

New Mexico: Relatives sue sheriff for the fatal pepper ball shooting of 88-year-old

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A family in Albuquerque's South Valley has filed a lawsuit against Bernalillo County Sheriff Manuel Gonzales and the Bernalillo County Commission for the death of an 88-year-old great-grandfather. Fidencio Duran died from injuries incurred in a confrontation in which officers shot him with pepper balls and loosed a K9 police dog on him.

Although the South Valley's postal location is Albuquerque, New Mexico, and its northern boundary is less than two miles south of Albuquerque's downtown, it is not part of the city and is labeled a "census designated place" (CDP) under the jurisdiction of Bernalillo County and the Bernalillo County Sheriff's Office (BCSO). Per capita income is around \$17,000 and over a quarter of the population lives below the poverty line.

The majority of South Valley residents are Hispanic or Latino and many speak Spanish as their first language, as did Fidencio Duran. On September 14, 2015, his wife of 67 years died after a three-year bout with illness. The next day, distraught and disoriented—Mr. Duran was partially blind and deaf and suffered from Alzheimer's disease, according to his family—he wandered around the neighborhood, then banged on the door of a neighbor, who called the BCSO.

The wrongful death complaint filed by Shannon Kennedy, an attorney who has represented other families in police violence cases, states that Mr. Duran's son and daughter, Robert and Sally, upon seeing their father surrounded by BCSO deputies, tried to explain their father's grief and condition, but, "Brandishing a gun, a deputy ordered Robert and Sally Duran to leave the scene where their father was surrounded by deputies."

A 90-minute standoff ensued, in which Mr. Duran,

shirtless and wearing one shoe and reportedly holding a four-inch knife, spoke, sometimes incoherently, in Spanish. Eventually, the BCSO officers fired over 50 rounds of pepper balls—similar to paint balls but containing a stinging chemical—at him from two directions. Some of the pepper balls penetrated his skin, causing contusions and embedding fragments of plastic.

Then the BCSO officers unleashed a muzzled K9 police dog. The dog knocked the 115-pound man over, breaking his femur and hip. He was taken to the hospital, where it took doctors days to remove all of the pepper ball fragments. He never left the hospital, succumbing to pneumonia as a result of his injuries a month later. A doctor from the Office of the Medical Investigator "determined that the manner of death was Homicide," declares the Complaint.

The deputies were not wearing lapel cameras—BCSO deputies are not required to—at the time, but belt recordings, as shown on a KOB Eyewitness News video report, caught some of the incident. At one point, one deputy tells another, "Dude, I think that pepper ball might be awesome, you know what I mean?" A fusillade of pepper ball shots and screams can be heard. One deputy's police report described his injuries as "minor."

The lawsuit points out, "Most police departments who allow the use of the PepperBall System, prohibit its use on children, elderly persons, persons with known respiratory ailments, persons with known heart ailments," both of which afflicted Mr. Duran. "BCSO wouldn't go on camera, but say they were not told they couldn't use pepper balls on the elderly," reported KOAT7.

Kennedy told reporters, "When he was surrounded by deputies, he has committed no crime. They are supposed to be serving, but instead they set in motion

the kind of violence that sets a very painful death. The fact that the sheriff hasn't come forward to apologize to this family is as equally shocking.”

The lawsuit recounts another, later incident: “In the weeks following the deputies’ attack on his father, Robert Duran was walking the family dog “Rusty” in the streets of the South Valley. Two sheriff deputies stopped him purportedly for “Jaywalking.” One said, “We know who you are.” “How’s your Dad?” When Robert Duran responded, “He’s going to pull through,” the other deputy said to him, “your father is old, he is going to die anyway.”

In addition to monetary compensation for the Duran family, the complaint asks the court for the encounter to be deemed an excessive use of force incident, to require all BCSO officers to wear on-body cameras, and to implement “improved training and the use of lapel cameras for members of the Bernalillo County Sheriff’s Department with respect to the use of force, specifically in the context of interactions with the disabled elderly in the County of Bernalillo, prohibiting the use of K-9s and the PepperBall System on the elderly.” Gonzales has said before that he is opposed to requiring the use of lapel cams on BCSO officers.

A BCSO spokesman said that an internal investigation cleared the deputies of any wrongdoing, and that there has been no change in policy as a result of the incident. A criminal investigation has been turned over to the district attorney.



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