

May 18, 2018

Chief of Police Michael Geier  
Albuquerque Police Department  
400 Roma NW  
Albuquerque, New Mexico 87102

RE: Prosecutorial review of the June 15, 2016 discharge of a firearm by Officer Adrian Montoya

BCSO case # 16-669089

APD case # 16-0054854

DA case # 2016-3831-1

Dear Chief Geier,

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the events surrounding the discharge of a firearm by Officer Adrian Montoya during the arrest of Ronald Delfino on June 15, 2016, for potential prosecution in this incident. After reviewing all available evidence, including law enforcement reports, officer statements, civilian witness statements, photographs, lapel videos, a business video, and a visit to the scenes I have concluded that it is not possible to prove, to a unanimous jury beyond a reasonable doubt, that Officer Montoya was not justified in acting under the belief that Ronald Delfino posed an immediate threat of death, or great bodily harm, to Officer Montoya, other officers and deputies, and/or members of the public. Accordingly, no criminal charges will be filed against Officer Montoya in State District Court, and this case will be closed. My decision, however, does not limit administrative or criminal action by other agencies, or civil actions by other parties.

#### FACTS SUPPORTED BY EVIDENCE

On June 15, 2016, at 6:45 p.m., in the parking lot of the Auto Zone located at 3251 Coors SW, a thin Hispanic male in his early 20's, later identified as Ronald Delfino, wearing a red shirt and khaki shorts, approached Santiago Romero-Anaya in the parking lot. Mr. Delfino began to argue with Mr. Anaya. Mr. Anaya, who was heard only speaking Spanish, appeared confused by Mr. Delfino, who was yelling at him in English. Mr. Delfino then produced a handgun, shot Mr. Anaya in the head, killing him instantly. Mr. Delfino took Mr. Anaya's keys and fled in Mr. Anaya's red Jeep Patriot. Bernalillo County Sheriff's Deputies responded to the scene and

broadcast an attempt to locate, including a description of Mr. Delfino and the Jeep Patriot. This attempt to locate was broadcast on Sheriff's Department (BCSO) and Albuquerque Police Department (APD) frequencies.

Less than half an hour later, at 7:12 p.m., Mr. Delfino drove the red Jeep Patriot through the drive-through at the McDonald's located at 5301 Quail NW, produced a handgun and demanded money. After an employee handed him some money he drove away. APD officers responded to the scene and, after speaking with witnesses and viewing store videotape of the robbery, confirmed the offender and vehicle matched those from the Auto Zone homicide/carjacking. An attempt to locate was again broadcast on both APD and BCSO frequencies, with vehicle and offender descriptions again given.

Shortly thereafter, APD Officers Adrian Montoya and Bradley Perry, who were riding together in an unmarked unit equipped with emergency equipment, spotted a red Jeep Patriot backed into a parking space in the Walgreen's parking lot at Coors and Central. Officer Montoya, who was driving, turned around in an attempt to investigate this vehicle. Before they could get into the parking lot the Jeep Patriot sped away, through the parking lot, nearly striking a motorcyclist. Due to traffic and the configuration of the Walgreen's parking lot, Officer Montoya was unable get behind the Jeep and stop it before it got away. He was, however, able to see three letters on the Jeep's license plate. He contacted BCSO Sgt. Nate Lerner who confirmed that this was the same vehicle involved in the two previous violent crimes.

At approximately 11:40 p.m., Officers Montoya and Perry were conducting an unrelated traffic stop on a vehicle in the parking lot of the Valero gas station at Bridge and 8<sup>th</sup> SW. Assisting them at this time was another two-officer unit comprised of APD Officers Daniel Porter and Eric Meek. This unit, driven by Officer Porter, was also unmarked and had emergency equipment. Officers Montoya, Perry, Porter, and Meek were all assigned to the APD Gang Unit, and were wearing tactical vests with marking that clearly identified them as police officers. As they were concluding their traffic stop they observed a red Jeep Patriot go by them, westbound on Bridge SW. Officer Montoya pulled out of the parking lot and got behind the Jeep. Officer Porter was behind him. While westbound on Bridge SW Officer Montoya realized that the license plate on the Jeep matched that of the one he had seen earlier that evening at Walgreen's. Officer Montoya broadcast on APD frequency that officers were now following the Jeep involved in the earlier carjacking/murder and subsequent armed robbery.

Heading eastbound on Bridge SW, and approaching 8<sup>th</sup> St. SW, at that time was BCSO K-9 Deputy Tyler Rahn. He was monitoring APD frequency and, hearing Officer Montoya's transmission, headed in the direction of APD officers following the Jeep. Also monitoring APD frequency and heading into the area was another BCSO K-9 Deputy, Johann Jareno. Deputies Rahn and Jareno were driving marked BCSO units with emergency equipment, and were

wearing their duty uniforms. APD Officer Trey Economidy, driving an unmarked unit with emergency equipment, was nearby and also headed into the area.

The Jeep turned northbound onto Old Coors NW from Bridge, with Officer Montoya behind it, followed by Officer Porter. Officer Montoya engaged his emergency lights and siren in an attempt to stop the Jeep. The Jeep accelerated and then turned westbound onto Central SW. Authorization for the deployment of a spike belt had been given by an APD supervisor, and another APD officer took up a position, on foot, at Central and New Coors NW. As the Jeep approached this intersection, westbound, it swerved around construction barrels, but did not slow down. The officer at the intersection, upon seeing the Jeep approaching, deployed the spike belt into its path. Pursuing officers and deputies, aware that a spike belt had been deployed at that intersection, were able to avoid it. It was not immediately apparent to pursuing officers whether the Jeep had gone over the spike belt, or not.

As the Jeep continued to speed away, westbound on Central NW from New Coors, authorization for the use of a "pursuit intervention technique" (PIT) from a supervisor was sought and granted. Continuing westbound on Central NW, and approaching Unser NW, Officer Montoya noticed the rear passenger side tire of the Jeep appeared to be deflating. At this point Officer Economidy passed all pursuing units in order to engage in the PIT that had been authorized. Officer Economidy struck the driver's side rear corner of the Jeep with the passenger side front corner of his, causing the Jeep to spin completely around. Officer Economidy also spun completely around, and came to rest on the median on Central, now facing eastbound. The Jeep now travelled eastbound on Central, in the westbound lanes, and struck Officer Montoya's vehicle, which was in motion westbound. The Jeep and Officer Montoya collided head-on, with Officer Montoya's passenger side slightly to the north of the Jeep's driver's side, and the Jeep's passenger side slightly to the south of Officer Montoya's driver's side. This collision took place on Central NW, west of Unser Blvd. and east of 86<sup>th</sup> St., about halfway between these streets, and slightly past where a left hand turn lane on Central NW opens up. Officer Montoya's vehicle and the Jeep collided in the left lane of Central NW, with an additional traffic lane to their north, and a turn lane to their south. They were thus in the middle lane of the three lanes for westbound traffic on Central NW.

Less than one second after this collision Officer Porter's vehicle also struck the Jeep and came to rest, the front bumper of Officer Porter's vehicle, on its passenger side, colliding with the passenger side front corner of the Jeep, at about a 30° angle. Approximately one second after this collision Deputy Rahn's vehicle collided slightly with the Jeep and came to rest, with Deputy Rahn's vehicle's passenger side front corner striking the Jeep in the area of its passenger side rear tire, at about an 80° angle. At approximately this same instant Deputy Jareno stopped his vehicle on right hand shoulder of westbound Central NW, to the north of Deputy Montoya's vehicle.

Immediately after these collisions, and nine seconds after Officer Economidy's PIT, but before any officer could exit their vehicles, Mr. Delfino, sitting behind the steering wheel of the

Jeep, raised his semi-automatic handgun over his steering wheel, and began firing through his front windshield at Officer Montoya's and Porter's units. Four rounds struck Officer Montoya's front windshield: two rounds just to the driver's side of the steering wheel, about 6" and 12" above the hood, one round nearly in the center of the windshield, and one round directly in front of where Officer Perry was seated on the passenger side, about halfway between the hood and roof. At least one round struck Officer Porter's front windshield: slightly to the center of the steering wheel, about 6" above the hood. No officer or deputy had any opportunity to give verbal commands to Mr. Delfino.

Officers Montoya, Porter, and Perry, and Deputies Rahn and Jareno were all aware that they were being fired upon by Mr. Delfino. They all immediately exited their units and, while moving quickly to the rear of the units for cover, returned fire. Because of how Officer Montoya's and Porter's units came to rest, Officer Meek was pinned inside Officer Porter's unit, on the passenger side, and could not open his passenger door far enough to allow him to immediately exit. During Mr. Delfino's volley of rounds Officer Perry was struck in the upper left portion of his torso. The tactical vest he was wearing stopped this bullet from penetrating, resulting in bruising.

While taking cover, and then from cover, officers and deputies simultaneously returned fire in two distinctive bursts. The first burst lasted 5 seconds. The second burst lasted 3 seconds. There were 3 seconds between these bursts, when no rounds were fired. Officers Montoya, Porter, and Perry, and Deputy Jareno, fired at Mr. Delfino through the front windshield of the Jeep. Deputy Rahn fired at Mr. Delfino through the front passenger door window of the Jeep. Rounds were fired by the following:

Mr. Delfino fired 5 rounds from a .40 caliber semi-automatic handgun

Deputy Rahn fired 5 rounds from a .223 caliber department issued rifle

Deputy Jareno fired 3 rounds from a .40 caliber department issued semi-automatic handgun

Officer Montoya fired 17 rounds from a 9mm department issued semi-automatic handgun

Officer Porter fired 7 rounds from a 9mm department issued semi-automatic handgun

Officer Perry fired 11 rounds from a 9mm department issued semi-automatic handgun

Mr. Delfino died as a result of multiple gunshot wounds, many of which were fatal, including: 3 to the head, 4 to the neck and throat, 2 to the upper chest, 7 to the shoulder, side, back, arms, and hands. He was wearing a red shirt and khaki shorts.

Three bullets, seven bullet core fragments, and six bullet jacket fragments were recovered from Mr. Delfino's body by the medical investigator. Criminalistics was able to determine from which gun five of them were fired: a bullet to the left tricep, a bullet to the right back, a bullet to the back of the right ribcage, and two bullet fragments in the head were all fired from Deputy Rahn's rifle. The remaining eleven bullet core fragments and bullet jacket

fragments did not have sufficient markings of value in order to determine which gun they were fired from.

During a search of the Jeep, afterwards, the handgun used by Mr. Delfino was found on the driver's seat with the slide locked open, indicating Mr. Delfino fired his handgun until he was out of bullets. Also found in the Jeep, in the console beside the driver's seat, was an open bottle of vodka with the cap off, about 1/3 empty. Mr. Delfino's backpack was also found in the Jeep. Inside his backpack was a note that read, in part, "Now I know. I'm going out like Maloso. When the pigs come. I'm loading my klip. The things I've done. I must admit most was dumb."

#### LEGAL ANALYSIS

At trial Officer Montoya would be entitled to raise the defense of justifiable homicide by a public officer. Officer Montoya, on trial for his use of deadly force, could raise this defense if, at the time of his use of deadly force:

1. Officer Montoya was a public officer or employee,
2. The [shooting] was committed while Officer Montoya was performing his duties as a public officer or employee,
3. The [shooting] was committed while overcoming the actual resistance of Ronald Delfino to execution of officers who were attempting to arrest him, *or*  
The [shooting] was committed while arresting Ronald Delfino, who committed murder, carjacking, and armed robbery, and was fleeing from justice, and
4. A reasonable person in the same circumstance as Officer Montoya would have reasonably believed that Ronald Delfino posed a threat of death or great bodily harm to Officer Montoya, other officers and deputies at the scene, or another person. The burden is on the state to prove beyond a reasonable doubt that the [shooting] was not justifiable.

N.M.R.A. 14-5173 (uniform jury instruction for justifiable homicide by public officer)

#### CONCLUSION

Officer Montoya was a public officer, performing his duties while attempting to arrest Ronald Delfino for murder, carjacking, and armed robbery, and who was fleeing officers and deputies in a motor vehicle. Officer Montoya could have reasonably believed that Ronald Delfino posed an immediate threat to himself, other officers and deputies, and members of the public, knowing that Ronald Delfino had, in the immediately preceding five hours:

1. shot Mr. Anaya in the head, in a parking lot in front of witnesses, killing him instantly, in order to steal Mr. Anaya's vehicle,
2. committed an armed robbery at a fast food restaurant,

3. led officers and deputies on a chase in Mr. Anaya's vehicle, necessitating that officers deploy a spike belt and pursuit intervention technique in order to bring the vehicle to a stop,
4. after being forced to stop, immediately fired several rounds at Officer Montoya, and other officers and deputies attempting to arrest him.

A jury is likely to find that Officer Montoya acted reasonably, and I also believe that a reasonable person, in the same circumstance as Officer Montoya, would have acted in a similar fashion, and therefore the shooting was justified. In the absence of any evidence to contest this finding, no prosecution is possible. Accordingly, no charges will be filed against Officer Montoya in state court. This case will be closed.

Very truly yours,



Chris Schultz

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Robert Warrick, Bernalillo County Sheriff's Department

Officer Adrian Montoya, Albuquerque Police Department, c/o Luis Robles

Ms. Patricia Ramirez