

Colorado Highway Patrolman tells Cheyenne motorist: "Swearing in public is against the law in Colorado."

Sometimes, the combination of a badge and a gun is a lethal combination. Not often, but sometimes.

A recent incident north of Fort Collins, on Highway 1, leading to Wellington, may lead readers to wonder what kind of public contact training the Colorado Highway Patrol is providing its officers.

To set the stage: On Thursday, August 14, 2007, a Cheyenne resident and long-time small business owner here, along with his girlfriend, his sister and his sister's husband, were returning to Cheyenne after spending time at Fort Collins' Old Town Square. His sister is a resident of Vermont and was in Cheyenne for an annual week-long visit.

The driver was northbound in his vintage 1973 Buick with his girlfriend in the passenger's seat beside him and the others in the back seat - his sister directly behind his girlfriend. That road, for those unfamiliar, is a route used from an area of North College Avenue and leads through downtown Wellington and to I-25.

At County Hwy. 58, the driver noticed an SUV approaching the stop sign at the intersection and saw that the vehicle was slowing - apparently to stop as is required at that T in the road with Hwy. 1.

But the driver did not stop. She was too preoccupied to bother with something as insignificant as stopping at an intersection where she was to yield the right-of-way to through traffic on a major artery.

When the Cheyenne motorist determined that the SUV driver was not stopping, only

slowing somewhat to turn toward him, he hit his brakes and even gave to the left - into the oncoming lane, which had no oncoming traffic. Skid marks for an extensive length, as shown on the highway, indicate his attempt at avoiding the accident.

But the SUV driver was not to be denied. She (it was determined before impact that it was a woman driver) hit the Buick nearly broadside on the passenger side and slid the car across the highway, coming to rest perpendicular to oncoming traffic.



That intersection is busy enough to warrant a left turn lane from the north (from the direction of Wellington).

Fortunately, the vehicle hit was not a newer model import - it was a Detroit-built steel sedan and did not crumple like a \$3 suitcase.

After checking on his own passengers, he went to the SUV to check on that driver's well-being. Having seen that she was on her cell phone as he approached, he was very upset to see that she was still on the cell phone after the collision. He let her know that he thought she was not very

intelligent and added to that with a profanity. He called her a "stupid -----".

Another driver had called for assistance and, almost immediately, two Larimer County sheriff's deputies, four fire trucks and an ambulance responded. The Cheyenne driver borrowed the Good Samaritan's cell phone and called a wrecker from Cheyenne.

As the picture below depicts, the deputies had blocked traffic from the north to avoid anyone else running into the Buick.

Shortly, a Colorado Highway Patrolman (CHP) arrived and, without inquiring about injuries to anyone in the Buick, immediately demanded to know whose vehicle the damaged car was and, when told, said it had to be removed from the roadway. Compassion and understanding may not be taught in the Colorado Academy.

The officer also told them that a tow truck had to be called and, when told one from Cheyenne had already been called, he said that wasn't good enough - he wanted the car moved faster.

Flat tire and all, the car was moved.

At the same time the CHP demanded the damaged car be moved from that lane, there were seven emergency vehicles sitting in the same lane. (The ambulance transported the sister to Poudre Valley Hospital in Fort Collins where her injuries were determined not to be serious.)

Then the CHP went to his fellow Coloradan's SUV and spoke with that driver - probably still on her cell phone.

He came back to the Wyoming resident and immediately said to him: "Do you want to know how close you are to going to jail?" What?

He went on, "Swearing in public is against the law in Colorado."

The hell it is. Where did someone sworn to uphold and enforce the law get that idea or was he simply trying to frighten or agitate an already upset motorist?

Could he really believe that swearing in public is against the law down there? Has he ever seen a Colorado Avalanche hockey game? Has he ever heard the sideline microphones at a Broncos game? Has he ever been in a bar in Denver after Happy Hour when filthy jokes dominate?

Here's what the Colorado Department of Health had to say on the subject at a Colorado Supreme Court argument:

"If it was held to be the rule that profanity is a ground for revoking a license, then there could be a serious depletion in the ranks of all professions." Colo. State Bd. of Nurse Exam'rs v. Hohn, 129 Colo. 195, 268 P.2d 401 (1954).

As the CHP walked away after making the preposterous threat, the Cowboy "flipped him off." The CHP's fellow traveler saw it and that precipitated further confrontation. According to the Cheyenne resident and witnesses, the CHP returned to the Buick driver, got him out of the car, got into his face and "asked him if he wasn't man enough to flip him off to his face." He challenged, "do it again and see what happens." When the girlfriend tried to intervene, she was told to get out of the way - that the driver was a man and could stand on his own two feet." Needless provocation, it seems.

People v. Harris, 797 P.2d 816 (Colo. App. 1990), "for the assertion that where the legislature has treated provocation as a mitigator ..." provides the Wyoming driver with an affirmative defense - had he really committed a citable violation for cursing the SUV driver (not physically threatening her, just expressing his opinion that she was a 'stupid -----' for ignoring a stop sign and causing a collision (for which she accepted 100% responsibility to both the CHPs and insurance company) that jeopardized the health of the four people in his car and greatly damaged his vintage automobile.

Colorado 18-9-111 does touch on obscene language as a violation of law. But it is an entirely different matter. It pertains to harassment or stalking and (b) reads: "In a public place directs obscene language or makes an obscene gesture to or at another person;" but obscene is then defined as "a patently ultimate sexual act or solicitation to commit ultimate sexual acts."

An uninformed or poorly trained CHP officer might try to use C.S. 18-9-106 Disorderly conduct to apply to this incident with the SUV driver. It doesn't fit either.

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace;

In most places, using such language to incite a riot will lead to charges but short of that, language falls under protected free speech and this CHP needs considerable training. A letter of Complaint was sent his supervisor on August 17th but there has been no reply.

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