



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

April 24, 2023

Sheriff David Lucero  
Pueblo County Sheriff's Office  
909 Court Street  
Pueblo, CO 81003

Chief Steven Noeller  
Pueblo Police Department  
Pueblo Municipal Center  
200 S. Main Street  
Pueblo, CO 81003

Re: District Attorney Critical Incident Team (CIT) Decision Letter  
Officer Involved Incident on June 26, 2023  
PPD 22-12209 PCSO 22S017314

Location: 2700 block 6<sup>th</sup> Avenue, Pueblo, Colorado  
Deceased: Brett Jay Chapman, (DOB: July 1, 1988)  
Officer Involved: Pueblo Police Department Cpl. Richard Giconi

Dear Sheriff Lucero and Chief Noeller:

The 10<sup>th</sup> Judicial District Critical Incident Team (CIT) was activated on June 26, 2023, to investigate an Officer Involved Incident which resulted in the fatal shooting of Brett Jay Chapman.

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) and the Colorado State Patrol (CSP).

After the investigation, the CIT prepared and submitted an executive summary and its investigative reports and materials to the District Attorney's (DA) Office for review. Those materials were reviewed, and this is the District Attorney's Decision Letter pursuant to CIT protocol.

## CRITICAL INCIDENT SUMMARY

On June 26, 2023, at 2:53 p.m., Mr. Chapman's ex-girlfriend ("Emily") called "9-1-1" to report that Mr. Chapman was suicidal at his residence, located at 2719 6<sup>th</sup> Avenue, in the city of Pueblo. Emily reported that Mr. Chapman, by phone, told her he had a gun, he wanted death by police officer, he would shoot officers if they didn't shoot him first, and he would shoot up his neighborhood if Emily didn't call the cops on him.

The Pueblo Police Department dispatcher relayed the above information to PPD officers, who gathered in a parking lot away from Mr. Chapman's residence and formulated a plan to safely intervene.

At 3:30 p.m., Mr. Chapman called "9-1-1" to report a "suspect" with a weapon in the middle of the street wearing black. He then identified the suspect as "me". PPD Sgt. Antoinette Ramos, a trained crisis negotiator, was patched into the call. Mr. Chapman refused to engage with Sgt. Ramos, but before he hung up he told her that he wanted to die, he would "draw down" on anyone that approached him, and he was waiting in the street for police with a ballistic vest and several weapons, including an assault rifle.

At 3:41 p.m., a resident in Mr. Chapman's neighborhood, ("Dana"), called "9-1-1" to report a man with a firearm on a strap across his back. Dana continued to narrate during her call what she saw, and at 3:43 p.m., Dana reported that the man was stopping vehicles from coming down the street. At 3:45 p.m., he was pacing back and forth, and cars were turning around where he was. At 3:47 p.m., he approached a driveway.

The above information from the "9-1-1" calls with Mr. Chapman and Dana was relayed by dispatch to the PPD officers at the staging area parking lot. A decision was made to respond immediately to the scene on 6<sup>th</sup> Avenue because Mr. Chapman's behavior now involved others in the neighborhood.

At 3:49:02 p.m., a marked Pueblo Police Department car ("the lead police car"), driven by uniformed Officer Andrew Stetler, with uniformed Corporal (Cpl.) Richard Giconi in the front passenger seat, arrived and parked facing southbound on 6<sup>th</sup> Avenue between 29<sup>th</sup> Street and 28<sup>th</sup> Street, approximately one and a half blocks from Mr. Chapman's residence. A second marked PPD car, with two uniformed officers, parked facing southbound on 6<sup>th</sup> Avenue to the side and behind the lead police car.

At 3:49:04 p.m. on the dash camera in the lead police car, Mr. Chapman stepped into the street in the 2700 block of 6<sup>th</sup> Avenue and slowly walked to the center of the avenue. Mr. Chapman was facing the marked police cars, approximately 70-yards away.

Cpl. Giconi stepped out of the passenger side of the car, and using the passenger door as cover, observed Mr. Chapman through the scope on Cpl. Giconi's department issued AR-15 rifle. The scope magnified Cpl. Giconi's view of Mr. Chapman by seven times. Cpl. Giconi saw that Mr. Chapman was wearing goggles, black pants tucked into black combat boots, a camouflage shirt,

and a black ballistic vest with pouches. Mr. Chapman was carrying an M-4 style rifle with a 30-round capacity magazine and had a semi-automatic handgun on his right hip.

The dash camera on the lead police car then showed:

At 3:49:18 p.m., a civilian vehicle drove across 6<sup>th</sup> Avenue on 28<sup>th</sup> Street, passing in between Mr. Chapman and Cpl. Giconi.

At 3:49:30 p.m., Mr. Chapman began to walk down the middle of 6<sup>th</sup> Avenue directly toward Cpl. Giconi.

At 3:49:43 p.m., a second civilian vehicle drove across 6<sup>th</sup> Avenue on 28<sup>th</sup> Street, passing in between Mr. Chapman and Cpl. Giconi.

At 3:49:51 p.m., a third civilian vehicle (later identified as “Richard”) approached 6<sup>th</sup> Avenue on 28<sup>th</sup> Street and stopped on 28<sup>th</sup> Street at 6<sup>th</sup> Avenue. Richard’s vehicle stopped approximately 25-yards from Mr. Chapman. As police yelled “Stop!”, “Drop the weapon!”, and “Drop that weapon!”, Richard quickly backed up his vehicle on 28<sup>th</sup> Street, out of view of the dash camera.

Mr. Chapman did not stop and did not drop his weapon. Mr. Chapman continued to walk toward 28<sup>th</sup> Street toward Cpl. Giconi. At that time, no other civilian was visible on the lead police car dash camera.

At 3:49:57 p.m., Cpl. Giconi fired his weapon at Mr. Chapman. Mr. Chapman’s body turned to the side.

At 3:49:59 p.m., Cpl. Giconi fired a second shot at Mr. Chapman and he fell in the middle of the street approximately 70-yards from Cpl. Giconi’s position at the lead police car.

Mr. Chapman was pronounced dead at the scene. Autopsy results revealed Mr. Chapman died from two fatal gunshot wounds with a blood alcohol level of .360.

When Mr. Chapman’s body was removed from the scene, it was discovered that the assault style rifle and two handguns he had were BB gun replicas of firearms. Even at a relatively close distance, the BB guns were indistinguishable from the firearms they were designed to look like, because the orange tips on their barrels had been blackened so that the orange color was not visible.

### **ADDITIONAL EVIDENCE**

**Emily’s interview:** In an interview with PCSO Det. Herrera and PPD Det. Torres after the fatal incident, Emily showed Detectives the texts and photos she received from Mr. Chapman that caused her to call “9-1-1”. Emily also agreed to allow those items to be downloaded from her phone. The texts that Mr. Chapman sent Emily on the afternoon of June 26, 2023 included:

2:08 p.m.: “I’m gonna call the cops. If you don’t first. I am done with this. I’m committing suicide by cop.”

2:47 p.m.: “That’s the last picture [photo of Mr. Chapman wearing the exact same military style clothes he wore at the time of the shooting] of me anyone gonna see.”

2:48 p.m.: “Call the cops or I’m going to start shooting the neighborhood up.”

**Richard’s interview:** In an interview with PCSO Det. Herrera and PPD Det. Torres after the fatal incident, Richard said he observed the gunman about 75-feet in front of him holding, in a ready position, an assault rifle that looked similar to an AR-15, a gun that Richard himself owns. Richard said he feared for his life and was thinking of driving forward and running over the gunman, but he chose to reverse his car, hoping the gunman wouldn’t shoot him. Richard heard police yelling at the gunman to put the gun down, but the gunman was not following commands from the officers and continued to walk forward approaching the officers. Richard was close enough to observe the two shots strike the gunman. Richard said he felt like someone saved his life because the suspect had a gun and he had no way to protect himself.

**Cpl. Giconi’s interview:** In an interview with PCSO Det. Herrera and CBI Agent Adams after the fatal incident, Cpl. Giconi confirmed that, before arriving to 6<sup>th</sup> Avenue he and his fellow officers received from dispatch information from the 9-1-1 calls [involving Emily, Mr. Chapman, and Dana]. PPD Sgt. Ramos was physically present at the staging area, and provided officers, including Cpl. Giconi, with details Mr. Chapman told her about the weapons he had on him: a “M4” [rifle], a “Glock 9mm” [handgun], a second “9mm” [handgun], and one “.45” [handgun].

Cpl. Giconi explained the following: He is a firearms instructor for the department, and the gun he fired, and regularly trains with, is an AR-15 rifle. The AR-15 rifle is more accurate than a handgun at greater distances and has an effective range of over 400 yards. The M-4 rifle that Mr. Chapman told Sgt. Ramos he was carrying is the fully automatic [machine gun] military version of Cpl. Giconi’s AR-15, which is semi-automatic. Cpl. Giconi was extremely concerned that any gun battle between the rifles in the street, with no backstop for fired bullets, posed a deadly threat to him, his fellow officers, and innocent bystanders.

Cpl. Giconi explained his rifle was loaded with 30 rounds of ammunition specifically designed to fragment upon striking the target, in order to avoid over penetrating the target and endangering anyone who might be behind the target. Based on his training, he was confident he would be accurate at the distance involved.

Cpl. Giconi described Mr. Chapman was walking toward him “holding his rifle in his hand, finger close to the trigger”, in a “low ready, fighting position,” with the rifle stock against the front of his shoulder, so the rifle could be raised and fired very quickly. Cpl. Giconi said “I’ll never forget the look in his eyes.” “I had no doubt in my mind, had I not stopped him when I did, it was going to end up in a gun battle and myself, or PPD Officer Stetler would have been shot or killed, along with innocent bystanders that were out.”

## LEGAL PRINCIPLES

### a) Use of Deadly Physical Force in Defense of a Person

“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.” *C.R.S 18-1-704(2)(a)*

In evaluating whether a person is legally justified in using deadly physical force, the person is entitled to act on appearances. *People v. La Voie, 395 P.2d 1001 (Colo. 1964).*

### b) Use of Deadly Physical Force in Making an Arrest:

“A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and,

(a) the arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

(b) the suspect poses an immediate threat to the peace officer or another person;

(c) the force employed does not create a substantial risk of injury to other persons.”

*C.R.S. 18-1-707(3.)*

“A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place the peace officers at risk of injury, or would create a risk of death or injury to other persons.” *C.R.S. 18-1-707(4).*

“Notwithstanding any other provisions in this section, a peace officer is justified in using deadly physical force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate, and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving serious bodily injury.” *C.R.S 18-1-707(4.5).*

## CONCLUSION

It is my conclusion that Cpl. Giconi was justified by the above self-defense and defense of others provisions of Colorado law in taking the actions he did to defend himself and others from what he reasonably believed to be the imminent use of unlawful deadly physical force by Mr. Chapman. Based on multiple sources of information Cpl. Giconi acquired beforehand, and his own observations through his scope during the incident, Cpl. Giconi had an objectively reasonable belief, and did believe, that he or another person was in imminent danger of being killed or receiving serious bodily injury. He also had an objectively reasonable belief that a lesser degree of force was inadequate.

Cpl. Giconi was legally entitled to act upon appearances. Mr. Chapman intentionally created those appearances by issuing threats to use deadly weapons, and by intentionally confronting and advancing on police in combat style clothing with what intentionally appeared to be authentic deadly weapons that he intentionally appeared ready to use imminently. Under these circumstances, Cpl. Giconi was not required to wait for Mr. Chapman to fire the first shot. Cpl. Giconi's actions were based on his own knowledge, observation and perception at the time, and his actions were reasonable under the totality of the circumstances.

Given the facts and circumstances of the situation and the governing statutes and case-law, criminal charges against Cpl. Giconi would not be supported, and therefore, no criminal charges will be filed against Cpl. Giconi.

Dated this 21<sup>st</sup> day of April 2023



J.E. Chostner  
District Attorney