

January 31, 2020

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

Prosecutorial review of December 12, 2018 shooting of
Gabriel Romero by APD Officer Douglas Moore
APD # 18-0118590; DA case# 2018-08351-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Gabriel Romero on December 12, 2018, for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and autopsy reports, videos, photographs, and a visit to the scene of the incident, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that APD Officer Douglas Moore was not acting under the reasonable belief that he faced death or great bodily harm as a result of Romero's actions. No charges will be filed: the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On the afternoon of December 12, 2018, Mary Higgins was walking west in the Hahn Arroyo between San Mateo Blvd, NE and Monroe NE, when a male in a red sweatshirt, who was walking east bound, appeared in front of her. This man, was later identified as Gabriel Romero, pointed a pistol at Mary and demanded her money. When Mrs. Higgin's stated she didn't have any money, Mr. Romero demanded that she open her backpack so he could see inside of it.

After Mrs. Higgin's unzipped her backpack and showed him what was in it, he continued walking east in the arroyo without taking anything. As Mrs. Higgin's continued walking west, she saw a man, Kevin Wellman, riding his bike east along the arroyo; she told him to be careful because there was a guy in a red sweatshirt walking east who had just tried to rob her at gunpoint. Mr. Wellman told Ms. Higgin's he had just passed another young male along the arroyo, who had stated a man in a red sweatshirt had just attempted to rob him. Mrs. Higgins called APD 911 and reported that a man in a red sweatshirt, armed with a gun tried to rob her and another man, and the man with the gun was walking east in the Hahn arroyo towards Montgomery Park. Mrs. Higgins was asked to describe the male, she stated; 5'9", medium build, black hair with "soft curls" and that he had dark circles around his eyes and was possibly "Greek" or "Arabian". She described the gun as silver and black, and that the gun was pointed at her chest.

APD Officer Andrew Ramkowsky and Sgt. Jim Edison were both dispatched to the area of San Mateo and Comanche in reference to the 911 call. The Officers were given a description of the male, and were advised the male was in the arroyo and was heading east towards the Erna Fergusson Public Library at 3700 San Mateo, NE. Officer Steve Arias who was working the Real Time Crime Center advised over the radio he was monitoring the cameras at the library and had not yet observed the male.

Shortly after that, Kevin Wellman called APD 911 and stated the man in the Hahn Arroyo who tried to rob two different people, was now at San Pedro, NE. Mr. Wellman stated the male was wearing a red hoodie, grey sweatpants, red high top tennis shoes, a fanny pack and his hands were in his front "Kangaroo" pocket, and stated he was watching the male from approximately 100 yards away and that he stopped under the San Pedro bridge.

Officer Brian Lund arrived in the area of the call, and Officer Ramkowsky advised over his police radio he and Officer Lund would be checking the area for the offender. Officer Arias advised that they had no cameras which provided a clear view of the area; however, video surveillance from a camera at Erna Fergusson Public Library captured a male wearing a red sweatshirt walking east in the arroyo but could not be clearly identified in the video. Officer Lund drove southbound on San Pedro and parked at the first house north of the Hahn Arroyo. He parked with his emergency lights on and had slung his rifle prior to arriving. When he saw Romero coming out from underneath the bridge, he announced that he was with the Albuquerque

Police Department and ordered Romero to stop and show him his hands. Romero glanced back at him and ran east with his hands in the front of his body as if he was holding something. Officer Lund advised over his police radio that the subject was running eastbound in the arroyo from San Pedro. As he ran, Romero continued to look back at Officer Lund, who had a feeling that Romero was armed and might take a shot at him. Romero ran east in the arroyo to California Street, where ascended the south side of the arroyo, and about three houses east, he jumped the wall going into the backyard of a white flat top roof home at 6313 Kiowa, NE. Officer Lund took position behind a metal sign and advised dispatch that he needed officers at the area of California and Kiowa.

Officer Lund then heard four to five gunshots coming from the yard where Romero had jumped the wall, and immediately heard screaming. Officer Lund then advised over his police radio "Okay PD, we have shots fired." He saw Romero jumping a wall to the east into the backyard of a brown flat roofed house at 6319 Kiowa, NE.

Nikko Hewitt called APD 911 from 6313 Kiowa, NE and stated a male in a red hoodie and blue pants had just run through his yard and shot his dog. Mr. Jacob Hewitt, Nikko's father, arrived at California and Kiowa, NE and told Officers that he had received a call from his son stating someone had jumped into their backyard from the arroyo, shot their dog, and ran east. Mr. Hewitt said his son, Nikko, and his two daughters, Aura and Kimira Hewitt were in the residence.

Sgt. Edison arrived on Kiowa NE and parked at 6325 Kiowa NE; Officer Lund advised him by radio that the offender could be in the backyard of the house at 6319 Kiowa, NE. Officer Moore also arrived and parked on Kiowa, NE. Sgt. Edison, Officers Lund, Moore, Ramkowsky and Cockerill began to walk towards 6313 Kiowa, NE. Detective Roach advised over his police radio that Mr. Hewitt was on the phone with the children, and they were going to remain in a bedroom until they heard officers at the front door. Sgt. Edison responded officers were at the front door, and to tell the children to come out. Officers Lund and Moore entered the residence to conduct a safety sweep, and as they entered the residence, they saw the family dog, Bartleby, lying dead on the floor in the hallway with blood coming from his eye and a large amount of blood around the dog. The officers searched the home, found no sign of Romero, and took the three Hewitt children outside and down the street to safety.

Officers Ramkowsky and Moore then went to 6319 Kiowa, NE, knocked on the front door, and made contact with the residents, Mike and Sarah Holguin and ensured they were okay. The Holguins said they hadn't noticed anyone and gave the officers permission to check the backyard.



Officers Lund and Moore walked to the west side of the residence, and checked two trash containers as they approached the gate to the backyard, and Officer Moore opened the gate and both officers stepped into the backyard. Officer Moore announced, “Albuquerque Police, anybody back here make your presence known,” Officer Moore walked east along the rear of the residence, with Officer Lund walking a few yards behind him. Officer Moore again called out “Albuquerque Police”, as he neared the east end of the residence, and stepped north, around a large tree. At the north east corner of the residence, Officer Moore raised his rifle to a shooting position, and slowly began to edge around the corner of the house. Seeing no one, he lowered his

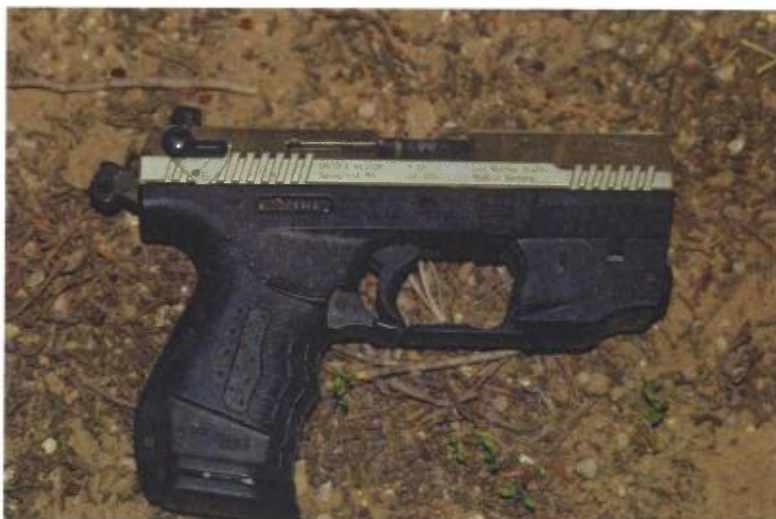
rifle and took four steps to the south along the east side of the residence.



Last image from Officer Moore's lapel camera before he shifted slightly and lost the angle. Romero is hiding behind the large black wheel barrow on the left.

Romero, who was hiding behind a black wheelbarrow along the east side of the residence, peeked over the top of the wheel barrow and pointed a pistol at Officer Moore. Officer Moore stopped abruptly, raised his rifle and yelled, “Show me your hands.” “Drop the gun”, “Drop the gun”. Officer Moore said later that, at that moment, “I thought he was gonna kill me.” He fired at Romero eight times. Romero fell to the side of the wheel barrow, and said “stop, stop, stop”. The gun dropped near his outstretched hand. Officer Lund, who was still along the north side of the residence, stepped up next to Officer Moore, and both officers gave Mr. Romero commands to put his hands up where they could see them. Officer Moore requested over his police radio to have Albuquerque Fire Rescue start to the scene. Mr. Romero was struck a number of times and died at the scene.

Romero's pistol, a Walther 22. Caliber pistol was recovered in the Holguin's backyard. The pistol had been stolen two months earlier from a vehicle. In Romero's fanny pack, investigators found a polaroid photograph of Romero holding the stolen pistol. When recovered, the pistol had with no live shells left in the magazine- Romero had expended the last live rounds killing the dog.



Pistol in the yard where it fell



Polaroid of Romero holding stolen pistol

Soon, Romero's mother, Savannah Duran, arrived at the scene. When told her son had been killed she said she assumed it was "death by cops". She told the investigators that her son suffered from a history of mental problems, a severe head injury in 2017, had been severely depressed lately, and talking about suicide.

The autopsy revealed that Romero had been struck by multiple shots in his right shoulder, left arm, both legs, and back, indicating that he was facing toward Officer Moore as the shooting started and twisted away to avoid the later rounds. Analysis of his blood indicated that he had consumed small amounts of alcohol and marijuana before his death.

LEGAL ANALYSIS

APD Officer Douglas Moore was acting in the line of duty, attempting to arrest Romero for attempted armed robbery when he fired the shots, 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 they believed they 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.

CONCLUSION

The question presented in this case is whether, at the moment APD Officer Douglas Moore fired, was he acting under a reasonable belief that Romero presented a threat of death or serious harm? Evidence clearly shows that Romero pointed the pistol at APD Officer Douglas Moore and he reacted out of a reasonable fear for his safety; and in the absence of any evidence to prove, beyond a reasonable doubt, that he was not, there is no reasonable likelihood of a successful prosecution; therefore, no charges will be filed against APD Officer Douglas Moore. The case will be closed.

Very truly yours,



Michael Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Chief Michael Geier, APD

Detective Todd Babock-Albuquerque Police Department

John D'Amato, Attorney for Douglas Moore, APD

Savannah Duran- Gabriel Romero's mother