

August 29, 2018

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

Re: Prosecutorial review of the shooting at David Macias by Bernalillo County Deputy Ryan Zamora.

BCSD Case # 17-684280
DA Case # 2017-04461-1

Dear Sheriff Gonzales,

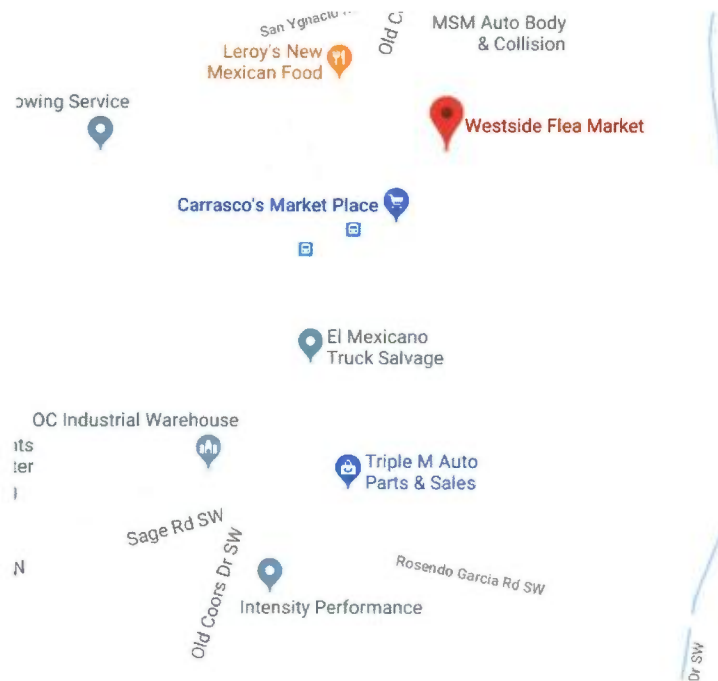
I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the July 23, 2017, non-lethal shooting at David Macias by Deputy Ryan Zamora. I reviewed all relevant evidence, including police reports, witness statements, videos, and photographs.

Substantial evidence exists to demonstrate that David Macias placed the lives of Deputies Ryan Zamora, Daniel Skartwed, and members of the public at risk of death or injury, prior to Deputy Zamora's use of deadly force. Therefore, a reasonable jury would conclude that the use of deadly force by Deputy Zamora in this case was justified. Criminal charges against Deputy Zamora are not warranted. My decision does not limit administrative or criminal action by other agencies, or civil action by other parties.

Relevant Factual History

On July 23, 2017, Alex Nunez went to the flea market located at 1240 Old Coors Rd SW. Nunez stood by one of the vendors while his friend Roberto Menjibar installed a radio into a silver Ford Ranger pickup that was parked in the northwest corner of the parking lot. While standing next to the vendor, Nunez saw a grey F-350 pickup park next to the truck Menjibar was working on. The driver of the F-350, later identified as David Macias got out of the F-350 and began trying to sell tools to the flea market vendors.

Kevin Hall, who was in the area, saw Macias and thought his behavior was suspicious. Hall called the Bernalillo County Dispatch non-emergency phone number because he believed the F-350 might be stolen. The dispatch operator ran the license plate number and discovered that the F-350 had been reported stolen earlier that morning.



1240 Old Coors Dr. SW. where the flea market is located.

Deputy Daniel Skartwed was dispatched to the call. Deputy Ryan Zamora, who was on duty and already near the flea market, heard Deputy Skartwed's dispatch to the call. Deputy Zamora pulled into a gas station not too far from the flea market so he could keep an eye on Old Coors Rd. pending Deputy Skartwed's arrival.

While Deputy Zamora was keeping an eye on Old Coors Rd., the dispatch operator advised that Macias had entered the truck and might be getting ready to leave through the flea market's north exit. Meanwhile, Deputy Skartwed arrived and parked his vehicle in the center median just north of the flea market. Deputy Zamora saw Deputy Skartwed arrive and drove to his location.

Deputy Skartwed asked other responding deputies to cover the south exit. He then drove into the parking lot and parked behind and to the right of the stolen F-350. Deputy Zamora followed behind Deputy Skartwed making eye contact with Macias as he drove into the parking lot. Macias looked at Deputy Zamora with surprise.

The expression on Macias' face quickly changed from surprise to that of a "predator". Deputy Zamora saw a female in the passenger seat of the stolen truck and became very concerned for her safety. Deputy Zamora's concern over the dangerousness of the situation heightened when he saw Macias reach to the right of the vehicle's interior. For that reason he stopped his patrol vehicle, making sure to place distance between his vehicle and that of Deputy Skartwed's.



Photo showing: (1) distance between Deputy Skartwed's and Deputy Zamora's vehicles in the flea market parking lot; and (2) location of the silver Ford Ranger Menjibar was installing a radio in.



Photo showing distance between Deputy Zamora's patrol vehicle and the silver Ford Ranger Menjibar was installing a radio in.

Deputy Skartwed got out and stood to the left of his vehicle. He then began commanding Macias to "Get out of the vehicle". Deputy Zamora got out of his patrol vehicle and walked to Deputy Skartwed's location. Hall heard the deputies yell at Macias "Let me see your hands!"

Macias did not get out of the truck or show his hands. Instead he drove in reverse and rammed the back of the F-350 into Deputy Skartwed's patrol vehicle.



Photo of Deputy Skartwed's patrol vehicle after Macia's rammed it.

Macias then aimed the front of the F-350 at deputies Zamora and Skartwed and revved the engine. Deputy Zamora knew if Macias drove forward he was going to run them over and possibly kill them. Deputy Zamora tapped Deputy Skartwed on the shoulder to warn him but Deputy Skartwed did not move. Deputy Zamora grabbed Deputy Skartwed and pulled him behind Deputy Skartwed's vehicle for cover. Macias drove towards the officers striking: (1) the rear driver's side of Deputy Skartwed's vehicle; (2) the truck Menjibar was installing the radio in; and (3) the front driver's side of Deputy Zamora's patrol vehicle. The impact caused the driver's side airbag in Deputy Zamora's vehicle to deploy.



Rear driver's side damage to Deputy Skartwed's patrol vehicle.



Front driver's side damage to Deputy Zamora's patrol vehicle.

Hall watched Macias ram the patrol vehicles and believed Macias was trying to hit the deputies. Hall believed Macias was going to in fact run over the deputies. Deputy Zamora had no doubt Macias was trying to run them over them. He was also concerned for the safety and lives of the pedestrians in the area.

Deputy Zamora tried to stop the F-350 Macias was driving by firing rounds at and striking the rear driver's side tire of the F-350. However, Macias continued to drive and left the parking lot. Deputy Zamora called out over the radio that shots were fired and that the F-350 was headed South on Old Coors Rd.

Deputy Darrel Tidwell observed Macias turn west onto Sage Rd. He pursued Macias in his fully marked patrol vehicle with the emergency equipment on. Deputy Tidwell noticed that the back driver's side tire of the F-350 was flat. Deputy Justin Bishop joined in the pursuit of Macias. Pieces of the flat tire fell onto the road as Macias continued to flee.

Macias drove through a red light at Sage and 86th St. When Macias reached the intersection of Sage and 98th St. the traffic in the westbound lanes was stopped in adherence to a red light. Macias did not stop and instead rear-ended a Pontiac that was about to make a right hand turn. The force of impact moved the Pontiac out of the way and Macias kept driving.

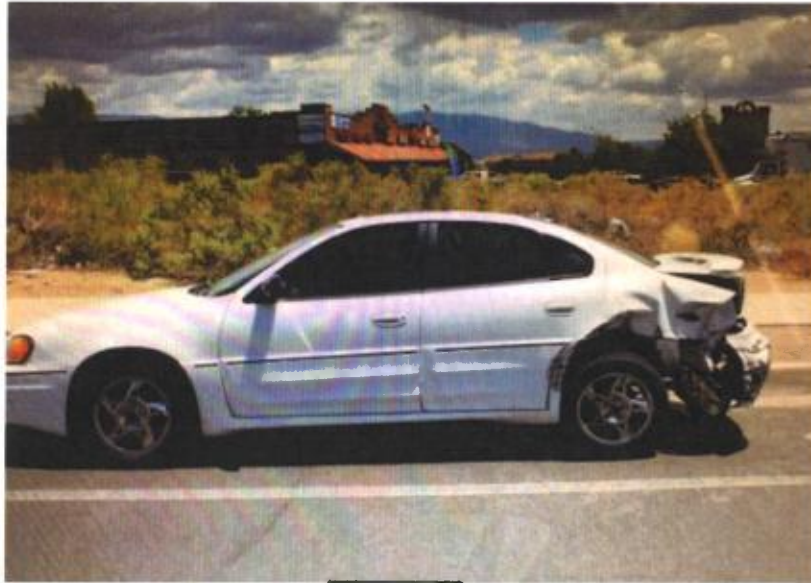


Photo of the Pontiac Macias rear-ended.

The F-350 then careened over the curb on the south side of Sage and crashed on the west side of the intersection at Sage and 98th St.



Photo showing where Macias's crashed the stolen F-350 and condition of the driver's side rear tire and rim.

Macias and Lucero jumped out of the F-350 and ran through a dirt lot. A Glock 17 handgun was discovered on the ground next to the open driver's side door of the F-350. The handgun had a bullet in the chamber and 10 rounds in the magazine. Deputies Tidwell and Bishop chased and apprehended Macias and Lucero.



Handgun found near the open door of the stolen F-350.

Criminal History and Proceedings

Prior felony convictions

Prior to the events in this case, Macias had been convicted of three felony crimes: (1) felony trespass in the District Court County of Denver, in cause 14-C-10337; (2) felony shoplifting in the Second Judicial District Court County of Bernalillo, in cause D-202-CR-2015-00936; (3) receiving or transferring a stolen vehicle in the Second Judicial District Court County of Bernalillo, in cause D-202-CR-2016-01435.

Prior felony offense charged

Macias was identified as having committed a December 12, 2016, felony offense of receiving or transferring a stolen motor vehicle. He was formally charged with this crime on January 26, 2018, in the Second Judicial District Court, County of Bernalillo, in cause number D-0202-CR-2018-00335.

Charges arising out of this case

An August 9, 2017, Grand Jury Indictment charged Macias with: (1) aggravated assault upon a peace officer; (2) criminal damage to property; (3) aggravated battery with a deadly weapon; (4) aggravated fleeing a law enforcement officer; (5) possession of a firearm by a felon; and (6) receiving or transferring a stolen motor vehicle in the Second Judicial District Court County of Bernalillo, in cause number D-0202-CR-2017-002661.

Plea and sentence

On January 26, 2018, Macias plead guilty to the following crimes: (1) aggravated assault with a deadly weapon; (2) aggravated fleeing a law enforcement officer; (3) possession of a firearm by a felon; and (4) two counts of receiving or transferring a stolen motor vehicle. Macias also admitted to having three prior felony convictions. District Court Judge Alisa Hart

sentenced Macias to eight and one-half years at the New Mexico Department of Corrections with three and one-half of those years suspended.

LEGAL ANALYSIS

Deputy Zamora was a public officer performing his duties while attempting to apprehend Macias for possession of a stolen vehicle. Therefore, if charged for the July 23, 2017, shooting at Macias, Deputy Zamora 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.

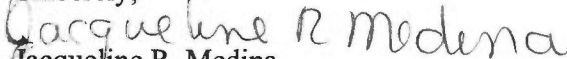
In New Mexico, an officer who uses deadly force need not prove that the suspect posed a threat of death or great bodily harm to another, he need only offer evidence that raises the possibility. The burden rests with the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was 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.

There is no question that Macias threatened the lives of Deputy Zamora and Deputy Skartwed when he attempted to run them down with the F-350. At the time Deputy Zamora discharged his weapon he was responding to the deadly force of the truck Macias was driving. It was reasonable for Deputy Zamora to believe that he, Deputy Skartwed, and pedestrians in the area were at risk of being killed or seriously injured by Macias. Deputy Zamora would have no trouble successfully arguing that his use of deadly force was justified under Section 30-2-6.

CONCLUSION

Deputy Zamora fired his weapon out of fear that he, Deputy Skartwed, and members of the public were going to be killed or seriously injured by the truck Macias was driving. Given Macia's pleas of guilt to committing the crimes of aggravated assault (deadly weapon), possession of a stolen motor vehicle, and aggravated fleeing a law enforcement officer, that arose out of his actions in this case, there is no possibility of a successful prosecution against Deputy Zamora. Therefore, no charges will be filed against Deputy Zamora and this case will be closed.

Sincerely,


Jacqueline R. Medina
Special Prosecutor

cc: Raul Torrez, District Attorney Second Judicial District
Detective Xavier Klein
Luis Robles counsel for Deputy Zamora
David Macias