

November 26, 2018

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

RE: Prosecutorial review of the August 8, 2017 shooting of
Danielle Sudlow by Albuquerque Police Department
Officer Morgan Franklin.

APD case # 17-0076489; DA case # 2018-01576-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review, for potential prosecution, the incident in which Albuquerque Police Department Officer Morgan Franklin shot Danielle Sudlow on August 8, 2017. After a review of all available evidence, including police reports, witness statements, videos, and photographs, and a visit to the scene, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Officer Franklin was not acting in the reasonable fear that he or other officers were about to be shot by Danielle Sudlow. No charges will be filed: the case will be closed. My decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On August 8, 2018, Danielle Sudlow was shot in the knee during a failed “suicide by cop” attempt. Sudlow was suffering from severe mental illness, including Borderline Personality Disorder and severe depression, which had led her to attempt suicide several times, the most recent of which occurred on August 5, 2017, three days before the shooting, when she threatened two police officers with a wallet, pretending it was a gun, hoping they would shoot her; they didn’t shoot, but they did take her to the University of New Mexico Mental Health Center. She

was kept there for three days of observation, but she steadfastly denied any suicidal intentions, so they released her on August 8, 2017, about 6:45 pm. Once home, she retrieved a pistol from its hiding place in a dresser drawer: she had purchased the pistol, a Taurus 9mm automatic, from a local gun shop three days earlier, planning to using it to kill herself. She drove to the intersection of Irving and Rainbow Blvd, on the west side of Albuquerque, intending to shoot herself. She was nervous and distraught, and was unable to load the magazine into the gun; she realized that she could not bring herself to shoot herself, so she decided to get the police to do it for her.

She called 911, told the operator who she was and where she was, and that she had a gun and wanted to kill someone and herself. The police department, now aware of Sudlow's mental issues, quickly created a response plan to take her into custody while reducing the risk to her and the officers involved. The plan included a team with different roles: Officer Rachel Nakamura, an Enhanced Crisis Intervention officer, who would try to persuade Sudlow to surrender peaceably, Sergeant Sean Kenny, and Officer Ladio Canales, each armed with less-lethal 40 mm launchers which shoot a large, painfully disabling foam projectile, and Officer Morgan Franklin and Officer Ramiro Garza, both armed with AR15 rifles, to protect the team with lethal support if it should become necessary. A fire department rescue unit was positioned nearby to provide immediate medical attention. A plain clothes officer, in an undercover car, drove by and reported that Sudlow was alone in the car, talking on her cell phone.

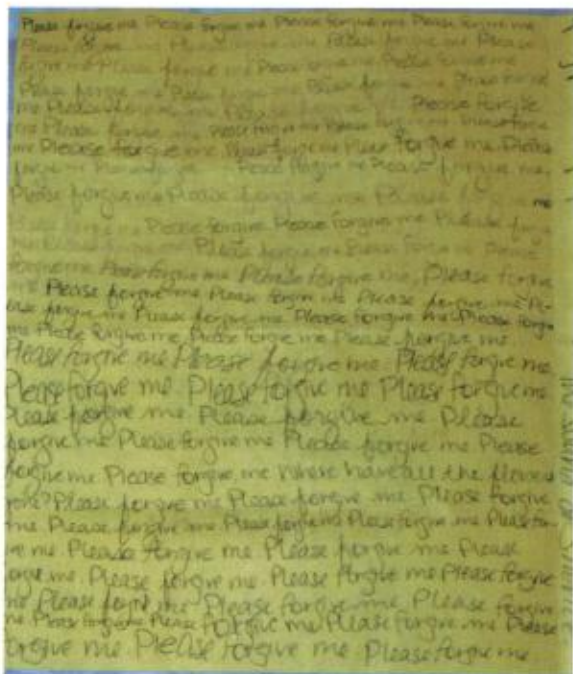
The team then moved in, parked their cars in a line facing the rear of Sudlow's car, and turned on their headlights and spot lights because it was now dark. Stepping out of their vehicles, the team positioned themselves. Officer Nakamura called to Sudlow on the police car's loudspeaker, and told her they were the police, they knew she had a gun, and directed her to show her hands. Instead of doing so, as Nakamura described it, "Next thing I know, she, the door flies open, she has a gun and she points it straight at us." Sudlow, blinded by the light, pointed her pistol at the voices behind the lights, because, as she explained later, she knew the cops "had to kill her if I point a gun at them." The officers in the line of fire, fearing for their lives, fired with the weapon they had ready: both Sergeant Jenny and Officer Canales fired their 40mm launchers, one projectile struck Sudlow in the abdomen; Officer Franklin fired one shot with his rifle, which struck Sudlow in the right knee. She fell to the ground, and dropped the gun beside her, and considered grabbing it and pointing it at the officers again to force them to kill her, but

she was surprised by how painful the first shot was and feared that they might shoot but not kill her, so she dropped the weapon and rolled away from it, as directed.

Officers rushed in, secured the gun, which was unloaded, and handcuffed her. A quick search of her clothing found the gun's magazine and loose cartridges in her pocket, along with a note on which she had written "Forgive me" over and over. As the officers called in the medical team, Sudlow told them repeatedly, "I'm sorry for making you guys shoot me." In an interview later, after she had received medical care, she said she was very sorry she made the officers shoot her but she just wanted to die and "be in heaven with God."



Pistol, with magazine from Sudlow's pocket



Note from Sudlow's pocket

Sudlow was charged with numerous counts of Assault on a Peace Officer with a deadly weapon. On October 2, 2018, she pled guilty to committing three counts of Aggravated Assault on a Peace Officer with a Deadly Weapon based on her threat to shoot Officer Nakamura, Officer Canales, and Sergeant Kenny. The plea agreement provides that she will be sentenced to inpatient mental treatment to address her mental illness.

LEGAL ANALYSIS

The evidence indicates that Officer Franklin shot Sudlow to prevent her from shooting or killing the officers she was threatening with a pistol, and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6. That statute establishes that a peace officer may justifiably use deadly physical force when he believes he or another is threatened with serious harm or deadly force. Under New Mexico law, the officer 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. The burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was unjustified, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

CONCLUSION

All of the available evidence indicates that Danielle Sudlow deliberately created the situation that forced Officer Franklin to shoot her, and that Officer Franklin acted to protect the lives of the officers in the line of fire. Sudlow's plea and admission that she threatened the officers with a pistol essentially establishes that Officer Franklin was acting reasonably when he shot her in the knee. In the absence of sufficient evidence to prove, beyond a reasonable doubt, that the shooting was unjustified, there is no real likelihood of a successful prosecution; therefore, no charges will be filed against Officer Franklin. The case will be closed.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael D. Cox". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "D. Cox".

Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Michael Davis, Albuquerque Police Department

Diane Sudlow- Danielle Sudlow's mother

Anne Keener-Danielle Sudlow's attorney

Officer Morgan Franklin