



STATE OF NEW MEXICO

**First Judicial District Attorney**

Santa Fe, Rio Arriba & Los Alamos Counties

**Mary Carmack-Altwhies**

District Attorney

**Santa Fe Main Office**

327 Sandoval Street  
PO Box 2041  
Santa Fe, NM 87504-2041  
Telephone: (505) 827-5000  
Fax: (505) 827-5076

**Espanola Office**

1122 Industrial Park Road  
PO Box 1209  
Espanola, NM 87532  
Telephone: (505) 753-7131  
Fax: (505) 753-7133

December 13, 2022

NMSP Michaelann Velasquez

Dear Agent Velasquez,

The District Attorney's Office has reviewed the August 13, 2022 Officer involved tasing involving Santa Fe Police Department Officer David Bogan that occurred during a disorderly conduct and roommate dispute incident in Santa Fe County, New Mexico. Based upon a review of the information, the evidence demonstrates that the use of force by Officer Bogan involved was justified and reasonable. *See*, NMSA 1978, §30-2-6(A) and §30-2-6(B), *see also State v. Mantelli* 2002-NMCA-033, *see also* UJI 14-5173.

Specifically, Officer Bogan and Officer Esquibel from the Santa Fe Police Department were dispatched to 1098 Willow Way in the city of Santa Fe, County of Santa Fe in reference to a disorderly conduct/roommate dispute. Officers first met with Joseph Guana who reported that he was trying to have his roommate, Melanie Garcia removed from his property. He reported that she was using drugs, had trashed her room in his house, and was maybe hiding in the backyard. Officers advised him that she probably had tenant's rights to his property but began to look for her on the property to speak with Ms. Garcia.

Ms. Garcia was not initially located at the property, but she approached Officers Bogan and Esquibel on the street after they completed their initial search of the property. Ms. Garcia was agitated and yelling at Officers as she approached. The street was very dark, so Ms. Garcia could not be easily seen until Officer Esquibel pointed her flashlight at Ms. Garcia. With the flashlight on her, Officer Esquibel saw that Ms. Garcia had a handgun in her hand and called it out to Officer Bogan. Officer Dogan began calmly saying, "Put the gun down." He instructed Ms. Garcia a total of 8 times to put her gun down while she waved it around and pointed it towards both Officers.

Officer Esquibel briefly moved her flashlight beam off of Ms. Garcia's face, and while the beam was off of her, Ms. Garcia put her gun in her mouth. When the beam from Officer Esquibel's flashlight found her face again, Officer Bogan instructed Ms. Garcia 1-2 more times to put her gun down. He then lowered his right hand with his gun in it, and instead used his taser which was in his left hand. Moments after he deployed his taser, Ms. Garcia shot herself with her gun in her mouth. All told, the entire interaction with Ms. Garcia lasted 18 seconds.

Under the facts and circumstances of this incident, Officer Bogan acted reasonably in response to an immediate threat to protect his and Officer Esquibel's life. Ms. Garcia has been waving and pointing her gun at Officers. She did not comply with Officer Bogan's repeated orders to put her gun down. Finally, he had less than 2 seconds to register that her gun which had previously been pointed at him and Officer Esquibel was in her mouth before he tased her. He further chose to use less-than-lethal force in spite of the fact that he was in immediate danger. Therefore, he was justified in the use of force to protect his life and the lives of other officers.

New Mexico State Police and the Santa Fe Police Department may release any evidence to the rightful owners of the property provided there are not any pending criminal charges or civil action arising out of this incident.

/s/ Mary Carmack-Altwies

Mary Carmack-Altwies

Frist Judicial District Attorney