

January 22, 2018

Chief Michael Geier

Chief of Police

Albuquerque Police Department

400 Roma Ave. NW

Albuquerque, New Mexico 87102

RE: Prosecutorial review of the January 11, 2016 shooting of Darrel Salazar by Albuquerque Police Officer Daniel Galvan.

APD case # 160003286

DA case # 2016-3393-1

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 armed robbery of the Bank of America on January 11, 2016, leading to the shooting of the offender, Darrel Salazar, by Officer Daniel Galvan, for potential prosecution in this incident. After reviewing all available evidence, including reports, statements, lapel videos, photographs, and a visit to the scene I have concluded that it is not possible to prove, to a unanimous jury beyond a reasonable doubt, that Officer Galvan was not justified in acting under the belief that Darrel Salazar posed an immediate threat of death, or great bodily harm, to himself, other officers, and members of the public. Accordingly, no criminal charges will be filed against Officer Galvan 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 January 11, 2016, at approximately 1546 hours, Darrel Salazar attempted to rob the Bank of America at 3101 Carlisle NE (the northwest corner of Carlisle and Candelaria). He handed a note to the teller demanding money, and indicating he had a gun. The teller pretended she did not understand the note, and Salazar became impatient and left the bank without acquiring any money. Another customer, Scott Ruiz, had been standing behind Salazar throughout this attempted robbery, saw him holding a handgun, and was the first to call 911. Ruiz followed Salazar out the bank and provided dispatch with a description: Hispanic male in his 20's, 5'6", thin build, wearing a black jacket, black pants, and a grey and white shirt. The

weather was sunny and clear, and while Ruiz stood outside the bank he witnessed Salazar cross Carlisle, eastbound, and then cross Candelaria, southbound, into the parking lot on the west side of the 7-11 convenience store, located on the southeast corner of Carlisle and Candelaria. Ruiz saw that Salazar had removed his outer jacket and thrown it over the fence behind the 7-11, and was now removing his pants. Ruiz noticed Salazar to be wearing shorts and a dark plaid shirt. He witnessed Salazar walk around the front of the 7-11 and disappear behind the east side of the store walking southbound. All of this information was provided to dispatch by Ruiz, which was all subsequently broadcast to the units responding to the scene.

Officers Cochran, LaForce, and Galvan, in separate units, responded to the call, with all arriving at approximately 1551 hours on Candelaria on the north side of the 7-11. Officer Cochran saw Salazar, who matched the description given, walking southbound down the alley from the east side of the 7-11. While Officer Cochran drove east to the next residential street (Hermosa) and then south to the next residential street (Los Arboles), Officers LaForce and Galvan drove south down the alleyway Salazar was walking. Officer LaForce caught up with Salazar in the parking lot of the Vortex, on the northeast corner of Los Arboles and Carlisle. She exited her vehicle and ordered Salazar to surrender. She observed that Salazar had a handgun in his hand. Salazar did not surrender, and ran southbound and then westbound, across Carlisle.

Officer Cochran drove southbound, in the northbound lanes, of Carlisle from Los Arboles, passing Salazar, to the next median (Claremont) where Officer Cochran turned around, now heading northbound in the southbound lanes of Carlisle, and approaching the fleeing Salazar. Officers LaForce and Galvan had driven straight across Carlisle and were in the southbound lanes, north of Officer Cochran. Salazar continued to run northbound, away from Officer Cochran and towards Officers LaForce and Galvan where he ran past them, now northbound on the sidewalk on the west side of Carlisle. Officer Galvan exited his vehicle and began to pursue Salazar on foot. Salazar then began to cross Carlisle, heading northeast, when he looked over his shoulder and tripped and fell in the street, landing on his stomach facing away from the approaching officers. Officer Galvan approached him, with his handgun pointed at Salazar, and commanded him to surrender. Officer LaForce was exiting her vehicle, and Officer Cochran was stopping his vehicle next to hers. Salazar rolled over and began to sit up, facing Officer Galvan. As he did so he pointed his handgun at Officer Galvan, who was approximately 15-20 feet in front of him. Officer Galvan then fired one round at Salazar, striking the trigger guard and handle of the gun Salazar was pointing at Officer Galvan. The round fragmented with four shards striking Salazar in the right front shoulder area. Salazar fell backward onto the pavement. All three officers then approached Salazar and one of them, it appears to have been Officer Galvan, kicked Salazar's gun away from him. Salazar's handgun, a .22 caliber revolver, was unloaded. This fact, however, was not known to any officer or witness until after the shooting.

Several officers and civilian witnesses saw Salazar point his handgun at Officer Galvan at close range immediately before he was shot: Officer Galvan, Officer LaForce, Officer Cochran, Katrina Shetron, Jerome Montoya, and Robert Bottomley. Officer Galvan stated "I encountered Darrel Salazar who pointed a gun three times at me. Being in fear for my life I fired my handgun one time."

Salazar was taken to the hospital and survived his wounds. He declined to give a statement. He was arrested and charged with armed robbery, under the United States Code. On October 17, 2016, Salazar plead guilty in United States District Court to Carrying, Possessing, and Brandishing a Firearm, During and in Relation to and furtherance of a Crime of Violence regarding the armed robbery at the Bank of America.

LEGAL ANALYSIS

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

1. Officer Galvan was a public officer or employee,
2. The [shooting] was committed while Officer Galvan was performing his duties as a public officer or employee,
3. The [shooting] was committed while arresting Darrel Salazar, who committed armed robbery, and
4. A reasonable person in the same circumstance as Officer Galvan would have reasonably believed that Darrel Salazar posed a threat of death or great bodily harm to Officer Galvan 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)

It is not necessary for an officer to prove, in his defense, that the suspect posed a genuine and actual threat to the officer, or another person. The officer must simply establish that he *reasonably believed* that the suspect posed a threat of death or great bodily harm to himself, or another, and that a reasonable person in the officer's position would have concluded the same. The burden would be on the state to prove to a jury, unanimously and beyond a reasonable doubt, that the officer's belief was unreasonable.

CONCLUSION

Officer Galvan was a public officer, performing his duties while attempting to arrest Darrel Salazar for armed robbery. Officer Galvan has said that he believed that Darrel Salazar posed a threat to him, other officers, and members of the public when he displayed a handgun during a

robbery, fled from officers while brandishing this handgun on a public roadway with many members of the public in immediate proximity, and pointed this handgun at Officer Galvan at a close distance while refusing to surrender to lawful authority. A jury is likely to find that Officer Galvan acted reasonably, and I also believe that a reasonable person, in the same circumstance as Officer Galvan, 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 Galvan in state court. This case will be closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Schultz", with a stylized flourish extending to the right.

Chris Schultz

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Michael Davis, Albuquerque Police Department

Officer Daniel Galvan, Albuquerque Police Department, c/o Fred Mowrer

Darrel Salazar, c/o Devin Fooks