

May 2, 2018

Chief of Police, Michael Geier
Albuquerque Police Department
400 Roma Ave NW
Albuquerque, New Mexico 87102

Re: Prosecutorial review of the December 22, 2015, shooting of Jose Rodriguez by Albuquerque Police Officers Andrew Quillman and Shawna Romero.

APD Case # 15-0117277
DA Case # 2015-07215-1

Dear Chief Geier,

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the December 22, 2015, shooting of Jose Rodriguez, aka "Panther" by Albuquerque Police Officers Andrew Quillman and Shawna Romero for prosecution. I reviewed all available evidence, including police reports, witness statements, the autopsy report, videos, and photographs. In addition, I visited the scene of the shooting and the related scene of an earlier attempted armed robbery in which the victim positively identified Jose Rodriguez as the offender.

My review reveals that substantial evidence exists to demonstrate that Jose Rodriguez pointed a loaded semi-automatic handgun at Officer Quillman, prior to the use of deadly force by Officer Quillman and Officer Romero. Therefore, a reasonable jury would conclude that the use of deadly force by the officers in this case was justified. Accordingly criminal charges against Officer Quillman and Officer Romero for the shooting of Jose Rodriguez are not warranted. My decision does not limit administrative or criminal action by other agencies, or civil action by other parties.

RELEVANT FACTUAL BACKGROUND

On the morning of December 22, 2015, at approximately 9:30 a.m., Alejandra Cardenas walked out of her apartment located at 522 Grove N.E., in Albuquerque, New Mexico. Once outside she heard whom she believed to be her

neighbor Kasandra yelling profanities and cursing at Jose Rodriguez. Kasandra and Rodriguez were brother and sister and both lived in a casita/apartment with their mother.

Cardenas heard a door slam and she heard Rodriguez shoot a gun in the air. Cardenas walked toward her car and saw Rodriguez. He was wearing light-gray sweatpants, tennis shoes, and a hoodie with light-gray arms and a black chest. Rodriguez was walking south. It was later learned that before leaving the apartment Rodriguez stated “this will be the last time you see me.”

Rodriguez made his way to 325 Pennsylvania N.E., where he ran up to a blue Ford Ranger that was pulling out of a parking lot. This was a mere two blocks east from Grove. Rodriguez startled the driver of the truck by banging heavily on the driver side window. The driver, Francisco Quezada-Santoyo, stopped his truck and asked Rodriguez “what happened?” Rodriguez then opened the driver’s side door of the truck and pressed a stolen black handgun to Quezada-Santoyo’s left temple. While doing so, Rodriguez demanded the keys to the truck and threatened to shoot Quezada-Santoyo if he did not get out of the truck.

Quezada-Santoyo turned his truck off and got out. Quezada-Santoyo told Rodriguez that the keys were in the truck. Rodriguez got into the truck and attempted to start the truck three or four times. However the truck had a standard transmission and Quezada-Santoyo could see that Rodriguez was not pressing the clutch in. Quezada-Santoyo pleaded with Rodriguez to get out of his truck. Frustrated over his inability to start the truck, Rodriguez got out and pointed the handgun at Quezada-Santoyo’s head and demanded money. Quezada-Santoyo responded that he did not have money.

Rodriguez then pushed the gun against Quezada-Santoyo’s chest and threatened to kill him if he did not give him money. Believing he was about to be killed, Quezada-Santoyo thought about his three young children and pleaded with Rodriguez not to kill him. Quezada-Santoyo began to yell for help. Rodriguez responded to Quezada-Santoyo’s yells for help by running across Pennsylvania in an easterly direction.

Quezada-Santoyo dialed 911 at approximately 9:36 a.m. and reported the attempted armed robbery and aggravated assault. He described Rodriguez as: (1) a male between twenty (20) and twenty-five (25) years of age; (2) between 5’9 and 5’11; (3) skinny; and (4) wearing a silver shirt and silver pants. Quezada-Santoyo initially described the gun that Rodriguez threatened to kill him with as

small, black in color, possibly a .22 or .25 caliber. Quezada-Santoyo would later tell the police that he believed the gun was a semi-automatic.

At 9:38 a.m., Albuquerque Police Officer Michael Werner, was dispatched to the attempted armed robbery call. At 9:39 a.m., Officer Shawna Romero, volunteered to be the assisting officer. The dispatch operator provided a description of Rodriguez over the air similar to the description provided by Quezada-Santoyo. The dispatch operator cautioned the responding officers that the suspect was possibly armed with a handgun.

At approximately 9:39 a.m., Albuquerque Police Sgt. Amy Sedler, responded to the general area of the call. Sgt. Sedler drove towards Pennsylvania looking down streets for Rodriguez as she drove. At approximately 9:43 a.m., Sgt. Sedler looked down Rhode Island N.E. and saw Rodriguez, who matched the description of the suspect. (Rhode Island is located one block east of Pennsylvania). Rodriguez was running at full sprint on the east side of the street in a southern direction. Rodriguez was wearing a black and gray jacket with a hood and gray pants.

Sgt. Sedler made a U-turn in an attempt to pursue Rodriguez. However, she was flagged down at 325 Rhode Island by Carolyn Smith. Sgt. Sedler stopped and rolled down her window. Ms. Smith pointed to a brown house across the street and told Sgt. Sedler that the guy she was looking for was in the backyard of the brown house. The brown house was located on the east side of Rhode Island and south of Ms. Smith's house.

At approximately 9:43 a.m., Officer Shawna Romero arrived in the area and began searching for Rodriguez. Officer Andrew Quillman joined the search at approximately 9:44 a.m. Sgt Sedler advised dispatch where she had seen the suspect, his direction of travel, and what he was wearing. At approximately 9:45 a.m., Sgt. Sedler called out for additional officers to respond to the area because she did not know if Rodriguez had entered the brown house on Rhode Island or was jumping yards in an easterly direction. Sgt. Sedler began to set up a perimeter around the area where she had seen Rodriguez. Officers were assigned to the areas of Chico and Rhode Island, Copper and Rhode Island, and Tennessee and Copper.

At 9:50 a.m., Sgt. Sedler requested another unit be assigned to Tennessee and Chico and for two more units to assist her with checking the backyard of the

brown house located at 242 Rhode Island. Meanwhile Detective Phillip Moya advised that he was arriving in the area and he requested Sgt. Sedler's location.

Rodriguez continued to flee east. In an attempt to conceal his identity from the officers who were looking for him, he stopped at a residence just east of the brown house located at 242 Rhode Island. Once there he removed his gray sweat pants and his grey and black jacket and stashed them in the back of a pickup truck parked at 245 Tennessee N.E. Rodriguez then continued to flee.

Shortly thereafter Officer Quillman drove south on Utah, which was located just two blocks east of Tennessee. Officer Quillman saw Rodriguez walking on the west side of the street in a southern direction. Rodriguez was now wearing red shorts. His mother would later tell officers that Rodriguez had been seen wearing red shorts in the apartment earlier that morning.

Officer Quillman drove along side Rodriguez, stopped his patrol car, got out, and directed Rodriguez to show his hands. Rodriguez ignored Officer Quillman's directive and continued to walk south. Officer Quillman returned to his patrol car and drove ahead of Rodriguez and parked. Meanwhile Officer Romero drove up and stopped her patrol car slightly behind Rodriguez. Officer Romero got out of her patrol car and walked to the right of a flatbed truck that was parked next to the sidewalk where Rodriguez was walking. Officer Quillman stepped out of his patrol car and walked to the front of his open driver's side door.

Aware that Rodriguez was possibly armed, Officer Quillman directed Rodriguez to "Get your hands out of your pockets." Rodriguez immediately pulled out a black handgun and pointed it at Officer Quillman. Officer Quillman was standing just a few yards away from Rodriguez. Officer Quillman unholstered his department-issued pistol and fired it at Rodriguez. Officer Quillman fell to the ground beside the door of his patrol car. Rodriguez also fell to the ground. Officer Quillman shouted, "Stay down!" "Shots fired!" "Shots Fired!" Officer Quillman's call out that shots had been fired occurred at approximately 9:51 a.m. Officer Romero also fired her firearm at Rodriguez when she saw Rodriguez pull a gun on Officer Quillman. As seen in the included photographs, Rodriguez' threat on the life of Officer Quillman was captured on the lapel cameras worn by Officers Quillman and Romero.



Officer Quillman and Officer Romero walked towards Rodriguez. A black semi-automatic handgun was laying on the ground next to Rodriguez. Officer Romero commanded Rodriguez not to move and stated “He’s not moving. Just hold on him. Just hold.” Officer Quillman used his foot to move the black gun away from Rodriguez’ reach and exclaimed, “That mother fucker just missed me!” Officer Romero handcuffed Rodriguez. By this time Officer Moya had arrived on the scene and was standing by with his rifle. Rescue arrived and attended to Rodriguez who died at the scene.

Two rounds from Officer Quillman’s pistol struck Rodriguez. One struck Rodriguez on the right side of his neck and the other on his right forearm. According to the autopsy report, the gunshot wound to the neck injured the internal jugular vein and was the lethal wound. The second round entered and exited Rodriguez’ right forearm. It is unknown which wound was inflicted first. Rounds from Officer Romero’s pistol did not strike Rodriguez.

Officer Quillman explained that he fired his pistol at Rodriguez because he believed Rodriguez was going to shoot and kill him. He also believed Officer Romero, who was standing just a few yards to the north of Rodriguez, was in danger of being seriously injured or killed.

At 10:23 a.m., Detective Moya and Officer Charles Chavez, located the gray sweat pants and the black and gray jacket that Rodriguez stashed in the back of the pickup truck parked at 245 Tennessee NE. Sgt. Sedler drove to that location and looked at the clothing in the back of the truck. She identified them as

the same clothing she saw Rodriguez wearing when he was running on Rhode Island.

The gun Rodriguez pointed at Officer Quillman, a .40 caliber Smith and Wesson M & P, was collected at the scene and logged into evidence. Although Rodriguez did not discharge his gun, there was a .40 caliber cartridge in the chamber and three cartridges in the magazine. A firearms trace revealed that the gun had been reported stolen during a November 13, 2015, auto burglary. Coincidentally, on December 1, 2015, Rodriguez used a black semi-automatic handgun to pistol whip the driver of a blue Chevrolet Silverado in order to complete a car jacking. The victim of the car jacking had attended school with Rodriguez and positively identified Rodriguez as the attacker.

ANALYSIS

The question of whether criminal charges should be filed against Officer Quillman and Officer Romero for the December 22, 2015, shooting of Rodriguez turns on whether there is sufficient admissible evidence to support a conviction as to each officer.

As this case involves a shooting by officers, the analysis necessarily includes consideration of 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 she is threatened with serious harm or deadly force. Section 30-2-6. 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, ¶¶ 16, 29, 42 P.3d 272.

Just as with a claim of self-defense in non-officer shootings, an officer charged with homicide is entitled to have a jury similarly instructed on the defense of justifiable homicide by a public officer, as long as evidence is presented to the trier of fact, "sufficient to allow reasonable minds to differ as to all elements of the defense". *State v. Mantelli*, ¶ 32.

The evidence reveals that: (1) Officer Quillman and Officer Romero, along with several other Albuquerque Police Officers, were attempting to locate Rodriguez, who had recently attempted to commit an armed car jacking; (2) when Officer Quillman located Rodriguez he directed Rodriguez to remove his hands from his pockets; (3) Rodriguez responded by pointing a firearm at Officer

Quillman; (4) Officer Romero saw Rodriguez pull out and point a firearm at Officer Quillman; (5) Officer Quillman and Officer Romero believed Rodriguez was going to shoot and kill or cause Officer Quillman great bodily harm; (6) faced with the threat of death or great bodily harm, Officer Quillman, un-holstered his department issued handgun and shot Rodriguez, striking him once on the neck and once in the arm; (7) believing Rodriguez was about to shoot and possibly kill Officer Quillman, Officer Romero fired her weapon at Rodriguez.

Given these facts, Officer Quillman would be entitled to raise the defense of justifiable homicide by a public officer. This means a jury would be instructed with UJI 14-5173 NMRA as follows:

Evidence has been presented that the killing of Jose Rodriguez was justifiable homicide by a public officer or employee. The killing was justifiable homicide by a public officer or public employee if:

1. At the time of the killing Officer Quillman was a public officer or employee; and
2. The killing was committed while Officer Quillman was performing his duties as a public officer or employee.
3. The shooting was committed while Officer Quillman was attempting to apprehend Jose Rodriguez, who had just committed an attempted armed robbery, and
4. A reasonable person in the same circumstances as Officer Quillman would have reasonably believed that Jose Rodriguez posed a threat of death or great bodily harm to Officer Quillman or another person. The burden is on the state to prove beyond a reasonable doubt that the killing was not justifiable. If you have a reasonable doubt as to whether the killing was justifiable, you must find the defendant not guilty.

UJI 14-5173.

Officer Quillman was a public officer, performing his duties while attempting to locate and arrest Rodriguez for an attempted armed robbery. Officer Quillman immediately believed Rodriguez was going to shoot him when Rodriguez pointed a black semi-automatic handgun at him. In an often cited case,

the Tenth Circuit Court of Appeals recognized that a “reasonable officer need not await the ‘glint of steel’ before taking self-protective action”. *Estate of Larsen e rel Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008). Here Officer Quillman faced more than a “glint of steel”. Rodriguez pointed a gun straight at Officer Quillman. Under the facts of this case a jury or district court judge sitting as trier of fact, would find that Officer Quillman acted reasonably and conclude that the shooting was justifiable.

Officer Romero, was also a public officer, performing her duties when she responded to the threat of death or great bodily harm Rodriguez posed to Officer Quillman when she fired her weapon at Rodriguez. Therefore, if charged with homicide as an accessory, she too would be able to successfully raise the defense of justifiable homicide by a public officer. Section 30-2-6.

ADDITIONAL CONSIDERATION

Rodriguez suffered from a long-term drug addiction to crystal methamphetamine and marijuana. Rodriguez had recently moved home to detox from his drug use. On December 18, 2015, just four days before the shooting in this case, Rodriguez’ mother called 911 to report that her son was having suicidal thoughts. An ambulance was sent to the residence. Rodriguez was transported to a hospital where he reportedly told a nurse he had used heroin. Rodriguez was not admitted as an overnight patient but instead treated and released.

Were Officer Quillman and Officer Romero charged with the homicide of Rodriguez, the officers could present this evidence to a jury to support a suggestion that the shooting may have been what is commonly referred to as “suicide by cop”. This theory would be especially compelling given Rodriguez’ statement to family members on the morning of the shooting that “this will be the last time you see me.” See *State v. Stanley*, 2001-NMSC-037, ¶ ¶ 6, 15, 37 P.3d 85 (recognizing that evidence of suicidal tendencies of a victim are relevant to show the decedent’s state of mind).

CONCLUSION

No evidence exists to demonstrate that Officer Quillman or Officer Romero acted unreasonably when they fired their weapons at Rodriguez. Additionally, the evidence suggests Rodriguez deliberately threatened Officer Quillman with a

firearm with intent to provoke a lethal response from the officers. Accordingly no charges will be filed and this case will be closed.

Sincerely,

Jacqueline R. Medina
Special Prosecutor

cc. Raul Torrez, District Attorney, Second Judicial District
Fred Mowrer, counsel for Officer Andrew Quillman
John D'Amato, counsel Officer Shawna Romero
Karina Holguin, mother of Jose Rodriguez