

Chief Michael Geier  
Chief of Police  
Albuquerque Police Department  
400 Roma Ave. NW  
Albuquerque, NM 87102

December 13, 2018

RE: Prosecutorial review of the May 28th, 2015 shooting of  
Rodrigo Garcia. APD case # 15-0047262; DA case # 2015-  
02571-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Rodrigo Garcia on May 28, 2015, for potential prosecution. After reviewing all available evidence, including police reports, witness statements, laboratory and autopsy reports, videos, photographs, and a visit to the scene of the incident, I conclude that it is not possible to prove, beyond a reasonable doubt, that the police officers were not acting under the belief that Rodrigo Garcia's actions posed a threat of death or great bodily harm to police officers or the public in general. No charges will be filed. The District Attorney's case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

#### STATEMENT OF FACTS

On May 28, 2015, members of the Albuquerque Police Department were looking for a stolen vehicle, a 2009 White Chevrolet Tahoe, which had been stolen by Rodrigo Garcia. On May 26<sup>th</sup>, 2015, Tricia Salazar, had given Rodrigo Garcia (who she knew as "Mad Dog") a ride to the Walmart in the Tahoe, which she had borrowed from her aunt. At the Walmart, she bought some items, had returned to the vehicle, then realized that she had left her cell phone in the store. She returned to the store, leaving Rodrigo in the car with her keys. As soon as she walked inside the store, he drove off in the vehicle.

Ms. Salazar reported the theft and also began looking for the vehicle herself with the help of some friends. On May 27<sup>th</sup>, 2015, they spotted the Tahoe near Aster and 72<sup>th</sup> Street. As police closed in, Garcia spotted them and drove off in the Tahoe. He turned a corner and encountered Sergeant David Baca, who was waiting nearby with his lights off. As Garcia drove toward him Sgt. Baca turned on his emergency lights. Garcia reacted by accelerating rapidly and steering the Tahoe directly at Sgt. Baca, waiting until the last possible moment to veer away and miss Baca. Officer Timothy McCarson followed at a distance and saw Garcia driving at a high rate of speed, using both sides of the road and forcing vehicles off the road. Garcia also narrowly missed hitting two pedestrians. After a few blocks, McCarson lost sight of Garcia.

The next day, May 28<sup>th</sup>, 2015, Karen Lucero, the Tahoe's owner was driving around that same neighborhood, looking for her car and saw Garcia driving it. She followed and called the police. Garcia was returning from a trip to the nearby Sonic Drive In. He'd gone there with Monica Garcia to attempt to pass a counterfeit \$50 bill. However, the car hop noticed the fake bill and notified his supervisor. Rodrigo drove off without paying for the food and returned to Monica Garcia's home. Garcia parked the stolen vehicle in the driveway of an abandoned home at 6200 Trujillo Street about one block away from Monica Garcia's home.

Officers in unmarked, undercover vehicles cruised the neighborhood, finally spotting Garcia as he backed the Tahoe into the driveway. Officer Economidy, driving an undercover blue pickup truck, saw Garcia backing the Tahoe into the carport of the empty home on Trujillo Street. He alerted the other officers that he'd found the vehicle and waited for Garcia to leave the Tahoe before moving in. Both Rodrigo Garcia and Monica Garcia stepped out of the vehicle. Monica started for her home when Rodrigo noticed the police closing in and yelled, "Cops! Cops! Cops!" He then ran back to the Tahoe and jumped inside, Monica Garcia continued to her home. Economidy pulled his truck into the drive way, nose to nose with the Tahoe to pin it in and prevent Garcia from driving away. Officers moved in from all sides, surrounding Garcia inside the Tahoe, commanding him to show his hands and exit the vehicle. He hesitated and then started the Tahoe and began to rev the engine. The officers surrounding the vehicle assumed that he was blocked in by Economidy's truck in front and a large tree in the rear. Garcia drove back into the tree and shot forward into Economidys truck which moved the truck back a small distance, enough to allow him to angle to the right and get around Economidy's truck. As he

revved the engine again, three officers Lieutenant Michelle Campbell, Sergeant Andrew Wickline, and Officer Toby Gallegos were standing on the other side of a low chain link fence to the right of the Tahoe about 10 yards away. He looked directly at Campbell and other officers, revved the engine, dropped it into gear, and to everyone's surprise, the Tahoe leapt up and over the chain link fence directly at Lieutenant Michelle Campbell. As Garcia crashed through the fence, Campbell thought, "Holy shit, he's gonna kill us." The other officers jumped out of the Tahoe's path, but Lt. Campbell's foot was caught by the crashing fence, trapping her directly in front of the advancing Tahoe. As Lt. Campbell described that moment, "He's right in front of my face and I'm afraid he's gonna run over me." She fired two shots, which had no effect, so she fired two more, but he kept coming, so she fired two more times, still with no apparent effect on Garcia. Campbell managed to roll to the side to avoid the tires of the Tahoe and was not seriously injured, but as she disappeared beneath the Tahoe, the other officers assumed she had been run over and killed.

When Garcia drove toward Campbell, other officers also opened fire to stop him. Officer Dain Symes, who was positioned on the driver side of the Tahoe opened fire, saying "At that point it is my belief that he is going to kill my Lieutenant. I start shooting to stop the action-to save her." He fired about 15 rounds with his rifle. Sgt. Wickline fired two shots at Garcia as the Tahoe headed his way, believing at that moment, "He's gonna run over and kill me." Officer Chris Keeling was climbing over a higher portion of the fence when Garcia crashed through it, knocking him off the fence. Keeling saw the Tahoe rising up and assumed Garcia was trying to run up on top of the truck with Economidy inside, so he fired several shots at Garcia to stop him. Officer Justice Bowe was on the driver's side of the Tahoe when Garcia drove toward Campbell. He fired 6 rounds, as he explained, "I was thinking, hey, she's running out of room and this guy, he's, he's gonna hit her with his vehicle." Officer Matthew Murphy also fired three rounds, because as, he put it, "Lt. Campbell was in immediate danger and I feared for her life."

Garcia was not stopped by any of the shots fired at him; he drove over the fence, over the sidewalk and into the street, still accelerating. He struck one police car and then hit second police car head on, which stopped his forward progress. At that point, he'd passed through the line of officers that surrounded him, leaving several officers directly behind the Tahoe, exposed in the street with no cover. Garcia revved the Tahoe's engine and dropped it into reverse. When

the officers saw the back-up lights go on, and realized that he intended to drive back toward the exposed officers in the street, they opened fire a second time. Officer Dain Symes fired several rounds at the back of the Tahoe, changed magazines and fired seven more times. He stopped shooting when the vehicle stopped moving. Sgt. Wickline, one of the officers in the street behind the Tahoe fired two shots, fearing for his own life, "He's gonna run over and kill me." And for the other officers with him, "He's gonna kill the other officers. He's gonna run over em." Officer Victor Bustillos was also behind the Tahoe as Garcia attempted to back up. He fired twice with his rifle, explaining later, "I was afraid he was gonna hurt me. Uh, all I wanted was the vehicle to stop." Detective Raymond Marquez fired twice at the driver before taking cover. Detective Armando Hernandez also fired four or five shots as Garcia as he started to back up, reasoning, "I was in fear that if the vehicle was to reverse, they were gonna run over the officers." Officer Toby Gallegos also fired at this time, "He's reversing and he's revving and he's going backwards, and that's when I take my shots to stop him before he runs over anybody else." Gallegos fired four to eight times, believing that Campbell is dead, "I'm gonna stop him before he can kill anybody more..." Officer Gallegos fired twice at Garcia's head, which he could see clearly. After the second shot, Garcia slumped and stopped. Gallegos stopped firing, as did the rest of the officers. Garcia had been seriously wounded but soon resumed his efforts to back up, revving the engine and shifting into reverse. However, when he smashed into the police car, the Tahoe's front tires had ridden up and become stuck. He continued his efforts to free the Tahoe for many minutes. The officers placed a spike belt behind his tires to flatten his tires if he succeeded in dislodging his vehicle. They knew he was wounded and could hear him moaning. They called in an APD armored vehicle, known as the Bearcat, which drove up next to the SUV. Garcia was clearly in medical distress, but it was unclear how conscious he was, so they dropped a flash-bang grenade. Garcia did not react, so officers approached and pulled him from the vehicle, and transported him to the hospital. He had been shot seven times, one to the right shoulder, one to the right hand, one to the left ear, two to the left leg, and the most serious one, to his head. The head wound caused major brain damage and left him in critical but stable condition.

Officer Matthew Murphy observed Garcia looking directly at Lt. Campbell before driving at her, he felt he was watching more than a simple escape attempt. He said, "He was using his vehicle as a weapon, he wasn't using it to get away." A neighbor who watched the entire

incident unfold had a similar take on what he saw, "The officers had the right to shoot because he was using the vehicle as a weapon."

### LEGAL ANALYSIS

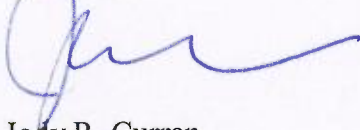
The officers who shot Rodrigo Garcia were in the process of attempting to arrest him, and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6. That statute establishes that a peace officer may justifiably use deadly physical force to prevent the escape of a suspect when he believes he or another is threatened with serious harm or deadly force. This same principle appears in case law: "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), and *Archuleta v. LaCuesta*, 1999-NMCA-113, ¶ 8. Under New Mexico law, the officer need not prove that the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility. The burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the shooting was unjustified, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

### CONCLUSION

The officers said they fired because they were afraid that they or fellow officers particularly Lt. Michelle Campbell were in danger of being killed when Rodrigo Garcia jimmied past a police truck, accelerated his vehicle through a yard, over a fence, collided with several police cars before coming to a stop. There is no evidence to suggest, much less prove beyond a reasonable doubt, that they shot Garcia for any other reason. In the absence of such evidence, a jury will almost certainly accept this element of the defense, which would lead them to the next question: Were the officers' fears unreasonable under the circumstances? Evidence establishes that Garcia had stolen the vehicle, was using the vehicle as a weapon, had resorted to violence the prior night, was desperate to escape arrest, and was prepared to kill or injure to accomplish

that escape. Under these circumstances, it is unlikely that any jury would conclude, beyond a reasonable doubt, that it would be reasonable to allow a person wanted for several felonies to flee through a residential neighborhood after using his vehicle to nearly kill at least one officer and threaten many more. In the absence of sufficient evidence to prove, beyond a reasonable doubt, that the shooting was unjustified, there is no real likelihood of a successful prosecution; therefore, no charges will be filed against each of the officers who fired at Rodrigo Garcia. The case will be closed.

Sincerely,



Jody R. Curran

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Terra Juarez, Albuquerque, Police Department

Joseph Kennedy attorney for Rodrigo Garcia's family

Luis Robles, attorney for Officers Matthew Murphy, Raymond Marques, and Lt. Michele Campbell

Fred Mowrer, Attorney for Officers Dain Symes, Armando Hernandez, Toby Gallegos and Sgt. Andrew Wickline

John D'Amato, attorney for Officers Justice Bowe, Victor Bustillos, and Chris Keelling

Stephanie Griffith, Assistant City Attorney