

June 7, 2021

Chief Harold Medina  
Chief of Police  
Albuquerque Police Department  
400 Roma Ave. NW  
Albuquerque, NM 87102

Prosecutorial review of the January 6, 2020 shooting death of Orlando Abeyta by Albuquerque Police Department Detectives Adrian Montoya and Bryce Willsey.

APD # 20-0001678. DA case# 2020-00253-1

Dear Chief Medina:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Orlando Abeyta on January 6, 2020, for potential prosecution. After a review of all available evidence, including police reports, witness statements, autopsy and toxicology reports, videos, and photographs, and a visit to the scene of the incident, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Albuquerque Police Department Detectives Adrian Montoya and Bryce Willsey were not acting under the reasonable belief that they or others faced the threat of death or great bodily harm as a result of Orlando Abeyta'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.

#### RELEVANT FACTS

On January 6, 2020, Officer Shaun Ginn was on his way to provide backup in a traffic stop when he noticed a man near Cochiti St. SE and San Pedro Blvd. NE, showing a pistol to a group of people near a dumpster. Officer Ginn was undercover, driving an unmarked car and

wearing civilian clothes, so none of the people at the dumpster seemed to take any notice of him. Officer Ginn didn't see any signs of a threat to any one, so he drove to the scene of the traffic stop. After he had finished at the traffic stop, he told the other officers what he had seen earlier, and that he would swing by to check on the situation. When he returned to the intersection, he saw a man, later identified as Orlando Abeyta, walking north toward Central Ave. NE. As Abeyta reached the center median on Central he pulled the pistol out of his pocket and pointed it at Officer Ginn. Officer Ginn notified the other officers and maintained watch on Abeyta.

Detective Adrian Montoya arrived first and saw Abeyta with the pistol, so he pulled onto Central and parked in the ART bus lane, facing east. Detective Thomas Jacobo was next on the scene; from his vantage point he could see Abeyta waving the gun and pointing it at people on Central. Detective Bryce Willsey joined Detective Montoya, parked on Central, also facing east, essentially blocking eastbound traffic. Abeyta continued across Central toward a bus stop bench on the north side of the street. He appeared to be intensely focused on the people at the bus stop, particularly a woman and man sitting together on the bench, who were later identified as Marlinda Jake, Abeyta's girlfriend, and Patrick Valdez, Abeyta's brother. Abeyta crossed Central Ave. until he was standing, gun in hand, directly in front of Jake and Valdez.

Detective Montoya jumped out of his vehicle and stepped away from the cover of the open car door so that Abeyta could see his vest, the front of which showed "Police" in large white letters. At that point, Detective Montoya was about 80 feet from Abeyta. Montoya called out "Drop the gun! Drop the gun!" and "Get on the ground! Get on the ground!" Abeyta appeared to hear the commands, and turned, but instead of dropping the gun, he brought it up as he turned. Looking through the telescopic sight on his rifle, Montoya could see the silver and black gun as Abeyta raised it: he interpreted that as a threat, later saying "He lifts his right arm and starts to bring it up, and at that point, I was in fear of that, at that point, he's gonna take the gun and be, and fire a round at me or shoot me, or kill me." Montoya fired two shots from his rifle, but Abeyta did not react, so Montoya fired again. Abeyta dropped his pistol and fell down.

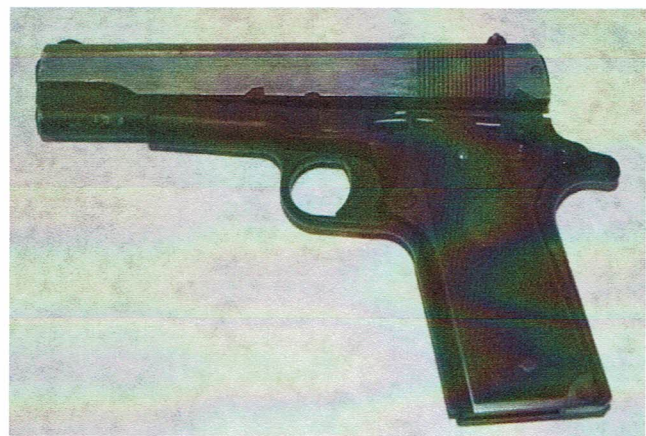
Detective Willsey parked behind Detective Montoya, left his vehicle and joined Detective Montoya. As Abeyta turned and raised the pistol, Detective Willsey, from his vantage point, was able to see that Abeyta was actually aiming his pistol at the head of the woman sitting on the bus stop bench. Detective Willsey later said, "I thought he was gonna shoot her in the head at that

point.” Willsey fired twice with his rifle. Abeyta stood for a moment before dropping the gun and falling to the street.

Detectives Montoya and Willsey fired ten rounds between them: six struck Abeyta: he died at the scene; the rest struck a fence and a pickup parked behind the bus stop.

After the shooting, Marlinda Jake started yelling, “He was just playing. He was just playing.” She and Patrick Valdez were both intoxicated and upset, but told the police that Abeyta was just playing around with a toy pistol. Marlinda Jake also said that Abeyta was accusing her of cheating on him with his brother, Patrick Valdez and was pointing the pistol at her head when he was shot.

A black and silver KWC bb airsoft pistol was found at the scene; KWC manufactures full size, all metal replicas of well-known handguns, in this case an exact replica of a 1911, 45 caliber pistol. Unlike toy replica pistols, airsoft guns are not required to have orange barrel tips or blazes to differentiate them from real firearms.



*Abeyta's Airsoft Pistol*

The autopsy determined that Abeyta had suffered six gunshot wounds to the chest, neck and knee. The analysis of his blood found a blood alcohol concentration of 0.299 (g/100ml), indicating an extremely high level of intoxication; the analysis also found methamphetamine.

Investigators were alerted to a report of a man threatening passengers on an ART bus just east on Central, a few hours before the shooting. In video from the ART station, Orlando Abeyta can be seen threatening passengers with the pistol as he leaves the bus and as the bus pulls away.

## LEGAL ANALYSIS

APD Detectives Adrian Montoya and Bryce Willsey were acting in the line of duty, attempting to prevent Orlando Abeyta from threatening people on the street with what appeared to be a pistol, and therefore would be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 30-2-6, under which a peace officer may justifiably use deadly physical force when they believe they or another is threatened with serious harm or deadly force. Under New Mexico law, the officer who uses deadly force 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. This inquiry is an objective standard, viewed from the perspective of the officer at the time of the incident with the understanding that officers often must make split-second decisions in difficult situations about what type of force is necessary. It requires only a finding that a reasonable person in the same circumstance as the officer would have come to the same conclusion that the use of force was necessary because of the threat of death or great bodily harm posed by the suspect. *State v. Mantelli*, 2002-NMCA-033. 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 any reasonable doubt as to whether the killing was justifiable, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable Homicide.

## CONCLUSION

The question presented in this case is whether, at the moment Detectives Adrian Montoya and Bryce Willsey fired, were they acting under a reasonable belief that Abeyta posed a threat of death or serious harm to them or the civilians on the street? Evidence clearly shows that Orlando Abeyta created the appearance of a lethal attack on Marlinda Jake, pointing a replica pistol at her head from close range during a tense confrontation. He ignored the Detective's commands to drop the gun, and instead continued with his threatening behavior. The Detectives responded to what appeared to be a deadly threat with deadly force. I do not believe that twelve jurors would conclude, unanimously, and beyond a reasonable doubt, that the Detectives' reactions were unreasonable. There is no reasonable likelihood of a successful prosecution: no charges will be

filed against Albuquerque Police Department Detectives Adrian Montoya and Bryce Willsey.  
The case will be closed.

Very truly yours,



Michael Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective David Gonzales, Albuquerque Police Department

John D'Amato, Attorney for Detective Adrian Montoya

Luis Robles, attorney for Detective Bryce Willsey

Betty Hardrick- Orlando Abeyta's mother