

July 08, 2019

Chief Michael Geier  
Albuquerque Police Department  
400 Roma NW  
Albuquerque, NM 87102

Chief Tim Johnson  
New Mexico State Police  
PO Box 1682  
Santa Fe, NM 87504-1628

RE: Prosecution review of use of deadly force by New Mexico State Police Officer Michael Mariscal, and Albuquerque Police Officer Justin Jones in the shooting death of Arthur Lujan.

NMSP case # 18-23-3-0100, incident no. 2018-17402  
APD case # 18-069017 and 18-068539  
DA case # 2018-04988-1

Dear Chief Geier and Chief Johnson,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the July 18, 2018, use of lethal force by New Mexico State Police Officer Michael Mariscal, and Albuquerque Police Department Officer Justin Jones. This occurred during the attempted apprehension of homicide suspect Arthur Lujan. I have reviewed all relevant evidence provided, including police reports, the autopsy report, witness statements, photos, and numerous audio and video recordings. I also visited the scene where the incident took place.

#### RELEVANT FACTS

In the early morning hours of July 18, 2018, Arthur Lujan was shot and killed after an extended standoff with members of the Albuquerque Police Department (APD), including the S.W.A.T. team, and members of the New Mexico State Police (NMSP) Tactical (S.W.A.T.) Team. The standoff ended when Mr.

Lujan came out of his garage and fired a .40 caliber handgun in the direction of officers. Albuquerque Police Department Officer Justin Jones, and NMSP Officer Michael Mariscal returned fire, killing Lujan. The day's events leading up to that point took a long and somewhat torturous path.

Arthur Lujan was in a relationship with Brittany Sandoval. Ms. Sandoval was divorced from her ex-husband, Anthony Sandoval. There was bad blood between Arthur Lujan and Anthony Sandoval. On the morning of July 17, 2018, Mr. Sandoval, who lived in an apartment complex at 6801 Los Volcanos NW, in Albuquerque, awoke to find the windows in his Jeep and in his Mazda sedan broken out. He immediately suspected Arthur Lujan, who supposedly had previously vandalized his vehicles. Mr. Sandoval called his ex-wife asking where Arthur was. Brittany said she did not know his whereabouts. Brittany texted Anthony to be careful. Mr. Sandoval texted threats to Brittany directed at Arthur and his family. Police were called and took a report. About 9:15 that morning, Anthony Sandoval called 911, and stated the Mr. Lujan was back at his apartment complex. He told the operator, "There's going to be something." He reported that Lujan was driving toward him "head to head". A commotion was heard, and Mr. Sandoval said, "He just shot me. He shot me." There was no further communication. Anthony Sandoval was found dead in the driver's seat of his Jeep in the parking lot of the apartment complex, with multiple gunshot wounds.

Between 10:00 and 10:30 am on July 17, Arthur Lujan showed up at the residence he shared with Brittany Sandoval at 6715 Black Volcano Rd. NW. Mr. Lujan had not been at the residence for the past three days, as he and Brittany had an argument three days prior, and had agreed to some time apart. Mr. Lujan came to gather some belongings, and asked if he could spend some time with the infant daughter he and Brittany had together. Brittany agreed. Mr. Lujan lay down on the couch with the baby, and Brittany went back to bed. When she awoke later, she found Mr. Lujan in an emotional state. He was tearful and told her he had shot Anthony Sandoval, and that he had looked on the news, and he was dead.

Brittany called Mr. Lujan's parents, who live in Socorro, and asked them to come to the residence. They arrived about 3:45 pm.

Arthur Lujan was a veteran. He had served in the army in an infantry division. He had never talked much about his time in the army until that day. He disclosed to Brittany and his parents, apparently for the first time, that he had been deployed to active combat in Afghanistan, and also possibly Iraq. He described combat situations, including at least one involving multiple dead children, that severely affected him.

The homicide detectives working on Anthony Sandoval's murder quickly focused on Arthur Lujan as a suspect. Members of the Investigative Support Unit (ISU) of the Albuquerque Police Department traveled to 6715 Black Volcano NW to conduct undercover surveillance of the residence. This continued for several hours until authorization for cell phone tracking placed Lujan at the residence at 6715 Black Volcano NW. Around 4:30 pm, Homicide detectives and ISU detectives decided to go ahead and make contact with the occupants of the residence, and attempt to take Mr. Lujan into custody, if in fact he was inside the house. At that point, Peter Lujan, Arthur's father, was outside the home holding the infant daughter of Brittany and Arthur. He was directed to move behind police vehicles with the baby. Phone contact was made with Brittany Sandoval inside the residence. She confirmed that Arthur was in the house. Brittany was directed to come outside by herself, which she did. That left Arthur's Mother, Darlene Lujan, inside the residence with Arthur. Peter Lujan was then instructed to call his wife and ask her to come outside without alerting Arthur that police were there. She complied, and was directed to a safe location behind police vehicles. The family was then directed to a location around the corner from the residence.

A containment perimeter was set up around the house by ISU detectives. Phone calls were then made to Arthur Lujan's cell phone by ISU Detective Eric Brown. The calls went unanswered and went to

voice mail. After about the fourth phone call, the front door opened. Arthur Lujan stepped out and threw his cell phone across the street. He then quickly went back inside the residence and shut the door. At that point public address (PA) announcements were made toward the house directing Lujan to come out and comply with officer's instructions. There was no response.

When ISU detectives began setting up a perimeter around the house to prevent escape by Arthur Lujan, assistance was requested from the APD K-9 Unit. The K-9 Unit is part of the SWAT team, but the full SWAT team was not activated at that time. Four K-9 officers arrived and assisted the ISU detectives in securing the perimeter. After Mr. Lujan threw his cell phone and refused to comply with any PA announcements, a full SWAT callout was initiated about 5:30 pm. The APD Crisis Negotiation Team (CNT) was also activated to the scene.

Officers from the SWAT team began arriving. They relieved and replaced the ISU detectives on the inner perimeter around the house. The SWAT team also brought armored vehicles to the scene. These included the Rook Rescue Vehicle—a small armored bobcat-type vehicle; and the Bearcat—a larger armored military-type vehicle that provides transportation and cover for SWAT officers. Additionally, the PackBot Robot and the Bomb Squad robot were transported to the scene. The SWAT team was fully in place by 6:40 pm.

The following information regarding Arthur Lujan and the situation was communicated to SWAT officers as they were given their assignments and took up their positions: Lujan had prior military experience, and had been assigned to the 10<sup>th</sup> Mountain Division in the Army, which is an infantry division. He was deployed overseas. He may be suffering from PTSD. He was believed to be in possession of at least a high-powered rifle, a shotgun, and a handgun, per information from Lujan's girlfriend. He drinks a lot, and may be drinking as the standoff continues. Additionally, a Facebook post was found in which Lujan apparently threatened to shoot police officers, and posted a picture of himself holding a rifle.

Over the course of the evening, many plans and many actions were implemented as officers tried get Arthur Lujan to exit the residence peacefully and be taken into custody. At approximately 7:00 pm, CNT Officer Talia Rosenberg began giving Lujan public address announcements from the Bearcat. These announcements continued throughout the course of the standoff. They had no effect. The Robot initially deployed a throw phone by the front door, and then later took the phone inside the house and deposited it there, in an attempt to get Mr. Lujan to answer and speak with negotiators. The phone was called thirty-six times, with no answer. At approximately 11:00 pm, the phone went directly to voice mail, indicating it had either been turned off or destroyed. A second phone was delivered into the house by the Robot. That phone was called forty-four times. It was never answered. After a search warrant for the house and an arrest warrant for Mr. Lujan were signed, the Rook broke down the front door, tore down a large portion of the front wall under a bay window, and tore down one of the two garage doors at the residence. This was done to give better visual access to the residence in an attempt to locate Lujan, as well as to allow easier access for the various chemical munitions (tear gas), that were introduced into the house over the course of the incident. Multiple rounds of chemical munitions were fired into the house, in the hope that the effects would force Mr. Lujan to come out and surrender. The house was completely saturated. The tear gas seemed to have no effect. It was later learned that Lujan was wearing a gas mask, which rendered the chemicals ineffective on him.

At approximately 10:00 pm it was decided to call in the New Mexico State Police Tactical Team (SWAT) to assist and back up the APD SWAT team. State Police Tact Team members arrived and took up various positions in support of APD SWAT. They also brought with them the NMSP Rook, Bearcat, and a robot.

When APD SWAT officer Justin Jones arrived at the scene about 5:30 pm, he was assigned to be "high ground". A high ground officer is tasked with finding a position of concealment some distance from the main center of activity, and from which the officer can observe and provide information to supervisors

and to officers who are closer to where the suspect is located. This position is preferably taken up at a point higher in elevation than where the suspect is located. It also gives the high ground officer a sniper-type advantage should it become necessary to use deadly force to stop the actions of a suspect. Officer Jones initially took up a position in the side yard of a house across the street from where Mr. Lujan was located. This was approximately thirty-six yards from the front of the house where Lujan was located. From that location, he could see and cover the front of the house. After it got dark, Officer Jones moved to the roof of the same house where he had initially positioned himself. This elevated position gave him a better view of the scene. He positioned himself at the edge of the roof, and about eight feet down from the pinnacle of the pitched roof.

New Mexico State Police Tact Team Officer Michael Mariscal reported to the scene at approximately 10:30 pm. He was assigned to high ground. He was to join Officer Jones in covering the front of the residence where Arthur Lujan was holed up. Officer Mariscal positioned himself at the pinnacle of the pitched roof. From their high ground positions, Officers Jones and Mariscal watched events unfolding across the street and below them. The following photo with additions shows an overview of the scene, and the positioning of Officers Jones and Mariscal in relation to Arthur Lujan's location.



Throughout the standoff, officers had a very difficult time sighting Arthur Lujan or pinning down his location within the house. Robots were sent in. The Robot cameras noted several things during the evening that were of concern to officers. There was a large duffle bag at the bottom of the stairs that contained numerous handgun magazines, and many boxes of ammunition, including .223 rounds, 12-gauge shotgun shells, .22 long rifle rounds, and .762 rounds. Additionally, a shotgun was noted at the top of the stairs that appeared to be “staged” for use if someone came in the house. Five hours into the time Officer Jones had been on high ground--at 10:35 pm--there was a first sighting of Arthur Lujan. Officer Jones from his high ground position saw Lujan peek around a corner deep inside the house in a tactical-type maneuver called “pie technique”. This technique describes a move whereby a person only exposes a small portion of their body and face as they look around an obstacle— little by little widening their field of vision, and in this manner are able to survey more of the scene they are concerned about while maintaining a degree of cover. Mr. Lujan was seen doing this approximately ten more times thereafter

from inside the main part of the house. Officers were never able to see both of hands to see whether he was armed.

The Robots went from room-to-room in the downstairs portion of the home. They were able to clear most of it, and ascertain that Mr. Lujan was not in the rooms that were cleared. As time went on it became more apparent the Lujan had probably retreated to the garage. Shortly before 1:00 am the APD Rook, being operated by Officer Michael Oates tore down one of the two garage doors. Officer Oates reported that it appeared that Lujan was hiding behind the engine block of one of the two cars that were in the garage. Officer Oates reported that it appeared Lujan was armed with a rifle. Officer Oates perceived that Lujan pointed the rifle in his direction. He quickly backed out and positioned the Rook at an angle so as to give the best possible protection in case Lujan began firing at him.

A plan was then implemented to introduce a smoke grenade into the garage. Smoke can clog the filters in a gas mask. It was hoped that by introducing smoke into the garage that Mr. Lujan would be forced to remove the gas mask and then succumb to the effects of the tear gas, thereby forcing him outside.

Smoke was introduced and filled the garage, making visibility into the garage extremely difficult. After about seven minutes the smoke began to clear. As the smoke cleared, Officer Mariscal and Officer Jones saw Mr. Lujan between the left wall of the garage and a silver SUV that was parked in the garage. He was positioned near the front of the garage, a few feet back from the garage door opening. He was leaning against the wall, and had his left hand on the top of the SUV, in what appeared to be a bracing posture. Officer Mariscal noted that he seemed to be rocking back and forth. Officer Mariscal noted a sling across Mr. Lujan's shoulder, but could not see what it was attached to. Neither officer could see if Lujan had anything in his right hand. Lujan was still wearing the gas mask. This was about 1:30 am.



As Officers Jones and Mariscal were observing this, Mr. Lujan's demeanor suddenly changed. He stood up straight, and turned and stepped toward the garage door opening. His right hand came up and he was holding a black handgun. He immediately fired a round in the direction of officers. As soon as Lujan fired, Officers Jones and Mariscal almost simultaneously each fired a single shot at Mr. Lujan. Both Officer Jones and Officer Mariscal fired from a Georgia Arms Winchester .308 caliber rifle. The following photo was captured from a NMSP Drone video. It shows the moment Arthur Lujan pointed his gun out the garage door and fired toward officers.



Mr. Lujan was hit and immediately went down. He fell face-down on his stomach, landing almost entirely just inside the entrance to the garage. His handgun landed about an inch from his hand. It was unknown at that point whether he was laying on a rifle, although it was suspected that he was. There was no movement from Mr. Lujan, except for some intermittent labored breaths. After employing a flashbang to see if it caused any reaction from Mr. Lujan (it did not), the NMSP Robot was moved up to move the handgun away from Mr. Lujan's hand. A police service dog was then deployed to pull Mr. Lujan out into

the open and possibly to separate him from any rifle on which he might be laying. As the dog pulled Mr. Lujan down the driveway, a rifle came into view. As the dog continued pulling, the rifle separated from Lujan's body. Mr. Lujan was taken into custody and checked by the SWAT team medics. There were no signs of life. Mr. Lujan was placed on the platform of the Rook and taken down the street to waiting EMT personnel. They confirmed that Mr. Lujan was deceased.

#### OFFICER STATEMENTS

Officer Justin Jones gave a formal statement to investigators on July 23, 2018. He was accompanied by his attorney Luis Robles, and retired APD Sgt. Drew Bader. Officer Jones gave a very detailed account of the activities of the day Arthur Lujan was shot. Officer Jones stated that he had been and APD officer for ten and one-half years, and a high ground officer with SWAT for over three years. He had never before had to use deadly force in this assignment.

After going through the events leading up to the shooting, he described what was going on at the point leading up to the shooting, and what was going through his mind at the point he fired.

I could see a hand coming up into my scope in the field of view and in that hand I could see a black, what appeared to be, semi-automatic pistol... When I first saw it was already up raised to about mid-chest height and it appeared that the muzzle kept coming up. And as I observed it I observed what I know to be a muzzle flash. I saw a bright red light at the end of the gun. I heard a muffled pop and it appeared to me that the gun was oriented up at Mariscal and I's roof when it went off.... I knew that in my mind he had just shot at Officer Mariscal and I and believing that he had a semi-automatic pistol I believed he was about to shoot at us, um, additional to that. Um, so I believed that both he and I's life were in immediate danger of great bodily harm or death.... [A]t that time I fired one round.

Officer Jones went on to say that he was also concerned that if Mr. Lujan were able to fire additional rounds, other officers on scene would be in danger in addition to himself and Officer Mariscal. Officer Jones said that he was not aware that Officer Mariscal had also fired at Mr. Lujan until he asked him shortly after the shots.

Officer Michael Mariscal gave a formal statement on August 6, 2018 to lead investigating Detective Michael Davis. He was accompanied by his attorney Luis Robles. Officer Mariscal stated that he had been a New Mexico State Police officer for eight and one-half years. He was assigned to the Tactical Team. His assignments as a member of the Tact Team would vary, but the day of this shooting he was assigned to high ground.

Officer Mariscal recounted the events that led up to the shooting. He then detailed what happened at the point of the shooting:

[T]he next thing I know he takes his right foot, takes a step out, uh, towards the driveway. At this point, his right hand comes up and punches out of the garage... I noticed a black, something black in his hand and next thing I knew I saw a flash and I heard a pop. Um, at that point my mind told me he's shooting at our guys because the way his arm was faced--it was turned, it was turned toward the direction of where our Rook was at and where our Bearcat was at...[W]hat I took from all this is he is now shooting at our officers. Uh, at that point, I made the decision that I need to stop him before he fires more and potentially hits somebody, so I fired one round with my bolt gun.... I didn't know if the people in the houses were evacuated or if they were told to shelter in place, so now we've got our operators... Now we've got innocent people across the street that potentially now are standing in harm's way.... I was in fear that he was going to shoot and potentially kill either one of the guys or an innocent bystander sitting inside their house. So I needed to stop the threat before he was able to inflict any injuries on anybody else.

Officer Mariscal said that he was not concerned that he would be shot, but as noted above, was very worried that a fellow officer or a civilian in the area would be injured or killed. Officer Mariscal was not aware that Officer Jones had also fired until they mutually asked each other if the other had fired.

Obviously numerous other officers were witness to some or all of the events of July 17 and 18, 2018. Many officers recorded parts of the events on lapel cam, helmet cam, or on belt tape. Interestingly, the NMSP Drone had the only video camera that was pointed at the garage door and recording at the point Mr. Lujan emerged with the gun.

All the recordings add up the narrative of events related earlier in this report. Many audio recordings captured the moments when shots were fired. They all reveal one shot being fired, followed immediately, by two almost simultaneous, but separate, shots. All three shots occurred within the space of one to one and one-half seconds. Various officer noted a difference in sound between the first shot and the second two shots. Several officers stated they could tell that the second and third shots were from high-powered rifles. Some officers heard only two shots, although recordings make clear there were three. Various other officers stated that they were in fear of being shot or of someone else being shot when they observed Mr. Lujan fire his gun out the garage door.

The neighborhood around 6715 Black Volcano NW was canvassed following the shooting. The interviews revealed nothing of significance to add to this report.

#### PHYSICAL EVIDENCE

Numerous items of physical evidence were collected relating to this case. The rifles that Officer Jones and Officer Mariscal fired were collected from the roof of 6712 Black Volcano NW. They were test fired and returned to the officers. On the ground on both sides of the home where Officers Jones and Mariscal were positioned on the roof, a .308 Winchester cartridge casing was located.

The two firearms with which Arthur Lujan was armed when he was shot were collected from the driveway. The handgun was a black, Glock .40 caliber pistol. It was loaded with seven .40 caliber bullets in the nine-capacity magazine, and had one in the chamber. The rifle was a black, Mossberg 5.56 caliber rifle. The rifle had one bullet in the chamber. The magazine contained twenty-nine bullets. An additional magazine attached to the gun contained thirty more rounds. The safety on the gun was off.

Various firearms and ammunition were collected from inside the home where Lujan lived. A black Weatherby shotgun was located at the top of the stairs. A black Taurus 9mm caliber pistol was located