

April 9, 2018

To: Sheriff Manuel Gonzales III
Bernalillo County Sheriff
400 Roma Ave., N.W.
Albuquerque, NM 87102

BCSO case # 16-613206
APD case # 16-0010382
DA case # 2016-01760-1

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

RE: Prosecutorial review of the February 2, 2016 fatal shooting of Edgar Alvarado, by Albuquerque Police Department Officer Josh Richards, and Bernalillo County Sheriff Office Deputies, Tim Hix and Gregory Gallegos.

Dear Sheriff Gonzales and Chief Geier:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of February 2, 2016 for potential prosecution. My role is to determine whether Officer Richards, Deputy Hix and/or Deputy Gallegos should be prosecuted for their actions during the incident. I have reviewed all of the available evidence, including: autopsy report, police reports, recorded and handwritten witness statements and transcripts, criminalistics report and photos, firearm and tool mark report and conclusions, 911 and CAD transcripts and recordings, Lapel videos, Giant Gas Station videos, criminal history, police radio communications during the incidents, crime scene photos, and a view of the multiple scenes involved. I conclude that it is not possible to prove beyond a reasonable doubt, that Officer Richards, Deputy Hix and Deputy Gallegos were not acting under the reasonable belief that the actions of Edgar Alvarado posed a threat of death or great bodily harm to themselves, to other law enforcement officers, and to the public at large. 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 February 2nd, 2016, in the early morning hours, an Albuquerque city wide manhunt was in progress for 21 year old Edgar Alvarado. This manhunt involved vehicle, air, and foot pursuits, and concluded immediately after Alvarado pointed, and fired his hand gun at law enforcement officers. It ended at about 1:25 p.m., when Bernalillo County Sheriff Office Deputies, Gregory Gallegos and Tim Hix, and Albuquerque Police Department Officer, Josh Richards, returned fire. Alvarado was fatally shot by Officer Richards. The many incidents that lead to the manhunt, and to the fatal shooting, began at about 2:23 a.m., on February 2nd, 2016.

At about 2:23 a.m., Turner Bowman and his girlfriend, Kylie Pedroncelli, were asleep in bed at 240 57th St. N.W., and they were awoken by Edgar Alvarado, when he pushed a gun against Bowman's forehead, and demanded the keys to his 2004 silver Dodge pickup. Alvarado then fled in the silver truck. They both knew the offender as Edgar Alvarado, and immediately called 911. Bowman warned the police that Alvarado has made threats, and stated that, he "wanted to shoot it out with the police." They described Alvarado as being in his early 20's, and about 5 ft. 6 inches tall.

At about 11:26 a.m., Alvarado went to 211 Rhode Island St. N.E., the home of Manuel Renteria-Segovia, and his wife, Blanca Yesenia-Arroyo-Medrano, and pointed a gun at Blanca. Manuel verbally confronted Alvarado, and threatened to call the police. Alvarado then shot Manuel in the stomach, turned the gun towards Blanca's head, and threatened to kill her if she reported him to the police. As soon as Alvarado left the home, they called 911, and the police arrived within five minutes. Upon arrival, the police saw Alvarado was still on the property. He was first on top of a shed, and then on top of a guesthouse roof. By the time they realized who he was, he had fled the area. Blanca knew him, and told the police that his name was Edgar Alvarado. Manuel was unconscious, and rushed to the hospital in critical condition. He underwent surgery and survived, but as of February 10th, still needed to undergo additional surgery to remove the projectile. A perimeter was set up at about 11:34 a.m., in the hopes of locating Alvarado. APD Detective Jarrod Pelot was familiar with Alvarado, and advised police that Alvarado was dangerous, and knew that he wanted a shootout with the police. The police also received a warning via radio from the "Real Time Call Center," advising that Alvarado had made threats in the past, "to have a shootout with the police."

At about 11:49 a.m., Alvarado approached Samuel Marquez-Aceves, at his home, located at 331 Espanola N.E. This address is about six blocks away from 211 Rhode Island N.E. Aceves was outside when approached by a male he described as about 5 foot 4, and wearing a hoodie. The male pointed a silver handgun at him, and demanded the keys to his Mustang. Aceves refused, and was able to get inside his house, locked the door, and then immediately called 911. Alvarado fled the scene, but the description provided by Aceves matched the previous descriptions provided.

At about 11:56 a.m., Aaron Means was driving his black Ford Explorer pickup, license MDT-888, at the intersection of Louisiana and Lomas. This intersection is about one mile away from 331 Espanola N.E. Means was awaiting the light change at the intersection when Alvarado jumped into the roadway, pointed the gun at Means, and ordered him to, "get out of fucking truck." Means jumped out of his truck and immediately called 911 as Alvarado drove away in the truck. Means and several other eye witnesses provided a description that was consistent with the earlier descriptions of Alvarado. The description was; a male, 5ft.-6 to 5ft.-7, Hispanic, mustache, wearing a hoodie, and carrying a silver revolver.

At about 12:18 p.m., APD Officer Albert Sandoval saw the black truck with the same license plate number, driving on Broadway Blvd. at a high speed, and in an erratic manner. Alvarado turned aggressively into Sandoval's lane of traffic, and attempted to ram Sandoval with the black truck. He also drove into oncoming traffic. Sandoval ended his pursuit because of the dangers created by Alvarado.

There were numerous reports of Alvarado's reckless driving throughout the valley while being pursued. At 238 57th St. N.W., Alvarado stopped his vehicle, stuck his head out of the driver's side window, and with a hand gesture, flipped off Officer John Garcia. He then laughed, and drove off at a high rate of speed. On Lomas, near Rio Grande Blvd., Alvarado drove in and out of traffic, jumped the curb, and drove eastbound in the westbound lanes, and failed to stop for the traffic lights. He again drove east bound in the westbound lanes near 12th Street, and the pursuit was again terminated.

At about 12:40 p.m., Alvarado returned to the area near 211 Rhode Island. Blanca saw him driving the stolen black truck, and pointed him out to the police who were still at her house. The police again gave pursuit.

At about 12:42 p.m., Roberta Dozel called 911 to ask whether there was any information concerning her daughter, Alisha Lopez. Dozel was aware of the situation involving Alvarado, and was worried that her daughter might be with him, because they were known to spend time together. There was no information that her daughter was with Alvarado, but during the conversation Dozel warned the police that according to her daughter, Alvarado had once threatened to shoot police, "like, suicide by cop".

At about 12:43 p.m., Alvarado drove the black truck into the intersection of Eubank and Central. He was speeding, failed to stop at the lights, and crashed into two other cars. A video camera at the Giant Gas Station located on the southeast corner of the intersection, captured the black truck as it spun out, immediately after the crash. Alvarado was seen on the video as he flopped out of the passenger side window, and onto the ground. Witnesses Jason Trotter and Alfred Romero stated that, Alvarado fired his weapon at the truck window and shattered it, prior to jumping out. He then ran towards the gas pumps with a silver gun in hand. He pointed the gun at Trotter, and then attempted to "carjack" a truck parked at the gas pumps. It was all caught on camera. Alvarado demanded the keys from the owner, but the owner of the truck ran away without providing him the keys. Alvarado then looked inside the truck, and when he did not locate any keys, immediate left the area, and ran back towards the intersection. Trotter described him as having a deranged look on his face.

At about 12:45 p.m., and immediately after he ran from the gas station, Alvarado approached a grey Jeep Wrangler that was stopped, and awaiting a light change at the intersection of Central and Eubank. He pointed a silver hand gun at the driver, Christian Jacquet, and at the passenger, Gustav Stern. He ordered them out of the vehicle, and drove away in the jeep. There were multiple witnesses to the jeep carjacking.

At about 12:50 p.m., Tim Rainey with the Albuquerque Police Department Air Support Unit was flying in the helicopter. He located the grey jeep traveling in an extremely reckless manner. The jeep drove into oncoming traffic at Chelwood and Copper. He saw the jeep strike a bicyclist at San Pedro and Candelaria. It then bumped a vehicle on Wyoming between Candelaria and Comanche belonging to Richard Broder, and pushed it from behind. Broder could hear the police sirens in pursuit behind him.

After bumping Broder, Alvarado traveled into the middle lane to get past him. Rainey observed Alvarado swerve around a spike belt deployed by Officers Aaron Maldonado and Dominic Martinez, at the corner of Glorietta and Copper. Alvarado tried but failed to run down Officer Maldonado with his vehicle, and almost went head on with another car. Then, with officers in pursuit, Alvarado drove through Montgomery Park. The use of deadly force was then authorized, in the event that children were playing in the park. At Phoenix and San Pedro, Alvarado swerved the jeep in an attempt to strike APD Officer Trey Ecomomidy. Ecomomidy was laying the spike belt in the roadway, and saw the jeep traveling in his direction at about 80 miles per hour. Alvarado deliberately tried to hit him with the jeep, but swerved back at the last moment as Ecomomidy hid behind a large metal pole. Alvarado was unable to avoid the spike belt which flattened the two passenger side tires.

At about 1:23 p.m., Alvarado lost control of the jeep because of the two flat tires, and it crashed into the curb at 5520 El Encanto Street N.E., located on the southeast corner of El Encanto, where it meets Alvarado Street. Rainey continued to advise and guide the police from the helicopter regarding Alvarado's location, and his activities. After he drove into the curb, Alvarado abandoned the jeep, and fled on foot westbound on El Encanto. An Xfinity Van was parked two houses away alongside the curb, and in front of 5512 El Encanto. Johnny Garcia was sitting in the driver's seat, and had just finished eating his lunch when Alvarado approached him. He pointed a "shinny revolver" at Johnny and said, "get out now mother fucker," "lay on the ground." Johnny did as he was ordered, and felt that Alvarado was going to shoot him. Alvarado looked inside the van, as if looking for the keys, and then left, walking westbound, towards the corner of El Encanto and La Veta Street.

At about 1:25 p.m., from the helicopter, Rainey saw Alvarado had walked near the northeast corner of the intersection at El Encanto and La Veta. Alvarado raised his arm, and pointed his gun in a southern direction towards La Veta Street, and in the direction of APD officer Josh Richards. Alvarado then raised his arm, and fired his gun in an eastern direction, and struck the hood of the vehicle driven by Deputy Gallegos, leaving a hole in the hood. At the time, Deputy Gallegos was headed westbound on El Encanto, towards Alvarado. Rainey saw the flash from the gun, and watched as Alvarado then ran south, to 5500 El Encanto. Rainey saw Alvarado fall in the front yard at 5500 El Encanto after being shot. Rainey did not see who had fired because his focus was on Alvarado.

APD Officers Brandon Arndt, Dominic Martinez, and Aaron Maldonado were behind APD officer Josh Richards respectively. They came into the scene northbound on La Veta, just south of El Encanto. Arndt heard initial shots being fired, but did not see Alvarado until he ran into the yard at the southeast corner of La Veta and El Encanto. He then saw Richards shoot at Alvarado with his rifle, and saw Alvarado fall to the ground. He later saw the silver and black revolver on the ground, next to Alvarado where he fell. Martinez and Maldonado were not in position to see the events that transpired prior to Richards firing at Alvarado, but they did hear shots being fired, and believed it was Richards who had fired his rifle. (see diagram)

collected near the vehicle driven by Deputy Hix, located in the intersection of La Veta and El Encanto. The tests concluded that both casings were fired from his Glock model 22, Smith and Wesson 40 caliber semi-automatic pistol. There were four, 40 caliber casings collected on El Encanto Street, east of the intersection of La Veta and El Encanto, and near the vehicle driven by Deputy Gallegos. The tests concluded that all four casings were fired from his Glock model 22, Smith and Wesson 40 caliber semi-automatic pistol. All of the law enforcement weapons were found to be consistent with the rounds missing from their collected weapons. There was a projectile impact hole in the hood of the Dodge Charger driven by Deputy Gallegos, located on the east side of the intersection. The projectile damaged the fuse box interior, and then traveled into the cabin filter where it was collected. The tests revealed that the only weapon that could have fired that projectile, was Alvarado's silver Smith and Wesson model 637-2 Airweight, 38 Special + P caliber revolver. Alvarado's silver revolver was also listed as stolen.

A criminal history check revealed that as a juvenile, Alvarado had a history with police going back to the age of fourteen, and had been charged in three separate cases that included; Aggravated Assault (DW), Domestic Violence, and Threatening Witnesses. As an adult, he had eight cases that were pending. Four of the cases were already charged and pending in Metro Court. These charges included; three Domestic Violence cases, and one Harassment case. In District Court, he had completed his first appearance, and was pending indictment in two separate cases. These charges included; felony Aggravated Assault (Deadly Weapon), Receiving and Transferring a Stolen Motor Vehicle, and Tampering with Evidence. He had two additional cases yet to be charged. These two cases were in the District Attorney's Office, and were pending. These charges included; Aggravated Burglary, Armed Robbery, Aggravated Battery (Deadly Weapon), Child Abuse, Aggravated Assault (Deadly Weapon), Shooting at or from a Motor Vehicle (No Great Bodily Harm), and Shooting at an Occupied Dwelling (No Great Bodily Harm).

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.

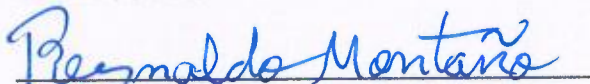
Case law has established that under Section 30-2-6, the crucial consideration is the conduct and dangerousness of the suspect, not the classification of the crime that he or she has committed, or is alleged to have committed. Under the Criminal Section of the Uniform Jury Instruction, 14-5173, the burden 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 Deputies Gallegos and Hix, and Officer Richards fired at Alvarado, they were acting under the reasonable fear that they, or others, would be killed or seriously injured by the actions of Alvarado. Alvarado behaved in a manic and reckless manner, in his determination to evade capture at all costs. The violent behaviors demonstrated by him on February 2nd were consistent with his criminal history, in terms of their violent nature. He demonstrated over and over, his willingness to harm anyone that got in his way. Then, when surrounded by multiple law enforcement officers, he did not relent, and fired upon them, knowing they would have no choice but to return fire. He did not have any regard nor respect for the lives and rights of others, including his own, and all three law enforcement officers had no choice, but to shoot in self-defense, and in defense of one another.

The evidence strongly suggests that Deputies Hix, and Gallegos, and Officer Richards were reasonably concerned for themselves, for one another, for law enforcement in general, and for the public at large, and responded to the threat of deadly force or serious harm posed by Alvarado, and fired their weapons based upon those concerns. Deputies Hix, Gallegos and Officer Richards are 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 Deputies Hix, and Gallegos, and Officer Richards; the case will be closed.

Sincerely yours,



Reynaldo Montano
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Russell Broyles, BCSO Detective
Raymond Del Greco, APD Sgt.
Fred Mowrer, Attorney for Deputy Hix
Jim Biamonte, Attorney for Deputy Gallegos
Luis Robles, Attorney for Officer Richards
Claudia Alvarado, sister to Edgar Alvarado
Guadalupe Alarcon, mother to Edgar Alvarado