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*District Attorney*



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**DISTRICT ATTORNEY'S OFFICE, DISTRICT 21**  
Cleveland, Garvin and McClain Counties  
State of Oklahoma

June 20, 2014

Chief Jerry Stillings  
Moore Police Department  
117 E. Main Street  
Moore, OK 73160

**Re: Moore Police Incident Number 14-06140**  
**OSBI Case Number 2014-209**

Dear Chief Stillings:

This office has reviewed the events of February 15, 2014, reported by your department and the Oklahoma State Bureau of Investigation under the above listed incident numbers, in which Moore Officers Joseph Bradley, Brian Clarkston, Ryan Minard and Wildlife Wardens Tyler Howser, and Chad Strang were involved in an altercation with Luis Rodriguez. Mr. Rodriguez was later pronounced dead at the Moore Medical Center emergency room.

Specifically, I have reviewed the investigative reports, photographs, witness statements, and other documents contained in the investigation presented to my office on June 3, 2014 by the Oklahoma State Bureau of Investigation. The purpose of my review was to determine if there were any criminal actions on behalf of the officers that resulted in Mr. Rodriguez's death. A summary of the relevant information is as follows:

On February 15, 2014 at approximately 0008 hours, Officer Minard and Officer Bradley were dispatched to the Warren Theater to assist off duty officers Brian Clarkston (Moore Police Department), Chad Strang (OK Department of Wildlife Game Warden), and Tyler Howser (OK Department of Wildlife Game Warden) who were working security for the theater. The off duty officers were in contact with two intoxicated customers who had fallen asleep inside the movie theater. The customer's level of intoxication led officers to believe that they needed to be checked out by medical personnel and therefore on duty officers were requested to respond. Minutes later, Officers Minard and Bradley arrived. While they were escorting the intoxicated customers outside to get a cab, officers were contacted by another customer regarding a possible domestic assault occurring outside the theater.

A civilian witness informed Officer Strang and Officer Howser that she had just witnessed a physical fight outside of the theater between what appeared to be family members. Officer Howser and Officer Strang then walked outside of the theater where the witness pointed out the members of the Rodriguez family, who she observed being involved in the physical altercation. Officer Howser observed the older female involved (later identified as Nair Rodriguez) begin to walk away from the other two people (later identified as Luis Rodriguez and Luinahi Rodriguez) so he began to call for her to stop. Officer Howser said it was obvious that Mrs. Rodriguez was upset as she was quickly walking away from Luis Rodriguez and Luinahi Rodriguez. Officer Howser was able to get Mrs. Rodriguez to stop after he flashed his flashlight in her direction. Officer Howser said once he was able to calm Mrs. Rodriguez down, he asked her what happened. Officer Howser said Mrs. Rodriguez told him that her daughter had lied to her and called her dirty names and was being deceitful so she struck her daughter in the face a few times. There was some distance between Officer Howser's contact with Mrs. Rodriguez and the other officers' contact with Luis and Luinahi Rodriguez. Officer Howser said he continued speaking with Nair about this domestic assault when he observed the other officers involved in a struggle with Mr. Rodriguez.

While Officer Howser was making initial contact with Mrs. Rodriguez, Officer Strang had contacted Luis and Luinahi Rodriguez. Officer Strang stated that at the time of his initial contact he was unsure of the exact details of the domestic assault that had been reported by the civilian witness. Officers were still unclear exactly who had been the aggressor and who the victim of the assault was at the time of the initial contact. Officer Strang said he asked Mr. Rodriguez what was going on and Mr. Rodriguez advised him that it was none of his business and they were dealing with a family matter. Officer Strang said Mr. Rodriguez eventually informed him that his wife, Nair Rodriguez, had struck his daughter, Luinahi. Officer Strang then informed Mr. Rodriguez that he needed his identification at which time Mr. Rodriguez said he wasn't giving it to him. Officer Strang said Mr. Rodriguez stepped back and crossed his arms and then tried to walk around him. As Officer Strang was speaking with Mr. Rodriguez and requesting his identification, Officers Minard, Bradley, and Clarkston approached to assist. Officer Clarkston advised that when he arrived, the incident appeared to be a domestic situation between family members. Officer Clarkston said Mr. Rodriguez was taking an aggressive stance with Officer Strang and attempted to get around him several times. Officer Clarkston said he believed Mr. Rodriguez was trying to go after Mrs. Rodriguez who was a good distance away from them. Officer Strang continued to ask Mr. Rodriguez for identification at which time Mr. Rodriguez again stated he wasn't going to give it to him. Officer Clarkston said at the last request for identification from Officer Bradley, Mr. Rodriguez continued to react to them aggressively and got into what he interpreted as a fighting stance where he was "bladed" or "squared off" to them. Officer Clarkston said at this time, Officer Minard attempted to place Mr. Rodriguez into investigative detention until they could find out his identity and level of involvement in the domestic assault that had been reported. Officer Bradley informed Mr. Rodriguez that he was being detained and to turn around and put his hands behind his back. As Officer Bradley stepped forward, Mr. Rodriguez stepped back in an aggressive posture. Due to Mr. Rodriguez's aggressive actions of stepping back and squaring off, Officer Minard attempted to place Mr. Rodriguez into an arm bar in order to place Mr. Rodriguez

into handcuffs. Once Officer Minard grabbed Mr. Rodriguez's arm, Mr. Rodriguez pulled back and pulled Officer Minard from in front of him to behind him. As Mr. Rodriguez became actively aggressive toward Officer Minard, the other officers stepped in to get Mr. Rodriguez under control. The officers began to help Officer Minard place Mr. Rodriguez into handcuffs and Officer Minard and Mr. Rodriguez fell to the ground. Mr. Rodriguez continued to ignore all requests by the officers to stop resisting and quit fighting them as he held his hands underneath his body and attempted to raise himself off of the ground. The officers used several compliance techniques to get Mr. Rodriguez under control including knee strikes and a neck hold. Mr. Rodriguez ultimately quit fighting and was handcuffed. None of the officers used force against Mr. Rodriguez once Mr. Rodriguez stopped resisting. This altercation lasted approximately 42 seconds.

After Mr. Rodriguez was handcuffed, officers sat him up and immediately called for a supervisor and medical personnel to come to their location. Medical personnel were already on scene due to the previously mentioned intoxicated individuals inside the movie theater. Paramedics arrived and loaded Mr. Rodriguez into the ambulance where they proceeded to administer medical assistance to him. While the paramedics were tending to Mr. Rodriguez, he stopped breathing so they transported him to the Moore Medical Center next door to the theater where he was stabilized. Mr. Rodriguez was then taken for a CT scan at the hospital. Once the CT scan was completed, Mr. Rodriguez stopped breathing again and died a short time later. Hospital records show that Mr. Rodriguez was at the Moore Medical Center for 54 minutes before being pronounced dead and was not in the custody of the Moore Police Department at the time of his death.

#### **Medical Evidence:**

The Medical Examiner's Report lists that Mr. Rodriguez's probable cause of death was cardiac arrhythmia due to physical restraint in the setting of cardiomegaly (enlarged heart) with left ventricular hypertrophy (a thick left ventricle wall). I have not only reviewed the medical examiner's report but also engaged in several conversations with Dr. Cutrer who performed Mr. Rodriguez's autopsy. I have also reviewed the numerous autopsy photographs obtained by the OSBI and discussed with Agent Whitney the findings of his investigation.

Simply put, Mr. Rodriguez died as a result of being in a struggle with the officers. The Medical Examiner can say with medical certainty that Mr. Rodriguez was not beaten to death and none of the injuries on his body that were sustained during this incident were severe enough to contribute to his death in any way. The fact that there was a struggle was enough to bring on Mr. Rodriguez's cardiac arrhythmia given his cardiovascular disease.

The medical examiner's office did determine that Mr. Rodriguez's manner of death was homicide. As was explained to me by Dr. Cutrer, this is due to the death occurring in association with a physical struggle and during attempted restraint by law enforcement and does not imply wrongdoing or criminal intent. It is simply a medical term used to describe deaths that occur during any use of force. It is not intended to be used as a legal term to determine whether any force was warranted or excessive.

Therefore, my inquiry turns to whether or not there were any illegal actions on behalf of the officers that led to Mr. Rodriguez's death.

### **Use of Force:**

The law in the State of Oklahoma is quite clear that use of force upon another person is not unlawful when necessarily committed by a public officer in the performance of any legal duty. See Title 21 Section 643.

In the instant case, officers were responding to a reported domestic violence situation. They had a legal obligation to investigate and determine who had been involved and if the involved parties were safe. It was appropriate for the officers to inquire of Mr. Rodriguez as to what had happened and attempt to identify the persons who had been named in the alleged assault.

Once Mr. Rodriguez refused to identify himself or answer any questions, the officers were well within their legal right to detain Mr. Rodriguez until such time as they could determine what had happened and that all concerned parties were safe. Under these circumstances and to insure the safety of everyone at the scene, the officers need not avail themselves of the least intrusive means of responding, and need only act within a reasonable range of conduct. At the moment in time that Mr. Rodriguez resisted attempts to be taken into investigative detention he was obstructing the officer in the performance of his official duties and became subject to arrest. Oklahoma law authorizes an officer to use all necessary means to effect an arrest once the person flees or forcibly resists. See Title 22 Section 193.

It should be noted that the video of the parking lot does show an officer using knee strikes and other active counter measures to force Mr. Rodriguez to release his arms so that he could be handcuffed. This is an appropriate law enforcement technique that was necessary to effect Mr. Rodriguez being taken into custody. This resulted in bruises to Mr. Rodriguez but in no way contributed to his death.

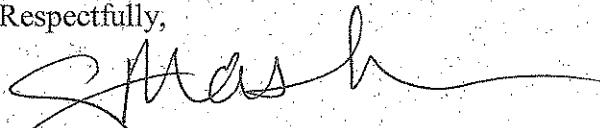
In this case, once Mr. Rodriguez was informed he was being taken into investigative detention he took an aggressive stance towards the officers and pulled his arms away. At this point, the officers had the legal right to use all necessary means to effect his being taken into custody. After a thorough review of the information provided to me and after speaking in depth with Agent Whitney of the OSBI, it is clear that only necessary force was used in gaining control of Mr. Rodriguez after he resisted attempts by law enforcement to investigate the domestic violence disturbance. None of the officers' actions against Mr. Rodriguez were done to dole out punishment. In fact, it is very significant that one of the only uninvolved, neutral witnesses to this altercation described the officers' actions as actively trying to get an out of control person under control. Although she didn't see the beginning of the confrontation she stated that she never observed the officers "beating" Mr. Rodriguez. She stated that it appeared to her that Mr. Rodriguez was actively resisting the officers and trying to prevent them from restraining him. The evidence clearly shows that once the officers were able to gain control of Mr. Rodriguez they no longer used any force against him.

Based on the above information, I find that

- 1) Although there is sufficient evidence to file a charge of misdemeanor Domestic Assault and Battery against Nair Rodriguez for her actions against her daughter it would be inappropriate under the circumstances;
- 2) The use of force by the officers against Mr. Rodriguez was justified and appropriate under the law; and
- 3) There is no nexus between illegal actions on behalf of the officers and Mr. Rodriguez's death.

Therefore, no action by the District Attorney's Office is warranted.

Respectfully,

A handwritten signature in cursive script, appearing to read "G. Mashburn", with a long horizontal flourish extending to the right.

Greg Mashburn  
District Attorney  
District 21