

March 28, 2018

Deputy Brent Broshow

Acting U.S. Marshal

U.S. Marshals Service

333 Lomas Blvd. NW suite 180

Albuquerque, New Mexico 87102

RE: Prosecutorial review of the May 16, 2016 discharge of a firearm by Deputy U.S. Marshal Robert Medina

APD case # 16-0044714

DA case # 2016-3111-1

Dear Deputy Broshow,

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 U.S. Marshal Robert Medina during the arrest of fugitive Nathan Jensen by the U.S. Marshals Fugitive Task force on May 16, 2016, for potential prosecution in this incident. After reviewing all available evidence, including reports, 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 Medina was not justified in acting under the belief that Nathan Jensen posed an immediate threat of death, or great bodily harm, to himself, other officers, and members of the public. Accordingly, no criminal charges will be filed against Deputy Medina 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 November 12, 2009, Nathan Jensen was sentenced in the U.S. District Court, pursuant to a plea agreement, to 84 months imprisonment, followed by 3 years of supervised probation upon release. Mr. Jensen had plead guilty to one count of being a felon in possession of a firearm or ammunition.

On April 25, 2016, Mr. Jensen was released from federal prison to begin his three year period of supervised release, and was to report to the U.S. Probation Office in Albuquerque. Among his conditions of supervised release were that he was to report to his probation officer

as directed; that he was to reside at and complete a program at a residential re-entry center (halfway house); and that he was not to possess or consume any controlled substance.

On April 28, 2016, Mr. Jensen submitted to a urinalysis screen at his probation office. This was submitted for analysis by probation authorities, the results of which were positive for cocaine.

On April 29 and May 4, 2016, Mr. Jensen failed to report to his probation officer as he had previously been instructed to do. Attempts by his probation officer, Jason Towne, to contact him telephonically were unsuccessful.

On May 2 and 3, 2016, Mr. Jensen failed to report to Diersen Charities Halfway House, and his whereabouts were unknown.

On May 4, 2016, Mr. Towne petitioned the U.S. District Court for an arrest warrant for Mr. Jensen, charging him with violating the terms of his supervised release. This petition was granted and a warrant was issued.

On May 6, 2016, Mr. Jensen's case was assigned to Deputy U.S. Marshal Robert Medina. Deputy Medina was assigned to the U.S. Marshals Fugitive Task Force whose primary duty was locating and apprehending fugitives. Through investigation Deputy Medina was able to determine that Mr. Jensen had an extensive violent criminal history, including convictions for: escaped from an inmate release program in 2001, battery on a household member in 2002, robbery in 2002, resisting or evading an officer in 2002, robbery in 2007, battery on a household member in 2008, and felon in possession of a firearm in 2008.

Through investigation Deputy Medina discovered that after his release and return to Albuquerque, Mr. Jensen had been visiting his ex-wife, Ms. Kimberley Ledezma, who was residing at the single family house located at 2900 19<sup>th</sup> St. NW, with her two children. Ms. Ledezma informed Deputy Medina that Mr. Jensen was using drugs, had become paranoid, and was attempting to acquire a handgun in order to commit armed robberies to support his habit. She said that Mr. Jensen was intermittently coming to her house, and was driving his father's vehicle, a 1999 Buick. Deputy Medina discovered that Mr. Jensen's father had been stopped in that vehicle on May 5, 2016, for an expired registration tag.

On May 15, 2016, Ms. Ledezma informed Deputy Medina that Mr. Jensen had acquired a handgun and was going to commit armed robberies the following day. She said Mr. Jensen physically assaulted her, by choking her, when she refused to accompany and assist him in his planned robberies.

On May 16, 2016, Ms. Ledezma informed Deputy Medina that Mr. Jensen would be returning to her house that afternoon, and that he was driving his father's vehicle. Deputy Medina feared that Mr. Jensen would imminently be committing armed robberies. He also feared that if Mr. Jensen were stopped for an expired license plate tag that the stopping officer

would be in grave danger, not knowing that Mr. Jensen was armed and either under the influence of drugs, or desperate to acquire them.

That afternoon Deputy Medina assembled several members of the U.S. Marshals Fugitive Task Force in order to formulate a plan to apprehend Mr. Jensen as soon as possible. Attending this briefing were Deputy U.S. Marshals Medina, Antonio Ramirez, Chris Roberson, Anthony Jones, Gary McCoy, Senior Inspector with the U.S. Marshal Marcus Malone, New Mexico Probation and Parole Agent Emily Edinger-Hunt, ATF Agent Lisa Gaul, and APD Officer Jerod Pelot. Ms. Ledezma had informed Deputy Medina that her two children, ages 15 and 7, were also living with her and were home that afternoon. Deputy Medina concluded that the safest way to apprehend Mr. Jensen was after he got into his vehicle, but before he was able to pull away in it. This would avoid a confrontation in the house where Ms. Ledezma and children were present; not allow Mr. Jensen to barricade himself in the house; and obviate attempting to stop him after he drove away, which could result in Deputies losing site of him and his escaping, or devolving into a high speed pursuit. The plan formulated by Deputies was to set up surveillance on Mr. Jensen's car, which was parked at the curb in front of Ms. Ledezma's house, wait for Mr. Jensen to return to his car, and then to quickly close in on him and box him in with their vehicles from the front and back, thus preventing his escape by vehicle.

All agents and officers who attended the briefing headed to the area of Ms. Ledezma's house at 2900 19<sup>th</sup> St. NW at around 5:00 p.m. to take up surveillance positions. This house is located on the east side of 19<sup>th</sup> St., about four house-lengths south of La Poblana Rd. NW and a quarter mile north of Prospect Ave. NW. Deputy Medina parked his vehicle on the south side of La Poblana, facing east, at the southwest corner of La Poblana and 19<sup>th</sup>. Also in his vehicle were Deputy Ramirez and Agent Edinger-Hunt. Parked behind Deputy Medina was Officer Pelot. Also in his vehicle was Deputy Jones. Deputy Roberson parked his vehicle on the east side of 19<sup>th</sup>, facing north, several house-lengths south of Ms. Ledezma's house. The day was bright and sunny, and all deputies, agents, and officers in these three vehicles had a clear line of sight to Mr. Jensen's vehicle, which was parked in front of Ms. Ledezma's house. There were no vehicles parked in front of, or behind Mr. Jensen's car. Deputies McCoy and Malone, and Agent Gaul, took up positions behind the backyard fence of Ms. Ledezma's house. They could not see the front of the house or Mr. Jensen's car. All deputies, agent, and officer were wearing tactical vests adorned with large lettering on the front and back clearly indicating the respective agencies to which they belonged. Also attached to the front of these vests were their badges, clearly visible.

At around 7:20 p.m. Mr. Jensen exited Ms. Ledezma's house and got into his car. Deputy Medina immediately recognized him as the fugitive they were seeking. Deputy Medina gave the signal for the three vehicles to move in and stop Mr. Jensen. The plan was to deploy a "vehicle blocking maneuver", wherein vehicles in front of and behind would both park so close to Mr. Jensen's car that it would be prevented from moving. All three of the deputies'/officer's vehicles were unmarked but were equipped with emergency equipment located in the front

grill. As the three vehicles approached Mr. Jensen's car Deputy Medina, who was in the lead vehicle, engaged his emergency lights while heading southeasterly across 19<sup>th</sup> St., approaching Mr. Jensen's car at about a 45° angle, directly toward the driver's side headlight of Mr. Jensen's car. Officer Pelot was behind Deputy Medina, and Deputy Roberson was approaching Mr. Jensen's car directly from the rear. Deputy Medina stopped his vehicle about 10-20 feet in front of Mr. Jensen's car, at a 45° angle, and exited with his handgun drawn. Deputy Ramirez and Agent Edinger-Hunt also exited with their handguns drawn. All three were in front of Mr. Jensen's car, pointing their guns at him, and loudly commanding him to stop his vehicle and to show them his hands. The side windows on Mr. Jensen's car were rolled up and were so darkly tinted that officers could not see through them. Deputy Ramirez attempted to open the driver's door, but Mr. Jensen had locked it and would not unlock it or open it. Mr. Jensen did not comply with officers' commands but immediately put his car in reverse and accelerated, striking Deputy Roberson's vehicle, which was still several feet behind Mr. Jensen, and moving forward. Mr. Jensen then put his car in drive, accelerated forward and struck Deputy Medina's vehicle, all three officers having moved out of Mr. Jensen's path, toward the driver's side of his car. While all officers continued to point their handguns at Mr. Jensen and issue commands for him to stop and show them his hands Mr. Jensen put his car in reverse again, accelerated and struck Deputy Roberson's vehicle a second time. Deputy Medina re-positioned himself in front of Mr. Jensen's vehicle because he could not see through the side windows, he believed Mr. Jensen to be armed, and he could not see his hands. Mr. Jensen then put his car in drive again and accelerated toward Deputy Medina and his vehicle. This time Mr. Jensen steered his vehicle to the left, thus pulling away from the curb and heading in a more direct line toward Deputy Medina and his vehicle. Deputy Medina quickly jumped to his right, out the way of Mr. Jensen's approaching car. Fearing he, or other officers, were about to be struck by Mr. Jensen's car Deputy Medina discharged one round from his handgun when Mr. Jensen's driver's side window was in front of him at a distance of 4 to 5 feet, and moving forward. This round missed Mr. Jensen's vehicle, but struck the front of Ms. Ledezma's brick house, about four feet above the ground, near the garage door. Ms. Ledezma was in the process of putting her 7 year old daughter in her car, parked in the driveway, when Deputy Medina discharged his weapon. Ms. Ledezma and her daughter immediately ducked to the ground. Her daughter sustained a small cut to the pinky finger on her right hand. It is uncertain how this injury came about. The bullet lodged in the mortar between two bricks on the wall beside the garage. This bullet was later retrieved, damaged but intact.

After Deputy Medina fired one round Mr. Jensen's vehicle struck Deputy Medina's vehicle for the second time. Deputy Roberson immediately brought his vehicle into contact with the back of Mr. Jensen's vehicle, thus pinning him between the two deputies' vehicles and preventing any further movement by Mr. Jensen. Mr. Jensen now complied with deputies' commands to show his hands. When deputies were unable to open his driver's door Officer Pelot attempted to break out the driver's door window with the butt of his rifle, but was unsuccessful. He handed his rifle to Deputy Ramirez who was able to break out this window.

Deputies then extracted Mr. Jensen through driver's door window opening. As they were doing so Mr. Jensen informed them he had a handgun in his waistband. Deputies retrieved a .40 caliber automatic handgun, loaded with 7 rounds, from his waistband. Mr. Jensen was arrested and handcuffed. He was not injured during his arrest. When he was then searched deputies also recovered a switchblade knife, some marijuana, a glass pipe typically used to smoke crack cocaine, or other drugs, bearing evidence of frequent use, and four syringes. Mr. Jensen stated that the meth had him "screwed up", and that he "had to have a gun."

Mr. Jensen was charged with violating his supervised release, and with being a felon in possession of a firearm and ammunition at the time of his arrest. On February 27, 2017, Mr. Jensen plead guilty in U.S. District Court to one count of felon in possession of a firearm and ammunition.

#### LEGAL ANALYSIS

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

1. Deputy Medina was a public officer or employee,
2. The [shooting] was committed while Deputy Medina was performing his duties as a public officer or employee,
3. The [shooting] was committed while arresting Nathan Jensen, who had an active warrant for violation of his supervised release and was fleeing from justice, and
4. A reasonable person in the same circumstance as Deputy Medina would have reasonably believed that Nathan Jensen posed a threat of death or great bodily harm to Deputy Medina, other officers at the scene, 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)

It is not necessary for an officer to prove, in his defense, that the suspect posed a genuine and actual threat to the officer, or another person. The officer must simply establish that he *reasonably believed* that the suspect posed a threat of death or great bodily harm to himself, or another, and that a reasonable person in the officer's position would have concluded the same. The burden would be on the state to prove to a jury, unanimously and beyond a reasonable doubt, that the officer's belief was unreasonable.

#### CONCLUSION

Deputy Medina was a public officer, performing his duties while attempting to arrest Nathan Jensen for violation of his supervised release. Deputy Medina has said that he believed that

Nathan Jensen posed an immediate threat to him, other officers, and members of the public when he rammed his vehicle into officers' vehicles four times, nearly striking Deputy Medina and other deputies as they attempted to arrest him and prevent his escape, while Deputy Medina also had credible information that Nathan Jensen was presently under the influence of drugs and armed with a handgun which he was planning to use to imminently commit armed robberies. A jury is likely to find that Deputy Medina acted reasonably, and I also believe that a reasonable person, in the same circumstance as Deputy Medina, would have acted in a similar fashion, and therefore the shooting was justified. In the absence of any evidence to contest this finding, no prosecution is possible. Accordingly, no charges will be filed against Deputy Medina Galvan in state court. This case will be closed.

Very truly yours,



Chris Schultz

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective David Gonzales, Albuquerque Police Department

Deputy U.S. Marshal Robert Medina, c/o Jeff Jacobson

Nathan Jensen, c/o Jason Bowles