

March 6, 2018

To: Sheriff Manuel Gonzales III
Bernalillo County Sheriff
400 Roma Ave., NW
Albuquerque, NM 87102

BCSO case # 16-0708841
DA case # 2016-08133-1

RE: Prosecutorial review of the September 19, 2016 shooting, involving Ricky Esparza by the Bernalillo County Sheriff's Office Deputy, Peter Martinez.

Dear Sheriff Gonzales:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of September 19, 2016 for potential prosecution. My role is to determine whether Deputy Peter Martinez should be prosecuted for his actions involving this incident. I have reviewed all of the available evidence, including: police reports, audio witness interviews, criminalistics report and photos, CAD printouts, crime scene photos, search warrant, criminal complaint, APD & BCSO dispatch recordings, and criminal history of Mr. Esparza. I conclude that it is not possible to prove beyond a reasonable doubt, that Deputy Martinez was not acting under the reasonable belief that the actions of Ricky Esparza posed a threat of death or great bodily harm to himself, and/or Deputy Valerie Carrillo. No charges will be filed: the case will be closed. My decision does not address nor limit administrative or criminal action by other agencies, or civil action by other parties.

STATEMENT OF FACTS

On September 19, 2016, Bonnie Gurule was at 197 Sunset Rd. S.W., the home of her elderly parents, Julia and Jonnie Esparza, and her brother, Ricky Esparza. She was staying with them temporarily to assist her mother with her medical issues. At 4:00 a.m. Bonnie contacted the Albuquerque Police Department by text, asking for assistance concerning her 49 year old brother Ricky. She was worried because Ricky was angry and yelling, and his behavior was not allowing her parents to sleep. He had been up all night drinking alcohol and taking methamphetamines. Bonnie also informed the police that Ricky had an outstanding warrant for removing a court ordered ankle monitor.

Bonnie had not received a response from her text, so at about 7:28 a.m. she called 911, and expressed her previously stated concerns. The operator informed Bonnie that police were backed up, and would respond as soon as possible. There was no indication that Bonnie's 4:00 a.m. text message was received by the 911 operators. She called again at about 8:16 a.m., and APD was still backed up. The 911 operator called Bonnie at about 8:30 a.m. to monitor her situation. Bonnie expressed her heightened concerns that in addition to the other issues, Ricky wanted his mother to drive him to the methadone clinic. Bonnie felt that her mother should not drive in her condition. She also felt that Ricky

was high on methamphetamines and alcohol, and feared he would manipulate her mother to allow him to drive.

APD then requested assistance from the Bernalillo County Sheriff's Office. Deputy Peter Martinez and Deputy Valerie Carrillo responded to 197 Sunset at about 8:43 a.m. Before they arrived they were advised that Esparza was known to be armed, and that he used narcotics. Bonnie heard the deputies arrive, met them at the door, and let them in the house. Deputy Carrillo believed Bonnie was frightened, because she immediately pointed to the back hallway and whispered that, "he's running out the back door." Bonnie observed her father intentionally try and block the hallway with his walker, and saw him push against the deputies as the two deputies chased after Ricky. That delay caused them to lose sight of the direction Ricky fled when he ran out the back door. Her father later stated that he fell, cutting his finger when the police pushed him. According to Bonnie, he received the cut on his finger from the police belt as they went passed him.

As they pursued Esparza out the back door, Martinez went to the right and Carrillo to the left. The back yard was surrounded on all sides by a high wooden fence. When Carrillo came around the southwest corner of the house, she caught a glimpse of Esparza from about fifteen feet away, facing her in a "firearm stance." He told her several times, "I'm gonna shoot you," and made threatening movements with his hands. She believed that the item in his hands was a gun. The item was later collected, and identified as a t-shaped chromed colored metal bicycle part with a black stem; (see attached photo). Carrillo then took cover, but

did not fire her weapon. Esparza also told her either, "I'll shoot you in the head," or "shoot me in the head." Martinez then arrived near her location, and ordered Esparza to drop what he was holding. Esparza then threatened Martinez several times, by pointing the object he was carrying at Martinez while saying, "I'm gonna shoot you." Martinez believed it was a gun, and fired one shot at Esparza, but missed him.



Martinez did not give a formal statement, but while still in a heightened state of emotions as observed by Sargent Christopher Starr, stated, "He pointed something chrome at me Sarge, I was scared."

After Martinez fired, Esparza immediately hit the ground and surrendered. The missile struck the fence behind Esparza, and he was not injured. A multi-jurisdictional task force involving APD, BCSO and the New Mexico State Police conducted the investigation. One .40 caliber casing was located on the ground in the southwest corner of the residence, and tests showed it had been fired from Martinez pistol. The t-shaped chromed colored metal bicycle part with a black stem was photographed and collected from the grass near to where Esparza was standing. Martinez had a Smith and Wesson, Glock brand, model 22 semi-automatic pistol, and a .40 caliber magazine, with one bullet missing. Carrillo's weapon was a 9 mm Luger, and all bullets were fully accounted for.

Esparza was taken into custody, and agreed to be interviewed by detectives. He said that he knew there was a warrant for his arrest because he had cut off a court ordered ankle monitor. When the police arrived he fled because he did not want to be caught. He told the detective that when he went outside, he "grabbed a bicycle part, and pointed it at the cop." He said "the cop thought it was a gun, and I wanted him to shoot me," "I made the cop shoot," "I'm tired of this life." He identified Martinez as the only officer that shot at him once, and said that when Martinez missed hitting him with the bullet, he told Martinez, "you fucken stupid, you missed me, stupid mother fucker." In April of 2017 he pled to Assault on a Peace Officer, misdemeanor, based upon this incident. He has an extensive criminal history with 31 separate cases charged, with 16 of those cases resulting in convictions, primarily involving domestic violence, DWI's, shoplifting, drugs, and issues with police.

LEGAL ANALYSIS

NMSA 1978, Section 30-2-6 is entitled, "justifiable homicide by public officer or public employee," and establishes that a peace officer may justifiably use deadly physical force when he reasonably believes that he or another is threatened with serious harm or deadly force. The officer need not prove the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility.

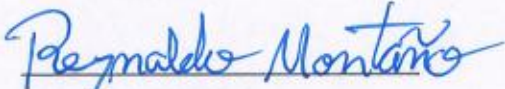
Case law has established that under Section 30-2-6, the crucial consideration is the conduct and dangerousness of the suspect, not the classification of the crime that he or she has committed or is alleged to have committed. Under the Criminal Section of the Uniform Jury Instruction, 14-5173, the burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified. If the jury has a reasonable doubt about any aspect of the prosecutions claim that the shooting was unjustified, they must acquit the officer.

CONCLUSION

The question presented in this case is whether, when Deputy Peter Martinez fired at Ricky Esparza, he was acting under the reasonable fear that he or another would be killed or seriously injured by the actions of Esparza. Esparza admitted that he wanted both Carrillo and Martinez to believe that he was pointing a weapon in their direction, because he wanted to be shot. He intentionally stood in a firearm stance, and pointed a harmless piece of metal at the deputies in an attempt to make them believe it was a weapon. While pointing the object at officer Martinez he said several times that he was going to shoot him. Both deputies were convinced that it was a weapon. Deputy Carrillo responded by taking cover, and when Esparza did not respond to commands to drop the object, Martinez fired at him in self-defense. The evidence strongly suggests that Deputy Martinez was justified in his concern for himself, and for Deputy Carrillo, and reasonably believed that Esparza posed a deadly or serious threat of harm, and responded to that threat by firing his weapon. Deputy Martinez is therefore entitled to raise the defense of justifiable homicide by public officer. Based upon these facts there is no reasonable

likelihood of successful prosecution: therefore no charges will be filed against Deputy Martinez; the case will be closed.

Sincerely yours,



Reynaldo Montano
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Robert Warrick, BCSO Detective
John D'Amato, Attorney for Deputy Peter Martinez
Ricky Esparza