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September 20, 2022

Sheriff Justin Smith
Larimer County Sheriff's Office

RE: Investigation of the May 26, 2022, Officer-Involved Shooting of Douglas Weishaupl

Sheriff Smith:

The investigation into the shooting of Douglas Weishaupl has been completed by the Weld County Critical Incident Response Team (CIRT). Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against Corporal Justin Calkins. Attached hereto are the findings of the Investigations Unit of the District Attorney's office based on the entirety of the CIRT investigation. This report applies the facts from the investigation to the pertinent Colorado laws.

I have determined that, under the circumstances presented in this investigation, I will release the name of the corporal involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act (CJRA) requires disclosure of records of official actions by criminal justice agencies.

These cases are not directly on point as the release of the corporal's name alone does not fall squarely within the CJRA, but they are informative in analyzing whether such disclosure is appropriate. The cases require a "balancing test" by the custodian of criminal justice records prior to the disclosure of criminal justice records. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

Here, the balancing test shows that the privacy interests of the individuals who may be impacted by a decision to allow inspection do not outweigh the other four factors to be considered, particularly the public's interest in inspection. While the continued safety of the corporal and his family is of significant concern in all cases, there does not exist a continuing or ongoing threat to the corporal or other law enforcement officials based on the CIRT investigation.

APPLICATION OF THE FACTS TO THE LAW

The District Attorney's office may ethically charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt the offense was committed without any statutorily recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. Because the evidence establishes that Douglas Weishaupt was shot and killed by law enforcement, the determination of whether the conduct was criminal is a question of legal justification.

Colorado Revised Statutes § 18-1-707, as amended by the Colorado General Assembly in 2020 by SB 20-217, establishes when a peace officer can use potentially deadly force to defend himself or others. The pertinent subsections of the statute read as follows:

C.R.S. § 18-1-707(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 to the peace officer or another person;
- c) The force employed does not create a substantial risk of injury to other persons

C.R.S. § 18-1-707(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...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.

C.R.S. § 18-1-707(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.

C.R.S. § 18-1-901(3)(d) “Deadly Physical Force” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. *See People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Weishaupl intended to use deadly force. The issue is whether it was reasonable for the corporal to believe that Weishaupl was about to use deadly physical force against the corporal or another person by means of a deadly weapon.

In this case, Larimer County Sheriff Special Enforcement Unit (SEU) attempted to contact and arrest Douglas Weishaupl on numerous outstanding warrants. He was initially observed at a Safeway store in Loveland. Deputies pursued him from there and attempted to contact him. Tyger Browder was driving the car in which Weishaupl was a passenger. Browder eluded officers, driving recklessly on county roads, frontage roads and even Interstate 25. In an interview Browder told law enforcement that Weishaupl forced him at gunpoint to elude. During the pursuit Weishaupl was armed, menaced officers and civilians and at one point fired in the direction of deputies. Ultimately, Weishaupl got out of the car and fled towards a field. Law enforcement pursued him and surrounded him. Weishaupl was given numerous commands to comply and warned that deadly force may be used. He refused to comply. He continuously pointed the gun in the direction of officers and at himself. He even fired a round into the ground. Eventually, he got closer to law enforcement and raised the gun in the direction of officers. Cpl. Calkins fired one round and Weishaupl went to the ground. While on the ground Weishaupl reached for his gun and Calkins fired another round to end the threat. Weishaupl died as a result of the gunshots.

Weishaupl would have clearly known that he was surrounded by law enforcement. He had previously eluded marked and unmarked cars with lights. Further, he was surrounded by numerous officers and deputies who were giving orders over a PA system.

Cpl. Calkins reasonably believed when he fired his weapon that he and other officers and deputies were in imminent danger of death or serious bodily injury.

Based on the facts gathered during this investigation as summarized in the attached report and the legal analysis outlined above, I find that Corporal Calkins was justified in using lethal force against Weishaupl. The use of such force was reasonable based on Weishaupl’s threatened use of deadly physical force.

CONCLUSION

Under C.R.S. § 18-1-707, the actions of Corporal Calkins were justified and authorized by law to defend and protect themselves and others from the lawless and threatening actions of Douglas Weishaupl. As a result, the Weld County District Attorney's Office will not file charges against Corporal Calkins for the use of deadly physical force in this event.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Rourke". The signature is written in a cursive style with a large, stylized initial "M".

Michael J. Rourke
District Attorney



Officer Involved Shooting

May 26, 2022

Investigator Carrie Barela

Subject: Douglas Weishaupl

S022-0004263- Larimer County

22DA00058- District Attorney's Office

22G041745- Greeley Police Department

22W019779- Weld County Sheriff's Office

22FI04323- Firestone Police Department

22ML02435- Mead Police Department

22JP04441- Johnstown Police Department

22MP02327- Milliken Police Department

22DP02019- Dacono Police Department

22PP02201- Platteville Police Department

22MV00092- Mountain View Fire

3A220908- Colorado State Patrol

12CN22002931- Brighton Police Department

Summary

On May 26, 2022, members of the Larimer County Sheriff's Office Strategic Enforcement Unit (SEU) were involved in an officer involved shooting in Weld County. SEU Investigator Russell, Deputy Solomon and Deputy Cartrite were conducting surveillance in the Safeway parking lot found at 860 Cleveland Avenue, Loveland, CO. Investigator Russell had arranged to meet with Douglas Weishaupl at that location via a covert Facebook account.

While conducting surveillance, Deputy Solomon saw a white Buick with two occupants enter the parking lot. He ran the plate and found the vehicle registered to Tyger Browder. Browder was known to law enforcement; however, Deputy Solomon was not aware of a connection between Browder and Weishaupl. Initially, Deputy Solomon could visually identify Tyger Browder as the driver but was unable to identify the passenger.

Browder parked his vehicle next to Deputy Solomon in his unmarked vehicle. Soon after, Weishaupl sent a Facebook message to Investigator Russel that there were police in the area, and he would not meet up with him at that location.

Browder and Weishaupl left the parking lot in the white Buick. The vehicle left southbound on Railroad Avenue approaching 14th Street Southeast. Deputies Solomon and Cartrite and Investigator Russell followed the vehicle.

The vehicle appeared to be trying to avoid the deputies. Investigator Russel attempted to conduct a traffic stop at Highway 60 and County Road 7 however, the Buick did not stop in response to lights and sirens. Deputies continued to follow the Buick in an effort to make a traffic stop, however the Buick continued to flee.

During the pursuit, Weishaupl was seen hanging out of the passenger window with a gun and shooting at the pursuing deputies. The vehicle continued to drive recklessly as it headed eastbound on County Road 48 and onto southbound I-25 with speeds reaching approximately 80-90 miles an hour.

The pursuit continued on I-25. Browder stopped the vehicle on the shoulder of I-25, just north of the WCR 38 overpass. Weishaupl exited the passenger side of the vehicle and ran up the embankment of the overpass and east on WCR 38, eventually ending up in a field just southeast of WCR 38.

A high-risk traffic stop was conducted on the white Buick by Investigator Russel and Deputy Cartrite and Browder was taken into custody. Larimer County Sheriff's deputies and surrounding agencies arrived and converged on Weishaupl. Despite efforts to de-escalate Weishaupl through verbal communication, Weishaupl would not drop the gun, and eventually aimed it in the direction of officers. A deputy shot and killed Weishaupl to end the threat.

Preceding incidents

Douglas Weishaupl was known to the Larimer County SEU to be a fugitive of justice with five active warrants. The first felony warrant (D0352021CR002184) was for failure to appear in court

on charges of false reporting and attempting to influence a public servant. The second felony warrant (D0302022CR000741) was for failure to appear for charges of motor vehicle theft and possession of burglary tools. The misdemeanor warrants were for the following: the first misdemeanor warrant (C0852021M00713) was for failure to appear for charges of possession of a controlled substance; the second misdemeanor warrant (C0352021M000968) was for failure to appear with charges of possession of controlled substance, theft, and DUI; and the third misdemeanor warrant (C0852021M001457) was for failure to appear with the charges of drug paraphernalia and driving under restraint.

Special Enforcement Unit-surveillance

SEU deputies were familiar with Weishaupl due to his involvement in drug use and active warrants, as noted above. The deputies knew Weishaupl had been staying with his mother in Loveland. Surveillance was conducted on her home, but they were unable to find him there. Investigator Russell used a covert Facebook account to communicate with Weishaupl to arrange a meet-up.

On May 26, 2022, Weishaupl arranged to meet with Investigator Russell through Facebook at the Loveland Safeway at 860 Cleveland Avenue. Deputy Solomon, Deputy Cartrite, and Investigator Russell were in separate unmarked cars surveilling the parking lot. At approximately 6:15pm, Deputy Solomon saw a white Buick that got his attention. When he ran the license plate, the vehicle came back registered to Tyger Browder dob (7/17/1997). The deputies did not know of a connection between Weishaupl and Browder at the time, so they did not focus on the vehicle. The vehicle left the parking lot.

Later, deputies saw Browder's white Buick return to the Safeway parking lot. The vehicle parked next to Deputy Solomon's unmarked truck. The passenger of the vehicle looked directly at Deputy Solomon. Solomon was able to identify the passenger as Weishaupl. Soon after, Investigator Russell received a Facebook message from Weishaupl that said he would not meet any longer at the Safeway parking lot because he believed that police were there.

Browder and Weishaupl left in the white Buick. Investigator Russell, Deputy Solomon, and Deputy Cartrite decided to follow the vehicle while keeping a distance. Deputy Russell said they followed the vehicle to the area of Highway 287 and Highway 405; then continued to Highway 287 and Highway 60. Deputy Solomon and Deputy Cartrite followed Investigator Russell.

Investigator Russell attempted to conduct a traffic stop at approximately Highway 60 and Larimer County Road 7 using his emergency lights on his unmarked patrol vehicle. The suspect vehicle continued to elude. Next, Deputy Russell activated his sirens as they entered the "s" curve on southbound County Road 7. At this point, the passenger in the car pointed a gun at Russell and fired a round in his direction. The vehicle continued driving erratically but did not stop. During the pursuit, Investigator Russell saw a lot of movement in the passenger seat.

The pursuit continued to Weld County Road 48. The driver of the suspect vehicle swerved into oncoming traffic to pass a vehicle that was stopped at a red light and merged onto southbound I-25. While pursuing the vehicle onto the southbound on-ramp to I-25, Investigator Russell

observed Weishaupl bring his upper body out of the passenger side window, point the handgun in his direction and fire two rounds.

The pursuit continued southbound on I-25. Larimer County Deputy Napolitano heard on the radio a request for help on southbound I-25. Napolitano responded toward the pursuit location. Deputy Napolitano stopped at I-25 and highway 56 and deployed spike strips across the right lane on I-25 to try to disable the suspect's vehicle. Another vehicle traveling southbound driven by Jenna Mitchum in the right lane hit the spike strips. Jenna said as she was approaching the Berthoud exit (exit 250) she saw lights approaching behind her in the left lane. Jenna quickly turned her attention back to the road when she saw a police officer on the west side of the highway pulling something from the roadway. Jenna realized she struck spike strips which caused one of her tires to lose air.

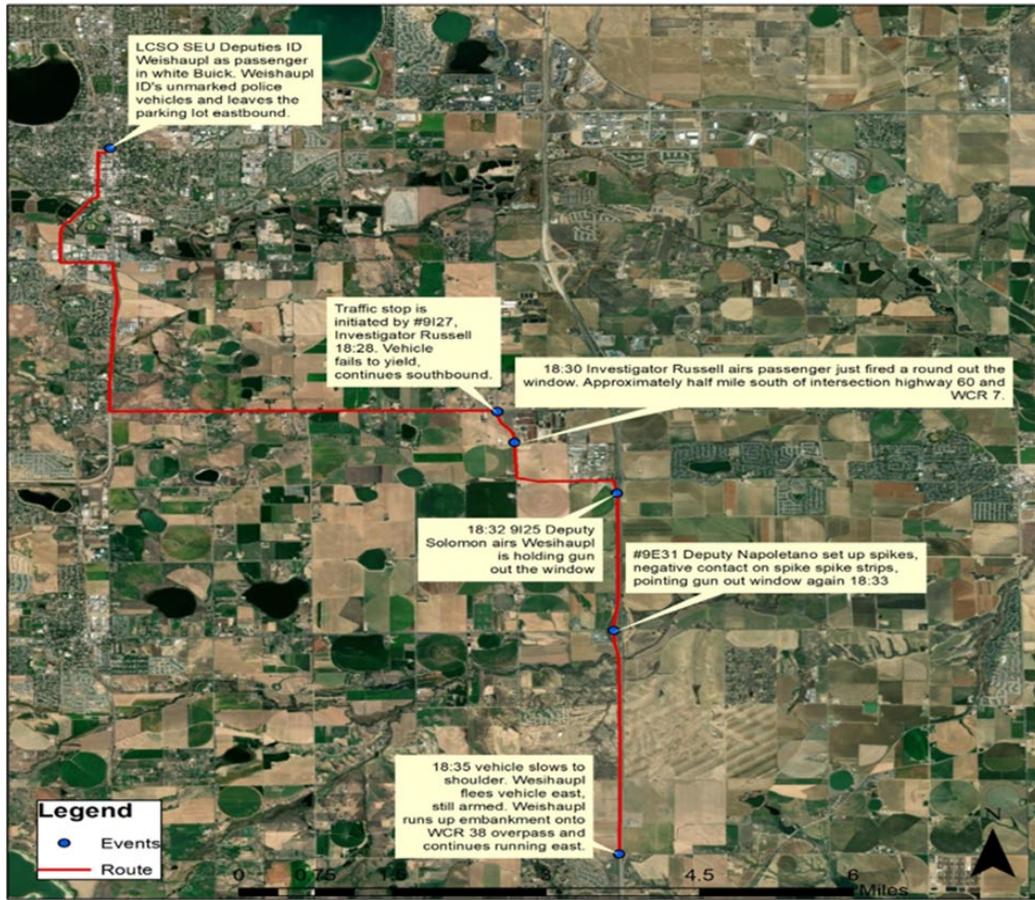
After this, Jenna saw a white Buick drive past her car. Jenna said her sister, Destiny Hepfer, who was sitting in the backseat saw a male hanging his arm out the car's passenger side window pointing a gun at them. The Buick pulled in front of Jenna's vehicle in the right lane. Jenna said she and her sister ducked to avoid being shot as the Buick continued southbound on I-25.

The suspect vehicle stopped just before the overpass at County Road 38 on the west shoulder of I-25. Pursuing deputies observed Weishaupl flee from the passenger side and run up the embankment to Weld County Road 38. Weishaupl was seen running eastbound on the overpass until the pursuing deputies lost sight of him.

Investigator Russel and Deputy Cartrite conducted a high-risk felony stop on the suspect vehicle. The deputies were able to take Browder into custody and clear the car before focusing their attention back on Weishaupl.



Above is the white Buick that eluded police and stopped on the shoulder of the south bound lanes where the high-risk traffic stop occurred



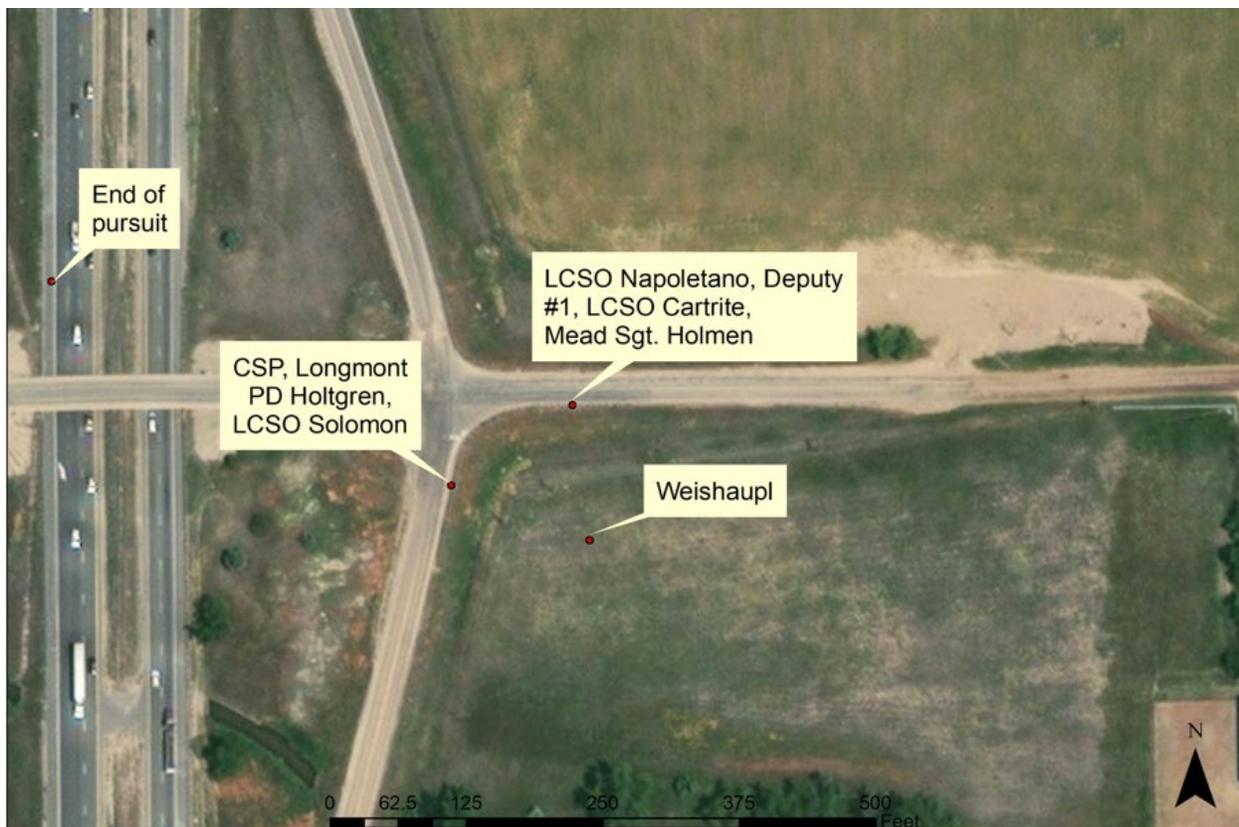
This image shows the route that the pursuit took place. The upper left corner is Safeway at 860 Cleveland Ave, Loveland, CO. The second marker is the initiation of the traffic stop with suspect vehicle where the vehicle fails to yield, and a pursuit ensues.

Deputies saw Colorado State Trooper Cummings arrive on the scene in the northbound lanes of I-25. They pointed Trooper Cummings in the direction Weishaupl ran. They told Trooper Cummings that Weishaupl ran east on WCR 38 and was wearing a white shirt and jeans. Trooper Cummings got off I-25 by using a dirt path between I-25 and the I-25 frontage road. He continued south towards WCR 38. He saw an individual matching the description of Weishaupl. This person was walking east into a field on the southeast side of WCR 38 and the I-25 frontage road. Trooper Cummings observed Weishaupl carrying a gun in his right hand. Trooper Cummings got out of his vehicle and started giving Weishaupl verbal commands to drop his gun. Weishaupl did not follow the orders and continued walking east into the field.

An off-duty Longmont police officer, Officer Hultgren, was on his way home from his shift northbound on I-25 approaching the WCR 38 overpass when he saw the police activity. Officer Hultgren saw a person running from the scene eastbound and did not see anyone pursuing him. Officer Hultgren drove across the dirt median and went southbound on the I-25 frontage road. At WCR 38 he saw Trooper Cummings' vehicle parked behind a guardrail. Trooper Cummings was out of his vehicle and facing the field that was southeast of WCR 38. Officer Hultgren saw the male who was running from the scene earlier in the field.

Officer Hultgren saw Weishaupl in the field on his knees facing them. Officer Hultgren observed Weishaupl holding the gun pointed upward under his chin. Officer Hultgren began yelling to Weishaupl to put the gun down and come towards him and Trooper Cummings. Weishaupl yelled back something to the effect of, "they would have to shoot him."

Due to the amount of noise from the interstate, Officer Hultgren used the PA system in Trooper Cummings vehicle to attempt negotiations with Weishaupl. Officer Hultgren informed Weishaupl that he was under arrest, and to put down his gun. He was warned if he did not comply, force may be used against him, up to, and including lethal force. Officer Hultgren told Weishaupl he wanted to help him, but that Weishaupl needed to work with him. During this time Weishaupl was seen going from a kneeling position to a standing position and pacing around. He held the gun down by his side, but he would occasionally hold it back up to the side of his head or underneath his chin.



This image is the south bound I-25 shoulder where Browder stopped the suspect vehicle. The road east of I-25 running north and south is the I-25 frontage road where law enforcement staged. The road running east and west is Weld County Road 38. Weishaupl entered the field southeast of WCR 38. Deputy 1 is Cpl. Calkins.

As deputies and officers arrived, they set up a tactical position to help limit crossfire concerns giving officers two different angles of Weishaupl. These officers and deputies were north of the suspect while Trooper Cummings, Officer Hultgren, and Deputy Solomon were positioned west of the Weishaupl's position.

Larimer county Corporal Swanty came on scene and positioned himself with Trooper Cummings, Officer Hultgren, and Deputy Solomon. Corporal Swanty deployed his patrol rifle and used the rifle scope to view Weishaupl. He saw Weishaupl placing the gun in his mouth, to his head, to his temple, and then on his lap. Weishaupl continued to pace back and forth.

Deputy Napolitano was staged on the north end of WCR 38. He observed Weishaupl bring his firearm up to waist level and discharge a round. The shot impacted the ground directly west of Weishaupl about 20 to 30 yards.

Corporal Calkins

Corporal Calkins heard the pursuit aired over the radio and began driving towards it. While updates were being given on the radio, Corporal Calkins learned Weishaupl fled from the suspect vehicle and was in a field near WCR 38. Corporal Calkins was advised that there was a house just east of Weishaupl's location. Corporal Calkins initially planned to go to the house to ensure the suspect did not go there. However, after it was aired the Weishaupl fired a round, a sniper rifle was requested. Corporal Calkins had his S.W.A.T. rifle in his vehicle, so he went to WCR 38 and staged his vehicle just north of Weishaupl in the field. Corporal Calkins ultimately deployed his sniper rifle with a tripod.

Utilizing the optics on his sniper rifle, Corporal Calkins zoomed in on Weishaupl to see the gun in the Weishaupl's hand to ensure it was a real gun. Corporal Calkins described the gun as a black semi-auto handgun that appeared to be a real firearm. He observed Weishaupl looking in his direction, standing up, and drawing a cross or a target on his chest. Weishaupl began tapping on his forehead while looking in the direction of the deputies.

Corporal Calkins and Deputy Napolitano had a conversation about a figurative "line in the sand." they identified that they would not let Weishaupl go past. Due to Corporal Calkins' training and experience, he knew the closer Weishaupl got to officers, the greater chance he had to shoot them. Following that conversation, Weishaupl crossed over the location they decided upon while looking at Corporal Calkins tapping his forehead.

Weishaupl turned to the west towards the officers and deputies staged on the I-25 frontage road. Corporal Calkins again found a "line in the sand," the location he would not let Weishaupl pass. Weishaupl reached that location, appearing to say something, but Corporal Calkins could not decipher what was said. Weishaupl turned east and started to walk a few steps and sat down on the ground and moved the gun to his head. Corporal Calkins said he heard continuous verbal commands coming from the west side of the field by the police to de-escalate Weishaupl.

Weishaupl stood back up and began walking east towards the house. Corporal Calkins began deciding on another "line in the sand," to the east to prevent Weishaupl from getting to the house. Corporal Calkins said Weishaupl walked about 4-5 feet east then turned west and began walking towards them.

Weishaupl was seen changing location again and began walking northwest. Corporal Calkins said Weishaupl reached the designated location to the west that he would not let him pass, but he did not shoot as he did not believe at that time Weishaupl was an imminent threat to others.

Weishaupl took approximately 8-10 more steps continuing to put the gun to his head and then drop the gun to his side. However, this time Weishaupl distinctly raised his hand with the gun out in front of his body, aiming in the direction of the officers. Corporal Calkins decided he needed to take a shot to assure nobody was shot.

Corporal Calkins aimed his rifle just ahead of Weishaupl, when the cross hairs of his rifle were in Weishaupl's chest he fired one shot. Weishaupl fell, the gun he was holding fell to his left side. Corporal Calkins observed Weishaupl look towards the gun and try to reach for it. Corporal Calkins fired a second shot that struck Weishaupl in the chest. Corporal Calkins observed Weishaupl go "limp," at which point Corporal Calkins felt the threat had been eliminated and no other shots were necessary.

Corporal Calkins aired "shots fired," and requested medical to respond. Corporal Calkins was part of the group that contacted Weishaupl after being shot. Weishaupl received immediate medical aid by deputies until medical arrived on scene.

Corporal Calkins said he shot Weishaupl to prevent him from causing serious bodily injury or killing anyone. He fired 2 rounds, using a personally owned SWAT sniper rifle loaded with .308 ammunition.

Body worn cameras confirmed Corporal Calkins and other officers' accounts of Weishaupl's actions.

Witness- Tyger Browder- summary

Tyger Browder is the registered owner and driver of the suspect vehicle in the incident with Weishaupl. Browder said he had only just met Weishaupl a few weeks earlier at a house where they were both mutually hanging out.

Browder met up with Weishaupl approximately from 1:00 to 2:00 pm on May 26, 2022 at an apartment. Browder was supposed to give Weishaupl a ride to Denver. Browder said Weishaupl wanted a drink from Safeway but when they got there, he changed his mind so they began to drive to Denver.

Browder said when he noticed the police lights behind him, he tried to stop but Weishaupl pulled out a gun and told Browder he was not pulling over and that if he did, he would shoot everyone. Browder said during the pursuit, Weishaupl was freaking out and screaming he was going to die. Browder told Weishaupl they needed to stop because he was worried about getting shot by the police.

Browder recalled Weishaupl shooting the gun while in the vehicle. Browder continued to plead with Weishaupl to let him stop the vehicle. Weishaupl agreed to let Browder pull over near the underpass of WCR 38.

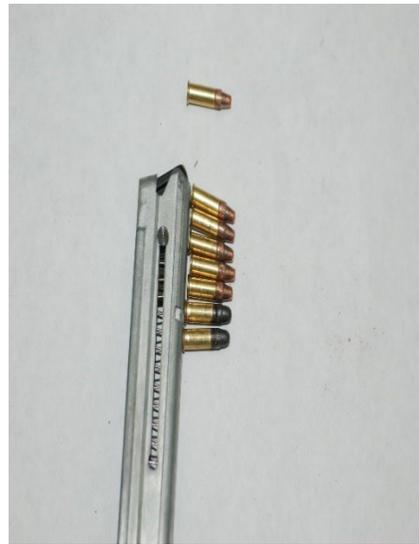
Browder said while in the pursuit, Weishaupl called his mother and told her he was going to, "die today."

Browder said Weishaupl and he smoked one or two "blues," and smoked a couple of hits of methamphetamine together before being contacted by the police.

Browder expressed he was in fear for his life and therefore, did what Weishaupl told him.

Physical evidence

After Weishaupl was shot, he was secured in handcuffs. To his left, a black GSG .22 caliber semi-automatic pistol was found with the safety disengaged. The weapon held a magazine with seven rounds of .22 caliber rimfire ammunition with one round in the chamber of the firearm. The gun was confirmed stolen out of Longmont, CO.



Weishaupl's gun was collected with one round in the chamber. There were seven rounds in the magazine.

Post incident interview- summary

Barbara Chadwick

Ms. Chadwick is Weishaupl's mother. She spoke with Weishaupl as he was being pursued by the police. She said he told her the police officers were following him. He told her he loved her and asked if she loved him. Ms. Chadwick said Weishaupl has mentioned suicide in the past before he went to jail, but she denied him saying anything about dying or suicide during her phone call with him.

Christi Claycomb

Ms. Claycomb is Weishaupl's sister. She called the Greeley Police Department after the incident. Ms. Claycomb indicated she learned what Weishaupl told Ms. Chadwick (her mom) from another source. Ms. Claycomb said she heard that Weishaupl told his mother he was going to kill himself. She knew Weishaupl did not want to go back to prison and would do anything to avoid going back.

Autopsy

The autopsy report revealed the cause of death was multiple gunshot wounds to the torso during the incident with law enforcement. The manner of death was homicide. Toxicology results showed Weishaupl had an amphetamine level of 200 ng/mL and a methamphetamine level of 1600 ng/mL. Blood levels of 200-600 ng/mL have been reported in methamphetamine abusers who exhibited violent and irrational behavior. High doses of methamphetamine can also elicit restlessness, confusion, hallucinations, circulatory collapse, and convulsions,