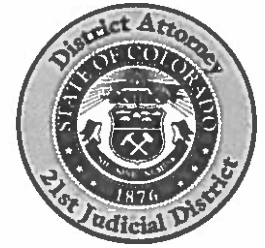


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April 3, 2019

Detective Charles Rojo
Grand Junction Police Department
555 Ute Ave
Grand Junction, CO 81501

RE: Critical Incident Response Team involving use of force by Deputy Thomas Stuckenschneider

Dear Detective Rojo,

I have completed my review of the case sent up for potential prosecution involving the use of force by Deputy Thomas Stuckenschneider on December 11, 2018. At this time, I am declining prosecution. Below are my findings of fact and conclusions of applicable law relevant to the case. If any new or different information comes to light, please re-submit the case for review.

FINDINGS OF FACT

Sgt. Christensen is the sergeant of the MCSO Street Crimes Unit (SCU) and he was working in that capacity on December 11, 2018. He received a call from U.S. Marshall Mic Bunn, in which he received information about a possible location of Ruben Sena (near Anna Court). Deputy Thomas Stuckenschneider is a deputy with the SCU and was working in that capacity on that date. At approximately 2300 hours he was contacted by Sgt. Christensen who advised that he wanted the SCU to look for Ruben Sena. The SCU was trying to locate Sena based on his outstanding warrants and criminal activity. Sgt. Christensen checked the area that was provided to him by U.S. Marshall Mic Bunn and located a Toyota Camry that Sena was associated to.

Sgt. Christensen started organizing a response from the SCU to arrest Sena, which included having Deputy Stuckenschneider respond in an unmarked vehicle. Sgt. Christensen was driving an unmarked Toyota 4Runner without police lights, Deputy Stuckenschneider was driving an unmarked Nissan Titan with a light bar one can put in the window, Deputy Sandell was in a marked patrol vehicle as was Deputy Espindola.

According to Sgt. Christensen, they usually work on a separate radio channel but they moved to the TAC 4 channel to include two additional deputies (Rolbiecki and Blackmon). Sgt. Christensen stated during his interview, this was because he wanted more marked units involved due to Sena's propensity to run from the police.

When Deputy Stuckenschneider arrived in the area he drove by the Toyota Camry that Sgt. Christensen had identified as Sena's. It took three times of driving by, but Deputy Stuckenschneider was able to identify Sena sitting in the front driver seat and no other occupants. Sgt. Christensen stated they planned to contain the vehicle with their vehicles in an attempt to avoid a vehicle pursuit because of the risk pursuits present to everyone involved as well as the public.

Deputy Stuckenschneider stated that he came from behind Sena's vehicle and activated his light bar in his Nissan. As this was happening, Deputy Stuckenschneider watched as Sena hit Sgt. Christensen's vehicle head on. Sgt. Christensen described that when he pulled up to block Sena's vehicle, it started to pull away, accelerated and struck his vehicle, and ultimately Sena's vehicle pushed past his. Sena then crashed into Deputy Sandell's vehicle, which caused Sena and Deputy Sandell's vehicles to be up into a driveway near 112 Anna Court.

Sgt. Christensen got out of his vehicle, with some difficulty due the collision causing the driver's door not to function correctly, and ran to get behind Deputy Sandell's patrol vehicle. Sgt. Christensen stated as he was running to Deputy's Sandell's vehicle, Sena's vehicle backed up and struck him causing him to fall to the ground and roll. Sgt. Christensen stated he first only noticed his hand was numb from being struck and thought he must have hit his "funny bone" when falling to the ground. Sgt. Christensen added, he later felt pain in his left arm and left neck.

Sgt. Christensen stated "I was afraid he (Sena) was going to break free and run over and kill either Deputy Sandell, Stuck, or myself. I'm sorry, Deputy Sandell, Sal (Deputy Espindola), or myself." Sgt. Christensen stated he yelled at Sena they were law enforcement and he was under arrest, but Sena continued to try to get his vehicle free. Sgt. Christensen said he also saw Sena reaching into the center console area.

Sgt. Christensen described that he heard shots fired at that point and believed it was Deputy Stuckenschneider who shot. Sgt. Christensen said he had Deputy Sandell pull his patrol vehicle forward so they could get Sena out of the vehicle. Sgt. Christensen told me that he heard Deputy Stuckenschneider say he could see both of Sena's hands, and this indicated to Sgt. Christensen he could move forward to get Sena out of the vehicle.

Sgt. Christensen stated they pulled Sena from the vehicle and it appeared Sena had been shot, so they started rendering medical aid to him. Due to his injuries, they did not handcuff Sena. Sgt. Christensen stated, Sena made some spontaneous statements on the ground and effectively said, "I give up. I give up. I deserve that, but you got me."

When Deputy Stuckenschneider described the incident he stated that when Sgt. Christensen exited his vehicle, Sena put his vehicle in reverse and Deputy Stuckenschneider watched as Sena reversed into Sgt. Christensen, who was moving behind Sena's vehicle, striking

Sgt. Christensen. Deputy Stuckenschneider drove between Sgt. Christensen's 4Runner and a rock wall before striking Sena's Toyota in the passenger side.

Deputy Stuckenschneider started to give Sena verbal commands as Deputy Stuckenschneider opened his driver side door. Realizing he was in danger of getting crushed between the vehicles, he closed the door and stayed in the driver's seat. As he was doing this, Sena was putting his vehicle in drive and reverse, revving the engine and trying to get free from the blocking deputies vehicles. Sena was accelerating the engine at this point and Deputy Stuckenschneider thought that Sena may get free and run over Sgt. Christensen.

Deputy Stuckenschneider did not know where Sgt. Christensen was and thought he may be on the ground behind Sena's vehicle. Deputy Stuckenschneider fired two rounds through his driver side window with his duty weapon, a .40 caliber Glock. The accelerator stopped on Sena's vehicle and Deputy Stuckenschneider exited his driver side door and gave verbal commands to Sena.

Sena leaned over and began digging through the passenger side floorboard and Deputy Stuckenschneider continued the commands, telling Sena to sit up and show him his hands or he would be shot again. Deputy Stuckenschneider could not see Sena's right hand, which was tucked under his right thigh. Sena advised his arm was broken and he could not raise it. Deputy Stuckenschneider told him to figure it out, which Sena did and placed the vehicle in park. Deputy Stuckenschneider did not take his eyes off of Sena from the time he shot him until the time Sena was taken from the vehicle to make sure that Sena did not produce a weapon.

Deputy Espindola came to Deputy Stuckenschneider and told him to stand behind the cover of another vehicle, away from deputies dealing with Sena. This was the next time Deputy Stuckenschneider saw Sgt. Christensen; he did not know where he was from the time he noticed Sgt. Christensen get hit to after moving away from the vehicle with Deputy Espindola.

Deputy Stuckenschneider did not hear sirens on the other patrol vehicles and did not know if the marked patrol vehicles had their lights activated. Sena did respond to Deputy Stuckenschneider's commands after the shooting. Deputy Stuckenschneider stated that he thought he was in danger of getting killed which is why he got back in his vehicle after opening the door initially, and he believed Sena was going to run over Sgt. Christensen and kill him.

Deputy Stuckenschneider described that he did not think any other tools available to him would have stopped Sena and he believed shooting Sena was his last resort. Deputy Stuckenschneider stated that he stopped shooting when the threat was eliminated because the car stopped accelerating. Deputy Stuckenschneider knew Sena had a violent criminal history, had a warrant for failing to register as a sex offender, had a warrant out of Mesa County and had run from a previous traffic stop.

Deputy Stuckenschneider has been trained in the vehicle containment technique and used it several times effectively. Deputy Stuckenschneider was wearing plain clothing with a black vest with "sheriff" in white lettering on the front and back, his vest also had a cloth patch badge. He also had a regular sheriff badge on his belt. Deputy Stuckenschneider advised Sgt.

Christensen was in plain clothing with a similar vest on that said “sheriff” and Deputy Sandell and Espindola were in full deputy uniforms.

Application of the law

The law permits deadly physical force¹ to be used against a person as defined by statute. Colorado permits deadly physical force to be used only if a person reasonably believes that a lesser degree of force is inadequate, and the actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. § 18-1-704(2). Additionally, reasonable and appropriate physical force is justified when, and to the extent a peace officer reasonably believes it is necessary to defend himself or a third person from the use or imminent use of force during an arrest. C.R.S. § 18-1-707(1)(b).

Here, Deputy Stuckenschneider attempted to use deadly force against Ruben Sena. Such force was authorized, as described above under the theory of self-defense as well as use of force during an arrest. In Colorado, attempting to use deadly physical force in self-defense has two equally important components. The first is a subjective component requiring that the actor himself, Deputy Stuckenschneider, actually believed that he or another was in imminent danger of death or great bodily injury, and that attempting to use deadly force was required. The second component is an objective component; that the actor’s actual belief was also a reasonable belief.

Here, it is clear from Deputy Stuckenschneider own statement that he actually believed that Mr. Sena was about to drive over Sgt. Christensen. He described observing Mr. Sena drive into Sgt. Christensen, causing Deputy Stuckenschneider to make the decision to drive his vehicle into Mr. Sena’s vehicle to disable it, at which time he observed Mr. Sena alternating between drive and reverse in effort to continue back where Sgt. Christensen was. He further articulated his actual belief when he stated that he believed Mr. Sena was going to run over Sgt. Christensen and that the only tool available to him was to shoot him. He further articulated that after shooting, the threat stopped. He did not fire any further rounds once that occurred.

Turning now to the objective reasonableness of this belief. It is clear that any jury would conclude that it is reasonable to believe that a person is in imminent danger of being killed in this situation. Here, Mr. Sena had already backed over a law enforcement officer, was refusing to comply with repeated commands by law enforcement to stop, and continued to try to back in the same direction after attempts to disable the vehicle.

It is appropriate to consider if an officer has specialized training that would allow him to make decisions more calmly, or otherwise be able to assess threats properly, without mental

¹ “Deadly physical force” means 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). Here, deadly physical force was not used, but rather, was attempted as the result was not death. However, the analysis justifying the attempted use of deadly physical force is the same with respect to whether such use was justified resulting in a determination that no charges are appropriate.

distortion due to stress. In this respect, Deputy Stuckenschneider's own observations or opinions of the propriety of the actions can be useful in assessing the objective reasonableness of his actions.

Deputy Stuckenschneider has been a Deputy with the MCSO since 2012. He is a firearms instructor, a member of the SWAT Team and a member of the Street Crimes Unit. Deputy Stuckenschneider was also a drill instructor in the Marines. Deputy Stuckenschneider has received ongoing training in all his occupational capacities on a regular basis. He is used to giving loud verbal commands from armored vehicle and through gas masks.

Deputy Stuckenschneider slept approximately ten hours before coming to work on Dember 11, 2018. Deputy Stuckenschneider did not drink any alcohol or take any drugs before coming to work and ate regularly.

For the reasons stated, I believe that the actions of Deputy Stuckenschneider fall squarely within the self-defense justification for the attempted use of deadly physical force under C.R.S. § 18-1-704(2). Additionally, Deputy Stuckenschneider was attempting to make an arrest. For the same reasons as described above, he reasonably believed that this was necessary force to defend Sgt. Christensen while attempting to make the arrest, and his actions were also justified under C.R.S. § 18-1-707(1)(b).

Accordingly, this matter is inappropriate for any criminal prosecution of Deputy Stuckenschneider. Thank you for your prompt and thorough investigation.

Respectfully,



Daniel P. Rubinstein
District Attorney