

November 26, 2018

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

Prosecutorial review of the July 31, 2017 shooting death of Robert Savelli by Albuquerque Police Officer John O'Guin.

APD case # 17-003550; DA case # 2017-04687-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting death of Robert Savelli on July 31, 2017, for potential prosecution. After a review of 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 the evidence establishes that Officer John O'Guin was acting under the reasonable belief that he faced death or great bodily harm as a result of Savelli's actions. No charges will be filed: the 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 July 31, 2017, Albuquerque Police Officer, John O'Guin, was on patrol in the northeast heights near Menaul Blvd. when he saw a man driving a motor scooter on the sidewalk, east bound on Menaul. The man turned onto Vassar Drive and drove on the road. Seeing no license plate on the scooter, Officer O'Guin followed the driver to determine if the scooter was the type that needed a license plate. The driver turned west on Phoenix Avenue, where Officer O'Guin stopped him. What Officer O'Guin did not know was that the driver, Robert Savelli,

was a convicted felon in criminal possession of a firearm, a loaded .45 automatic pistol hidden in his waist band, and that Savelli was under the influence of methamphetamine.

Initially, Savelli pulled over and stopped, but as soon as Officer O'Guin stepped out of his car, Savelli drove forward and made a U-turn, heading toward Officer O'Guin who was in the street. Officer O'Guin tried to stop Savelli, who veered across the road to avoid him. As he passed by, Savelli asked an odd question, "Are you trying to stop me?" Savelli accelerated and ran the stop sign at Phoenix Drive. Officer O'Guin got in his car, made a U-turn and caught up with Savelli. He drove up and paced Savelli, urging him to pull over, but Savelli responded, "Who the fuck, I don't know you.", and drove on. Officer O'Guin pulled ahead and blocked Savelli's path, but he avoided O'Guin by pulling into a business driveway and making another U-turn, now heading southbound on Vassar Drive. Officer O'Guin made another U-turn, caught up with and passed Savelli. This time, Officer O'Guin blocked the road in a spot without any driveways, which trapped the scooter between the police car and the curb, at which point Savelli dropped the scooter and ran. Officer O'Guin jumped out of his car and gave chase on foot. Savelli glanced back and for some reason, gave O'Guin a thumbs up sign with his right hand, while reaching into his waist band with his left hand. Officer O'Guin, fearing that Savelli had a weapon, drew his pistol. Then, as Officer O'Guin's lapel video shows, Savelli turned with a large pistol in his hand, and started toward O'Guin, raising the pistol as he advanced. O'Guin thought to himself, "He's either gonna kill me or I'm gonna get shot." Officer O'Guin fired five quick shots at Savelli, striking him twice before Savelli could fire. Savelli dropped to the ground, the pistol by his side.

Officer O'Guin took cover behind his police car, called in for reinforcements, and ordered Savelli to move his hand away from the pistol, but Savelli said he couldn't move his arms. O'Guin stayed in his covered position waiting for other officers to arrive. Other officers arrived quickly and decided to approach Savelli and pull him away from the pistol. Once they had done so they began rendering first aid until the rescue unit arrived and took over. He was transported to the hospital but died of his wounds.

Savelli's girlfriend, Daedra Hall, arrived at the scene of the shooting. She told the police that she and Savelli were homeless, living on the streets, and that Savelli always carried the



*Pistol at the scene*

pistol hidden in his waist band. The firearm recovered from the scene was a .45 caliber Witness semi-automatic pistol, with a round in the chamber, the safety off, and eight more cartridges in the magazine. A search of Savelli's clothing, discovered a glass pipe and what appeared to be crystal methamphetamine.

The autopsy revealed that Savelli died of two gunshot wounds, one to the left shoulder and one to the abdomen, just over the hip. An analysis of his blood established that he was under the influence of methamphetamine, at levels that are associated with violent and irrational behavior.

Savelli had numerous arrests dating back to at least 2002 in California and New Mexico. He had been convicted of Attempted Felony Assault and Vandalism in 2004 in California, and of Attempted False Imprisonment, Attempted Aggravated Battery Against a Household Member, and Possession of Methamphetamine in 2012 in Albuquerque. He was arrested on March 16, 2017, with drugs and guns and was facing charges of Possession of Firearm by a Felon and Trafficking in a Controlled Substance on the date he was stopped by Officer O'Guin.

### LEGAL ANALYSIS

Officer O'Guin shot Robert Savelli in response to deadly force, and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6, which establishes that a peace officer may justifiably use deadly physical force when he believes he or another is threatened with serious harm or deadly force. 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 not justified. If the jury has a reasonable doubt as to whether the killing was justifiable, they must acquit the

officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

### CONCLUSION

The question presented in this case is whether, at the moment Officer O'Guin fired, was he acting under a reasonable belief that Savelli presented a threat of death or serious harm? Evidence clearly shows that Savelli pointed the pistol at Officer O'Guin, which establishes that Officer O'Guin was in fact acting out of a reasonable fear for his safety; and in the absence of any evidence to prove, beyond a reasonable doubt, that he was not, there is no reasonable likelihood of a successful prosecution; therefore, no charges will be filed against Officer O'Guin. The case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Chief Michael Geier -Albuquerque Police Department

Detective David Gonzales, Albuquerque, Police Department

John D'Amato, attorney for Officer O'Guin

Jonelle Vanderman, next of kin