

March 26, 2018

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

RE: Prosecutorial review of the June 4, 2015 shooting incident in which Detective Adrian Montoya shot at Danan Gabaldon.

APD case # 150046158; DA case # 2015-02570-1

Dear Chief Geier:

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 Detective Adrian Montoya shot at Danan Gabaldon on June 4, 2015. After a review of all available evidence, including police reports, witness statements, laboratory reports, videos, and photographs, I conclude that it is not possible to prove, beyond a reasonable doubt, that Detective Montoya was not acting under the belief that Gabaldon's actions posed a threat of death or great bodily harm to Detective Montoya. 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 June 4, 2015, Danan Gabaldon was avoiding arrest in three separate cases:

- Aggravated Assault on a Peace Officer with a Deadly Weapon, arising from an incident in March 2015 in which he used his vehicle as a battering ram in an attempt to escape arrest; he was released on bond in that case, but had cut off his GPS bracelet on May 20, 2015 and absconded.
- Residential Burglary and Larceny in which a warrant had been issued for him for violating his conditions of release.

● Aggravated Assault on a Peace Officer arising from an incident on May 25, 2015 in which he had nearly run over an officer who was trying to arrest him.

On June 4, 2015, the police received a tip that Gabaldon was driving a red and white Subaru sedan in the area of 98th Street and Central Avenue NW. They spotted a vehicle matching the description parked in front of a mobile home at 10200 Central Avenue NW and waited. Gabaldon left the trailer and drove off in the Subaru. The officers began a loose pursuit in unmarked vehicles, waiting for an opportunity to arrest him safely. As he drove around the neighborhood he became aware that he was being followed; honking and waiving at one of the undercover officers.

Eventually, when he stopped in the street, the officers initiated a vehicle blocking maneuver, attempting to pin his car with their cars. Gabaldon began accelerating back and forth, ramming the vehicles blocking him. In the confusion, two police vehicles collided, creating a gap in the ring of vehicles. Gabaldon drove toward the gap just as Detective Adrian Montoya stepped out of his truck. As Gabaldon's car rushed toward him, Gabaldon fired three hurried shots, one warning shot into the air, and two at the Subaru, because, as he put it, "I was gonna be killed. I was gonna be ran over." The two shots fired at the Subaru struck the hood; one ricocheted over the vehicle, the other lodged in the engine compartment; neither Gabaldon. Gabaldon ignored the shots, striking Montoya who fell, injuring his knee, while managing to scramble to safety at the back of the truck, near the bed. Gabaldon continued forward, ramming into a car driven by Detective Etheridge.

In the collision with Detective Etheridge's car, Gabaldon's car was immobilized, but he refused to surrender. He continued to race the engine and shift gears, pretending to use his cell phone as a gun, pointing it at the officer. When they shot him with a tazer, he pulled out the tazer barbs and threw them aback at the officers. He leapt from the car, fell down and pulled yet another pair of tazer barbs from his body before running away down the sidewalk. One of the officers paced him in a pickup truck and cut him off. Gabaldon slammed onto the hood and fell to the ground.¹ After a struggle he was finally arrested.

¹ I am limited by my appointment and contract to reviewing only certain narrowly defined situations, which does not include the portion of this incident in which Gabaldon was injured by the collision with the truck. I have referred that aspect of the case to Raul Torrez, the Second Judicial District Attorney for review.

LEGAL ANALYSIS

Detective Montoya was acting in the line of duty, attempting to arrest Gabaldon for numerous warrants when he fired the shots, therefore he would be entitled to raise the defense of Justifiable homicide by public Detective, NMSA 1978, Section 3-2-6, which establishes that a peace Detective 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 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 a 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, Detective Montoya was acting under the reasonable fear that he would be struck and injured by the car accelerating toward him. Detective Montoya said that he fired out of fear for his life. Evidence strongly suggests that he was in fact acting out of such fear, and in the absence of sufficient evidence to prove, beyond a reasonable doubt, that he was not, or that his fear was unreasonable, there is no realistic likelihood of a successful prosecution; therefore, no charges will be filed against Detective Montoya; the case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective David Nix, Albuquerque, Police Department

Dana Gabaldon, Guadalupe County Correctional Facility, Santa Rosa, NM

Luis Robles, Attorney for Adrian Montoya

Joseph Kennedy, attorney for Danan Gabaldon