

April 9, 2018

To: Chief of Police, Michael Geier
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, NM 87102

APD case # 16-00448656
DA case # 2016-03334-1

RE: Prosecutorial review of the May 28, 2016
fatal shooting of Dennis Humphrey Sr., by
Albuquerque Police Department Officer, Jon
O'Guin.

Dear Chief Geier:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of May 28, 2016 for potential prosecution. My role is to determine whether Officer Jon O'Guin should be prosecuted for his actions during this incident. I have reviewed all of the available evidence, including: autopsy report, police reports, witness statements and transcripts, criminalistics report and photos, CAD printouts, crime scene photos, 911 transcripts and audio recordings, criminal history, lapel video's and a view of the scene. I conclude that it is not possible to prove beyond a reasonable doubt, that Officer O'Guin was not acting under the reasonable belief that the actions of Dennis Humphrey Sr. posed a threat of death or great bodily harm to himself, and to other police officers. No charges will be filed: the case will be closed. My decision does not limit nor address administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On May 28, 2016 at 9:42 p.m., APD dispatch received an emergency 911 call, from the home of Dennis Humphrey Sr., at 3904 Goodrich N.E. in Albuquerque. Theresa Humphrey told the 911 operator that her husband, Dennis Sr., was upset because he had just cut his foot by walking on broken glass. She also said that he was drunk, carrying a firearm, and he told her that, "I will shoot whoever comes through the door." Theresa was crying, and Dennis Sr. could be heard in the background cursing at her, and in an angry voice questioning her regarding the location of a pistol. Theresa said that Dennis Sr. was also her caretaker, and he was very frustrated because she had mobility issues due to her being wheelchair bound. When further questioned, Theresa clarified that Dennis Sr. was not at the time carrying a gun, but had access to a rifle in the garage. The call then disconnected.

Police would later learn that Dennis Sr. was a 57 year old Vietnam veteran diagnosed with PTSD as a result of his service, and according to his son Dennis Jr., was supposed to be on medication. He had no criminal history in New Mexico, and according to Theresa, had one DWI in Washington. The son and family wanted to take care of him, so they moved him from Washington to Albuquerque about ten months earlier. According to Theresa he was depressed, and she was concerned because, "he wanted to

kill himself." His mother, Irene Humphrey, told police that Dennis Sr. suffered from major depression, and had wanted to kill himself in the past. Irene believed he was off his medications, and she was concerned that, "he would try to create a situation of suicide by cop." His neighbor Celia Rex told the police, that one day just out of the blue Dennis Sr. told her, "I'm scared, I don't want to go to hell, and if I kill myself, I will go to hell." He then showed Celia slits in his arm, and told her that he cuts on himself so that way he doesn't hurt people.

Upon arrival at 3904 Goodrich N.E., the police took cover and heard a man's voice yelling from within the home. A large boat was parked in the front yard, and a truck was parked in the driveway. The single car garage was located on the west side of the house, and the garage door was open. Soon after arrival, police surrounded 3904 Goodrich in an L shaped pattern. They were positioned on the eastside of the residence, and across the street on the north side, behind trees, bushes, and a vehicle that was parked in the driveway. After the phone call had disconnected, Dennis Sr. went into the cabin of the boat. He picked up a rifle, and carried it around while pacing inside the boat. Officers saw Dennis Sr. clocking the bolt action on the rifle in a backward and forward motion, and heard him say, "I'll kill you bitch." Officer Mikhail Kupper described Dennis Sr. as acting bold, angry, drunk, and irrational. What gave him the most concern was how comfortable Dennis Sr. was in handling the rifle. Dennis Sr. exited the boat without the rifle, and walked between the truck, the house and the garage several times. He apparently suspected that officers were in the area hiding, because he shouted, and requested that officers shoot him. He then armed himself with the rifle.

At least twelve officers were involved in securing and monitoring the house. Dennis Sr.'s son, Dennis Humphrey Jr., walked into the scene, and urged Dennis Sr. stating, "dad put down the gun, what are you doing?" Up to that point, Dennis Sr. suspected that officers were present, but did not know where they were hiding. Officer James Eichel was hiding across the street behind some bushes. Eichel then shouted, and ordered Dennis Jr. to leave the area because Dennis Sr. had a gun. Eichel was trying to protect Dennis Jr., and in doing so, gave away his position. Dennis Jr. complied, and left the area. He later told police that he heard his father say, "I'm coming out," instead, Dennis Sr. diverted his focus to Eichel's hiding spot across the street. Dennis Sr. shouted towards the bushes, "bring it on," and "I see you behind the bushes, come to my driveway you pussies." He also told the police that he had a 30-06 rifle which would go through their vests, and dared officers to shoot him. With only the bushes for protection, Eichel was placed in a perilous position.

Dennis Sr. then went back inside his house. Theresa was again on the phone with the 911 operator, and Dennis could be heard in the background repeatedly demanding that Theresa tell him where she had hid the gun. Dispatch was able to hear the conversation, and reported back to the officers in the field. Dennis Sr. told Theresa in an angry and desperate voice, "I want to kill every cop that comes through the door." Then while demanding that Theresa hand him the gun said, "give me a chance against the cops." "You don't want to give me a chance, because you know I'm gonna die like a pig in the street." Dennis Sr. then accused her of not caring for him anymore. Theresa was crying, and pleaded with him not end up in jail. When she did not give him the gun, Dennis Sr. responded by saying "fine," and then left the bedroom. At that time it was not clear why Dennis Sr. was so desperate to

obtain a gun when he a rifle in his possession. The police would later learn that the rifle was not loaded. They would also later learn that the gun was a .45 caliber pistol, and was fully loaded.

Dennis Jr. had taken the same gun away from his dad earlier that day, and had told his mother to hide it from him. According to his neighbor Celia Lamkin, Dennis Sr. was at her house drunk, had an argument with her husband, and was pointing a gun in the air earlier that day. She said that at one point Dennis Sr. put the gun down on the table. She then grabbed it, and took it inside. It is unclear whether it was the same gun that Dennis Jr. gave his mother to hide. According to multiple neighbors and family members, Dennis Sr. was intoxicated throughout much of the day and into the evening.

Dennis Sr. returned to the garage after not being able to obtain the gun from Theresa, and began to pace. The SWAT Unit had been contacted, and was in route to the scene. The police were instructed to hold and secure the scene until SWAT arrived. Dennis Sr. continued to pace in and out of the house through the garage while talking to himself. He again requested for the police to shoot him. The magnifier on Officer Jon O'Guin's rifle gave him a better view than the other officers, so he had the responsibility of the lead position. O'Guin positioned himself in the driveway behind a car, directly across the street from the garage where Dennis Sr. was pacing. The lighting in the garage was very poor because Dennis Sr. had turned the main light off, leaving only the dim garage door light which would turn off and on by itself, as if on a timer. When the light was out, it was darker in the garage than it was outside, which concerned O'Guin because it gave Dennis Sr. the advantage of being able to see the officers, when they could not see him. At that time, Officers Jon O'Guin, James Eichel, and Jacob Christison were positioned across the street from 3904 Goodrich.

At 10:20 p.m. Dennis Sr. was pacing in the garage when the light went out. Just prior to the light going out, he sat down with a beer in his right hand, and his left hand was clear. O'Guin knew that Dennis Sr. had a rifle nearby when he then heard the sound of a chamber, or a bolt check on a weapon coming from within the garage. The garage area was completely dark, and O'Guin was not able to see even with the magnifier. O'Guin then immediately shouted the words, "light him up," which was the signal that O'Guin needed an officer to immediately shine a light in the garage area. Eichel then stood up and pointed his light into the garage. He saw Dennis Sr. standing and facing them, with his left side in front, and his rifle shouldered, aimed in their direction. Eichel then ducked down, and at the same time felt gunshots coming from his right side, as O'Guin fired his weapon in rapid succession. O'Guin never gave a formal statement, but told Eichel that Dennis Sr. was pointing his rifle at them when he shot. Christison saw that Dennis Sr. was standing as if shouldering a rifle, but from his location he was not in a position to see the rifle.

Dennis Sr. was shot twice by O'Guin, and when officers entered the garage, the rifle was laying on his right side, against his back. Officer Matthew Reeder slid the rifle away from his body, cuffed him and began to render aide. Officer Shane Treadaway moved the rifle further away and assisted Reeder in rendering aide. Two chest seals were applied, and Dennis Sr. was rushed to the hospital where he later died from his wounds. Once the residence was cleared, Theresa told Treadaway that Dennis Sr. was very intoxicated, and "believed his plan was to die that night." The autopsy revealed that Dennis Sr. died

from two gunshot wounds; one through his left elbow that then went into his chest, and a second into the chest just right of midline. The trajectory for both wounds was from left to right. He also had a laceration on his right foot. The blood alcohol level for Dennis Sr. was a .12g/100ml. His rifle was secured and provided to criminalistics. It was a Rugar brand 30-06 caliber rifle, equipped with scope, sling and bipod extended, and was not loaded. Criminalistics also collected 10 cartridge casings that were fired from O'Guin's weapon, along with the rifle used by Officer O'Guin. The casings were collected from the driveway across the street from 3904 Goodrich. Comparisons were not requested since there was no evidence that anyone other than O'Guin had fired their weapon.

LEGAL ANALYSIS

NMSA 1978, Section 30-2-6 is entitled, "justifiable homicide by public officer or public employee," and establishes that a peace officer may justifiably use deadly physical force when he reasonably believes that he or another is threatened with serious harm or deadly force. The officer need not prove the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility.

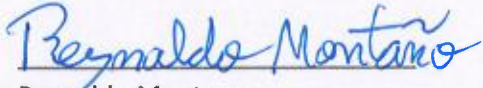
Case law has established that under Section 30-2-6, the crucial consideration is the conduct and dangerousness of the suspect, not the classification of the crime that he or she has committed or is alleged to have committed. Under the Criminal Section of the Uniform Jury Instruction, 14-5173, the burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified. If the jury has a reasonable doubt about any aspect of the prosecutions claim that the shooting was unjustified, they must acquit the officer.

CONCLUSION

The question presented in this case is whether, when Officer O'Guin fired at Dennis Humphrey Sr., he was acting under the reasonable fear that he or another officer would be killed or seriously injured by the actions of Dennis Sr. Officer O'Guin assumed that the rifle that Dennis Sr. shouldered and aimed directly at him and other officers was loaded. The autopsy report supports the observations of Officer Eichel in that, the trajectory of both bullets traveled from left to right into the chest of Dennis Sr., with one of the bullets traveling through his left elbow before it entered his chest. This is consistent with both the rifle and the left elbow of Dennis Sr. being raised, and in front of his chest while standing with his left side facing forward, while pointing the rifle towards the police. If not for the actions of Theresa and Dennis Jr. by concealing the pistol from Dennis Sr., additional deaths may have occurred. Theresa feared that Dennis Sr. wanted to die that night, and his mother Irene feared that he would create a situation of suicide by cop. Both fears were revealed as Dennis Sr. shouted for the police to shoot him, while bragging that the bullets from his 30-06 rifle would go through the officer's vests, and then when he pointed the same empty rifle directly at police. The evidence strongly suggests that Officer O'Guin was reasonably concerned for himself, and for the other officers involved, in responding to the threat of deadly force or serious harm posed by Mr. Humphrey, and fired his weapon based upon those concerns. Officer O'Guin is therefore entitled to raise the defense of justifiable homicide by public officer. Based

upon these facts there is no reasonable likelihood of successful prosecution: therefore no charges will be filed against Officer O'Guin; the case will be closed.

Sincerely yours,



Reynaldo Montano
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Raymond Del Greco, APD Sgt.
John D'Amato, Attorney for Jon O'Guin
Irene Humphrey, mother of Dennis Humphrey Sr.
Dennis Humphrey Jr., son of Dennis Humphrey Sr.