

March 8, 2018

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

RE: Prosecutorial review of the July 22nd, 2014 shooting death of Jeremy Robertson.

APD case # 140059537; DA case # 2014004499-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting death of Jeremy Robertson on July 22, 2014, for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and autopsy reports, videos, photographs, and visits to the scene of the incident, I conclude that it is not possible to prove, beyond a reasonable doubt, that the police officers were not acting under the belief that Jeremy Robertson's actions posed a threat of death or great bodily harm to police officers or the public in general. 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 July 22, 2014, members of the Albuquerque Police Department were looking for Jeremy Robertson to arrest him on a bench warrant which had been issued for his failure to appear for re-sentencing on two counts of Receiving or Transferring a Stolen Motor Vehicle. On April 30, 2014, he had been sentenced on those charges and received a suspended sentence of six years and was placed on probation. However, he failed to report for probation and a warrant was issued for his arrest on June 18, 2014. He was also facing charges in Sandoval County of Aggravated Assault on a Peace Officer with a Deadly Weapon, and Aggravated Battery on a

Peace Officer with a Deadly Weapon, arising from an incident on January 9, 2014, in which he had attempted to escape arrest by smashing his car into the officers' vehicles.

In the days before July 22, 2014, the police had received information from a confidential informant that Robertson was driving a stolen van, and had acquired a sawed-off shot gun and a pistol that he always carried with him. The confidential informant also reported that Robertson said he had six burglaries pending and said "I'll never go back to prison. I'm not going to live in a box." On the morning of July 22, 2014, he was spotted in the van in a trailer park off of Eubank Blvd. N.E.. Robertson was loading scrap metal into the van with the help of an acquaintance, Glen Edwards. While they were loading the van, Robertson told Edwards, "Today's a suicidal day." After loading the van, Robertson and Edwards drove to a nearby scrap metal lot to sell the metal. The police, in undercover vehicles followed, waiting for an opportunity to arrest Robertson. Unfortunately, the pair were in and out of the scrap metal lot before an arrest could be planned.

Robertson then drove the van to the Giant Gas Station on Central and Eubank. Enroute, Edwards noticed the police and asked Robertson what was happening. Robertson told him that he was running from the law and "If they shoot at me, I'm gonna shoot back." He also said he was on a suicide mission. Edwards urged him to surrender but Robertson said, "I will fucking kill them all," and showed Edwards a black and silver pistol he had in his waistband. Edwards asked why he had a gun, and Robertson replied, "If they're gonna kill me, I'm gonna kill them."

At the Giant Station, Robertson filled up the van and went inside to pay. The officers blocked the van and waited for Robertson in the parking lot. When he emerged, Detective Mathew Volmer and Detective Eric Endzel, both in plain clothes, approached him. The moment he saw them he ran, fumbling to pull the pistol from its holster. When ordered to drop the gun, he responded, "Fuck you!" and ran. Detective Volmer fired a taser round at the fleeing Robertson but it failed to attach and had no effect. Robertson ran northwest across the busy intersection of Central and Eubank. He pulled out his pistol, dropping the holster in the intersection. Edwards saw him pointing the gun at the pursuing officers, but they were dodging cars and didn't notice.

Robertson ran northwest through the parking lot of the Valerio Gas Station on the corner of Eubank and Central. He hopped a chain link fence behind the gas station and ran north through a vacant lot with two mobile homes parked there. At the north end of the lot, on the

other side of the fence, two SWAT officers, Ramon Ornelas and Anthony Sedler, drove up and jumped out of their cars. Robertson saw them and veered toward the northwest corner of the lot. Ornelas yelled at Robertson, "Stop. Drop the gun." But Robertson ignored the command, and started to climb the fence in the corner, gun in his hand. On the other side of the fence was a residential neighborhood. As he reached the top of the fence, both officers fired twice, all four shots struck Robertson. He fell from the fence onto the sidewalk on the other side, dropping the gun. Almost immediately, A.P.D. SWAT Officer Johnny Salas drove up on the other side of the vacant lot. He had seen Robertson running across the lot with the gun and saw him climb the fence and then fall to the other side. He parked and went to the motionless Robertson; he kicked the gun away; it was a 9mm Ruger, loaded with 13 rounds. Rescue personnel arrived almost immediately, but were unable to save Robertson. Blood tests found methamphetamine in Robertson's system consistent with recreational use. Common side effects of such use of methamphetamine would include agitation, aggression, and paranoia.

Both officers who fired, Ornelas and Sedler, said they were afraid for anyone that Robertson might encounter on the other side of the fence. Both were aware of Robertson's violent attempt to avoid arrest in Rio Rancho in January, and of a similar incident that occurred earlier in January, in which he had successfully rammed his way out of a blockade. Officer Sedler said, "And so I was afraid that someone was going to get killed if I let him get over that fence." Officer Ornelas said, "I could not let him get into that neighborhood. He would kill and/or injure people."

LEGAL ANALYSIS

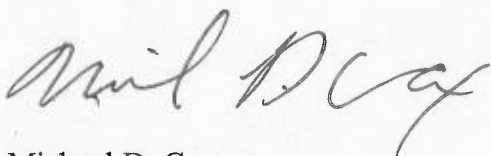
The officers who shot Jeremy Robertson were in the process of attempting to serve an arrest warrant and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6, which establishes that a peace officer may justifiably use deadly physical force to prevent the escape of a suspect when he believes he or another is threatened with serious harm or deadly force. "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer, or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985), and *Archuleta v. LaCuesta*, 1999-NMCA-113, ¶ 8. 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 unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was unjustified, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

CONCLUSION

The officers said they fired because they were afraid that people on the other side of the fence would be threatened with death or serious harm by Jeremy Robertson. There is no evidence to suggest, much less prove beyond a reasonable doubt that they shot for any other reason. In the absence of such evidence, a jury will almost certainly accept this element of the defense, which would lead them to the next question: were the officers' fears unreasonable under the circumstances? In essence, the jury can only convict if they conclude, beyond a reasonable doubt, that Jeremy Robertson did not present a danger to the people he might encounter on the other side of the fence. Given his previous violent efforts to avoid capture, the loaded firearm he refused to relinquish, the effect of the methamphetamine on his behavior, and his vow to die and take others with him, there is no reasonable possibility that a jury would conclude he did not present a significant danger to the officers and the public. In the absence of sufficient evidence to prove, beyond a reasonable doubt, that the shooting was unjustified, there is no real likelihood of a successful prosecution; therefore, no charges will be filed against Officers Sedler or Ornelas. The case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Geoffrey Stone, Albuquerque, Police Department

Joseph Kennedy, attorney for Jeremy Robertson's family

Luis Robles, attorney for Officer Ramon Ornelas and Officer Anthony Sedler