



# OFFICE OF THE DISTRICT ATTORNEY

## 4<sup>th</sup> Judicial District of Colorado

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### May 24, 2021

### Officer-Involved Shooting Ruled Justified

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The 4<sup>th</sup> Judicial District Attorney's Office has completed its review of the officer-involved shooting that occurred on May 24, 2021, in Fountain, 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. As cases against the defendant remain open and pending, this will be an abbreviated review.

On May 24, 2021, the El Paso County Sheriff's Office (EPSO) Communications Center received radio traffic from detectives with the Fountain Police Department (FPD) reporting a man with a gun, later identified as David James Melendy. Mr. Melendy was in the 5500 block of Travel Plaza Drive in Fountain, Colorado, hiding in a car wash. Officers attempted contact; a foot-chase ensued, and the subject was observed to be holding a handgun. Mr. Melendy ran to Willow Springs Park about 500 yards to the east of where officers first observed him hiding. There, detectives contained Mr. Melendy in what was described as an "open air barricade" and attempted to negotiate his surrender. On scene officers also reported numerous civilians in and around the park. Additional arriving law enforcement resources evacuated the park and set a perimeter.

It was later learned that Mr. Melendy was a person of interest in a felony level assault that occurred in the City of Fountain earlier in the day.

FPD requested additional resources from EPSO, who later took tactical command of the incident. As a result, additional resources including EPSO Tactical Support Unit, the METRO Bomb Squad, Colorado Springs Police Department, and multiple other law enforcement responded.

As EPSO took command, Mr. Melendy held a position on a park bench where he continued to brandish his handgun. Mr. Melendy was emotionally volatile, intermittently making suicidal



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statements, and stating he would “shoot it out” with police rather than go back to jail. Despite multiple requests to put the gun down, Mr. Melendy continued to refuse.

After approximately three hours of negotiating with Mr. Melendy, negotiations broke down and a tactical tiered response of nonlethal force was utilized. After being hit by a less lethal impact round Mr. Melendy stood up and reached for his weapon which was still in his lap. Deputy Christopher Donatell (EPSO) held an unobstructed position as a designated marksman, watching Mr. Melendy’s aggressive actions with his weapon. Being concerned about deputies behind Mr. Melendy’s position, Deputy Donatell fired one single shot from his authorized rifle, striking Mr. Melendy’s left shoulder, stopping the threat. On scene law enforcement immediately provided medical aid and later were relieved by medical personnel. Mr. Melendy was transported by ambulance to a local hospital with what were later determined to be non-life-threatening injuries.

David Melendy was injured as the result of a gunshot wound. Forensic evidence confirmed Deputy Donatell fired the round that struck Mr. Melendy. The use of force by Deputy Donatell was justified. In making this determination the facts of this case must be analyzed based on the following statutes.

### **Analysis and Conclusion:**

David Melendy was injured as the result of a gunshot fired by EPSO Deputy Christopher Donatell. This use of physical force by Deputy Donatell was justified. In making this determination the facts of this case must be analyzed pursuant to 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:

- Deputy Donatell was a sworn peace officer carrying out his official duties on behalf of the El Paso County Sheriff’s Office, a law enforcement agency. All officers involved in this incident were in official police uniforms or vests, and either driving fully marked police vehicles or standing behind shields indicating to which law enforcement agency they belonged.
- The initial information Deputy Donatell received was that an armed suspect was in an open-air barricade at Willow Springs Park. He learned that Mr. Melendy had potentially shot at his brother earlier in the day and it was believed there was probable cause for

Attempted Murder charges. This alerted Deputy Donatell to Mr. Melendy's propensity for violence.

- Deputy Donatell could clearly see that Mr. Melendy maintained consistent control of a pistol and was acting erratic and volatile. Mr. Melendy refused to relinquish his weapon over the span of several hours and showed no sign of relenting.
- All the officers and deputies present indicate that Mr. Melendy was volatile and threatened to shoot it out with officers should they try to take him back to jail. Some officers noted Mr. Melendy ingested what appeared to be drugs at some point during the negotiations.
- Nonlethal measures were exhausted. Once the tiered response was initiated Mr. Melendy's response was to aggressively grab for his weapon and turn toward deputies situated behind him. Deputy Donatell knew those deputies would not be able to see Mr. Melendy's movements and would not know to protect themselves. Deputy Donatell notes there was insufficient time for any other method of action other than to shoot Mr. Melendy to stop the threat.
- Deputy Peery and Officer Johnson also state that Mr. Melendy grabbed for his gun in a manner that caused them to believe he was going to use it on deputies. Deputy Peery noted he was going to shoot, but his line of fire put other Deputies behind Mr. Melendy at risk.
- Deputy Donatell 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. Melendy who was the intended target of his justified physical force.

In addition to the analysis above, C.R.S. § 18-1-707(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."

- Deputy Donatell had an objectively reasonable belief that Mr. Melendy did in fact pose an imminent danger to multiple deputies. A gunshot wound would pose a substantial risk of serious bodily injury or death to the deputies stationed behind Mr. Melendy.
- Deputy Donatell had an objectively reasonable belief that lesser degrees of force would be inadequate to neutralize the threat posed by Mr. Melendy. No less-lethal options were available to Deputy Donatell to incapacitate Mr. Melendy to the degree that he would be unable to fire his pistol.

All EPSO deputies and CSPD officers were in uniform and their department body worn cameras were activated. Their recordings of this incident were successfully downloaded in their entirety.

Mr. Melendy has been charged in Colorado District Court Case #21CR2920. Criminal charges are merely allegations, and all defendants are presumed innocent unless and until they are found guilty beyond a reasonable doubt.

After completing a thorough review of the facts and evidence, the 4<sup>th</sup> Judicial District Attorney's Office has determined the use of deadly physical force by Deputy Christopher Donatell was justified under the law of the State of Colorado.

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

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