

May 3, 2019

Sheriff Manuel Gonzales
Bernalillo County Sheriff's Department
400 Roma NW
Albuquerque, New Mexico 87102

RE: Prosecutorial review of the October 24, 2017 discharge of a firearm by Deputy Charles Coggins

BCSO case # 17-721646

DA case # 2017-08596-1

Dear Sheriff Gonzales,

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the events surrounding the discharge of a firearm by Deputy Charles Coggins on October 24, 2017. After reviewing available evidence, including law enforcement reports, officer statements, civilian witness statements, photographs, and a visit to the scene I have concluded that it is not possible to prove, to a unanimous jury beyond a reasonable doubt, that Deputy Coggins was not justified in acting under the belief that J.C. Perales posed an immediate threat of death, or great bodily harm, to Deputy Coggins, other deputies, and members of the public. Accordingly, no criminal charges will be filed against Deputy Coggins in State District Court, and this case will be closed. My decision, however, does not limit administrative or criminal action by other agencies, or civil actions by other parties.

FACTS SUPPORTED BY EVIDENCE

On October 24, 2017, at 4:46 a.m., deputies of the Bernalillo County Sheriff's Department were dispatched to the United States Post Office located at 1050 Sunset Rd. SW, in response to a report of a male subject assaulting and attempting to rob a postal employee with a knife in the parking lot at that location. The dispatch described the suspect as a Hispanic male, about 5'5", with a slim build, and that he had fled eastbound, on foot. Among the deputies who responded to the call was Deputy Charles Coggins. Coggins did not go to the scene of the assault, but drove around the surrounding area looking for the suspect.

At 5:21 a.m., Coggins saw a male matching the description given, walking southbound on Isleta Blvd. SW, south of Nashville Ave. SW. The male was accompanied by a female. This was approximately one mile southeast, via roadways (Sunset Rd., Gatewood Ave., and Nashville

Ave., to Isleta Blvd.), from the Post Office. Coggins, who was wearing his standard duty uniform and was driving a fully marked patrol unit, engaged his emergency lights, exited his vehicle, and ordered the male to stop. The male stopped at 721 Isleta Blvd. SW. The male, later identified as J.C. Perales, became agitated and repeatedly asked Coggins why he was stopping him. Coggins and Perales were facing each other, standing still, at a distance of approximately 15 feet. Perales had his hand inside his pocket and refused to remove it despite Coggins's repeated demands that he do so. After about ten seconds of facing each other Perales turned around, dropped a backpack he was carrying, and began running southbound on Isleta Blvd. SW. Perales had four outstanding felony warrants for his arrest, which he later admitted he knew about, although at the time Coggins was unaware of this. Perales also later admitted that this was why he fled from Coggins, in order to avoid arrest. These warrants were for failing to appear at court hearings and failure to comply with conditions of release in two pending stolen vehicle and drug possession cases.

Coggins pursued Perales on foot. A few seconds into the foot pursuit Perales removed a loaded BB-pistol from his front waistband, held it out to his side, and began to turn toward Coggins. This BB-pistol is indistinguishable from an actual firearm in full lighting. See, appendix A. At that time lighting was dim. Fearing he was about to be shot at by Perales, Coggins drew his firearm, a 9mm semi-automatic handgun, and fired four rounds at Perales. Perales was not struck by any of the rounds fired by Coggins. These rounds struck the unoccupied building at 831 Isleta Blvd. SW. Perales dropped his BB-pistol and continued to run, southbound. See, appendix B. This was about 175 feet south from where Coggins had first encountered Perales. The female who was with Perales, later identified as Desirae Sanchez, did not flee and was now behind Coggins, where he had originally encountered her and Perales. The amount of time that elapsed between Coggins encountering Perales and his firing four rounds was 19 seconds.

Coggins pursued Perales for only a few seconds because he realized that what he believed to be a firearm was now on the ground, behind him, and between himself and Sanchez. Not knowing what Sanchez's intentions were, Coggins feared that she might arm herself with Perales's handgun, and shoot at him. Therefor Coggins ceased pursuing Perales, and radioed that he had lost sight of him just north of the intersection of Isleta Blvd. SW and Lopez Rd. SW. This is about 700 feet from where he first encountered Perales.

Deputies set up a perimeter and began searching for Perales, who was later located at 1015 Lopez Rd. SW, hiding under a trailer in the driveway. This is about 200 feet from where Coggins lost sight of him. He was taken into custody at 7:16 a.m.. Located nearby were his shoes, which he had removed. Inside one of his shoes was a lighter and a glass pipe typically used to smoke methamphetamine. A laboratory test later confirmed that a small amount of methamphetamine was in the pipe. Perales later admitted that he had smoked methamphetamine earlier in the day, before Coggins confronted him.

Deputies later prepared a photographic array containing Perales's photograph, along with 5 other males with similar facial features, and showed it to the postal employee who had been assaulted. The postal employee was not able to identify Perales as the offender.

Perales's BB-pistol was a Daisy Powerline, model 5501. It is powered by a CO² cartridge and is capable of causing great bodily injury, or even death, according to the manufacturer's operation manual.

On March 22, 2018, Perales plead guilty to two counts of receiving or transferring a stolen motor vehicle, possession of a firearm by a felon, and possession of burglary tools, which were the subject of his outstanding arrest warrants. He also plead guilty to resisting, evading, or obstructing an officer, which was the subject of his flight from Coggins. He was indicted for, but not convicted of, aggravated assault on a peace officer with a deadly weapon, which was the subject of his arming himself and confronting Coggins.

LEGAL ANALYSIS

At trial Deputy Coggins would be entitled to raise the defense of justifiable homicide by a public officer. Deputy Coggins, on trial for his use of deadly force, could raise this defense if, at the time of his use of deadly force:

1. Deputy Coggins was a public officer or employee,
2. The [shooting] was committed while Deputy Coggins was performing his duties as a public officer or employee,
3. The [shooting] was committed while overcoming the actual resistance of J.C. Perales to execution of Deputy Coggins who was attempting to arrest him, *or*
The [shooting] was committed while arresting J.C. Perales, who had committed aggravated assault against a peace officer with a deadly weapon, and who Deputy Coggins reasonably believed had committed an attempted armed robbery of a postal employee, and was fleeing from justice, and
4. A reasonable person in the same circumstance as Deputy Coggins would have reasonably believed that J.C. Perales posed a threat of death or great bodily harm to Deputy Coggins, other deputies, or another person. The burden is on the state to prove beyond a reasonable doubt that the [shooting] was not justifiable.

N.M.R.A. 14-5173 (uniform jury instruction for justifiable homicide by public officer)

CONCLUSION

Deputy Coggins was a public officer, performing his duties while attempting to arrest J.C. Perales, who he had reasonable suspicion to believe had recently committed an armed robbery of a postal employee. Deputy Coggins could have reasonably believed that J.C. Perales posed an immediate threat to himself, other deputies, and members of the public, knowing and believing that J.C. Perales had, in the immediately preceding half-hour:

1. Attempted to rob a postal employee with a knife,
2. Refused to comply with his commands to remove his hands from his pockets when confronted,
3. Begun to flee when commanded to submit, and ,
4. Produced a handgun from his waistband, raised it into a shooting posture, parallel to the ground, and begun to turn back around towards him.

A jury is likely to find that Deputy Coggins acted reasonably, and I also believe that a reasonable person, in the same circumstance as Deputy Coggins, would have acted in a similar fashion, and therefore the shooting was criminally justified. In the absence of sufficient evidence to contest this conclusion, no prosecution is appropriate. Accordingly, no charges will be filed against Deputy Coggins in state court. This case will be closed.

Very truly yours,



Chris Schultz

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Dep. Xavier Klein, Bernalillo County Sheriff's Department

Dep. Charles Coggins, Bernalillo County Sheriff's Department, c/o Mr. John D'Amato

Mr. J.C. Perales, c/o Ms. Keren Fenderson

Appendix A



Appendix B

