

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

March 11, 2020

U.S. Marshal Sonya K. Chavez
United States Courthouse
333 Lomas Blvd., NW, Suite 180
Albuquerque, NM 87102

Prosecutorial review of June 7, 2018, shooting of Wes Robert Allen by Bernalillo County Detectives John Barricklow, Lorenzo Mora, David Booth, Luke Edwards, Charles Lill and United States Marshals Todd White and Vincent Gambone.
BCSO # 18-662759; DA Case# 2018-04294-1

Dear Sheriff Gonzales and United States Marshall Chavez:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting death of Wes Robert Allen occurring on June 7, 2018, for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and autopsy reports, surveillance video, lapel video, photographs, ballistic analysis, a review of the evidence with case agent Nick Marrujo, and a visit to the scene, I conclude that Bernalillo County Detectives John Barricklow, Lorenzo Mora, David Booth, Luke Edwards, Charles Lill and United States Marshals Todd White and Vincent Gambone were acting under a reasonable belief of death or great bodily harm to themselves or others as a result of Allen's actions. No charges will be filed. The case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

Statement of Facts

In the late evening hours of June 6, 2018, detectives with the Fugitive Apprehension and Surveillance Team comprised of Bernalillo County Detectives and United States Marshals were attempting to arrest Wes Allen for probation violations and a string of armed robberies committed in the Farmington and Albuquerque areas. Based on information received from a confidential source, detectives learned that Wes Allen would be present at room #108 at the Motel 6 located on 1000 Avenida Cesar Chavez in the Southeast section of Albuquerque. Shortly after midnight Wes Allen along with a female companion Nikita Uribe drove into the parking lot of the Motel 6, and backed into a parking space in front of room #108. Both Allen and Nikita, got out of his Toyota Solara, and knocked on room #108. As Allen was knocking on room #108, BCSO detectives and U.S. marshals began blocking in his vehicle to prevent escape. Nikita Uribe ran south away from Allen's car while Allen ran to his car. Allen was able to get back in his car

and began ramming police vehicles. The blocking effort by police was unsuccessful and through repeated ramming of police cars Allen able to re-direct his car to a gap south (right) of the police line. As Allen accelerated towards the gap Detectives John Barricklow, and Charles Lill, U.S. Marshal Vincent Gambone and Probation Officer Emily Edinger approached the gap on foot. With no cover and Allen accelerating towards the four officers, Detective Barricklow fired three shots into the windshield of Wes Allens's car. (A review of the Office of the Medial Investigator's report suggests that at least one of these shots struck Wes Allen.) When asked about why he fired Detective Barricklow said,

"I'm feeling that he'd put myself and task force member in imminent immediate uh, involving bodily harm and death cause...he started going away from me, I believe that he was going to hit uh, Gambone and Edinger uh, and the only thing I could to try to stop him was try to uh, basically shoot him to stop his actions."

As Barricklow fired his shots Wes Allen collided with another car in the parking lot and drove his car up onto a curb causing the car to become high centered.



Wes Allen's car high centered on curb

As officers shouted commands for Allen to surrender Detective Barricklow ran behind Allen's car and took up a position behind and to the left of Allen's car. Ignoring commands to surrender Allen then produced a handgun from inside his car and fired two shots in the direction of Barricklow and other officers. Barricklow and six other officers returned fire, killing him. Canine Officer Sean Morper arrived on scene just as officers were returning fire. His dash cam audio of the event captured the barrage of shots. (Due to the distance, angle, lighting and other obstructions very little can be seen on the video. This was the only audio or video taken of the event.) Once it was determined Allen was no longer a threat, paramedics were called to the

scene. Wes Allen was pronounced dead later that morning. An autopsy determined that he died of multiple gunshot wounds. A toxicological report dated November 26, 2018, determined that Wes Allen had significant amounts of methamphetamine in his system.

When asked why he fired a second time Barricklow said:

“I can see down the pistol and I’m at that point I’m in fear that he’s going to shoot me or one of my task force members, so at that time with my rifle I shoot at the vehicle.... and shoot my rifle until the target and the pistol are out of sight”.

In the aftermath of the shooting an exhaustive canvass of the motel was conducted to find any witnesses to the shooting. Although many hotel guests heard shots being fired no one was an eyewitness to the exchange of gunfire. However, several guests did witness Wes Allen ramming the police vehicles.

Leroy Bentacu the Motel 6 clerk on duty that night started his shift at 11:30. Shortly after midnight he went outside to smoke a cigarette. Bentacu was about 20 yards north of where Wes Allen had backed his car in. While outside he heard shouting but was unable to distinguish what was being said. When he looked to where the commotion was coming from he saw a “white car ramming the cops”. Shortly after this he turned to go inside the office when he heard “a lot of shots being fired.”

Ricardo Martinez was staying in room #109. Mr Martinez said he saw a “white car come south through the parking lot and then was blocked in by the truck. He said he saw “the white car hit the truck”. “The car looked like it was trying to get away”. He said he heard 125 rounds 115 from rifles and 15 from 9mm guns.

Ritesh Mathew was staying in room #112. He arrived there at about 12:30. Ritesh Mathew stated he had just unlocked his room and was heading back to help his wife bring their children into their motel room when he observed a black truck drive around the corner quickly. Mr. Mathew observed another black police canine vehicle come around the corner quickly, and he observed police lights. Mr. Mathew said he gathered his wife and children and quickly headed towards their room. Mr. Mathew heard the officers giving commands for someone to stop and show their hands. Mr. Mathew observed a white vehicle ramming the police vehicles by going forward and backwards as the officers continued giving commands for the driver to stop and show his hands. He said after he got his wife and children inside the room he heard four or five gunshots followed by several more gunshots a few seconds later.

Grant Exton was staying in room #202. He said he heard cops yelling saying, “stop put your hands up” then a lot of movement, then 4 or 5 shots from one guy, then nothing, then 50 shots all at once.

Matthew Freyre a crime scene investigator assisted by Detective Carroll with the Bernalillo County Sheriffs Department processed the scene for evidence. Inside Wes Allen's car Freyre found a 9mm handgun on the front passenger seat. The handgun contained one bullet in the chamber. An NCIC inquiry identified this gun as having been stolen on June 1, 2018 from Jorge Aragon in Farmington, N.M. Also found in Wes Allen's car were two spent casings. One was found under the drivers seat the other on the dashboard of the Toyota Solara on the driver's side. On March 20, 2019, Steve Guerra, a forensic firearms expert with the Department of Public Safety determined that the casings found inside Wes's car had been fired from the 9mm handgun found on the passenger seat. In an interview with Nikita Uribe later that same day Nikita told Detective Marrujo that about 20 minutes before they pulled into the Motel 6, Allen asked Nikita to get his handgun from under the passenger seat. Nikita found the gun and handed it to Allen. Nikita described the handgun as being black with chrome.



Photo of Wes Allen's handgun on passenger seat

In the center console Detective Freyre found a second handgun. Its magazine contained five 9mm bullets. (This handgun was inoperable after being struck by projectiles during the exchange.) On the backseat floorboard Freyre found an AR-15 assault rifle. Its chamber contained 23 rounds of LC ammunition. Also in the backseat was a backpack containing unused syringes and a plastic bag containing methamphetamine. In the trunk of Wes Allens's car was found a Safariland body armor vest, a box containing 38 cell phones, and related items taken in the Verizon store robbery just hours before the shooting. Also found on the drivers side floorboard were 17 grams of methamphetamine. In the drivers side door Freyre also found 40 grams of a green leafy substance.

As part of Freyre's crime scene investigation he documented the damage done to each of the police vehicles and to Wes Allen's Toyota Solara. An inspection of the photos showing the damage supports the eyewitness accounts of Allen using his car to ram the law enforcement vehicles.



Photos of Minivan and Tundra showing damage to front bumpers

Seven Detectives and/or Marshals discharged their weapons at Wes Allen on June 7, 2018. Todd White, U.S. Marshal, Vincent Gambone, U.S. Marshal, David Booth, Bernalillo County Sheriffs Detective, Lorenzo Mora, Bernalillo County Sheriffs Detective, Luke Edwards, Bernalillo County Sheriffs Detective, Charles Lill, Bernalillo County Sheriffs Detective and John Barricklow, Bernalillo County Sheriffs Detective. Of the seven Detectives and/or Marshals Lorenzo Mora, John Barricklow and Todd White gave statements.

Detective Mora was surveilling the scene from afar when Wes Allen pulled into the Motel 6 parking lot. Once Allen exited his vehicle and was identified, Mora drove to the Motel to assist with the arrest. He arrived in time to see Wes Allen ramming the U.S. Marshals' mini van and the Tundra driven by U.S. Marshal John Roberson and Bernalillo County Sheriff's Detective Luke Edwards respectively. Mora positioned his truck in between the minivan and the Tundra to prevent Allen from squeezing between the two. When Allen repositioned his car to allow him to drive to the right of the Tundra, Detective Mora left his vehicle and took up a position to the left and rear of Wes Allen's car. As he did so he heard one shot being fired. From his position to the left and rear he saw Wes Allen fire two shots in his direction from a handgun while still inside his drivers seat. Mora said he responded by firing from 8 to 10 rounds at Allen. When asked why he engaged him Detective Mora stated;

“Because I felt in fear for my life and I felt a fear for the life of the detectives and marshals that were with me on that day”.

U.S. Marshal Todd White was in a minivan being driven by U.S. Marshal Chris Roberson. White and Roberson arrived in time to see Wes Allen ram the Tundra truck, driven by Edwards. Roberson attempted to pin Allen in by closing the space to the right of the Tundra. As Roberson did this Allen was able to reposition his car and drive to the right of the Tundra. As Allen was

driving to the right of the Tundra, White got out of the Minivan and ran around the back of the Tundra. In that instant he heard three shots. He next saw Allens's car high centered on the curb. He was asked by Detective Marrujo what happened next.

"I did, well we were hollering, multiple people were hollering, let's see your hands, let's see your hands, and I remember somebody going don't do it man, let's see your hands, empty hands, and uh, I just stayed focused there, I could see like from this position I could see like his head, part of the steering wheel, it was like right between the frame and that, that seat, so I had a pretty good shot, I mean it's not as clear as if I was looking over him obviously but I had a pretty good visual and he came up with some type of object in his hand and at the same time I saw the object, I'm thinking is that it, that looks like a gun to me and I hear, gun and I hear shots..... and I fired. ...So I heard gun, and I heard the pop."

Detective Marrujo then asked: "Okay. So at that point did you believe that someone or you were about to be shot?" U.S. Marshal White answered: "Absolutely".

Legal Analysis

Detective John Barrickclow, Deputy U.S. Marshal Todd White, Deputy U.S. Marshal Vincent Gambone, Detective David Booth, Detective Lorenzo Mora, Detective Luke Edwards and Detective Charles Lill, were all in the process of arresting Wes Allen who had just hours before committed an armed robbery at a Verizon cell phone store. This would allow the officers to raise the defense of justifiable homicide by a public officer, NMSA 1978 Section 30-2-6(A)(2). 30-2-6(A)(2) allows a peace officer to use deadly force when committed in overcoming actual resistance to the execution of a legal process or other legal duty.

Under New Mexico law an officer need not prove that the suspect posed a threat of death or great bodily harm to another, he need only offer evidence that raises the possibility. The burden then falls on the prosecution to prove beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was justified, they must acquit the officer. The reasonableness of an individual officer's actions is an objective analysis evaluated from the perspective of the officer at the time of the incident and is necessarily a factual inquiry. State v. Mantelli, 2002 NMCA-033. 131 N.M. 692.

Conclusion

There is substantial evidence to support the conclusion that the officers who fired at Wes Allen did so because of a reasonable belief of death or great bodily harm as a result of Wes Allen's actions.

The threat of death or great bodily harm to the officers can be broken down into two segments. The first segment, occurred when Wes Allen chose to ram police vehicles, then accelerated toward Detectives and/or Marshals Barricklow, Lill, Edinger, and Gambone. The second segment occurred when Wes Allen drew his gun and began firing at officers when his car became incapacitated.

First Segment

Once Wes Allen felt he had enough space to squeeze his car to the right of the police line of cars he accelerated his car towards that gap. However, four detectives and/or marshals (Barricklow, Lill, Edinger and Gambone) were attempting to fill the gap on foot. This act of accelerating his car towards the detectives and/or marshals necessarily placed the lives of all four in danger. With no cover and no vehicle to protect them from the impact, Detective Barricklow, fired into the windshield of Wes Allen's car. Detective Barricklow fearing for his own life as well as the lives of the other three officers, felt his only recourse to stop the threat was to shoot at Wes Allen. A review of the physical evidence found at the scene supports this version of events. Detective Barricklow in his statement said he fired three shots into the windshield of Wes Allen's car. Photographs taken at the scene shows at least three bullet holes in the windshield of Wes Allen's car. The Office of the Medical Investigator documented one bullet entering the right side of Wes Allen's face and lodging in the left side of his neck. The trajectory being right to left, front to back and downward suggests this was one of the bullets fired by Barricklow. The actions of Wes Allen would cause any reasonable person to fear for ones own safety as well as other in close proximity. Detective Barricklow was reasonable in his decision to use deadly force.



Windshield showing bullet holes fired by Barricklow