



April 21, 2014

Colonel Scott G. Hernandez
Colorado State Patrol
8200 N. Highway 85
Commerce City, CO 80022

Chief Troy Smith
Commerce City Police Department
7887 E. 60th Avenue
Commerce City, CO 80022

Sheriff Doug Darr
Adams County Sheriff
332 N. 19th Avenue
Brighton, CO 80601

Re: Investigation of the officer involved shooting of Ryan Schenk, DOB 9/22/82

Dear Major Savage, Chief Smith, and Sheriff Darr:

The Office of the Seventeenth Judicial District Attorney has completed the review of the investigation regarding the officer involved shooting of Ryan Schenk on January 13, 2014. The Seventeenth Judicial District Critical Incident Team, led by Detective Bogdan Georgescu of the Commerce City Police Department, conducted the investigation into this matter. The factual findings were presented on March 17, 2014 to the District Attorney of the Seventeenth Judicial District in the form of police reports, audio and video recorded interviews, photographs, and diagrams of the crime scene. The Office of the District Attorney concludes that the investigation was thorough and complete. As further set forth herein, based upon the evidence presented and applicable law, no criminal charges will be filed against the law enforcement officers involved in this incident.

OVERVIEW OF THE INCIDENT

On January 13, 2014 at approximately 2:30 a.m., Zack Stephens was driving his tow truck eastbound on Interstate 270 when he observed a blue Mazda in the median that appeared to have crashed into the center barrier. Mr. Stephens turned on his overhead lights and stopped his truck in the left lane to block traffic. As he did so, Ryan Schenk got out of the driver's side of the Mazda and appeared as if he were trying to leave the area. Mr. Stephens flashed his lights and honked his horn in an effort to prevent Mr. Schenk from fleeing the scene.

Mr. Schenk walked up to the tow truck and entered the passenger side. Inside the cab of the truck, Mr. Stephens lied to Mr. Schenk, stating that he was waiting for an additional tow truck to block the highway. Mr. Schenk then offered to pay Mr. Stephens \$600.00 if he would tow him right away without calling the police. Mr. Schenk told Mr. Stephens that he was on parole and that he did not have a license to drive. Adams County Sheriff's Deputy Skyler Vonfeldt was the first officer to arrive on scene. Deputy Vonfeldt contacted Mr. Stephens on the driver's side door.

Mr. Stephens was concerned with the situation and the circumstances that had occurred. Therefore, with Mr. Schenk nearby, Mr. Stephens initially lied to Deputy Vonfeldt about whom Mr. Schenk was, stating that he was a tow truck driver in training. As Deputy Vonfeldt subsequently returned to his patrol vehicle, Mr. Stephens was able to follow him and relay information that Mr. Schenk was in fact the driver of the Mazda, was on parole and had no driver's license.

Colorado State Trooper Daniel Fiallo arrived on scene and was briefed by Deputy Vonfeldt. Shortly after, Commerce City Police Officer David Coleman arrived on scene and parked behind the tow truck. Officer Coleman walked up to the drivers' side of the tow truck and asked Mr. Schenk to step out of the truck. Mr. Schenk got out of the passenger's side and ran eastbound on I-270. He then jumped the steel cabled guardrail in the center median and ran on the westbound shoulder of I-270.

From the westbound side of I-270, Mr. Schenk pointed a handgun in the general direction of the officers and fired multiple times. Deputy Vonfeldt took cover in the median. Officer Coleman and Trooper Fiallo returned fire using their service weapons. Mr. Schenk suffered a gunshot wound to his left leg and fell into the grass off the shoulder of westbound I-270. Mr. Schenk was transported to Denver Health Hospital where he was treated. Upon his medical release, he was arrested and booked into the Commerce City Police Department.

WITNESS INTERVIEWS

The various members of the Seventeenth Judicial District Critical Incident Team convened within hours of the incident to conduct the investigation into the facts surrounding the law enforcement officers' use of force. Detective Bogdan Georgescu of the Commerce City Police Department was also assigned to investigate the criminal activity of Ryan Schenk.

Among the witnesses interviewed on January 13, 2014 were Zach Stevens, Deputy Skyler Vonfeldt, Trooper Daniel Fiallo, and Officer David Coleman.

Detective Georgescu and Thornton Police Detective Doug Parker interviewed Mr. Stephens at the Adams County Sheriff's substation. Mr. Stephens stated that he was en route to an unrelated call in Aurora. As Mr. Stephens was eastbound on I-270 just east of the Platte River, he observed a blue Mazda that appeared to have struck the center barrier. Mr. Stephens believed that the blue Mazda had been traveling in the left lane and left the roadway before striking the center median barrier. Mr. Stephens turned on his overhead lights and blocked the left lane. Mr. Stephens observed a male, later identified as Ryan Schenk, exit the blue Mazda from the drivers' seat. Mr. Schenk appeared to be trying to stop cars and trucks on the highway. Based on this behavior, Mr. Stephens thought that Mr. Schenk was trying to abandon his vehicle and flee from the area. In an attempt to get him to stay, Mr. Stephens said he flashed his lights and honked his horn. At that point, Mr. Stephens was already on the phone with 911 and gave a description of Mr. Schenk.

According to Mr. Stephens, Mr. Schenk walked up to the passenger side of the tow truck and offered him cash to get out of the area immediately. Mr. Stephens initially kept his door locked since he felt like something was "not right" with Mr. Schenk. Mr. Stephens eventually let Mr. Schenk in to the truck after Mr. Schenk tried to leave a second time. Mr. Stephens lied to Mr. Schenk, stating that he was waiting for an additional tow truck to block the highway. Mr. Schenk then offered to pay Mr. Stephens an extra \$600.00 if he would tow him right away without calling the police. Mr. Schenk told Mr. Stephens that he was on parole and that he did not have a drivers' license. The first officer arrived and contacted Mr. Stephens at his drivers' side door. Mr. Stephens believed this was either a Colorado State Trooper or an Adams County Sheriff Deputy.

Mr. Stephens described how Mr. Schenk was sitting in the passenger seat of the tow truck and quickly exited the truck and walked around to the front of the truck so he could listen to the conversation between Mr. Stephens and the police officer. Mr. Stephens said that he initially lied to Deputy Vonfeldt about whom Mr. Schenk was, stating he was a tow driver in training. Mr. Stephens stated that he did this because he thought that Mr. Schenk may pose a threat. The officer asked Mr. Stephens and Mr. Schenk to remain by the truck and walked back towards his patrol vehicle. Mr. Stephens stated that he was able to exit the truck and walk back towards the officer to tell him that Mr. Schenk was actually the driver of the Mazda, that he was on parole, and that he had no drivers' license. Mr. Stephens told the officer to get additional units since he thought that Mr. Schenk may be armed.

A short time later, Mr. Stephens saw multiple other law enforcement officers arrive. Mr. Schenk acted nervous and asked whether Mr. Stephens had "narked him out." The officers approached the driver's side of the truck and asked Mr. Schenk to step out of the truck. As he stepped out of the passenger side, Mr. Stephens saw him grab his backpack and take off running eastbound on I-270. He saw Mr. Schenk cross the median and run back on the westbound side of I-270. Mr. Stephens heard Mr. Schenk cock his pistol and heard three to five shots fired from Mr. Schenk's location. Mr. Stephens stated that he then heard gunshots which appeared to be the

law enforcement officers returning fire. Mr. Stephens stopped westbound traffic and tried to assist the officers by shining his flashlight in the area where Mr. Schenk had fled.

Mr. Stephens thought that he heard Mr. Schenk loading the gun. Mr. Stephens said that he was outside his truck and heard this sound clearly, since there was no traffic noise at this point and he remembered being approximately sixty feet away from Mr. Schenk when he heard this. Mr. Stephens stated that Mr. Schenk fired first and that the officers returned fire. Mr. Stephens did not know if Mr. Schenk's first shot was aimed at him or the officers on scene, but the subsequent shots were in the direction of the officers.

Detectives Parker and Georgescu also interviewed Adams County Sheriff's Deputy Skyler Vonfeldt. Deputy Vonfeldt verified what Mr. Stephens told them about their respective actions during this incident. Deputy Vonfeldt stated that once Officer David Coleman asked Mr. Schenk to step out of the truck in order to speak with him, Mr. Schenk exited the truck and ran eastbound on I-270. Deputy Vonfeldt observed Mr. Schenk pull a black semi-automatic handgun from a backpack as he was running away. He then observed Mr. Schenk turn around towards the officers and fire his weapon at least two times from the center of the eastbound lanes of I-270 towards all of the officers. Deputy Vonfeldt described going into "survival mode" and took cover next to the tow truck. He stated that he was in fear for his life. At this point he indicated that the Trooper returned fire towards the direction of Mr. Schenk as Mr. Schenk ran towards the west bound lanes of I-270.

Deputy Vonfeldt saw Mr. Schenk cross the center guardrail onto the westbound lanes and run west on the shoulder towards the tow truck as the Trooper continued to pursue him. As Mr. Schenk got to be parallel with the tow truck in the westbound shoulder, he fired again at the officers. Deputy Vonfeldt specifically recalled something passing by his head this time while Mr. Schenk was shooting. He observed the Trooper firing his weapon from the westbound shoulder guardrail to the east of Mr. Schenk's location. He described the Trooper aiming his weapon towards the embankment where he last saw Mr. Schenk fire his weapon approximately twenty feet to the east of Deputy Vonfeldt. He also observed Officer Coleman return fire from the center median of I-270 approximately twenty feet west of Deputy Vonfeldt's location. Deputy Vonfeldt did not shoot at Mr. Schenk, as he took cover in a shallow depression in the median. Deputy Vonfeldt's service weapon was a Glock 22 .40 caliber pistol and was fully loaded.

Westminster Police Detective Richard Infranca and Thornton Police Detective Mark Swisher interviewed Officer David Coleman. Officer Coleman stated that he contacted Mr. Schenk when he was in the front passenger seat of the tow truck and noticed right away that Mr. Schenk was acting very nervous. Officer Coleman stated Mr. Schenk grabbed a backpack out of the front seat of the tow truck and started running away east on I-270. Officer Coleman and Trooper Fiallo gave loud commands for him to stop, but Mr. Schenk continued to run to the east. Officer Coleman described seeing Mr. Schenk raise his arm as he was running away and observing what he thought was a gun. Officer Coleman stopped his pursuit and drew his service weapon. He observed Mr. Schenk jump over the median guardrail and run back towards the west in the westbound lanes of I-270. Officer Coleman ran parallel to him while staying in the eastbound lanes of I-270. At this point Officer Coleman observed Mr. Schenk turn, lift his arm

and fire shots at him. Officer Coleman heard two gunshots and observed a muzzle flash come from Mr. Schenk's gun. Officer Coleman stated that he was in fear of his life and that it was his belief that Mr. Schenk intentionally fired at him. Officer Coleman positioned in the median next to where the tow truck was located then fired his service weapon at Mr. Schenk. He thought he fired his weapon six times until Mr. Schenk jumped the guardrail on the westbound shoulder of I-270.

Westminster Police Detective Richard Infranca and Thornton Police Detective Mark Swisher also interviewed Trooper Daniel Fiallo. Trooper Fiallo said that when he approached the tow truck, Mr. Schenk was sitting in the front passenger seat. Soon after the trooper's arrival, Mr. Schenk took off running to the east on I-270. He yelled, "police stop" and began a foot pursuit. Trooper Fiallo observed Mr. Schenk jump over the guardrail in the median of I-270 and began to run west onto the westbound lanes of I-270. As Trooper Fiallo was crossing the median guardrail in pursuit, Mr. Schenk was still running to the west. As the chase continued, Mr. Schenk began to shoot toward Trooper Fiallo. Trooper Fiallo described hearing possibly three shots and seeing the muzzle flash of Mr. Schenk's gun. At this time, Trooper Fiallo returned fire with his service weapon stating that he was in fear for his life as Mr. Schenk was firing his gun directly at him. Trooper Fiallo thought that he fired one to two rounds at the direction of Mr. Schenk at this point.

Trooper Fiallo observed Mr. Schenk continue to run westbound on I-270 and eventually jumped the guardrail on the shoulder of the westbound lanes. He described Mr. Schenk "squaring up" to Trooper Fiallo. Trooper Fiallo stated that Mr. Schenk stopped running at this point and took a defensive position behind the guardrail. Trooper Fiallo described his body language as it appeared he was "bringing the fight back to me." Trooper Fiallo stopped his pursuit and fired his service weapon a second time at Mr. Schenk. He saw Mr. Schenk go to the ground behind the guardrail and disappear down an embankment.

Mr. Schenk suffered a gunshot wound to his left leg and fell into the grass on the east side of the highway. Mr. Schenk was transported to Denver Health Hospital and then medically cleared. Commerce City Officer Brad Keadle took custody of Ryan Schenk and transported him back to the Commerce City Police Department to be processed.

Detectives Parker and Georgescu conducted a recorded interview with Mr. Schenk at the Commerce City Police Department. Detective Georgescu advised Mr. Schenk of his rights, which he acknowledged and waived. During the interview Mr. Schenk admitted to being under the influence of alcohol, marijuana and methamphetamines earlier in the morning. He claimed to have fallen asleep at the wheel as he drove eastbound on I-270. Mr. Schenk stated that he knew that Mr. Stephens had lied to him, and that the police were coming to arrest him, so he then made a decision that it was them or him. Mr. Schenk admitted to carrying a Springfield .40 caliber pistol with ten rounds loaded in the magazine. Mr. Schenk stated that he knew he would be arrested since he is a prior convicted felon carrying a firearm. Mr. Schenk admitted to trying to shoot the officer wearing a gray watch cap (later discovered to be Trooper Fiallo) as he was running away, but his gun malfunctioned. Mr. Schenk described jumping over the median guardrail. Mr. Schenk then racked the pistol, loading a round, and then fired two rounds at the

officers. Mr. Schenk admitted that he was shooting at the cops, but not at the tow truck driver. Mr. Schenk claimed he was trying to make the police kill him.

CRIME SCENE INVESTIGATION

Crime Scene Investigator Dennis Davenport of the Commerce City Police Department, Broomfield Police Department CSI Brenda Harris and Thornton Police Department CSI Doug Young processed the scene of the shooting. CSI Davenport discovered two .40 caliber shell casings in the westbound shoulder of I-270, near the location where Trooper Fiallo described seeing Mr. Schenk fire his weapon at the officers. Additionally, a loaded Springfield XD .40 caliber pistol was recovered in the grassy area down an embankment on the other side of the guardrail where Mr. Schenk fell after being shot. This gun is consistent with what Mr. Schenk described owning and had one live round in the chamber as well as seven live rounds in the magazine. The magazine is designed to hold twelve rounds. There were defects to the westbound shoulder guardrail and pavement underneath the guardrail that were consistent with bullet impacts.

To the east of this location on the westbound shoulder, eight .40 caliber shell casings were located. This would be the general area where Trooper Fiallo described firing his weapon a second time. On the eastbound lanes, just east of the wrecked blue Mazda, six 9 mm shell casings were located on the ground. This area is consistent with where Officer Coleman states he fired his weapon. Further east of this location in the eastbound lanes a cell phone, gun holster, knife sheath and a backpack were located.

Officer Coleman's service weapon was a Smith and Wesson MP9, 9 mm pistol. The magazine has a seventeen round capacity and Officer Coleman indicated that he also keeps a live round in the chamber. When his weapon was examined a total of twelve rounds remained in the weapon after this incident, which is consistent with him firing six times.

Trooper Fiallo's service weapon was a Smith and Wesson MP9, .40 caliber pistol which has a fifteen round capacity in the magazine. Trooper Fiallo indicated that he also keeps a round in the chamber. When his weapon was examined, a total of eight rounds remained in the weapon after this incident, which is consistent with him firing eight times.

Dr. Hurlbut Jacobi reported that the surgical removal of the projectile from Mr. Schenk's leg would present substantial medical risks and permitting the round to remain in his leg would not create a specific medical risk to Mr. Schenk. Therefore, that bullet was not recovered and no conclusion can be made regarding the caliber of weapon that shot Mr. Schenk.

SUSPECT INFORMATION

Mr. Schenk's criminal history includes four prior felony convictions in El Paso County. He was convicted in 04CR4786 of Second Degree Assault on a Peace Officer (F4). In 04CR2932 and 04CR4746, the defendant was convicted of Forgery (F5). Additionally, in 04CR2682, the defendant was convicted of Aggravated Motor Vehicle Theft in the First Degree (F4). On October 22nd, 2004, Mr. Schenk was sentenced to eight years in the Colorado Department of

Corrections for the Assault Conviction contained in El Paso County case 04CR4786. The defendant was under parole supervision on the date of this incident. The defendant is currently facing Escape (F3) charges out of El Paso County case. As of the date of the incident, there was an arrest warrant for Mr. Schenk's escape.

As a result of this incident, Mr. Schenk was charged with sixteen criminal counts (14CR116). These counts include: seven (7) counts of Criminal Attempt to Commit Murder in the First Degree (F2), two (2) counts each for Officer David Coleman, Trooper Daniel Fiallo, and Deputy Skylar Vonfeldt. Schenk was also charged with Criminal Attempt to Commit Murder in the First Degree – Extreme Indifference for discharging his firearm in the direction of Zachary Stephens, tow truck driver. Further, Schenk was charged with two (2) additional felony offenses, Possession of a Forgery Device (F6), and Possession of a Weapon by a Previous Offender (F6).

On March 20, 2014, Mr. Schenk pleaded guilty to count one, Criminal Attempt to Commit Murder in the First Degree including the names David Coleman, Skyler Vonfeldt, Daniel Fiallo, and Zachary Stephens. The Honorable Judge Katherine Delgado accepted a stipulated sentence of twenty-five (25) years to the Department of Corrections on this case. The defendant was sentenced to twenty-five years in the Colorado Department of Corrections, to be followed by a five (5) year period of parole.

LEGAL ANALYSIS

The decision to file criminal charges involves an assessment of all known facts and circumstances and an evaluation of whether there is a reasonable likelihood of conviction under the applicable law. Generally speaking, criminal liability is based upon the standard of proof beyond a reasonable doubt that the evidence satisfies all of the elements of a criminal offense. In addition to proving the elements of a crime, the prosecution must also prove beyond a reasonable doubt that the crime was committed without a statutorily recognized justification or excuse.

The use of lethal force by a law enforcement officer necessarily invokes an analysis under § 18-1-707(2), C.R.S. (2013), the law applicable to the use of deadly physical force by a peace officer. In pertinent part, the language of the statute reads as follows:

- (2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:
 - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:
 - (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or

- (II) Is attempting to escape by the use of a deadly weapon; or
 - (III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.
- (3) Nothing in subsection (2)(b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.
- (4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody.

However, “deadly physical force” is defined as “force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact produce death.” See C.R.S. § 18-1-901(3)(d). Because the officers’ use of force did not, in fact, cause Mr. Schenk to die, the appropriate standard to apply is §18-1-704, C.R.S. (2013). Section 18-1-704, defines the circumstances under which anyone, including a peace officer, can use physical force in the defense of a person in Colorado. The relevant parts of the statute are as follows:

- (1) ... [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 or imminent 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.

The legal question presented to the Office of the District Attorney is whether at the time Officer Coleman and Trooper Fiallo fired their weapons, they reasonably believed that Mr. Schenk was about to use physical force against them or another person. Moreover, in order to establish criminal responsibility for an officer who uses such physical force, the government must prove beyond a reasonable doubt that the officer either did not believe Mr. Schenk was about to use unlawful physical force or that the officer’s belief that Mr. Schenk was about to use unlawful physical force was unreasonable in light of the totality of the facts and circumstances.

Mr. Schenk pulled his handgun from his backpack and fired it towards the direction of the officers at a time the officers were engaged in a foot pursuit with him. Therefore, it was reasonable for officers to return fire in order to protect themselves as well as others, including Zach Stephens, the civilian tow truck driver. Mr. Schenk was armed with a firearm, and the police responded by using firearms. As such, the amount of force utilized was reasonable under the circumstances.

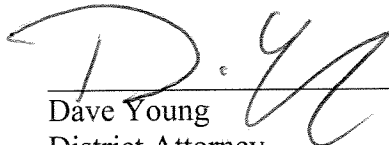
CONCLUSION

Applying the facts of this incident to C.R.S. §18-1-704, the officers were justified in to the use of force upon Mr. Schenk in the January 13, 2014 incident.

On the morning of January 13, 2014, Ryan Schenk fired several rounds in the direction of several police officers, specifically Trooper Daniel Fiallo, Deputy Skyler Vonfeldt, and Officer David Coleman. Trooper Fiallo and Officer Coleman immediately returned fire toward Ryan Schenk. One round struck Ryan Schenk in his leg, which provided these officers with the ability to effectuate his arrest. Each law enforcement official conducted himself appropriately under these dire circumstances, and did not resort to the use of deadly force, until it was apparent that such force was being used upon them.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that Trooper Fiallo and Officer Coleman were justified in the use of force against Ryan Schenk pursuant to Colorado law and no criminal charges will be filed against Officer Coleman, Trooper Fiallo, or Deputy Vonfeldt. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,



Dave Young
District Attorney