

December 18, 2018

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

Re: Prosecutorial review of the shooting of Charles Chavez by Bernalillo County Deputy Charles Coggins.

BCSD Case: #17-684970
DA Case # 2017-04473-1

Dear Sheriff Gonzales,

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the July 25, 2017, non-lethal shooting of Charles Chavez by Deputy Charles Coggins. I reviewed all relevant evidence, including police reports, witness statements, and photographs. In addition, I visited the scene of the shooting with case agent, Detective Mark Craver.

Substantial evidence exists to demonstrate that Deputy Coggins, reasonably believed he was about to be shot and killed or seriously injured by Charles Chavez, prior to his use of deadly force. Therefore, a reasonable jury would conclude that the use of deadly force by Deputy Coggins, in this case was justified. Criminal charges against Deputy Coggins, are not warranted. My decision does not limit administrative or criminal action by other agencies, or civil action by other parties.

Relevant Factual History

Auto burglaries

At approximately 12:50 a.m., on July 25, 2017, Charles Chavez, broke into two vehicles that were parked at an apartment complex located at 1612 Goff, in Albuquerque, New Mexico. An auto theft alarm activated when Chavez entered the second vehicle. The apartment complex consisted of seven separate two-story buildings with apartments on the first and second floors.



Apartment complex located at 1612 Goff.

Ivan Dominguez, was standing outside the apartment complex smoking a cigarette when he heard car doors slamming and a car alarm go off. He looked towards the sound of the car alarm and saw Chavez, who was wearing shorts and no shirt, running towards a vacant field located on the northeast side of one of the apartment buildings. Elben Cordova and his wife Jahday Ortiz lived in apartment #304. They heard the car alarm on their car go off. They went outside and found the driver's side door of their car cracked open.

Law enforcement response

BCSO Deputy Charles Coggins was patrolling in the area of Sunset and Goff when he heard the car alarm go off. He called out that he was going to investigate the car alarm and pulled into the apartment complex. He immediately came into contact with Mr. Cordova and Ms. Ortiz, who were standing by their recently burglarized car. Soon thereafter, Mr. Dominguez walked up to Deputy Coggins and informed him that a second vehicle had been burglarized. He told Deputy Coggins that he saw a Hispanic male with no shirt run from the vehicles into a vacant field that was just northeast of the apartment complex.

Deputy Coggins called out that the suspect was fleeing north. Officers who were in route to assist with the investigation, adjusted their routes into the area accordingly. Deputy Coggins ran into the field hoping to locate and apprehend Chavez. While running through the field, Deputy Coggins heard a crashing sound coming from the backyard of an apartment. The apartment was located on the end of an apartment building on the northeast side of the apartment complex. Deputy Coggins ran towards the apartment and climbed on top of a cinderblock wall that enclosed the north side of the apartment's backyard.

The backyard measured approximately ten-feet in length and six-feet in width. The east side of the yard was enclosed by a wooden-slat fence that did not have a gate. A wooden-slat fence separated the west side of the yard from the yard next door. The only entrance into the yard was from the apartment.

Once on top of the wall, Deputy Coggins saw Chavez crouched down in the southwest corner of the yard. Chavez was not wearing a shirt and matched the description of the fleeing suspect that was provided by Mr. Dominguez. Deputy Coggins commanded Chavez "Show me your fucking hands! Show me your fucking hands! Put your hands up!" Chavez stood up and

told Deputy Coggins to “stay right there” and then placed his right hand into his right front pocket and began approaching Deputy Coggins.

Deputy Coggins commanded Chavez to get his hand out of his pocket and to keep his hands up. Chavez responded “Fuck you!” Deputy Chris Leeper, who had arrived near the vacant field, saw Deputy Coggins on the brick wall and heard Deputy Coggins yelling at someone to show their hands.

Chavez continued approaching Deputy Coggins. Deputy Coggins commanded Chavez to “stop”. Chavez replied “Fuck you” and walked towards Deputy Coggins. Concerned for his safety, Deputy Coggins commanded Chavez, “Stop! Get your fucking hand out of your pocket! Get your fucking hands away from your pocket!”

Joshua Saiz and his wife lived in the second-floor apartment just above the yard where Chavez was hiding. The verbal exchanges between Deputy Coggins and Chavez, woke them up. Mr. Saiz initially thought the yelling was coming from the television. However, when a light flashed across his bedroom window, he knew something was going on outside. Mr. Saiz looked outside his window and saw Deputy Coggins standing on the cinderblock wall with a taser. Mr. Saiz’ view of the yard below was partially obstructed by a portal that protruded from the apartment below. For this reason, he could not see who Deputy Coggins was issuing commands to.

Meanwhile, Chavez continued to walk towards Deputy Coggins with his hand concealed in his pocket. Deputy Coggins deployed his department-issued taser at Chavez. Two taser prongs struck Chavez but they had no effect. Chavez pulled the taser prongs off and continued to approach Deputy Coggins. Chavez’ actions lead Deputy Coggins to suspect that Chavez might be under the influence of a controlled substance.

Mr. Saiz, saw Deputy Coggins jump into the yard after he deployed the taser. Mr. Saiz lost sight of Deputy Coggins when he jumped into the yard but began hearing scuffling. Mr. Saiz also thought he heard someone say “he’s got a gun” or something like that.

As soon as Deputy Coggins landed in the backyard, Chavez took a bladed stance and placed a hand behind his lower back area as if to conceal something. Chavez began taunting Deputy Coggins to “Do it! Do it!” Deputy Coggins yelled out “somebody get over here!”

Deputy Donny Hicks who had approached the scene from the field, ran to the east side of the yard and began ripping off wooden slats in order to gain access into the yard. When he pulled two or three slats off the fence he looked into the yard. Deputy Hicks saw Chavez’ hand on what looked like a knife with black electrical tape tucked in the back of his shorts. Deputy Hicks drew his firearm to engage Chavez. However, he could not safely engage Chavez without risking the life of Deputy Coggins, so he continued pulling slats off the fence in order to enter the yard.

Meanwhile, Chavez continued closing in on Deputy Coggins and challenged Deputy Coggins to “Do it! Do it!” Deputy Coggins commanded Chavez to “Stop! Get back! I will fucking shoot!” Chavez replied “Do it.” Deputy Coggins yelled out “does he have a gun?” Chavez, responded “Yeah I do. Do it.” Deputy Coggins believed Chavez was going to shoot him.

Chavez and Deputy Coggins circled around each other as Chavez closed in on Deputy Coggins. Chavez suddenly grabbed the muzzle of Deputy Coggin’s firearm and began pulling it away from Deputy Coggins.¹ Deputy Coggins resisted and regained control of his firearm.

¹ The New Mexico Department of Public Safety Forensic Laboratory detected a mixture of at least two DNA samples on Deputy Coggin’s handgun. The DNA examination and comparison could not eliminate Deputy Coggins and Chavez as possible contributors to the DNA mixture. Latent fingerprint impressions on Deputy Coggin’s handgun were insufficient for use in comparison to fingerprints obtained from Chavez and Deputy Coggins.

Chavez continued to advance on Deputy Coggins. Deputy Coggins believed Chavez was about to shoot and kill him with the gun he claimed to have or that Chavez would make a second attempt to grab his department-issued firearm and shoot him with that gun. Based on those fears and beliefs, Deputy Coggins fired two rounds at Chavez. The shots can be heard on Deputy Coggins' belt tape recording approximately two seconds after Chavez claimed he had a gun and was commanded to "stop" which was approximately thirty-two (32) seconds after Deputy Coggins yelled out "somebody get over here".

One round struck Chavez in the abdomen and the other in the left forearm. Deputy Hicks made it into the backyard just before Deputy Coggins fired his weapon. Deputy Hicks heard the gunshots and saw Chavez stumble back and fall to the ground. Deputy Hicks cuffed Chavez, patted him down, and called for a trauma kit. Deputy Hicks did not locate a knife. However, he did see a pair of silver plyers with black handles on ground where Chavez had fallen. Chavez told Deputy Hix that he was sorry as he rendered first aid to him. Other officers arrived and Chavez was transported to UNMH for treatment by ambulance.

Albuquerque Police Detective Todd Babcock and BCSO Detective James Frederickson, traveled to the home of Charles Chavez Sr., and notified him of his son's actions and arrest. Chavez Sr. told the officers that believed his son had been on heroin for about three years, that his son had stolen from him, and that his son needed help with his drug addiction.

Deputy Coggins' Statement of Probable Cause

On July 25, 2017, Deputy Coggins prepared and signed off on a Statement of Probable cause supporting the warrantless arrest of Chavez for the crimes of: (1) resisting arrest; (2) assault with intent to commit a violent felony upon a peace officer; (3) attempt to commit a battery upon a police officer; (4) two counts of battery upon a peace officer; and (5) disarming a peace officer.

In his probable cause statement Deputy Coggins reported that when he first located Chavez, he began commanding Chavez to “Show me your hands” and “Put your hands up” and that Chavez responded “Fuck you, I will kill you.” Deputy Coggins’ belt tape recording reveals the initial exchange between himself and Chavez was not quite as he reported but instead as follows.

Coggins: Show me your fucking hands! Show me your fucking hands!
Put your fucking hands up! Put your fucking hands up! Do I have to say it
again?

Chavez: Stay right there officer. I’ll (inaudible).

Coggins: Keep your fucking hands up. Get your hands out of pocket. Stop.

Chavez: Fuck you.

Chavez admits to fighting with Deputy Coggins

On July 30, 2017, Chavez told Deputy Judy Galloway, who was standing guard over him at UNMH, that he wanted to die that night and wanted Deputy Coggins to shoot and kill him. Chavez stated he was sorry for fighting with Deputy Coggins and that he wished he could write a letter to Deputy Coggins apologizing and for forcing Deputy Coggins to shoot him.

Criminal history and proceedings

Deputy Craver prepared a July 25, 2017, criminal complaint charging Chavez, with: (1) assault with intent to commit a violent felony on a peace officer; (2) battery on a peace officer; (3) disarming a peace officer; (4) two counts of burglary; and (5) possession of burglary tools. Prosecutors sought to detain Chavez pending trial. However, Second Judicial District Court Judge Argyres, released Chavez on his own recognizance. The Office of the Second Judicial District Attorney later dismissed the charges without prejudice. Charges against Chavez for his actions on July 25, 2017, are pending review in the Office of the Second Judicial District Attorney.

Chavez has since acquired two new felony cases which are pending in the Second Judicial District Court. In D-202-CR-201801387, Chavez is charged with receiving or transferring a stolen motor vehicle. In D-202-CR-2018-03876-1, he is charged with: (1) burglary of a vehicle, (2) receiving or transferring a stolen motor vehicle, and (3) possession of burglary tools. Chavez failed to appear for court hearings in both cases and arrest warrants were issued. His whereabouts are currently unknown.

LEGAL ANALYSIS

Deputy Coggins, was acting in the line of duty, attempting to apprehend Chavez when he fired his weapon. Therefore, if charged for the July 25, 2017, shooting of Chavez, Deputy Coggins would be entitled to assert a defense under NMSA 1978 § 30-2-6. This statute provides that an officer is entitled to use deadly force when the officer reasonably believes that he or another is threatened with serious harm or deadly force. Section 30-2-6.

In New Mexico, an officer who uses deadly force 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 rests with the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified.

The reasonableness of the officer's actions is an objective analysis evaluated from his or her perspective at the time of the incident with the understanding that officers must often make split-second decisions in difficult situations about what type of force is necessary. *State v. Mantelli*, 2002-NMCA-033, ¶ 29, 42 P.3d 272.

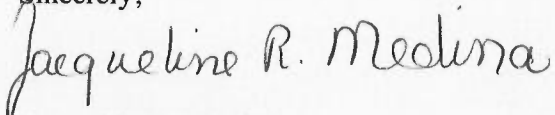
Deputy Coggins was attempting to apprehend Chavez, who had just broken into two vehicles. Prior to firing his weapon at Chavez, Chavez claimed to have a gun, had advanced on Deputy Coggins, and attempted to disarm Deputy Coggins. Given these facts, Deputy Coggins

could successfully argue that his split-second decision to use deadly force was justified under Section 30-2-6. This is especially so given Chavez' statement that he wanted to die and admission that he fought with and forced Deputy Coggins to shoot him.

CONCLUSION

No evidence exists to demonstrate that Deputy Coggins acted unreasonably when he fired his weapon at Chavez. Therefore, no charges will be filed against Deputy Coggins for shooting Chavez and this case will be closed.

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline R. Medina".

Jacqueline R. Medina
Special Prosecutor

Cc: Raul Torrez, District Attorney
John D'Amato counsel for Deputy Charles Coggins
Detective Mark Craver Case Agent
Charles Chavez (to last known address)