



DenverDA

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July 10, 2008

Gerald Whitman
Chief of Police
Denver Police Department
1331 Cherokee Street
Denver, CO 80204

RE: Investigation of the shooting death of Odiceo Lopez Valencia, dob 4/10/63, by Officers Chris Pappas, badge #05103, and Chris Cesarec, #00106 on May 17, 2008, at 5553 Dillon Street, Denver, Colorado.

Dear Chief Whitman:

The investigation and legal analysis of the shooting death of Odiceo Lopez Valencia ("Valencia") have been completed, and I conclude that under applicable Colorado law no criminal charges are fileable against Officers Chris Pappas or Chris Cesarec. My decision, based on criminal-law standards, does not limit administrative action by the Denver Police Department where non-criminal issues can be reviewed or civil actions where less-stringent laws, rules and legal levels of proof apply. A description of the procedure used in the investigation of this officer-involved shooting and the applicable Colorado law is attached to this letter.

STATEMENT OF FACTS

On April 21, 2008, Odiceo Valencia, who had moved out and returned to the family home five times in the prior seven months, called and insulted his wife, Altigracia Medina ("Ms. Medina"). When Ms. Medina left work that day, Valencia followed her, stopped her on Peoria Street, slapped her, and took her car. She called police and an arrest warrant was issued. Valencia was arrested shortly thereafter and a permanent restraining order was issued by the Court on April 23, 2008. Valencia soon began calling Ms. Medina telling her to drop the restraining order and that she better not show up for court on June 24, 2008. In those calls Valencia told her he would rather die than go to jail.

On May 17, 2008, the Valencia's daughter was celebrating her First Communion and Valencia went to the church and later arrived at the residence at 5553 Dillon Street. At 18:01:13 (6:01:13 p.m.), Ms. Medina called 9-1-1 for emergency assistance to report her estranged husband, Odiceo Lopez Valencia, had cut his wrist during an argument with her and had left the scene bleeding. She and other family members would later tell investigators he said he was going to kill himself and he was talking to her for the last time. A family friend would later tell police that the police were called because they were afraid Valencia was going

to come back and “do something dumb.” Valencia’s fourteen-year-old son, Pedro Valencia, would later tell police that they called the police because Valencia could “come back any time or he could go to the hospital and tell them his mom cut him or something like that.” Ms. Medina also expressed this concern to investigators. Pedro Valencia told police his sister came out of the house crying and screaming. Pedro immediately went in the house and his mom and dad were close to each other ... face-to-face ... his dad was mad and his mom was calm ... he was going to punch his dad, but his dad is much bigger, so he went out and told his godfather to come in to help him. Other witnesses and family members would later tell police that Valencia was drunk and getting aggressive while at the residence prior to the incident. Valencia had grabbed his wife by the arm and took her inside. After the abusive contact with his wife, he went to the kitchen and used a large butcher knife to cut his left wrist. He then left the house bleeding and drove from the scene. Ms. Medina told investigators Valencia came to the United States in 1987 and although he was not fluent in English, he did understand a lot of English.

While further information continued to be obtained from Ms. Medina by the 9-1-1 call taker, Denver police officers were dispatched to her home at 5553 Dillon Street, Denver, Colorado. Because of the nature of the call, C.I.T. trained officers were requested.¹ Officer Tony Bruce, #98020, was dispatched at 18:03:53 (6:03:53 p.m.) and arrived within 4 minutes at 18:07:48 (6:07:48 p.m.). Officer Chris Cesarec arrived at 18:09:15 (6:09:15 p.m.) followed by Officer Chris Pappas at 18:11:28 (6:11:28 p.m.). Upon arrival, Officer Bruce spoke with family members and acquaintances. While gathering background information, Valencia made multiple calls to the residence and family cell phones. Officer Bruce was then handed the phone by Valencia’s son, Pedro Valencia, and spoke with Valencia. Valencia indicated he would return to the location in 10 minutes and Officer Bruce informed him they would get him help for his cut wrist. Paramedics were requested to respond to the area in the event Valencia, in fact, returned. During this time there were efforts to determine a secure alternative location to meet Valencia. A status update and a description of Valencia’s car was aired to other officers which caused Officer Jared Feher to position himself at a location which Valencia would likely pass if he returned. At 18:28:18 (6:28:18 p.m.), Officer Feher, #05028, aired that he was following Valencia in the direction of the house. Valencia was driving the described Toyota Camry, Colorado license plate 954RVD, and Officer Feher observed blood running down from the driver’s-side window. Soon after the radio transmission, Valencia pulled up across from 5553 Dillon Street and Officer Feher pulled behind him. Officers Bruce, Pappas, and Cesarec were in the front yard advising the family members and witnesses to whom they were speaking to go back in the house. The officers turned their attention to Valencia who was getting out of his car. Valencia saw the officers and turned to reach back into the car and retrieve a large blue handled butcher knife. As they moved in the direction of Valencia, Officers Bruce and Pappas drew their Tasers. Officer



¹ C.I.T. (Critical Incident Team) officers are trained to respond and assist on calls of this nature. Information about the C.I.T. program can be accessed through the Denver Police Department website.

Cesarec drew his service pistol which he held down to his side as the officers fanned out to create separation from one another and to shield the victim's house from him. Officer Feher went to the back of his marked police car and armed himself with his "Pepper Ball Deployment System" ("PBDS") weapon. At 18:29:21 (6:29:21 p.m.) radio records indicate: "Party is NB Dillon w/knife in hand and not obeying orders." [Translation = Party is northbound on Dillon Street with knife in hand and not obeying orders.]

Valencia began moving across the street while focusing on Officer Cesarec and stating, "You, I want you." Officer Cesarec moved to put a Plymouth Voyager van between Valencia and himself. He interpreted Valencia's statement in concert with his actions to mean Valencia was intending to kill him. As Valencia started rounding the front of the van, Officer Cesarec backed up trying to keep the van between the two of them. As Valencia closed the distance between the two of them, Officer Cesarec raised his firearm up prepared to fire. Valencia was closing distance faster than Officer Cesarec could back away. Officer Cesarec fired a single gunshot, but Valencia kept coming at him with the knife. It cannot be determined if the shot struck him, but he showed no sign that it did.

At the same instant Officer Cesarec fired, Officer Pappas fired his Taser. Officers Pappas and Bruce are trained and authorized to carry the ERD/Taser M-26.² Officer Bruce had his Taser drawn but was not in a position to fire it during this incident. Officer Pappas' Taser shot resulted in one of the two probes striking and sticking in Valencia's forehead, but the other probe did not penetrate his body. It struck the Plymouth Voyager van. One end of the Taser wire was still attached to the Taser cartridge and the wires were hanging over the rear windshield wiper.³ The Taser did not stop Valencia's armed pursuit and attack on Officer Cesarec. Officer Pappas determined it was not the appropriate weapon for the quickly evolving and escalating armed attack by Valencia. He immediately dropped his Taser and drew his service pistol. He remained in the vicinity of the back passenger side of the van.

Valencia at this point had pursued Officer Cesarec around the front of the van, along the passenger side and around the back. After the Taser shot failed to have any impact on Valencia, Officer Feher fired multiple projectiles from his PBDS weapon. These projectiles struck Valencia in the torso, but had no stopping effect on him. As Valencia continued to close distance down the driver's side of the van, Officer Cesarec fired a second shot. Again, this shot appeared to have no impact on him. As Valencia rounded the front driver's side of the van with Officer Cesarec still backpedaling, Officer Feher fired additional projectiles from the PBDS weapon. These shots struck Valencia in the back. Valencia had now pursued Officer Cesarec more than a full circle around the van with the knife extended in his right hand. As Officer Cesarec backed across the sidewalk into the yard on the front passenger side of the van, he fired two additional shots at Valencia. At this same time, Officer Pappas fired multiple rounds at Valencia and stopped firing when Valencia went down to his knees then fell over backward with the knife in his right hand. His arm went down and the knife fell between his legs. The officers moved in to secure him and the knife was kicked away from his grasp.

2 See "Addendum A:" Denver Police Department Denver Police Department Operations Manual - 105.02 Less Lethal Force and Control Options

3 See attached photographs.

At 18:30:40 (6:30:40 p.m.) radio records indicate: “Possible officer down.” At 18:32:20 (6:32:20 p.m.) radio records indicate: Officer Bruce radioed ... “OFCR INVOLVED UNK ON OFFICER.” [Translation = Officer-involved shooting with unknown officer and condition.]⁴

As a result of the officers’ earlier request for medical support, a Northglenn Ambulance was dispatched to the scene at 6:21 p.m. The ambulance arrived at the scene at 6:32 p.m. and provided immediate medical intervention. At 6:45 p.m., Valencia was taken from the scene and arrived at Aurora South Medical Center - Emergency Room at 6:58 p.m. for treatment of multiple gunshot wounds. Efforts to save his life were unsuccessful and he was pronounced by Dr. Michael Bertacchi at 7:07 p.m.

Following the shooting, written and videotaped statements were taken at Denver Police headquarters from numerous witnesses. The statements that follow are a paraphrasing of the pertinent portions of the videotaped statements of Valencia’s 14 year old son, Pedro Valencia, and the three officers who fired the Taser, Pepper Ball Deployment System weapon, and firearms—Officers Chris Cesarec, Chris Pappas, and Jared Feher. While the statements of various witnesses vary in some respects, the statements of these four witnesses collectively provide an account of this event that is consistent and supported by the totality of evidence developed in the investigation, including the evidence recovered in the crime scene processing; the radio transmission tapes and records; the firearms and ballistics examination and analysis; and the wounds documented at autopsy.

The following is a paraphrasing of the pertinent portions of Pedro Valencia’s videotape statement to investigators.

My sister came out of the house crying and screaming ... I was the first one to go in ... my mom and dad were close to each other ... face-to-face ... my dad was mad and my mom was calm ... they were in the living room ... I was going to punch him [his dad], but he is way bigger than me ... I went out and told my godfather to come in to help me ... I went back inside and my dad went in the kitchen and pulled a knife out of the cabinet ... my dad then cut his left wrist ... the knife had a brown handle and silver blade ... it is sharp ... it is used to cut frozen meat ... he had it in his right hand and cut his left wrist ... my sisters and I saw it ... I don’t know what he did with the knife⁵ ... he went outside and held his left hand up showing he was bleeding ... my mom and sisters were inside crying ... his Toyota Camry was parked around the corner from the house ... he got in the car ... he then drove by right in front of our house ... everyone was in the house crying ... we called the police because he could come back any time or he could go to the hospital and tell them my mom cut him or something like that.

4 This radio transmission was made after the officers controlled an attack on them by a neighbor Judea Duran after the shooting. Duran resides at the residence across the street at 5554 Dillon Street. [This attack will be discussed at a later point in this letter.]

5 After Valencia left the residence, Ms. Medina picked the knife up off the kitchen floor and placed it in the sink.

An officer came and started to talk to my sister and me in his police car ... my dad called the house phone ... he also called the cell phone and I hung up on him ... he called again and the officer answered ... the officer told my dad if he came back they could help him ... help him with his cut wrist ... we went inside the house ... my mom was crying ... we tried to clean blood off of the couch ... the officer told us to lock the back doors.

I went outside ... then my dad came back ... I was in the front door with it open talking to the officers in the front yard when he pulled up ... the officer told me to go inside ... I went in and went to the window [Pedro was at the window in the house that had the best over-all view of the incident even though a front-yard tree caused some obstruction.] ... my dad got out of the car ... my dad started moving his right hand around with the knife in it ... he started walking toward the cops with the knife out toward them ... one officer tried to tase him ... my dad pulled the Taser away ... then they shot him with a paintball gun [This is the Pepper Ball Deployment System weapon fired by Officer Jared Feher.] ... nothing happened to him ... he started walking toward the officer again ... the officer started screaming at him ... [he said he could not hear what was being said, but saw the officer's mouth moving] ... then the officer shot him ... the neighbor came running at the officers and they shot him with the paintball gun (Pepper Ball Deployment System).⁶

In response to investigator questions, Pedro Valencia provided additional details concerning the final frames of the confrontation. He described for investigators how

... his dad had the knife in his right hand with his elbow bent 90 degrees with the knife blade pointed out in front of him ... he was on the street walking toward the officers ... they were talking but he could not hear what was said ... then he heard the paintball gun ... his dad kept walking toward the officer ... he knew there was a Taser fired from near the van ... his dad was in the street ... he was not sure if the Taser hit him ... he had the knife in his hand ... he was still walking toward the officers ... his dad kept getting closer to the officers and they shot him ... the officer was backing away before he shot him

⁶ In his statement to investigators, Officer Bruce said that prior to Valencia's return to the scene he went to advise neighbors to go inside their homes until the developing situation was resolved. He stated: "I then went across the street and asked the neighbor [Judea Duran] if he would be able to secure his family inside his home. The neighbor stood up and stated 'I'm not going anywhere, you cops are over reacting, I know Augi.' I asked him to please cooperate and he said 'no.' I turned away and went to the neighbor to the north of 5553 Dillon Street, made the same request and got quick cooperation."

Officer Bruce then described what happened immediately after the shooting. He stated: "I then observed the neighbor from across the street [Judea Duran] now on the roadway yelling and screaming at us. This person ran upon myself with both fists clenched and at one time drew back to hit me, as I still had my TASER in hand, I used my left hand to maintain distance from this person, giving order to stay back. I observed officer Feher approach from my right side, then deploy his pepper-ball gun to keep the neighbor from assaulting us. After being struck by numerous pepper balls, this person retreated. I called for back-up officers to respond for assistance and crowd control."

In his statement to investigators, Judea Duran confirmed the officers' accounts when he stated he contemplated "dropping a two piece" on the officer. He demonstrated that a "two piece" was a two-punch attack which he believed would have rendered the officer useless. [See attached photo of Judea Duran.]

... his dad was going at the officer with the knife still in his hand and the officer was backing up ... then the officer shot him ... he estimated the distance to be approximately sixteen feet.

The following is a paraphrasing of the pertinent portions of Officer Chris Pappas' videotape statement to investigators.

Officer Pappas said the dispatcher provided information that the suspect was 6 feet 2 inches tall and weighed over 200 pounds and was trying to harm himself. The person had left the scene. Upon arrival he contacted Officer Bruce who was on a cell phone and sounded like he was talking to the person [Valencia]. Officer Pappas went to speak with some juveniles who were by the garage ... he saw some drops of blood on the porch ... more blood inside the house ... the trail went into the kitchen where there was more blood⁷ ... it looked like someone tried to clean it up ... there were two Hispanic males crying on the couch in the living room ... then Officer Bruce told him the suspect was going to be coming back to the scene ... they had also determined there was a restraining order out on the suspect.

Officer Jared Feher aired that the suspect was coming to the location ... the suspect came around the corner ... he parked across the street from the house ... Officer Feher pulled in behind him ... the suspect got out of his car ... he reached back in and pulled a knife out with a blue handle and silver blade ... Officer Pappas told him to drop his knife ... they tried to get him to focus on them ... the suspect never stopped moving ... he approached Officer Cesarec who tried to maintain a distance separation ... Officer Cesarec was backing toward Officer Pappas ... Officer Cesarec had his gun out ... Officer Pappas had his Taser out ... Officer Cesarec went between Officer Pappas and the van ... Officer Pappas was on the sidewalk ... he yelled "Taser" ... then deployed it ... it had no impact on the suspect ... Officer Cesarec was now in the middle of the street trying to keep separation between himself and the suspect ... Officer Cesarec fired one shot ... Officer Pappas could see Officer Feher behind his police car ... he saw him fire his PBDS weapon several times ... it had no effect on the suspect ... suspect was not complying with commands to drop the knife ... Officer Cesarec was still moving away from the suspect ... now going toward the front of the van ... at the front of the van with the suspect still going after him, Officer Cesarec fired two more shots ... there was still no effect on the suspect ... as the suspect continued to pursue Officer Cesarec, Officer Pappas fired several shots until the suspect fell to the ground on his back ...

A Hispanic male came running from across the street yelling "why did you kill him" ... this happened very quickly and he would not comply with orders ... Officer Feher saw him assailing the officers and fired his PBDS projectiles at him ... we finally got him back across the street to his house.

⁷ See attached photographs.

In response to investigator questions, Officer Pappas provided additional details concerning the final frames of the confrontation. He said

he was telling the suspect to “put down the knife ... put down the knife” but he was not responding to anyone’s commands ... his focus seemed to be on Officer Cesarec ... Valencia was saying something to him ... Officer Pappas was 10 to 15 feet from the suspect ... Officer Cesarec was moving backward around the front of the van with the suspect after him ... they had both gone around the front of the van ... Officer Cesarec was backing out into the street ... when the suspect got to mid-point of the van at the edge of the sidewalk ... Officer Pappas discharged his Taser ... he saw a portion of the string over Valencia’s left arm ... he believed that either both probes did not contact the suspect or something caused it to have no impact on the suspect ... the suspect continued around the back side of the van ... Officer Pappas then dropped his Taser right behind the van and drew his service pistol as Officer Cesarec approached the front of the van still going backward⁸ ... Officer Pappas heard a single shot which he believed was fired by Officer Cesarec ... the shot had no effect on the suspect ... the suspect was in a quick walk the whole time ... he was following the backpedaling Officer Cesarec around the van ... they were 8 to 10 feet apart ... face-to-face ... Officer Cesarec was going backward when he fired ... right after Officer Cesarec fired at the suspect, Officer Feher fired his pepper-ball system from his position behind his police car ... the shots looked like they were hitting the suspect in the back ... the shots had no effect on the suspect ... Officer Cesarec was now moving further away from the van toward a tree in the yard ... from the area of the tree Officer Cesarec fired two more shots at the suspect ... the suspect did not slow his pace ... Officer Pappas did not know if the suspect was hit by the shots ... Officer Cesarec was still moving backward in an effort to create separation between himself and the suspect ... Officer Pappas then brought his firearm up and fired at the suspect ... he thought he fired from 5 to 7 shots ... he thought Officer Cesarec had fired 3 shots at the suspect ... Officer Pappas said he fired until the suspect fell down ... the suspect fell backward by the bushy part of the tree ... the knife was underneath his left leg ... he approached the suspect ... Officer Cesarec also approached and pulled the knife out with his foot and moved it away from suspect for safety.

Officer Pappas said the officers did not want the suspect to get beyond them to endanger those in house ... the shots Officer Cesarec fired did not stop the suspect ... Officer Pappas was shooting to protect Officer Cesarec and himself ... he fired at center mass ... he estimated the suspect was approximately 10 feet from him when he fired.

The following is a paraphrasing of the pertinent portions of Officer Chris Cesarec’s videotape statement to investigators.

⁸ See attached photographs.

I parked in front of the house ... Officer Tony Bruce was talking on the phone ... saying something regarding coming back to the house ... Officer Chris Pappas was providing information to their Sergeant ... Officer Jared Feher radioed he was at Crown and Randolph because that is where the suspect might return from ... information was that suspect had cut himself with a knife ... Officer Pappas said there was a lot of blood in the house ... we needed to make sure the suspect was okay ... about 10 to 15 minutes after my arrival Officer Feher radioed the suspect was coming ... the suspect came around the corner onto Dillon Street ... he parked his car northbound on the street across from us ... Officer Feher was right behind him ... the suspect got out of his car ... Officer Feher also got out ... the suspect held the knife in an aggressive manner and yelled something ... the suspect kept saying no to Officer Bruce who was trying to get him to put the knife down ... I believe the suspect had the knife in his right hand ... Officer Bruce had a Taser in his hand ... I drew my weapon ... I held it down to my side ... I saw a van and moved to it to put the vehicle between the suspect and me ... as soon as I drew my weapon, the suspect focused all his attention on me ... the suspect said "You! I want you!" ... he started walking toward me ... I did the best to keep the van between us ... he started rounding the front of the van ... I backed up ... trying to keep the van between the two of us ... he kept looking right at me ... he started to come around the front of the van ... I was backing up ... I pulled my weapon up prepared to fire ... I knew he was going to try to kill me ... he was closing distance faster that I was able to back up ... I fired one shot ... he kept coming forward with the knife ... he never put it down ... he just kept coming ... I fired a second shot ... then a third shot ... then a fourth shot ... I heard several other shots ... the suspect looked like he was slowing down ... stopping his forward motion ... I saw that Officer Pappas fired shots ... the suspect went down to his knees then fell over backward with knife in hand ... he was on his back ... knife fell down between his legs ...

The neighbor across the street ... came running screaming and cursing ... seemed like he wanted to fight ... Officer Bruce told him to get back and go back across the street ... Officer Pappas went to assist Officer Bruce ... they spent 1 or 2 minutes dealing with this man ... trying to get him to go back to his house ... he wasn't complying with anything ... Officer Feher then shot him with the Pepper Ball gun ... he then went back over to his home.

Because the knife was still between the suspect's legs, I pulled it back with my foot to get it out of his reach ... I called for an ambulance ... Officer Bruce ran around trying to block everything off and control the crime scene.

In response to investigator questions, Officer Cesarec provided additional details concerning the final frames of the confrontation. He said

The suspect got out of his car ... then went back in his car for the knife

... had the knife in his hand ... Officer Bruce was trying to talk to him ... it was a very long butcher knife with a blue handle ... he was not complying with any commands ... I was not saying much at all ... Officer Bruce was giving commands ... "Stop ... Put the knife down!" ... the suspect was 20 to 30 feet from me initially ... he looked at Officer Bruce and said, "No!" ... his attention turned toward me ... he said "You—I want you!" ... I interpreted that to mean he wanted to kill me ... the knife was in his right hand with blade extending out ... As I began to move toward the van ... I knew Officer Feher had a Pepper Ball gun ... I tried to keep the van between us ... I didn't want him to stab me and I didn't want to have to shoot him ... when the suspect was approaching the front of the van I told Officer Feher to hit him with the Pepper Ball gun ... I could see by the look in his eye that he was trying to get me.

I went from the front yard toward the van ... I drew my firearm ... the suspect was in the middle of the street ... the suspect pointed at me and said "You-I want you!" ... suspect started walking toward the front of the van ... he kept the knife in front of him and repeating "I want you!" ... he was looking right at me ... pursuing me ... I was trying to see what he was going to do next ... when I was at the front of the van the suspect came around at me ... I was face-to-face with the suspect and backing up ... as the suspect came around the front passenger side I was backing around the back of van ... he was pursuing me and I fired one shot at him ... I was hoping he would stop but he didn't ... I kept backing up ... I also heard the Taser sound at that time ... he was within about 7 feet ... I don't know if the first shot struck him ... it was right after my shot that the Taser was fired ... I don't think it hit him ... then when I was midway on driver's side of the van ... we were very close ... I think it must have hit him ... knife still in hand ... then I kept backing up and got toward the front of the van ... I fired one more shot ... I was still backing up ... I was looking at background to be sure I wouldn't hit anyone ... he was still coming ... I was now toward the front of the van ... I backed around the front and got to the sidewalk side of the van and fired a single shot ... he was still holding the knife ... he was not going down ... then a whole bunch of shots were fired by Officer Pappas ... Officer Pappas was off to my left ... then the suspect went down ... the suspect was 8 or 9 feet away from me ... Officer Pappas was pretty much right next to me ... the suspect went on his back ... the knife was in his right hand ... his arm went down and the weapon fell between his legs ... I then noticed the non-compliant person and officers trying to get him controlled ... Officer Feher fired the Pepper Ball gun at him ... I moved the knife from between the suspect's legs out of the way.

I stopped firing at the suspect when he stopped pursuing me. I fired at him because he was coming at me with a knife and I thought he was going to kill me or someone else. I wanted him to stop ... I didn't want to get killed.

The following is a paraphrasing of the pertinent portions of Officer Jared Feher's videotape statement to investigators.

I heard Officer Bruce radio that the suspect was going to be returning to the location of 5553 Dillon Street. I headed that way to see if I could intercept him ... I got in a position where I could see two of the three ways he could come to the house ... I saw the car they described coming down the street ... I saw blood by the driver's-side window and door ... I got behind the car and followed him ... the suspect pulled in across from the house and I pulled in right behind him ... he opened his door and I opened my door ... he reached back in the car and came out with a knife ... he was ordered to "Stop right there" ... I went to the back of my police car and armed myself with the Pepper Ball weapon ... I don't think he even knew I was there ... he was focused on the other three officers across the street by the house ... commands were given to "Stop right there—drop the knife!" The suspect said, "What are you going to do about it—F___ you!" The suspect was going around the van (Plymouth Voyager) ... Officer Cesarec was there ... Officer Pappas fired his Taser ... the suspect then came around back of van facing my direction ... I fired 4 Pepper Balls into his chest ... the guy kept going ... Officer Cesarec was backing up around the front of the van ... Officer Cesarec fired his first shot from his gun ... I had fired more Pepper Ball shots ... then there are two more firearm shots ... Officer Cesarec was behind the van ... the suspect charged toward the officer ... I heard 6 or 8 shots ... I dropped my Pepper Ball gun and drew my service pistol.

In response to investigator questions, Officer Feher provided additional details concerning the final frames of the confrontation. He said

The suspect was saying to the 3 officers ... "What are you going to do ... f___ you ... it wasn't clear English but I could understand it ... he was not obeying any of the commands ... the suspect first started to go forward and then went back to go toward the van.

When Officer Pappas tased the suspect, he moved his right arm across his body and probably broke the Taser wire ... the suspect was pursuing Officer Cesarec around the front of the van and the suspect was by the driver's-side mirror ... Officer Cesarec fired his first shot from his service pistol ... I realized I was in the line of fire ... I got behind my police car for protection ... I fired repeatedly at center mass with the Pepper Ball gun ... I fired about 10 times when the suspect was on the driver's side and 10 times on the other side ... Officer Cesarec fired two more shots ... the Officer was moving back ... I heard 8 more shots ... the suspect first went forward and then fell back on his butt ... I believe he still had the knife in his hand when he fell.

This is when the guy across the street came running at the officers ... I then focused on helping Officer Bruce with this guy ... I fired my Pepper Ball gun at him when he was confronting Officer Bruce.

Pursuant to protocol, after the shooting Denver Police Department Crime Laboratory personnel collected the firearms of Officers Pappas and Cesarec. Officer Pappas was armed with a 9mm Glock 17 semiautomatic pistol. The unloading of the weapon indicated that seven shots had been fired by him. This is consistent with the seven shell casings recovered at the scene, which were matched to his firearm. Officer Cesarec was armed with a 9mm USP Compact Heckler & Koch semiautomatic pistol. The unloading of the weapon indicated that four shots had been fired by him. This is consistent with four shell casings recovered at the scene, three of which were matched to his firearm and one which had similar class characteristics. A total of eleven shots were fired by the two officers during the incident.

On May 18, 2008, Dr. James Wahe, forensic pathologist with the Denver Medical Examiner's office, performed an autopsy of the body of Valencia at the Denver County Coroner's Office. The cause of Valencia's death was multiple gunshot wounds. Five defects were identified in his abdomen, one in his left side and one in his right side. He had one linear defect to his left buttock. One Taser probe was recovered approximately one inch above his left eyebrow. He had multiple bruises from the strikes by the projectiles from the less lethal PBDS weapon. Dr. Wahe recovered seven (7) "fired copper color jacketed bullets" from the body of Valencia. Denver Police Department Crime Laboratory Firearms Examiner Ted Ritter examined the bullets. A microscopic comparison of these seven (7) bullets with the officers' firearms disclosed common class characteristics. However, due to a significant lack of individual characteristics these bullets can neither be identified nor eliminated as having been fired from either of these firearms. Therefore, it cannot be determined which bullets were fired by which officer. Based on a totality of the facts developed in the investigation, it can be concluded that from three (3) to seven (7) of the bullets were fired by Officer Pappas and from zero (0) to four (4) of the bullets were fired by Officer Cesarec.

LEGAL ANALYSIS

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being and causing their death is generally prohibited as homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of deadly physical force by a peace officer is justified. As the evidence establishes that Odiceo Lopez Valencia was shot by Officers Pappas and Cesarec, the determination of whether their conduct was criminal is primarily a question of legal justification.

Section 18-1-707(2) of the Colorado Revised Statutes defines the circumstances under which a peace officer can use deadly physical force in Colorado. In pertinent part, the statute reads as follows:

- (2) A peace officer is justified in using deadly physical force upon another person ... only when **he reasonably believes** that it is necessary:

- (a) **To defend himself or a third person** from what he reasonably believes to be the use or imminent use of deadly physical force; or
- (b) To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:
 - 1. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - 2. Is attempting to escape by the use of a deadly weapon.

Section 18-1-901(2)(e) of the Colorado Revised Statutes defines the term “Deadly weapon” as follows:

(2)(e) “Deadly Weapon” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: (I) A firearm, whether loaded or unloaded; (II) **A knife**; (III) A bludgeon; or (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance. The degree of force required may be different in different situations. (*Boykin v. People*, 22 Colo. 496, 45 P. 419). This, of course, does not mean that an officer cannot retreat, if he or she chooses to do so.

Also pertinent to the facts and circumstances of this case is Section 18-3-202 (1)(e), Assault in the first degree, of the Colorado Revised Statutes, which reads as follows:

- (1) A person commits the crime of assault in the first degree if:
 - (e) With intent to cause serious bodily injury upon the person of a peace officer or firefighter, he or she threatens with a deadly weapon a peace officer or firefighter engaged in the performance of his or her duties, and the offender knows or reasonably should know that the victim is a peace officer or firefighter acting in the performance of his or her duties.

In reference to the pertinent section of the “Assault in the first degree” statute in which the victim is a peace officer, in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972), the Colorado Supreme Court stated:

“The General Assembly recognizes that peace officers are placed in a position of great risk and responsibility, so to invoke a special punishment for an assault upon a peace officer acting in the scope of his official duties is neither arbitrary, capricious, nor unreasonable.”

Therefore, the question presented in this case is whether, at the instant Officers Pappas and Cesarec fired the shots that killed Valencia, they reasonably believed that Valencia was directing or was about to direct deadly physical force against them or another person or was attempting to escape by the use of a deadly weapon. In order to establish criminal responsibility for an officer knowingly or intentionally causing the death of another, the state

must prove beyond a reasonable doubt that the officer doing the shooting either did not really believe in the existence of these requisite circumstances, or, if he did hold such belief, that belief was, in light of all available facts, unreasonable.

CONCLUSION

First, we address the attempt to control Valencia by use of the less lethal force Taser and the Pepper Ball Deployment System weapon. The “Taser” is a less-lethal force, pistol-shaped weapon which fires two charged wires or leads a short distance (up to 21 feet). When an individual is struck by the probes an electrical charge temporarily immobilizes the individual. ***The ERD/Taser is not intended to be a weapon of choice in close proximity encounters with individuals armed with edged weapons.*** The ERD/Taser is designed for use against unarmed, non-compliant individuals; to incapacitate a combative or physically resistive person from a safe distance so they can be safely controlled and taken into custody. An individual armed with an edged weapon immediately raises the encounter to a possible deadly force threat level. Attempting to use the ERD/Taser in an edged weapon confrontation significantly increases the risk to the officer of serious injury or death. The effective range of the ERD/Taser of necessity would place the officer dangerously close to the armed subject. For this reason, as stated in the Denver Police Department policy, ***there is neither a requirement nor an expectation the ERD/Taser will be used in these situations.*** While it is fortunate that on occasion under the right set of circumstances a Taser can be deployed to end an encounter without serious injury or death to anyone, there should be no expectation that a Taser will be used in confrontations with assailants armed with firearms and edged weapons. This case is an example of the fact that in these quickly evolving, tense confrontations, the presence of a Taser guarantees neither a certainty that it will be able to be deployed nor that it will be successful if deployed. When this occurs it can create an increased vulnerability and risk to the officers’ safety. This is one reason it is tactically correct to have lethal force present to back up the less-lethal force Taser. These comments also apply to the PBDS weapon. The primary difference is that it can be fired from a greater distance of separation from the threat.

In dispatched to the call from the family for assistance, the officers responded with the intent to protect the family members and control the suspect and provide medical assistance for him if he returned. Of necessity, to accomplish this, they had to potentially place themselves in close proximity to him. When Valencia returned, his armed and aggressive actions instantly transitioned the encounter into a protect and control mode. The intent to immediately provide medical assistance for him was thwarted by his actions. The events all occurred in rapid escalation—in a chaotic environment where commands were being shouted by officers and ignored by Valencia. The C.I.T. officers’ attempts to de-escalate the confrontation failed in the face of his armed attack on the officers from the instant he arrived.

There was no break in the rapid flow of the encounter. As we have stated in prior similar encounters where use of a knife is involved, a threat can instantaneously turn into an attack, particularly when that action is in concert with other non-compliant behavior—most significantly, closing distance on the officer(s) while still in possession of the knife. These

two actions not only intensify the danger; they are indicative of a bad intent on the part of the assailant. The distance that separates the suspect from the officer becomes critical in the officer's assessment of the level of danger and the available response options. A greater distance of separation allows for a broader range of options. Where the encounter is at close range, the options rapidly become severely limited. It was Valencia's failure to comply with the officers' commands to drop the knife in concert with his movement toward the officer(s) that incrementally reduced the distance between him and the officer(s) and moved this encounter on a collision course. The officer's expectation is that the knife will be dropped in response to their commands. Here, Valencia's pursuit of Officer Cesarec rapidly closed the distance between them as Valencia moved from being near his car across the street to only being separated by a portion of the Plymouth Voyager van.

As Valencia continued to pursue Officer Cesarec around the van, he had closed to well within the range of serious danger to the officer. In these circumstances, officers become focused on the weapon and the assailant, almost to the exclusion of other surroundings. At that point, it is simply a question of how much risk the officer(s) are willing to assume. Absent success in retreating while still protecting potential victims in the house or Valencia dropping the knife or not continuing to close distance, a decision to shoot was predictable. For purposes of this analysis, Colorado law is clear that officers are not required to retreat. Nevertheless, Officer Cesarec was attempting to avoid having to use deadly force by backing away and trying to keep the van between himself and Valencia. Under the facts of this case, had Officer Cesarec stumbled or tripped while backpedaling around the van, Valencia could have easily inflicted serious injury or death to the officer. In fact, at its inception and until Officer Pappas discarded his ineffective Taser and drew his firearm, three of the four officers were only armed with less lethal force weapons—Officer Cesarec was the only officer armed with a firearm—and he was the one being pursued. Had he gone down in the early stages of the pursuit, no deadly force response was immediately present.

As we have indicated in prior letters, the officers who are dispatched to handle these matters must react to the sometimes chaotic, tense, quickly evolving, and dangerous circumstances which confront them. In that process, they must make judgments based on the information they possess at the time and the often non-compliant actions of the individual they seek to control. Officers have a right to act on reasonable appearances to protect themselves and other citizens. The decision of when and if to use deadly force is a decision that is generally thrust upon the officer by the non-compliant conduct of the offender. It is a decision that often does not provide the luxury of a bright-line determination. And, it often does not provide time for reflection, tactical planning, and strategy. It is fair to say that had Valencia complied with any of the repeated requests to drop the knife, this incident would have concluded peacefully. Valencia's deadly attack on the officer(s) forced an unwanted result.

Throughout this encounter Valencia's conduct was non-compliant and aggressive. At no time did he exhibit cooperation by word or action. He purposefully armed himself with the butcher knife and pursued Officer Cesarec. He refused to follow any of the lawful commands given by the officers. When engaging in the described conduct, Valencia is not simply resisting arrest; he is physically demonstrating the intent to cause serious injury or death to the officer. Even after being struck by the less lethal force Pepper Ball projectiles and the Taser

and being fired at by Officer Cesarec, Valencia continued his aggressive life-threatening attack. For reasons known only to Valencia, his suicidal actions and statements prior to police involvement and during the confrontation are consistent with an intention to force the police to shoot him—commonly referred to as “suicide by cop.”

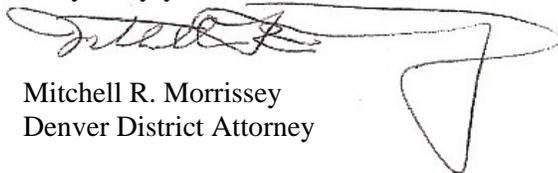
Under the specific facts of this case, we could not prove beyond a reasonable doubt that it was unreasonable for Officers Pappas and Cesarec to fire the shots that caused Valencia’s death. Therefore, no criminal charges are fileable against either officer for his conduct in this incident.

The attached document entitled *Officer-Involved Shooting Protocol 2008* is incorporated by this reference. The following pertinent statement is in that document: “*In most officer-involved shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time. This more compressed time frame will allow the Denver Police Department administrative investigation to move forward more quickly.*” The release of this letter has been delayed a number of weeks to await the results of Denver Police Department Crime Laboratory firearms examination reports. Although the justification for this shooting has been clear from the beginning and the reports were not required in order to make our decision, we felt it was appropriate to have the reports before releasing the letter.

In accordance with the protocol, the administrative and tactical aspects of the event will be addressed by the Manager of Safety and Chief of Police in their review and administrative decision letter. We will open our Officer-Involved Shooting file in this case for in-person review at our office on the earlier date of sixty (60) days from the date of this letter or when the City releases its administrative decision letter.

The Denver Police Department is the custodian of records related to this case. As in every case we handle, any interested party may seek judicial review of our decision under C.R.S. 16-5-209.

Very truly yours,



Mitchell R. Morrissey
Denver District Attorney

cc: Officer Chris Pappas; Officer Chris Cesarec; David Bruno, Attorney at Law; Doug Jewell, Attorney at Law; John W. Hickenlooper, Mayor; All City Council Members; Alvin J. LaCabe, Jr., Manager of Safety; David Fine, Denver City Attorney; John Lamb, Deputy Chief; Michael Battista, Deputy Chief; Tracie Keesee, Division Chief; Dave Fisher, Division Chief; David Quinones, Division Chief; Mary Beth Klee, Division Chief; Gregory LaBerge, Crime Lab Commander; Joe Montoya; Captain; Jon Priest, Lieutenant, Homicide; Kathleen Bancroft, Lieutenant; Sergeant James Kukuris, Homicide; Detective Tyrone Campbell, Homicide; Detective Daniel Wiley, Homicide; John Burbach, Commander, Civil Liability Bureau; Chuck Lepley, First Assistant District Attorney; Lamar Sims, Chief Deputy District Attorney; Doug Jackson, Chief Deputy District Attorney; Henry R. Reeve, General Counsel, Deputy District Attorney; Justice William Erickson, Chair, The Erickson Commission; Richard Rosenthal, Office of the Independent Monitor.

Addendum “A”

Denver Police Department Operations Manual

105.02 Less Lethal Force and Control Options

(1) The primary duty of police officers is to protect the public, themselves, and other officers. Less lethal force and control options may assist officers in performing these duties, *but are not intended to substitute for the use of deadly force when it is reasonable and necessary. There is neither a requirement nor an expectation that officers attempt to use or exhaust less lethal options in situations requiring the use of deadly force.*”

(2) LESS LETHAL FORCE OPTIONS

The Denver Police Department authorizes the use of **Electronic Restraints Devices (ERD)/TASER, PBDSs**, twelve (12) gauge and forty (40) mm specialty impact munitions to be carried by certain officers in their normal duty assignments.

(3) LESS LETHAL WEAPONS DEFINITIONS

- a. Less lethal: A concept of planning and force application which meets an operational or tactical objective, with less potential for causing death or serious injury than conventional more lethal police tactics.
- b. Less lethal weapon: Any apprehension or restraint device approved for carry, which when used as designed and intended has less potential for causing death or serious injury than conventional police lethal weapons. Less lethal weapons include Electronic Restraints Devices (ERD/TASER), PBDSs, less lethal twelve (12) gauge shotguns and forty (40) mm projectile systems and others as approved by the Chief of Police.
- c. **Less lethal officer: An officer trained in the principles of less lethal force and the use of less lethal weapons. One who is authorized by the Department to carry and deploy one or more of the weapons in the performance of their duty.**
- d. Less lethal shotgun: Department approved twelve (12) gauge shotgun with a cylinder bore eighteen-inch (18) barrel. The shotgun, except those approved by the Chief of Police for use by Metro/Swat, has a high visibility stock and fore-end and is equipped with rifle sights.
- e. Twelve (12) gauge beanbag projectile: Department approved and issued. The beanbag projectile is a lead-shot-filled fabric bag designed to be non-penetrating and to deliver its kinetic energy over a broad surface area.
- f. Forty (40) mm Launcher: Either a single round or multi-launcher, department approved, with fixed stock and rifle barrel.
- g. Forty (40) mm Projectile: Only Department approved and issued specialty impact munitions may be deployed.
- h. **ERD/TASER: Advanced Taser M-26 ERD (Electronic Restraint Device) which uses a twenty-six (26) watt electrical signal to**

temporarily override the central nervous system and directly control the skeletal muscles. This causes an uncontrollable contraction of the muscle tissue, allowing the M-26 to physically debilitate a target regardless of pain tolerance or mental focus.

- i. Pepper Ball Deployment System: Air-Powered launch device and projectiles that are plastic spheres filled with powdered or liquid five (5) % Oleoresin Capsicum (OC). Projectiles burst on impact and release OC. Pepper Ball projectiles subdue by strongly irritating the nose, lungs and breathing. Response to inhaling Pepper Ball projectile OC powder varies greatly among individuals. In most cases the symptoms last for a few minutes. The Pepper Ball can deliver projectiles with enough kinetic energy to produce abrasions, bruises, and/or welts.**



Paramedic debris

Taser

5553 Dillon Street

Valencia's Toyota Camry

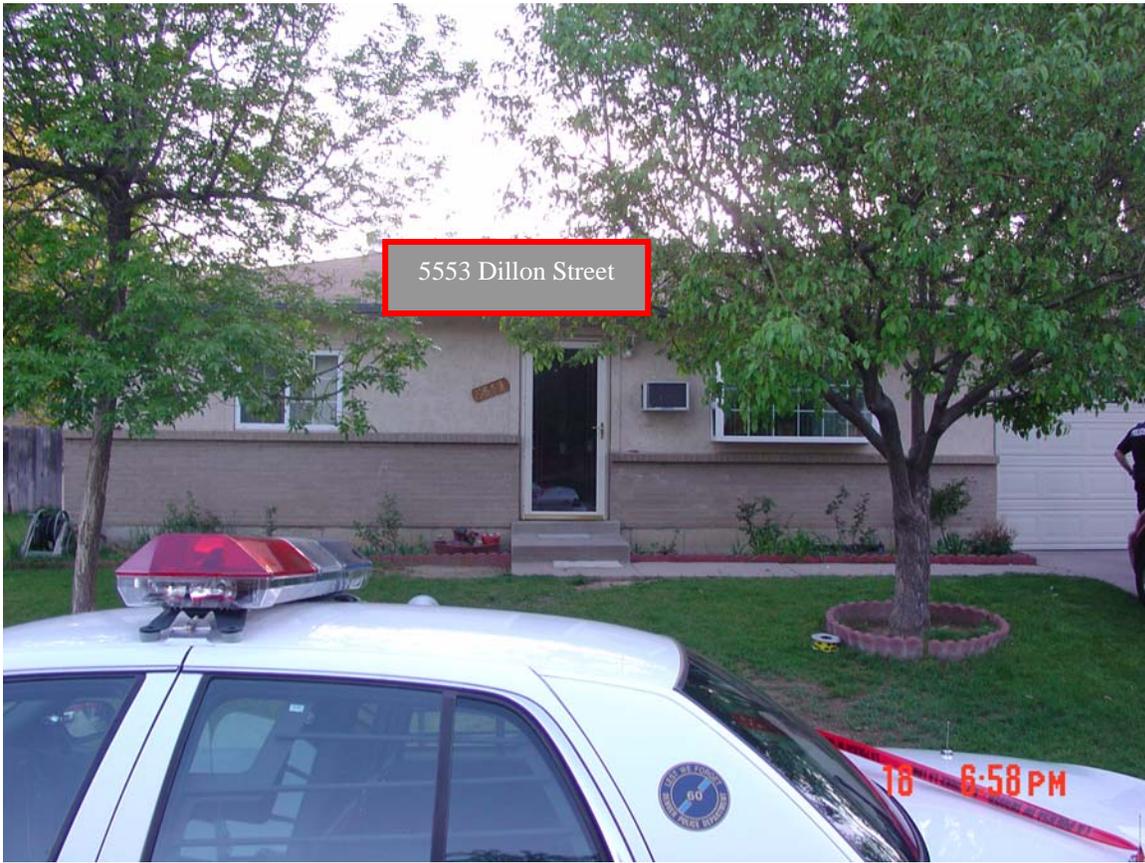
Officer Jared Feher

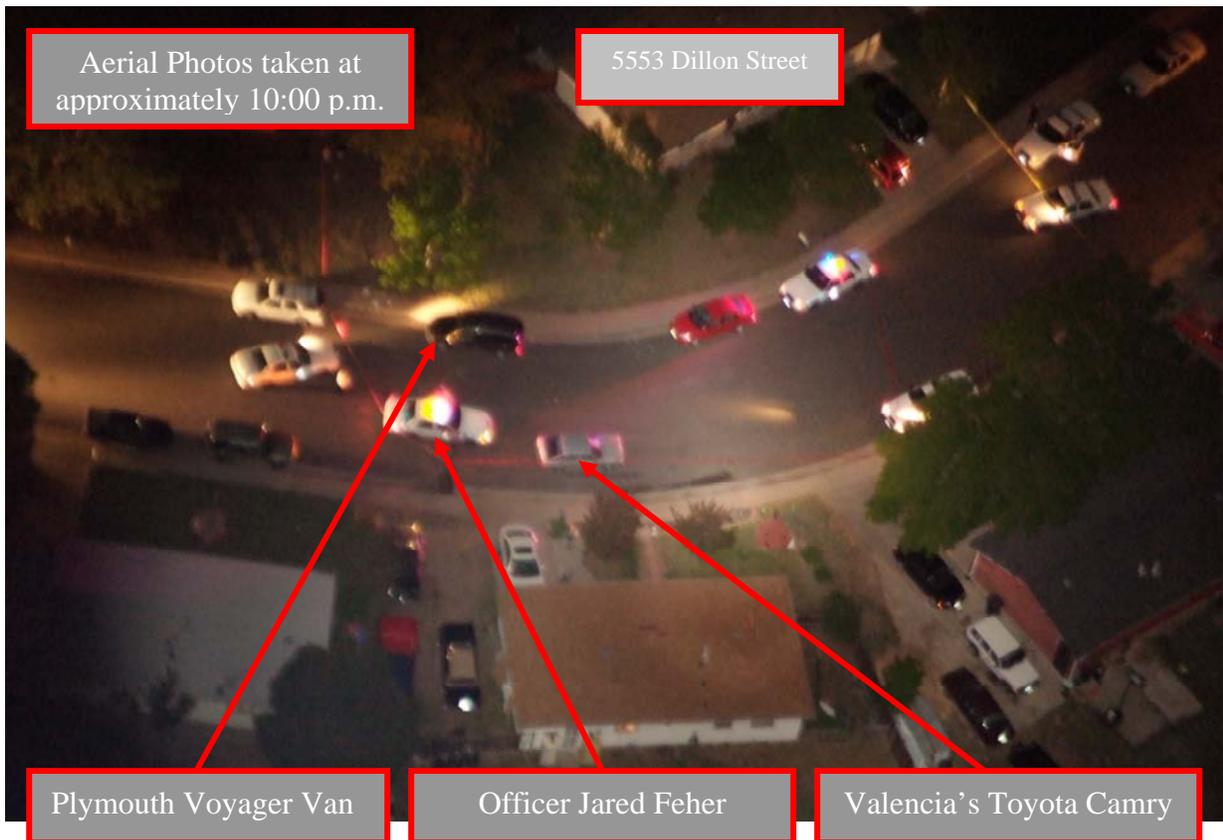
Plymouth Voyager Van



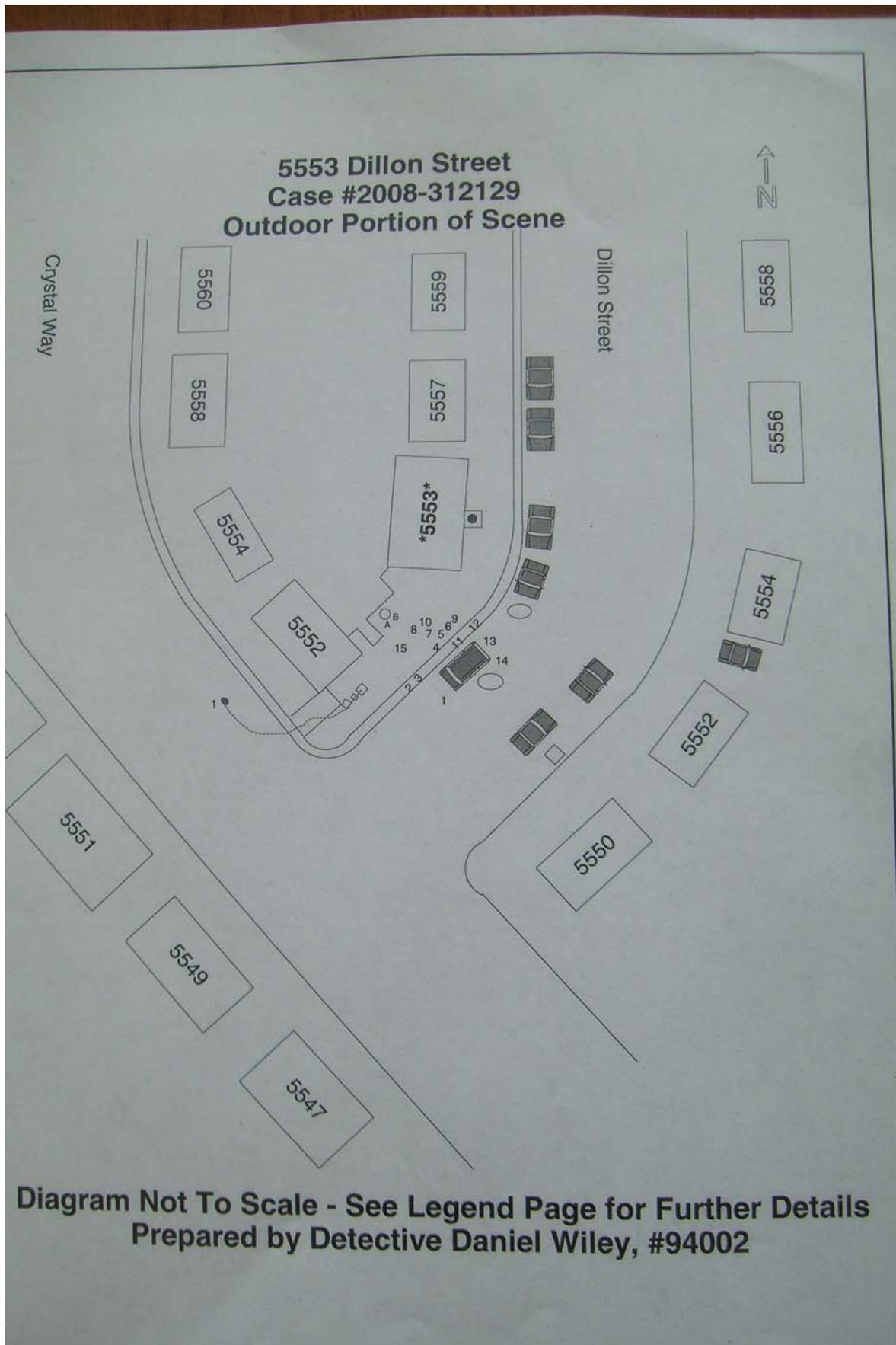
5553 Dillon Street

18 7:08 PM









**5553 Dillon Street
Case #2008-312129**

Legend and Measurements for Outdoor Portion of Scene

Evidence on Dillon Street:

- Evidence Placard 1 - 9mm shell casing
85'6" north of north curb line of Crystal Way
6'8" east of west curb line of Dillon Street
- Evidence Placard 2 - 9mm shell casing
80'5" north of north curb line of Crystal Way
4'4" west of west curb line of Dillon Street
- Evidence Placard 3 - Medical intervention debris
85' north of north curb line of Crystal Way
2'7" west of west curb line of Dillon Street
- Evidence Placard 4 - Knife with blue handle
100'2" north of north curb line of Crystal Way
4'10" west of west curb line of Dillon Street
- Evidence Placard 5 - 9mm shell casing
105'2" north of north curb line of Crystal Way
6'9" west of west curb line of Dillon Street
- Evidence Placard 6 - 9mm shell casing
106'3" north of north curb line of Crystal Way
7'1" west of west curb line of Dillon Street
- Evidence Placard 7 - 9mm shell casing
104'6" north of north curb line of Crystal Way
8'8" west of west curb line of Dillon Street
- Evidence Placard 8 - 9mm shell casing
103'11" north of north curb line of Crystal Way
10'2" west of west curb line of Dillon Street
- Evidence Placard 9 - 9mm shell casing
108'1" north of north curb line of Crystal Way
7'8" west of west curb line of Dillon Street

Evidence Placard 10 - 9mm shell casing
107'4" north of north curb line of Crystal Way
9'9" west of west curb line of Dillon Street

Evidence Placard 11 - 9mm shell casing
105'9" north of north curb line of Crystal Way
3'3" west of west curb line of Dillon Street

Evidence Placard 12 - Coke can
114'4" north of north curb line of Crystal Way
2'10" west of west curb line of Dillon Street

Evidence Placard 13 - Taser
112'2" north of north curb line of Crystal Way
3'2" east of west curb line of Dillon Street

Evidence Placard 14 - 9mm shell casing
111'5" north of north curb line of Crystal Way
11'11" east of west curb line of Dillon Street

Evidence Placard 15 - 9mm shell casing
94' north of north curb line of Crystal Way
16'5" west of west curb line of Dillon Street

Evidence on Crystal Way:

Evidence Placard 1- Apparent blood drops
7'2" south of north curb line of Crystal Way
56'4" west of west curb line of Dillon Street





5553 Dillon Street
Case #2008-312129
Main Floor

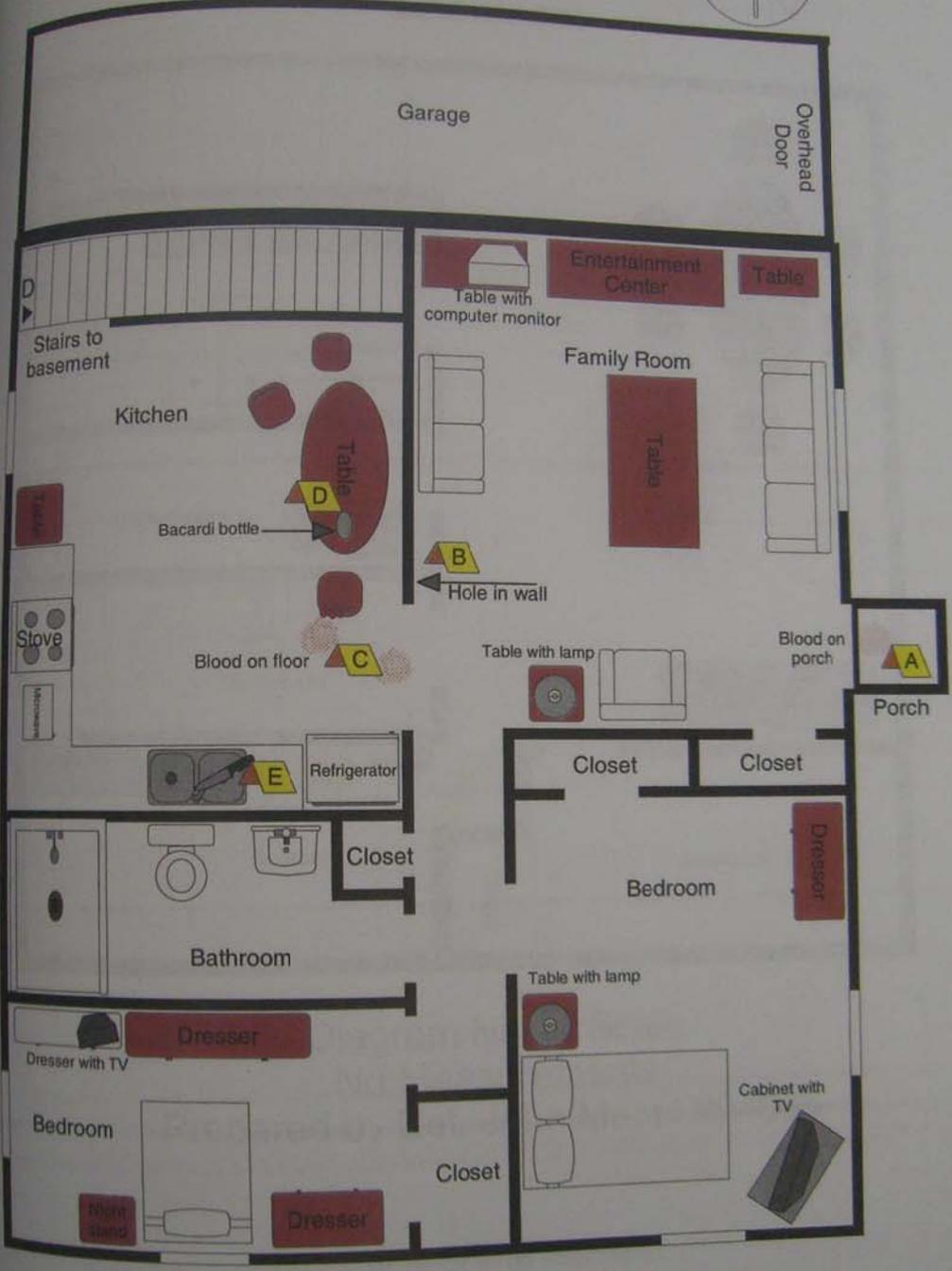


Diagram Not To Scale
Diagram Prepared by Detective John Meoni #94005

5553 Dillon St.
2008-312129
Basement

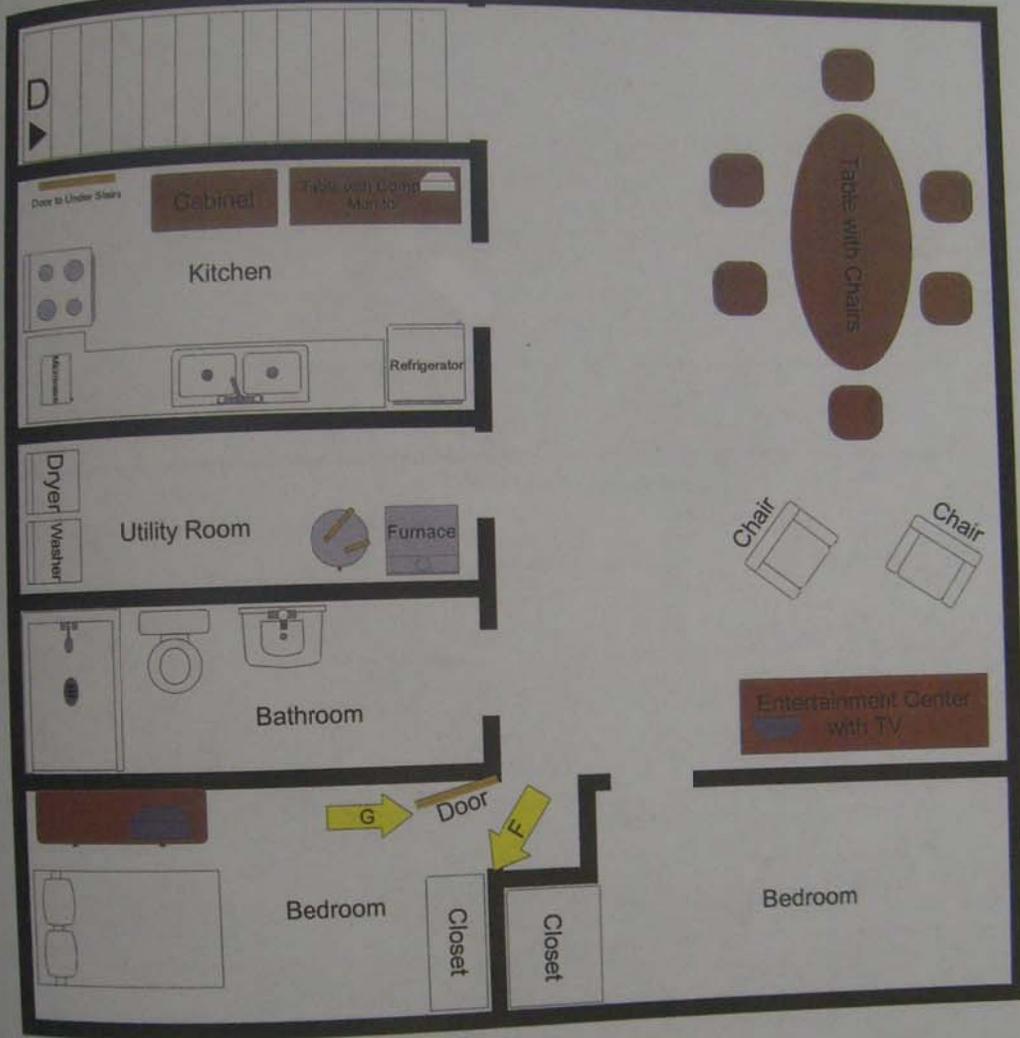
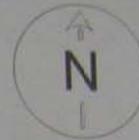
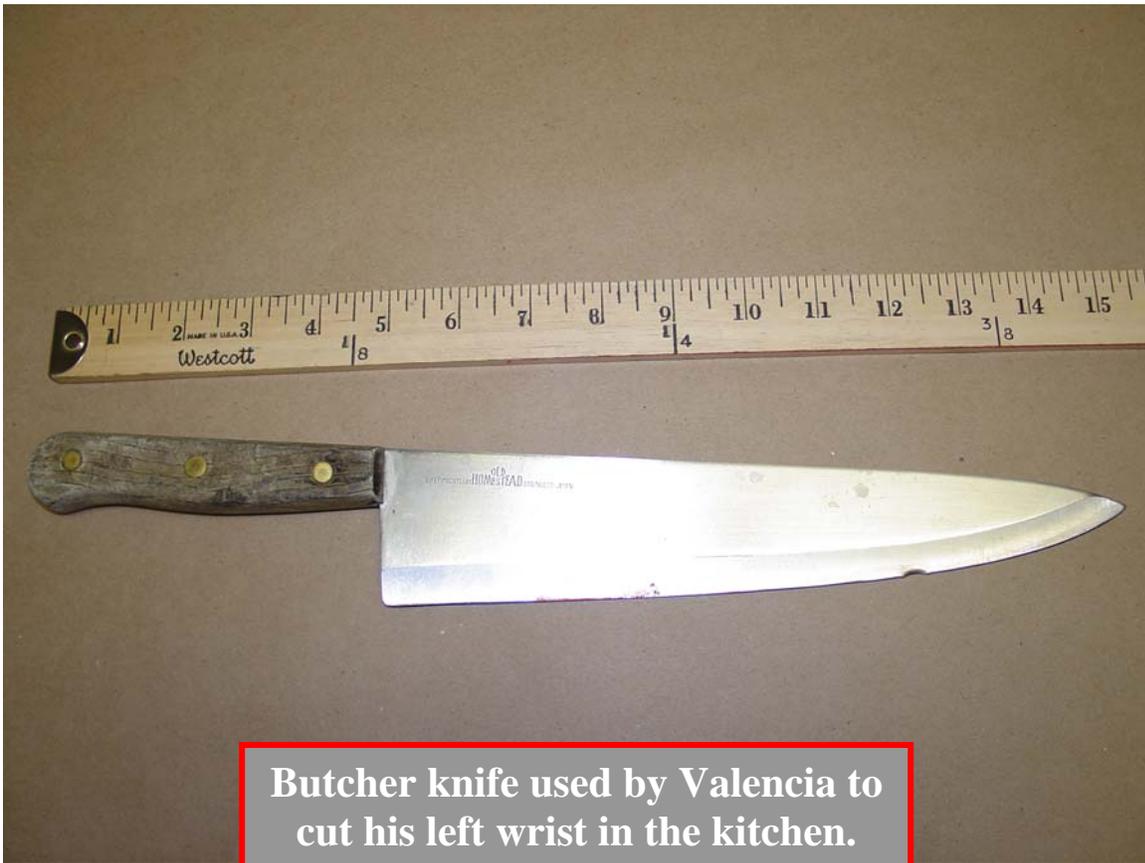


Diagram Not to Scale
No Measurements
Prepared by Det. John Meoni #94005

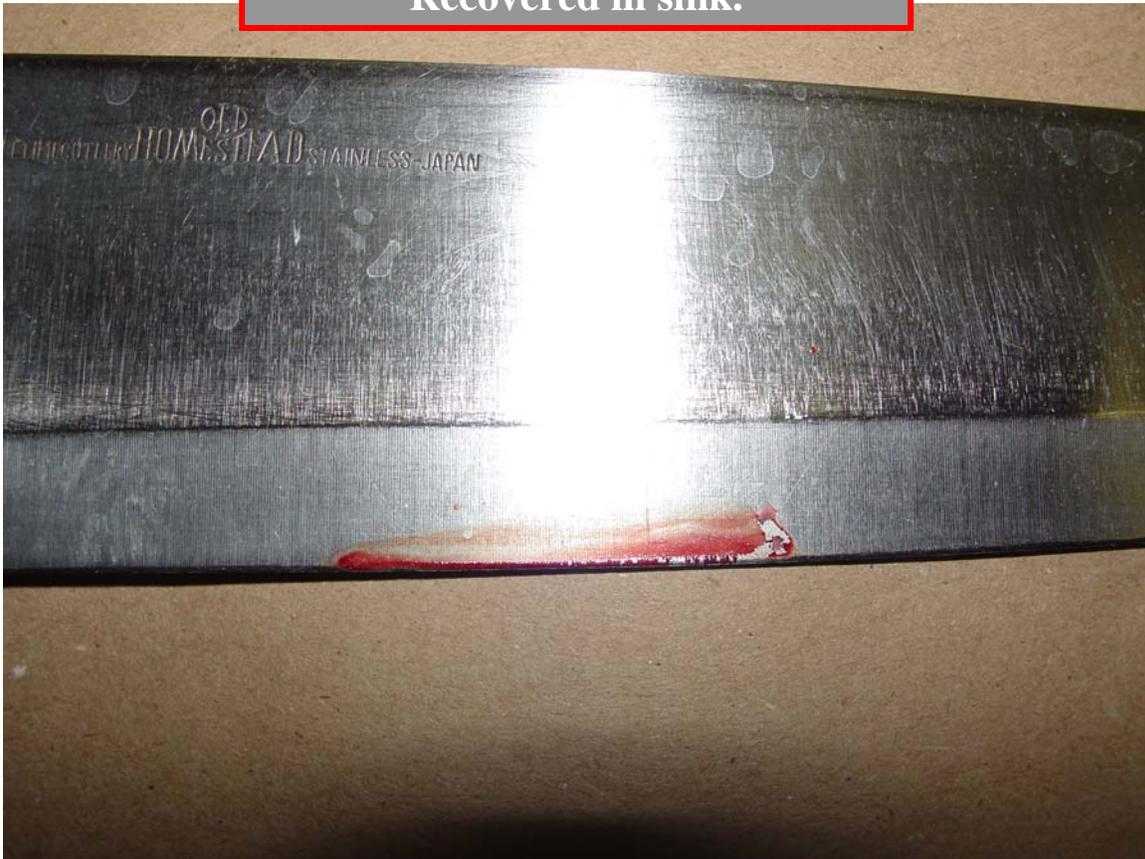
Crime Scene Markers
F- Cracked Door Jam
G-Damaged Door

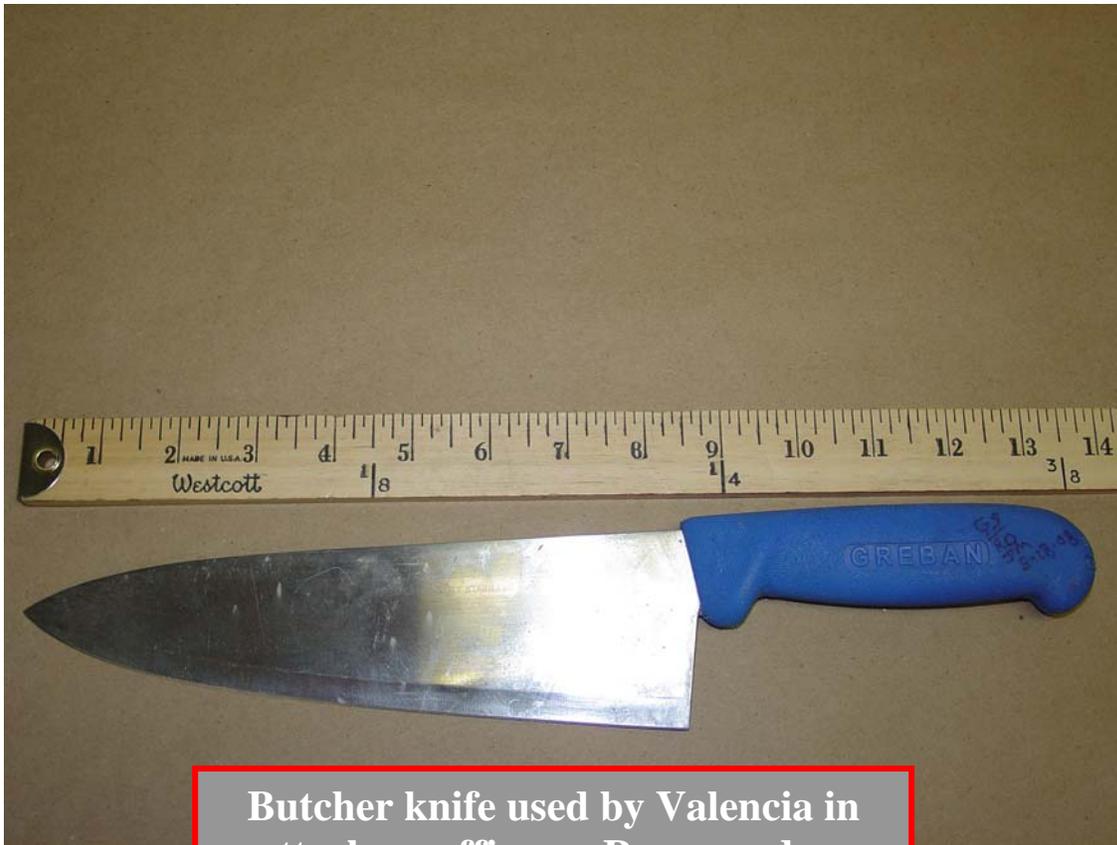




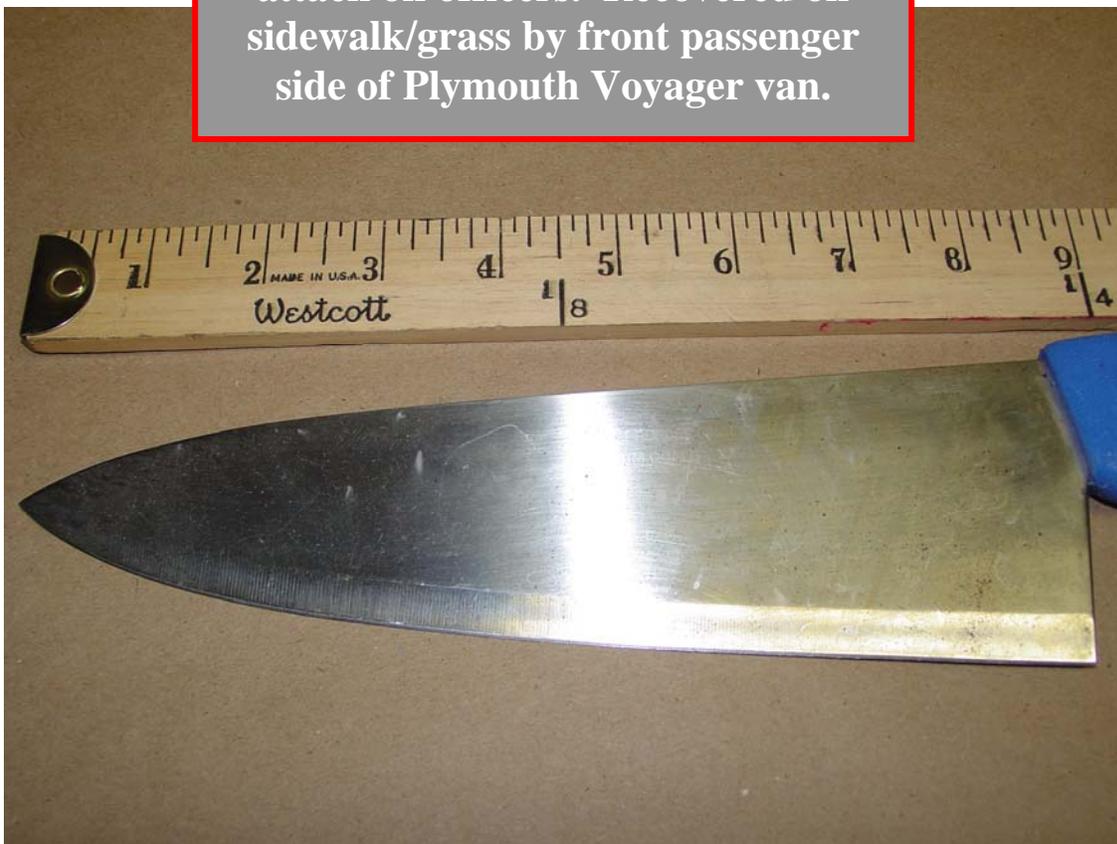


Butcher knife used by Valencia to cut his left wrist in the kitchen. Recovered in sink.





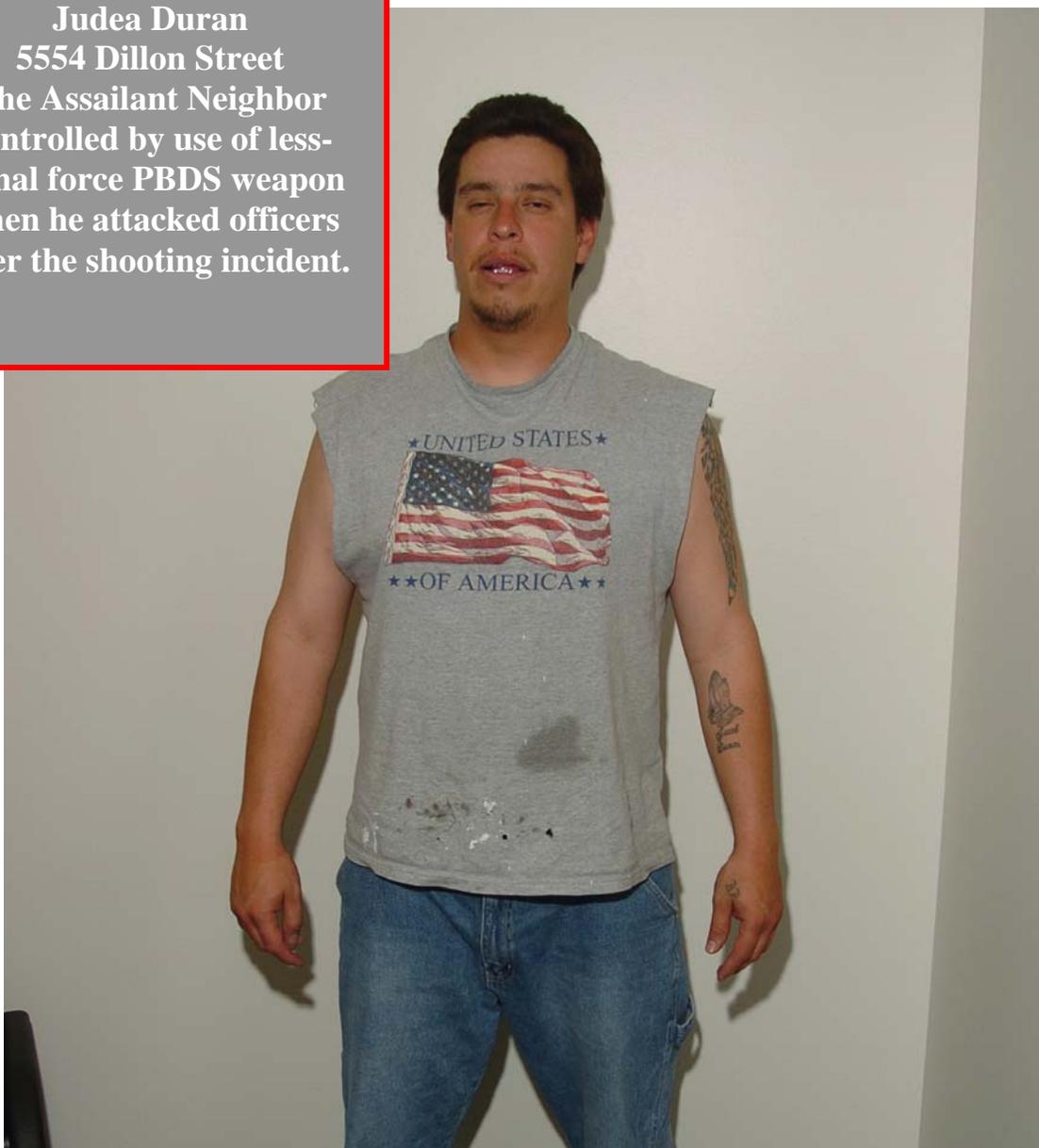
Butcher knife used by Valencia in attack on officers. Recovered on sidewalk/grass by front passenger side of Plymouth Voyager van.



To Scale:
Actual blade size
of butcher knife



Judea Duran
5554 Dillon Street
The Assailant Neighbor
controlled by use of less-
lethal force PBDS weapon
when he attacked officers
after the shooting incident.



In his statement to investigators, Officer Bruce said that prior to Valencia's return to the scene he went to advise neighbors to go inside their homes until the developing situation was resolved. He stated: "I then went across the street and asked the neighbor [Judea Duran] if he would be able to secure his family inside his home. The neighbor stood up and stated 'I'm not going anywhere, you cops are over reacting, I know Augi.' I asked him to please cooperate and he said 'no.' I turned away and went to the neighbor to the north of 5553 Dillon Street, made the same request and got quick cooperation."

Officer Bruce then described what happened immediately after the shooting. He stated: "I then observed the neighbor from across the street [Judea Duran] now on the roadway yelling and screaming at us. This person ran upon myself with both fists clenched and at one time drew back to hit me, as I still had my TASER in hand, I used my left hand to maintain distance from this person, giving order to stay back. I observed officer Feher approach from my right side, deployed his pepper ball gun to keep the neighbor from assaulting us. After being struck by numerous pepper balls, this person retreated. I called for back-up officers to respond for assistance and crowd control.

In his statement to investigators, Judea Duran confirmed the officers' accounts when he stated he contemplated "dropping a two piece" on the officer. He demonstrated that a "two piece" was a two-punch attack which he believed would have rendered the officer useless.