

May 28, 2019

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

Re: Prosecutorial Review of the November 5, 2017
shooting of Rodney Tenorio by Bernalillo County
Sheriff's Sergeant Jason Foster.

BCSO Case #17-726482; DA Case # 2018-01578-1

Dear Sheriff Gonzales:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the November 5, 2017 shooting of Rodney Tenorio by Bernalillo County Sheriff's Sergeant Jason Foster. After a review of all available evidence, including police reports, witness statements, officer belt recordings, photographs, and a visit to the scene of the shooting, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Sergeant Foster was not acting in the reasonable fear that Rodney Tenorio's actions posed a significant threat of death or great bodily harm to Jorge Martinez. Accordingly, criminal charges against Sergeant Foster for the shooting of Rodney Tenorio are not warranted and the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

RELEVANT FACTUAL BACKGROUND

On November 5, 2017, between 12:00 noon and 1:00 p.m., Sergeant Jason Foster heard over the radio that Deputies Tammy Sherfy and Rocky Williams were dispatched to the area of Vineyard Rd. and Edith Blvd. NE. Sergeant Foster surmised that the call concerned a domestic

situation, because the dispatch indicated that a woman, accompanied by a young child, had entered the M&A Corner Mart (Corner Mart) on the corner of Edith and Vineyard NE and was bleeding profusely from her face. Sergeant Foster learned that Deputy Williams was in the Paradise Hills area, which was quite a distance away from the incident, so Sergeant Foster decided to drive to the Corner Mart and act as back up for Deputy Sherfy until Deputy Williams arrived on scene.

While driving to the scene, Sergeant Foster heard over the radio that a male subject had returned to the scene and was yelling at the female victim, who was later identified as Vesta Harris. Within minutes, Sergeant Foster arrived at the Corner Mart, intending to make contact with the calling party or the female victim. At that point, Sergeant Harris heard a whistle as if someone was trying to get his attention. Sergeant Foster turned toward the whistle and the first thing he observed was a white pickup truck with the driver's side door nearly detached from the vehicle. Sergeant Foster also observed a GMC Yukon in the area, so he thought that the two vehicles had possibly crashed into each other. Sergeant Foster pulled up in front of the white pickup truck, turned on his emergency lights, engaged his belt recorder and stepped out of his patrol unit.

As soon as Sergeant Foster exited his vehicle, a female witness, later identified as Carol Otto, immediately yelled that there was an individual who hit them and who was stabbing her boyfriend. Ms. Otto pointed towards the Yukon, where Sergeant Foster observed a male in a blue hat, later identified as Jorge Martinez, and a male in all black, later identified as Rodney Tenorio. Mr. Martinez and Mr. Tenorio were fighting and Mr. Tenorio had blood on his face. Sergeant Foster ordered the two men to stop, but Sergeant Foster's commands were ignored. Sergeant Foster observed Mr. Tenorio striking Mr. Martinez in a downward motion. Meanwhile,

Ms. Otto is screaming “He’s stabbing him. He’s stabbing him”. Ms. Otto also informed Sergeant Foster that the man dressed in black had a knife. Sergeant Foster ordered Mr. Tenorio to drop the knife. Sergeant Foster repeated the order for Mr. Tenorio to drop the knife. Sergeant Foster stated that Mr. Tenorio did not acknowledge the officer and did not obey the officer’s commands. Mr. Tenorio was completely focused on Mr. Martinez. Sergeant Foster saw the knife in Mr. Tenorio’s hand, and he witnessed Mr. Tenorio stab Mr. Martinez two times. As Mr. Tenorio brought his hand up for another blow, Sergeant Foster fired a single shot from his service weapon, striking Mr. Tenorio in the chest. Sergeant Foster stated that he was about six feet away from Mr. Tenorio when he fired his weapon. Mr. Tenorio fell straight to the ground with his arms extended. Sergeant Foster observed a black knife with blood on it right next to Mr. Tenorio’s feet. Sergeant Foster kicked the knife away and placed handcuffs on Mr. Tenorio. Sergeant Foster stated that he shot Mr. Tenorio because he believed that the man with the knife, Mr. Tenorio, was trying to kill the man in the blue hat, Jorge Martinez.

Sergeant Foster then turned his attention towards Mr. Martinez. Mr. Martinez sustained several stab wounds during the fight. Mr. Martinez was compressing a stab wound on his shoulder. Sergeant Foster also observed what appeared to be another stab wound on the back of Mr. Martinez’s head.

Law enforcement officers interviewed numerous witnesses who were able to describe the events that led to the shooting of Rodney Tenorio. Detective Samuel Rodriguez interviewed Vesta Harris. Ms. Harris stated that Rodney Tenorio is the father of her infant daughter, Trinity Tenorio. Ms. Harris stated that she met up with Mr. Tenorio earlier in the day because Mr. Tenorio said he wanted to talk. Ms. Harris stated that when she picked up Mr. Tenorio that morning, he appeared to be under the influence of something. Ms. Harris informed Detective

Rodriguez that Mr. Tenorio is known to use methamphetamines. Ms. Harris also witnessed Mr. Tenorio drink two cups of vodka at her apartment on 4401 Montgomery Blvd. NE. Ms. Harris stated that when Mr. Tenorio drinks alcohol, he turns into a different person and gets “instantly angry”. When Ms. Harris told Mr. Tenorio that she needed to leave, he became angry and pulled her hair in a violent manner. Ms. Harris, intending to leave, put her children, seven-year-old Sydra Harris and eighteen-month-old Trinity Tenorio in her black Dodge SUV. Although Ms. Harris did not intend for Mr. Tenorio to leave with her, Mr. Tenorio opened the driver’s side door from the outside and tried to hit Ms. Harris. Ms. Harris fought back, but Mr. Tenorio pushed her into the passenger seat and sat in the driver’s seat. Mr. Tenorio started the vehicle and tried to drive off, despite Ms. Harris’ multiple attempts to turn off the ignition. Mr. Tenorio and Ms. Harris were fighting in the front seat while the two children were crying in the back seat of the vehicle.

Mr. Tenorio seized control of the vehicle, drove out of the apartment complex and sped westbound on Montgomery Blvd. Neither Sydra nor Trinity was secured in the back seat. Ms. Harris told Sydra to buckle her seatbelt and to fasten Trinity in her car seat. Ms. Harris tried to get control of the steering wheel at the same time she was screaming for help from other motorists. She told Sydra to call 911, which Sydra did using Ms. Harris’ cell phone. Sydra made contact with a police dispatcher, but was having trouble answering the dispatcher’s questions. Sydra handed the phone to Ms. Harris, at which time Mr. Tenorio either grabbed the phone or smacked it out of Ms. Harris’ hand.

Ms. Harris stated that at this point, she was physically exhausted and could no longer fight Mr. Tenorio so she pleaded with him to stop the car. She told Mr. Tenorio that the fight was her fault and she apologized for asking Sydra to call the police. Mr. Tenorio responded by

saying that he was going to kill Ms. Harris when he got out of jail. Mr. Tenorio also punched Ms. Harris in the face, causing Ms. Harris to bleed profusely. Mr. Tenorio eventually stopped the vehicle at the intersection of Edith Blvd. and Vineyard Rd., very near Mr. Tenorio's mother's house. Ms. Harris was able to stumble out of the vehicle. She yelled at Sydra to get out of the car and told Sydra to go into the Corner Mart and call 911 again.

Dominique Garcia, a customer at the Corner Mart, called 911 and reported that a woman walked into the store bleeding and crying, and that there was young child with her who was visibly terrified. Ms. Garcia stated that the injured woman was losing a lot of blood. Ms. Garcia also described the vehicle that Mr. Tenorio was in and informed the police dispatcher that Mr. Tenorio threatened her boyfriend who was outside the Corner Mart. The dispatcher instructed Ms. Garcia to lock the doors to the Corner Mart and to wait for officers to arrive.

Mr. Tenorio drove away from the Corner Mart but returned a short time later. Ms. Harris stated that when Mr. Tenorio returned, he was bleeding from his head. She thought that he may have cut himself with a folding knife that he usually carries. Mr. Tenorio drove away a second time eastbound on Vineyard Rd. Ms. Harris stated that Mr. Tenorio returned again, but this time the entire driver's side of her black SUV was damaged as if Mr. Tenorio scraped the SUV against another vehicle. While Ms. Harris and Sydra were hiding at the back of the store, Mr. Tenorio was outside the store brandishing a knife.

Dominique Garcia provided a statement that she was inside the Corner Mart when a woman with a bloody face entered. Ms. Garcia stated that the injured woman said that her boyfriend was drunk and that he beat her while they were driving. Ms. Garcia also stated that the little girl was terrified and visibly shaking. According to Ms. Garcia, Ms. Harris stated that her eighteen-month-old child was still in the vehicle with her boyfriend. Ms. Garcia saw Mr.

Tenorio “driving crazy” on Edith Blvd. She stated that Mr. Tenorio drove away and returned numerous times. The second time he returned, the SUV was “all banged up”.

Anthony Gonzales told investigators that on the day of the shooting, he and his girlfriend Dominique Garcia were at the Corner Mart. Mr. Gonzales was in his vehicle waiting for his girlfriend who was in the store. Mr. Gonzales saw Mr. Tenorio try to enter the store, but the doors were locked. When Mr. Tenorio could not get in the store, he turned his attention towards Mr. Gonzales who was just sitting in his vehicle waiting for his girlfriend. Mr. Tenorio pulled out his knife and went straight to Mr. Gonzales who was sitting in the driver’s seat of his vehicle with the window down. Mr. Tenorio cursed at Mr. Gonzales and stated “That’s what I thought”. Mr. Gonzales stated that the folding knife was closed, but that Mr. Tenorio approached him in a threatening manner. Mr. Gonzales stated that Mr. Tenorio drove away, but returned and left several times.

Other witnesses described Mr. Tenorio’s conduct while he was driving away from the Corner Mart. First, Madeline Tenorio, Robert Tenorio’s mother, informed officers that she lives at 525 Vineyard Rd. NE, and that Rodney lives with her. Ms. Tenorio stated that Rodney recently moved in with her after breaking up with his girlfriend, Vesta Harris, with whom Rodney had lived with for three years. On November 5, 2017, at approximately 12:30 p.m., Rodney arrived at her house, dropped Trinity off and said he would be back later. Mrs. Tenorio stated that Rodney appeared to be in a rush and that all he said was that he was dropping off the baby and that he would be back later.

Detective Tod Babcock, with the Albuquerque Police Department, interviewed Carol Otto. Ms. Otto stated that she and Jorge Martinez had just arrived at 425 Vineyard Rd. NE to visit their friend Matthew Sommers, when they saw a black SUV driving fast down Vineyard

Rd. Jorge and Ms. Otto were in Jorge's white Chevy pickup truck. Ms. Otto said that she saw a man, later identified as Rodney Tenorio, get out of the black SUV and approach and yell at Matthew Sommers. Ms. Otto saw that Mr. Tenorio had a knife. Ms. Otto later described the knife as a folding knife with a blade about three or four inches long. At this point, Jorge got out of the white pickup truck and said "What's going on?" Ms. Otto stated that Mr. Tenorio immediately went after Jorge. Mr. Tenorio lunged at Jorge and stabbed him in the arm. Jorge backed up into his truck as Mr. Tenorio continued stabbing at Jorge. Ms. Otto saw Jorge grab a pole or a pipe from his truck and try to defend himself against Mr. Tenorio's attack. Jorge hit Mr. Tenorio with the pipe and Mr. Tenorio retreated to the black SUV and left.

Ms. Otto stated that two of Matthew Sommers' roommates, Juan Alderete and Craig Hopkins, came out of the house at 425 Vineyard to see what was going on. As the two roommates were coming out of the house, Matthew Sommers went back inside the house to get a first-aid kit for Jorge's stab wounds. Ms. Otto was about to get back into the white pickup truck when she heard the black SUV come screeching back towards them. Ms. Otto said it appeared the driver of the black SUV was trying to hit Jorge with the vehicle. The black SUV narrowly missed Jorge and hit the passenger side door of Jorge's truck. After the impact, the door of the white pickup truck was almost completely knocked off the truck. The black SUV went around and then hit Mr. Sommers' vehicle, a GMC Yukon. Ms. Otto stated that the black SUV left and returned five or six times. After the black SUV hit the Yukon, Mr. Tenorio drove the SUV directly into Craig Hopkins, who was just standing by the gate to the property. The SUV plowed right into Mr. Hopkins crushing him against a chain-link fence. Mr. Tenorio did not get out of the vehicle after hitting Mr. Hopkins, but backed up and took off down the street. When the black SUV returned for approximately the fourth time, it came directly towards Ms. Otto and her

friends. Mr. Sommers and Jorge threw rocks at the black SUV, trying to get Mr. Tenorio to stop his rampage. Mr. Tenorio drove the SUV into a nearby ditch, rendering it immobile, exited the vehicle and again went after Jorge with the knife. Ms. Otto stated that it was at this point that she saw the police officer, Sergeant Foster, pull up. Ms. Otto immediately told Sergeant Foster that Mr. Tenorio was attacking her boyfriend, that he was stabbing Jorge with a knife. Ms. Otto heard Sergeant Foster command Mr. Tenorio to drop the knife, but Mr. Tenorio refused to obey the commands. Ms. Otto stated that the officer said “Drop your weapon” more than once. Mr. Tenorio looked directly at the officer, but did not stop his assault. Ms. Otto stated that after Sergeant Foster’s commands were ignored, Sergeant Foster shot Mr. Tenorio. Ms. Otto stated that she heard a single gunshot and that Sergeant Foster fired his weapon as Mr. Tenorio was actively stabbing Jorge Martinez.

Matthew Sommers provided a statement to police that was consistent with Ms. Otto’s version of events. Mr. Sommers stated that he went outside to take something to a neighbor and he saw a guy arguing with his girlfriend. Mr. Sommers saw the girl get out of the black SUV and walk away, and then he saw the guy get in a black SUV and “drive crazy” down the street. The driver of the car, later identified as Rodney Tenorio, pulled up by Mr. Sommers and started yelling at him for no particular reason. Mr. Sommers stated that Mr. Tenorio came up to him with a knife and said “Are you backing her?” Mr. Sommers had not spoken a word to Mr. Tenorio, so Mr. Sommers was confused as to why he was the target of Mr. Tenorio’s anger. At this point, Jorge Martinez, who just arrived, got out of his white truck and asked what was going on. Mr. Sommers stated that Mr. Tenorio almost immediately went after Jorge with the knife. Ms. Tenorio just started stabbing Jorge and Jorge tried to fight back with a pipe that he had taken out of his truck. Mr. Sommers stated that Carol Otto was screaming the entire time that Mr.

Tenorio was stabbing Jorge. Mr. Tenorio got back into the black SUV and left. Mr. Sommers quickly went inside his house for a first-aid kit to help Jorge with his stab wounds. When he was returning with the first-aid kit, Mr. Sommers heard screaming and he saw that the black SUV had returned. He observed the black SUV first hit his GMC Yukon and then he observed the black SUV run over his roommate Craig Hopkins. Mr. Sommers stated that Mr. Tenorio was using the black SUV as a weapon. Mr. Sommers, Jorge and Juan Alderete threw rocks at the black SUV in an attempt to stop Mr. Tenorio. Juan Alderete picked up a bat and hit the driver's side window of the black SUV, causing Mr. Tenorio to drive the SUV into the ditch. Mr. Tenorio got out of the SUV and immediately continued his attack against Jorge Martinez with the knife. Mr. Sommers stated that Mr. Tenorio was swinging on Jorge when he saw the officer approach. The officer ordered Mr. Tenorio to stop his attack. When Mr. Tenorio failed to heed the officer's commands, the officer shot Mr. Tenorio. Mr. Sommers heard one gunshot. The officer was about three feet away from Mr. Tenorio when the officer fired his weapon.

Detective Roger Garcia conducted a recorded interview with Jorge Martinez. Mr. Martinez stated that he and his girlfriend drove to 425 Vineyard Rd. NE to hang out with his friend Matthew Sommers. He had just pulled up in his white Chevy pickup truck when he saw a black SUV driving at a high rate of speed in their direction. Mr. Martinez thought the vehicle was going to hit him, but the vehicle suddenly stopped. Mr. Martinez got out of his vehicle and said "What's up?" to the driver of the SUV. The driver of the SUV, later identified as Rodney Tenorio, exited his vehicle, pulled out a knife and immediately went after Mr. Martinez. Mr. Tenorio stabbed Mr. Martinez in the arm, causing Mr. Martinez to retreat into his vehicle. Mr. Martinez grabbed a club, a steering wheel locking device, from inside his truck and tried to defend himself against Mr. Tenorio's attack. Mr. Martinez was also able to kick Mr. Tenorio in

the chest, creating some distance between the two men. Mr. Martinez was able to get out of his truck and hit Mr. Tenorio in the head with the club. Mr. Martinez stated that Mr. Tenorio got back into the black SUV and drove away. Mr. Tenorio returned in a short amount of time and drove directly at Jorge and his girlfriend who were still standing by the white pickup truck. Mr. Tenorio drove the black SUV into the white pickup truck and nearly knocked the passenger side door off the truck. Mr. Martinez stated that Mr. Tenorio drove off after hitting the white pickup truck. While Mr. Tenorio was gone, Mr. Martinez tended to his stab wounds by tying his shirt around the wound and applying pressure to stop the bleeding.

Mr. Tenorio returned in the black SUV and drove directly into Craig Hopkins who was just standing by the gate to the property. Mr. Tenorio drove off again and tried to turn around, but drove right into the ditch. Mr. Martinez and Mr. Tenorio resumed their fight. Mr. Martinez stated that Mr. Tenorio pulled out the knife again. Mr. Martinez slipped and fell to the ground by the ditch, at which point Mr. Tenorio attempted to stab Mr. Martinez while he was down. Mr. Martinez stated that this was the moment when he heard the deputy approach and give commands for Mr. Tenorio to stop. Mr. Martinez heard a single gunshot. Mr. Martinez stated that had the deputy not fired his weapon, Mr. Tenorio would have stabbed him while he was on the ground. Mr. Martinez stated that he believed the deputy saved his life.

Juan Alderete provided a statement to law enforcement officers on the day of the incident that was entirely consistent with other witnesses on the scene. Mr. Alderete stated that he was awakened to the sound of yelling outside his house. Mr. Alderete went outside to see what was going on, and the first thing he saw was a black SUV in the front of the house and the driver of the SUV arguing with the driver of the white truck who had a shirt wrapped around his arm as if he was injured. Mr. Alderete also saw his roommate Matthew Sommers standing near the guy in

the white truck. Mr. Alderete saw that the man in the black SUV, later identified as Rodney Tenorio, was armed with a knife. Mr. Alderete described the knife as a pocketknife with a black handle. Mr. Alderete saw Matthew Sommers, the guy in the white truck and Mr. Tenorio begin to fight. Mr. Tenorio got back into the black SUV and fled westbound on Vineyard Rd. toward Edith Blvd. The black SUV returned a few seconds later and sideswiped the white truck, made a U-turn and sideswiped Matthew Sommers' GMC Yukon, and then crashed straight into Craig Hopkins and through a front gate. The impact sent Mr. Hopkins flying through the front gate and into the front yard of the property. Mr. Alderete stated that he, Matthew and the guy in the white truck began to throw bricks and other items at the black SUV in an attempt to get him to stop. Mr. Alderete stated that Mr. Tenorio left again but returned and drove past the 425 Vineyard property and crashed into a ditch on the east side of the property. Mr. Alderete started to approach Mr. Tenorio when Matthew Sommers' Pit Bull dog bit Mr. Alderete on his left calf. Mr. Sommers was able to free Mr. Alderete from the dog's grasp, but the dog remained very agitated. At this time, Mr. Alderete noticed Craig Hopkins still laying on his back. Mr. Alderete ran inside the house to get some water for Mr. Hopkins. As he was on his way back to Mr. Hopkins, Mr. Alderete heard a single gunshot coming from outside.

Craig Hopkins, who was hit by the black SUV, was interviewed at the hospital. Mr. Hopkins stated that he could not provide any helpful information. He stated that he lives with Matthew Sommers and Juan Alderete at 425 Vineyard Rd. NE, that he went outside to close the gate to the property and got hit by a car. He heard the vehicle, but never saw it coming. He stated that after the vehicle hit him, he was dragged underneath the vehicle.