



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

April 29, 2014

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

Re: Supplemental Decision Letter
Officer involved shooting re: Officers Jeff Carpenter and Rick Giconi on January 4, 2014
Deceased: Frank Andrew Martinez (Date of Birth: 03/07/1948)
Location: 1633 Gaylord, Apartment #5, Pueblo, CO

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 supplements the Decision Letter issued March 11, 2014, and contains my decision in accordance with the Critical Incident Team Protocol.

1. The Incident

On January 4, 2014, at approximately 5:31 p.m., Alvino Hidalgo, who was intoxicated, arrived at the liquor store located at 1659 Prairie in Pueblo. Mr. Hidalgo had been shot in the chest with a small caliber handgun. Pueblo police officers were able to determine from Mr. Hidalgo that he was shot by his uncle Frankie Martinez, at 1633 Gaylord Ave., in apartment #5, after Frankie had told him to come to his apartment and get his belongings. Mr. Hidalgo went to get his belongings and when he walked in Frankie lifted a black handgun and pointed it toward him and he heard a loud bang and then realized he had been shot. He indicated that his uncle has been suffering from depression due to a previous medical illness. Mr. Hadalگو's mother came to the store and confirmed that Frankie was Alvino's uncle and that Alvino was Frankie's caregiver.

Officers responded to the eight apartment complex at 1633 Gaylord Ave. and in apartment #5 in a back bedroom observed a male who matched the description given by Alvino. Officer Kenneth Matic approached a southwest rear window to apartment #5 and looked through a 2 inch opening in the mini blinds. With a flashlight he saw a male lying on a bed apparently asleep. Matic and Sgt. Taylor knocked on the window asking for "Frank" to open the door and said that the police were outside. Matic continued to knock and then observed the male raise his right arm holding a small dark handgun pointed toward the window Matic was looking through. Matic immediately aired that the male had a handgun. The SWAT team arrived and Matic cleared the window.

The SWAT team began evacuating other residents of the apartment complex for their safety. Sgt. Taylor requested a negotiator and formulated a plan to use a throw phone to communicate with the person in apartment #5. Two three man teams were placed inside the apartment building. One of the teams was comprised of Officers Jeff Carpenter, Rick Giconi, and Brandon Beauvais took a position in the hallway where apartment #5 was located. Officer Beauvais was using a ballistic shield and the other two had AR style rifles.

Officer Doyle, who was positioned in the stairwell, attempted to call the suspect out of his apartment. Frankie Martinez opened the door and then closed it. About a minute later, the door opened and Martinez was seen holding a gun to his head. Shortly thereafter, Officers Carpenter and Giconi fired their rifles into the open door. The shots resulted in the death of Martinez. Martinez had two handguns in his possession at the time shots were fired and afterward the two guns were found: one was in Martinez's lap; the other on the bed next to his body.

After the shooting incident the CIT team was organized. Detective James Olonia of the Pueblo Police Department and A.J. Colletti, of the Sheriff's Department were assigned as lead detectives. The only witnesses to the incident were the SWAT team members Jeff Carpenter, Rick Giconi, and Brandon Beauvais. They were each interviewed by Olonia and Colletti.

Brandon Beauvais stated he received a level 1 SWAT call out which means it is a critical situation. He was made aware that there was a suspect in an apartment who had already shot someone and that he had later pointed a gun at an officer. Upon arrival at the apartment he was assigned to be with Carpenter and Giconi in the hallway near apartment #5. A shield was brought to them and he deployed the shield and did not have his weapon out. He saw a male come to the apartment door using a walker, but he refused command to come out. The male slammed the door. A short time later, the male opened the door, but now he was sitting. Beauvais saw a gun in the man's right hand pointing at the man's head. He was given commands to drop the gun, but the man produced a second gun in his left hand. Beauvais saw the male raise the gun in the air and started moving his hand toward the officers. Beauvais took cover as he believed the man was going to shoot at him and his fellow officers. Beauvais had moved the shield in front of his fellow officers and he heard gunfire. He thought maybe 5 or 6 shots, but said it could have been double that. He stated he did not fire any shots.

Rick Giconi stated he responded to a level one SWAT call out. He was aware of the previous shooting at 1633 Gaylord and the fact that the suspect had pointed a gun at Officer Matic as he was with Matic when Matic pulled back from the window. He said at one point, the man opened the door to apartment 5 using a walker, but would not respond to commands. Giconi said that the man was wearing a long sweater and he was concerned that the suspect might be hiding a weapon. Giconi said the suspect's actions appeared off and he thought it might have been an attempt to draw the officers in. A few moments later the male opened the door and had a black gun in his right hand pointed to his head. Giconi was giving commands to drop the gun and the suspect raised a chrome gun in his left hand. Giconi said he kept yelling and fired at the suspect and then he took cover. According to Giconi, Carpenter was firing and he did not know if he (Giconi) even hit the suspect. Giconi said he expected bullets and drywall to start coming at him and thought he was going to be shot and stated all he could think about was his wife and children.

Jeff Carpenter stated that he responded to a level one SWAT call out and after arrival he was assigned to the team in the hallway with Beauvais and Giconi. He was briefed and made aware that the person in the apartment had shot a relative and pointed a gun at an officer. After setting up in the hallway and waiting, the apartment door opened and he saw a man using a walker. The

man was not responding to commands and to Carpenter something appeared to be "off", as if the man was trying to draw them in. The man appeared to be weak, but when he back into the apartment, he rapidly slammed the door. This action appeared to be inconsistent with the way in which he had previously moved with the walker. A short time later the man opened the door and he could see that the man was holding a gun in his right hand to his head. Giconi was giving commands to drop the gun and then the male produced a second gun in his left hand, which he then swung it around and pointed it at Carpenter and his fellow officers. Carpenter said he fired at the suspect because he was in fear for his life. Carpenter thought he fired three times, but was not sure.

All three officers were in uniform or tactical gear with identifying patches. Giconi was wearing his duty uniform with his shoulder patch facing the suspect. All three officers reported hearing commands from the tactical armored unit asking the suspect to come out.

After the gunfire police officers entered the room to investigate. Frankie Martinez was found on an air mattress inside the door with one .22 caliber handgun in his lap and one .22 caliber handgun on the bed next to his body. Martinez suffered wounds to his torso and right elbow. No wounds were found in the head or legs. The autopsy revealed 10 entrance wounds in the torso of Martinez.

In the investigation afterwards, Detective Velasco talked to John Ribal, the owner of the Prairie Liquors. John told him that Jesse, Alvino Hidalgo's brother, told him that Frank had said he wanted to kill himself, but didn't have the balls to do it and that Frank had , in fact asked family members to take him out and shoot him.

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; investigators from the District Attorney's office responded to the scene; Pueblo County Coroner James Kramer responded to the scene.

3. Conclusion

The suspect placed Officers Jeff Carpenter and Rick Giconi in life threatening situations and they had reason to believe Frank Andrew Martinez intended to, and was capable of, causing them death or serious bodily injury.

It is my conclusion that Officers Jeff Carpenter and Rick Giconi 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 Frank Andrew Martinez, 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
Pueblo County Coroner James Kramer