



**OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO
J.E. CHOSTNER
District Attorney**

April 15, 2013

Chief Luis Velez
Pueblo Police Department
Pueblo Municipal Justice Center
200 S. Main Street
Pueblo, CO 81003

Re: Decision Letter
Officer involved incident concerning Officers Benjamin Candelaria and Matthew Ballard
On December 25, 2012.
Deceased: Richard Licon (Date of Birth: 06-01-72)

Dear Chief Velez:

The Investigative Summary Report prepared by the Critical Incident Team relating to the referenced incident was submitted to my Office. I have reviewed the Report and the detailed investigative reports submitted with it. This letter contains my decision in accordance with the Critical Incident Team Protocol.

1. The Incident

The events leading up to the fatal shooting began with an emergency 911 call on December 25, 2012, to the Pueblo Police Department from a caller, reporting a man with a gun in the house at 919 W. Evans Avenue and he was pointing it at his daughter, wife and son. The caller said the man he identified as Richard Licon was his daughter's boyfriend and he had angrily demanded his daughter be given to him or he would kill those present. The caller said that Licon also pointed the gun at him and his wife. The caller stated Licon frequently pointed the pistol at the faces of his daughter and son and had "racked" the pistol as if to charge it at least twice. At one point, the caller said Licon struck his son across the face with the pistol. The call was aired as a domestic disturbance involving a man with a gun inside the house and menacing the wife and children with the gun.

Pueblo Police Officer Benjamin Candelaria was the first to arrive at the scene at about 11:17 a.m. He parked his fully marked patrol vehicle in front of the residence in the street. As Candelaria approached the front of the residence dressed in full police uniform, Licon kneeled or squatted down with his arms outreached, then pointed a gun at the officer through a hole in the lower portion of the front door, according to the occupants inside. Candelaria stated he believed the man pointed the gun at him and fired from a position off the front porch near the sidewalk, although the occupants did not hear or see a gunshot. Candelaria took cover behind the suspect's

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vehicle in the driveway. He heard the back door open and saw a male with a blue jacket and blue jeans run through the backyard and into an alley. Candelaria gave chase, but slipped on snow and ice and lost sight of Licon.

In the interview with Candelaria, he stated that as he approached the residence, he saw the male go into his stance and tried to fire at him with his right hand. Candelaria thought "I'm scared" and "I'm dead" because he was caught off guard and was in the open and he thought the male was going to shoot him. At that moment, the male went inside and Candelaria said he heard a shot fired. The occupants surmised that the loud noise occurred when Licon slammed the front door closed when he re-entered the home. The investigation revealed that no shot was fired.

As Officer Candelaria was searching the alley, Pueblo Police Officer Matthew Ballard arrived in the alley in his fully marked patrol vehicle and parked in a location behind 108 Arthur, the incident location. Officer Ballard exited his vehicle and got his AR15 rifle. Two persons were seen in the distance at the end of the alley across Arthur Street. The officers ran toward them with Candelaria in the lead. The two persons were calling to the officers and pointing to a man on the porch located at the northwest corner of the apartment complex. Officer Quintana arrived and observed the couple calling to someone and pointing to the front of the apartment complex, at which time he saw Candelaria and Ballard running around the corner of the apartment complex from the alleyway. Quintana heard an officer scream "Get down" and immediately heard multiple gunshots. As Quintana approached, he saw Ballard with his rifle moving to his left and shouting, while Candelaria was standing by an iron fence at the right corner of the porch.

Officer Candelaria stated he ran around the corner of the apartment complex and approached a porch which was partly obstructed from view by a large juniper/evergreen type bush. He saw Licon's legs through the bush. He began yelling, "I see his legs. He's right there, he's right there." As he was coming around the bush, he was yelling at the suspect, "Get down, get down, get down." He encountered the suspect at the railing of the porch and saw the suspect had a gun pointed right at his face and he was "scared for my life." Candelaria raised his hand as a distraction and moved downward, heard a shot, and as he came back up, he believed he fired one shot at the suspect.

Officer Ballard said that after he arrived he observed two persons across the street yelling, "He's over there...he's over there" and pointing to the area in front of the apartment complex. He followed Candelaria as he ran to that area. As they rounded the corner of the building, he could see that nothing was on the first patio. As they approached the second patio, he could see large bushes and heard Candelaria say, "There he is" as he pointed toward the second patio behind the bushes. Then he heard Candelaria say, "Stay where you are" or "Get down right there." He saw a blue sweater and thought the male would flee.

As Candelaria and Ballard moved around the bush, Ballard saw the suspect's arms extended with a gun in his hands, with the barrel pointed approximately two and one-half feet from Candelaria's face. Ballard brought his rifle up and Ballard heard a "pop" and believed Candelaria was dead because he could see that Candelaria went down and out of his sight. He

fired a volley of four to five shots and saw the suspect back up behind the bushes. Ballard moved around the bushes and saw the suspect had backed up against the building. As he closed the distance, the suspect turned to face him with his upper arms positioned with his hands at his center line, which, based on Ballard's law enforcement and military training and his experience, suggested a starting position for the suspect to present and shoot. Ballard began firing at the suspect.

Licon's 9 mm. caliber pistol was found on the patio under his body. The magazine was empty. Eleven shell casings from Ballard's weapon were found. Toxicology reports from Licon showed a blood alcohol level of .288 g/dl and measurable amounts of cocaine and methamphetamine. Licon died as a result of gunshot wounds. Deformed bullet fragments were recovered in the autopsy consistent with ammunition from Ballard's rifle and one bullet consistent with Candelaria's .45 caliber handgun.

2. The Investigation

The investigation was conducted in accordance with the Critical Incident Team criteria. The Pueblo County Sheriff's Office was designated the lead investigative agency. The Pueblo Police Department provided personnel and resource assistance; and the Colorado State Patrol participated by measuring, mapping and diagramming the incident scene.

3. Conclusion

Officers responded to an emergency 911 call reporting a man with a gun inside a house menacing the wife and children. Upon arrival, the suspect placed Officer Candelaria in a life threatening situation at 919 West Evans Avenue by aiming a pistol at him. Candelaria believed the suspect shot at him.

Officers Candelaria and Ballard pursued the suspect and located him at 108 Arthur Street on a porch behind bushes. Again, the suspect placed the officers in a life threatening situation. The officers had good reason to believe that Richard Licon intended to, and was capable of, causing them immediate death or serious bodily injury.

It is my conclusion that Officers Candelaria and Ballard were justified in using the actions they employed to defend themselves and each other from what they reasonably believed to be the use or imminent use of deadly physical force by Richard Licon, and they reasonably believed a lesser degree of force would be inadequate. C.R.S. 18-1-704. Based on this conclusion, no criminal charges are appropriate and none will be filed.

Sincerely,



J.E. Chostner
District Attorney

pc: Sheriff Kirk Taylor, Pueblo County Sheriff's Office
Captain Brian Lyons, Colorado State Patrol