

April 22, 2019

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

BCSO case # 17-0675722
DA case # 2017-03848-1

RE: Prosecutorial review of the July 4,
2017 shooting of Miguel Gonzales by
Bernalillo County Sheriff Deputy Charles
Coggins.

Dear Sheriff Gonzales:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of July 4, 2017 for potential prosecution. My role is to determine whether Bernalillo County Sheriff's Deputy Charles Coggins should be prosecuted for his actions during this incident. I have reviewed all of the available evidence, including: police and supplemental reports from four police agencies, witness transcripts and audio statements, eleven witness transcribed depositions, crime scene reports and photos, OMI report and photos, DNA reports, Latent finger print report, firearm reports and their associated lab reports, CAD printouts, audio dispatch interactions, criminal history, lapel video's, surveillance videos, search warrants, four separate rule 26 expert reports and the related CV's and addendums, and viewed several scenes to include; the laundromat, car wash, and the roads travelled up to the residence where the shooting occurred. I conclude that it is not possible to prove beyond a reasonable doubt that Deputy Coggins was not acting under the reasonable belief that the actions of Miguel Gonzales posed a threat of death or great bodily harm to Deputy Coggins. 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 July 4, 2017 at about 12:53 a.m., the Bernalillo County Sheriff's Department Dispatch Unit received a call regarding ten subjects loitering in the parking lot of a 24 hour laundromat, located at the southwest corner of Coors Blvd. and Edwardo Street S.W. Bernalillo County Sheriff Deputies Charles Coggins and Daniel Skartwed responded to the call. Both officers were in marked patrol cars, and wearing their uniforms and badges of office. The individuals left the laundromat without incident when told to do so by the deputies. Coggins then relocated and parked on the north side of the car wash, located directly north of the laundromat. Skartwed joined him momentarily, and then at about 1:29 a.m., drove southbound on Coors. Coggins had observed a red Monte Carlo parked in the second to last bay on the south side of the car wash. He drove by the bay, obtained the license plate number, and ran the number through dispatch. The license came back as stolen. The investigation would later reveal that the license plate identified as NCB189 belonged to a different vehicle, and was reported stolen by the owner, Rosalie Lovato, about eight hours earlier.

Skartwed had only travelled a short distance when he heard the call concerning the Monte Carlo, and the stolen license plate. He then turned and headed north on Coors, back towards the car wash. Coggins did not want to spook the driver, and waited for Skartwed to return before he approached the vehicle. At about 1:30 a.m., the Monte Carlo had moved up into the wash bay and out of sight from Coggins' view. Skartwed arrived back on scene within moments, and upon his arrival, Coggins learned that the Monte Carlo had exited the car wash. Both deputies heard the sound of the Monte Carlo in the distance as it accelerated travelling southbound on Coors, and they then began to pursue the vehicle. The vehicle turned westbound on Arenal S.W., and both deputies observed as the vehicle drove erratically between two other vehicles. The deputies had difficulty catching up due to the Monte Carlo's accelerated speed. The driver would later be identified as Miguel Gonzales. The car wash had two cameras, and the video footage was later provided to the police. Gonzales was identified in the video as the driver, and was observed to have a shiny object on his right hip, believed to be a handgun.

The pursuit continued into a residential area on the south side of Arenal near Unser Blvd S.W. At about 1:32 a.m., and while still in the residential area, Coggins saw the vehicle with only its orange running lights travelling in his direction. Coggins illuminated the vehicle with his spot light, and saw a Hispanic male in the driver's seat. He recognized the vehicle as the same Monte Carlo from the car wash. The vehicle did not stop, and Coggins reported to dispatch that the vehicle "just went head-on with me, and then went over the curb, going northbound." Coggins then pursued Gonzales with his emergency lights engaged to Desert Breeze Road. After a short chase, Coggins vehicle pursuit quickly converted into a foot pursuit. Gonzales exited the Monte Carlo, and fled to the back yard of 7412 Desert Breeze S.W. As Gonzales fled, Coggins heard him shouting as if trying to gain the attention of someone inside the residence, but without a response. It was later discovered that when Gonzales had exited the Monte Carlo, he left it in drive. The Monte Carlo then crashed into an unoccupied vehicle that was parked along the curb two houses west of 7412 Desert Breeze S.W., which then caused that vehicle to strike a second unoccupied vehicle that was parked behind it, and along the same curb. The Monte Carlo had remained in drive with its engine still running until the police later sealed it, and had obtained a search warrant for the vehicle.

Deputy Coggins provided a formal statement to police, and then again in a sworn deposition. He indicated that he observed as Gonzales scaled over an iron gate, and fled into the backyard of 7412 Desert Breeze. Coggins parked his police unit in front of 7412, and pursued Gonzales over the iron gate, and into the backyard. While running, Coggins attempted to key his lapel radio five times, but it would not activate. Once over the gate, Coggins attempted to turn his belt tape on as he pursued Gonzales around the southwest corner of the residence. However, prior to Coggins being able to activate his belt tape, he heard Gonzales threaten him, by stating, "get back or I'll shoot." By all accounts it was very dark in the backyard. Coggins saw the silhouette of Gonzales standing near the back wall, about seven yards southeast of his position. Gonzales was on top of a two and one-half foot high retaining wall, and he was looking at a downward angle towards Coggins. Gonzales was in a bladed stance with his body at a 90 degree angle from Coggins. Gonzales had his right arm fully extended as if aiming a firearm, and had a dark object in his hand, and pointed in the direction of Coggins when he made the threat. Coggins

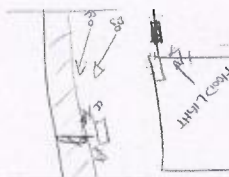
concluded that Gonzales was pointing a gun at him, and further felt that Gonzales "had the drop on him," and that he, Coggins, was about to be shot.

Coggins explained, "I felt that I was about to get shot." "I was expecting to get bullets, excuse me, to get shot." "All I know is I needed to react before I got shot at, or fight, and not give up before, even if I get shot on, just to respond." Coggins stated that he then pulled the gun from his holster and fired four shots in "extremely rapid" succession, fatally wounding Gonzales. Coggins stated that there were two different actions that were occurring. He explained, "there's me firing and him moving." "So while he's moving, he's also getting hit while he's moving." Coggins stated that pursuant to his training, he "stopped shooting when Gonzales fell down, and was no longer a threat." Immediately after the shooting, Coggins was able to start his belt tape, and is heard as he ordered Gonzales to "show his hands," but without response. It was then he reported that Skartwed appeared next to him in the backyard. At about 1:36 a.m., and moments after firing his weapon, Coggins reported to dispatch, "shots fired S.O., one down, one at gunpoint."

When Skartwed first arrived at the residence, he observed that Coggins' car was parked in front of the house that he later learned was 7412 Desert Breeze. The emergency lights were activated, and the drivers' door was left open. Skartwed parked behind Coggins' vehicle, and in his attempt to catch up to Coggins, popped off his seat belt with his belt tape in the same hand. In his haste, when he threw off the seat belt, he also threw his belt tape by accident. He began to look on the floorboard of the vehicle for the belt tape, but determined that in the situation at hand, he needed to back up Coggins instead. Skartwed could tell that Coggins was in a foot chase when he saw his shadow on the wall as Coggins ran along the side of the residence. Skartwed was in full sprint, and about 25 feet behind Coggins when he then observed Coggins on top of a wall, and ready to jump into the backyard. As Skartwed ran towards the wall he heard Coggins shouting commands, and when he reached the wall, heard three shots, a very short pause, and then a fourth shot. The flashes from the weapon lit up the entire backyard. Skartwed momentarily did not jump over the wall as he was concerned that Coggins was shot, and thought he could be headed into an ambush. He then heard Coggins shouting, "let me see your hands." He then jumped over the wall.

Once over the wall, Skartwed saw that Coggins had his gun pointed with his arm extended towards Gonzales, and saw that his flash light was on. He saw Gonzales as he lay on top of the retaining wall, on the ground, and on his right side facing them, with his right arm extended over the edge of the retaining wall, which would have been in the direction of a dog house located near the retaining wall. Skartwed then drew his firearm, and while doing so, observed the left arm of Gonzales move on its own. He was then shoulder to shoulder with Coggins when Coggins told him, "he was going to fucken shoot me." Coggins then called dispatch and announced that shots were fired, and asked for rescue. The two of them then approached Gonzales. Skartwed believed that he felt a pulse on Gonzales. Coggins then rolled Gonzales onto his back from his right side in order to conduct a basic medical evaluation, and to check on the seriousness of the wounds. Coggins observed a large amount of blood near the edge of the retaining wall, which was in the area where the head/neck of Gonzales was located prior to rolling him onto his back.

Drawing by Skartwed identifying the locations of Coggins and himself near the NW corner of the residence when he had first entered the backyard. The drawing also depicts the location and position of Gonzales on top of the retaining wall. Gonzales was on the ground, and laying on his right side, with his right arm extended outward between the retaining wall and the doghouse.



Skartwed drawing



scene photo northern view

Coggins and Skartwed needed to alert dispatch as to their location, but were unaware of the exact address. After securing the backyard, Skartwed left the immediate area to obtain the address while Coggins remained with Gonzales. As Skartwed neared the front yard, several of the residents exited the home from the front yard in an excited state. An argument ensued as the residents were confused, concerned, and angry. They demanded answers as to why the police were at their home, shouting commands at them from the backyard. Skartwed had remained in the backyard, and from behind the gate was able to keep all individuals out of the backyard. At that time the deputies were still in the process of assessing what had just occurred, and in maintaining a secure scene. In doing so, Skartwed had ordered two of the residents to the ground in an attempt to contain the situation. The two residents ordered to the ground were identified as Joanna Rodriguez, and her brother Juan Rodriguez Jr. Joanna had been married to Gonzales, but they were no longer a couple, and did not live together. They had three children together, ages 10, 11 and 6. All three children were in the residence at the time of the shooting, along with Joanna, her brother Juan Jr., her father Juan Rodriguez Sr., and a family friend identified as Alejandro Guzman, but Alejandro's identification was never confirmed.

Juan Rodriguez Jr. and Alejandro were awake in the residence, but were not alerted to the incident until after hearing the gun fire. All others were awoken either by the sound of gunfire, or by the commotion that briefly occurred after the gunfire. Nobody in the house had observed the actions of Gonzales or Coggins prior to the gunfire. A canvassing of the area was conducted for witnesses that may have had additional or helpful information, and concluded without any helpful information being obtained. Surveillance videos were also obtained from neighbors, but did not assist with any new information.

The gun believed to be carried by Gonzales was located at the scene next to the south side of the doghouse, on top of a cinder block piece, and in between the retaining wall and the doghouse. The gun was still buttoned inside of its holster. Coggins and Skartwed both indicated that they had not observed the gun when they first approached Gonzales as he lay on top of the retaining wall. Coggins reported locating the gun, which was just over four minutes after he had turned on his radio as recorded. Coggins was then heard on the radio about a minute and one-half later, again as recorded, pointing out the location of the weapon to Skartwed and to another officer. Coggins and Skartwed both indicated that neither of them had tampered with, moved, or otherwise altered the crime scene at any time other than when Coggins rolled Gonzales onto his back. There is no evidence that either Coggins or Skartwed had any contact with the weapon, or with the holster. Coggins further stated that nobody

altered the scene between the time that he fired his shots, and the time when he was sequestered in a police vehicle.

Scene photos depict location of holstered gun behind evidence tag number 5 near the south side of the doghouse. First photo also shows a pool of blood in the open space between the bricks where the neck/head of Gonzales lay, prior to being rolled onto his back by Coggins.



scene, weapon location



south side of dog house

The weapons collected at the scene included a 9mm Luger, Glock brand semiautomatic pistol, model 17 from Coggins, and the holstered silver 38 Special caliber, Taurus brand revolver located near Gonzales. The Taurus was still buckled inside of the holster, and there were no indications that it had been fired. There were five 38 Special cartridges collected from the Taurus. There were also four spent 9mm casings collected at the scene. These casings were tested at the lab and identified as having been fired by the 9mm Luger owned by Coggins. These four casings were consistent with the reported number of shots fired by Coggins, the type of bullets in the magazine, and with the total number of rounds missing from the magazines collected. There was one fired bullet and two bullet fragments located and collected at the scene. The 9mm Luger and the 38 caliber Taurus were both functional when test fired.

DNA was retrieved from the holster located near Gonzales, and the results show that Gonzales was represented on the holster. The source of the DNA was not identified as spatter, transfer or other, but the odds that the sample could have come from someone other than Gonzales were about 1 in 9.7 octillion. A DNA mixture of at least three individuals was also retrieved from the silver Taurus revolver. The odds that the major sample could have come from someone other than Gonzales were about 1 in 6.5 septillion. Comparisons could not be made with the two minor samples due to an insufficient quantity of DNA in the sample. DNA was also found on two of the bullets located inside of the holstered .38 caliber Taurus handgun, but was never tested. The Taurus and two of the five cartridges taken from the Taurus were examined and each contained one print impression sufficient for identification. Gonzales was eliminated as the source of all three print impressions. The three latent impressions were entered and searched in the NM AFIS and FBI NGI AFIS databases with negative results.

Dr. Lauren Dvorscak, from the Office of the Medical Investigator conducted the autopsy, produced an autopsy report and testified in a deposition regarding the cause of death of Miguel Gonzales. Dr. Dvorscak is board certified in anatomic, clinical and forensic pathology. She identified four separate projectile wounds to the body. The first wound was an entrance wound to his right neck at the base of the skull about three inches behind his right ear. The projectile traveled through the brain, and to his left temple where projectile fragments were recovered. The trajectory path was from back to front, right to left, and upward. She indicated that the neck wound was the fatal gunshot wound, with bullet fragments ending up in the head, but found that just the blood loss from all of the wounds together could also have caused death on its' own. The second entrance wound was on the back side of his right shoulder, with an exit wound also on the back side of his right shoulder. The trajectory path was from back to front, right to left and upward. The third entrance wound was to the side of his right chest,

about two inches to the right of his nipple area, with an exit wound in the middle chest area, and also level with the nipple area. The trajectory path was from right to left, back to front and downward. A fourth entrance wound was located on the outside of his right forearm, with an exit wound on the inside of his right wrist. The trajectory path was from back to front, left to right and downward. Projectile fragments were collected from his right forearm. In her deposition she explained that a front to back wound means that when the bullet travelled through the body, it was more toward the posterior surface, and travelled to more toward the anterior surface. It didn't necessarily mean he was shot in the back. She explained that if somebody is shot in the side of the body, and the projectile comes out the front of the body, it is still characterized as moving from back to front.

Actual autopsy photo in this case with entrance wound "D," to the side of the right chest, and corresponding exit wound to the middle of the chest area, illustrating the point that a bullet travelling from back to front, did not mean that the person was shot in the back.



In determining the distance of the gun barrel from the skin of the person struck when fired, Dr. Dvorscak explained that there are three distance classifications. The first is called a contact wound. With a contact wound, the gun is pressed against the skin when fired. One may see a ring of soot around the wound, and a searing of the skin, which is sort of a burn mark around the skin. There may be other characteristics such as a stellate laceration if it's on the part of the body with a bone very close to the skin, like the skull, depending where on the body the contact range wound is located.

The second distance is called an intermediate range of fire. With this distance, the barrel of the gun is farther away from the skin, and you'll see what is called powder tattooing or stippling, which are small, tiny abrasions from gun powder particles in the skin. This powder tattooing and the lack of soot around the wound indicate that it was an intermediate gunshot wound, or a more distant wound. It could also mean that there was something like a clothing barrier on the skin that did not allow the soot deposit on the skin.

The third distance is called Indeterminate range, or a distant range of fire. She explained that with this distance, once you get past a certain point there are no characteristics that would indicate the range of fire because the barrel of the gun is too distant from the skin. The term "distant range" is sometimes used concurrently with the term "indeterminate range" of fire. A barrier such as glass or fabric will block the findings to determine the range of fire because there would be no marking on the skin. She explained that with all wounds, photos are taken both before and after cleaning the wound, and any dirt, debris, blood, stippling, soot or other is removed and examined as a standard procedure. Dr. Dvorscak determined that all wounds were classified as an indeterminate or distant range, to a "reasonable degree of medical certainty."

Professor William Harmening was hired on behalf of the Gonzales' three children to provide his opinion as a criminologist regarding the use of force, scene reconstruction, and as a law enforcement