



COPY

BILL THIEBAUT
District Attorney

OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO

December 8, 2009

VIA HAND DELIVERY

Chief Jim Billings
Pueblo Police Department
130 Central Main
Pueblo, CO 81003

Re: Decision Letter
Officer-Involved Incident Concerning
Officer Benjamin Candelaria

Chief Billings:

The investigation and legal analysis regarding the above matter have been completed. My decision, based on criminal law standards, does not limit administrative action by the Pueblo Police Department where non-criminal issues can be reviewed, or a civil action where less stringent laws, rules, and legal levels of proof apply.

Background

Effective January 1, 2006,¹ several law enforcement agencies in Pueblo County entered into a revised "Officer-Involved Incident Protocol of The Tenth Judicial District" (CIT agreement). Signatories to the CIT agreement include the Pueblo Police Department, the Pueblo County Sheriff's Office, the Colorado State Patrol, and the Colorado Bureau of Investigation (CBI). The CIT agreement establishes a team approach to the investigation of certain critical incidents involving peace officers. Such a team provides any participating law enforcement agency requesting assistance proficient investigators to assist in the investigation of a critical incident to enable a "thorough, unbiased investigation of any critical incident involving a law enforcement officer." Notably, the

¹ Prior to its effective date of January 1, 2006, the original CIT agreement was revised on December 21, 2005.



protocol adopted in the CIT agreement recognizes that “[A]long with an open investigation for public evaluation, the incident investigators and agency managers must understand the legal rights, obligations and authority of the agencies and individuals involved.” *Officer-Involved Incident Protocol of the Tenth Judicial District, Statement of Pueblo County Law Enforcement Agencies.*

Statement of Investigation and Facts

Triggering the CIT Agreement

The Pueblo Police Department Chief of Police invoked the agreement’s investigative protocols for this incident. The investigation was conducted by investigators from the Pueblo Police Department, the Pueblo County Sheriff’s Office, the Colorado State Patrol and District Attorney’s Office.² Reports were received from agencies involved in the investigation as well as diagrams of the accident scene, accident reconstruction data and video tapes taken from the camera systems of responding police vehicles.³

Facts

The Chase

According to a citizen eyewitness, just before 11:30 p.m. on March 20, 2009, she was traveling westbound on West 4th Street approaching Abriendo Avenue. At that moment another vehicle passed her at a high rate of speed (speeding vehicle). The witness observed a marked police vehicle (police vehicle) at the intersection of West 4th/Lincoln Street and Abriendo Avenue⁴ traveling eastbound. The Police vehicle made a U-turn and accelerated behind the speeding vehicle that had passed her.

The police vehicle was Unit 153 being driven by Pueblo Police Officer Benjamin Candelaria and he was proceeding westbound in the left lane on Lincoln Street giving chase to the speeding vehicle at the time of the collision.

² The CIT investigation was activated subsequent to the on-scene investigation by the Pueblo Police Department. This is the sixth investigation involving the CIT agreement.

³ The CIT agreement provides that “Vehicular collisions ... shall be investigated with the assistance of accident investigation specialists from any of the participating agencies.” *Officer-Involved Incident Protocol of the Tenth Judicial District, Venue Determination*, at page 11.

⁴ Although the same four-lane roadway, Lincoln Street is west of Abriendo Avenue; West 4th Street is east of Abriendo Avenue.

The Collision

At approximately 11:28 p.m., as Officer Candelaria approached W. Routt Avenue, a cross street with Lincoln Street, the police vehicle and a Dodge Durango, driven by John Paul Martinez (John Martinez or Mr. Martinez), collided. Officer Candelaria had swerved right in an attempt to avoid a collision. At impact his police vehicle rotated clockwise impacting the Durango again. The police vehicle continued traveling northwest, ran into the curb and continued to rotate clockwise to final rest.

The Durango was traveling eastbound on Lincoln Street in the left lane and was in the act of turning left (presumably onto W. Routt Avenue) in front of the approaching police vehicle driven by Officer Candelaria when the collision occurred.⁵ Pueblo Police Sgt. Dan Rutherford, in his accident reconstruction report, opined that at impact the speed of the Durango was approximately 9 m.p.h. in a posted 35 m.p.h. speed limit zone; the police vehicle's speed at impact was about 68 m.p.h. Pueblo Police Department Accident Reconstruction 09-5839, Opinion 1, p. 27.

Upon impact, the Durango rotated counterclockwise and, as previously noted, it collided a second time with Officer Candelaria's police vehicle and continued to rotate counterclockwise to final rest. John Martinez made an attempt to prevent the collision by steering right and made an attempt to decelerate prior to the first and second collision.

A diagram of the collision is attached to this decision letter.

Audible and Visual Signals

One citizen witness could not recall if the police vehicle had its visual signals activated as it gave chase to the speeding vehicle or at the scene of the collision after the police vehicle came to final rest. Another citizen witness indicated that the taillights of Officer Candelaria's police vehicle were on but that there were no visual signals active.

Pueblo Police Captain Linda Grisham reviewed the videos filmed from several Pueblo police vehicles that arrived at the scene of the collision. The videos show:

- "Officer Solano (in Unit 816) approaches the crash scene from westbound Lincoln and is the first unit on scene. He parks directly in front of Officer

⁵ According to the accident reconstruction report "it is likely that the driver failed to perceive the approaching (police) vehicle due to his intoxication level and the speed of the (police vehicle)." Pueblo Police Department Accident Reconstruction 09-5839, Opinion 4, p. 27.

Candelaria's police vehicle and [his police vehicle] video shows that the overhead lights on Officer Candelaria's vehicle are off."⁶

- Officer Heblinger "approaches the crash scene from westbound Lincoln there are ... other marked police vehicles already on scene (e.g., Officer Solano in Unit 816, Officer Heflin in Unit 771 and Officer Furbush in Unit 815) [and Officer Heblinger] positions his vehicle so that Officer Candelaria's vehicle is clearly visible. The overhead lights on Officer Candelaria's vehicle are off at this point."⁷ Thereafter, according to Captain Grisham, the video reflects that Officer Jeffries enters the passenger side of the police vehicle, and then the overhead visual signals were activated.
- The police vehicles of Officer Heflin and Furbush were positioned in such a way that "Officer Candelaria's police vehicle is not visible in their police vehicle video(s)."⁸

After impounding Officer Candelaria's police vehicle, further investigation revealed "all three settings for the red and blue rotating lights seemed to work normally and the audible mode worked as well." Report by Pueblo Police Detective Stephen Jesik, I.D. Section, 3/20/2009.

Moreover, on May 6, 2009, Pueblo Police Officer Timme and Sgt. Dan Rutherford removed the light bulbs from the light bar on Officer Candelaria's police vehicle. According to Sgt. Rutherford, "the light bulbs showed no indication the bulbs were incandescent at the time of the collision." Pueblo Police Department Accident Reconstruction 09-5839, p. 20.

After considering the statements from witnesses, and the statements and video recordings of police officers who were first to arrive at the scene of the collision, it was concluded by Sgt. Rutherford that "it is more likely that the emergency lights (visual signals of the police vehicle) were not on at the time of impact." Pueblo Police Department Accident Reconstruction 09-5839, Opinion 2, p. 27.⁹

⁶ Report by Captain Linda Grisham, 5/6/2009.

⁷ Id.

⁸ Id. Notably, Pueblo Police Deputy Chief McLachlan reviewed the video from Officer Heflin's police vehicle and "it only shows the glare of lights from other vehicles that arrived prior to Cpl. Heflin." Pueblo Police Department Accident Reconstruction 09-5839, p. 19.

⁹ It should be noted that the headlights on the Durango "were more likely on and lost power post collision." Pueblo Police Department Accident Reconstruction 09-5839, Opinion 3, p. 27.

At the scene of the collision the siren (audible signal of the police vehicle) was in the standby mode. Pueblo Police Department Accident Reconstruction 09-5839, p. 2.

Injuries

At the scene of the collision Officer Candelaria was unconscious and pinned in the police vehicle. As a result of the collision he had to be extricated from the police vehicle by emergency responders.

Notably, he suffered serious bodily injury and was transported to Parkview Medical Center for treatment.

Mr. Martinez was treated at the scene prior to being transported to Parkview Medical Center for treatment of injuries. An investigating officer detected an odor of alcoholic beverage on his breath, and noted that his eyes were bloodshot and watery, and his speech was slurred. Mr. Martinez provided a urine sample and blood test (registering 0.255 g/dL and 0.260 g/dL).

Additionally, it was determined that a valid restraining order was in effect with respect to Mr. Martinez which prohibited him from possessing or consuming alcohol or controlled substances. Several bottles of beer were found in and around the Durango at the scene of the collision.

Property Damage

As a result of the collision, there was severe and extensive damage to the police vehicle, including front-end and rear-end damage as well as damage to its tires, muffler, brakes, and overall body and mechanical condition. Additionally, the front end and driver side of the Durango was severely damaged. It sustained damage to its rear end and right passenger side.

Supplemental Accident Reconstruction Report

A Pueblo Police Department Supplemental Accident Report was prepared at the request of the District Attorney's Office.

In the analysis used by Sgt. Rutherford in the accident reconstruction report he analyzed the question: "Would the collision have occurred if Officer Candelaria was traveling at

the posted speed limit?"¹⁰ In calculating the answer to this question, the CIT investigators instructed Sgt. Rutherford "to use the start of the "yaw" mark¹¹ since this was a definite point in time that (investigators) could be certain Officer Candelaria reacted." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 1.

The location suggested by the CIT team is *not* the standard used in the field of accident reconstruction. According to Sgt. Rutherford, the analysis should be based upon a perception and reaction time of 1.5 seconds as the standard time used is "1.5 seconds unless there is data to support a different conclusion." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 1.

A recalculation by Sgt. Rutherford using the correct standard yielded the conclusion that "The Dodge Durango driven by John Martinez would have traveled an additional 45.877 feet, which would have allowed him to clear the intersection. The collision would not have occurred between the two vehicles." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 5.

The Pueblo Police Department Supplemental Accident Reconstruction Report is attached to this decision letter.

Procedural Considerations

Administrative Actions

An administrative review is controlled by less stringent legal levels of proof and rules than a *criminal review* and can provide both positive remedial options and punitive sanctions. This process can be said to result from an agency's "internal affairs" investigation and provides significantly broader latitude in accessing and using information concerning the background, history and job performance (prior conduct) of the involved officer. Issues related to the strategic decisions made by the involved officer leading up to the critical incident are most effectively addressed by the department's administrative review. This type of information may have limited or no applicability to *criminal reviews*, but is very important in making administrative decisions.

¹⁰ "The collision would still have occurred if Officer Candelaria was traveling at 35 mph 52 feet from the original area of impact." Pueblo Police Department Accident Reconstruction 09-5839, Opinion 5, p. 27.

¹¹ "Yaw" is the term that denotes the point of perception by a driver and the driver's reaction. For example, the point at which the physical skid mark begins can be the yaw.

There are a variety of actions that can be taken administratively by the department in response to its review. On the one hand, the department's review may reveal that no action is required. On the other hand, the department may determine that rules were violated and that formal discipline may be appropriate. Or, the department may make findings that support additional training for all officers on the force, or the need for changes in departmental policies, procedures and rules. In summary, departmental action can be taken for the benefit of the community, department, its' officers or the involved officer.

Civil Law versus Criminal Law

The civil law provides remedies for essentially private wrongs — actions in which the state may not have an interest. Monetary damages can be sought under a civil suit for a wrongful act that violates a legal right of an injured party. Plaintiffs in civil litigation are required to prove their case by a preponderance of the evidence or some lesser standard of proof; although some cases have indicated that "clear and convincing evidence" may be the required standard of proof.

A crime normally involves a wrongful act specifically prohibited by the criminal law. In most cases the law requires the wrongful act be accompanied by criminal intent. In other words, a person intentionally commits a prohibited act. Of course, a criminal action requires that the prosecution prove its case "beyond a reasonable doubt" — the highest standard of proof.

Notably, the criminal law and civil law can overlap. Conduct by a person that constitutes a crime can also involve a tort (a wrongful act that violates a legal right of an injured party). For example, a driver whose car hits another car and injures another person can be guilty of a crime and have a verdict of guilty rendered against him or her in a civil suit for damages.

It is the general responsibility of a district attorney to review cases prior to placing them into the judicial branch's court system. Put simply, a district attorney has a criminal "charging" responsibility. Charging may be through the complaint/information process or the grand jury presentment process. The charging "discretion" reposed in a district attorney is an awesome power to be used judiciously. If ever justice is to be established in a community, it will first come from a local district attorney's charging practices. This is the area of discretionary power that best defines a prosecutor's personal criminal justice

philosophy. Accordingly, if there is reasonable likelihood or probability of conviction, a district attorney may conclude that one has committed a chargeable offense. Among other things, this standard takes into account the quantity, quality, admissibility and credibility of available evidence.

Legal Analysis – Criminal Law

Pursuit Law & Pursuit Policy

Statutory Law Privileges and Conditions

Colorado law is clear that the driver of an authorized emergency vehicle, when in pursuit of an actual or suspected violator of the law, and when making use of audible or visual signals may exceed the lawful speeds or exceed the maximum lawful speed limits so long as he/she does not endanger life or property. Section 42-4-108 (2)(c), C.R.S.¹² The statute goes on to clearly state that a driver of an authorized emergency vehicle is not relieved from the duty to drive with due regard for the safety of all persons. Section 42-4-108 (4), C.R.S.

Case Law Inquiries

Corsentino v. Cordova, Colo., 4 P.3d 1082 (2000), dealt with a circumstance where a Pueblo County deputy sheriff received a dispatch to a home burglary alarm. The deputy responded to the dispatch as an emergency call, activating the sirens and lights of his sheriff cruiser. In route to the home burglary alarm, the deputy was driving at a speed of 50-60 m.p.h. in a 35 m.p.h. speed zone. While driving at this speed, the deputy approached an intersection at the same time as another person was making a left turn in her car. The two cars collided. Notably, before the impact, the deputy still had his emergency sirens and lights activated, but did not slow down as he approached the intersection. The resulting collision caused the death of the person making the left turn.

Among other things, *Corsentino* addressed: 1) the legal standard under the Colorado Governmental Immunity Act (GIA) for determining when an emergency vehicle operator faces an exigency that calls for immediate action; and 2) whether an emergency vehicle operator exceeding the legal speed limit must comply with the condition of section 42-4-108(2), C.R.S., which allows an emergency vehicle operator to speed “so long as said

¹² Under very narrow instances an authorized emergency vehicle being operated as a police vehicle while in actual pursuit of a suspected violator may not need to display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator. Section 42-4-108 (3), C.R.S. *But cf. Tidwell v. City & County of Denver, Colo.*, 83 P.3d 75 (2003).

operator does not endanger life or property,” in order to fall within the provisions of the GIA that grant immunity to emergency vehicle operators.

In establishing the proper standard for determining whether an emergency vehicle operator was responding to an emergency call¹³ under section 42-4-108 (2), C.R.S., the court reasoned that: “... it is an objective standard from the perspective of a reasonable emergency vehicle operator.” *Corsentino*, at p. 1088. And the court further reasoned in *Corsentino* that “... whether an emergency vehicle operator endangered life or property while speeding ...” can be answered by an “... inquiry to the relationship between the conduct of the emergency operator prior to the accident and the circumstances surrounding the conduct.” *Corsentino*, at pp. 1092 and 1093.

The *Corsentino* case is instructive in analyzing this critical incident. Even though the case dealt with a civil action and the interplay between the conduct of a deputy sheriff and the GIA, its reasoning gives clarity to the standards imposed upon authorized emergency vehicle operators who are facing the possibility of criminal culpability for their conduct.

Pursuit Policy Requirements

Moreover, courts give substantial weight to a department’s pursuit policy governing the proper response action for certain circumstances. *Corsentino, supra*. The Pueblo Police Department established a pursuit policy by Pueblo Police Department Orders (Pursuit Policy), which was in full force and effect at the time of the incident.

The Pursuit Policy requires that a police officer consider certain factors prior to beginning pursuit, which take into account any factor or condition impacting on public or officer safety. *Pursuit Policy, Pursuits, General Considerations, 8-4.2*.

Pursuant to the Pursuit Policy, “Officers are expected to exercise standards consistent with Colorado State Law C.R.S. 42-4-108, In particular, Sub Section 4” and “officers SHALL activate the red and blue emergency lights AND siren promptly after the officer has determined that there is probable cause to believe a violation of the motor vehicle code, or other violation, has occurred, and begins to go after the violator to make a stop.” *Pursuit Policy, Vehicle Operation and Tactics, 8-4.8*.

¹³ Presumably the objective standard established in *Corsentino* applies “... when in pursuit of an actual or suspected violator of the law ...” Section 42-4-108 (2), C.R.S.; and *Corsentino, supra*, citing with approval *Fiser v. City of Ann Arbor*, 417 Mich. 461, 339 N. W.2d 413 (1983): objective standard proper for determining whether a law enforcement officer properly responded to a car chase as an emergency.

Conclusions

Officer Candelaria

Officer Candelaria was "in pursuit," as that term is ordinarily understood, of an actual or suspected violator of the law, but he did not follow legal and policy requirements imposed upon him.

The facts clearly disclose that for some unexplained reason Officer Candelaria did not activate his emergency audible or visual signals, although maintaining pursuit speed. One citizen witness could not recall if the police vehicle had its visual signals activated as it gave chase to the speeding vehicle or at the scene of the collision after the vehicle came to final rest. Another citizen witness indicated that the tail lights of Officer Candelaria's police vehicle were on but that there were no visual signals active.

After considering the statements from witnesses, and the statements and video recordings of Pueblo police officers who were first to arrive at the scene of the collision, it was concluded by Sgt. Rutherford that "it is more likely that the emergency lights (visual signals of the police vehicle) were not on at the time of impact." Pueblo Police Department Accident Reconstruction 09-5839, Opinion 2, p. 27.

At the scene of the collision the siren (audible signal of the police vehicle) was in the standby mode. Pueblo Police Department Accident Reconstruction 09-5839, p. 2.

And an argument that because he was in pursuit of a suspected violator, Officer Candelaria needed to exceed the lawful speeds or exceed the maximum lawful speed limits to apprehend the suspect is tenuous at best. The circumstances prior to and at the time of the accident do not fall within the statutory emergency vehicle privileges because his excessive speed of travel endangered life and property. Section 42-4-108 (4), C.R.S. and *Corsentino, supra*.

Important factors relating to the circumstances include the fact that it is a 35 m.p.h. posted speed limit in the area, and the speed at which Officer Candelaria was driving (as noted above) was at the rate of approximately 68 m.p.h., or about 33 m.p.h. over the posted speed limit zone of 35 m.p.h.

A Pueblo Police Department Supplemental Accident Report was prepared at the request of the District Attorney's Office.

In the analysis used by Sgt. Dan Rutherford in the accident reconstruction report he analyzed the question: "Would the collision have occurred if Officer Candelaria was traveling at the posted speed limit?"¹⁴ In calculating the answer to this question, the CIT investigators instructed Sgt. Rutherford "to use the start of the "yaw" mark since this was a definite point in time that (investigators) could be certain Officer Candelaria reacted." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 1.

As previously noted, the location suggested by the CIT team is *not* the standard used in the field of accident reconstruction. According to Sgt. Rutherford, the analysis should be based upon a perception and reaction time of 1.5 seconds as the standard time used is "1.5 seconds unless there is data to support a different conclusion." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 1.

The impact speed of the vehicles was calculated as follows: Officer Candelaria was traveling 68.95 m.p.h., which was 101.08 feet per second; John Martinez was traveling 9.79 m.p.h., which was 14.35 feet per second. The distance the police vehicle would have traveled in 1.5 seconds at 71 m.p.h. (initial speed of Officer Candelaria "prior to yaw") would be 156 feet. It would take 3.04 seconds for the police vehicle to travel the 156 feet at 35 m.p.h. Factoring in the time to decrease his speed during the yaw and the distance the Durango would have traveled at the impact speed, a recalculation by Sgt. Rutherford using the correct standard yielded the conclusion that "The Dodge Durango driven by John Martinez would have traveled an additional 45.877 feet, which would have allowed him to clear the intersection. The collision would not have occurred between the two vehicles." Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 5. In short, this revised calculation weighs against the conclusion that the actions of Mr. Martinez were the proximate cause of the collision.

It is apparent that Officer Candelaria's duty to drive with due regard for the safety of all persons was breached by his excessive speed. Section 42-4-108 (2)(c) and (4), C.R.S. And, of course, he failed to make use of his audible or visual signals near the accident intersection. Section 42-4-108 (3), C.R.S. and *Pursuit Policy, Vehicle Operation and Tactics*, 8-4.8.

When any person drives a motor vehicle in a careless and imprudent manner, without due regard for the traffic, and use of streets and highways and all other attendant circumstances, he or she is guilty of careless driving. Section 42-4-1402(1), C.R.S.; and *See People v. Chapman*, 192 Colo. 322, 557 P.2d 1211 (1977).

¹⁴ See footnote 10, p. 6.

John Martinez

Pending Charges

Based upon the on scene investigation, Mr. Martinez was charged with:

Count 1: unlawfully and feloniously operating or driving a motor vehicle while under the influence of alcohol, and the conduct was the proximate cause of serious bodily injury to Officer Candelaria; in violation of section 18-3-205(1)(b), C.R.S. (a class 4 felony);

Count 2: unlawfully and feloniously operating or driving a motor vehicle in a reckless manner, and the conduct was the proximate cause of serious bodily injury to Officer Candelaria; in violation of section 18-3-205 (1)(a), C.R.S. (a class 5 felony);

Count 3: unlawfully driving or operating a motor vehicle while under the influence of alcohol; in violation of section 42-4-1301(1)(a), C.R.S. (an unclassified misdemeanor); and

Count 4: unlawfully and knowingly possessing or consuming alcohol, which was prohibited by a protection order personally served upon Mr. Martinez pursuant to section 18-1-1001, C.R.S.; in violation of section 18-6-803.5, C.R.S. (a class 1 misdemeanor).

A Prosecutor Must Act Within the Bounds of Professional Ethics

A district attorney is not an ordinary litigant. He represents the People of the State of Colorado. Section 20-1-102, C.R.S. "In representing citizens, the prosecutor is vested with broad discretionary authority to investigate and charge criminal conduct." *See People in Interest of J.A.L.*, 761 P.2d 1137 (Colo. 1988). Put simply, the role of a prosecutor is to seek the truth and for justice to be done, not merely to convict. ABA Standards for Prosecution and Defense Standards, 3-1.2(c) (1993).

A prosecutor's duty is to "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Rule 3.8(a), Colo. RPC [Colorado Rules of Professional Conduct].

Notably, it is the ethical responsibility of a prosecutor to only pursue charges that the prosecutor is convinced are factually and legally justified. And a prosecutor must reveal and disclose all reports, data and tests that might be exculpatory to the defense. *Doing Justice, a Prosecutor's Guide to Ethics and Civil Liability*, 2nd Edition (2007).

Chief Billings
December 8, 2009
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After reviewing the CIT investigation report, especially the Pueblo Police Department Supplemental Accident Reconstruction 09-5839, p. 5, the "Complaint and Information" will be amended with a charge equal to the offense committed by Mr. Martinez.


Decision¹⁵

Taking into consideration the quantity, quality, admissibility and credibility of available evidence I conclude:

1. That there is a reasonable likelihood or probability that Officer Candelaria committed the traffic offense of careless driving, in violation of Section 42-4-1402(1), C.R.S. which can be proven beyond a reasonable doubt, unanimously, to a jury. These charges will be filed with the appropriate court.

2. That there is a reasonable likelihood or probability that John Martinez has committed the offense of unlawfully driving or operating a motor vehicle while under the influence of alcohol in violation of section 42-4-1301(1)(a), C.R.S., Count 3, noted above, which can be proven beyond a reasonable doubt, unanimously, to a jury. These charges have been filed with the appropriate court.¹⁶

Sincerely,



Bill Thiebaut
District Attorney

BT: rd
Enclosures
Cc: Sheriff Kirk M. Taylor
Captain Scott Copley

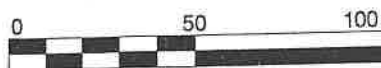
¹⁵ According to the CIT agreement, as soon as practical after the critical incident and receipt of the investigative report, the District Attorney "... shall determine whether anyone committed a crime. The District Attorney shall communicate his findings, conclusions of law and decision via a decision letter to the chief law enforcement officer of the venue and employer agencies involved." *Officer-Involved Incident Protocol of the Tenth Judicial District, District Attorney Responsibilities*, at page 37.

¹⁶ Mr. Martinez is scheduled to enter a plea to Count Three on December 11, 2009. Counts 1, 2 and 4 will be dismissed.



Lincoln Street

W Routt Avenue



DISCOVERY No. 87

DISTRICT ATTORNEY
JUDICIAL DISTRICT
STATE OF COLORADO

Pueblo Police Department
Supplemental Accident Reconstruction Report

Thursday, August 13, 2009

2310 hrs:

Narrative:

I was requested by the Pueblo County District Attorney's Office to analyze the Officer Candelaria accident given a perception and reaction time of 1.5 seconds.

In my original analysis presented to the CIT Group, Critical Incident Team, I did not analyze the question, "Would the collision still have occurred if Officer Candelaria would have been traveling at 35 mph?". I was asked during the CIT, Critical Incident Team, Meeting to analyze this question. I asked for the starting point for the analysis. I was instructed to use the start of the yaw mark since this was a definite point in time that we could be certain Officer Candelaria reacted.

DDA, Stephen Cornetta (sic) asked me if this location would be the standard used in the field of accident reconstruction. I informed him that the standard time used is 1.5 seconds unless there is data to support a different conclusion.

The following data was calculated in the previous reconstruction and will be used in this analysis:

- Impact speed of the vehicles
 - Candelaria – 68.95 mph / 101.08 fps
 - Martinez – 9.79 mph / 14.35 fps
- Initial speed of Candelaria prior to yaw
 - Candelaria – 71 mph / 104 fps
- Deceleration rate of Officer Candelaria
 - $a = -19.32 / g's = 0.6$

Collision Dynamics Report

Case Name:	Martinez Candelaria
Involved Parties:	John Martinez and Ben Candelaria
Involved Vehicles:	2006 Dodge Durango 2000 Ford Crown Vic
Case Number:	09-5839
Incident Location:	Lincoln Street W. Routt Avenue
Incident Date:	4/9/2009 12:00:00 AM

1. Distance 1.5 sec P/R Time

$$d = VT$$

Equation Comments

Distance Candelaria's Vehicle would have traveled in 1.5 seconds at 71 mph / 104 fps.

Input Value(s)	Units	Value
V (constant velocity)	ft/sec	104.000
T (time)	seconds	1.500

Result(s) for d (distance traveled) (feet)

156.000

Solution Steps

V = constant velocity = 104.000 ft/sec
T = time = 1.500 seconds

$$d = VT$$

$$d = 104 \times 1.5$$

$$d = 156$$

d = distance traveled = 156.000 feet

2. Time to Travel 156 Feet at 35 mph

$$T = \frac{d}{v}$$

Equation Comments

How much time would it take for Candelaria's vehicle to travel the 156 feet at 35 mph / 51.31 fps

Input Value(s)	Units	Value
d (distance)	feet	156.000
v (velocity constant)	ft/sec	51.310

Result(s) for T (time of travel) (seconds)

3.040

Solution Steps

d = distance = 156.000 feet
v = velocity constant = 51.310 ft/sec

$$T = \frac{d}{v}$$

$$T = \frac{156}{51.31}$$

$$T = 3.04$$

T = time of travel = 3.040 seconds

3. Time to decrease speed during yaw at 0.6 g's

$$T = \frac{V_f - V_o}{a}$$

Equation Comments

Add this time to the 3.04 seconds and the total time is 3.197 seconds

Input Value(s)	Units	Value
Vf (velocity final)	ft/sec	101.080
Vo (velocity initial)	ft/sec	104.110
a (acceleration rate)	ft/sec ²	-19.320

Result(s) for T (time) (seconds)

0.157

Solution Steps

V_f = velocity final = 101.080 ft/sec
 V_o = velocity initial = 104.110 ft/sec
 a = acceleration rate = -19.320 ft/sec²

$$T = \frac{V_f - V_o}{a}$$

$$T = \frac{101.08 - 104.11}{-19.32}$$

$$T = \frac{-3.03}{-19.32}$$

$$T = 0.157$$

T = time = 0.157 seconds

4. Distance Durango would have traveled at 9.79 mph

$$d = VT$$

Equation Comments

The Durango would have traveled 45.877 feet, clearing the intersection.

Input Value(s)	Units	Value
V (constant velocity)	ft/sec	14.350
T (time)	seconds	3.197

Result(s) for d (distance traveled) (feet)

45.877

Solution Steps

V = constant velocity = 14.350 ft/sec
 T = time = 3.197 seconds

$$d = VT$$

$$d = 14.35 \times 3.197$$

$$d = 45.877$$

d = distance traveled = 45.877 feet

Conclusion:

The Dodge Durango driven by John Martinez would have traveled an additional 45.877 feet, which would have allowed him to clear the intersection. The collision would not have occurred between the two vehicles in question given the above data.

The opinions and conclusions expressed in this report are based on the information available to this investigator at the time of this report. Should any new information become available to this investigator, I would be willing to discuss and review the information. Additional information may affect my opinion and conclusions.



Sgt. Danny Rutherford
Pueblo Police Department
ACTAR # 1281

