

August 28, 2017

Chief Gordon Eden  
Chief of Police  
Albuquerque Police Department  
400 Roma Ave. NW  
Albuquerque, NM 87102

Prosecutorial review of the January 13, 2015 shooting death of John O'Keefe.

APD case # 15-0003934; DA case # 2015-00187-1

Dear Chief Eden:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting death of John O'Keefe on January 13, 2015, 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 the police officers were acting under the reasonable belief that O'Keefe posed a threat of death or great bodily harm to police officers or the public in general. 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

In January 2015 John O'Keefe was homeless, committing burglaries in the neighborhood near San Mateo and Constitution, to support his drug habit. On January 11, 2015, he entered an abandoned home at 1012 Quincy Street N.E. through the dog door. Once inside, he ransacked the home and stole many items, including a camera in its case. The next day, January 12, 2015, he entered the home of a Bernalillo County Sheriff's deputy at 318 Morningside Drive N.E., again through the dog door. He took a Glock 40 caliber pistol, two Ruger Vaquero 45 caliber revolvers, and ammunition for the weapons. He also took two knives and a bullet-proof vest.

When recovered later, O'Keefe's cell phone contained two photographs: one of him posing in the bullet proof vest and another of him with the Glock pistol.

The following day, January 13, 2015, Roberto Vasquez, the owner of Roberto's Le Salon on San Mateo Blvd. N.E., called the police to report that he had seen two suspicious men behind his store. The men jumped the fence when they saw Vasquez, leaving behind a bag containing jewelry and other items. Officer Ryan Holets, of the Albuquerque Police Department, arrived quickly and found an empty camera case with the address "1012 Quincy NE" written inside. He drove to that address, a few blocks away, and saw the two men he was looking for in front of 1012 Quincy Street N.E. Officer Holets activated his lights and tweaked his siren, commanding the men to stop. One of them, Jeremiah Hickey, stopped, but the other man, John O'Keefe, ignored the command and walked away.

Officer Holets placed Hickey in the back of his police car and drove to the end of the block where Quincy crossed Constitution Blvd. N.E. He parked and walked east on Constitution, searching for O'Keefe, who had disappeared. A passing motorist told Holets that he had seen a man in a yard on Royene Ave. NE, the next street over. Holets ran towards Royene and saw O'Keefe in the front yard of 5127 Royene Ave. NE, but O'Keefe ducked around the corner of the house. When Holets rounded the same corner, O'Keefe was waiting in ambush with the Ruger revolver pistol drawn and aimed at Holets. O'Keefe fired two shots at Officer Holets, who took cover when he felt the bullets whiz by his head. He immediately called out on the radio, "He's shooting at me!", requested backup, and gave a description of the shooter that included a black backpack and a light jacket. Officers began to flood into the neighborhood.

While Holets was calling for help, O'Keefe jumped the fence into a yard on Sunningdale Ave. NE and tried to hide, but a woman in the home knocked on the window to show she had seen him. O'Keefe ran back east through the neighborhood, abandoning his backpack, which contained burglary tools, a syringe, paraphernalia for intravenous drug use, and additional rounds for the Ruger. He jumped another wall and dropped his jacket: in the jacket pockets were spare ammunition for the revolver, a syringe, and one of the knives stolen from the Morningside burglary. He walked out onto San Mateo and turned north, but Sergeant Rene Barraza was coming in from the north and spotted O'Keefe. They made eye contact; O'Keefe ran east across San Mateo through rush hour traffic.

As he crossed San Mateo, O'Keefe passed in front of Officer Michael Oates, who jammed on his brakes, jumped out of his car, and chased after O'Keefe. O'Keefe ran through a narrow strip park on the east side of San Mateo, and crossed through a hedge into an alley, Officer Oates in close pursuit. O'Keefe tried to scale a cinderblock wall on the backyard of one of the homes that backed up on the alley, but he couldn't get over the tall wall and continued south in the alley. Officer Oates had closed the distance between them and shot O'Keefe with his Taser. The Taser darts attached but the electrodes could not penetrate to his skin because O'Keefe was wearing the bullet proof vest he had stolen the day before.

O'Keefe paused for a moment in an area of the wall recessed for a telephone pole. He had run out of room to run. Officer Oates was behind him, Officer Anthony Andolino was in front of him, advancing up the alley. Officers Fisher and Holets were running into the park from his right, and the high wall was to his left. Officer Matthew Fisher called out, "Show me your hands!" O'Keefe turned and fired one shot at Fisher, which missed. In response, Officer Oates fired two times, striking O'Keefe, he went down partway, but then rose and pointed the pistol toward Fisher again. Officer Fisher then fired eight times at O'Keefe with his Smith and Wesson M&P 15 rifle. Oates also fired a second volley, after which O'Keefe stayed down.

O'Keefe died almost immediately from numerous gunshot wounds, including a fatal shot to the head. The stolen Ruger Vaquero .45 revolver had three fired casings in the cylinder. The front of the revolver had been damaged by a bullet impact: the vest showed an impact on the front from one of the shots, and marks on the back where the Taser barbs had struck. Blood test results indicated that O'Keefe had been using both heroin and methamphetamines before his death.

In the meantime, Jeremiah Hickey, locked in the back of Officer Holets' car, kicked out the back window and ran. He was caught nearby within minutes. He at first claimed to be David Hickey, his own brother, but eventually admitted his identity. When questioned, he stuck to history that John O'Keefe was a man he barely knew who he just happened to be walking down the street with. He denied any knowledge of burglaries, stolen jewelry, or guns.

## LEGAL ANALYSIS

The officers who shot John O'Keefe were responding 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 the officers fired, were they acting under a reasonable belief that O'Keefe presented a threat of death or serious harm. Evidence clearly establishes that O'Keefe was armed and desperate to escape, had already shot twice at Officer Holets, and once at Officer Fisher. These fact establish that the officers were in fact acting out of a reasonable fear for their safety; and in the absence of any evidence to prove, beyond a reasonable doubt, that they were not, there is no reasonable likelihood of a successful prosecution; therefore, no charges will be filed against Officer Oates or Officer Fisher. The case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Chief Gordon Eden-APD

Detective Jodi Gonterman, Albuquerque, Police Department

John D'Amato

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