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August 15, 2022

Dear District Attorney Carmack-Altewies,

I have finished my review of *In the Matter of Edward Daniel Santana*. This case involves an officer involved shooting of Mr. Santana by Patrick Ficke, a Deputy with the Santa Fe County Sheriff's that occurred on July 7, 2021, at No. 1 Entrada Capulin, located in the community of Tesuque, in Santa Fe County. I reviewed the following information to arrive at my opinion:

1. Lapel cam and video from Officer Anthony Curry
2. Video from Donald Romero
3. Lapel cam/audio and video from Deputy Ian Burr
4. Lapel cam and video from Jonathon War
5. Lapel cam and video from Patrick Ficke
6. Drone photos
7. Photos off all law enforcement and firearms taken by Nathaniel Garcia
8. Crime Scene photos taken by Ryan Boone
9. Photos of deceased victim Delia Cervantes
10. Interview of Maria Valenzuela
11. Interview of Rebecca Montano
12. Interview of Larry Montano
13. Dispatch Records/CAD reports/radio logs/911 calls
14. Evidence collected
15. Phone calls from case agent Cruzita Romero
16. Search warrants/inventories
17. Tow sheet
18. Crime scene log
19. Interview of Joshua Mejia (NMSP)
20. Interview of Patrick Ficke
21. Interview of Ian Burr
22. Interview of Blaine Lattin

23. Interview of Deputy Donald Romero
24. Reviewed toxicology of Edward Santana and interviewed toxicologist, Dr. Anderson
25. Reviewed autopsy and all autopsy photos
26. Reviewed lab results on firearms
27. Spoke with case agent Cruzita Romero by phone

Per my discussion with the Case Agent, Cruzita Romero, and review of the file, there is no outstanding evidence or labs.

FACTS:

On July 7, 2021, officers were dispatched to the above address for an active stabbing in progress. Maria Valenzuela stated her nephew (later determined to be Santana) had stabbed and was strangling her sister (later identified as Delia Cervantes). Deputy Ian Burr responded and encounters Maria Valenzuela screaming "he has a knife" "he stabbed her." Burr encounters Santana outside the residence who is shirtless and wearing jeans. Burr orders Santana to walk towards him and get on his knees. Santana complies. As Burr gets one handcuff on Santana, Santana pushes up and takes 2 swings at him with his fists, hitting his lapel camera and knocking it to the ground. At this point, only audio can be heard from this camera. Per Burr's interview, he holsters his weapon and gets out his taser. He deploys his taser on Santana. Santana falls to the ground, then jumps up and lunges at Burr. Burr deploys his taser a second time. Santana does not react to the taser. Burr deploys his taser at him a third time. Santana is stunned for a moment then runs into the house.

Deputy Currey and Donald Romero arrive and find Delia Cervantes lying on the patio with multiple stab wounds. Cervantes is carried away from the house where she is taken away by emergency personnel, but ultimately dies from her stab wounds. While Santana is in the residence, the deputies and officers can hear glass breaking inside the residence. Deputy Patrick Ficke and Deputy Blaine Lattin have now arrived on scene. Deputies are calling for Santana to come outside so they can get him help. Santana responds with profanities. Burr, Ficke, State Police Officer Joshua Mejie, and Blaine Lattin are all present by the residence when Santana exits the residence and starts walking towards the deputies/officers. Santana appears to be stabbing his own throat with glass and is bleeding heavily from his neck. Santana is described by officers/deputies as irate, distressed and covered in blood. Deputies repeatedly tell Santana to stop walking towards them. Santana is saying "kill me." Santana picks up what is described as a large wood stick and/or bat and lifts it over his head and is advancing towards the deputies/officers. Lattin is told to taser Santana. At 20 feet out, Lattin deploys his taser on Santana which doesn't stop Santana. Lattin deploys his taser a second time at approximately 10 feet out which doesn't stop Santana, who is now saying "shoot me." Seconds later, Patrick Ficke fires two gun shots center mass from his firearm at Santana. Santana falls to the ground. Santana tries to get up again, and Lattin his deploys his taser a third time. This time, Santana doesn't get up from the ground. All officers/deputies begin rendering first aid to Santana. Santana ultimately is pronounced deceased at the scene.

In Ficke's interview, Ficke states he felt he needed to shoot Santana because he felt Santana was going to kill or cause great bodily injury to Lattin with the large stick. Ficke knew the taser had not been effective in stopping Santana. Santana had the bat (which was later determined to be a large fence post) cocked back and was lunging at Lattin when he fired the two gun shots. Lattin was

“ducking back” when he fired the shots at Santana. This account is consistent with what is seen on the officers and deputies lapel cameras.

According to the autopsy report, Santana had two penetrating gunshot wounds in the right and left mid torso. Both projectiles were retrieved from Santana and match the firearm (9mm luger caliber Glock pistol) carried and shot by Deputy Ficke. Both bullets attributed to Santana’s death as they passed through major organs. There were lacerations to Santana’s neck that nicked the internal jugular which would have caused a slow bleed. This was determined not to be the cause of death. Shards of glass were located in the lacerations. Lacerations to both wrists were also located. Three taser probes were collected on the right chest, right thigh, and left chin. A toxicology report showed the presence of amphetamines and methamphetamines in the femoral blood. Cocaine, amphetamines, and fentanyl were presumptively positive in the urine.

A fixed blade knife with a red handle and reddish-brown stains was located at the scene. This is consistent with the knife described by witnesses that was used by Santana to kill Cervantes. A wood post with blood was located at the scene as was a broken glass bottle with glass.

It is also noteworthy that Ficke has had numerous advanced trainings in use of force.

LEGAL ANALYSIS:

For an officer to use deadly force, the force used by the officer must be reasonable. The proper application of this reasonableness standard requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct.1865. **Section 20-2-6 (B)** requires that a homicide be “necessarily committed” places a limit on the use of deadly force by law enforcement officers in New Mexico that was envisioned in *Garner*. Thus, if a suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction of serious or threatened infliction of serious physical harm, deadly force may be used. *See Garner*. The reasonableness of an individual police officer’s actions is an objective analysis evaluated from his perspective at the of the incident and is a factual inquiry. *State v. Johnson*, 1998-NMCA-019, 124 N.M. 647. Similarly in *Archuleta v. LaCuesta*, 1999-NMCA-113, 128 N.M. 13, the Court discussed whether an officer’s use of deadly force was reasonable is heavily fact dependent. The reasonableness of the use of deadly force in any particular situation is an objective test from the perspective of the officer on scene, with the understanding that officers must make split second decisions in difficult situations about what force is necessary.

The crux of the issue is, did Deputy Ficke objectively believe that Santana threatened him or Deputy Lattin with serious physical harm or deadly force, and the use of deadly force was necessary to avert the threat? In other words, was there an appearance of immediate danger of death or great bodily harm to Deputy Lattin as a result of Santana raising the wooden post and coming towards him, was the threat immediate (*see State v. Jernigan*, 139 N.M.1 (2005), and was this apparent danger to Lattin and the other deputies/officers such that would cause a reasonable

officer in the same circumstances to act as Deputy Ficke did? *See also State v. Lymon, 488 P.3d 610(2021); State v. Ellis, 144 N.M. 253 (2008); State v. Gallegos 130 N.M. 221 (2001).*

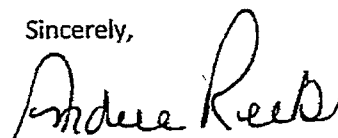
It is my opinion that Deputy Ficke used reasonable force in this situation. There are specific facts in this investigation that lead me to this conclusion. On July 7, 2021, deputies responded to a violent call where Santana was seen stabbing Cervantes and strangling her. When Deputy Burr encountered Santana and tried to take him into custody, he attempted to strike the deputy. Santana seemed unphased by the deployed taser and ran back into the residence. Santana was asked by the officers to come out of the residence where he yelled profanities at them. Breaking glass was heard inside the residence. The Deputies found Cervantes with multiple stab wounds on the porch. Santana exited the residence stabbing himself with what appeared to be glass in his neck. Officers repeatedly asked him to stop coming towards them. Santana picked up a large fence post and started aggressively advancing on the officers. Deputy Lattin tried less lethal uses of force by deploying a taser, which did not stop Santana from lunging at Lattin with the post. Deputy Ficke felt Lattin's life was in danger and/or Lattin was going to receive great bodily harm by being struck with the post. The threat to Lattin was immediate. In addition, a reasonable officer in the same situation would have acted as Ficke did and fired his weapon at Santana to stop the threat.

Furthermore, after a thorough review of this case and all the evidence, there is nothing noteworthy to indicate any other conclusion in this matter. Santana's toxicology, in addition, shows he was using methamphetamine and other substances. After speaking with the toxicologist, Dr. Anderson, the behavior noted above by Santana is consistent with someone using methamphetamines. The defendant had killed another individual, was stabbing himself in the neck, cutting his own wrists, not listening to officer's instructions, asking officer's to "kill me", and not responding to less lethal force.

It is my recommendation to you that this matter be closed, and Deputy Patrick Ficke be cleared of any criminal conduct in this incident. His use of deadly force was reasonable in this matter.

If you have any other questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Andrea Reeb". The signature is written in a cursive style and is positioned above a horizontal line.

Andrea Reeb

Cc: Cruzita Romero: Case Agent State Police