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March 28, 2019

Mr. Marco Serna
First Judicial District Attorney
327 Sandoval St.
Santa Fe, NM 87501

In Re: Officer Involved Shooting of Anthony Benavidez / NMSP
Incident #2017-16653

Dear Mr. Serna:

Per your request, the New Mexico District Attorneys Association (NMDAA) recently convened an Officer Involved Shooting Panel consisting of 9th Judicial District Attorney Andrea Reeb, 2nd Judicial District Attorney Raul Torrez, and 4th Judicial District Attorney Richard Flores, to examine whether or not charges should be brought against Santa Fe Police Department (SFPD) Officers Jeramie Bisagna and Luke Wakefield for the killing of Anthony Benavidez on July 19, 2017. What follows is a summary of our process and our findings.

Prior to convening the panel, we received and examined the entire case file as presented by New Mexico State Police (NMSP) Agent Ryan Kuehl which included, among other things, body worn video footage from the date of the incident, 911 and dispatch calls, photographs, prepared diagrams, both audio and written witness statements, and lab/autopsy reports. After independently evaluating those materials, the panel then met with Agent Kuehl and other NMSP Officers for a lengthy discussion surrounding the facts leading up to the incident and a careful examination of the physical evidence recovered at the scene. Based upon this exhaustive review, the panel concluded that SFPD Officers Bisagna and Wakefield should not be criminally charged for their actions on July 19, 2017.

In order to file criminal charges against Officers Bisagna and Wakefield, the State would have to prove beyond a reasonable doubt that they were not acting under the reasonable belief that Anthony Benavidez's actions posed a threat of death or great bodily harm to themselves, other

officers or the general public. To evaluate whether or not their belief was reasonable under the circumstances, the panel carefully considered the unique circumstances leading up to the fatal shooting and how those facts would likely be interpreted by a jury.

FACTUAL BASIS

From the description of Mr. Benavidez's behavior in the days and hours before the shooting, and the history provided by some of his family members, it is apparent that he was suffering from schizophrenia and mental illness at the time of his death. Indeed, the day before his fatal encounter with police, Mr. Benavidez had been transported to St. Vincent's Hospital for a psychiatric evaluation following his eviction from his unit at the Tuscany Apartment Complex. After being released from the hospital he returned to the complex that evening and broke back into the unit but was gone by the time SFPD Officers arrived at the scene. However, he once again returned to the unit the following day and it was that event which ultimately led to the SWAT standoff involving Officers Bisagna and Wakefield.

In an attempt to get him to exit the apartment without resorting to force, SFPD Officers asked Mr. Benavidez's case manager - Juan Valdez of the Santa Fe Community Guidance Center - to contact Mr. Benavidez at the front door and ask him to surrender. Unfortunately, this attempt to de-escalate the situation failed and Mr. Benavidez attacked Mr. Valdez, stabbing him in the torso with a sharp-edged weapon. It was in direct response to that act of violence that SFPD requested the assistance of their Special Weapons and Tactics (SWAT) Unit, which included Officers Bisagna and Wakefield.

SFPD repeatedly tried to make contact with Mr. Benavidez following the attack on Mr. Valdez but Mr. Benavidez continued to resist their calls to surrender. Instead, his erratic and potentially dangerous behavior increased, culminating in Mr. Benavidez throwing various chemicals and homemade explosive devices from the apartment. Eventually the decision was made to have the SWAT Unit break a large, bedroom window in order to increase their visibility of Mr. Benavidez and to help sound travel more effectively inside the apartment as they intended to continue negotiating with him.

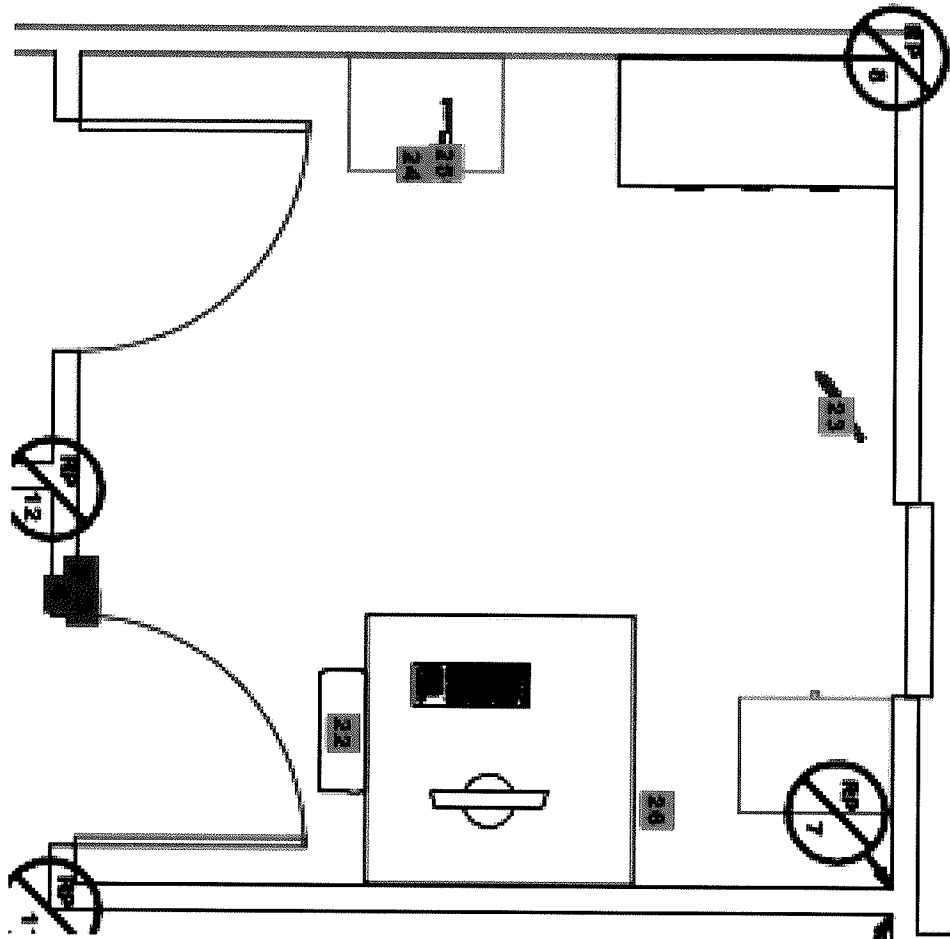
After initiating the planned "break-n-rake" of the window, Mr. Benavidez moved to the threshold of the bedroom and, according to Officer Bisagna, "[t]he suspect was wearing dark clothes and his arms were flexed straight down with his hands holding a silver object." He went on to say that he couldn't immediately identify the silver object but indicated that Mr. Benavidez assumed what he interpreted to be a "low ready

shooting position.” At that point both he and Officer Wakefield identified themselves as police officers and issued commands for Mr. Benavidez to “show me your hands.”

Rather than complying with the officers’ commands to show his hands, Mr. Benavidez instead raised his arms up while still holding onto the silver object and, believing Mr. Benavidez posed a threat of death or great bodily harm, Officer Bisagna discharged his .40 caliber Glock pistol. However, according to multiple witness accounts, Mr. Benavidez was not immediately incapacitated but, rather than retreating into the residence, he instead rushed towards the officers, beginning to close a distance of approximately 12 ft. from the threshold of the bedroom door to the area of the broken window.



A view from the door of the bedroom facing the broken window. According to NMSP Agents it was approximately 10 - 12 ft. from the threshold of the door to the window.



NMSP Diagram of the bedroom. #23 indicates the position of the knife in relation to the bedroom window.

While he did not immediately discharge his weapon, Officer Wakefield, who was assigned to cover the “brake-n-rake” team with his rifle, also witnessed Mr. Benavidez gripping an unidentified object in his hands and indicated that he started to sprint toward the officers. Eventually Officer Wakefield realized that the unidentified object in Mr. Benavidez’s hands was not a gun, but rather a large butcher knife. Although Officer Bisagna was continuously firing at Mr. Benavidez, it was also apparent that he could not accurately fire his pistol and maintain control of the ballistic shield he was carrying at the time. Consequently, Officer Wakefield fired a single .223 caliber rifle round and Mr. Benavidez finally fell just inside the area of the broken window.¹

¹ NMSP agents recovered fifteen .40 caliber cartridges and one .223 caliber cartridge from the scene while the autopsy of Mr. Benavidez indicates that he was actually struck four times. Although it is somewhat unusual for officers to fire sixteen times to end a perceived threat from an armed suspect, it appears that Officer Bisagna was unable to accurately fire his weapon while simultaneously holding onto the ballistic shield he was carrying at the time. Nevertheless, officers are routinely trained to discharge their weapons until the perceived threat has been eliminated and, under the rapidly evolving, dynamic



The presence of the knife and blood spatter at this location corroborates the proximity of Mr. Benavidez to the officers.



circumstances of this encounter, the number of shots fired can be explained and has no legal relevance to the question of whether the officers' perception of the threat presented was reasonable.

LEGAL ANALYSIS

Pursuant to NMSA 1978, Section 30-2-6, Officers Bisagna and Wakefield are entitled to raise the defense of justifiable homicide by public officer, which allows a peace officer to use deadly physical force when he believes he or another is threatened with serious harm or deadly force. Under New Mexico law, the 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 and that a reasonable person in the same circumstances would not have believed that Anthony Benavidez posed a threat of death or great bodily harm to the officers at the window. Moreover, as courts in other jurisdictions have recently concluded, the availability of other less-than lethal tools at the scene of the event or the tactical judgment which may in itself have placed the officers in a position of danger, are not legally relevant to the question of whether these officers' perception of the threat was reasonable at the time they pulled the trigger.²

CONCLUSION

There is an insufficient factual basis to support charging SFPD Officers Bisagna and Wakefield with criminal violations in connection with the fatal shooting of Anthony Benavidez on July 19, 2017. Mr. Benavidez's demonstrated history of mental illness, the stabbing of his own caseworker with a sharp-edged weapon, his continued erratic and potential dangerous behavior, and his decision to advance towards officers with a knife in his hands despite repeated commands to surrender, prevent the State from proving -

² In the trial of STATE V. KEITH SANDY, D-202-CR-2015-00104 and STATE V. DOMINIQUE PEREZ, D-202-CR-2015-00105, the district court issued the following jury instructions in connection with the instruction for justifiable homicide by public officer:

Instruction No. 16, was as follows:


The availability of less-lethal tools at the scene is not relevant to your determination of whether the elements of justifiable homicide by a public officer or employee have been met.

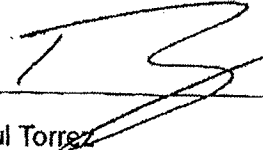
Instruction No. 18, was as follows:

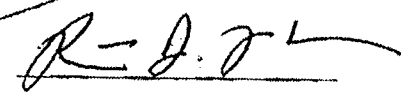
Whether the actions of the person being defended played a role in creating the need to use force is not relevant to your determination of whether the elements of justifiable homicide by a police officer and/or the elements of justifiable homicide in defense of another have been met.

beyond a reasonable doubt - that the shooting in this case was not predicated on a reasonable fear on the part of the officers. Of course this decision does not foreclose either administrative or civil remedies which do not require the extraordinary burden imposed upon criminal cases, however the panel is unanimous in its recommendation that a criminal prosecution under these circumstances is not warranted.

Respectfully Yours,


Andrea Reeb
9th Judicial District Attorney


Raul Torres
2nd Judicial District Attorney


Richard Flores
4th Judicial District Attorney