr. Cosby then turned towards the East and took a couple of steps, and as he did, it appeared that he also raised his right arm and hand upwards. Video was not clear enough to see what may have been in his hand(s).

On Sergeant Swartz's body worn camera, Mr. Cosby can be seen standing in the driveway area, while orders for him to drop the gun were issued. Mr. Cosby then appeared to either take a step or turn towards Sergeant Swartz while also raising his right arm upwards. Sergeant Swartz deployed the 40mm round and then concealed himself behind cover to re-load his less lethal weapon.

Officer Sullivan expressed that she believed Mr. Cosby was intent on provoking a lethal response from law enforcement — a "suicide by cop." She also mentioned that while speaking with Mr. Cosby, he stated he did not want to harm the officers but seemed determined to have them end his life. Regarding her fear for the safety of fellow law enforcement officers on scene, Officer Sullivan stated, "I tried to get him to come down without a gun, and he had said he didn't wanna hurt us, and I honestly think that's why he shot into the air. But I really think he wanted to die, and that's why he seemed to know exactly what he was doing, and he knew what was gonna happen." Officer Sullivan continued, "As far as like, did I think he was gonna come down and purposely shoot one of the officers, in talking to him, I don't think he honestly wanted to hurt anybody except for himself. But do I think he would have shot at one of us to facilitate his demise? Yes."

The handgun Mr. Cosby had possessed was lying a few feet above his head.

Castle Rock Police Sergeant Fruh contacted neighbors who reside at 12656 Roosevelt Lane #C-3. They stated they had returned home from work about 7:00 PM and shortly thereafter heard a dog barking, and yelling coming from outside. One of the neighbors described hearing officers giving commands to "get down," "put the gun down," and, "we don't want to kill you," multiple times. One of the residents stated it sounded as if the officers were begging the person while issuing commands.

The same resident provided a video that was taken during the incident. The video begins as multiple gunshot rounds can be heard. Deputy Kyle is seen standing near the front passengerside mirror/door of a white pickup truck. Movement near the rear, driver side tire of the truck, where Deputy Derington was reported to be standing, could be seen, as well. It appeared as though Mr. Cosby took a step or steps towards the East (in the direction of Deputy Kyle) as gunshots were heard. A flash, presumably from Deputy Kyle's handgun, was observed. Deputy Kyle then took a couple of steps towards the front of the truck and fired two more rounds as Mr. Cosby fell forward to the ground. As he fell to the ground, his right hand and arm appeared to be partially extended away from his body at approximately shoulder height.

#### **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 of 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 23<sup>RD</sup> Judicial District is whether the four DCSO Deputy Sheriffs, when firing their weapons at Mr. Cosby, reasonably believed the use of deadly physical force was necessary to defend themselves and/or others from what they believed to be the imminent use of deadly physical force by Mr. Cosby.

The officers fired their weapons at Mr. Cosby after Mr. Cosby came out of his apartment with his firearm. Mr. Cosby ignored multiple commands to put the weapon down and pointed his weapon at the Deputies.

The shooting officers, 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 the officers involved gave a consistent and accurate account of what occurred in the engagement and throughout the entire incident. The officers who fired their weapons all described being in fear for their own lives and the lives of others.

The subsequent investigation by the CIRT investigators determined that the following officers fired their weapons:

DCSO Deputy Travis Derington, who fired nine rounds of 9mm ammunition from his handgun.

DCSO Deputy Travis Kyle, who fired three rounds of 9mm ammunition from his handgun.

DCSO Deputy Ryan Timothy Hosier, who fired four rounds of 9mm ammunition from his firearm.

DCSO Deputy Dustin Pastore, who fired two rounds of 9mm ammunition from his firearm.

All the officers were individually interviewed by CIRT team investigators in the days following the incident. All four officers described fearing for their own lives and the lives of their fellow officers when Mr. Cosby refused to drop his firearm and pointed the firearm at deputies.

The actions of the four deputies, in firing their firearms at Mr. Cosby, were reasonably justified. Mr. Cosby, by his actions, placed the Deputies in fear for own lives, the lives of other officers and the lives of the citizens. Mr. Cosby's actions were the proximate cause for the use of deadly force by the four deputies who fired their weapons.

I find that the officers reasonably believed that Mr. Cosby posed an imminent threat of deadly physical force to themselves and others in the vicinity. The officers attempted to deescalate the situation and to use lesser force. The officers were justified in using deadly physical force against Mr. Cosby to defend



themselves and others from the unlawful use of deadly physical force against them. The officers did not commit any crime and criminal charges will not be filed against them.

A handwritten signature in black ink, reading "Rebecca Jochum", written over a horizontal line.

Senior Deputy District Attorney Rebecca Jochum