

April 30, 2019

Manuel Gonzales III  
Bernalillo County Sheriff  
400 Roma NW  
Albuquerque, NM 87102

Re: Prosecution review of deputy-involved shooting of Matthew Scudero by deputies Justin Bishop, Alejandra Heredia, John Ray, Daniel Skartwed, and Sergeant Theresa Sabaugh

BCSO case #17-728373; DA case #2017-08597-1

Dear Sheriff Gonzales:

I have been assigned as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review the November 10, 2017, lethal shooting of Matthew Scudero by Bernalillo County Sheriff's deputies Justin Bishop, Alejandra Heredia, John Ray, Daniel Skartwed, and Sergeant Theresa Sabaugh. I have carefully reviewed all relevant evidence in this case, including police reports, witness statements, criminalistics reports, autopsy results, and audio and video from the scene. I also visited the scene where the shooting occurred.

I have concluded that the evidence shows that the deputies were in legitimate fear for their lives and safety, as well as for those of fellow deputies, at the time they fired shots at Mr. Scudero. A reasonable jury would in all likelihood conclude that each deputy was acting in legitimate self-defense or defense of another, and would not find beyond a reasonable doubt that the shooting was *not* a legitimate use of deadly force by a law enforcement officer. No criminal charges are warranted against any of the deputies who fired shots at Mr. Scudero. This decision does not limit administrative or criminal proceedings by other agencies, or civil action by other agencies or parties.

## RELEVANT FACTS

On November 10, 2017, at approximately 7:30 am, 87-year-old Joseph Scudero contacted the Rio Rancho police from the parking lot of a local church in Rio Rancho. He reported to them that his son, Matthew Scudero, age 50, had awoken him early that morning in the mobile home they shared at 10200 2<sup>nd</sup> St. N.W., Space 121, and threatened to kill him. Matthew was armed with a black .38 caliber revolver, which actually belonged to Joseph Scudero. At one point during the confrontation, Matthew stuck the barrel of the gun in Joseph Scudero's mouth. Joseph was eventually able to gather his dog and escape from the house. Matthew was upset because two days prior he had been arrested for domestic violence for threatening his father--possibly with a knife. Matthew had spent the night in jail, and was released the next day. Deputies were dispatched to the Scudero residence on November 9<sup>th</sup>, to give notice of release of a domestic violence offender to Joseph Scudero, but no one answered the door.

Rio Rancho police did not have jurisdiction over the offense Joseph described, because the assault occurred in Bernalillo County. Rio Rancho police contacted the Bernalillo County Sheriff's Office (BCSO) and relayed the information to them. Numerous deputies from the Sheriff's office responded to 10200 2<sup>nd</sup> St. N.W. Deputies arrived about 8:15 am. They were: Justin Bishop, Alejandra Heredia, John Ray, Daniel Skartwed, Daniel DeGraff, Darrell Tidwell, and Jonathan Young. After confirming that an aggravated assault had occurred on Scudero's father, deputies decided to approach the scene tactically because of Matthew Scudero's reported use of, and access to, a gun. That, along with his history of volatile behavior, caused concern for the deputies' safety. Deputies Ray and Skartwed are members of the S.W.A.T. team, and took the lead in this regard. Deputies met up right outside the entrance of the mobile home park to discuss strategy. It was decided to set up a perimeter around Matthew Scudero's residence before attempting to make contact. It was also decided that deputies would try to contact

Matthew by phone and attempt to persuade him to come out, and hopefully thereby lessen the chance of a confrontation or escalation of a dangerous situation.

Deputies moved in and set up a perimeter around Matthew Scudero's residence. Deputies DeGraff and Tidwell took up positions at the back of the mobile home. The other deputies positioned themselves around the front of the residence. As deputies arrived at space 121, a man was standing outside the mobile home. Deputies initially thought he was Matthew. The man was told to come to where deputies were positioned. He complied. He was patted down and identified as Larry Goode, a neighbor and friend of Matthew Scudero. He told deputies that Matthew was inside the residence. Mr. Goode was placed in a police vehicle to await further questioning.

As this was happening, Matthew Scudero came out the front door. Mr. Scudero was immediately confrontational. As Deputy Ray described it: "[He] was immediately like just amped up. He was immediately...started yelling at us...and like puffing his chest out, and bow his back." Matthew did not remain on the porch for long before he went back inside the residence. It was clear to deputies that calling on the phone and using gentle persuasion to get Mr. Scudero to come out and cooperate was probably not going to work. At that point Deputies drew out their weapons. Deputy Skartwed initially armed himself with a beanbag shotgun, in case less-than-lethal force might be appropriately used at some point to take Mr. Scudero into custody. Deputy Heredia was armed with a Glock 22, .40 caliber handgun. Deputies Bishop, Young, and Ray were armed with rifles. Sgt. Sabaugh arrived on scene at some point after initial contact was made. She was armed with a Glock 22, .40 caliber handgun.

After it became clear that calling Mr. Scudero on the phone or attempting to talk to him directly were not going to work, deputies decided to give public address (PA) announcements to Scudero directing him to come out of his home and talk to deputies. Deputy Heredia was assigned to broadcast PA announcements. These announcements continued until the shooting occurred, with no success.

The situation continued to escalate with Mr. Scudero. He came out the front door several times, but would go back inside each time. He was increasing agitated and profane each time. He stayed on the front porch, very close to the front door, and refused to follow deputies' directions to come to where officers were positioned. As described by Deputy Skartwed: "[E]very time he comes out of the house his volume high ends, raises. His actions get more irate. He's becoming more animated, becoming more violent, like his actions are more violent. He says 'I'll fucking shoot you' and...I'll fucking kill you motherfuckers.'" He also told deputies numerous times to shoot him. Additionally, Scudero made numerous statements to deputies, particularly to Deputy Heredia, to "suck his fucking cock", and similar profanities, accompanied by obscene gestures. Scudero continuously repeated variations of all of the above-described statements over the course of the standoff.

Of more concern to deputies than Mr. Scudero's words, were his actions when he would present himself at the front door. Scudero at first reached into his pants and fumbled around—making obscene gestures toward Deputy Heredia and other deputies. On subsequent showings at the front door, he would reach into the waistband and the back of his pants such that deputies could not see his hands. He made gestures like he was pulling out a gun. The third time he came out of the house, he had a red bottle in his hand, and continued to reach into the back of his waistband and made motions like he was pulling out a gun. Scudero again retreated back into the house. Deputies made the decision at that point that Deputy Skartwed would deploy his beanbag on Mr. Scudero if he came out onto the porch again. Before that could happen, things started happening inside the residence.

After Mr. Scudero went back inside the house for the final time, he continued to yell at deputies, and refused to comply with commands. All windows at the front of the house had blinds drawn, so deputies could not see into the residence. Deputies heard sounds like items being moved around in the home. They were concerned that Scudero was barricading himself in the residence. After about six minutes Scudero pulled back the curtain on a window that was close to the center of the mobile home,

and which turned out to be in the kitchen. He started banging on the window with his hands. Eventually he broke the out the bottom half of the window. At that point he started pulling off pieces of broken glass with his bare hands, and began throwing them at Deputies Heredia, Skartwed and Ray. As he was doing that, he told deputies to shoot him and that he was going to shoot them. Mr. Scudero then withdrew back into the house. Deputies heard what sounded like more items being moved around. It then appeared that Mr. Scudero threw something against the same window, which broke out the top half of the window. Within about a minute, Scudero appeared at the front door, but stayed behind the outermost glass door. Deputies Bishop and Young were positioned to have the best view of Scudero at that point. They could see his left hand, but his right hand was not initially visible. Deputy Bishop described Scudero looking directly at him through the glass door, and then, "I saw him level off and saw his right arm kind of real close to his body, up near his chest and could see he was holding something." Over radio either Deputy Bishop or Deputy Young broadcast the following: "He just pointed something at us. It was black in his hand. Just now out through the front door." Scudero then shut the solid interior door where he had been standing and moved back into the residence.

Within seconds of Mr. Scudero moving back into the house, a gunshot was heard from within the house. Approximately twenty seconds after the first shot, another shot was heard within the residence. Approximately a minute and a half after the second shot, a third shot is heard. This shot is louder on belt tapes. The following is broadcast over radio: "He's shooting out the window." Deputy Skartwed recalled the scenario as follows: "[F]rom what I can remember, it's a third gunshot goes off, but this time it comes through the window at deputies.... And the reason that I know it came through the window was because when the gunshot went off, the uh, the sheet that's covering the window moves. It like moves outward, you know, pop. Simultaneously the sheet moves outward toward deputies." Approximately ten seconds later a fourth shot is heard. Over the radio one of the deputies broadcasts: "Four 27-8's [shots] now--one came out the window." Still no shots are fired by deputies.

Mr. Scudero continued to yell and curse at deputies from inside the residence. Shortly thereafter, Scudero presented himself at the broken window. He leaned his upper torso out the window and pointed a gun in the direction of deputies Heredia, Skartwed and Ray. Multiple shots are heard on belt tapes within a span of about two and one-half seconds. Deputies Bishop, Heredia, Ray, Skartwed and Sgt. Sabaugh all discharged their firearms at Mr. Scudero. This occurred a minute-and-a-half after Scudero fired his fourth shot. Radio broadcast of, "shots fired, shots fired" occurred at 8:32 am.

After the volley of shots, Mr. Scudero withdrew from the window back into the mobile home. The window covering fell back into place, and deputies could not see Mr. Scudero or tell what had happened as a result of the shooting. They did not know if Scudero was hit, or if he was still alive and possibly presenting a continuing danger. Deputies did not hear sounds or movements right after the shooting. Several minutes later glass was heard breaking, but it was thought that it was probably additional glass falling out of the broken window. Shortly after that Deputy Skartwed thought he heard some movement within the home. It was decided that entry would not be made into the residence by deputies on the scene, but that S.W.A.T. would be called out. The State Police S.W.A.T. team was also called out, as was the Canine Unit of BCSO.

The Sheriff's Office S.W.A.T. team began arriving at approximately 9:20 am. Support equipment and other personnel continued arriving after that. The BCSO Bearcat, the State Police Rook and State Police robot were all brought to the scene. As this was occurring, a warrant was being obtained to search the Scudero residence. Once the warrant was signed at approximately 11:00, the robot was moved to the front window where Matthew Scudero was last seen. The robot tore down the window covering, and extended an arm with a camera into the residence. The camera was able to see feet on the kitchen floor. A noise diversionary device ("flashbang") was deployed right outside the window. No movement was detected from the detonation of the device. S.W.A.T. members put together an entry plan, and made entry into the residence at 11:17 am. No movement was detected from Mr. Scudero,

who was laying partly in the kitchen and partly in the hallway. It was quickly determined that Mr. Scudero had suffered multiple gunshot wounds and was deceased. Near Mr. Scudero's body, at the base of the refrigerator, was a black .38 caliber revolver.



#### **DEPUTY STATEMENTS**

All five deputies that fired shots gave statements to investigators. The deputies were accompanied at their interviews by an attorney for the Sheriff's Officers Association. The interviews were video recorded.

Deputy Alejandra (Allie) Heredia was stationed at the front of Scudero's mobile home. She had just graduated from the Academy, and was in training with Deputy John Ray. Deputy Heredia was tasked with giving P.A. announcements to Matthew Scudero and residents in the area during the

standoff. Deputy Heredia recalled the moment of the shooting as follows: “[O]nce I heard him shoot, I don’t know how many rounds, that’s when I shot to return fire.... All I could see, and I had pretty good uh, visual of him was that he poked the gun out directly in front.” Asked what was going through her head at the time, she responded: “He had already told me that he was wanting to kill me, uh, at that point he shot and I knew that he was going to kill me.... I felt like he wanted to kill me, and it was absolutely terrifying.” Deputy Heredia acknowledged that fellow deputies and residents in the area were also in danger from Scudero’s gunshots. Deputy Heredia said that she fired two shots from her Glock 22 handgun. Deputy Heredia had her belt tape running during the standoff.

Deputy Daniel Skartwed had been a deputy for two and one-half years at the time of the shooting. He had recently become a member of the S.W.A.T. team. He was stationed at the front of the residence. Although he was initially armed with a beanbag shotgun, he traded it for his Glock 22, .40 caliber handgun after Mr. Scudero started shooting. At the point of the final shots, Deputy Skartwed described the situation from his perspective: “[W]hen I’m transitioning my focus to him, I see a gun right when he comes out of the window. I see a gun and it’s pointing at me and John Ray. I hear a pop and right as I’m seeing the gun, hearing the pop...and seeing a muzzle flash, I’m hearing a pop.” He goes on to say, “I’m in fear for my life. I know that John Ray is right next to me... I am in fear for the life and safety of my partners.” He went on to say that he was also in fear for the safety of others in the mobile home park, noting that there were two homes directly behind him which would have been in the line of fire from Mr. Scudero’s shots. Deputy Skartwed said he shot one time, ducked down, and when he came back up he did not see Scudero in the window, so he did not fire any more shots. Deputy Skartwed had his belt tape running during the incident.

Deputy Justin Bishop had been a Sheriff’s deputy for one and one-half years at the time. He was stationed at the front of the Scudero residence. Deputy Bishop’s recollection of the critical moments was as follows: “I see, uh, an arm come out the window and uh, like a full top, like torso of this person



come out. He's fully extended with something in his hands, uh, and he's pointing it right at where Skartwed, Allie and Ray were. And then I see his right arm uh, jerk, and I hear a pop. So it was almost like everything happened simultaneous for me.... I ended up discharging my rifle.... I Just remember discharging uh, my firearm after I heard his shot." Deputy Bishop recalled shooting twice. When asked why he shot, Deputy Bishop said he was in fear that Deputies Skartwed, Heredia, and Ray would be shot, and also was in fear for the safety of other people in the mobile home park. Deputy Bishop had his belt tape going during the incident.

Deputy John Ray had been with the Sheriff's Department for five and one-half years on November 10, 2017. He was a member of the S.W.A.T. team. He was stationed at the front of Matthew Scudero's residence, alongside Deputy Heredia and Deputy Skartwed. Deputy Ray was armed with a Bushmaster .223 rifle during the standoff. He recalled what happened at the point shots were fired as follows:

He was shooting out the window already. He was shooting towards us, uh, and he wasn't showing his hands... He was still shouting, yelling, and then he does this jerking motion where he leans, kind of leans out and then starts pulling his arm up and his arm kind of just fell, it fell right in my sights. And I just remember seeing the gun, just dropping down...and it was a black gun. And before he got it all the way down, I started pressing the trigger and I pressed it once and thought I pressed...I think I pressed it again. And he fired off a round and I don't know where it went. It went somewhere towards us, uh, and then I got fire all around me....

Deputy Ray noted that he fired his weapon because "I thought he was trying to kill us. I thought he was trying to kill Skartwed and Allie and Sarge. We were all right there and he was firing towards us."

Deputy Ray's belt tape was running during the incident.

Sergeant Theresa Sabaugh was a fourteen-year veteran of the Department at the time of the Shooting. She was the supervisor of all the deputies who initially responded to the scene that morning. She arrived after other deputies had taken up positions around the Scudero residence. Sgt. Sabaugh

described her perspective of the shooting: "I remember putting my front sight at the...at the window, and I was about to key up when he then presented the gun. He brought it out. He presented the gun. I shot one round one-handed and then gave two-handed and then I shot another round... When he pulled the gun out I was fearing that he was going to shoot somebody, uh, one of us. So to stop him I shot two times." Sgt. Sabaugh could not recall if she had hit "record" on her belt tape, as she was trying to erase old material to make room, when things got very active at the scene. It turned out there was no recording of the incident on her belt tape.

Deputy Jonathan Young was also positioned at the front of the residence. He was armed with a rifle. He described seeing a hand come out of the window holding a black revolver that was pointed at deputies. He did not fire his weapon, as he said he was moving his target location at the time the other deputies fired, and he did not have a good angle. Deputy Young had his belt tape running during the standoff.

Deputy Darrell Tidwell and Deputy Dan DeGraff were stationed at the back of the Scudero residence. Neither of them fired any shots. Both deputies had belt tapes running during the incident.

#### **WITNESSES**

Numerous residents of the mobile home park were interviewed. Many saw parts of the incident. Many heard multiple shots. Of those who heard shots, the number they thought they heard varied, though most described hearing many shots fired almost simultaneously. Most had nothing of substance to add to this report.

Cristal Vargas Avila lived at Space 118, across the street from the Scudero residence. She was home during the standoff, and watched it unfold from her front window. At the point of the shooting, she saw Mr. Scudero "peeking out of the window. He was holding something. I just saw him shoot once out of the window. Then after that..." She stated that Scudero shot first, and that she only saw him