

Chief Stewart Steele
Chief of Police
Rio Rancho Police Department
100 Quantum Road,
Rio Rancho, New Mexico

June 6, 2019

Prosecutorial Review of the August 22, 2017
shooting death of Henry Rivera, involving
Officers Jacquelyn Reedy and Lawrence Samuel
Rio Rancho Police Dept. # 17-006445: DA case #
2018-05665

Dear Chief Steele:

I have been appointed as a Special Prosecutor by Raul Torrez the Second Judicial District Attorney to review the fatal shooting of Henry Rivera, which occurred on August 22, 2017, for potential prosecution against Rio Rancho Police Officers Jacqueline Reedy and Lawrence Samuel. After a review of all the evidence, including police reports, witness statements, laboratory and medical reports, trajectory analysis, numerous audio recordings, photographs, and a visit to the scene, I conclude that it is not possible to prove beyond a reasonable doubt, that Rio Rancho Police Officers Jacqueline Reedy and Lawrence Samuel were not acting under a belief that Henry Rivera's actions posed a threat of death or great bodily harm to the them or civilians in the area. No charges will be filed. This case will be closed. My decision does not limit administrative or criminal action by other agencies or civil suits by other parties.

Statement of Facts

On August 22, 2017 at 7:59 am Henry Rivera abducted Michelle De Mondragon at gun point as she left her work at the Walmart Supercenter on 901 Unser Blvd. in Rio Rancho New Mexico. Rivera forced Melissa into his truck and attempted to rape her. While Rivera attempting to remove Michelle's pants he placed the gun on the floorboard next to Melissa, which allowed Melissa to grab the gun. The two struggled for the weapon outside of the truck. Melissa fired several shots into the air in an attempt to disarm the weapon. Several Walmart customers who happened to be in the parking lot witnessed the struggle. Dennis Fredenburg, Melissa Brown, Jon Jennings and Nolle Green all saw the struggle the gun and or heard the shots being fired. Shortly after the shots were fired Melissa was able to escape and run back into the Walmart. When Mellissa ran, Rivera got back into his truck and drove away. Fredenburg followed him out of the parking lot and called the police.

Rivera was located a short distance away. A high speed chase resulted, which was aborted due to neighborhood safety concerns. Using Rivera's license plate information Officer Jacqueline Reedy was able to locate Rivera about 20 minutes later at his home at 6427 Duero Place NW in Albuquerque N.M. From a position of cover Reedy watched Rivera take the license plates off of the truck used in the attack and replace them with different license plates. Shortly after changing the plates Rivera drove out of his driveway at a high rate of speed toward Officer Rodela who had come to assist Officer Reedy. While nearly hitting Officer Rodela, Rivera pointed a handgun at him. Rodela then radioed this information to responding officers.

A second high speed chase began with Officers Samuel, Reedy and Rodela in pursuit. Rivera headed south to a main east west thoroughfare, Irving Blvd. Morning rush hour and several schools in the area placed citizens and children in extreme danger. After several minutes into the chase Rivera abruptly turned south (right) into a cul- de- sac, Piedra Court. As Rivera turned right he sideswiped a white pickup truck driven by Paul Hernandez, who was stopped at the stop sign at the intersection of Piedra Court and Irving Blvd. Officer Samuel entered the cul-de-sac in time to see Rivera reach the end of the cul-de-sac, turn around and accelerate towards his police car. Samuel fled his car in time to see Rivera crash into his driver's side door. Rivera now driving north back out of the cul-de-sac scraped the right side of Hernandez' truck for a second time as he slowed to enter Irving Blvd. Officer Reedy who had now entered the cul-de-sac took up a position in the middle of the street and prepared to fire at Rivera before he could exit. Before she could fire Rivera opened the door to his truck and while still moving pointed a shotgun at her. In that instant both Reedy and Samuel fired their rifles at Rivera killing him. The shotgun Rivera was holding fell from the truck into the street.

On August 29, 2017 Officers Reedy and Samuel provided statements to Rio Rancho Detective Chris Carabajal regarding their involvement. Officer Reedy described the reason she fired as follows.

“Oh my God he was going to kill me. He was absolutely going to kill me. I've never in my life been so scared. I was so desperate to stay alive. There's no other way, you don't,... he was going to kill me.”

Officer Samuel, on seeing the shotgun:

“If that barrel comes up any further it's a bad day. And I pressed two shots, and then it looked like he fell into the cabin or like he was reaching for something...And then I pressed off maybe four, maybe six more. ... but I just kind of kept squeezing until I didn't see any movement inside the cabin anymore.”

When asked did you believe that if you didn't shoot him he would have shot you or another Officer Samuel replied “yeah.”

Once Rivera had been shot and killed the Albuquerque Police Department Criminalistics Division processed the scene on Piedra Court, Rivera's home and the Walmart Parking lot. At the Walmart parking lot Police found a plastic tie, spilled contents from Michelle's purse and surveillance video showing Rivera entering the parking lot at 6:59 am. At Rivera's home police found ammunition, Rivera's original license plates and obtained a statement from Rivera's grandson who said he saw Rivera loading bags of ammunition into his truck early that morning.



At the shooting scene police found a shotgun in the street on Irving Blvd., inside Rivera's truck they found a 357 pistol, bags of ammunition, two speed loaders for the handgun, and in the intersection of Piedra Court and Irving Blvd. they found and numerous casings. Rivera's truck had numerous bullet impacts all coming from the south to north and southwest to northeast. The shot gun had blood smeared on the handle of the gun, with one shotgun shell chambered, and 4 additional shotgun shells in the magazine tube.



On the driver's side floor board was a fully loaded 357 handgun. Under the center console was a casing stamped cci nr 357 mag.



Paul Hernandez who was hit by Rivera's truck as he waited at the stop sign was in a position to observe the entire incident. With his two children in the car he saw Rivera strike Officer Samuel's car then saw Rivera strike his truck for a second time. Hernandez stated that as Rivera approached Irving he slowed down to about 4 miles an hour then stopped. Before stopping he showed his shotgun, then fired his handgun at Officers Reedy and Samuel and in his general direction. Hernandez then saw the Officers return fire killing Rivera. The entire incident occurred just yards directly in front of Hernandez who stayed in his truck the entire time. When asked who fired first, Hernandez replied "Rivera shot first". Ballistic testing on Rivera's shotgun and 357 handgun did not confirm that Rivera fired either of the weapons. This fact does not alter our analysis.

Rivera who was shot seven times was pronounced dead at the scene. An autopsy report concluded he died of a gunshot wound to the head. No conclusive determination was made as to which officer fired the fatal shot.

Legal Analysis

Officers Reedy and Samuel were in the process of arresting Henry Rivera who just minutes before had committed a series of felonies, including kidnapping, attempted criminal sexual penetration, aggravated assault, aggravated battery and numerous misdemeanor offenses. This would allow Officers Reedy and Samuel to raise the defense of justifiable homicide by a public officer. NMSA 1978 Section 30-2-6 (A)(2). Section 30-2-6(A)(2) allows a peace officer to use deadly force when committed in overcoming actual resistance to the execution of a legal process or other legal duty.

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 the perspective of the officer at the time of the incident and is necessarily a factual inquiry. *State v. Mantelli*, 2002 NMCA-033. 131 N.M. 692.

Conclusion

There is ample evidence to support Officer's Reedy and Samuel's fear of death or great bodily harm stemming from the actions of Henry Rivera. In the short time span of 40 minutes Henry Rivera used his handgun to abduct Michelle De Mondragon, evade capture by high speed chase, threaten Officer Rodela again with a handgun, lead officers on a second high speed chase in busy rush hour traffic, then threaten Officers Reedy, Samuels, and civilian Paul Hernandez with a shotgun and handgun.

Evidence found at each crime scene; Rivera's home, the Walmart parking lot and the scene of the shooting is supported by the eyewitness testimony of civilian and responding officers. The actual abduction of Michelle De Mondragon was witnessed by at least four civilian witnesses who saw the struggle and the gun. In addition there is the statement of Michelle De Mondragon herself who not only was threatened with the handgun but managed to fire the gun in an effort to prevent Rivera from using the gun to shoot her. Plastic ties, spilled purse contents and surveillance video all corroborate these eyewitness accounts.

From the Walmart parking lot Rivera evaded officers by driving at a high rate of speed. Successful in evading officers Rivera then retreated to his home where he was seen changing the license plate on the truck used in the attack. A search of Rivera's home discovered the original license plate in the garage of the home. Rivera's act of changing license plates is a classic example of his consciousness of guilt and would be admitted at trial. This same act also supports his overall scheme to abduct, and evade capture through the use of violence. Upon leaving his home with the changed license plates Rivera then assaulted Officer Rodela by pointing the handgun at him as he drove by.

As Rivera turned onto Piedra Court his violent behavior continued. He intentionally rammed Officer Samuels's car, struck Paul Hernandez' truck two times before threatening Officers Reedy, Samuel and Hernandez with a handgun and shotgun. Both the shotgun and 357 handgun found at the scene had blood on the external portions of the weapon. The shotgun had blood smeared on the handle which supports the fact that Rivera was holding the gun at the time he was shot by officers. On February 29, 2019 Alina Sanchez forensic scientist with the New Mexico Department of Public Safety performed a ballistics test on the gun and casing found inside the truck. She concluded that the casing had been fired from the 357 handgun. The final resting place of the shotgun in the center lane of Irving Blvd., the fully loaded 357 handgun found on the floorboard of Rivera's truck, the casings found in the street from Reedy and Samuel firing their rifles and the bullet holes in Rivera's truck are all consistent with the statements given by Officers Reedy, Samuel and Hernandez. There is simply no evidence to support a finding that the use of deadly force by Officers Reedy and Samuels was unreasonable.



It is apparent that a good deal of planning had gone into Henry Rivera's morning of violence. The plastic ties found in the parking lot where the attack on Michelle De Mondragon took place were necessary to his plan to abduct Ms. De Mondragon and rape her. The bags of ammunition loaded inside his truck, witnessed by his grandson that same morning, were also part of his plan to be ready to "shoot it out"

with police. Also found inside Rivera's truck were two speed loaders for the 357 handgun. The speed loaders would allow Rivera to quickly reload his handgun gaining an advantage over officers in a shootout scenario. The fact that Rivera's 357 handgun was found to be fully loaded at the time of his death means that Rivera reloaded the gun in the time between Michelle De Mondragon fired the weapon and Rivera's death. The alternate license plates Rivera used to conceal his identity might have worked were it not for the stealth of Officer Reedy in discerning the switch from a position of cover. All of this evidence would be admitted in a trial against Officers Reedy and Samuels to show not only Henry Rivera's state of mind, but the reasonableness of the actions taken by Officers Reedy and Samuels. While very little of this information was known to officers at the scene it is evidence of Rivera's intent to resort to violence and gives context to the physical evidence found at each of the scenes.

To be able to convict Officers Reedy and Samuel for the death of Henry Rivera the prosecution would have to prove that all of this evidence is false, that both officers use of force was unreasonable and prove beyond a reasonable doubt that Henry Rivera did not possess a shotgun and handgun at the time he was shot. The jury confronted with substantial evidence that Rivera did possess weapons, did threaten the officers, and did place the lives of Paul Hernandez and his children in danger, would be forced to acquit the officers. There is no reasonable likelihood of a successful prosecution. No charges will be filed against Officers Reedy and Samuel. The case will be closed.

Sincerely,



Jody R. Curran
Special Prosecutor

Cc: Raul Torrez, District Attorney Second Judicial District
Case Agent, Detective Chris Carabajal, Rio Rancho Police Department
Attorney John D'Amato, attorney for Officers Jacquelynn Reedy and Lawrence Samuel
Henry Rivera Jr.