

May 11, 2018

Sheriff Manual Gonzales III
Bernalillo County Sheriff
Bernalillo County Sheriff's Department
400 Roma ,NW
Albuquerque, NM 87102

Re: Prosecutorial Review of the August 20, 2014
non fatal shooting of Alex Trinidad Gallegos
BCSO case # 14-677502 DA case # 2014-05249-1

Dear Sheriff Gonzales:

I have been appointed as a Special Prosecutor by Raul Torrez the Second Judicial District Attorney, to review the non fatal shooting of Alex Trinidad Gallegos, which occurred on August 20, 2014 for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and medical reports, audios, photographs, and a visit to the scene of the incident, I conclude that it is not possible to prove beyond a reasonable doubt, that Detective Andrew Griego was not acting under the belief that Alex Trinidad Gallegos' actions posed a threat of death or great bodily harm to himself or other officers in the immediate area. No charges will be filed. The case will be closed. My decision does not limit administrative or criminal action by other agencies or civil actions by other parties.

Statement of Facts

On August 20, 2014 Detectives Andrew Griego, Jennifer Garcia of the Bernalillo County Sheriff's Department and Brett Finn from the Department of Homeland Security were attempting to serve an arrest warrant for murder on Alex Trinidad Gallegos. Detective Griego had previously surveilled Gallegos during the murder investigation and was aware that Gallegos had a violent history, had done prison time for prior felonies and was considered to be armed and dangerous. At about 3:00pm Detectives Griego and Garcia observed Mr. Gallegos drive a large tow truck into his driveway at 5115 Hattiesburg NW, Albuquerque NM. As Alex Gallegos pulled into his driveway Detective Griego and Detective Garcia in one vehicle pulled in behind him, slightly to the left of the tow truck. Agent Brett Finn pulled in behind and slightly to the right rear of the tow truck. Detective Garcia left the police truck and took a position to the rear of the police vehicle, while Detective Griego approached Gallegos on the drivers side of the tow truck. Once Alex Gallegos was out of the tow truck Detective Griego ordered Gallegos to the ground. Alex Gallegos ignored the command and began reaching into his waist area as if to grab a gun. Detective Griego took cover behind his truck while repeating his commands. Alex Gallegos then reached into the cab of the truck through the drivers side door and began pulling on an object which Detective Griego thought was a second gun. Unable to free the object Alex Gallegos then

reentered the tow truck and tried to flee by backing out of his driveway into the street. Once in the street Gallegos drove forward colliding with Agent Finn's truck who had pulled forward in an attempt to stop Gallegos from fleeing. Detective Griego hearing, but unable to see the collision due to his vision being obstructed by his own truck, moved to his left in time to see Gallegos begin to accelerate while driving in reverse down the residential street. Fearing for the safety of himself and his two fellow officers Griego fired two shots into the drivers side of the tow truck striking Alexander Gallegos one time in the left leg. Gallegos continued accelerating in reverse down the residential street until he collided with a parked truck about 150 yards away from where the shots were fired. With his tow truck disabled Alex Gallegos then fled the tow truck, on foot carrying a rifle. Alex Gallegos was found and arrested hiding in a residential home several hours later.

Plea Admission

On November 19, 2015 Alex Gallegos pled guilty to being a felon in possession of a firearm in federal court. As part of the plea agreement Alex Gallegos admitted to having a Mossberg model 500A shotgun loaded with 12 gauge shotgun shells in the tow truck with him at the time of the incident. He also admitted to colliding with Agent Finn's pickup truck as he tried to flee. On August 24, 2016 he received a sentence of 96 months in federal court.

On May 26, 2016 Alex Gallegos was found guilty by a jury of first degree murder and associated crimes in state court. On July 15, 2016 he received a sentence of life imprisonment plus 19 years.

Legal Analysis

Detective Griego was in the process of arresting Mr. Gallegos on a warrant for murder. This would allow Detective Griego to raise the defense of justifiable homicide by a public officer, NMSA 1978 Section 30-2-6. Section 30-2-6 allows a peace officer to use deadly force while arresting, or preventing the escape of a suspect when he believes he or another is threatened with serious harm of deadly force. Detective Griego, Detective Garcia and Agent Finn all confirmed that Alex Gallegos struck Agent Finn's truck while fleeing. All three were in danger of being injured by the accelerating tow truck. In addition Alex Gallegos while ignoring the commands of Detective Griego and Detective Garcia appeared to be reaching for weapons in two separate instances occurring only seconds apart.

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer, or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

Tennessee v. Garner, 471 U.S.1, 11 (1995) and Archuleta v. La Cuesta, 199-NMCA-113. Under New Mexico law an officer need not prove that the suspect posed a threat of death or great bodily harm to another, he need only offer evidence that raises the possibility. The burden then falls on

the prosecution to prove beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was justified, they must acquit the officer. The reasonableness of an individual officer's actions is an objective analysis evaluated from his perspective at the time of the incident and is necessarily a factual inquiry. State v. Mantelli, 2002 NMCA-033, 131 N.M. 692. Uniform Jury Instruction-Criminal 14-5173 Justifiable Homicide; Public Officer or Employee.

Conclusion

There is substantial evidence that Detective Andrew Griego was justified in using deadly force against Alex Trinidad Gallegos for two reasons. Detective Griego, Detective Garcia and Agent Finn all confirmed that Alex Gallegos accelerated his tow truck in reverse out of his driveway after ignoring commands to comply with the arrest warrant. Once in the street Alex Gallegos then drove forward colliding with Agent Finn's truck in a head on collision. (Alex Gallegos also admitted to colliding with Agent Finn's truck in his plea statement in Federal Court.) This act necessarily placed the lives of all three officers in danger. Having once rammed into Agent Finn's truck with Agent Finn inside and not knowing the exact location of Detective Garcia, Detective Griego fearing for the safety of himself and the other two officers took action by using deadly force to eliminate the threat. Secondly, Detective Griego believed that Alex Gallegos was in the process of arming himself with a gun on two occasions during the incident, a belief that turned out to be true. Finally Alex Gallegos admitted that inside his tow truck he had a Mossberg shotgun. The actions of Alex Gallegos would cause any reasonable person to fear for ones own safety as well as others in close proximity.

In the absence of sufficient evidence to prove beyond a reasonable doubt that the shooting was unjustified, there is no reasonable likelihood of a successful prosecution. No charges will be filed against Detective Griego. The case will be closed.

Sincerely,



Jody R. Curran
Special Prosecutor

cc: Raul Torrez, District Attorney Second Judicial District
Detective James Frederickson, Bernalillo County Sheriff's Department
Fred Mowrer, Esq. Attorney for Detective Andrew Griego
Alex Trinidad Gallegos, New Mexico Department of Corrections
Kari Converse, Attorney for Alex Trinidad Gallegos