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Grand jury: Shooting was justified

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Article Text:

A grand jury on Thursday ruled the fatal shooting of a Tularosa man by Otero County Sheriff's Department deputies to be justified.

Michael Gray, 42, of Tularosa, was shot and killed Dec. 2 as sheriff's deputies Ian Conway and Robert Hanson attempted to serve an arrest warrant on him at his residence. According to an external investigation conducted by New Mexico State Police, Gray was shot once each by two deputies, once with a shotgun and once with a .40 caliber rifle. He was holding a pellet gun at the time. The report stated that Gray repeatedly said, "I'm not going to jail."

An autopsy conducted by the state Office of the Medical Investigator determined Gray died from "multiple gun shot wounds of the torso." The report states the shotgun wound perforated Gray's liver, right lung and kidney. Gray died at the scene. The grand jury convened by the 12th Judicial District Court and heard testimony beginning Tuesday. A continuance scheduled for Wednesday was canceled due to inclement weather. Fourteen witnesses testified over an eight hour period, over the two days.

Key concerns District Attorney Scot Key said he couldn't comment on testimony or evidence presented, but said his office had been involved with the investigation, in conjunction with state police, from the onset.

"Based upon my review of the evidence and the investigation, I can tell you I concur with the grand jury's findings," he said. Sheriff John Blansett said he felt "great" about the decision and was pleased his officers had been vindicated, adding he thought Key made the proper decision in sending the case to a grand jury.

"Society expects a lot of us, police officers, and I think that the reason we have so many problems in our lives is because we expect so much from ourselves," he said.

Key said he wasn't an expert on police procedures, but felt the actions of the officers were "pursuant to training and pursuant to policy."

"In almost every investigation there are things that can be improved and be looked at, and this investigation revealed some things that can probably be looked at," Key said. "But that is probably peripheral to the issue of self defense and whether the shooting was justified."

Blansett said as far as he knew, the deputies followed all procedures. He said he hadn't had a chance to look at the state police report.

Key said he would like to see a firmer policy among law enforcement agencies in regard to dashboard video cameras in squad cars. According to the NMSP report on the incident, only one of the officers turned his video camera on. Blansett said his department has been working on a policy for quite some time but hasn't had a chance to implement it. He wasn't sure what the existing policy is in regard to when officers are required to turn their dashboard cameras on. He said he hadn't looked at the policy in a while, but said the department now requires officers to change videotapes every day so they don't become worn out and fail to work.

"They have been using them over and over and they have degraded, so we have changed that policy," he said.

Video camera wouldn't have helped

Key and Blansett said the positions of the police cars on the property would not have shown the shooting, as the cars were parked in between two trailers and the shooting occurred around the side of one of the trailers. "Investigation revealed that under the circumstances, videotape would not have been turned on or helpful," Key said.

He said the officer who didn't turn on his video camera was looking out for a pit bull on the property, and was surprised when Gray approached.

Brenda Markulik, Michael Gray's sister, said the grand jury was convened before all the evidence had come in, particularly an autopsy report. She said Key's statements to the media and Gray's family regarding the shooting hopelessly biased Key and his handling of the case.

"He made sure that that was what the outcome was and he is effectively playing God," she said.

"As far as I'm concerned, two men with badges got away with murder and the county backed them."

Markulik was not present at the shooting but said she heard it over her cellular phone.

Key said the allegations of bias in the case are not "legitimate." He said he was privy to the facts and was involved in the investigation, and therefore was able to arrive at the conclusion the shooting was justified. He added he is required under his duties as a prosecutor to only look at the facts in any particular case.

He presented the facts to the grand jury, which made the final decision and just because he agreed with their findings doesn't make him biased, he said. Key said a police officer had attended Gray's autopsy, and the district attorney's office had received all the information before the grand jury convened. "I am confident the grand jury received all pertinent facts," he said.

Lawsuit possible

Markulik said she is planning a wrongful death lawsuit as a result of her brother's death. Key said he had met with family members of Gray before the grand jury convened. He said he recognizes they are hurt, having had a family member killed, adding the state pathologist opined in the autopsy that Gray had been facing officers when he raised the pellet gun. "There's nothing I could tell them that would change their minds," he said.

Gray's brother, Kenneth Gray, said he witnessed the shooting. He said his brother raised his pellet gun, but stated it was in order to throw it to the ground. He declined to comment any further, saying he wanted to consult with his attorney. According to the state police report, Kenneth Gray had originally said he didn't see the shooting. Gray said he changed his story because at the time of the shooting he could not accept that his brother had just been killed. Key said police-involved shootings were not commonplace in Otero County, and tend to happen on average once a year.

Blansett said one of the deputies is back on duty, and the other left for vacation. He said they were "doing fine."

The sheriff said the investigation had been handled properly from the onset.

"All in all, the proper decisions were made all along as far as having state police take over the investigation and Key choosing to use the grand jury to look into the matter," Blansett said. "It relieved the situation from bias. Had (Key) chosen to not prosecute, people would have said

there was bias."

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