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Second Judicial District



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Chief Paul Pazen
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

Chief W. J. Haskins
Glendale Police Dept.
950 S. Birch St.
Glendale, CO 80246

RE: Investigation of the shooting death of John Pacheaco, DOB 10/30/1984, in which Glendale Police Officers Neal McCormick (badge number 261) and Chandler Phillips (badge number 231), fired shots on October 31, 2020, in the 300 block of S. Colorado Blvd. in Denver, Colorado.

Dear Chiefs Pazen and Haskins,

The investigation and legal analysis of the shooting of John Pacheaco, in which shots were fired by Glendale Police Officers Neal McCormick and Chandler Phillips, has been completed. I conclude that under applicable Colorado law, no criminal charges are warranted against these officers. My decision, based on standards of criminal law, does not limit administrative action by the Glendale Police Department, where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. This letter will be posted on our website and our file will be available for interested members of the public to review.¹

STATEMENT OF FACTS

On October 31, 2020, Glendale Police Officer Bradley Reed was on patrol in an unmarked police car on S. Colorado Blvd. At approximately 10:00 p.m., he noticed a black truck with heavily

¹ Parties interested in reviewing the file should visit our website at www.denverda.org/records-request/. Our officer-involved shooting protocol is available on our website at www.denverda.org/officer-involved-shooting-investigations-decision-letters-2.

tinted windows stopped in northbound traffic in the right-hand lane. The truck did not move when the light turned green, so Officer Reed pulled behind the vehicle, parked, and activated the lights on his police car. He aired the license plate to his dispatch, then approached the passenger side of the truck to assist what he believed to be a disabled vehicle. When he was able to look into the passenger compartment of the truck, he saw the silhouette of a person slumped over the steering wheel, immobile. The vehicle was still running. Because Officer Reed knew that this particular area of Colorado Blvd. was geographically located within Denver, he called for a Denver police unit to respond to his location. At approximately this time, Officer Reed learned via police radio that the truck had been reported stolen,



Figure 1. Officer Reed's unmarked police car pulling up to the idling truck.

Upon learning this information, Officer Reed returned to his police car and called for a cover officer to assist him. Officer Phillips at the time was to the north of that scene. He proceeded southbound on Colorado Blvd., activated his patrol lights, pulled in front of the stolen truck, and parked “nose to nose” with his marked patrol car facing the front of the truck. Officer Reed then pulled his unmarked police car forward in an attempt to block the stolen car and to prevent the driver from fleeing. Officer McCormick arrived a short time later and parked facing southbound, behind Officer Phillips’s patrol vehicle.



Figure 2. The stolen truck with Reed's patrol vehicle behind it and Phillips's facing it.

Officers Phillips and Reed approached the driver's side of the stolen truck. Officer Reed intended to open the truck door while Officer Phillips attempted to pull the keys from the truck. In the meantime, Officer McCormick walked to the passenger side of the truck in order to provide cover for the other officers. Officer Reed tried to open the door of the stolen truck but found that it was locked. Officers began to shout commands, such as "let me see your hands!" and "stop!" The driver of the truck, later identified as John Pacheaco, awoke, looked at the officers, put the car into gear, and accelerated forward, hitting Officer Phillips's patrol car. Officer McCormick, still on the passenger side and realizing that the situation was escalating, did not want to be caught in any possible crossfire from his fellow officers and wanted to be on the same side of the truck with the other officers. He moved around the back of the truck in order to get to the driver side. As he moved behind the truck, Mr. Pacheaco put it into reverse and accelerated rapidly toward Officer McCormick, clipping Officer McCormick on the side. Officer McCormick was then able to move up beside Officer Phillips on the driver's side of the truck. Officer Phillips had seen Officer McCormick moving behind the truck and feared that he would be or had been pinned between the stolen truck and Officer Reed's vehicle behind the truck. Both he and Officer McCormick discharged their duty weapons into the compartment of the truck and shot Mr. Pacheaco. The truck continued moving in reverse southbound on Colorado Blvd, striking Officer Reed's vehicle and causing it to spin sideways. The cars struck a third Glendale police car, a Tahoe in which a Glendale sergeant was seated in the driver's seat, then came to a stop. Denver police officers arrived on scene and were able to extract Mr. Pacheaco from the driver's seat. They immediately rendered medical aid and transported him to the hospital, but, unfortunately, he was pronounced deceased that night.

Homicide detectives from the Denver and Aurora Police Departments, as well as members of the Denver District Attorney's Office, were called out to conduct this investigation. The

investigative team collected the firearms of Officers McCormick and Phillips. Ultimately, they determined that Officer McCormick fired seven rounds and that Officer Phillips fired 12 rounds.

The investigative team located two videos that captured this shooting incident. Surveillance footage from a KFC recorded the events which occurred on the passenger side of the stolen truck.² The video shows the truck stopped in traffic, with traffic having to maneuver around it in order to proceed northbound on Colorado Blvd. The video then shows Officer Reed arrive in his unmarked patrol vehicle with its red and blue lights flashing behind the stopped truck. He parks and approaches the passenger side of the truck. Officer Reed returns to his vehicle and another Glendale police car approaches the truck and parks in front of it, facing southbound.³

Another Glendale police car arrives and parks behind this second patrol car.⁴ The video shows that Officer Phillips gets out of his car, walks past the truck on the passenger side, and approaches Officer Reed in his vehicle. Officers Phillips and Reed then approach the driver's side of the stolen truck. Officer McCormick gets out of his car and walks to the rear passenger side of the truck. The truck then accelerates forward, hitting Officer Phillips's car. Officer McCormick appears to be attempting to break the passenger window of the truck but is unsuccessful. As he runs behind the truck, the truck begins to back up rapidly. The truck crashes into Officer Reed's police car and continues southbound until one can no longer see the truck on the video. Officer Phillips has his body positioned in such a way as to suggest that he is firing his weapon, but the video does not show muzzle flashes. Because the video lacks sound, the video does not identify the exact moments when shots were fired.

Detectives also recovered a second video recorded by a civilian witness and posted on Twitter. This video lasts 21 seconds. The video reflects several shots being fired at the approximate time that the truck reverses into Officer Reed's patrol car.

Glendale police officers do not use body worn cameras so there is no BWC video.

Chief Medical Examiner Dr. James Caruso conducted the autopsy of Mr. Pacheaco on November 2, 2020. He concluded that Mr. Pacheaco likely had been shot three times.⁵ One gunshot wound was of the head and neck. Another wound was to the left side of his face. A third wound was to Mr. Pacheaco's left arm, where the bullet likely traveled through the arm and into Mr. Pacheaco's torso. Two bullets were recovered from Mr. Pacheaco's body: one from the neck and one from the abdomen. A forensic scientist determined that the projectile recovered from the neck was fired by Officer Phillips. The bullet recovered from the abdomen was fired by Officer McCormick. Both projectiles involved significant injuries and would be categorized as expecting to result in death independently of each other. A toxicology report revealed the presence of methamphetamine and its related metabolite in Mr. Pacheaco's blood.

² This video recording has no audio.

³ This is Officer Phillips' patrol car.

⁴ This is Officer McCormick's patrol car.

⁵ Mr. Pacheaco suffered four gunshot wound injuries. The pathologist concluded that two of the injuries – those to the arm and torso – were likely caused by a single bullet.

Through fingerprints obtained during the autopsy, investigators were able to identify the decedent as John Leroy Pacheaco. Within a day of the confirmation of the decedent's identity, investigators located and notified Mr. Pacheaco's next of kin, who lived out of state.

STATEMENTS OF CIVILIAN WITNESSES

Civilian witnesses were present during the incident and agreed to provide statements. Witness S.J.⁶ stated that she was at the bus stop with her boyfriend, S.D-B., at the time of the shooting. She said that she noticed the truck stopped in the bus lane then saw a police car pull up behind it.⁷ She said a police officer got out of that car and made his way to the passenger side of the truck; he turned on his flashlight and shone it into the truck. The officer then went back to his car and more marked police vehicles arrived. She heard officers try to speak with the driver of the truck and heard them say "show us your hands." Officers were trying to break one of the windows when the truck drove forward and bumped the police cars in front of it. The driver of the truck then put the truck in reverse and hit the police car behind it, making the police car spin. Officers "were shooting at him – maybe at the truck doors – when he was backing up." The truck then stopped, and officers attempted to remove the driver from the truck. An ambulance arrived then left with lights and sirens activated.

S.J.'s boyfriend, S.D-B., also witnessed the incident. At the scene, he told investigating officers that he saw the truck stopped in traffic in front of the KFC. An unmarked patrol car pulled up and parked behind the truck while other marked cars also pulled up in front of the truck. The driver of the truck "goes crazy. He rams the police cars and then they shoot him." S.D-B refused to go to headquarters to undergo a more thorough and formal video interview.

Paramedic K.K. was on duty with her partner J.F. They were sitting in their ambulance in traffic eastbound at Colorado Blvd. and Alameda Ave. K.K. saw that a police officer had pulled a truck over. She saw two officers at the driver's side of the truck, trying to get the driver out. The driver of the truck put it in reverse and hit the police car behind it. The truck may have pushed into and struck the police car behind it. Right after the truck began moving in reverse, the police shot into the truck. K.K. estimated that officers fired four shots. K.K. and J.F. remained on scene but saw Denver Health paramedics there, so they eventually left.

J.F. stated to investigators that he was a paramedic on duty when he witnessed the shooting. J.F. and his partner were on Alameda Ave. at Colorado Blvd. facing east. They saw a truck on Colorado Blvd. and a police officer on the driver's side hitting the window. The driver of the truck "floored it backwards" and began backing up. In response, officers fired at least ten shots. J.F. said that the truck hit at least two cars before coming to rest. He remained on scene to determine whether they could render aid, but it was not needed.

I.E. was in the parking lot at the KFC. He saw an unmarked patrol car with flashing lights behind a truck that was facing northbound on Colorado Blvd. An officer approached the passenger side of the vehicle then stepped back slowly. Another marked patrol vehicle pulled in front of the truck. Officers were trying to get the driver out of the truck and hitting the window. I.E. then stated that the driver "used his truck as a weapon," moving forward into the police car

⁶ I use the initials of civilian witnesses to protect their identities.

⁷ At first, she did not realize it was a police car because it was unmarked.

in front of him. I.E. then heard five to seven shots. The truck went into reverse and was 'hauling ass' about thirty yards. It hit the police car behind it as well as a Tahoe that was behind them. He saw officers remove the driver of the truck and perform CPR on him.

OFFICERS' STATEMENTS

Officer Phillips

Officer Phillips agreed to be interviewed on December 2, 2020. Officer Phillips stated that when he first approached the stolen truck, he was aware that he was at a busy intersection with fairly heavy traffic, both vehicular and pedestrian. Furthermore, it was Halloween so that particular evening was busier than usual. As he approached the truck, he was in uniform, and he identified himself as a police officer.

As Mr. Pacheaco put the truck in reverse, Officer Phillips feared for Officer McCormick's safety because he knew that in the "back of my mind, I knew Officer McCormick was there. I didn't know where he was." When asked for clarification, Officer Phillips explained "so the [truck] is accelerating and ramming into my car. At that point, the driver pulls down on the lever putting it in reverse, and begins to accelerate and the engine start to – the engine starts to rev up again and begins to move back when I notice Officer McCormick behind the car." When asked where Officer McCormick was when Officer Phillips discharged his firearm, Officer Phillips stated "behind the [truck] as I take a step to the left, and then I no longer see him behind the vehicle because the vehicle is lifted and I can't see back there."

Officer Phillips was asked about the amount of force and acceleration the truck was displaying when driving in reverse. He responded that the driver of the truck was driving in reverse at "full acceleration." When he discharged his weapon, Officer Phillips's "point of aim [was] at the driver, because the vehicle at that point in time is the threat that could cause [sic] or kill someone." He shot through the driver's side window from approximately one to two feet away and he knew the backdrop for his shots was a toolbox in the back of the truck.

When Officer Phillips was asked why he stopped shooting, he said:

my mind perceived that Officer McCormick was no longer in between the vehicle – again, that happened so quick that I saw him – again, I didn't realize that he got pushed out and stumbled until I replayed it over and over and over in my mind. And then I remember visually seeing him get pushed and struck by the vehicle and stumbling out. But once I saw him, again my mind saw it and that's when my mind said "all right, he's no longer a threat." ... Because the perceived threat for Officer McCormick was no longer there.

When asked whether he had seen any video of the incident, Officer Phillips stated that he had seen both the KFC video as well as the cell phone video. These videos did not seem to comport with his own memory of the events. He described the event as "a fast situation and intense and uncertain and rapidly evolving." He also stated that he spoke with Officer McCormick prior to the interview, "seeing if he was all right," and saying that they "briefly talked."

Officer McCormick

Officer McCormick likewise agreed to be interviewed on December 2, 2020. He stated that he approached the truck on its passenger side. When the driver of the truck accelerated into Officer Phillips's car, the "situation was escalating really quickly, so for tactical reasons, I wanted to be on the same side as Officer Reed and Officer Phillips," who were on the driver's side of the truck. Then "I backed myself around the rear side of the pickup truck between Officer Reed's vehicle and the [stolen] vehicle. As I was behind the pickup truck, the vehicle then started to reverse. The – the vehicle impacted me. I was able to get out from behind – between the two cars. And then the vehicle continued to reverse and impacted Officer Reed's vehicle."

Officer McCormick stated that he "utilized [his] firearm to shoot in the direction of the driver-side vehicle." He was approximately two to three yards away when he discharged his weapon. When asked why he shot, Officer McCormick stated:

I know he had already hit me. I was scared. I was in fear of, you know, my co-workers' lives. At one point, I thought he was going to throw it back into drive and go forward where Officer Reed and Officer Phillips were standing, but he continued to reverse, and it – it didn't – I don't know if he knew what he was going to hit, or was about to hit but it looked like he was doing anything to escape.

When asked whether there were any other people in harm's way, Officer McCormick said, "I assume there was, but I – I don't know." When asked how much time elapsed from when he was behind the truck and when he was able to get around to the side of the truck and shoot, Officer McCormick said, "no more than a couple seconds."

EXPERT OPINIONS

To assist me in determining whether I should charge either Officer Phillips or Officer McCormick or both officers, I consulted with an independent expert in the area of the use of force by police officers. He reviewed all of the video evidence as well as all of the statements in the case. He reviewed the Glendale Police use of force policy. He opined that Officer Phillips' use of force was reasonable and necessary given his perception that Officer McCormick was in danger of being pinned by the stolen truck. He also articulated that Officer McCormick's decision to shoot was reasonable based upon his perception that Officers Phillips and Reed were in danger of being struck by this very large truck.

The attorney for Officers McCormick and Phillips likewise consulted an expert in this field. That expert, Jonathyn Priest, reviewed the two videos of the event as well as statements by both officers. He also researched the Glendale Police Department's use of force policy.⁸ Mr. Priest concluded that "Mr. Pacheaco was a potential danger to others should he [have been] allowed to escape the control of the officers present at the incident scene." He noted that "Officer McCormick articulated that Mr. Pacheaco was dangerous and a fear that Mr. Pacheaco could cause serious injury or death to Officers Phillips and Reed." He also observed that "Officer

⁸ Although compliance with a use of force policy does not conclusively determine whether an officer violated the law, I do believe that such compliance – or lack thereof – can be relevant to a criminal investigation.

Phillips articulated a fear for the safety of Officer McCormick if [Mr. Pacheaco] was not stopped.” Thus, Mr. Priest concluded that “considering the actions of Mr. Pacheaco, the context of the scene, and circumstances experienced and articulated by Officers McCormick and Phillips, the officers acted reasonably at the moment of firearm discharge.” Mr. Priest further opined that “deadly physical force was necessary to stop the potentially deadly actions of Mr. Pacheaco.” Furthermore, he concluded that “both Officer McCormick and Officer Phillips articulated an objectively reasonable need for the employment of deadly physical force and both articulated that they actually believed this level of force was necessary.” Finally, Mr. Priest indicated that in his opinion, the officers behaved consistently with the use of force policy of the Glendale Police Department.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes.

The justification of using physical force in self-defense is described in C.R.S. § 18-1-704. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... 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.

Deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and 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(2)(a).

The justification for a peace officer’s use of physical force while attempting to make an arrest is described in C.R.S. § 18-1-707. As pertinent to this case, C.R.S. § 18-1-707 states:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When physical force is used, a peace officer shall:

- (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- (b) Use only a degree of force consistent with the minimization of injury to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(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.

(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 or other deadly physical force, with sufficient time for the warning to be observed, 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.

(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.

These justifications are “affirmative defenses.” This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, the question I must consider is: **Is there enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt, that Officers McCormick and Phillips acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that these officers had lawful justification to fire at Mr. Pacheco in defense of their fellow officers, pursuant to C.R.S. § 18-1-704. Furthermore, it is my belief that the People cannot disprove beyond a reasonable doubt the circumstances outlined in C.R.S. § 18-1-707(4.5).

At the moment they discharged their firearms, both Officers Phillips and McCormick reasonably believed that fellow officers were in danger of being killed or receiving serious bodily injury. Furthermore, they reasonably believed that a lesser degree of force would have been inadequate to stop the threat that they had perceived. Officer Phillips stated that at the moment he fired his weapon, he believed that Officer McCormick was in danger of being pinned between the stolen truck and Officer Reed’s police car. Due to this fear, he discharged his weapon to stop the driver from continuing to reverse and seriously harm or even kill Officer McCormick. Officer McCormick corroborates Officer Phillips’s belief that Officer McCormick remained behind the truck as it reversed into Officer Reed’s vehicle: Officer McCormick stated that his movements happened within a few seconds.

For his part, Officer McCormick, having just been hit by the truck himself, feared that the driver of the stolen vehicle would once again put the car into “drive” and seriously injure or kill Officers Phillips or Reed. These fears were sincere and reasonable. I believe that a jury would conclude that the actions taken by Officers Phillips and McCormick were reasonable and necessary in light of the totality of the circumstances experienced by the two officers and that we

therefore cannot disprove the circumstances in C.R.S. § 18-1-704 and C.R.S. § 18-1-707 beyond a reasonable doubt.

Furthermore, I find that the officers complied with C.R.S. § 18-1-707 in that they did indeed announce themselves as police officers. They were unable to announce their intention to deploy deadly force because events unfolded too quickly for them to do so. After the shots were fired, aid was rendered as quickly as possible. Investigators notified Mr. Pacheaco's family within a reasonable amount of time after he was identified at his postmortem. Finally, they acted in a way that minimized the likelihood of injury to others; their shots were at fairly close range and directed into the stolen truck.

The Supreme Court of the United States has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

Graham v. Connor, 490 U.S. 386 (1989) at pp. 396-397.

Under these dangerous circumstances, Officers McCormick and Phillips were forced to make split-second judgments, and their decision to shoot Mr. Pacheaco in defense of others was justified under Colorado law.

Sincerely,



Beth McCann
Denver District Attorney

Glendale Police Department Officer Neal McCormick; Glendale Police Department Officer Chandler Phillips; Denver Police Department Deputy Chief Barb Archer; Division Chief Joe Montoya; Commander Matthew Clark; Lieutenant Joe Bell; Sergeant Scott Murphy; Sergeant Brock Ellerman; Sergeant Scott Hagan; Detective Dan Tregembo; Detective Aaron Lopez; Attorney Matthew Haltzman; Attorney Danny Foster;