

December 18, 2017

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

RE: Prosecutorial review of the May 25, 2015 shooting incident in which Officer Ryan Graves 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 Albuquerque Police Department Officer Ryan Graves shot at Danan Gabaldon on May 25, 2015. After a review of all available evidence, including police reports, witness statements, laboratory reports, videos, photographs, and a visit to the scene of the incident, I conclude there is not sufficient evidence to prove, beyond a reasonable doubt, that Officer Graves was not acting under the belief that Gabaldon's actions posed a threat of death or great bodily harm to Officer Graves or his fellow officer. Therefore no criminal charges will be filed against Officer Graves, and 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 May 25, 2015, Danan Gabaldon was driving a stolen red Chevrolet Tahoe in the parking lot of the Valley Apartments at 1824 Indian School Road N.W. The police received an anonymous tip that someone was driving a stolen, red Tahoe at the apartment complex. Officers Ryan Graves and E Nelson responded to the scene. They located the car in the lot and were able to run the license plate, which confirmed that the car was stolen. Danan Gabaldon was driving the Tahoe.

Gabaldon had several reasons to avoid arrest. First, he was wanted in two pending criminal cases. In one he was charged with Aggravated Assault on a Peace Officer with a Deadly Weapon, arising from an incident in March 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. In the second case he was charged with Residential Burglary and Larceny in which a warrant had been issued for him for violating his conditions of release. In addition, he had two prior felony convictions, one for Aggravated Fleeing a Law Enforcement

Officer and a second for Felon in Possession of a Firearm, which meant that any sentence he received for any felony, including receiving a stolen vehicle, would be enhanced by four years.

In the car with him were two young women and a child, who had accepted a ride to the grocery store from Gabaldon, who they knew only as "Creeper". When he saw the police cars he attempted to drive away but found himself trapped in a dead-end part of the parking lot. The officers turned on their emergency lights, followed in their cars, and parked behind Gabaldon. He reversed the car's direction to face the officers, who had stepped out of their cars and commanded Gabaldon repeatedly to "Stop", and "Don't do it." When the two women in the car saw what was happening, they begged Gabaldon to let them and the child out of the car, but he ignored them and, instead, accelerated toward the gap between the parked cars and Officer Graves' car, in which Officer Graves found himself trapped. Graves fired three shots at Gabaldon; two shots pierced the windshield and the third passed through the body of the car, just grazing Gabaldon's leg. Graves said that he fired because "I'm concerned he's gonna hit me." Two civilian eyewitnesses confirmed that Officer Graves was about to be struck by Gabaldon's car when he shot at the windshield.

Graves scrambled to safety as Gabaldon drove through the gap, striking the open door of Graves' police car. Gabaldon then raced through the parking lot and onto Indian School Road where he collided with another vehicle, damaging both cars. Gabaldon drove off in the heavily damaged Tahoe, now with flat tires, and abandoned it a few blocks away. He escaped on foot.

The investigation quickly focused on Gabaldon, who was positively identified as "Creeper" by one of the women who had been in the SUV during the shooting. He was arrested on June 4, 2015, and at first denied any involvement in the incident, but later admitted he did drive the Tahoe, insisting that he was just trying to protect his passengers and claimed he had his hands up when the shots were fired, which was contradicted by all of the eye witnesses, including the women in the car and a passerby, and the officers' lapel cameras. On February 26, 2016, he pled no contest to Aggravated Assault on a Peace Officer with a Deadly Weapon, based on his attempt to run down Officer Graves.

LEGAL ANALYSIS

Officer Graves was acting in the line of duty, attempting to arrest Gabaldon on suspicion of car theft 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 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 overwhelming weight of the evidence, from both eyewitnesses and lapel videos shows that Gabaldon was accelerating straight at Graves when Graves opened fire. Officer Graves acted under the reasonable fear that he would be struck and injured by the car accelerating toward him. In addition, although Gabaldon's no-contest plea was not an admission of guilt, it was an admission that there existed sufficient evidence to prove that he assaulted Officer Graves with a deadly weapon. This admission alone establishes that Officer Graves was acting in reasonable self-defense, thereby precluding any potential prosecution of Officer Graves; therefore, no charges will be filed against Officer Graves; the case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Matthew Caplan, Albuquerque, Police Department

Dana Gabaldon, Guadalupe County Correctional Facility

Fred Mowrer- Attorney for Ryan Graves