

November 18, 2019

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

Re: Prosecutorial Review of the November 4, 2018 shooting
death of Anthony David Chavez by Albuquerque Police Sergeant Larry Middleton and Officers
Christopher Duda and Carlo Franco.
APD Case #18-0105978
DA Case #2018-08347-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the November 4, 2018 shooting death of Anthony David Chavez by Albuquerque Police Sergeant Larry Middleton and Albuquerque Police Officers Christopher Duda and Carlo Franco. After a review of all available evidence, including police reports, witness interviews, body worn cameras, cell phone videos, photographs, laboratory and medical reports, and a visit to the scene of the shooting, I conclude that there is not sufficient evidence to prove beyond a reasonable doubt that Sergeant Middleton, Officer Duda, and Officer Franco were not acting in the reasonable fear that Anthony David Chavez' actions posed a significant threat of death or great bodily harm. Accordingly, criminal charges against Sergeant Larry Middleton, Officer Christopher Duda, and Officer Carlo Franco for the shooting death of Anthony David Chavez are not warranted and the case will be closed. This

decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

RELEVANT FACTUAL BACKGROUND

On November 4, 2018, at approximately 2:20 p.m., Shirl Rodgers, a tenant of the Warren House Apartments located at 950 Louisiana SE in Albuquerque, New Mexico, made an emergency 911 call to the Albuquerque Police Department (APD) and reported that she heard a gunshot fired near the stairwell in her apartment complex. Ms. Rodgers informed the APD emergency center that just prior to the gunshot, she heard people arguing in the hallway of her apartment building. In a later interview, Ms. Rodgers stated that she heard a female and at least two males yelling and screaming at each other near the stairwell in the apartment building. Ms. Rodgers opened the door of her apartment to see who was arguing. When Ms. Rodgers heard the gunshot coming from the nearby stairwell, she immediately closed her apartment door and called 911. She did not see who was arguing and did not see who fired the gun. A second 911 call came into the APD Communications 911 emergency center a few minutes later. This person did not want to identify herself, but she reported that she had just seen a young Hispanic male in a black long sleeve Pittsburgh Steelers shirt carrying a gun in the parking lot of the Warren House Apartments at 950 Louisiana SE.

APD dispatch asked over the Southeast Area Command radio if any unit could respond to a "shots fired" call at the Warren House Apartments. Officers Christopher Duda and Carlo Franco were talking to each other over the phone about lunch plans when the "shots fired" call came out over the radio. They decided that they would both respond to the call before they went to lunch. Sergeant Larry Middleton also requested that he be sent on the "shots fired" call. The

APD radio dispatcher broadcast the description of the suspect as a Hispanic male, seventeen to eighteen years old, wearing a black shirt and possibly in possession of a handgun.

Sergeant Middleton and Officers Duda and Franco provided voluntary statements to investigating officers. The three officers arrived simultaneously at the corner of Continental Loop SE and Louisiana Blvd. SE. Officer Duda retrieved his department-issued patrol rifle. Sergeant Middleton advised Officer Franco to arm himself with his non-lethal beanbag shotgun. Sergeant Middleton was armed with his department-issued 9 mm Glock handgun. The three officers proceeded on foot toward the parking lot of the Warren House Apartments and all three officers activated their body worn cameras. Officer Duda, carrying the patrol rifle, took the lead. Officer Franco was directly behind Officer Duda, and Sergeant Middleton followed the two officers. As the officers proceeded south toward the parking lot, they first observed a man walking his dog. The officers initially thought that this man might be the subject of the shots fired call, but the officers observed that this man was holding only a dog leash.

Within seconds, the officers observed another man wearing what appeared to be a black hoodie come out of the east entrance of the apartment building. Sergeant Middleton described the subject as a twenty-year-old Hispanic male. The male subject, later identified as Anthony David Chavez, started walking in the parking lot directly towards the officers. Officer Franco stated that Mr. Chavez clearly acknowledged the officers' position and was walking very quickly towards the officers. Officer Duda observed a silver object in Mr. Chavez's hand, but could not immediately identify the object. Officer Franco also observed a silver object in Mr. Chavez's left hand. Officer Duda then observed Mr. Chavez bring his right hand over the silver object and make a cocking motion or pulling the slide back as if chambering a round. Officers Duda and Franco were able to identify the silver object as a firearm and simultaneously called out "gun".

Officer Franco described the firearm as a “silver sub-machine gun with a large, black extended magazine.” The officers fanned out, and Officer Franco quickly switched from his less lethal bean bag shotgun to his duty-issued 9mm Glock handgun. Officer Franco stated that he transitioned to a lethal weapon because he perceived a lethal threat and a non-lethal response did not fit the situation.

According to all three officers, Mr. Chavez raised the gun and pointed it directly towards the officers, prompting the officers to seek cover. On the video from Officer Duda’s body worn camera, Officer Duda can be heard saying “He’s pointing it at us.” Officer Duda ran behind a vehicle in the parking lot, Officer Franco sought cover behind a cinder block wall surrounding a dumpster, and Sergeant Middleton sought cover near the same vehicle where Officer Duda was positioned. Officer Duda stated that he did not fire his weapon because he was concerned that the gentleman walking his dog might be in the line of fire. Sergeant Middleton also did not fire his weapon because Officer Duda was directly in front of him. In his statement, Officer Franco stated that he recalled a lot of yelling by the officers, but that he could not recall what was said. The video from Officer Franco’s body worn camera revealed that Officer Franco yelled “Show me your hands” prior to any shots being fired. Officer Franco observed Mr. Chavez take aim first towards Officer Duda and then take aim directly at Officer Franco himself. As Mr. Chavez looked along the sight of his gun taking aim at the officers, Officer Franco discharged one round from his handgun at Mr. Chavez. Mr. Chavez was in full forward movement when Officer Franco discharged his weapon. Sergeant Middleton stated that he heard a “loud pop” come from Officer Franco’s position and two “loud pops” come from Mr. Chavez’s position. Officer Franco’s gunshot struck Mr. Chavez, causing Mr. Chavez to fall face first to the ground. Sergeant Middleton believed that Mr. Chavez also fired his weapon. Investigators, however, did

not find any evidence that Mr. Chavez fired his weapon outside the apartment complex. While Mr. Chavez was lying face down on the ground, Officer Franco observed a firearm directly to the right of Mr. Chavez's body.

The officers formulated a plan to approach Mr. Chavez. They moved to another point of cover behind a red car, closer to where Mr. Chavez was lying face-down on the ground. Each officer gave multiple commands for Mr. Chavez to show his hands to the officers. As the officers gave their commands, Mr. Chavez stood up and looked directly at the officers. The officers gave additional commands for Mr. Chavez to show his hands. Instead of complying with the officers' commands, Mr. Chavez reached to the ground, picked up the silver firearm, and pivoted toward the officers. The officers then gave multiple commands for Mr. Chavez to drop the gun. Sergeant Middleton commanded the officers to shoot at Mr. Chavez. Each officer fired his respective weapon multiple times. The officers stopped shooting at Mr. Chavez when Mr. Chavez fell back to the ground. Each officer stated that he feared for his life and the lives of his fellow officers. Each officer stated that Mr. Chavez's actions constituted a deadly threat, and that if officers had not shot at Mr. Chavez to stop the threat, Mr. Chavez would have killed one or more of the officers. The officers also stated that the potential for deadly harm was great, because Mr. Chavez's firearm appeared to be a fully automatic weapon.

The officers maintained cover until additional officers arrived on the scene. When the additional officers arrived, a group of officers approached Mr. Chavez and placed him in handcuffs. There was a silver firearm with a large black magazine partially covered by Mr. Chavez's body. Sergeant Middleton, using his foot, moved the gun away from Mr. Chavez's body. Sergeant Middleton stated that the gun looked like a Mac-10 automatic handgun. Both Officer Duda and Officer Franco stated that the weapon looked like an Uzi or a variation of an

Uzi. The silver firearm was later identified as a MAC-11, which is a 9mm caliber subcompact machine pistol. A photograph of the firearm recovered at the scene is provided below.



Photograph of MAC-11 firearm recovered from the scene.

A review of the officers' body worn cameras (BWC) largely corroborated the officers' voluntary statements. Officer Franco's BWC best captured the events of November 4, 2018 at the Warren House Apartments. As the officers walked along the grounds of the apartment complex, Officer Franco observed Mr. Chavez enter the parking lot. Officer Franco called out "Gun." In the video, a person wearing a dark shirt and lighter colored pants can be seen in the distance. The officers took cover. Officer Franco can be seen lowering his less lethal bean bag shotgun and switching to his handgun. Officer Franco yelled "Show me your hands." Officer Franco then fired a single gunshot from behind a cinder block wall. Mr. Chavez cannot be seen in the video at the moment Officer Franco fired his weapon. Sergeant Middleton and Officer Duda can be seen taking cover behind another vehicle. The

officers proceeded closer to Mr. Chavez, who can be seen in the video lying flat on the ground. The officers advanced and took cover behind a red car. One of the officers can be heard saying, "He's still down, not moving." Five seconds later, Mr. Chavez began to pick himself up off the ground. The officers yelled additional commands, telling Mr. Chavez to stay on the ground and not to move. For approximately 12 seconds, Mr. Chavez stood upright and looked around. Mr. Chavez then bent over and reached to the ground to pick up an object to his right. The object cannot be identified from the video, but several witnesses observed Mr. Chavez pick up his gun. As soon as Mr. Chavez picked up the gun, the officers fired numerous gunshots at Mr. Chavez. Mr. Chavez fell to ground. When additional officers arrived on the scene, a group of officers approached Mr. Chavez, placed him in handcuffs and proceeded to administer first-aid to Mr. Chavez. Life saving measure proved to be unsuccessful and Mr. Chavez died on the scene. A silver handgun with a black extended magazine can be seen by Mr. Chavez's ankle.

In the aftermath of the shooting, a multi-agency task force consisting of the Albuquerque Police Department, the Bernalillo County Sheriff's Office, and the New Mexico State Police Department conducted an exhaustive canvass of the residents of the Warren House Apartments and nearby apartments to determine if anyone had witnessed the shooting or the events leading up to the shooting. Investigating officers made contact with three of Anthony Chavez's relatives that live in the Warren House Apartments and with whom Anthony Chavez had visited just prior to the shooting. Cynthia Rodriguez, Mr. Chavez's aunt, and her two children David Ballejos and Jasmine Ballejos spoke and argued with Anthony just prior to the shooting. Ms. Rodriguez stated that Anthony came by her apartment on the day of the shooting, and that Anthony was having a very hard time. Ms. Rodriguez said that Anthony told her that he wanted to die because nobody loved him. Ms. Rodriguez tried to provide some comfort, but asked Anthony to leave because Anthony had a gun. Ms. Rodriguez gave

Anthony some money and Anthony left. Ms. Rodriguez acknowledged that Anthony used drugs, but she did not believe he used anything other than marijuana. David Ballejos told investigators that when Anthony came to the apartment, Anthony had a gun on his hip under his shirt. David was aware that because of a prior criminal incident involving Anthony and David's sister Jasmine, Anthony was not supposed to have any contact with Jasmine as a condition of both Anthony's and Jasmine's respective probations. David asked Anthony to leave because of the no-contact order and the fact that Anthony had a gun. David acknowledged that he and his sister Jasmine argued with Anthony. David also mentioned that it looked like Anthony was on drugs because Anthony's eyes were dilated. Jasmine Ballejos stated that Anthony had spent the night with her family at the apartment the night before the shooting. She stated that Anthony left early that morning but came back to the apartment later that day. When Anthony returned, he had a gun under his shirt. Jasmine stated that Anthony was asked to leave because of the gun. Both David and Jasmine stated that Anthony was mad when he was asked to leave. David said he heard a gunshot in the nearby stairwell immediately after Anthony left. Ms. Rodriguez and Jasmine denied hearing a gunshot after Anthony left the apartment.

Jim Colegrove, a tenant of the Warren House Apartments, approached officers at the scene of the shooting and reported that he found a gun casing in the stairwell on the staircase landing by his apartment. Mr. Colegrove's apartment was a few doors away from Cynthia Rodriguez's apartment. Mr. Colegrove brought out the casing and showed the officers where he found it. Officers went to the stairwell and observed two impacts on the west wall of the stair landing. Mr. Colegrove reported that he found the casing on the staircase landing, near the handrail of the stairs leading from the landing to the second story. Officers took possession of a gold colored casing head stamped Hornady 9mm Luger. This was the same brand as the bullets found in the magazine of the MAC-11 firearm that Mr. Chavez