

"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."

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The Ben Peech story

Exclusive to the Cheyenne Herald

by Dave Featherly

The worst thing about a bureaucracy is that it is a bureaucracy. We continue to see the consequences of promotion of the most compliant instead of the most competent - of heading departments in state government with friends instead of the more qualified and deserving.

Many Herald readers have read or heard at least part of the story involving recently fired Wyoming Highway Patrol Trooper Ben Peech. Only the Casper Star has made any attempt to ferret out the facts and report on the story in a comprehensive way. But they've also come up short.

After extensive research and a 3 1/2 hour interview with Ben Peech, the Cheyenne Herald is in the best position to convey not only what happened the night of April 6 and early morning of April 7 of this year and subsequent to that cash interdiction.

During the lengthy taped interview, Ben Peech was open, candid, composed and cooperative. He answered every question and volunteered a great deal of information and documents on his own.

Ben Peech was born and raised in Zimbabwe (formerly Rhodesia) in southeast Africa. His parents had met at the University there and were tobacco farmers. His father was killed in 1978 in the Rhodesian civil war.

From a news report of August 7, 1978: "Tim Peech, a 31-year-old farmer from the Macheke district, east of Salisbury, was a third-generation Rhodesian and as such a colonial aristocrat. Nonetheless, he believed that white farmers like himself could stay, survive and flourish in a black-ruled Zimbabwe. A longtime critic of Prime Minister Ian Smith's Rhodesian Front party, Peech had organized several meetings with Macheke's tribesmen and informally had tried to work out a cease-fire with black national guerrillas in the district. Last week Tim Peech had become another grim statistic in Rhodesia's bloody civil war. While working the bush on one of his peace missions, he was ambushed and clubbed to death by the guerrillas with whom he had sought dialogue. Peech, who is survived by his American wife, Michela, a son and daughter, was the 204th white and the 2,191st civilian to die in Rhodesia since the armed racial struggle began six years ago."

Ben's father is on the Roll of Honour --

In memory of members of the Rhodesia National Farmers' Union, their wives, sons and daughters, killed in the terrorist war.

Mr T. M. S. Peech, Macheke/Virginia, 13/7/78.

Ben's family continued to live in Rhodesia, as did he until he was 18, when he came to the United States and enrolled in Memphis State University. He played rugby at MSU and for the U.S. U21 Eagles team. He was first exposed to the west when the Vail rugby team flew him out to play on their team in tournaments. He enrolled in CSU, continued to play rugby, but decided college was not for him.

While his declared major was Wildlife Management and Biology, an elective that required reading the Constitution led him to choose a career in law enforcement. Contrasting what the Constitution stood for in the U.S. to the country from which he came meant a great deal to him.

He still has relatives in Rhodesia and will visit but does not plan to return there to live. His mother and stepfather, who Ben affectionately calls "Dad," left the country in 2001, after having most of their property and businesses taken from them. They now live in Abu Dhabi in the United Arab Emirates, where he is a pilot.

Ben paid his own way through the Wyoming Law Enforcement Academy in Douglas. He was hired by the Torrington Police Department in 1994, where he worked for two years. He was assigned to the DCI Drug Enforcement Task Force (1996-1998) from the Torrington Police Department.

He went to work for the Wyoming Highway Patrol in June of 1998, completed recruit trooper training and was assigned to Rock Springs from 1998 to May of 2000. He was assigned to Division "A" in Cheyenne in May, 2000 and remained in that assignment until he was terminated by the Wyoming Highway Patrol effective November 5, 2007.

I have spent considerable time reviewing court rulings of cases in which Trooper Ben Peech was the arresting officer. While the arrest used to justify the termination involved this year's confiscation of over \$3 million in cash, Peech has been a very active trooper in highway interdiction of drugs and, where large amounts of cash or illegal drugs are involved, legal

appeals of convictions and motions to suppress evidence are almost certain to follow. When confiscations amount to several hundreds of thousands of dollars of drugs or cash, those people will have lawyers. In one case, *O'Boyle v. State*, the current Laramie County District Attorney was among the attorneys representing that defendant. In that case, the Wyoming Supreme Court ruled that the evidence would be suppressed and reversed the conviction. O'Boyle was later found guilty in Federal District Court and, in that court, Trooper Peech's actions were found to be reasonable and legal.

Five pounds of marijuana were found in O'Boyle's vehicle. He consented to a search but the Wyoming Supreme Court ruled that Peech had asked him too many questions - some unrelated to the stop.

It is interesting that in these cases of illegal drugs being confiscated, defense attorneys don't argue that the drugs weren't there but, rather, that they should not have been found. I wonder how easy it is to sleep at night after freeing a drug runner or dealer who was caught red-handed but beat the rap because he was questioned too long and asked the wrong questions?

Other cases in which Ben Peech was the arresting trooper, appealed convictions were affirmed by a higher court.

Morgan v. State (2004 WY 95, 95 P.3d 802). In this case, Ben Peech went far beyond the call of duty to take eight ounces of marijuana out of circulation. In this case, public defenders argued the reliability of the drug-sniffing dog, among other things. The Wyoming Supreme Court affirmed the search and guilty plea.

Grant v. State (2004 WY 45, 88 P.3d 1016). This defendant appealed on the basis that "he did not consent to the search of his vehicle and, even if he did, the consent was not voluntary."

That's like the defense of, "I didn't shoot the guy and if I did, it was self-defense."

The Wyoming Supreme Court also affirmed the no contest plea of felony possession of 42 pounds of marijuana.

Santos v. United States of America (D.C. No. 03-CR-0033-B). The Tenth Circuit Court of Appeals wrote that there were "apparent inconsistencies" between testimony and the video tape of the stop and "relatively weak indicators of suspicious

behavior." "Nonetheless, doing our best to apply the standards currently prescribed by the Supreme Court, we **AFFIRM.**"

The Santos stop netted approximately five pounds of methamphetamine.

Bradford v. United States of America (D.C. No. 03-CR-101-B). The Tenth Circuit Court of Appeals affirmed the conviction. Ms. Bradford pled to possession of 4.97 kilograms of cocaine with intent to distribute and told a DCI agent that she had made "nine previous trips from California to Minnesota" and was paid \$10,000 for this trip.

The issues of his termination were not previous arrests and seizures of drugs or cash that were upheld by the Wyoming Supreme Court or the Tenth Circuit Court of Appeals. These examples are provided to establish that Ben Peech has been a key player in arrests and convictions of major drug couriers through the State of Wyoming.

His success at drug interdiction would not guarantee him a lifetime job, but it should be considered when the terminal "violation" was as minor as it was in his case.

If, as Peech alleges and a Highway Patrol official said in a television interview, the directive of superiors at the Patrol were for troopers to write speeding tickets and not concern themselves with drug interdiction, the Governor needs to step in. This is an unhealthy attitude and a deadly policy.

It is not enough that drug couriers know that, unless called out, Wyoming interstates have no highway patrol troopers active between midnight and 7 am - we should not offer the added protection that troopers have been specifically instructed not to aggressively pursue drug trafficking on Wyoming highways - even during daytime hours. That is ludicrous.

Ben Peech has a number of "disciplinary" entries in his personnel record. We went over every one of them in detail. Most had to do with damage to his patrol car. One was very serious but it was not punished as seriously as some that were more insignificant. As a result of his acknowledged carelessness, a shotgun went off inside the patrol car with no injury and very little property damage. He did not handle the shotgun properly after returning it to its cradle and buckshot was scattered on the floorboard when it accidentally was discharged. (See P. 6 for more on disciplinary matters and details of the cash confiscation which was used to justify his termination.)

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Peech continued ...

Coincidentally, the Casper Star-Tribune editorialized today (November 13) about the story and headed the offering: "Money seizure hurts law enforcement."

That stance is typical of lazy editorialists and controlled media. The CS-T has more details than others but chose to ignore them for the sake of salacious content. In their piece, someone wrote: "Peech had been disciplined for nine offenses in 10 years -- including a written reprimand for firing a shotgun into the floorboard of his patrol car." Makes it sound almost like he deliberately discharged the shotgun inside his patrol car - in a drunken rage or drug-induced stupor.

Nine offenses in 10 years. Portrays him as a troublesome cop, doesn't it? Does the CS-T have any idea about how many disciplinary actions other WHP troopers have had over the same period? Of course not. That would take a little work and they're not willing to do that. They just write critically based on staying on the good side of authority. Don't want the Governor mad at them.

Let's get the other eight "disciplinary actions" out of the way now.

May 17, 1999 - written reprimand. Crossing the median resulting in damage to the patrol vehicle.

September 27, 2000 - written reprimand. Discharge of the shotgun. (Ben Peech said it was "stupid," a "ridiculous" mistake and while accidental discharges are not unheard of, it was inexcusable, he said.)

April 17, 2002 - written reprimand. Left his patrol car on the side of I-80 with a flat tire. (Peech was responded to officers in need and was taken a few miles by a farmer to the scene. He asserts that the patrol vehicles are often left unattended - in parking lots, at home, etc.)

April 9, 2003 - Letter of reprimand for damage to patrol car from backing out of a parking space into a passing vehicle.

April 28, 2003 - Letter of reprimand, having a snow plow pull his struck patrol car from a snowy median, resulting in under carriage damage found later when the car was on the hoist. (Peech said the troopers are issued a tow rope. The wait for a tow truck would have lost an hour or more on patrol and the snow plow was right there. He did not know about the damage at the time.)

July 11, 2003 - Disciplinary suspension of three (3) days for damage to his patrol car as the result of crossing the median to go in the opposite direction. (Peech said this is common practice and necessary. The crossovers are several miles apart and pursuit of a speeding vehicle or drunk driver would put distance between them - requiring the trooper to go as fast as the vehicle will travel [up to 130 mph] to overtake an offender.)

March 25, 2005 - Letter of reprimand for colliding with a fleeing stolen vehicle when

that driver made an unexpected maneuver and Peech brushed against that vehicle. (Peech knew by that time that it was a stolen vehicle.)

April 3, 2006 - Disciplinary suspension of three (3) days for patrol car damage while pulling into a parking spot in a sally port at the new DCI/DEA facility on Airport Pkwy. (Peech was aiding that agency in determining the width of the enclosure and rubbed his vehicle in the tight fit.)

October 19, 2006 - Letter of reprimand, damage to his patrol car as the result of changing a flat tire on the vehicle, it leaned the flat against the rear bumper and when lowering the patrol car after changing the flat, it caught on the rear bumper and damaged the bumper cover - \$460 in damages.

So, there you have it. Hardly an out-of-control rogue cop. Ben told me that he had not had a complaint filed against him for excessive force and had no reports filed against him by a member of the public for any reason in the past five years.

In summary, the cash interdiction that led to the termination of Peech's employment with the Highway Patrol went down something as follows: *(The sources of information are written statements from Ben Peech, Colonel Sam Powell of WHP, Matthew J. Fermelia of the Wyoming AG's office, and my interview with Ben Peech.)*

Ben Peech's statement -- On the evening of April 6, 2007, while still on duty, he was called by a DEA special agent (SA) on his cell phone. He was told that there was a vehicle coming through Cheyenne, traveling westbound. It was described as a silver, Dodge Dually pick-up with a silver top and a temporary registration. The vehicle reportedly had about \$1.5 million in cash - proceeds of illegal drug sales.

Peech went onto I-80 to look for the vehicle. He did not know at that time that a GPS tracking device was on the pickup and DEA knew exactly where it was and it wasn't near Cheyenne at that time. While out, Peech was contacted by dispatch and told DEA had attempted to contact another trooper, who has the K-9 unit. Peech knew him to be on vacation and he asked dispatch to have the investigator call him on his cell phone.

The DEA SA called Trooper Peech again, with more and slightly different details. He now said the vehicle had temporary Oregon plates and was carrying about \$2.5 million in cash. He told Peech there was an informant in the vehicle and a GPS tracker on board.

At that time, the vehicle was traveling in eastern Nebraska, toward the west, but it was uncertain whether it would take I-76 toward Denver or continue along I-80 toward Cheyenne. The SA explained to Peech that the agency would like a "Wall Stop" to be conducted and asked if Ben could handle that - and have a K-9 unit there to sniff the vehicle. Ben Peech told me that even cash handled by those in contact with drugs would have the odor. Or the masking odor would be strong and noticeable.

A "Wall" or "Whisper" Stop is one in which law enforcement attempts to hide the fact that it was anything other than a normal traffic stop in the highway. In an ongoing investigation, to try to get as high up the ladder of drug distribution as possible, if the miscreants even suspect that their drugs or cash have been intercepted as the result of a wire tap or informant, they take immediate corrective action and law enforcement has to start from scratch all over again.

Ben told the SA that he would have to get permission from his supervisor to come out after his shift ended - the vehicle was still 7-8 hours out - and he did so. He told his supervisor about the Wall Stop request from DEA and requested permission to come back on duty after his shift ended. Permission was granted.

Because the K-9 handler for WHP was on vacation, Ben Peech contacted the Laramie County Sheriff's Office to seek their K-9 unit assistance and that was arranged. That information was passed along to the SA and Peech was again reminded that stop needed to be completely separated from the DEA "due to the fact there was a very successful informant and a large ongoing investigation at stake."

Based on his extensive experience at drug interdiction on Wyoming highways, Ben believed that there was an active wire tap, which would indicate an expensive, labor-intensive, and in-depth investigation. He did not want to jeopardize it.

Ben Peech went home at 10:30 pm, but first he asked dispatch if there was a record of the call from the DEA SA. Told there was, he asked if that record could be removed. He was not trying to do anything illegal. He was trying to protect an investigation on the scale that it would result in the confiscation of about \$3.3 million a few hours later. But it could not be removed. A paper trail had been started which could assist defense attorneys when they try to bring down probable cause for the stop and suppress evidence in court at a later date.

To say drug dealers and their mules are "lawyered up" before trips start is an understatement. Just like law enforcement officers like Ben Peech do, they read every court decision involving drug interdictions and how law enforcement had handled the act. They know every loophole and every dodge. We are about to see some of them when the driver of this Dually goes into federal court and seeks return of the \$3.3 million cash.

At about 3:00 am, Ben went back on duty. Normally, those who work nights take calls until 3:00 am if a trooper is needed and the day shift takes calls after that. He had been told by the SA at about 1:00 am that the vehicle was coming west on I-80. At 2:50 am, the vehicle had passed Sidney, Nebraska and Peech and the LCSO K-9 officer responded. That deputy had arranged for his coming out to be separated from the DEA investigation, according to Ben. To establish a record that would hold until a trial at least, Peech called in a false REDDI report - to provide a reason for him to be on duty on his off-hours that

would not link his being on I-80 to a DEA investigation. People who make REDDI (Report Every Drunk Driver Immediately) calls can request anonymity and dispatch is not even supposed to record the incoming telephone no. if the caller has Caller ID.

When Ben called back to confirm that the call had been recorded anonymously, he was told that he had been recorded as the reporting caller. He explained to dispatch why his action had to be covert but the record could not be changed. Another DEA SA called in a second false REDDI and Peech was dispatched to it.

He set up on the side of the I-80 westbound lanes, by the Campstool exit. The LCSO deputy K-9 unit waited in the parking lot of the gas station at that exit. They were in full view of each other.

While he waited, he spoke with several DEA agents and the deputy almost constantly. Over and over, the DEA agents expressed concern that the stop be completely "Walled" to protect the ongoing investigation.

During the wait for the Dodge pickup, dispatch advised Peech of a real REDDI report - at mile post 374, traveling east. Peech acknowledged and advised the LCSO deputy that he was going to leave to respond. They discussed how an arrest could be handled if Peech found the offender. It was agreed that Peech would call for a LCSO "late" deputy (on duty then) to come and effect the arrest and transport to jail. Peech traveled as far east as the TA truck stop, saw a vehicle pull into a trailer park and park at a residence. That was the only vehicle he saw and he returned to the Campstool exit.

He continued to speak with DEA agents and the LCSO deputy on his hands-free cell and briefly forgot to call dispatch to report he had been unable to find the REDDI vehicle. He did so at about 4:30.

At about 5:00 am, the suspect Dodge passed Peech's stationary position on I-80 and Peech stopped it for speeding.

The dog circled the vehicle (not considered a search) and indicated a "hit." The consent to search led to the discovery of eight suitcases (Peech said they were so heavy as to be almost unliftable) full of cash, bundled in plastic with a figure on each bundle. The bills were of smaller denominations and a marking of "75" or "125" indicated how many thousands of dollars were in each container.

Ben Peech told me he was scared. Not nervous. Not apprehensive. But scared. Knowing that there was to be \$2.5 million in cash in the vehicle somewhere, seeing that there were two pit bulls in cages in the box of the pickup and a driver who was about to lose that cash, this was not a routine stop for speeding. I asked him if the pit bulls could have been released from their cages from inside the cab and he said, "you know, I never thought about that." *(The allegations made against Ben Peech to justify his termination of employment and my opinion on the real reason are covered on page 7.)*