



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

June 26, 2014

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

Re: Decision Letter
Officer involved shooting on March 5, 2014
Location: 1630 Jackson, Pueblo, Colorado
Officers involved:
Cpl. Jeff Maize
Officer Darren Kochis
Officer Matt Van Leeuwen
Deceased: Robert James Gonzales, DOB: 04/21/90

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, including video recordings with witnesses and the involved officers. This letter contains my decision in accordance with the Critical Incident Team Protocol.

The Incident

This shooting incident was on March 5, 2014. The events occurring earlier in the day help put the shooting incident in context. Renee Martinez is the common law wife of Robert Gonzales. She and Robert have had an on and off relationship for the past eight years and they have three children, ages 6, 4, and 3 years of age. Robert is on parole for criminal mischief and menacing with a deadly weapon. According to Renee, on Robert's "parole days", Robert drinks and then acts really stupid after meeting with his parole officer. On March 5, 2014, he bought a "40" beer about 11:00 A.M. and started drinking. Renee had a prescription for Vicodin and about noon Robert took one of her Vicodin pills. Later he went to class at PCC and returned home about 7:00 P.M. After supper they started arguing because Robert wanted more alcohol to drink. He came back with a pint of Southern Comfort and started drinking it. Then around 9:40 P.M. he took two more of Renee's Vicodin pills. He was talking about beating her up because she had been getting out of line lately. This brought flashbacks of having been previously beaten by Robert. Renee texted her mom, Carol Trujillo, to come pick her up and to just honk when she arrived. When she heard a honk, she went outside to talk to her mom about how to get the kids out of the house. Renee's sister, Rhiannon Trujillo, was there and she went back in the house

with Renee. Renee told Rhiannon to get her three kids out and as they were about to leave Robert started choking Renee and pulled a gun out of his back pocket. Renee told Robert to put the gun away and then Robert put the gun in his back pocket and started choking her and pulling her hair and telling her that she couldn't leave. As the argument escalated, Rhiannon ran outside and told her mom. Their mom then came into the house, took the kids outside, and then came back in. Renee told Rhiannon to call the cops and she complied and remained with the kids until the police arrived. Renee said that after the police arrived she heard one of them say "Robert". When Robert heard that that word he let her go and she ran outside. As she was running she told the cops Robert had a gun.

Pueblo Police Officers were dispatched to 1630 Jackson Street in Pueblo at about 10:33 p.m. on March 5, 2014 in response to a 911 call reporting a domestic violence situation in which the male suspect had a gun. The caller was Rhiannon Martinez and she reported that she and her mother, Carol Trujillo, were trying to get their sister Renee Trujillo out of the house but Renee's common law husband, Robert Gonzales, was choking Renee and he had a gun.

Among the officers responding were Cpl. Jeff Maize, Officer Matt Van Leeuwen, and Officer Darren Kochis. All three officers heard the dispatch call describing the incident as involving a domestic fight with a male with a handgun who had menaced several females and the male was still in the house with the gun. Cpl. Maize heard in route that the reporting party (Rhiannon Martinez) was in the driveway on the phone with dispatch. Upon arrival Maize contacted Rhiannon on the driveway who told him Robert was in the house and had her sister around the throat waving a gun around. Officer Van Leeuwen arrived and both officers approached the front door where they heard screaming. It sounded like several females screaming.

When officer Kochis arrived he saw a black vehicle in the driveway and officers Maize and Van Leeuwen by the front door of the residence. Officer Torres appeared to be in contact with a female in the black vehicle so Kochis headed to the front porch to join Maize and Van Leeuwen. As he approached the porch he heard the other officers giving loud and clear verbal commands to somebody inside that they were the "police" and to "come out". Officer Maize recounted that he opened the door and yelled twice "Robert, police department, come to the front of the house with your hands up". He yelled the same directive a second time. After yelling the second command, they heard a shot fired in the back part of the house. At that point the officers yelled "shots fired, shots fired" to alert the officers outside. As the officers proceeded into the house a younger female came running from the back of the house screaming and she ran past them going toward the front door. An older female followed the first female from the back part of the house holding her hands over her ears and screaming and yelling. The officers took about two more steps forward when a man (later identified as Robert Gonzales) stepped into the doorway from which the women had fled.

The man was holding a handgun at his side with his right hand. The man looked, turned, and then brought the handgun up, pointing it at the officers. As the man's gun was coming up to chest level, the officers were giving commands "drop the gun". The man kept raising the firearm. All officers at that point thought their lives were in jeopardy and they were going to be shot, so they started firing their handguns. As the officers shot, the man began stepping back into the hallway from which the man had appeared. He appeared to be trying to retreat out of their line of sight. Finally, the man either fell back, or stepped back, and went to the floor. When there was a pause, Officer Maize, being the senior officer, yelled to stop firing. Officer Maize then saw Robert's firearm, with the magazine by it, lying on the floor near Robert.

Renee's account of the events that night was corroborated by Carolyn Trujillo, Renee's mom. She stated that she received a text from Renee asking that she come get her. Carol and her

daughter, Rhiannon, went to the house to get her daughter, Renee, and her grandchildren from the home. Carolyn related that at one point Robert had Renee by the throat and he had a gun. Renee was able to get away when the police called out to Robert. Carol stated Robert told her "that bitch got away so I will just kill you instead". Robert pointed the gun at Carol and fired but she ducked. Carol said her ear was stinging and she could not hear out of it. The round fired at her did not strike her, but it impacted a wall and it was close enough that drywall pieces were in her hair from the impact of the bullet into the wall. The bullet and casing were recovered.

Rhiannon reported to police that she went with her mother to get her sister Renee and the three children out of the house and she had seen Robert with a gun and he was choking Renee so she got the kids out of the house and called 911.

Robert Gonzales was fatally shot during the incident. The CIT investigative team collected the handgun and magazine used by Robert Gonzales as well as the handgun and magazines used by the three officers. The team also collected all the spent cartridges from the scene and collected all of the projectiles they could find at the scene and at the autopsy of Robert Gonzales. All the evidence was submitted to the Colorado Bureau of Investigation for forensic analysis. Based on the evidence gathered, statements of witnesses, and the CBI analysis it was determined:

- Robert Gonzales fired a 9mm, SCCY Model CPX2 handgun 1 time.
- Cpl Maize fired his .45 caliber, Kimber handgun 3 times
- Officer Kochis fired his .45 caliber, Colt handgun 7 times
- Officer Van Leeuwen fired his .40 caliber Springfield Armory handgun 13 times.

The Investigation

The investigation was conducted in accordance with the Critical Incident Team criteria. The Pueblo County Sheriff's Department was designated the lead investigative agency with nine personnel participating; the Pueblo Police Department was a team member with ten participants; the District Attorney's office was a team member with four participants.

Conclusion

The three involved officers were informed by police dispatch that they would be going to a situation in which there was a domestic violence situation in which the man had a gun and had just menaced several females inside the residence in which the incident was still occurring. Upon arrival at the residence the officers were informed by the reporting person that the suspect was still in the house and he had the reporting person's sister by the throat and was waving a gun around. The officers approached the front door and yelled that they were police and ordered "Robert" to come to the front of the house with his hands up. Instead, the response was a gunshot with two females fleeing from the location of the gunshot in a back area of the house. Immediately thereafter the suspect, Robert Gonzales, appeared in the doorway through which the females had fled. He was holding a handgun in his right hand and upon seeing the officers he swung the gun up to chest level with the gun pointed at the officers in disregard of the officers' commands to "drop the gun". The officers had identified themselves as police officers and they were in full uniform with badges and other gear that identified them as police officers.

Because the suspect was ignoring the officer's commands to drop his gun, and he kept raising his gun and pointing it at the officers, and because the officers knew the suspect had already fired a shot, possibly at the fleeing females, they reasonably thought they were going to be shot and that their lives were in jeopardy. Further, as the officers began shooting, the suspect began stepping back into the hallway and appeared to be trying to retreat out of their line of sight. The suspect appeared to be posing a threat as long as the officers were firing.

A person may use deadly physical force in defending himself or another if the person reasonably believes a lesser degree of force is inadequate and the person has reasonable grounds 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. In evaluating whether a person was justified by self-defense, the person is entitled to act on appearances. People v. La Voie, 395 P.2d 1001 (1964). The United Supreme Court recently had occasion to review a situation to determine whether officers used excessive force under the Fourth and Fourteenth Amendments. Plumhoff v. Rickard, 134 S. Ct. 2012 (2014). In that case officers fired a total of 15 shots at a suspect in a fleeing car that was determined to constitute a grave public safety risk. In its ruling the Court said "...It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended..." The Court also said that it analyzed the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Further, the Court said that it allowed for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation - in circumstances that are tense, uncertain and rapidly evolving.

It is my conclusion that Officers Maize, Van Leeuwen, and Kochis were justified by the provisions of the statutes of Self-Defense and Defense of Others (C.R.S., 18-1-704) 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 Robert Gonzales, and they reasonably believed a lesser degree of force would be inadequate. Given the facts in this situation and the governing law, criminal charges would be inappropriate and, thus, no criminal charges will be filed.

Sincerely,



J. E. Chostner
District Attorney