

February 6, 2018

To: Chief of Police, Michael Geier
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, NM 87102

APD case # 15-0069254
DA case # 2015-04210

RE: Prosecutorial review of the July 31, 2015,
car chase and fatal shooting of Rafael Molina,
involving APD Officers Cornel Heitzman and
Carlos Hernandez.

Dear Chief Geier:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of July 31, 2015 for potential prosecution. My role is to determine whether Officer Heitzman, and/or Officer Hernandez should be prosecuted for their actions involving this incident. I have reviewed all of the available evidence, including: police reports, witness statements, a visit to the scene, lapel videos, photos, lab reports and autopsy report. I conclude that it is not possible to prove, beyond a reasonable doubt, that the officers involved were not acting under the reasonable belief that Rafael Molina's actions posed a threat of death or great bodily harm to Officer Heitzman, Officer Hernandez, as well as to the public and other officers in general. No charges will be filed: the case will be closed. My decision does not limit nor address administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On July 31, 2015 at about 3:30 p.m. multiple APD Officers responded to a call from a concerned citizen, who indicated a Hispanic male had just grabbed a "fair skinned female," place her in a headlock and forced her into a black SUV. He described the Hispanic male as wearing a red baseball cap and a red shirt. According to the caller, the black SUV was leaving southbound on 8th Street at a high rate of speed from Robison Park near 8th and Central NW. Within six minutes APD Officer C. Heitzman located a black Lincoln Navigator traveling in the same direction, southbound on 8th Street where it intersects with Silver, driven by a Hispanic man, wearing a red cap, and redshirt, with a woman hunched down in the front seat. The driver was Rafael Molina.

Officer Heitzman followed the black SUV to the corner of 4th Street and Bridge Blvd. SW, where three additional officers arrived to assist him. Officer Heitzman initiated his emergency lights and siren. The black SUV then stopped after pausing in the second lane of Bridge Street. Over his PA system Officer Heitzman ordered the driver to "throw his keys out the window." Officer Heitzman could see that Molina was watching him in his driver's rearview mirror.

Instead of complying with the commands, Molina drove off. Lieutenant A. Sanchez authorized a "pursuit," based on the belief that a female, later identified as Jinee Barraza, was being abducted. While in pursuit near the area of Southern Blvd. and Jesus St. SW, Officer Heitzman observed Ms. Barraza stick her hand out the front passenger side window, and open the door from the outside as the vehicle was still in motion. She either jumped or was pushed out the passenger side door while the vehicle was still in motion. Officer Heitzman observed Barraza roll as if "she was just a log rolling in the street." Another officer stopped to assist Barraza.

The police would later interview Barraza. She was Molina's fiancé and mother of his two year old child. They were involved in a domestic dispute at Robison Park. Molina tried to force her into the vehicle by chocking her, and placing her in a headlock. She stated she was not kidnapped, but eventually got into the vehicle with Molina on her own to avoid a scene. She said that when Molina saw the police behind them he initially stopped, and then said, "fuck this, I'm going." Molina ignored her continued pleadings and reasoning with him to stop. She was afraid she was going to die. Molina locked the door with the child door lock override button, so she had to reach out and open the door from the outside. Barraza stated that she was in such fear that she jumped from the moving vehicle to get away from him. It was estimated that the SUV was traveling between 20 and 30 mph at the time of the jump.

After Barraza jumped out of the car, the chase continued as Molina drove through residential areas running stop signs and traffic lights. Due to public safety concerns, Lieutenant Sanchez authorized the use of the "Pursuit Immobilization Technique," also known as the PIT maneuver. As the black SUV turned onto southbound Edith, Officer Hernandez successfully administered the PIT maneuver, causing the SUV to spin 180 degrees into the northbound lane and up onto the east dirt sidewalk. Officer Hernandez came to a stop just south of the black SUV, facing the black SUV's rear bumper. The front part of Officer Heitzman's vehicle was northeast and at an angle, to the SUV's front engine and driver's door. Officer Heitzman was looking at him, "eyeball to eyeball."

Officer Heitzman saw Molina exit his SUV, gun in hand, and approach Officer Hernandez with his arm raised, pointing it at Officer Hernandez. Officer Heitzman barely had time to exit his vehicle, while simultaneously firing his weapon at Molina in protection of Officer Hernandez. He heard additional sounds of gunfire, and believed that Officer Hernandez may have been shot.

Officer Heitzman's lapel video shows that Molina immediately began to exit his vehicle after the PIT maneuver, one second later Officer Heitzman exited his vehicle, and fires his weapon. The lapel video obtained from Officer Hernandez, shows him placing his car in park following the PIT maneuver, and shouting, "show me your hands," while simultaneously exiting his vehicle. One second after that Officer Hernandez fired his weapon. After the shooting Officer Hernandez stated, "he pointed his gun at me, so I shot him."

Officer Lucero stopped his vehicle facing north near the front drivers side quarter panel/door of the black SUV. Officer Lucero saw Molina exit the black SUV, his back to Officer Lucero, but Officer Lucero could tell that Molina's arms were not at his sides. Lucero saw Molina run in the direction of

Officer Hernandez, and heard someone yell "gun." He then heard five to ten quick shots being fired coming from his left side, and also right in front of him. Officer Lucero was not able to tell how many guns were being fired. Officer Lucero quickly realized that he was in a cross fire situation and he ducked down to obtain protection behind the engine block. It was later observed that his radiator was shot and radiator fluid was leaking from his vehicle as a result of the gunfire. After a few seconds Officer Lucero realized that the gun fire had stopped. He then exited his vehicle and observed Molina on the ground, laying on his right side, with his right arm extended, and a large handgun on the ground about six inches away from his right hand.

Officers Heitzman and Lucero were the first to approach Molina after the shooting. Officer Heitzman kicked the gun out of reach of Molina. Officer Stuyvesant arrived at the scene after the shooting, but prior to officers approaching Molina who was already on the ground. He also saw the gun close to Molina's right hand. Officer Stuyvesant placed a chest shield on Molina and began chest compressions with the aid of Officer Lucero until rescue arrived. Molina died at the scene.

The autopsy on Molina revealed that the gunshot wound to the chest may have been a gunshot reentry wound of the wound to the left arm, which then passed through the rib, lung and heart, also indicating that it was the fatal shot. The body trajectory of the bullet passing through the left arm lined up with the trajectory of the bullet in the chest. The left arm would have been raised and extended to the left side of the body at the time the bullet struck the arm and traveled into the chest. During the autopsy, a golf ball size baggie of cocaine, and a smaller baggie of methamphetamine was collected from the rectum of Molina. In addition, Molina's blood results indicate alcohol, cocaine and marijuana usage.

An examination of the weapons and evidence collected was performed, and it is concluded that seven cartridges collected at the scene came from the gun fired by Officer Hernandez, and eleven of the cartridges collected came from the gun fired by Officer Heitzman. It was also concluded that the bullet collected at OMI from the chest cavity of Molina was from the gun identified as belonging to Officer Hernandez, and the two bullet fragments collected from Molina's right hip were from the gun identified as belonging to Officer Heitzman. The weapon collected near Molina was a fully functional, High Standard Brand, model Sport-King, 22 Long Rifle caliber semiautomatic pistol, loaded, and had not been fired at the scene.

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

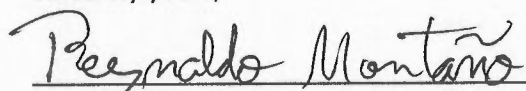
alleged to have committed. Under the Criminal Section of the Uniform Jury Instruction, 14-5173, the burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified. If the jury has a reasonable doubt about any aspect of the prosecutions claim that the shooting was unjustified, they must acquit the officer.

CONCLUSION

The question presented is whether, when the officers fired at Mr. Molina, they were acting under the reasonable fear that they, or others, would be killed or seriously injured by the actions of Rafael Molina. Officer Hernandez and Officer Heitzman were responding to the threat of deadly force or serious harm posed by Mr. Molina towards themselves, other officers, and the public in general, and were entitled to raise the defense of justifiable homicide by public officer. Up to the point of the PIT maneuver Mr. Molina demonstrated that he was willing to sacrifice himself or others, as demonstrated in the manner he was driving by running stop signs and traffic lights. In addition, officers observed what they believe to be a kidnapped female subject jumping, or being pushed out of a moving vehicle traveling 20 to 30 mph. It was reasonable for the officers to be concerned for themselves and for the public at large. Mr. Molina ignored commands by police even after a PIT maneuver; he then exited his vehicle carrying a handgun, moving in the direction of Officer Hernandez, while pointing the handgun at him. At least three officers independently observed the firearm close to Mr. Molina's extended right hand as he lay on the ground immediately after being shot, and prior to anyone approaching Mr. Molina.

Evidence from OMI indicated that the firearm was raised as Mr. Molina moved in the direction of Officer Hernandez just prior to shots being fired. Two eye witnesses corroborate statements provided by Officers Heitzman and Lucero indicating that Mr. Molina was running in the direction of Officer Hernandez when the shots began. The evidence strongly suggests that both Officer Heitzman and Officer Hernandez were at great risk to their own personal safety, and were justified in their concern for themselves, other officers and for the public at large, and they fired their weapons based upon those concerns. It would therefore not be possible to prove to a jury, beyond a reasonable doubt that the shooting was not justified. There is no reasonable likelihood of successful prosecution: therefore no charges will be filed against Officer Heitzman, or Officer Hernandez; the case will be closed.

Sincerely yours,



Reynaldo Montano
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Detective David Nix, Albuquerque Police Department
John D'Amato, Lawyer for Officers Heitzman & Hernandez
Rafael Molina Sr. & Nancy Iguado, parents of Rafael Molina