

Special prosecutor brings reduced charges against Albuquerque cops who killed James Boyd

By D. Lencho
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On Monday, the office of a special prosecutor in Albuquerque, New Mexico, announced that it would charge Albuquerque Police Department (APD) officers Keith Sandy and Dominique Perez with second-degree murder for their killing of mentally ill homeless camper James Boyd in March 2014. In addition, Sandy and Perez will face charges of voluntary manslaughter, involuntary manslaughter, aggravated battery and aggravated assault.

The second-degree charge is a significant reduction from the original accusation. On January 12, 2015, in the midst of ongoing protests and calls for prosecution of the officers, Bernalillo County District Attorney Kari Brandenburg, who had never before prosecuted an APD officer in her 14 years as DA, announced that she would bring charges of first-degree murder against Sandy and Perez.

However, Brandenburg, along with the entire BCDA staff, was disqualified April 9, 2015, with a district court judge ruling that there was a conflict of interest due to past cooperation between the APD and the DA's office, and citing tensions stemming from recent allegations by an APD investigator that Brandenburg had attempted to bribe and intimidate witnesses in a case involving her son. The judge ordered Brandenburg to appoint a special prosecutor in her place.

On April 16, the BCDA's office announced the appointment of private attorney Randi McGinn to serve as special prosecutor. According to a *KRQE News 13* report, McGinn "reviewed the case and ultimately decided she couldn't convince a jury that Sandy and Perez planned to kill Boyd," instead filing second-degree charges, claiming that the chances for conviction were better.

Although states vary on its definition, first-degree murder involves premeditation and deliberation. According to one legal dictionary, "It is distinguished from second degree murder in which premeditation is usually absent, and from manslaughter which lacks premeditation and suggests that at most there was intent to harm rather than to kill." In New Mexico, a first-degree murder conviction can bring a life sentence.

Local news station KOAT 7 quoted Barry Porter, whom it described as "a seasoned defense and civil rights attorney not involved with the case," regarding the punishment aspect: "The penalty is dramatically reduced in the murder in the second degree charge. Murder in the second degree carries a 15-year penalty. And the judge actually has the discretion to suspend that sentence, so that the person doesn't have to do prison."

In what news outlet KRQE called "another bit of good news for Sandy and Perez," the lesser charges of aggravated assault (for Sandy) and aggravated battery (for Perez) "could theoretically give a jury the option of convicting on that alone." A preliminary hearing is scheduled for the first week in August.

Sandy's defense attorney claims that even these reduced charges are uncalled for. Shortly after the announcement, Sam Bregman told reporters, "Keith was a police officer protecting a fellow officer when he shot a mentally unstable man wielding two knives. There is simply no criminal intent." Any testimony by the accused officers is sure to be replete with expressions of their terror at the threats posed by a deranged violent man, and claims that they were only acting in desperate defense of their lives.

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The APD video of the incident and later developments tell a different story. As the WSWS noted on the day after the killing, the video shows that the shooting “was nothing short of cold-blooded murder.” The video begins with Boyd announcing to the officers, “I am not a murderer,” and picking up his belongings, apparently preparing to leave his campsite.

Then, for no reason apparent on the video, Boyd was barraged with flash-bang grenades, beanbags and an attack by a police dog. Boyd’s only act of “violence” was to draw a small knife to defend himself from the dog. In the midst of this turmoil and confusion, the cops were shouting at him to get down on the ground.

As he turned away from the officers, with arms outstretched, appearing to comply, six shots rang out from the assault rifle being held by the officer wearing the helmet-cam. The dog was put back on the leash.

Although Boyd was mortally wounded, an officer commanded him to drop the knife and repeatedly fired “less-lethal” beanbag rounds into his posterior. The dog was then sicced on Boyd again, mauling his motionless leg.

A subsequent state police dashboard camera recording captured Sandy calling Boyd “a f***ing lunatic” before the shooting. Sandy also allegedly told a state police officer on the scene that he was going to “shoot [Boyd] in the penis here with a shotgun in a second,” a statement to which he admitted in an internal investigation interview, only to deny it later.

Sandy has since left the APD, while Perez remains on administrative duty.

The video of the shooting precipitated local protests and outrage nationwide. A few weeks later, a report from a US Department of Justice (DOJ) investigation stated that the APD “engages in a pattern or practice of excessive force that violates the Constitution and federal law.”

At the time of the issuing of the DOJ report in April 2014, APD officers had fatally shot 23 people—mostly unarmed and several with mental health problems—since 2010. Since the report’s release, at least six others have been fatally shot by APD officers, in addition to two by Bernalillo County Sheriff deputies and one by State Police in Albuquerque.