

September 16, 2020

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

Prosecutorial review of January 24, 2020 shooting of Daniel Montoya by Albuquerque Police Department Officer Damian Lujan and Detective Thomas Jacobo. APD # 20-0007132. DA case# 2020-00959-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Daniel Montoya on January 23, 2020, for potential prosecution. After a review of all available evidence, including police reports, witness statements, videos, 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 Officer Damian Lujan and Detective Thomas Jacobo were not acting under the reasonable belief that they faced the threat of death or great bodily harm as a result of Montoya'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

In mid-January of 2020, the Albuquerque Police Department was focusing on a loosely organized group of car thieves who specialized in stealing Kia and Hyundai passenger cars and

were known to generally carry firearms. The group was based in the Westgate neighborhood of Albuquerque, in the Southwest part of town.

On the morning of January 23, 2020, police received word of a shooting at 1635 Casa Florida Pl. NW. Four car thieves, in two stolen cars, had gone to the Casa Florida address to dump one of the cars. In the car to be dumped, a red Hyundai Sonata, were Daniel Montoya and Ciera "Red" Lopez. The other car, a silver Hyundai Sonata, was driven by James Gonzales. As Daniel Montoya and Ciera Lopez were taking items out of the red Sonata, Ciera Lopez, for reasons unknown, fired several shots into the air with a handgun, which attracted the attention of several neighbors. Esperanza Martinez was at home with her four-year-old daughter; she looked out her second-floor window and started to video the incident with her cell phone. Ciera Lopez saw her and told Montoya, "That bitch is filming us." Which prompted Montoya to fire several rounds from his AK47 assault rifle at Esperanza Martinez. His shots pierced the home's wall but missed Esperanza and her daughter. Montoya and Lopez jumped in the silver Sonata and sped away.

A receipt from a nearby McDonald's restaurant was found in the red Sonata: the video of that transaction led to the identification of James Gonzales. Later that day, a silver Kia SUV was stolen from the parking lot of Ross Dress for Less on Coors Blvd. N.W., by a man who closely fit James Gonzales' description. The stolen Kia was located near the Walmart, and Gonzalez was seen leaving the Kia and getting into a Hyundai, which drove away. The Air Unit Two, Albuquerque Police helicopter followed the car as it drove south on Interstate 25, where State Police Officers tried to stop the vehicle, resulting in a long highway chase which ended near Mountainair when the Hyundai ran out of gas. Gonzales fled on foot but was captured nearby. The driver of the Hyundai was identified as Dani Lynn Winters.

James Gonzales agreed to speak with the police and admitted he had been at the shooting on Casa Florida that morning. He identified Daniel Montoya and Ciera Lopez as the shooters and agreed to try to lure Montoya to a meeting where the police could arrest him. He texted Daniel Montoya and set up a meeting for later that night at the Motel Six near Iliff Rd NW and Coors. At 11:30 p.m. Montoya arrived at the motel in a silver Hyundai Sonata, along with several other people. He walked towards the motel room where the meeting was to be held, but

the officers were unable to positively identify him in the dark and decided not to make contact. Montoya returned to the Sonata and left the parking lot.

With the help of Air 2, the APD helicopter, the officers followed the car to 10500 Benavides Rd. S.W., the home of Amanda Trujillo, Montoya's ex-girlfriend. Montoya and another man entered Trujillo's home and the Sonata drove away. A short time later Montoya walked out of the home and walked south on Del Rey Rd. SW. Officers began to converge on the area, approaching Montoya from different directions. Officers in unmarked cars pulled in behind him and activated their emergency lights, but Montoya just turned and looked at them and continued walking, talking on his cell phone. He was told to stop, but replied, "Fuck you" and continued walking.

When Montoya turned left on Anaconda St. SW, he started running. He stopped and fired six shots at the officers, including Detective Thomas Jacobo, who returned fire with his rifle by firing through his own windshield, explaining later that he thought, "he would continue to fire, he would injure me, he would kill me, he would injure my teammates, he could in-he could kill them." None of Jacobo's shots struck Montoya who ran behind parked cars, out of the officer's sight.

Montoya continued north on Anaconda Street, slowing to a walk. After turning left on Ladrones Pl. SW, he fired two shots into the air, possibly trying to hit the helicopter that was tracking him from above, without hitting the craft. At the intersection of Ladrones and Mimbres St SW, Montoya fired three more shots in the direction of the officers. He turned right on Mimbres and continued walking, reloading his handgun as he walked. When he passed 1228 Mimbres, he fired three more shots into the air, but then pointed his pistol at the nearby officers. Agent Santana got out of his car and yelled to Montoya that they were the police. Agent Santana described Montoya's reaction, "He just kept walking towards us yelling fuck you fuck you and continued yelling. He just, he didn't care. To me, he either wanted to kill us or he wanted to die and he, he didn't show no fear at all." Montoya turned down Pilar Avenue, stopping to fire one shot in the direction of the officers.

Just after midnight, at the intersection of Pilar and Mimbres, Montoya was confronted by another group of officers, one of whom illuminated him with a spotlight. He spun around and fired one shot at the officers. Officer Damian Lujan, fearing for his life, fired two shots with his

rifle, striking Montoya, who dropped to the ground, with a grazing wound to his neck. Officers instructed him to push the pistol, which he had dropped, away from his body, which he did. They then approached, handcuffed him and rendered first aid, before transporting him to the hospital. Montoya was wearing purple latex gloves on both hands. In his pockets he had several pair of



Montoya's 9mm pistol

latex gloves, a torch lighter, and a flashlight.

Montoya's gun, a Sportarms T-54 9mm semi-automatic pistol, was recovered at the scene, with seven live rounds remaining in the gun, one in the chamber. On the ground nearby were found an empty 9mm magazine, a cell phone, a glass pipe, a screwdriver, three knives, and a fired 9mm casing.

Ultimately, 19 fired 9mm casings, and an empty ammo box were located along Montoya's route.

Montoya told the officers that he didn't clearly remember everything because he had done an eight-ball of methamphetamine a couple of hours before the incident. He first claimed that he didn't know the people following him were police officers, but later admitted that he knew they were when the red and blue lights went on. He steadfastly maintained that he fired into the air, not at the officers, but could not explain why he repeatedly shot upward. He also admitted that he might have fired off a few rounds with his AK rifle earlier in the day during the incident at Casa Florida SW.

Amanda Trujillo, Montoya's ex-girlfriend, and the mother of his two children, told the police that she had recently ended their relationship because of his constant use of methamphetamine, and had obtained a restraining order the previous month because of his violent behavior. She also reported that Montoya suffered from severe depression and had attempted suicide on several occasions. She explained that he had come to her home just before the shooting and demanded a ride, which she refused. He then left and called her within minutes, once again demanding a ride because the cops were after him. She urged him to surrender, which he ignored and continued to talk to her throughout the incident until the final shot when he told her, "They got me mommy."

Montoya was charged in federal court with Assault on a Federal Officer with a deadly weapon, and Use of a Firearm in a Crime of Violence. Trial is pending.

LEGAL ANALYSIS

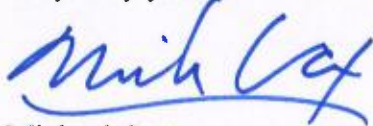
APD Officer Damian Lujan and Detective Thomas Jacobo were acting in the line of duty, attempting to arrest Daniel Montoya for the Aggravated Assault with a Deadly Weapon he had committed earlier that day against Esperanza Martinez and her daughter, and therefore would be entitled to raise the defense 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 Officer Damian Lujan and Detective Thomas Jacobo fired, were they acting under a reasonable belief that they were threatened with death or serious harm? Evidence clearly shows that Montoya fired numerous rounds at the police officers attempting to arrest him. When Officer Damian Lujan and Detective Thomas Jacobo returned fire, they were responding to a clear and imminent threat of

deadly force, with deadly force, and in the absence of any evidence to prove, beyond a reasonable doubt, that they were not, there is no reasonable likelihood of a successful prosecution; therefore, no charges will be filed against Albuquerque Police Department Officer Damian Lujan or Detective Thomas Jacobo. The case will be closed.

Very truly yours,



Michael Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Tod Babcock, Albuquerque Police Department

John D'Amato, Attorney for Detective Thomas Jacobo, Albuquerque Police Department

Luis Robles, Attorney for Officer Damian Lujan, Albuquerque Police Department

Daniel Montoya-Cibola County Correctional Center