



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

March 16, 2020

Ms. Toni Perrino
1608 Johneva Street
Pueblo, CO 81006

Chief Troy Davenport
Pueblo Police Department
Pueblo Municipal Center
200 S. Main Street
Pueblo, CO 81003

Sheriff Kirk Taylor
Pueblo County Sheriff's Office
909 Court Street
Pueblo, CO 81003

Re: District Attorney CIT Decision Letter
Officer Involved Incident on July 18, 2019

Location: The kitchen/hallway/dining room inside the residence at 1704 E. 5th Street in Pueblo, Colorado

Deceased: Patrick Martinez

Officers Involved: Officer Brandon Victor, Officer Adam Quintana, Officer Eufracio (JJ) Ortiz, and Officer Jordan Klopp.

Dear Chief Davenport and Sheriff Taylor:

The 10th Judicial District Critical Incident Team (CIT) was activated on July 18, 2019, to investigate an Officer Involved Incident, which resulted in the death of Patrick Martinez (DOB 12/08/1965). The Pueblo County Sheriff's Office (PCSO) was designated as the lead investigative agency and other CIT participants included the Colorado Bureau of Investigation (CBI), Pueblo County Coroner, Pueblo Police Department (PPD), and the 10th Judicial District Attorney's Office (DA). After the investigation, the CIT prepared and submitted an executive summary and its investigative reports and materials to the District Attorney's Office for review. Those materials were reviewed, and this is the District Attorney's Decision Letter pursuant to CIT protocol.

Overview of the Incident

On July 18, 2019, at approximately 7:51 p.m., Pueblo Police officers were sent to 1704 E. 5th Street in Pueblo, Colorado in reference to an active family disturbance. While in route, officers were told that multiple parties, including a male, were arguing, and screaming. Officers were also informed that someone inside the residence was injured and the male was making statements about fighting. The reporting party, later identified as Toni Perrino, reported that she was afraid because her ex-husband kicked in a basement door, as well as, a bathroom door.

When Officer Adam Quintana arrived on scene, he could hear an active disturbance coming from inside the residence. As Officer Quintana approached the front door of the residence a male, who was inside the residence, shut the front door. Officer Quintana loudly identified himself several times as a Pueblo Police Officer and told the occupants inside to open the door. Officer Quintana asked the shift supervisor if he could breach the door once additional officers arrive on scene. Officer Quintana was told by the supervisor if he had the resources he needed, he was authorized to breach the door.

Officer Quintana continued to knock on the door and announce himself as a Pueblo Police Officer. Once more officers arrived and set up a perimeter, Officer Quintana announced to the occupants that if no one answered the door he would breach the door. No one inside the residence opened the door, so Officer Quintana used his foot to kick open the front door.

After kicking the door open, Officer Quintana, Officer Eufacio (JJ) Ortiz, and Officer Brandon Victor entered the residence, through the front door. Officer Jonathan Klopp remained just inside the front door. Once inside, the officers could see a female in the kitchen of dining room area. Officers asked the female, several times, where the male was. The female did not answer. Then a male, who was later identified as Patrick Martinez (DOD 12/8/65), suddenly appeared from the kitchen door and stated, "here I am." Initially, when the Defendant first stepped out of the kitchen, Officer Brandon Victor, Officer Eufacio (JJ) Ortiz, and Officer Jordan Klopp saw only one kitchen knife. Officer Adam Quintana and Ms. Raquel Martinez (Mr. Martinez' daughter) believed that Mr. Martinez initially had two kitchen knives, one in each hand, when he first stepped out from the kitchen to confront officers. The officers immediately began giving Mr. Martinez orders to drop the knife. Officer Victor, Officer Ortiz and Officer Klopp later saw a second kitchen knife that was laying on a chair because Mr. Martinez put the second knife down on a chair, after being shot.

Mr. Martinez refused to comply with the officer's orders, and he did not drop the knife. Officer Victor deployed his Taser because he believed Mr. Martinez was lifting one of the knives as if he was going to throw it at officers. The first taser appeared to have stopped him from throwing the knife and caused Mr. Martinez to stumble and step back briefly, but the first taser had no other discernable effect. Officer Ortiz then deployed his taser, and the second Taser deployment had little to no effect on Mr. Martinez. Mr. Martinez withdrew a few feet away into the kitchen doorway, and then he threw the butcher's knife at the officers, who were only a few feet away from him. The handle of the knife, thrown by Mr. Martinez, hit Officer Ortiz in the thigh. Officer Ortiz believes that the handle hit him because of how it felt and because he only sustained an abrasion from the knife. As Mr. Martinez threw the knife at the officers, Officer Victor fired his duty weapon, once, at Mr. Martinez striking him in the neck/collarbone area. All witnesses, except Officer Klopp described this knife being a butcher's knife that was approximately ten inches long. Officer Klopp believed that it was a huge butcher's knife that was over a foot long.

Mr. Martinez retreated into the kitchen area. The three officers advanced into the kitchen entrance where they could still see him standing, and now he was holding a second knife in his hand. According to all officers and lay witnesses, the second knife appeared to be a long bread knife, which was approximately

ten inches long. Mr. Martinez was bleeding substantially at this point. Additional verbal commands were given to Mr. Martinez ordering him to drop the knife, but he would not comply with the commands to drop the knife. In response, Officer Klopp then advanced into the house and deployed his Taser, which was the third and final taser deployment of the incident. The third taser deployment caused Mr. Martinez to, finally, lay down on the floor in a prone position. After the officers were able to render the situation safe and gain control of Mr. Martinez, emergency medical assistance was requested to respond to the scene and tend to Mr. Martinez.

The incident scene was immediately secured to protect the integrity of the scene as well as all potential evidence. Each Pueblo Police Department officer involved was assigned a gatekeeper per CIT protocol and they were all transported to the Pueblo Police Department to be processed. Mr. Martinez was taken to Parkview Medical Center where he succumbed to his wounds.

Autopsy of Patrick Martinez

The autopsy on the body of Patrick Martinez was conducted on July 22, 2019, at St. Mary-Corwin Hospital in Pueblo, Colorado. The autopsy was performed by Forensic Pathologist Dr. Daniel Lingamfelter. Dr. Lingamfelter concluded that the cause of death was a single gunshot wound to the neck and chest.

The Dr. Lingamfelter noted that there was no exit wound, and he noticed that there was a single taser barb with associated abrasions found on the lower right portion of Mr. Martinez' back. There were also abrasions found on Mr. Martinez' right chest and right elbow, and there were contusions of the chest, right forearm, left thigh, and right shin.

Dr. Lingamfelter observed a gunshot wound to Mr. Martinez' neck and chest. The entrance wound was located on the lower anterior of Mr. Martinez' neck. Dr. Lingamfelter tracked the bullet's trajectory through the body, and he determined that after entering through the front of the neck the bullet perforated the left internal jugular vein, left common carotid artery, the left clavicle bone, the left upper lung, the 3rd through 5th ribs on the left side, and muscular tissue in the upper left back. The Direction of the bullet was right to left, front to back, and slightly downward. There was no exit wound located. The bullet caused the left lung to collapse and massive blood loss that ultimately resulted in the death of Patrick Martinez.

The toxicology performed on the blood of Mr. Martinez revealed a severely elevated blood ethanol level and the presence of methamphetamine at the time of death. Dr. Lingamfelter determined that the level of ethanol was 354 mg/dL, the level of amphetamine was less than 20 ng/mL, and 45 ng/mL of methamphetamine was also found in Mr. Martinez blood.

Interview: Officer Brandon Victor

Officer Victor was interviewed by CIT Detective J.C. Williams (PCSO) and Detective Jose Medina (PPD) at the Pueblo Police Department, on July 24, 2019. He was interviewed in the presence of his attorney, John Rice, and advised pursuant to *Garrrity*.

Officer Victor explained that, on July 18, 2019, he was not the primary officer on the call. Officer Victor had conducted a traffic stop "a couple blocks down" from 1704 E. 5th Street in Pueblo, Colorado, when he heard an officer get on the radio and say "step it up." When he looked at the CAD notes on his computer he saw that Officer Quintana had requested officers to "step it up." According to Officer Victor, "step it up" means that something is in progress and officers are needed to respond to his call for back up faster.

When Officer Victor arrived at 1704 E. 5th Street Officers Adam Quintana, Officer Eufracio (JJ) Ortiz, Officer Corwin, and Officer Jordan Klopp were present. Officer Corwin went around the back of the

residence, in case someone attempted to leave from the back door. Officer Quintana was at the front door, which was shut. Officers were searching to see if there was another way into the house, when dispatch confirmed there was an injured person inside the house. Officer Quintana contacted the shift supervisor, who gave officers permission to force entry into the house. Officer Quintana forced entry into the house through the front door by kicking the door four or five times.

Officers Quintana, Ortiz, and Victor entered the house. Officer Quintana entered first, followed by Officer Ortiz, and Officer Victor was last. Officers Quintana and Ortiz had drawn their duty weapons prior to entering the house, and Officer Victor had drawn his taser because they needed at least one officer to be ready with a the less lethal weapon. Officer Klopp remained by the front door.

When the three officers entered the house, they had to maneuver to their left because directly in front of the doorway was a wall and a closet. Just to the left of the entry hallway was a large room. The officers formed up in the triangle formation in the room (with the front door behind them to the right) and in front of them was a hallway and in front of them, to their left, was a doorway leading to the kitchen. Officer Victor was in the middle, Officer Quintana was to Officer Victor's left, and Officer Ortiz was to the right. Officer Victor described the room as cramped or very tight with all three officers inside.

Officer Quintana asked "where is he at? Where is he at?" At that point, and for a split second, Officer Victor could see a female in the kitchen. The female was wearing a yellow shirt, and she was sitting down. Officer Victor did not observe that the female had any visible injuries at the time. A male with long hair and a black shirt then came out of the kitchen and said, "I'm right here." The male had a butcher's knife in his right hand. The male was facing the officers with the knife in hand, and he was approximately 4 or 5 feet in front of them. Officer Ortiz told the male, two or more times, to "drop the knife." The male did not comply with Officer Ortiz' commands, and, because of the officer's close proximity to the armed male and his threatening demeanor, Officer Victor deployed his taser.

Officer Victor believed that the taser probes contacted the male's chest, but he doesn't know if both probes actually hit the male. Officer Victor knew that at least one of the taser probes made contact because the suspect flinched, stepped back, and said "fuck." Then the suspect came right back and stood up where he was. Then Officer Ortiz moved to a position a little closer to the suspect and in front of Officer Victor and deployed his taser. According to Officer Victor, he heard the taser probes hit the male, but the taser did nothing because the male didn't react, except to retreat back into the kitchen.

The male then came out into the kitchen doorway, poking partially out. Officer Ortiz told the male twice more to drop the knife. Officer Victor could still clearly see the butcher's knife in Mr. Martinez hand. Officer Victor then gave the male another command to drop the knife. The male then reached the knife over his head into a throwing motion. It was at this point that Officer Victor said he went from less lethal to lethal by switching to his duty firearm, a Glock 17, 9mm handgun, which was loaded with hollow point ammunition. When the suspect raised the knife over his head, Officer Victor said it appeared as though he was getting ready to "tomahawk" the knife at Officer Ortiz. Officer Victor was scared for Officer Ortiz' safety (because Officer Ortiz was in the male's direct line of sight), his own safety, and Officer Quintana's safety. Officer Victor felt afraid for his life and the lives of his fellow officers. Officer Victor felt that he had no choice but to discharge his firearm to protect himself and his fellow officers.

At the same time as the male was throwing the knife Officer Victor discharged his firearm once at the suspect. Officer Victor said he shot at the male while the male released the knife. According to Officer Victor, the knife struck Officer Ortiz in the leg, but didn't do any damage. Officer Victor believes that his bullet striking the male threw off the trajectory of the knife causing it to hit Officer Ortiz leg, instead of his

center mass. After being struck by the bullet, the male then retreated into the kitchen, and he said "okay I'm done."

The three officers followed the male into the kitchen. The male was still standing, and Officer Victor could see that the suspect had a second knife in his hand. Officers gave the male commands to get on the ground and show his hands, but the male was not complying. The male then dropped to his knees, at which point Officer Victor's focus changed to Officer Ortiz. Officer Victor checked Officer Ortiz to make sure that he wasn't injured by the knife. No physical injury was found by Officer Victor. According to Officer Victor, the male eventually went down to his stomach, and officer secured the scene. Officers secured the female, who was in the kitchen for the entire event, to make sure that she was safe. The three officers then left the house as other officers and AMR were entering to tend to the male. The male was later identified as Patrick Martinez.

Interview: Officer Eufracio (JJ) Ortiz

Officer Ortiz was interviewed by CIT detectives Melissa Rohrich (PCSO), and Carly Gustin (PPD) at the Pueblo Police Department, on July 18th, 2019.

Officer Ortiz said he was dispatched to 1704 E 5th Street, in Pueblo, Colorado, on a disturbance that evening. While in rout, he learned that someone in the home was injured. He also learned from Officer Quintana that Officer Quintana arrived on scene first, and Officer Quintana approached the front door of the residence, where a man, later identified as Patrick Martinez slammed the door in Officer Quintana's face.

Officer Quintana told Officer Ortiz that he first went to the rear of the residence in case someone tried to escape there. Then more officers arrived, and they got approval, from the shift sergeant, to force entry into the residence. Another report was made to dispatch indicating that there was an injured person in the residence. According to Officer Ortiz, Officer Quintana kicked the front door three or four times and it opened.

Officer Quintana entered the residence first, then Officer Ortiz, and Officer Victor behind him. Officers immediately went into the first main room to the left of the front door, which Officer Ortiz described as a living room, and he also described the space as "cramped" with all three officers in the room. Once inside the residence, Officer Ortiz observed a female, in a yellow shirt with blood on her forehead. They asked the woman repeatedly to tell them where the man was at, but she would not answer. Then a male, later identified as Mr. Martinez, came around a corner with a knife in his hand and said, "I'm right here." Officer Ortiz thought Officer Victor tased Mr. Martinez because Mr. Martinez turned around and bent over briefly, but he still had the knife in his hand.

Officer Ortiz then tased Mr. Martinez a second time in the back, at which point Mr. Martinez turned around and threw the knife at the officers. He believed sometime between when Mr. Martinez lifted and threw the knife, he heard a gunshot. Officer Ortiz then realized Officer Victor had shot Mr. Martinez. After the gunshot, Mr. Martinez retreated into the kitchen. Officer Ortiz thought that Mr. Martinez was going to get another knife. Officer Ortiz described the knife, thrown by Mr. Martinez, as being approximately ten inches long. Officer Ortiz said the knife handle hit him in the groin area of his leg, but it didn't injure him. Officer Ortiz felt threatened and afraid for his life when Mr. Martinez threw the knife.

The three officers advanced into the entryway of the kitchen, where he observed Mr. Martinez hunched over with blood flowing between his legs. The officers continued to give Mr. Martinez commands to show them his hands, but he would not. Mr. Martinez eventually dropped to his hands and knees in the

kitchen, and they continued to give him commands to show his hands. Officer Jordan Klopp came in behind the three officers, and Officer Klopp tased Mr. Martinez again. After being tased, Mr. Martinez turned toward the officers, and at that point, Officer Ortiz observed Patrick had nothing in his hands but was covered in blood. Mr. Martinez eventually went to the ground prone.

When the officers felt safe to do so they checked the welfare of the parties and got them out of the house. They left their tasers and removed Officer Victor from the scene so he could be taken to the Pueblo Police Department. The remaining officers stayed on scene until they were taken to the Pueblo Police Department as well.

Interview: Officer Adam Quintana

Officer Adam Quintana was interviewed by CIT detectives Melissa Rohrich (PCSO), and Carly Gustin (PPD) at the Pueblo Police Department on July 18th, 2019.

Officer Quintana said he was on duty on the evening of July 18th, 2019. At between 7:00 p.m. and 7:30 p.m. he was dispatched to the 1700 block of E 5th Street because of a disturbance. The 911 call came from a cell phone that was pinged to that area. By the time he arrived they had determined that the disturbance was at 1704 E 5th street, and he heard fire/rescue was also responding to this address, for an assault. American Medical Response (AMR) indicated to him that someone inside of the residence was hurt.

When Officer Quintana arrived, the front door of the residence was open, and he could hear a lady screaming. A man (later identified as Patrick Martinez) saw Officer Quintana coming, so he slammed the door and locked it. Officer Quintana heard a woman scream as the door was slammed. He pounded on the door and announced "police." Officers Ortiz, Victor, and Klopp then arrived.

Officer Quintana had Officer Ortiz go to the back of the house until more officers arrived. He continued to pound on the door and announce himself until the others arrived. Once other officers arrived, Officer Quintana asked a supervisor for direction because there was an injured person in the home. His supervisor told him to do what he had to do. Officer Quintana then kicked the door in and made entry into the home.

Officers Ortiz and Victor followed Officer Quintana into the residence. As they entered the home, the officers turned left into the home, and they entered a living room. To their right was a wall with a closet and straight ahead of them was a dining room. There was a female in the dining room. The female was wearing a yellow shirt and had blood on her face. She was cowering in fear and did not answer the officers, but she kept shifting her eyes to the right.

Officer Quintana then saw Mr. Martinez come around the corner with a kitchen knife in each hand. Mr. Martinez was standing between the woman and the officers. Mr. Martinez was grumbling something, but he could not remember anything he said. The knives had black handles and blades about ten inches long; one looked like a bread knife and the other a butcher's knife. Officer Victor tased Mr. Martinez but nothing happened. Officer Ortiz then tased Mr. Martinez and again nothing happened. Mr. Martinez then cocked back and threw a knife in the direction of Officers Ortiz and Victor. Officer Quintana heard a gunshot pop and saw blood start squirting out Mr. Martinez' neck. At the time Mr. Martinez was shot, Officer Quintana anticipated Mr. Martinez was going to rush them with the knives. Officer Quintana indicated that he would have shot him as well if the woman had not been directly behind Mr. Martinez. Officer Quintana feared that, had he shot Mr. Martinez from where he was standing, his bullets might pass through Mr. Martinez and strike her. Officer Quintana indicated that it was scary and startled him when Mr. Martinez first emerged from around the corner, and he felt threatened by Mr. Martinez' actions.

After Mr. Martinez was shot, he retreated into the kitchen. Officers followed Mr. Martinez into the kitchen. Officer Quintana then attempted to ascertain whether Mr. Martinez still had the second knife in his hand, but eventually he located the second knife lying on a chair in the kitchen.

Interview: Officer Jordan Klopp

Officer Klopp was interviewed by CIT Detective J.C. Williams (PCSO), at the Pueblo Police Department, on July 18, 2019.

Officer Klopp said that On July 18, 2019 he was on duty with the Pueblo Police Department on Watch 2, Quad 2, which is the east and northeast side of town. He was on follow up status when he heard other units being dispatched to an address on East 5th Street, for a family disturbance. Officers Adam Quintana, and Eufracio (JJ) Ortiz were dispatched to the address on East 5th street. It was aired over the radio that there was a male inside the house, another party inside a room, and someone was possibly hurt.

At this point, Officer Klopp put himself on the call. Officer Quintana then asked for units to “step it up.” Officer Klopp then quickly responded to the address on East 5th street to assist the other Officers. When he arrived at the residence, he saw other officers outside the residence. Other officers were heading to the front As Officer Klopp is walking past the house, he could hear a sound that he described as screaming or crying coming from inside the house.

Officer Klopp then joined other officers at the front door. As Officer Klopp approached the front door, Officer Quintana was on the radio discussing possibly kicking in the door. Officer Quintana kicked the front door approximately three times causing the door to open. Before any officers entered the house, Officer Klopp told Officer Victor to switch from lethal to less lethal, which he did. Then Officer Quintana, Officer Victor, and Officer Officer Ortiz proceeded into the house. Officer Klopp stayed back by the entrance to the house, and he did not enter the house. Officer Klopp heard officers yell, “Where’s he at?” Officer Klopp could partially see inside the house, but his view was largely obstructed by the three officers who had entered.

Officer Klopp heard a male’s voice say, “I’m right here,” and he saw a male come out from around a corner. The male approached the officers. He could see that the male had a “huge” butcher knife in his hand. Officer Klopp believed the knife was silver and over a foot long. Officers then told the male to “Put - put - put down the knife, put down the knife,” and then he heard a taser being discharged, and he could see the cords of the taser. Officer Klopp said that the taser appeared to have no effect on the male. Officers continued to tell the male to “put down the knife.” Then the male appeared to turn his arm in as if he was going to throw the knife. This caused Officer Klopp to take a step back from the doorway so that he was standing just outside of the front door. Officer Klopp saw the male throw the knife, and he felt like the knife was flying straight at his own head, but the knife hit the interior wall just inside the front door.

At the same time as the knife was being thrown, Officer Klopp heard a shot being fired. After the shot was fired, other officers began moving into the house. Officer Klopp lost sight of the male, but he believed that he retreated into the kitchen area. The three officers followed the male into the kitchen, and Officer Klopp believed the male was going into the kitchen to get another knife. All three officers switched to their firearms as they followed the male into the kitchen. As they entered the kitchen the officers told the male, “Show me your hands, show me your hands.” Officer Klopp entered the house and came near the kitchen, but he continued to stay back from the officers because he wanted to make sure he could still maneuver if the male continued his aggressive actions.

Officers continued to give orders to the male to show them his hands. Officer Klopp told the other officers to use a taser, but the other officers indicated that they did not have a taser left. Officer Klopp approached and looked over the officers. Officer Klopp could see a male inside the kitchen on all fours, facing away from officers, a female was in the kitchen standing there crying, and there was blood all over the floor. The male continued to ignore commands from officers, so Officer Klopp deployed his taser, which struck the male in the back causing him to straighten his body, flip onto his back, and go limp. Officers cleared the scene and got the female out of the kitchen and to safety.

Once the male was subdued, the three officers left the residence. Officer Klopp then led newly arrived officers through the house on a protective sweep.

Witness Interview: Toni Perrino

Toni Perrino was one of the reporting parties. She was interviewed by Pueblo County Sheriff's Office Detective JC Williams, on July 18, 2019.

Ms. Perrino explained that was married to Mr. Martinez, and she was inside the residence when Mr. Martinez arrived. Ms. Perrino said that the residence of 1704 E. 5th Street belongs to her daughter, Raquel Martinez, who is also the daughter of Mr. Martinez. She has been the victim of many domestic violence incidents from her husband. They have been separated over a domestic violence incident in which Mr. Martinez was arrested on February 3, 2019. (PCSO 19S002581)

On July 18, 2019, she was with her daughter at 1704 E. 5th Street, when Mr. Martinez came there looking for her. Ms. Perrino was in fear for her life, so she locked herself in an upstairs bathroom. She did not know how Mr. Martinez got into the house, but she heard him pounding on the door of the residence. Once inside, Mr. Martinez began looking for her and he forced open the bathroom door, where she was hiding. When he forced the bathroom door open, the door struck her in the forehead causing her pain and causing her forehead to bleed. Mr. Martinez did not find her because she was still hiding behind the door.

Ms. Perrino then heard the police arrive and make entrance into the residence. She was still in the bathroom but could hear them yelling for Mr. Martinez to "Put the knife down" several times. She said a few moments later, she heard the single gunshot.

Witness Interview: Raquel Martinez

Raquel Martinez was one of the reporting parties. She was interviewed by Pueblo County Sheriff's Detective Melissa Rohrich and Pueblo Police Detective Carly Gustin, on July 18, 2019.

Ms. Martinez said that she lived at 1704 E. 5th Street. She woke up, just prior to Mr. Martinez' arrival, and was planning to make dinner. Her mother, Toni Perrino, who was at the residence, went to the bathroom to fix her dentures. Ms. Perrino came back downstairs and asked Ms. Martinez if someone was kicking in the basement door from the backyard. Ms. Martinez explained that the bathroom was close to the outside entrance to the basement and that's how Ms. Perrino was able to hear the banging. Ms. Martinez explained that her parents, Toni Perrino and Patrick Martinez, were involved in a domestic violence situation in February where Mr. Martinez was arrested, so there was a restraining order between them.

Ms. Martinez went into the kitchen to see what was going on because there was a locked door in the kitchen that also led to the basement. The door from the kitchen to the basement was missing the knob, so he looked through the hole with a flashlight. She saw her father, Patrick Martinez standing in front of the door. Mr. Martinez started yelling at her to let him in. Ms. Martinez called the police right away. Mr.

Martinez then started kicking the door and it came unlatched. He then broke the door and came into the kitchen. He took her phone from her and put it in his pocket. She pleaded with him to give it back, but he refused. When she last looked at her phone it said the time was 7:45 p.m. or 7:50 p.m.

Mr. Martinez asked where Ms. Perrino was because he saw her car outside and knew she was there. He started to accuse Ms. Martinez of taking guns from his house at 1608 Johnneva Street, in Pueblo, but she didn't know where his guns were. She told him that her aunt had been to the house that day to check on him while he was sleeping, and she asked him to allow her to call her aunt to sort it out. Mr. Martinez told her he was going to find a knife and kill her. Ms. Martinez was not sure how many guns Mr. Martinez had, but she estimated that he had ten to twenty guns total, and she said that he kept them locked in two separate safes in his home.

Mr. Martinez continued to insist that she had stolen from him and was telling her to give his guns back. He then began looking through the house trying to find Ms. Perrino. He kicked in the bathroom door where Ms. Perrino was hiding. The door hit Ms. Perrino in the head, which caused it to bleed. Ms. Martinez estimated that this occurred between 7:55 p.m. and 8:00 p.m., not long after he broke in.

Mr. Martinez made her Ms. Martinez go into her bedroom and was pushing her around. Her bedroom was up a short flight of stairs from the living room. He tried to push her back down the stairs, but she was able to balance herself to prevent the fall. He told her to go to the kitchen, where he pulled a knife out on her. Mr. Martinez then stabbed the long slender knife into the wall above her head. He told her, "I never had a daughter to kill, but I have you." He kept threatening her, asking where his guns were and why she was lying to him. He told her she had been the last one in his house. She told him she had only taken property that belonged to her. He then shoved his forearm into her throat while he was holding the knife. Mr. Martinez saw the police arrive at the screen door, so he went to the door and closed it on the officer.

Mr. Martinez told her to stay in the kitchen and started calling her a snitch because she had called the police. She was not sure the call went through because he took her phone from her, but there were neighbors outside who she also thought might have called. She pointed the neighbors out to Mr. Martinez and told him they might have called. He told her they were coming for him and to "just watch." The police kicked down the front door, and Mr. Martinez got up with a knife in each hand. She believed that one was a butcher and the other was a filleting type knife, but she was not certain.

Mr. Martinez either went toward the officers with the knives or threw one at them. The police tased him two or three times and shot him as she backed up in the kitchen. After Mr. Martinez was shot, she was standing at the kitchen door and Mr. Martinez was near the basement door when he made a "snarky" comment. He told her, "That's what real blood looks like," and started to walk toward her. The police tased him again and he either fell down or got down on his knees. The police tased Mr. Martinez again and told her to get out of the kitchen. She was then evaluated by medical personnel on scene. She found bruising on her knuckles and marks on her arms.

Witness Interview: Patrick Martinez, Jr.

On 07/18/2019, Pueblo County Sheriff's Office Detective Victor Herrera and Pueblo Police Detective Glenn Fillmore interviewed the son of Mr. Martinez, Patrick Martinez, Jr. Mr. Martinez, Jr. was interviewed in an audio/visual recorded interview room at the Pueblo Police Department.

Mr. Martinez Jr. informed detectives that his mother, Toni Perrino, called him around 8:00 p.m. and told him his father, Mr. Martinez, arrived at his sister Raquel Martinez's residence unexpectedly. His sister currently rents the home from his father.

Mr. Martinez Jr. said he went to the residence because there was a restraining order between his two parents, which concerned him. Mr. Martinez Jr. said his parents were involved in a domestic violence situation in February where his dad, Mr. Martinez, was arrested. Mr. Martinez Jr., said he didn't know much about the incident, but said it occurred at 1608 Johneva Street in Pueblo, CO. He further explained that his father is a heavy drinker and believes he may be suffering from a mental illness.

Mr. Martinez Jr. said he arrived at the residence and noticed Pueblo Police Officers were already on scene. He kept his distance from the property because officers were currently kicking in the door to enter the home. Once officers made entry into the house, he heard officers yelling "put that down." He then heard one gun shot.

Officer Involved Processing

Officers Victor, Quintana, Ortiz, and Klopp were processed by PCSO Detective Butterfield. The officers were all processed separately from the others, one at a time. The officers were brought to the CSI/ID office in the Pueblo Police Department. Full body pictures were initially completed of each officer in the uniform they were wearing at the time of the shooting. Once pictures were completed, they were escorted to a dark room where an ALS (Alternative Light Source) is ran over their bodies. This process is completed using a bright light to illuminate any possible body fluids which they may have come in contact with.

While examining Officer Victor, Detective Butterfield observed a brown unknown substance on his left shin pant leg. Swabs were used with distilled water to collect this sample. Also during the officer processing, Detective Butterfield observed that Officer Ortiz had a small abrasion on his right upper thigh, which was approximately 20 millimeters in length and by 5 millimeters in width. Detective Butterfield photographed these injuries. Officer Ortiz told Detective Butterfield that this was where he was struck with the knife.

Each officer was then removed from the dark room individually, and their firearm was placed on a piece of parchment paper along with their spare magazine with ammunition. The firearm was then made safe by removing the magazine and locking the slide to the rear removing any live cartridges in the chamber. The magazines were then emptied, and ammunition was counted. Pictures were then taken of the firearm, magazines, and ammunition count.

The following information is the results of the officer processing:

Officer Brandon Victor: Glock 17 9mm (SN# BFUR382): 1- live cartridge in chamber, 16 live cartridges from magazine in gun, 17- live cartridges in both spare magazine #1 and #2. Possible discharges is one. No Taser on his duty belt.

Officer Jordan Klopp: Glock 22 .40 caliber (SN# ENA830): 1- live cartridge in chamber, 14 live cartridges in magazine from firearm, spare magazine #1 and #2. NO DISCHARGES OF FIREARM. Taser X-26P (X12003WIT) was discharged and removed from Officer Klopp as evidence. Officer Butterfield downloaded information from Officer Klopp's Taser X-26P. The results of the Taser download indicated that Officer Klopp's Taser was that, on July 18, 2019, the Taser was armed at 2:52:22 p.m., armed again at 8:02:07 p.m., and then discharged, for approximately 5 seconds, at 8:02:14 p.m.

Officer Adam Quintana: Glock 17 9mm (SN# SLP249): 1- live cartridge in chamber, 15 live cartridges from magazine in gun, 16 live cartridges from spare magazine #1, 17 live cartridges from spare magazine #2. NO DISCHARGE OF FIREARM. Taser X26P (X12003WCI) present but there no discharges and the Taser cartridge was still intact.

Officer Eufracio (JJ) Ortiz: Glock 17 9mm (SN# BGLY760): 1- live cartridge from chamber, 17 live cartridges from magazine in gun, spare magazine #1 and spare magazine #2. NO DISCHARGE OF FIREARM. No Taser on his duty belt.

Scene Processing: Inside the residence located at 1704 East 5th Street, Pueblo, Colorado

On July 18th, 2019 at approximately 11:00 PM., Detective David Butterfield, responded to 1704 E 5th Street Pueblo, CO. Detective Butterfield conducted a search of the residence.

Detective Butterfield took overall pictures of the internal and external portions the residence. These pictures were taken prior to searching any portion of the residence. Once pictures were taken, he began searching several areas of the residence primarily the external front walkway, where he observed several 90-degree blood drops. Detective Butterfield determined that these blood drops were consistent with Mr. Martinez being transported off the property by medical personnel and blood dripping from his person.

Detective Butterfield then searched the living room of the residence, where the shooting took place. This was also the first room that Detective Butterfield arrived in as he entered the residence. In the living room Detective Butterfield found several blood stains, which would be also consistent of when Mr. Martinez was transported out of the residence. Detective Butterfield also found a knife with a black handle, a single 9mm FC spent shell casing, two AXON/Taser X26-P Tasers, and several AFID's. AFID's are small circular paper cutouts which are placed in taser cartridges. When a taser cartridge is discharged the AFID's are also deployed with the taser barbs. The AFID's have a serial number attached to them, which match the serial number on the cartridge they were fired from.

Once the living room area was searched. Detective Butterfield began working his way towards the kitchen where Mr. Martinez was found. The kitchen is located on the south side of the residence. The kitchen was covered in blood, which was primarily consistent with a gushing wound. While searching the kitchen two taser cartridge blast doors were located along with more AFID's. There was also another black handled knife, which was collected. This knife was located on what is believed to be a kitchen chair. There was a large amount of blood under the knife, which Detective Butterfield concluded came from when the knife was placed on the chair, after Mr. Martinez had already been struck by the projectile and began bleeding.

After the kitchen was searched, Detective Butterfield did a walkthrough of the rest of the residence. No more relevant evidence was located at the residence. All evidence located at the residence was tagged into evidence at the Pueblo County Sheriff's Office.

Detective Butterfield performed a download on the two taser's found at 1704 E. 5th Street. The taser download showed that, on July 18, 2019, Officer Victor's taser was armed at approximately 3:38:33 p.m., it was triggered at 3:38:34 p.m. (which was believed to be a test of the taser at the beginning of his shift), it was armed again at 8:05:36, and it was triggered again at 8:05:40 p.m., for approximately 5 seconds, which was while officers were at the 1704 E. 5th Street. The download on Officer Ortiz' taser showed that, on July 18, 2019, the taser was armed at approximately 8:00:53 p.m., and it was triggered, for approximately 120 seconds, at approximately 8:02:53 p.m.

Legal Guidelines

A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person. Furthermore, he may use a degree of force which he reasonably believes to be necessary for that purpose. §18-1-704(1), C.R.S.

A person is justified in using deadly physical force upon another person in order to defend himself or a third person if he reasonably believes a lesser degree of force is inadequate and he has reasonable grounds to believe, and does so believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. §18-1-704(2)(a), C.R.S.

In evaluating whether a person is justified by self-defense, the person is entitled to act on appearances. *People v. La Voie*, 395 P.2d 1001 (Colo. 1964). The United States Supreme Court evaluated whether officers used excessive force under the Fourth and Fourteenth Amendments by approaching the issue of reasonableness from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. *Plumhoff v. Rickard*, 143 S. Ct. 2012 (2014). In *Plumhoff*, 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 . . .” Further, the Court took into account that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation – in circumstances that are tense, uncertain, and rapidly evolving.

Conclusion

On July 18, 2019, Officer Victor responded to assist Officer Quintana with an active family disturbance, which was happening at 1704 E. 5th Street. When Officer Victor arrived, he learned that someone inside the residence may be injured, and that a supervisor had given officers permission to force entry into the residence. After forcing entry into the house, Officers Quintana, Ortiz, and Victor entered the residence through the front door. Officer Klopp remained by the front door. Officer Victor initially had his less lethal weapon (a taser) drawn, while the other officers had their guns drawn. The three officers stopped in the first room (the living room) where officers saw an injured female in the kitchen or dining room area straight ahead of them. Officers asked the female where the male was several times, but she did not answer. Shortly thereafter, Patrick Martinez emerged from the kitchen and said, “here I am.”

Officer Victor saw that the Defendant had a Butcher’s knife in his right hand. Mr. Martinez was facing the officers, and he was only approximately four to five feet away from the officers. The Officers gave Mr. Martinez numerous orders to drop the knife. Mr. Martinez refused to comply with the officer’s orders. Officer Victor discharged his taser because he believed that Mr. Martinez was a threat. Officer Victor also reasonably believed that he and other officers were in imminent danger of death or great bodily harm. The taser only caused the Mr. Martinez to stumble momentarily. Officer Ortiz then discharged his taser, but it had no effect on the Mr. Martinez. After the second taser was discharged, Mr. Martinez retreated, a few feet, into the doorway between the kitchen and the dining room.

Mr. Martinez then brought the knife above and behind his head, as if he was winding up to throw it, and he then threw the butcher’s knife in the direction of Officer Ortiz and Officer Victor. Officer Victor believed that either himself, Officer Quintana, or Officer Ortiz (who he thought was in the direct line of sight of the knife) were in imminent danger of great bodily harm or death from the knife. Officer Klopp, who was in the front doorway behind Officer Ortiz, also believed that the knife would hit him in the head. At the same time as Mr. Martinez was throwing the knife, Officer Victor fired a single shot at Mr. Martinez, from his 9 mm handgun. The bullet struck Mr. Martinez in the neck and collarbone area. Mr. Martinez was taken to Parkview Medical Center, where he later succumbed to his wounds.

Based on the facts of the investigation conducted by CIT investigators, the use of deadly force by Pueblo Police Officer Brandon Victor appears to be justified based on the fear and threat of great bodily injury or death posed to Officer Victor, Officer Quintana, Officer Klopp, and Officer Ortiz by Patrick Martinez. Mr. Martinez posed a serious threat of imminent great bodily harm or death to the officers because Mr. Martinez

was actively throwing a large butcher's knife at Officers. This conclusion is based off interviews of the involved officers, civilian witnesses to the incident, body worn camera (BWC) video, crime scene and evidence processing, and information developed from the execution of search warrants.

There is no evidence or facts collected to support any criminal wrongdoing by Pueblo Police Officer Brandon Victor during the OIS incident. The actions taken by Officer Victor during the OIS incident were conducted with the justified belief that the lives of himself and other officers were in imminent jeopardy from the knife that was being thrown at Officers. Officer Victor was also reasonable in the belief that a lesser degree of force was inadequate to stop the threat posed by Mr. Martinez because Office Victor and Officer Ortiz had already attempted to use their tasers, a lesser degree of force, with no results.

It is my conclusion, based on the totality of the circumstances, that Officer Victor was justified, by the Defense of Others and the Defense of Self provisions of the laws of the State of Colorado, in using the actions he employed to defend himself or a third party, namely Officer Ortiz, Officer Quintana, and Officer Klopp, from what he reasonably believed to be the imminent use of unlawful physical and deadly force by Patrick Martinez, and he reasonably believed that a lesser degree of force would be inadequate. He had reasonable grounds to believe, and did believe, that either himself or other officers were in imminent danger of being killed or receiving great bodily injury. The actions of Officer Victor were based on his own observations and perceptions, and his actions were reasonable.

Given the facts and circumstances of the situation and the governing law, criminal charges against Officer Brandon Victor would not be appropriate, and, therefore, no criminal charges will be filed.

Dated this 16th day of March, 2020.

A handwritten signature in dark ink, appearing to read "J.E. Chostner", is written over a horizontal line.

J.E. Chostner
District Attorney