

# BCSO used pepper balls and K-9 on 88-year-old

By Ryan Boetel / Journal Staff Writer  
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Fidencio Duran was injured during a standoff with sheriff's deputies near his South Valley home on Sept. 15, 2015. He died a

month later in the hospital as a result of his injuries, and his family is suing Bernalillo County. (Courtesy Of Kennedy, Kennedy And Ives)

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Eighty-eight-year-old Fidencio Duran, distraught over his wife's death a day earlier, was wandering the streets shirtless and wearing one shoe last Sept. 15 when Bernalillo County sheriff's deputies approached him near his South Valley home.

After a 90-minute standoff, during which Duran waved a knife and asked the deputies to shoot him, the officers shot him with pepper balls – which are like paint balls filled with a stinging chemical – and unleashed a K-9 dog, according to police reports.

Duran suffered contusions and broken bones. His bloody 115-pound body was strapped to a gurney and he was taken to the hospital, where he died a month later of pneumonia brought on by a broken femur he suffered when the K-9 knocked him over.



Fidencio Duran died a month later in the hospital as a result of his injuries.

The medical investigator ruled the death a homicide, according to the autopsy report.

A lawsuit filed last week by Duran's family claims that had the deputies been wearing lapel cameras, Duran might still be alive, and asks that BCSO deputies be forced to use them.

"I think that had the officers been wearing lapel cameras, they wouldn't have done what they did," said Shannon Kennedy, an attorney

representing the Duran family. "A watched cop doesn't boil."

Albuquerque police officers wear lapel cameras, and the department is in the midst of rewriting its policy governing their use.

Sgt. Aaron Williamson, a spokesman for the sheriff's office, said the agency completed an internal investigation, which cleared the deputies of wrongdoing. He said the agency also completed a criminal investigation into the matter and turned it over to the District Attorney's Office, which will decide whether criminal charges will be filed against any of the deputies.

### **Belt-tape recording**

While there is no video of the incident, there is belt-tape recording.

During the standoff, Duran can be heard in the background speaking Spanish while deputies try to have a conversation with him. Deputies trained in crisis negotiation were called to the scene. About 15 minutes into the tape, one deputy suggests ending the standoff by using less-lethal force and taking Duran into custody.

"Dude, I think that pepper ball (gun) might be awesome, you know what I mean?" one unidentified deputy said to another.



This is the type of pepper ball gun used by Bernalillo County sheriff's deputies to subdue Fidencio Duran. (Courtesy of BCSO)

"We're on the same page, dude. We're going to go less lethal, and if that doesn't work, we'll do something else."

Another deputy had another idea.

"Let's not do less lethal. Let's keep him talking, as long as he's willing to talk," that deputy said.

About 20 minutes later, a deputy points out that the man's age should be a factor in how they proceed. Duran's family also told deputies at the scene that Duran had Alzheimer's

disease, according to the recordings.

“He’s 90 years old. He’s not going to sprint at us,” a deputy said.

The belt-tape recordings, which the sheriff’s office released to the firm Kennedy, Kennedy and Ives, indicate there was some debate among the deputies on scene about what to do. Duran kept speaking in Spanish, and a Spanish-speaking deputy said Duran wasn’t making sense.

At one point, one deputy questioned another deputy who said a sheriff’s office K-9 was en route.

“I don’t understand how that is going to make it better,” the inquiring deputy said.

But after failing to talk Duran into surrendering, BCSO Capt. Justin Dunlap ordered the deputies to instead shoot him with pepper balls from two directions and unleash a police K-9. Dunlap told deputies the pepper balls wouldn’t hurt Duran as much as a bean-bag shotgun that was also on scene.

The audio recordings indicate that a sheriff’s deputy yelled “drop the knife” several times before shooting at Duran about 50 times with the pepper-ball gun, and a K-9 is heard snarling and barking.

The lawsuit says the K-9 broke Duran’s pelvis and femur when the dog knocked him over. Duran’s autopsy report indicated there were at least 10 marks on his body from the pepper balls.

“Regrettably, there is no lapel camera video footage to capture in sound and moving pictures the horrific conduct of these sheriff’s deputies,” the lawsuit states.

### **More training**

In addition to asking for deputies to begin wearing lapel cameras, the lawsuit calls for deputies to be trained not to use pepper balls on the elderly. The suit says most law enforcement agencies that use that type of weapon have policies against shooting children or the elderly with pepper balls.

The lawsuit names the Bernalillo County Commission and Sheriff Manuel Gonzales as defendants.

It also seeks money damages and asks for the encounter to be deemed an excessive use of force by the court.

Williamson said no policy changes were made because of the incident.

Sheriff Manuel Gonzales, while campaigning for the position, said he was against the idea of putting lapel cameras on all deputies.

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