



OFFICE OF THE DISTRICT ATTORNEY

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18TH JUDICIAL DISTRICT

SERVING ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN COUNTIES

November 29, 2016

Chief Nick Metz
Aurora Police Department
15151 E. Alameda Parkway
Aurora, Colorado 80012

Re: Officer Involved Shooting of Steven Ray "Lucifer" Schuster on May 11, 2016
APD Case #16-18835

Chief Metz:

I have completed my review of the Officer Involved Shooting that occurred on May 11, 2016 in the area of the 7700 block of South Quemoy Way, Aurora, Colorado. I have carefully reviewed the investigation completed by Major Crimes/Homicide Unit Det. Michael Prince, and find the investigation to be both complete and thorough. For the reasons set forth in this letter, I find no criminal liability on the part of any officer stemming from this incident. I find that Sgt. Tyler Riessland, Officer Peter Benda, Officer Jose Ortiz, and Officer Cody Jones acted in defense of themselves, their fellow officers, and in defense of the public in general.

My analysis of the facts of this incident as well as the legal principles leading to my conclusion are set out in this letter.

I. Recitation of Incident

As a preliminary matter, I would note that the Deadly Force Investigation conducted by Det. Prince was comprehensive and the facts as set forth in his investigative summary match my own independent review of all the crime scene photographs, video-taped witness statements, video surveillance, police reports, and documentary evidence submitted in this case. As such, I consider Det. Prince's investigative summary (some 100 pages in length, excluding addenda) to be a complete and accurate factual record of this incident. For the purposes of this discussion, I recount only the facts relevant to my legal conclusions regarding the use of deadly force.

The suspect in this incident was 35 year-old Stephen Ray "Lucifer" Schuster, ("Schuster"). Schuster suffered multiple felony convictions out of Washington, as well as Colorado. Of import to this discussion is Schuster's most recent Colorado conviction, in 2010 for, *inter alia*, Felony Menacing. In that instance, Schuster was contacted by law enforcement personnel, produced a handgun, and pointed the weapon at officers before beginning a foot-chase which culminated in a physical altercation with the pursuing officers. Schuster was ultimately convicted and sentenced to nine years in the department of corrections. The fact that Schuster had previously served prison time is strongly corroborative of statements he made to his associate, Taylor Hughes ("Hughes")

during the course of this incident, and his intent to avoid returning to prison at any cost. This prior incident is also instructive to some degree in assessing Schuster's ultimate intent towards the Police Officers involved in this incident.

On May 10, between 7:00 PM and 7:30 PM, Schuster purchased two magazines for a .40 caliber Smith and Wesson handgun from the Cabela's in Lone Tree. Store records and video surveillance confirm this purchase. Of note is that the gun Schuster possessed during the shooting was a Smith and Wesson .40 caliber handgun.

Sometime after purchasing the magazines, in the late evening of May 10, Schuster and two female associates, Hughes and Mackenzie Keating, ("Keating") made plans to meet at a Wendy's. Schuster and his associates contacted [redacted] via a Craigslist advertisement, and informed [redacted] that they wished to purchase cellular phones from him.

Per [redacted] interview, he met Schuster, Keating, and Hughes, at a Wendy's for the purposes of selling cellular phones. Video surveillance confirms this meeting at approximately 11:30 PM, May 10. Schuster identified himself to [redacted] using the moniker of "Lucifer" (Hughes subsequently corroborated that "Lucifer" was a moniker commonly utilized by Schuster). Schuster, [redacted] and Hughes entered [redacted] s Jeep Cherokee to conduct the transaction. Schuster feigned interest in purchasing [redacted] s Jeep as well as the cellular phones, and asked [redacted] to drive to some other location, ostensibly so Schuster could test-drive the vehicle. [redacted] complied and drove generally to the area of E. 13th Ave. and Idalia St.

At that point, Schuster asked [redacted] to stop the car so that he could inspect the engine. Once and Schuster were outside the vehicle, Schuster produced a handgun, threatened [redacted] with the weapon, and stole the Jeep. In subsequent interviews, both Keating (who was following in Schuster's vehicle, a red Challenger sedan) and Hughes (who was in the Jeep, when Schuster jumped into the driver's seat, and drove away) deny seeing Schuster produce a handgun. Both do ultimately confirm that Schuster drove away in [redacted] Jeep, without [redacted]

At approximately 11:53 PM on May 10, [redacted] called 911, and gave a description of the armed robbery, Schuster as the gunman, his two female associates, and the vehicles involved. description of Schuster's weapon (a small, dark, semi-automatic handgun) is generally consistent with the subcompact S&W .40 caliber ultimately found in Schuster's possession.

The white Jeep (driven by Schuster with Hughes in the passenger seat) and the red sedan (driven by Keating) were located at approximately 11:58 PM by Aurora Police Officer John Gonzales, who began following the cars. By 12:01 AM, May 11, several additional Aurora Police Officers were following the Jeep and sedan, including Sgt. Tyler Riessland, and Officers Jose Ortiz and Cody Jones, (who were riding in a two-man car).

All officers mentioned in this letter either drove, or were passengers in clearly marked Aurora Police vehicles. Additionally, all officers mentioned in this letter wore the standard Aurora Police uniform, which clearly identified the wearer as a peace officer.

Officers used their vehicles to separate the sedan and Jeep in order to conduct separate traffic stops of the vehicles. Keating, (the driver of the sedan) was pulled over and taken into custody without

incident. Schuster, (driving the Jeep) refused to yield to the officers' emergency lights. Rather, Schuster turned into a residential area, followed by Officers Gonzalez and Ortiz. Schuster then made a U-turn, so that his vehicle faced the Officers' vehicles.

Officer Ortiz exited his vehicle to contact the driver of the Jeep. Officer Gonzalez had opened his door and was getting out of his vehicle, when Schuster aimed the Jeep at Officer Gonzalez' vehicle, rapidly accelerated towards it, and swerved into its driver's side door. After striking the police vehicle, Schuster drove away, yelling something to the effect of "fuck you, motherfuckers." In a subsequent interview, Hughes, Schuster's front-seat passenger in the Jeep, confirmed Schuster "gunning" the engine, and intentionally ramming the driver's side door of the police vehicle. Also, Hughes confirmed that at about that time, Schuster produced a black handgun and said that he was "not going to go back to prison."

Over the next 15 minutes, Aurora Police Officers pursued Schuster's (stolen) vehicle as he attempted to elude them. Officer Patrick Benda, Officers Jones and Ortiz, and Sgt. Riessland engaged in the high-speed pursuit. At multiple points, Schuster drove at speeds between 60 and 80 miles per hour into on-coming traffic lanes, and ran multiple red-lights at intersections, attempting to elude officers. On multiple occasions, Schuster swerved directly towards on-coming vehicles, (causing those vehicles to take emergency evasive action and swerve away) ostensibly in an attempt to cause vehicle crashes that would delay the pursuing officers.

Schuster eventually drove into to a dead-end street, slightly past Gartrell Road, where he told Hughes "I ain't fucking going back to prison, I'll shoot every one of these motherfuckers!" Sgt. Riessland attempted to block the Jeep in the dead-end with his own vehicle. At that point he saw Schuster in the driver's seat, holding a black handgun. Per Sgt. Riessland, Schuster aimed the handgun directly at him, in a "fighting position."

Sgt. Riessland drove his vehicle directly into the driver's side of the Jeep, in an attempt to incapacitate Schuster before he fired. The collision resulted in the Jeep and Sgt. Riessland's vehicle facing front-to-front, slightly at an angle on each driver's side, such that each driver's side door-frame obscured the driver of the other vehicle. At this point, Officer Benda pinned the Jeep with his own vehicle as well, and Officers Ortiz and Jones arrived on scene.

The involved officer's actions are as follows:

-*Sgt. Riessland*, still in his own vehicle, observed Schuster (still in possession of the handgun) maneuvering as if to find a clear line of fire around the door-frames. Sgt. Riessland exited his vehicle, drew his handgun, and fired rounds at Schuster. Later investigation determined the number of rounds fired to be approximately seventeen. Despite the volley of shots fired, Schuster maintained control of his weapon. After the initial volley, Sgt. Riessland stepped to the front of the vehicles, and saw that Schuster maintained possession of the handgun in his right hand. The gun was elevated and positioned across Schuster's chest. Sgt. Riessland, now in Schuster's direct line of sight and fire, fired two additional rounds towards Schuster. He then observed Schuster's right arm go limp and that the gun was no longer elevated across his chest.

- *Officer Benda*, while exiting his vehicle, heard the sound of multiple gunshots being fired. He directed his attention to the driver of the Jeep Cherokee (Schuster). He saw Schuster held a dark

handgun in his right hand and raised it upward and across his chest (in a right-ward direction). Officer Benda knew Sgt. Riessland was to Schuster's right, which meant that Sgt. Riessland was directly in Schuster's line of sight and potential line of fire. Officer Benda drew his weapon and fired five rounds at Schuster.

-*Officer Ortiz*, still in the patrol car, saw Schuster sitting up straight in the Jeep's driver's seat, with a black colored handgun. Officer Ortiz saw Schuster point the handgun in the direction of Sergeant Riessland and Officer Benda. Officer Ortiz heard numerous and continuous gunshots being fired. Officer Ortiz exited his vehicle, and fired one shot at the driver of the Jeep.

-*Officer Jones* exited his vehicle. He heard Sgt. Riessland and Officer Benda yelling that the suspect had a gun, and heard them giving orders to Schuster to drop his weapon. He observed Schuster turn his body to the right and reach towards the center console of the Jeep. He heard multiple gunshots, but could not discern whether officers were firing on Schuster or whether Schuster fired on officers. Officer Jones fired two shots at the driver of the Jeep.

Hughes recounted in a later interview that she saw Schuster raise his weapon at police officers. She believed Schuster fired multiple rounds before the officers returned fire. Though later crime-scene investigation indicated that Schuster likely did not fire any rounds from his weapon, it is nonetheless critical to note Hughes' corroboration of Schuster aiming his weapon at officers, before any shooting began.

Sgt. Riessland, and Officers Benda, Ortiz, and Jones advanced on the Jeep. They noted that Schuster remained non-compliant with commands to disarm, and still retained the handgun in his right hand. Sgt. Riessland ordered an assisting officer to deploy a taser, which finally disarmed Schuster. Officers extricated Schuster from the Jeep, at which point Officer Jones began performing CPR on Schuster until the arrival of Aurora paramedics.

Schuster was transported from the scene to Parker Adventist Hospital, where, at 12:48AM, May 11, he was pronounced deceased due to multiple gunshot wounds.

Investigators recovered Schuster's .40 caliber Smith and Wesson handgun from outside the driver's door of the Jeep. The weapon is a black, sub-compact, semi-automatic M&P Shield model, (generally matching Lane's description of a small, dark handgun) found fully loaded, (seven round magazine, plus one round in the chamber) and confirmed as fully operational. The weapon was reported as stolen out of South Dakota.

II. Legal Analysis

The legal analysis for my conclusion centers on *C.R.S. 18-1-704* and *C.R.S. 18-1-707*.

Colorado law allows any individual (civilian or law enforcement) to utilize deadly physical force if "the actor has 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. 18-1-704*.

Based on the evidence and statements obtained during the investigation, I find that Sgt. Riessland, Officer Benda, Officer Ortiz, and Officer Jones each reasonably believed that his own life was in danger, and further that each reasonably believed that the lives of those nearby were in danger. During the last hour of his life, Schuster placed numerous officers and civilians at imminent risk of great bodily injury and death. As such, I find that Sgt. Riessland, Officer Benda, Officer Ortiz, and Officer Jones clearly acted in self-defense and defense of others pursuant to *C.R.S. 18-1-704*.

Further, Colorado law provides specific consideration for the use of deadly force by peace officers in the performance of their duties. Specifically, *C.R.S. 18-1-707* provides that deadly physical force may be used by a peace officer:

- (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.*

As regards this statute, the clear and present danger of deadly physical force that Schuster presented to the involved officers has been previously discussed. Further, I find that the officers would have been justified in arresting Schuster for committing any number of felonies involving the use of a deadly weapon, including: Aggravated Robbery by Means of a Deadly Weapon, (re: Lane's vehicle); First Degree Assault – Menacing a Peace Officer by Means of a Deadly Weapon, (re: ramming Ofc. Gonzalez' vehicle); Attempted First Degree Assault by Means of a Deadly Weapon, (re: ramming Ofc. Gonzalez' vehicle, and swerving into on-coming vehicles). I further find that Schuster utilized both a handgun, and his own vehicle as deadly weapons during his attempt to escape apprehension. Additionally, in (1) using a firearm to conduct the aggravated robbery of Lane's vehicle; (2) utilizing his vehicle as a deadly weapon to ram Officer Gonzalez' vehicle; (3) driving with extreme indifference and utter disregard for the safety of officers and civilians during the course of the pursuit *he* initiated; and (4) pointing a loaded handgun at Officers, Schuster demonstrated that he was "likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay."

Only one enumerated condition need be present in order for *C.R.S. 18-1-707* to justify the use of deadly force by a peace officer. Here, I find *every* enumerated condition present, and conclude that Sgt. Riessland, and Officers Benda, Ortiz and Jones were justified in using deadly physical force pursuant to *C.R.S. 18-1-707*.

In assessing the ultimate reasonableness of the officers' actions, it is important for me to note the restraint demonstrated by the members of the Aurora Police Department during this episode, and the care taken to not needlessly endanger the lives of any non-involved individual. For example- Sgt. Riessland ordered the deployment of less-than-lethal force, (in this case, a Taser) to ultimately disarm Schuster, even though he had a direct line of fire at Schuster (who still held a handgun) and

could have easily continued the engagement with his firearm. Put simply, though he likely could have continued utilizing lethal force, Sgt. Riessland chose to *de-escalate* his use of force in this situation.

Additionally, each officer involved in this engagement remarked that, prior to discharging their firearms, they knew that there was another individual present in the suspect's vehicle. The presence of a (potentially uninvolved) third-party made them take great care in the placement of their shots at the vehicle, for fear of accidentally striking the non-gunman. The officers' direction and concentration of fire *away* from where a third-party might be sitting in the suspect's vehicle is borne out by the crime-scene evidence. The fact Hughes was not struck in this engagement is entirely owing to the effort and focus of the officers involved.

For the reasons discussed in this letter, I find no reason to suggest any criminal liability on the part of any officer stemming from this incident, and that the actions discussed herein were manifestly reasonable and appropriate under the circumstances.

Sincerely,



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Chief Deputy District Attorney

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