

August 31, 2020

Chief Tim Johnson  
New Mexico State Police  
PO Box 1682  
Santa Fe, NM 87504-1628

RE: Prosecution review of use of deadly force by Sergeant Joshua Perea against Roman Craig

NMSP Case#: 20-23-3-0004/2000979

DA Case#: 2020-00960-1

Dear Chief Johnson,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the January 21, 2020, use of deadly force by New Mexico State Police Sergeant Joshua Perea, which occurred when Roman Craig approached Sgt. Perea and pointed a gun at him. I have reviewed all relevant evidence, including police reports, criminalistics reports, witness statements, photos, and audio and video recordings. I also visited the scene where the confrontation took place.

#### RELEVANT FACTS

On the morning of January 21, 2020, Sgt. Joshua Perea stopped his State Police patrol vehicle behind a Jeep that appeared to have been abandoned by the side of northbound Interstate 25 near the Paseo Del Norte exit. Sergeant Perea noticed that the Jeep appeared to have been vandalized, and started the process of having it towed. He sat in his pickup truck filling out paperwork while waiting for a tow truck to arrive. While he was doing this, an Albuquerque courtesy patrol truck arrived and parked behind Sgt. Perea's vehicle.

State Police Officer Sharron Duran heard on the radio that Sgt. Perea was stopping behind the abandoned Jeep. She decided to drive north on I-25 to see if he needed any assistance. As she approached Sgt. Perea's location in the far left lane of I-25, she noticed the courtesy patrol vehicle present and decided Sgt. Perea did not need any further assistance. As she passed Sgt. Perea, who was seated in his patrol vehicle, she noticed a man walking southbound along the freeway toward Sgt. Perea's location. She noticed that the man was carrying a gun. She immediately radioed Sgt. Perea: "Hey Sarge, watch yourself. You've got a guy walking in front of you with a gun." Sergeant Perea responded, "With a what?" Officer Duran said: "With a gun. A guy walking toward you with a gun. It's in his right hand."

Sergeant Perea got out of his patrol vehicle and moved to the back of the Jeep in front of him. As he did so he unholstered his Kimber 1911, .45 caliber duty weapon. He saw a man (later identified as twenty-six year-old Roman Craig) walking toward him at the edge of the right-hand (slow) lane of the interstate, almost as if to conceal himself from the officer's view. Sergeant Perea stepped from behind the Jeep to his right and gave Mr. Craig numerous commands to show his hands and to get on the ground. Mr. Craig kept advancing toward Sgt. Perea. At one point Mr. Craig put his hand to his ear as if to signal he couldn't hear Sgt. Perea. Immediately thereafter, Mr. Craig raised the gun and pointed it at Sgt. Perea. Sergeant Perea fired one shot at Mr. Craig, who immediately fell to the ground. His gun fell several feet behind him. Sergeant Perea held his gun on Mr. Craig while he waited for backup. Criminalistics personnel later determined Mr. Craig was thirty-two yards away from Sgt. Perea when he was shot. The following photo shows Mr. Craig's gun at the scene in relation to where Mr. Craig fell.



After warning Sgt. Perea of the man with a gun, Officer Sharron Duran exited the freeway as quickly as she could and circled around back to Sgt. Perea's location. She arrived on the scene a little over a minute after Sgt. Perea called out "shots fired". Approximately one minute after Officer Duran arrived on the scene, a third officer arrived. The three officers then moved up to take Mr. Craig into custody and check on his injuries. It was determined that Mr. Craig suffered a gunshot wound to his groin area on his upper left thigh. When Sgt. Perea asked Mr. Craig, "Why

would you point the gun at me?”, Mr. Craig replied: “Because you’re a pig”. Rescue arrived approximately seven minutes after the shooting, and Mr. Craig was taken to UNMH. Mr. Craig survived his injury.

#### SERGEANT PEREA STATEMENT AND VIDEO

Sergeant Perea’s dashcam in his State Police vehicle was running from the time he pulled behind the Jeep on the interstate. He also had his lapel camera activated during the incident and for several minutes after the shooting. The cameras give a clear and accurate picture of what transpired during the shooting of Roman Craig.

Sergeant Perea’s dashcam shows Roman Craig come into view from the front of the Pan American Inn and Suites where he had been staying. The Pan American Inn and Suites is located on the frontage road and faces Interstate 25, and was to the north of Sgt. Perea’s location. Mr. Craig walked south along the frontage road for approximately two minutes before he crossed the barrier between the frontage road and the interstate, and began to walk along the interstate toward Sergeant Perea. Fifty seconds after Mr. Craig started walking along the interstate, Officer Duran called out the warning to Sgt. Perea about a man walking toward him with a gun.

As Mr. Craig continued to advance on Sergeant Perea, lapel camera makes clear that Sgt. Perea told Mr. Craig six separate times to show or put his hands up. As he continued advancing, he was ordered three separate times to get on the ground. The only reaction Mr. Craig gave to any of the commands was to put his hand up to his ear as if to say “I can’t hear you.” This happened about two seconds before Mr. Craig raised his gun toward Sgt. Perea. When he did this, Sergeant Perea stepped to his left for a little better cover behind the Jeep. About three

seconds after Mr. Craig initially raised his gun, Sgt. Perea gave a final command to get on the ground, and then fired a single shot at Mr. Craig as Mr. Craig re-raised his gun toward the officer.

Immediately after he fired, Sgt. Perea called out “shots fired”. Approximately forty-five seconds after the shot, Sgt. Perea broadcast over the radio: “For CAD purposes, subject pointed a gun at me and refused to get on the ground.” A short time later when another officer arrived on the scene and asks if he is ok, Sgt. Perea said: “He pointed a gun at me ‘cause I’m a fucking pig...’ He just came walking up the freeway. I never saw him ‘till she told me.”

On January 30, 2020, Sgt. Perea provided a formal statement to investigators. He was accompanied by his attorney, Luis Robles, and a buddy officer. Sergeant Perea had been a law enforcement officer for twenty-two years—thirteen years with State Police, and nine years with the Los Lunas Police Department. Sergeant Perea stated that when he initially made contact with Mr. Craig, he was not sure the black object in his hand was a gun. He went on to explain what happened next: “All of a sudden he raises his right hand and as it’s coming up, no doubt it’s a gun. He points it directly at me. I see the muzzle of the gun. I see the barrel hole in the gun. It looked like the biggest handgun you’ve ever seen, right?” Sergeant Perea then ducked to his left behind the Jeep for cover. He then went on to explain the events that followed, and his state of mind.

I’m thinking, “holy crap, this guy’s gonna kill me. He’s gonna try to take me from my wife and kids. He’s gonna kill me. Why? I don’t know why. But bullshit, this isn’t gonna happen. It’s not gonna happen. I’m not gonna let him put my family through that.” No doubt in my mind this guy wants to kill me. Everything got quiet. I don’t know if there was a shot fired—if he ever shot. Even ‘till now I don’t know if he shot.

After stepping behind the Jeep, Sergeant Perea started to “pie” around the corner of the Jeep. “The minute I saw him, he must have seen me because he started to raise it again.... I thought, ‘This ain’t happening. You’re not gonna kill me.’ I shot him.”

Sergeant Perea noted that he felt that Mr. Craig was intent on essentially ambushing him. He stated: “He made sure I didn’t see him. He didn’t walk where it would have been safer for him to walk,” noting that Mr. Craig walked along the slow lane of the freeway where the disable Jeep was more likely to obscure him from Sgt. Perea’s line of sight, as opposed to walking along the concrete barrier along the shoulder of the road. When Officer Sharron Duran saw Mr. Craig walking toward Sgt. Perea, she perceived that “[h]e was walking with a purpose. He was fixated on Sgt. Perea’s position.”

#### OTHER WITNESSES

Jesse Velarde was the courtesy patrol truck driver who pulled up behind Sgt. Perea. When Mr. Velarde got out of his truck, Sgt. Perea was already out of his vehicle standing behind the Jeep. As he walked up to the officer’s location, he saw a guy walking toward them on the shoulder. He heard Sgt. Perea yelling commands at the man. He saw that the man had a gun and it was pointed in their direction. He noted that the man was walking with his arm fully extended and “walking aggressively”. When he saw that, he started walking backward, and after a few steps, turned to get back to his truck. As he started opening the door to his truck, he heard a gunshot, but did not see who shot. Mr. Velarde said the he “felt scared”, and thought the officer’s life was in danger as well.



Eduardo Gallegos was driving northbound on the frontage road between San Antonio and Paseo Del Norte. He observed a man climb over the wall from the frontage road to the freeway. As he approached the rear of the officer's truck, he saw the man raise his right hand, and he could see that he was holding a black gun. As he was parallel to the officer's truck, he heard one shot from the officer and saw the man who had the gun drop to the ground. He observed that the man raised his gun before the officer did. Mr. Gallegos described the man as walking with an intent, noting that, "[h]e was walking directly toward the officer."

Coralee Feit was working in an office at the New Mexico Hospital Association adjacent to the freeway. She was looking out her second story window and saw a man walking southbound on the freeway toward a vehicle. She observed that he had a backpack, and had his arm straight out with what appeared to be a gun in his hand. She turned from the window to tell coworkers what she was seeing. At that point she heard at least one, possibly two, shots. She did not know who shot, but saw the man with the backpack on the ground, and later being given aid by the officers and rescue personnel.

Dennis Sanchez was driving north on Interstate 25 toward the Paseo Del Norte exit when he saw what he described as a "city officer" with his gun drawn. He was pointing his gun at a man who was wearing a backpack. The man had a semi-automatic handgun in his hand. His arm was fully extended as he pointed the gun at the officer. As Mr. Sanchez passed the officer's position he heard the officer give some kind of command. He then heard one gunshot and saw the man with the backpack immediately drop to the ground.

## ROMAN CRAIG HISTORY AND CHARGES

Roman Craig declined to give a formal statement to investigators. When investigators interviewed his mother, Deborah Robinson, she gave some insight into Mr. Craig.

Ms. Robinson stated the Mr. Craig had been diagnosed with schizophrenia and bipolar disorder, along with ADHD and depression. He had moved out of his mother's house two and one-half months prior, and moved into the Pan American Inn and Suites. He periodically would not take his medication, although he had been to UNMH to get his medication five days prior to the shooting. Mr. Craig sometimes was subject to auditory hallucinations—particularly when not taking his medication. Ms. Robinson indicated that Roman had previously talked about suicide after the breakup of a relationship with a woman that had lasted eight years. When Ms. Robinson visited Roman at his hotel room a month earlier, he denied using drugs or alcohol, and she saw no evidence of such in his room.

A search of Albuquerque Police Department records revealed that police had been dispatched to Ms. Robinson's home four times between March, 2019, and May, 2019, to deal with issues involving Roman. Two of the incidents involved Mr. Craig holding a knife to his neck. Two of the incidents involved Mr. Craig stating he wanted officers to shoot him. A fifth incident occurred in November, 2019, when Mr. Craig was reported to be walking in and out of traffic on Paseo Del Norte Blvd, and was found with a suicide note. After all five of these incidents, Mr. Craig was transported by police to UNMH for evaluation.



Roman Craig has no prior criminal history. In this incident he was indicted on one count of Aggravated Assault on a Peace Officer with a Deadly Weapon (firearm enhancement). He is pending trial.

#### LEGAL FRAMEWORK

Under New Mexico law, a peace officer, acting in the course of regular duties, is entitled to legally use deadly force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. NMSA 1978 § 30-2-6. An officer may also use deadly force to prevent the escape of a dangerous felon. “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); *Archuleta v. LaCuesta*, 1999-NMCA-113, ¶8. An officer who uses deadly force does not have to prove that a suspect actually posed a threat of death or great bodily harm--only that the suspect’s actions would cause a reasonable person to believe there is the possibility of such.

Once an officer who uses deadly force raises the possibility that a suspect’s actions posed a threat of death or great bodily harm, the burden is on the prosecution at the trial of an officer charged with a crime, to prove beyond a reasonable doubt that the use of deadly force was *not* reasonable. This inquiry is an objective standard, viewed from the perspective of the officer at the time, keeping in mind that officers often must make split-second decisions in difficult situations. It only requires a finding that a reasonable person in the same circumstance as the officer would have come to the same conclusion--that the use of force was necessary because of the threat of death or great bodily harm posed by the suspect. *State v. Mantelli*, 2002-NMCA-033, 42 P.3d 272. If the jury has any reasonable doubt as to whether the use of deadly force by the officer was justified, they must acquit. Uniform Jury Instruction—Criminal: 14-5173, Justifiable homicide; public officer or employee.

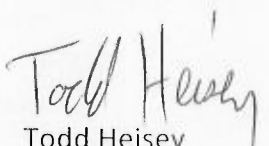
#### CONCLUSION

Sergeant Joshua Perea was acting in the legal course of his duties on January 21, 2020, when he was on-duty, wearing his uniform, driving his marked police vehicle, and taking enforcement actions to have an apparently abandoned vehicle removed from the side of a busy public thoroughfare. It was the very appearance of acting in his official capacity that apparently drew Mr. Craig's attention and made Sgt. Perea a target.

Roman Craig was walking with a gun along the side of a busy freeway toward Sergeant Perea, and was approaching in a manner consistent with trying to conceal himself from being seen by the officer. When ordered to show his hands and get on the ground, Mr. Craig ignored those commands and kept advancing. These actions in themselves were sufficient to make Sgt. Perea reasonably fear that Mr. Craig was a threat to his physical safety. Once he pointed his gun at Sgt. Perea, the officer could have no doubt that he was faced with the serious threat of death or great bodily harm. He was justified at that point in firing his weapon in self-defense at Mr. Craig in an attempt to stop his actions.

Were Sgt. Perea to be charged in this case, a jury would agree that his use of deadly force under the circumstances was reasonable and justified. There would be no evidence to show beyond a reasonable doubt that Sgt. Perea was *not* acting reasonably when he shot Mr. Craig. There would be no reasonable likelihood of a successful prosecution of the officer. No charges will be file, and the case will be closed.

Sincerely,

  
Todd Heisey  
Special Prosecutor

Cc: Raul Torrez, Second Judicial District Attorney  
Diego Mendoza, Lead Investigator, NMSP  
Luis Robles, Attorney for Sgt. Joshua Perea  
Roman Craig, C/O Anne Keener, attorney for Roman Craig