

December 17, 2018

Sheriff Manuel Gonzales

Bernalillo County Sheriff's Department

400 Roma NW

Albuquerque, New Mexico 87102

RE: Prosecutorial review of the July 28, 2017 discharge of a firearm by Deputy Peter Martinez

BCSO case # 17-686229

DA case # 2017-04684-1

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 shooting of Raymond Cruz by Deputy Peter Martinez during Cruz's arrest on July 28, 2017. After reviewing available evidence, including law enforcement reports, officer statements, civilian witness statements, photographs, security video, 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 Martinez was not justified in acting under the belief that Raymond Cruz posed an immediate threat of death, or great bodily harm, to Deputy Martinez, other deputies, and/or members of the public. Accordingly, no criminal charges will be filed against Deputy Martinez 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 July 28, 2017, at 2:42 a.m., a 1994 Dodge Dakota extended cab pickup arrived at the Isleta Casino, located at 11000 Broadway Blvd. SW, and parked in its lot. The parking lots were monitored, in real time, by several cameras. It was observed by security officers monitoring the cameras that this truck did not have a license plate, the front windshield was cracked, and the back window was covered in plastic. The driver, later identified as Raymond Cruz, and his female passenger, Sonia Myrtle, exited the truck and entered the casino. Cruz was wearing a black tee-shirt with large gold lettering, black shorts, white socks and sandals. Several security cameras were located throughout the casino, and Cruz was observed at numerous locations during the entire time he was in the casino.

At approximately 4:00 a.m., Isleta Casino Security Officer Jordan Chemski checked on Cruz's truck. Chemski discovered it had been spray-painted black, confirmed that it did not have a license plate, had a cracked windshield, a plastic bag covering the back window, and a damaged steering column. The VIN was not visible because the portion of the windshield through which it should have been visible had been spray-painted black as well. Mr. Chemski suspected the vehicle might be stolen. He had security contact the Isleta Police Department and Isleta Police Officer Alan Montano was dispatched to the scene. Upon arrival Officer Montano made the same observations but was unable to verify whether or not the truck was stolen. He asked Mr. Chemski if its driver had been identified or located. Security informed him that the driver was not identified, and his location within the casino was not presently known. Having no further information Officer Montano cleared the scene.

Security began to review camera footage and soon located Cruz in the casino. At 5:20 a.m., Isleta Casino Security Captain Michael Van Sickler and Security Officer Kenneth Jojola located and detained Cruz and Myrtle in the casino. Officer Montano had been dispatched back to the truck in order to make contact with Cruz and Myrtle. He and Officer Chemski waited at the truck while Cruz and Myrtle were instructed by Van Sickler to return to their vehicle to speak with Officer Montano. As they exited the casino Myrtle returned to the truck and spoke with Officer Montano. Cruz, however, immediately went in a different direction and approached a random car that was just then parking in a different lot. Cruz got into this vehicle and it then drove him to the northern boundary of the Isleta Fun Connection, about 1,500 feet north from where Cruz got into the car. There Cruz exited the car, and ran into a mesa, northbound. The driver of this vehicle, Kirk Davis, did not know Cruz and was merely offering him a ride.

Officers declined to pursue Cruz because they had no probable cause at that time that he had committed any crime. The Dodge Dakota he had driven to the casino was later determined to not have been stolen. At that time, however, Cruz was on supervised probation for convictions including kidnapping, aggravated assault with a deadly weapon, and aggravated fleeing a law enforcement officer. He was in violation of his probation for recently testing positive for a controlled substance, and a felony warrant for his arrest had been issued and was then active. Although none of the officers involved in these events were aware of that fact at the time, this may explain, to some extent, Cruz's actions throughout these events.

At 5:34 a.m., Cruz entered the Isleta Golf Course shop yard, located across Broadway Blvd. SW, in the northwest corner of the Isleta Golf Course, approximately 2,700 feet from where he had exited Mr. Davis's car. There he approached Aaron Wade, a golf course employee, who was driving a golf cart. Cruz verbally threatened Wade and ordered him to surrender the golf cart. Wade complied, and Cruz got into the golf cart and drove away in a northwesterly direction, towards Isleta Lakes RV Park. Wade radioed Isleta Police and advised them of what had just taken place. Officers went to Wade's location and began searching for the cart. They located it in the northwest corner of Isleta Lakes RV Park, about 2,000 feet

northwest from where it had been taken. It had crashed into a chain link fence, on high ground, and was immobilized. Cruz had already fled the scene on foot. Officers located shoeprints going away from the golf cart, northbound along the drainage ditch, towards Interstate 25. Isleta Police Officers Panteah and Millane saw Cruz on the west side of the ditch, but could not find a way to traverse the ditch themselves in order to apprehend him. Because Isleta Police Officers now had a reason to arrest Cruz (for the theft of the golf cart and its subsequent damage), they had dispatch request assistance from the Bernalillo County Sheriff's Department.

At 5:51 a.m., Bernalillo County Sheriff's deputies, including Deputy Peter Martinez, were dispatched to Interstate 25, where it traverses the drainage ditch, approximately 1,000 feet north from where the golf cart crashed. They arrived at 5:55 a.m. where they met Isleta Police officers who provided them with a description of Cruz, and what he was wearing. There they were able to spot Cruz running northbound along a ditchbank. He matched the physical description and clothing that had been previously broadcast and given to them by the Isleta Police Department. They then broadcast that Cruz matched the description of the suspect they were looking for, and that he was running northbound, along the ditchbank, from Interstate 25.

At 6:16 a.m., Wayne Cunningham, a retired APD Officer who lives at 800 Vidal Rd. SW, was awakened by the sound of someone breaking into his vehicle. His house is located approximately 4,700 feet north from the Deputies on Interstate 25. He armed himself with a handgun, went outside, and discovered Cruz was inside his vehicle in the driveway. Cunningham announced his presence and ordered Cruz to exit his vehicle. Cunningham did not point his firearm directly at Cruz, but held it in a "low ready" position in front of him. Cruz, upon exiting the vehicle, saw the gun, held up his hands, turned around, and immediately began to walk away, eastbound on Vidal Rd. SW. Cunningham's wife, Sheila Cunningham, a retired BCSO Deputy, called 911 and gave a description of what had just transpired, including Cruz's description.

Cruz then walked northbound on Paseo Alegre Rd. SW. He then attempted to break into at least one additional vehicle parked in a residential driveway on this road. When confronted by the owner he continued to walk away, in a northeasterly direction. This prompted additional 911 calls from residents, who also gave a physical description of Cruz.

Additional deputies were dispatched to the area to help set up a perimeter. At 6:26 a.m. Deputies Haworth, Martinez, and Hessinger saw Cruz on the east side of the ditch, which is directly behind the houses on the east side of Paseo Alegre SW, running eastbound. Cruz then crossed a field in a northeasterly direction, and scaled the wall that surrounds the two-story house at 852 Las Garzas Rd. SW. This house is approximately 1,200 feet from Paseo Alegre Rd. SW, and was occupied by its owners, Juan and Socorro Contreras, and their two guests, Jose and Sara Sandoval. The Contreras's were downstairs in the process of leaving for work, while the Sandoval's were asleep in the upstairs bedroom. At 6:35 a.m. the Contreras's left out the garage, in separate vehicles, a few seconds apart, heading east on Las Garzas Rd. SW.

At 6:33 a.m., while setting up a perimeter around the house, Deputies Haworth and Velarde could hear loud banging coming from the backyard of 852 Las Garzas Rd. SW. Cruz had climbed up onto the balcony outside of the bedroom that the Sandoval's were asleep in and kicked in the door and its glass. Cruz entered the bedroom, and when confronted by Jose Sandoval, Cruz made incoherent statements. Cruz grabbed a laptop computer, and other items, from the room, and lead the Sandoval's downstairs to the kitchen. In the kitchen Cruz retrieved two large knives from the knife block on the counter, and demanded the keys to their car. Fearing that Cruz, who was 6'4" tall and weighed 220 lbs., might stab them the Sandoval's told him the keys were back upstairs in their bedroom. Cruz lead them back up to the bedroom where he got the keys. While displaying the large kitchen knife, Cruz ordered the Sandoval's into their vehicle, a 2014 4-door Chevrolet Malibu, which was also in the garage that was now closed. Fearing for their safety the Sandoval's complied with Cruz's commands. Jose was seated in the front passenger seat, and Sara was seated directly behind him. At 6:37 a.m. Cruz opened the garage door, backed out, and sped eastbound on Las Garzas Rd. SW, 650 feet to Second St. SW. As he did so he passed Deputy Josh Hessinger, who was on Las Garzas Rd. SW, and had stopped the Contreras's.

Deputy Hessinger had just confirmed that Cruz was not in either of the Contreras's vehicles. Deputy Hessinger was advised by the Contreras's that the Sandoval's were still inside the house. Simultaneously Deputy Haworth saw the garage door open, and Cruz exit in the Sandoval's car. He could see that Cruz was driving, and that the back seat passenger, Sara, was waiving her arms frantically, appeared to be screaming, and was in great distress.

Several Deputies were in the immediate vicinity, include Deputies Autumn Neas, Hessinger, and Martinez. When Cruz got to the end of Las Garzas Rd. SW he began to turn left (northbound), however, upon seeing Deputy Neas parked on Second St. SW, just north of Las Garzas Rd. SW, he turned around and headed southbound on Second St. SW. Deputy Martinez was on Second St. SW, just south of Las Garzas Rd. SW, when he also saw Cruz speed past, with Jose Sandoval in the front passenger seat, and Sara Sandoval desperately waiving her arms as if to signal that she had been kidnapped, or carjacked. Believing they now had a hostage situation, Deputies Neas, Martinez, and Hessinger engaged their emergency equipment and pursued Cruz, and were lined up in that order behind him. While pursuing Cruz Deputies could see Sara Sandoval had turned around in the back seat and was continuing to frantically waive at them with a terrified look. Cruz was driving approximately 35-40 miles per hour, and drove southbound, approximately 4,000 feet, to where the paved roadway of Second St. SW ends, and turns right (westbound), and becomes a dirt road about as wide as a residential street. Cruz drove approximately 2,000 feet westbound on Second St. SW where he approached a locked metal gate at the entry to a private residence and some barns. Cruz did not slow down but drove through the gate, with Deputies in pursuit. Because it had rained much of the previous night the dirt roadway was slick and muddy. Cruz continued in a northwesterly direction for approximately 500 feet when he ran out of roadway and circled around one of the barns. As he was circling back, now in a southeasterly direction, he was struck at an angle on

the rear passenger door by Deputy Martinez, who was travelling toward him. This contact was not intentional by Deputy Martinez, but was due to the slick road surface which caused his vehicle to slide into Cruz.

Cruz continued back through the metal gate and was now eastbound on the dirt roadway of Second St. SW, with all three Deputies still in pursuit behind him. After travelling approximately 800 feet, eastbound, past the metal gate, Deputy Neas performed a pursuit intervention technique on Cruz by striking the passenger side rear corner of his car with the driver's side front corner of hers. This caused Cruz's vehicle to spin around 180° in the roadway, with it now facing westbound. Deputy Neas slid off the roadway, to her right, and was now behind Cruz. She attempted to back up and place her car behind Cruz's in order to prevent him from backing up, or turning around, and continue to flee, but her car had become stuck in the mud on the side of the road and she was unable to do so. Deputy Martinez was now facing Cruz's vehicle, which was still moving forward, head on, and he drove forward until the front of his unit collided with the front of Cruz's car, in order to prevent Cruz from moving forward any further. Deputy Hessinger had stopped behind and to the left of Deputy Martinez's unit.

At 6:41 a.m., Deputies Neas, Martinez, and Hessinger, who were all in full uniform, exited their units with their handguns drawn and ordered Cruz to exit his vehicle. Deputy Hessinger approached the vehicle from the front, and Deputy Neas approached it from the driver's side. Deputy Martinez went around the passenger side of Cruz's vehicle and began to approach it in order to extricate Jose and Sara Sandoval. As Deputy Martinez was approaching it Jose Sandoval began to open his door. Just as Deputy Martinez stepped into the opening front passenger doorway Cruz put the vehicle in reverse and began to accelerate backwards, pinning Deputy Martinez behind the open door, and dragging him. Fearing he was about to be killed, or receive great bodily harm by being completely run over by Cruz's vehicle, and realizing that Cruz was attempting to flee with hostages, Deputy Martinez fired two rounds, in quick succession, across the front seat of the Sandoval's car and into Cruz. Both rounds struck him in the right side of his chest. The vehicle immediately ceased accelerating, yet continued to drag Deputy Martinez backwards until it came to rest when it off the north side of the roadway, and struck a wooden power pole, pinning Deputy Martinez between the front passenger door and the power pole, and against barbed-wire fencing, which was strung to and from the power pole. See, appendices 1 and 2. With much effort Deputy Martinez was able to free himself. Cruz's vehicle had travelled approximately 100 feet from the front of Deputy Martinez's unit to the power pole.

Deputies removed Cruz from the vehicle, rendered aid, and immediately called for medical rescue. Cruz was unresponsive and died as a result from his wounds. One round went through his right arm, entered the right side of his chest just under the right armpit, went through his heart, and left lung. The other round entered the right side of his chest from the front, about 10" medially from the first round. It went through his right lung, and liver. Both

rounds were fatal. A toxicological analysis of Cruz's blood during his autopsy revealed the following substances to have been present in his system: ethanol, amphetamine, methamphetamine, morphine, and a blood alcohol concentration of .044. Among the items recovered from Cruz's pockets was a syringe cap.

Deputy Martinez sustained significant and severe bruising to his right arm, shoulder, and the right side of his chest. He also sustained a broken bone in his foot. Jose and Sara Sandoval were not injured.

Deputies recovered a large kitchen knife, taken by Cruz from the Contreras's kitchen, and used to threaten the Sandoval's, between the front seats of the Sandoval's car. See, appendix 3. Another large knife was recovered from the driver's side floorboard.

Detectives Warrick and Bailey searched the Dodge Dakota that Cruz had driven to the casino, and on the driver's side floorboard they located a zippered pouch which contained syringes and a spoon with what appeared to be heroin residue.

LEGAL ANALYSIS

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

1. Deputy Martinez was a public officer or employee,
2. The [shooting] was committed while Deputy Martinez was performing his duties as a public officer or employee,
3. The [shooting] was committed while overcoming the actual resistance of Raymond Cruz to execution of officers who were attempting to arrest him, *or*
The [shooting] was committed while arresting Raymond Cruz, who had committed aggravated residential burglary, carjacking/kidnapping, armed robbery, aggravated assault, and aggravated battery on a peace officer, and was fleeing from justice, and
4. A reasonable person in the same circumstance as Deputy Martinez would have reasonably believed that Raymond Cruz posed a threat of death or great bodily harm to Deputy Martinez, 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 Martinez was a public officer, performing his duties while attempting to rescue Jose and Sara Sandoval, and arrest Raymond Cruz for kidnapping/carjacking, and aggravated battery on a peace officer, and who was fleeing deputies in a motor vehicle, with hostages. Deputy Martinez could have reasonably believed that Raymond Cruz posed an immediate threat to himself, other deputies, Jose and Sara Sandoval, and members of the public, knowing that Raymond Cruz had, in the immediately preceding two hours:

1. Robbed Isleta Golf Course of a golf cart,
2. Attempted to steal at least two motor vehicles from residential driveways,
3. Broken into an occupied house,
4. Kidnapped/carjacked two occupants of that house,
5. Led deputies, who were trying to apprehend him, on a motor vehicle chase,
6. Refused to surrender to deputies after they brought his vehicle to a stop, and
7. Attempted to run over Deputy Martinez in a renewed effort to flee.

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

Very truly yours,



Chris Schultz

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Sgt. Robert Warrick, Bernalillo County Sheriff's Department

Sgt. Peter Martinez, Bernalillo County Sheriff's Department, c/o John D'Amato

Ms. Christina Cruz

Appendix #1

