

December 13, 2019

Sheriff Manuel Gonzales III  
Bernalillo County Sheriff  
400 Roma Ave. NW  
Albuquerque, NM 87102

RE: Prosecutorial review of the February 23, 2019 arrest of Derick Garcia and Dominic Montoya during which a shot was fired by Deputy Scott Golson of the Bernalillo County Sheriff's Office.

BCSO case # 190020002686;

DA case #: 2019-03163- 1&2

Dear Sheriff Gonzales:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review, for potential prosecution, the incident in which Bernalillo County Deputy Scott Golson fired a single shot at the vehicle being driven by Derick Garcia on February 23, 2019. After a review of all available evidence, including police reports, witness statements, videos, and photographs, and a visit to the scene, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Deputy Golson committed any crime for which he can be successfully prosecuted. No charges will be filed: the case will be closed. My decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

#### STATEMENT OF FACTS

On the morning of February 23, 2019, Meranda Sanchez left her car running in front of her home while she went inside to get her purse; while she was gone it was stolen by a man wearing a black ski mask. The car, a gold Honda Civic, was fitted with a GPS tracking device which pinpointed its position at the Price Rite Smiths at 1601 Arenal Rd. SW. Deputies Josh Hessinger and Scott Golson were sent to locate the vehicle. They searched the parking lot, finally locating the car, which was parked facing out, with a truck parked behind it. Deputy Hessinger positioned his car in front of the Civic to block it in, while Golson left his car and approached

from the rear. Derick Garcia was the driver, and Dominic Montoya was in the front passenger seat. Garcia started the car and drove forward just as Golson arrived behind the car, at which point Garcia reversed direction and accelerated backwards, almost hitting Golson who slapped the trunk of the car and said, "I will shoot you.!" Garcia then drove forward at an angle, struck a parked car and managed to squeezed past Hessinger's car. He drove off with the Deputies in pursuit.

The ensuing chase would last for about 15 minutes and cover almost ten miles. Garcia drove erratically, running multiple red lights, and driving the wrong way on Central Avenue, forcing on-coming vehicles off the road. At times his speed approached 100 miles per hour. Garcia struck two vehicles: one at Unser Boulevard and Blake Road, and another at Dennis Chavez Boulevard and Coors Boulevard; fortunately, without injuring anyone. At one point, he drove through a construction zone, crashing through the barriers. He also ran over a spike belt which flattened his front right tires but did not stop him. On several occasions, Deputies attempted a Pursuit Intervention Technique, or PIT maneuver: which involves pushing the back of the vehicle being pursued at an angle, which causes it to spin to a stop, each time without success. Finally, on Airport Road, Deputy Golson's PIT maneuver successfully spun the Honda around facing the pursuing vehicles. Deputy Hessinger parked bumper to bumper in front of the car to block forward motion. As Deputy Golson approached the Honda from the front driver's side, Garcia rammed Hessinger's car and then gunned the engine, threw it into reverse and



*Path of the bullet fired by Deputy Golson*

steered to the left, which sent the front of the Honda in Deputy Golson's direction, trapping Golson between his car and the approaching Honda. Golson explained, " ..if it pushes me or even slides me against the two cars then I'm gonna be seriously injured or killed." Golson fired a single shot at Garcia, which passed through the wheel well and stuck in the fire wall without entering the passenger compartment

of the car. After the shot, Garcia abandoned the car, hands in the air. The car continued, still in reverse, to back across the road, stopping when it struck the curb.

Deputy Daniel Skartwed, who was behind Golson and realized Golson was about to be run over, drew his pistol, intending to shoot Garcia, but could not get a clear shot because Golson was in his line of fire. After Golson fired, Skartwed determined the danger was over and did not shoot.

The passenger, Dominic Montoya, ran but was captured immediately and arrested for possession of methamphetamine, which was found in his jacket pocket.

Garcia lay on the ground and, after a brief struggle, surrendered. As he was being handcuffed he said, repeatedly “ I’m sorry. The passenger didn’t know it was stolen.,” and, “I fucked up.” In the stolen Honda, the deputies found keys, called jiggle keys which had been filed down to steal cars, and a black ski mask. Garcia refused to participate in an interview, but gave a brief statement in which admitted he knew the car was stolen but never tried to run over any deputies. He would ultimately plead guilty to Receiving or Transporting a Stolen Motor Vehicle, and Resisting, Evading, or Obstructing a Police Officer, for which he was sentenced to 18 months suspended sentence with supervised probation.

#### LEGAL ANALYSIS

Officer Golson was acting in the line of duty, attempting to arrest Garcia on suspicion of car theft when he fired, he therefore would be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6, under which a peace officer may justifiably use deadly physical force when he believes he or another is threatened with serious harm or deadly force. Under New Mexico law, the officer who uses deadly force need not prove that the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility. The burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified. If the jury has any reasonable doubt as to whether the killing was justifiable, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

## CONCLUSION

The question presented in this case is whether, at the moment of the shooting, Deputy Golson was acting under the reasonable fear that he would be struck and injured, possibly killed, by the car accelerating toward him. All available evidence indicates that Deputy Golson was in fact acting out of such fear, and the reasonableness of that belief is corroborated by Deputy Skartwed who shared that fear based on his observation of the situation. In the absence of sufficient evidence to prove, beyond a reasonable doubt, that Deputy Golson he was not acting out of fear of injury or death, or that his fear was unreasonable, there is no realistic likelihood of a successful prosecution; therefore, no charges will be filed against Deputy Golson; the case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Deputy Scott Golson, Bernalillo County Sheriff's Department

John D'Amato, Attorney for Deputy Scott Golson

Detective Samuel Rodriguez- Bernalillo County Sheriff's Department

Zachary Garcia- Derick Garcia's probation officer