

September 9, 2020

Sheriff Manuel Gonzales, III  
Bernalillo County Sheriff's Office  
400 Roma Ave. NW  
Albuquerque, New Mexico 87102

Re: Prosecutorial Review of the March 3, 2020 shooting  
of Kevin Torgerson by BCSO Sergeant Christopher Starr.  
DA Case #2020-02034-1  
BCSO Case # 20-624513

Dear Sheriff Gonzales:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the March 3, 2020 shooting of Kevin Torgerson by Bernalillo County Sheriff's Office Sergeant Christopher Starr. After a review of all available evidence, including police reports, witness interviews, belt tapes, dash-cam videos, photographs, a review of the evidence with Case Agent Cameron Carroll, and a visit to the scene of the shooting, I conclude that when Sergeant Starr discharged his weapon and shot Mr. Torgerson, he was acting under a reasonable belief that Mr. Torgerson's actions posed a significant threat of death or great bodily harm to the law enforcement officers at the scene. Accordingly, criminal charges against Sgt. Starr are not warranted and the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

#### RELEVANT FACTUAL BACKGROUND

On the morning of March 3, 2020, police dispatch received a call reporting that a man dressed in black was walking on the concrete pillars between the east and westbound lanes of Interstate 40 (I-40)

near mile marker 169. Bernalillo County Sheriff's Office (BCSO) Deputies Mark Volk and Micah Barker were dispatched to the area to look for the male subject. Both deputies were in full BCSO uniform and driving marked patrol vehicles. According to the BCSO deputies, they did not locate the subject of the initial dispatch. Around the same time, police dispatch received a report from a utility worker that there was a crashed vehicle in an arroyo east of the Carnuel exit on State Road 333. The vehicle was described as a red Ford Taurus with an Arizona license plate. Deputy Volk was dispatched to the crash site and found the reported vehicle. There was no one inside the vehicle. A photograph of Mr. Torgerson's crashed vehicle is provided below.



*Photograph of Mr. Torgerson's crashed vehicle.*

While Deputy Volk was at the crash site, he noticed a man matching the description of the earlier call which reported that a man was walking between the lanes of traffic on I-40. Deputy Volk announced his discovery over the radio. Deputy Barker proceeded to the location to assist Deputy Volk. Deputies Volk and Barker approached the male subject, later identified as Kevin Torgerson, and tried to talk to him. Deputy Volk tried to find out if Mr. Torgerson knew anything about the crashed vehicle.

Deputy Volk stated that the Mr. Torgerson seemed really agitated, and when asked his name, stated “You don’t need to know my name.” Mr. Torgerson made some comments that did not make any sense and then walked away from Deputy Volk.

Deputy Volk walked back to his patrol vehicle and used the P.A. system to make announcements to Mr. Torgerson. Mr. Torgerson walked back towards Deputy Volk’s location and at one point jumped over a fence that was less than ten yards away from Deputy Volk. When Mr. Torgerson came down from the fence, he lifted his sweater and, with his left hand, pulled a gun from his waistband. Deputy Volk described the gun as a black revolver. Deputy Volk, from behind the door of his patrol vehicle, drew his weapon and ordered Mr. Torgerson to drop the gun or Deputy Volk would shoot him. Deputy Volk stated that Mr. Torgerson said, “Do what you have to do”. Although Mr. Torgerson never pointed the gun at Deputy Volk, he also did not follow Deputy Volk’s order and drop the gun. Instead, Mr. Torgerson put the gun back in his waistband. Deputy Volk commanded Mr. Torgerson to get on the ground and to put his arms to the side. Mr. Torgerson refused to follow Deputy Volk’s instructions, and instead took a couple of steps to the left and then to the right and then he jumped back over the fence and walked in a westerly direction. Deputy Volk continued to order Mr. Torgerson to the ground , but Mr. Torgerson continued to disregard the deputy’s orders and continued to walk westbound about 100 yards from Deputy Volk’s location. Deputy Volk believed that Mr. Torgerson was trying to coax the deputies towards him. Deputy Volk stated that other officers arrived on the scene, set up a perimeter, and made contact with Mr. Torgerson. A short time later, Deputy Volk heard two gunshots. He did not see the shooting, but he saw Mr. Torgerson fall to the ground.

Deputy Alejandra Heredia, while working her day shift, heard over the radio that Deputy Volk was dealing with a man with a gun. Deputy Heredia informed dispatch that she was going to assist Deputy Volk in dealing with the armed individual. When Deputy Heredia arrived on the scene, she

observed that Deputy Barker and Deputy Miguel Rivas had their weapons drawn. Deputy Heredia considered approaching with her taser, but when she saw Mr. Torgerson and observed the handgun in his waistband, she opted to approach with her handgun. Deputy Heredia began to talk to Mr. Torgerson. Deputy Heredia stated that her whole purpose was to talk Mr. Torgerson into a safer environment, because Mr. Torgerson's actions were not making the situation very safe. Deputy Heredia told Mr. Torgerson several times that the officers needed to get Mr. Torgerson's gun so they could talk to him in a safe environment. Deputy Heredia asked Mr. Torgerson to get on the ground and put his hands on his head. Deputy Heredia assured Mr. Torgerson that they just wanted to talk to him, but that they needed to secure the weapon for everybody's safety. Mr. Torgerson, however, disregarded Deputy Heredia's commands and continued to walk away from the deputies. The deputies employed crisis intervention techniques and continued to talk to Mr. Torgerson in an attempt to secure the weapon and to resolve the situation. As the conversation progressed, Deputy Heredia learned that Mr. Torgerson had crashed his car, the red Ford Taurus, and that he was having a very rough day. Deputy Heredia tried to assure Mr. Torgerson that the deputies would try to help Mr. Torgerson with his crashed vehicle, but that the officers needed Mr. Torgerson to get on the ground so the deputies could secure Mr. Torgerson's weapon.

During the conversation, Mr. Torgerson told the deputies that he wanted water and a cigarette. Deputy Heredia had both items in her patrol vehicle, so at the urging of Sgt. Christopher Starr, Deputy Heredia ran back to her patrol vehicle and returned with a bottle of water and a cigarette. Deputy Heredia pleaded with Mr. Torgerson to put his hands on top of his head and drop down to his knees so she could get the firearm in exchange for the water and cigarette. Mr. Torgerson stated, "I'm not going to do that." Deputy Heredia continued to converse with Mr. Torgerson, trying to build some rapport. She gave Mr. Torgerson a bottle of water by rolling it on the ground, but told him that she could not roll

a cigarette, so that if he wanted the cigarette, he needed to put his hands on his head, drop down to his knees, and allow the deputies to secure the firearm. Deputy Heredia assured Mr. Torgerson that he was not in any trouble, that the deputies just wanted to secure the firearm so they could talk in a safe environment. Additionally, Deputy Heredia offered medical assistance in case Mr. Torgerson had injuries from the car crash. Mr. Torgerson said “No.”

Deputy Heredia stated that as the conversation continued, Mr. Torgerson started becoming somewhat cooperative, but it did not last very long. At one point Mr. Torgerson put his hands over his head. Deputy Heredia then asked Mr. Torgerson to face away from her. Mr. Torgerson did not want to do this and brought his hands back down. Deputy Barker asked Mr. Torgerson why he stopped cooperating, but Deputy Heredia could not recall Mr. Torgerson’s verbal response. At this point, Mr. Torgerson, only about ten feet away from the deputies, “bladed” his body with the gun on his right side in relation to Deputy Heredia. Mr. Torgerson suddenly brought his right hand back down towards the gun. Deputy Heredia heard a gunshot and thought Mr. Torgerson shot himself when he reached for his gun. The facts that Deputy Heredia did not discharge her weapon, that Deputy Barker had earlier transitioned from a handgun to a taser, and that she did not see anyone else fire their weapon supported her belief that Mr. Torgerson shot himself. Deputy Heredia observed Mr. Torgerson drop to the ground. Deputy Heredia and Deputy Barker approached Mr. Torgerson, secured the revolver, and handcuffed Mr. Torgerson. The deputies proceeded to render medical aid to Mr. Torgerson. Deputy Heredia observed a wound on Mr. Torgerson’s arm. She applied a tourniquet and called out the time as 7:21 a.m. Deputies also applied two chest seals to Mr. Torgerson’s wounds.

In her voluntary statement, Deputy Heredia summarized how deputies implored Mr. Torgerson to let the deputies retrieve and secure his weapon so nobody would get hurt. She stated:

So, I remember Deputy Barker telling him many times like don’t put your hands in your pocket. I told him the same thing. Or like put your hands over your

head, drop down to your knees, give me the opportunity to get that gun, um, and he just wouldn't do that, and he would tell me he wouldn't do that, and he would offer me different scenarios. Like what if I tossed the gun and then ran over to get the cigarettes. I was like that's not gonna, how it's going to work. I'm like it's not going to work that way. Um, I need to get it, um, and so just like, or different things where he would like start walking away. We would tell him not to walk away, then he would continue to walk away. I even voiced over the radio at one point the male's walking back towards I-40, um, because he just kept walking. I was like well maybe he's just going to continue walking, but he did like eventually stop and talk to us again. Um, so it was just that kind of thing where like if It told you to put your hands over your head, just put your hands over your head, I'm not trying to hurt you.

Sgt. Christopher Starr, the only law enforcement officer that fired his weapon at Mr. Torgerson, provided investigators with a voluntary statement. He informed investigators that he has been with the BCSO for nineteen years, that his current position is shift supervisor, that he has been trained in crisis intervention, that he was on the SWAT team for a number of years, and that he is a firearms instructor and a defensive tactics and ground control instructor for the department. On the morning of March 3, 2020, Sgt. Starr was at the substation when he heard over the radio that a couple of deputies were dispatched to mile marker 2 on State Road 333 in reference to a vehicle crash, and he also heard over the radio that there was a male individual who was on I-40 walking in and out of traffic. At the time, Sgt. Starr did not know if the two reports were connected but he heard that deputies made contact with a male individual, later identified as Kevin Torgerson. Mr. Torgerson, dressed in a black jacket and dark pants, was not being compliant with responding deputies. A short time later, deputies radioed that Mr. Torgerson was armed with a handgun. Sgt. Starr and other units immediately proceeded to the area to assist with the situation. When Sgt. Starr arrived on the scene, he observed Mr. Torgerson walking away from the deputies in a westbound direction. Sgt. Starr, armed with his rifle, positioned himself about 25 yards away from Mr. Torgerson. Sgt. Starr also turned on his belt recorder.

Sgt. Starr observed Mr. Torgerson make erratic movements such as closing the distance between himself and the deputies, intermittently balling up his fists, "blading" his body towards the deputies,

which Sgt. Starr described as positioning his body with the gun at his side closer to the deputies, looking left and then right, and refusing to comply with deputies' commands to get down on the ground. Sgt. Starr believed that Mr. Torgerson's body movements indicated that Mr. Torgerson was planning a confrontation. Sgt. Starr stated that despite the deputies de-escalation efforts, Mr. Torgerson continued to resist the deputies' orders. From Sgt. Starr's position, he could not hear everything that was said between the deputies and Mr. Torgerson, but Sgt. Starr could hear the commands for Mr. Torgerson to get on the ground and he could hear Mr. Torgerson's angry and challenging tone. Sgt. Starr heard Deputy Barker explain to Mr. Torgerson that the demands Mr. Torgerson was making were not safe for deputies and that is why the deputies needed Mr. Torgerson to get on the ground so the deputies could secure the weapon. Sgt. Starr heard Mr. Torgerson say that he was not going to get on the ground. Sgt. Starr heard something about a cigarette, and knowing that Deputy Heredia was a smoker, he asked Deputy Heredia to get some cigarettes from her patrol vehicle and use that as a negotiating tool. Deputy Heredia tried to use a cigarette as a bargaining chip, but Mr. Torgerson still would not comply with the deputies' orders to get on the ground.

Sgt. Starr continued to observe Deputies Barker and Heredia communicate with Mr. Torgerson. At one point, Mr. Torgerson exposed his gun by bringing his shirt up. Sgt. Starr believed that Mr. Torgerson was taking steps to increase his readiness for a conflict. By making it easier to acquire his revolver, Mr. Torgerson was taking an overt action to prepare for a gunfight. Although the deputies were behind the doors of their patrol vehicles, Sgt. Starr did not believe this was effective cover to protect them from gunfire. Sgt. Starr believed that if Mr. Torgerson was able to unholster his handgun, he would be able to get off at least a couple of rounds before the deputies could respond. Based on his training and experience, Sgt. Starr stated that the average shooter takes about one second to draw and fire a round, and an exceptional shooter can draw and fire in a fraction of that time. Sgt. Starr believed

that Mr. Torgerson's actions, in exposing his weapon, were threatening to the deputies. Sgt. Starr was concerned for the safety of his deputies. Sgt. Starr rotated the safety switch on his rifle to the "off" position and was prepared to fire based on Mr. Torgerson's erratic movements, the exposing of his weapon, the proximity of Mr. Torgerson to the deputies, and the deputies insufficient cover. Sgt. Starr believed that one or more of his deputies could be injured or killed if Mr. Torgerson was successful in drawing his weapon. Sgt. Starr resolved in his mind that if Mr. Torgerson reached for his gun, he was going to stop the deadly threat by shooting Mr. Torgerson. Without warning, Mr. Torgerson reached for his gun. Sgt. Starr discharged his firearm and shot Mr. Torgerson. Sgt. Starr believed he fired twice. Mr. Torgerson fell to the ground. Sgt. Starr approached Mr. Torgerson and ordered the deputies to place handcuffs on Mr. Torgerson. Sgt. Starr observed that Mr. Torgerson had wounds to his right arm and to his abdomen. Sgt. Starr assisted other deputies in rendering first-aid to Mr. Torgerson and requested by radio for rescue to be dispatched. Sgt. Starr observed Deputy Barker secure Mr. Torgerson's handgun. A photograph of the revolver recovered from Mr. Torgerson is provided below.





In the aftermath of the shooting, a multi-agency task force, consisting of the Albuquerque Police Department, the Bernalillo County Sheriff's Office, and the New Mexico State Police Department (NMSPP), conducted an exhaustive investigation of the shooting of Mr. Torgerson. Mr. Torgerson survived his wounds, and while he was recovering in the hospital, he agreed to give a voluntary statement to investigators. Mr. Torgerson stated that he crashed his car and just panicked. He thought he may have fallen asleep or passed out, and he thought he may have done something really bad. He did not know what to do, so he decided to run away. Investigators asked Mr. Torgerson if he was on drugs. Initially, Mr. Torgerson stated that he was not on drugs. The investigators confronted Mr. Torgerson with the fact that a methamphetamine pipe and a baggie with a white, crystal-like residue was found in his vehicle. Mr. Torgerson then admitted using drugs, but that it had been a while, "like a couple of days", since he had used drugs, that he "wasn't even really high," and that he does not use drugs very often. The investigators then asked Mr. Torgerson why he was so agitated. Mr. Torgerson stated, "I have no idea why I was so pissed off. I wasn't mad at them. I wasn't trying to hurt them. I wasn't trying to hurt me especially me." He also stated that he was afraid of the deputies because he thought he may have hurt somebody during the car crash and that's why he just wanted to leave the area. Detective Carroll asked Mr. Torgerson if he remembered pulling his gun out of his pants the first time. Mr. Torgerson stated that he was jumping over a fence and he pulled his gun out of his pants so it would not fall and accidentally discharge. Mr. Torgerson stated that the cop "freaked out." Mr. Torgerson stated that he was confused about what the officers wanted, that he could not make sense out of all their yelling. Mr. Torgerson stated that the whole reason he got shot was a misunderstanding, that he had no intention of shooting his gun at the deputies and that his only intention was to pull out his gun and put it down on the ground. Mr. Torgerson acknowledged that the deputies did not tell him to take out his gun and that his actions could have appeared aggressive, but Mr. Torgerson insisted that he had no hostile

intentions. When asked why he would not comply with the deputies' commands, Mr. Torgerson had no explanation.

There were no other civilian witnesses to the shooting, but several other law enforcement officers on the scene at the time corroborated the statements of the officers that interacted with Mr. Torgerson. NMSP Officer Ernest Najera stated that he observed Mr. Torgerson reach for his gun when he was shot. NMSP Officer Richard Jiron stated that he observed Mr. Torgerson with the gun in his waistband, he heard deputies give Mr. Torgerson multiple commands, and he observed Mr. Torgerson fail to comply with the deputies' commands. BCSO Deputy Miguel Rivas observed a gun on the waistband of Mr. Torgerson and observed Mr. Torgerson reach towards his waistband multiple times before he was shot.

The deputies' belt tapes also corroborated the deputies' statements. Deputy Barker can be heard telling Mr. Torgerson to put his hands on his head and get to his knees. He tells Mr. Torgerson numerous times not to grab or reach for his gun. On numerous occasions, Deputy Heredia tells Mr. Torgerson to get on the ground and put his hands on top of his head so the deputies can secure the weapon. Deputy Heredia explains multiple times that the deputies need to secure the weapon for the safety of everybody involved.

#### ADDITIONAL CONSIDERATIONS

As noted above, investigators searched Mr. Torgerson's vehicle pursuant to a warrant. In addition to discovering a methamphetamine pipe and a plastic baggie with white, crystal-like residue, investigators found paperwork indicating Mr. Torgerson's purchase and ownership of a .38 caliber revolver and eleven rounds of live .38 caliber ammunition. Mr. Torgerson was also charged with Resisting or Obstructing an Officer, pursuant to Section 30-22-1 NMSA 1978.