

August 3, 2018

Chief Michael Geier

Chief of the Albuquerque Police Department

400 Roma Ave. NW

Albuquerque, NM 87102

RE: Prosecutorial review of the June 2, 2017 incident in which Raul Gallegos died after being tased by Officer Joseph Brown of the Albuquerque Police Department.

APD case #17-0052436; DA case # 2018-02894-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review, for potential prosecution, the incident in which Raul Gallegos died after being tased by Albuquerque Police Department Officer Joseph Brown on June 2, 2017. After a review of all available evidence, including police reports, witness statements, autopsy reports, laboratory reports, videos, and photographs, and a visit to the scene, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Officer Brown committed any crime. No charges will be filed: the case will be closed. My decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On the morning of June 2, 2017, Raul Gallegos was at the Cottonwood Mall, prying open the drawers of unattended cash registers and making off with the cash inside. He struck first in the Sears Department Store, where he stole \$114. He then moved to the Kid's department of the Dillard's Department Store, where he was spotted by an employee of Dillard's, who notified security. Raul was quickly identified because he was well known to the Mall staff: he had been breaking into cash registers at various Mall stores during the past four months, and his photo had been posted to help mall employees spot him. Gallegos opened the cash register in the Kid's Department and took \$91.00 in cash.

Another employee, Cindy Andablo, headed to the south entrance of the store where she knew she could find APD Officer Justin McCormick and Paul Atkins, the Mall security director who were waiting to intercept some shoplifters. On her way to notify them of the cash register break in, she saw Raul Gallegos walking through the store. She recognized him from his photograph and told McCormick and Atkins that he'd just broken into a cash register, at which point Gallegos turned and ran out of Dillard's and north through the mall, with the others in pursuit. Gallegos ran into Sears and out through the package pickup entrance. Once in the parking lot, he ran towards the Sears Auto Center building to the east. He passed by the building and ran along 7 Bar Loop Road. McCormick was far behind, but received a ride from Aaron Theriault, Mall Operations Manager, who took him to the intersection of 7 Bar loop and Coors, where Gallegos had been seen. At that point, an off-duty Bosque Farms police officer, Amaday Duran, saw the chase, parked his car at the Nusenda Credit Union on Coors and joined the chase.

Gallegos passed through the parking lot of the Hong Kong Buffet and dropped down a steep hill behind the Buffet, which put him on the side of a diversion canal. He crossed the canal on a small foot bridge and ran north on the bridal path on the east side of the canal, with Duran following behind. Duran noticed that Gallegos had something, possibly a screwdriver, in his hand and kept his distance. Lieutenant Tim Espinosa joined the chase with Duran and also saw the object in Gallegos hand. Lt. Espinosa called out to Gallegos, and ordered him to drop the screwdriver, which he did, but continued to run, dropping down a staircase into the neighborhood to the east which was filled with stables and fields fenced for horses. Gallegos ran through the fields, hopping over chest-high fences as he went. When Duran caught up to him, Gallegos turned, a blue object in his hand and told Duran, "I'm gonna fuck you up, I'm gonna fuck you up." Afraid that he'd be stabbed, Duran abandoned his chase.

Gallegos ran on through the horse fields and homes until he reached 10149 Bosque Circle NW, where he encountered Officer Joseph Brown who had just driven into the neighborhood. Officer Brown saw Gallegos running through the fields in his general direction and got out of his car to intercept him. Gallegos appeared in the driveway between the buildings, running towards Officer Brown, who saw that Gallegos had something in his hand, possibly a tool of some kind. Rather than wrestle with a man holding a potential weapon, Officer Brown pulled out his taser and told Gallegos twice, "Don't move or I'm gonna tase you." Gallegos continued towards

Brown, but then veered suddenly between some horse trailers parked in the driveway. Officer Brown fired his taser just as Gallegos was about to turn the corner behind one of the horse trailers. The taser struck Gallegos and he fell, face down to the ground. Officer Brown approached and ordered Gallegos to show his hands, but then realized that Gallegos was having some kind of seizure. Officer Brown called for rescue and handcuffed Gallegos. By then Officer McCormick had reached them, the officers noticed that Gallegos had stopped breathing. They couldn't find a pulse, so they removed the handcuffs and began to perform CPR, which they continued until the paramedics arrived and took over. Despite the efforts of the officers and the paramedics, Gallegos was never revived and was pronounced dead at the scene.

THE REDLINE SHOWS THE PATH GALLEGOS FOLLOWED.



In the driveway, where Gallegos fell, officers recovered \$91.00: the money stolen from the cash registers at Dillard's. They also found a pair of pliers, and a small pry bar. The screwdriver Gallegos had dropped during the chase was found and turned out to be small pry bar with a screwdriver-like handle. When his clothing was searched at the Office of the Medical Investigator, \$114.00 in cash was discovered in his pocket: the money from the Sears cash register.

The autopsy discovered that Gallegos had an enlarged heart, a common symptom of chronic methamphetamine users, and also found methamphetamine and cocaine in his blood. It also located two taser probes, one in the back of his head, the second in his back. The autopsy report noted that tasers, also called conducted energy devices (CEDs) are “normally safe, rarely causing injury, let alone death. However, Mr. Gallegos was also intoxicated with methamphetamine. Methamphetamine is a stimulant drug which can cause fatal irregular heartbeats (arrhythmias). His use of methamphetamine predisposed him to the development of an arrhythmia from the shock of the CED.” The report concludes with the opinion that “Raul Gallegos died from the combined effects of methamphetamine and cocaine toxicity and the effects of a conducted energy device. The manner of death is homicide.” Gallegos enlarged heart was stressed by the drug use and pushed to its limit by the the long chase- the taser charge caused a chaotic heart rhythm that led to his death.

LEGAL ANALYSIS

Charges of intentional homicide or aggravated battery would require proof of intent to kill or injure, which are not present in this case: all of the evidence indicates that Officer Brown sought to avoid death or injury to Gallegos. Therefore, the only potential charge would be Involuntary Manslaughter (NMSA 30-2-3(B)). To convict for this crime, the jury would have to find, beyond a reasonable doubt, that the Officer Brown knew or should have known that tasing Gallegos might kill him and acted with willful disregard for his safety, (UJI 14-231). The jury would also be required to find, beyond a reasonable doubt, that Gallegos’ death was a foreseeable result of being tased , (UJI 14-251). Homicide; “proximate cause”: defined.

CONCLUSION

To convict Officer Brown of involuntary manslaughter, the prosecution would need sufficient evidence to prove to a jury that Officer Brown could foresee that tasing Gallegos might kill him and acted with willful disregard for his safety. A jury would therefore need to find that the Officer Brown could have or should have foreseen that tasing Gallegos once would combine with his compromised heart and methamphetamine intoxication to cause a fatal irregular

heartbeat. There is however, no evidence to prove that Officer Gallegos considered the taser to be anything other than a safe means of incapacitating Gallegos. As the autopsy report indicated, tasers are “normally safe, rarely causing injury, let alone death.” In addition, Gallegos appeared to be in good health, running almost a mile and jumping numerous chest high fences. There was nothing in his behavior that would have alerted Officer Brown that Gallegos was peculiarly vulnerable to the effects of the taser. There is simply no evidence to refute the fact that Gallegos death was the unintended and unexpected consequence of his tasing, caused by his drug use. Officer Brown’s conduct will not support any criminal charges- no charges will be filed; the case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Tod Babcock, Albuquerque Police Department-Force Investigation Team

John D’Amato, Attorney for Officer Joseph Brown

Frank Gallegos- brother of Raul Gallegos