

**2011DA129**

**OFFICER INVOLVED SHOOTING**

**4/22/11**

**Officer Nate Jorstad Colorado Springs Police Department**

**Deceased: James Guy**

**Went to Grand Jury who returned a No True Bill. Case was closed on 7/19/11**



Daniel H. May  
District Attorney

## OFFICE OF THE DISTRICT ATTORNEY

Fourth Judicial District  
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Administration  
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Daniel C. Zook  
Assistant District Attorney

September 7, 2011

The District Attorney's Office has concluded its' investigation of the officer involved shooting that occurred on June 16, 2011 and issues the following report:

Any time a law enforcement officer fires his weapon and a person is injured or killed, the Office of the District Attorney conducts an independent investigation. The Office of the District Attorney then reviews the incident and determines if any criminal laws were violated by the law enforcement officer discharging his/her weapon. The independent investigation consists of interviewing witnesses, to include the law enforcement officer who fired his weapon. Investigators from the District Attorney's Office conducted the interviews in this case. Physical evidence is carefully examined. Forensic evidence is reviewed.

C.R.S. 18-1-707(2) states that a peace officer is justified to use deadly force if he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be imminent use of a deadly physical force or to effect an arrest of a person whom he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.

Just before 7:00 p.m. on June 16, 2011, Deputy Schulz was dispatched to a disturbance that occurred near the intersection of Falcon Highway and Ellicott Highway. Deputy Schulz contacted the reporting party's and got their statements as to what occurred. He then drove to 24040 Falcon Highway to get the other parties side of the situation. Deputy Schulz contacted the other party, David Goss, at the end of his driveway where it intersects with Falcon Highway. David Goss was seated in his pick-up. When Deputy Schulz approached Mr. Goss, he found him to be very angry, irate, aggressive and extremely verbally abusive. Deputy Schulz told Mr. Goss when he calmed down he could call in a report and the Deputy proceeded to leave. As he was about to enter his patrol car, Mr. Goss got out of his truck and came at Deputy Schulz in an aggressive and threatening manner. Deputy Schulz then tazed Mr. Goss at close range. As Mr. Goss was on the ground, a second vehicle pulled-up from Mr. Gosses's house. A tazer charge lasts just a few seconds, and when it ended, Mr. Goss pulled out the tazer probe and started toward the second vehicle. When Deputy Schulz attempted to taze Mr. Goss a second time, Mr. Goss knocked the tazer out of the Deputies hand. Mr. Goss pulled the Deputies radio off his belt and swung at the Deputies face. Deputy Schulz then fell backwards, to the ground. Mr. Goss got his hand on Deputy Schulz's gun and a struggle ensued over the gun. At times the gun was pointed at both men. Deputy Schulz feared for his life, "I'm thinking this guy, he's trying to kill me, he's trying to shoot me, I mean, he's trying to get my gun and if I don't do something, I'm done.... I'm not gonna let that happen." "If I don't stop this right now, I'm not going home." The Deputy pulled the trigger several times while both were struggling and holding the gun. It fired three times and the last shell casing stove piped, this stove piped casing is consistent with hands

on the gun. Mr. Goss was shot. Deputy Schulz immediately called for backup and medical assistance.

The Fourth Judicial District Attorney's Office concludes under Colorado law, no criminal laws have been violated by Deputy Schulz. In the struggle over the gun, Deputy Schulz was justified in using deadly physical force to defend himself and reasonably believed it was necessary to defend himself from the imminent use of deadly force by Mr. Goss.

Sincerely,

Daniel H. May  
District Attorney  
Fourth Judicial District



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE  
September 22, 2011

Lee Richards  
Community Outreach Director  
4<sup>th</sup> Judicial District  
(719)520-6084

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### Deputy-Involved Shooting Ruled Justified

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The 4<sup>th</sup> Judicial District Attorney's Office has completed an investigation into the deputy-involved shooting that occurred on July 26, 2011. Following careful review of the facts and evidence surrounding the incident, it has been determined that the deputies' use of force against the suspect was reasonable, appropriate and justified.

At approximately 12:30am, El Paso County Deputies were dispatched to the area of 6145 Vessey Road, El Paso County, in response to a reported disturbance which had occurred at 6480 Coolwell Drive, El Paso County. Deputies learned that the reporting party, Daniel Leskinen, DOB 4/25/66, had been involved in a disturbance with his father, Paul Leskinen, DOB 1/29/38, hours earlier at the Coolwell address. In addition, deputies were informed that Daniel Leskinen was armed with a firearm during the disturbance and that he had discharged it inside the home. Following the disturbance, Daniel Leskinen left the residence and his whereabouts were unknown. Deputies searched the area for more than 45 minutes without success. Eventually, they responded to 6445 Coolwell Drive after hearing a gunshot in that area. Because the area is heavily wooded, deputies used an infrared camera to locate Daniel Leskinen, who was standing near a barn, holding a gun. Deputies immediately set up containment and began to negotiate with him to drop the weapon.

Despite numerous attempts to convince him to drop his pistol and surrender, Daniel Leskinen refused and continued to wave his handgun in the air, threatening to shoot himself. He repeatedly refused to comply with deputies' demands to drop the gun. During the confrontation, Daniel Leskinen told deputies that he was a medical marijuana user and wanted to smoke some marijuana. In an effort to calm the suspect and diffuse the situation, deputies stood by and continued to talk with him as he smoked marijuana. While he smoked he placed the gun on the ground, at which time Sergeant Robert Stone attempted to subdue him with a taser. The tase was unsuccessful and, as a result, Daniel Leskinen grabbed the gun and began firing. Four deputies returned fire, striking Daniel Leskinen several times. He was later pronounced dead.

Sergeant Cy Gillespie, Deputy Bradley Bengford, Deputy John Watts and Deputy Chris Herman were placed on routine administrative leave following the incident. All have returned to duty.

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



The District Attorney's Office reviews all incidents involving a discharged weapon by an officer. The facts and evidence from this investigation show that the deputies were acting reasonably at the time. Thus, based on the law and the facts, the investigation has determined that the deputies were justified under the law of the State of Colorado. No criminal charges will be pursued.



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

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FOR IMMEDIATE RELEASE  
August 26, 2011

Lee Richards  
Community Outreach Director  
4<sup>th</sup> Judicial District  
(719)520-6084

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### Officer-Involved Shooting Ruled Justified

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The 4<sup>th</sup> Judicial District Attorney's Office has completed an investigation into the officer-involved shooting that occurred on July 27, 2011. Following careful review of the facts and evidence surrounding the incident, it has been determined that the officers' use of force against the suspect was reasonable, appropriate and justified.

At approximately 8:30pm, CSPD officers were dispatched to a call involving a domestic disturbance at the Camelot Apartments on S. Murray Blvd. The reporting party told police a man was fighting with his girlfriend and threatening to kill her. When officers arrived they spotted a man waving a handgun. He ran into his apartment after seeing the police. The individual was identified as twenty-one year old Robert Cole Jr.,

Numerous attempts to convince Cole to drop the handgun and surrender were unsuccessful. He appeared at the window, knocked out the screen and aimed the handgun at the officers in the parking lot. Officers Robert Hallman, Matthew Davis and Dale Peterson fired their service weapons at Cole, hitting him several times.

Robert Cole, Jr. remains hospitalized. He faces several charges when he is released from the hospital.

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

The District Attorney's Office reviews all incidents involving a discharged weapon by an officer. The facts and evidence from this investigation show that the officers were acting reasonably at the time. Thus, based on the law and the facts, the investigation has determined that the officers were justified under the law of the state of Colorado. No criminal charges will be pursued.



## NEWS FROM THE OFFICE OF THE DISTRICT ATTORNEY

FOR IMMEDIATE RELEASE  
November 18, 2011

Lee Richards  
Community Outreach Director  
4<sup>th</sup> Judicial District  
(719)520-6084

### Deputy-Involved Shooting Investigation Report

The 4<sup>th</sup> Judicial District Attorney's Office has completed an investigation, in coordination with the Violent Crimes Unit of the Colorado Springs Police Department, into the deputy-involved shooting that occurred on September 13, 2011.

At approximately 7:25 pm, El Paso County Sheriff Deputies were in the area of the Chief Motel, located at 1624 South Nevada Avenue, Colorado Springs, Colorado, in response to information they had received that a party with an active felony warrant could be found at the Chief Motel. The three deputies, who were members of the El Paso County Sheriff's Office Crime Reduction Unit (a specialized unit designed to apprehend fugitives) coordinated their efforts to search for this fugitive. All three deputies were dressed in jeans and t-shirts displaying the Sheriff's Office logo, Crime Reduction Unit and "SHERIFF" prominently on the front, arms and back of the t-shirts. In addition, the deputies wore prominent metallic law enforcement badges on chains around their necks.

The three deputies met at that location and exchanged information and a photograph of the wanted party, a young Hispanic female. The deputies proceeded to the motel room where the party was reported to be and contacted the occupants of that room. The occupants denied the wanted party was present but pointed out a gray Hyundai sedan that had just entered the parking lot and stated that those were the only young people in the area. The sedan had completed a u-turn in the parking lot of the motel and was stationary outside the Motel office facing to the east.

All three deputies approached the gray sedan to determine if the wanted party was an occupant of the vehicle. The car was occupied by four individuals with 2 in the front seat and 2 in the rear seat of the car. Unknown to the deputies at the time, was the fact that the gray Hyundai sedan was reported stolen two weeks prior to the shooting and was affixed with a stolen license plate assigned to a different Hyundai vehicle.

One deputy approached the passenger side of the vehicle and the remaining two deputies approached the driver's side of the vehicle. The front passenger of the sedan exited the vehicle and immediately observed the approaching deputy. The passenger resembled the photograph of the wanted party. This passenger quickly jumped back into the sedan, appeared to communicate with the driver, and the brake lights of the vehicle were then activated. The deputy on the passenger side contacted this passenger through an open car window and asked what they were doing. The deputy asked the occupants to stop and turn off the car so that they could determine whether the passenger was the fugitive they were seeking. During this interaction, the passenger



continued to reach inside the neckline of her shirt despite repeated requests by the deputy to stop this action. Simultaneously, the remaining deputies stationed themselves in close physical proximity to the driver's side door of the sedan. The driver of the sedan was Christen Vargas, a 27 year old female, who was at the time, wanted on four active felony warrants and considered to be an escapee from COMCOR, Community Corrections Facility. An autopsy of Ms. Vargas revealed high levels of methamphetamine in her blood.

The cover deputy, Deputy Marcus Miller positioned himself in front of the driver side mirror in order to be able to observe the two front seat occupants through the windshield and the driver's side window. The Deputies ordered the driver to put the car in park and turn off the engine. The driver began to move the sedan slightly forward. Deputy Miller drew his weapon and the deputies again ordered the driver to put the car in park. The driver appeared to comply and placed the car in park. Within seconds, the driver placed the car in drive and rapidly accelerated the vehicle. All three deputies attempted to physically back away from the vehicle. The vehicle turned into Deputy Miller and ran over his foot making him unable to gain any physical distance from the vehicle as the driver continued to turn into him. Deputy Miller feared that if the vehicle continued on its path, he would be knocked down and run over or pulled underneath the car. To prevent this, Deputy Miller fired a single round striking the driver, Christen Lea Vargas, in the side through the open driver's side window. The path of the vehicle veered away from Deputy Miller but continued out of the parking lot and onto Nevada Avenue southbound.

The front seat passenger pulled Ms. Vargas out of the driver's seat and eluded a deputy during a high speed chase in the Broadmoor area of the City. Surveillance video confirmed the vehicle was abandoned one hour later at 8:38 pm in the parking garage of Memorial Hospital with Christen Vargas in the backseat. The car was not discovered until CSPD Communication Center received an anonymous 911 call at 10:25 pm and alerted police to the location of Ms. Vargas and the stolen vehicle. She was pronounced dead at Memorial Hospital.

Deputy Miller stated his objective was to stop the driver from continuing to turn into him and change the course of the vehicle so that Deputy Miller could retreat to a safe distance. The Major Accident Unit of the Colorado Springs Police Department completed a computer simulation and re-creation taking into account the specifications of this model of Hyundai and its turning radius. This simulation concluded that Deputy Miller could potentially have been run over or drug underneath the car if the car continued on its path as it was fleeing from the scene.

Colorado Revised Statutes 18-1-707 provides that an officer is justified in using deadly force if he or she reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly physical force. In addition, Colorado Revised Statutes 18-1-704 provides all citizens with the right to defend themselves with deadly force if they reasonably believe they are in imminent danger of being killed or of receiving great bodily injury and reasonably believe a lesser degree of force is inadequate. Under either standard, Colorado law allows an individual to act based on their subjective reasonable belief.

The facts of the case and the results of the simulation/re-creation support Deputy Miller's belief that he was in danger of receiving greater injury or death if the car continued on its

original path. Because Colorado law allows for the use of deadly force based upon a reasonable belief, no criminal charges will be pursued.