

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 th Avenue Greeley, Colorado 80631 (970) 475-2400	
IN RE: 2023-2024 WELD COUNTY GRAND JURY, INVESTIGATION INTO THE OFFICER INVOLVED SHOOTING OCCURRING NOVEMBER 8, 2022	<p style="text-align: center;">▲ Court Use Only ▲</p>
Michael J. Rourke, Atty. Reg. No. 28812 District Attorney, 19th Judicial District P.O. Box 1167 Greeley, Colorado 80632 Phone: (970) 356-4010 FAX: (970) 352-8023	Case No. 23CR02 Division 1
GRAND JURY REPORT	

SCOPE OF THE INVESTIGATION

On November 8, 2022, Seth Luedtke discharged his firearm while on duty as a peace officer for the City of Greeley, Colorado and caused the death of Benjamine Weise. Because of the facts and circumstances of this officer involved shooting the Grand Jury conducted an investigation to determine if a crime was committed. The Grand Jury issued a No True Bill and a report should be issued pursuant to Colorado law C.R.S. § 20-1-114(2).

INVESTIGATIVE SUMMARY

On November 8, 2022, at approximately 1130 hours Greeley Police were dispatched to the Meadow View Mobile Home Park located at, 101 E. 20th Street #10 regarding a warrant attempt. The reporting party called 911 because his son, Benjamine Weise (Weise), had warrants for his arrest and wanted him arrested and removed. As GPD officers arrived on scene, reporting party told them Weise lived in the shed at the end of the carport. While trying to communicate with Weise the officers discovered a hole in the skirting of the shed. Weise had crawled under the trailer and refused to come out.

Additional information gathered during the 911 call and from the reporting party indicated Weise told him if the cops show up, he will do something to make officers shoot him.

Officers were on scene for approximately three hours attempting to apprehend Weise. Officers gave Weise continuous verbal demands. Mr. Luedtke arrived on scene at approximately 1:40 p.m. and at approximately 2:00 p.m. deployed pepper balls in an attempt to get Weise to come out from under the trailer. He deployed them numerous times to try and gain compliance. After

15-20 minutes Weise started crawling out of an opening or hole in the shed armed with a knife. In a further attempt to gain compliance and disarm Weise, Mr. Luedtke fired 40 mm impact rounds. They had no effect.

Mr. Luedtke and Officers Girtten, and Klassen were in the small, cluttered shed giving commands to Weise as he emerged from the opening. Officer Klassen had his K9 but did not deploy him on Weise for tactical and safety reasons. As Weise was partially out of the hole, still armed with a knife, Mr. Luedtke shot him seven times in the head and upper body. Weise died from these gunshot wounds.

GRAND JURY INVESTIGATION

SETH LUEDTKE'S TESTIMONY

Mr. Luedtke testified before the Grand Jury. Luedtke explained his extensive background and experience with the Greeley Police Department Swat Team and being certified in the use of non-lethal weapons. He described hearing the radio traffic and ultimately going to the scene to potentially utilize the less lethal force (pepper ball and 40 mm). He attempted to gain Weise's compliance by firing pepper ball rounds under the trailer where Weise was hiding.

Finally Weise appeared through an opening under the trailer, Mr. Luedtke identified a knife in Weise's pocket. Luedtke then retrieved the 40 mm impact gun. When he returned to the shed, Weise was holding an open knife in his left hand. Mr. Luedtke, Girtten, and Klassen commanded Weise to drop the knife, but Weise did not comply. Mr. Luedtke fired two 40 mm rounds that had no effect on Weise.

Fearing for his safety and the safety of the other officers, Mr. Luedtke shot Weise as he was coming through the opening. He and other officers attempted to render aid to Weise.

OFFICER GIRTEN'S TESTIMONY

Officer Girtten testified that he was assigned the call and was there for the duration of the incident. He described that they were aware Weise had warrants and mental health issues. Because of this he requested a supervisor on scene. He and other officers made numerous attempts to locate and/or communicate with Weise. Weise never responded.

Officer Girtten described discussing and ultimately using less lethal methods to attempt to apprehend Weise, including pepper balls, the 40 mm impact launcher, and a canine. Officer Girtten and other officers on scene were unsure of what weapons Weise may have access to under the home or in his shed. Because of this, they did not want to allow Weise access to the shed by backing out.

When Weise came out of the opening and refused to drop the knife, Officer Girtten described his concern for Weise being able to stab the officers in the shed and his inability to defend himself or other officers given the confines of the shed and the location of officers outside. When Weise continually refused to drop the knife, Officer Girtten was in fear of bodily injury or death. Officer Girtten said he had taken the slack out of his trigger in anticipation of the need to fire.

OFFICER KLASSEN'S TESTIMONY

Officer Klassen testified that he was called to this scene to utilize his canine. He arrived and described the scene as relatively calm. He and other officers attempted to determine the best way to apprehend Weise. At one point, his canine was sent under a portion of the trailer still on a leash to help locate Weise.

After Mr. Luedtke fired the pepper ball rounds, Officer Klassen took his canine into Weise's shed as he was emerging from the opening. He observed the knife in Weise's hand and gave commands to Weise to drop the knife. He did not deploy his canine at that time because if Weise injured his dog, the dog may have become feral and attack officers. He then observed Mr. Luedtke fire the 40mm impact rounds and saw they had no effect on Weise.

Shortly after firing the impact rounds, Officer Klassen observed Mr. Luedtke utilize his firearm and shoot Weise seven times. The shed was very cluttered, and Weise could gain access to other potential weapons. He also knew there were other officers and citizens outside the shed that may be injured if Weise got out and retrieved other weapons or charged officers with the knife he had in his hand.

SERGEANT BIRD'S TESTIMONY

Sergeant Bird was one of several command staff on the scene. He was called to the scene due to the serious nature of the call. Eventually, it became apparent that Weise was not going to come out from under the trailer. He along with other command staff allowed the use of the pepper ball gun and 40 mm by Mr. Luedtke.

SERGEANT PATTERSON'S TESTIMONY

Sergeant Patterson was assigned by the Critical Incident Response Team (CIRT) as the lead investigator for this case. He testified to officers' statements regarding this incident, the body worn cameras (BWC), the dispatch notes, the crime scene and autopsy. The toxicology results from the autopsy showed methamphetamine levels in Weise's system of 1200ng/mL

All of his testimony corroborated the officers' testimony.

APPLICATION OF FACTS TO THE LAW

The Grand Jury considered Murder in the Second Degree (C.R.S. §18-3-103) and Manslaughter (C.R.S. §18-3-104). The Grand Jury also considered the affirmative defense of a peace officer's use of deadly physical force (C.R.S. §18-1-707(4.5)) and the fact that an officer may rely on apparent necessity.

The Grand Jury was convened to determine if an indictment should be issued for the aforementioned criminal charges.

In reviewing the evidence in a light most favorable to the prosecution, it is clear Benjamin Weise was not going to comply with police based on his statements to his father and his actions. In this instance it does not matter whether or not Weise actually intended to stab the officers, it

appeared to Mr. Luedtke that he and the other officers were in danger of serious bodily injury or death.


Weise refused to comply with officers from the outset and when forced out from under the trailer he armed himself. He refused to comply with commands to drop the knife. Officers were four to six feet from Weise when he appeared from the opening armed and refused to drop the knife.

When applying the facts as set forth above to the law as set forth in the Grand Jury Instructions of law, at least nine or more Grand Jurors determined that there was not probable cause to believe that Mr. Luedtke committed a crime, and therefore the Grand Jury issued a No True Bill.

The Grand Jury hereby authorizes the District Attorney's Office to sign this report on our behalf, indicating that this report has been authored and approved by the members of this Grand Jury. The Grand Jury verifies the contents and release of this report to the public.

Respectfully submitted on behalf of the 2023-2024 Weld County Statutory Grand Jury, on this 10th day of March, 2023.

By:



District Attorney