

February 28, 2020

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

RE: Prosecution review of use of deadly force by Albuquerque Police Officers Christopher Duda, Elliott Padilla, Robert Sanchez, Jordan Trujillo, and Bryce Willsey in the December 23, 2018, fatal shooting of Jason Scott Perez at 308 Pennsylvania St. N.E.

APD case # 18-0122233
DA case # 2018-09008-1

Dear Chief Geier,

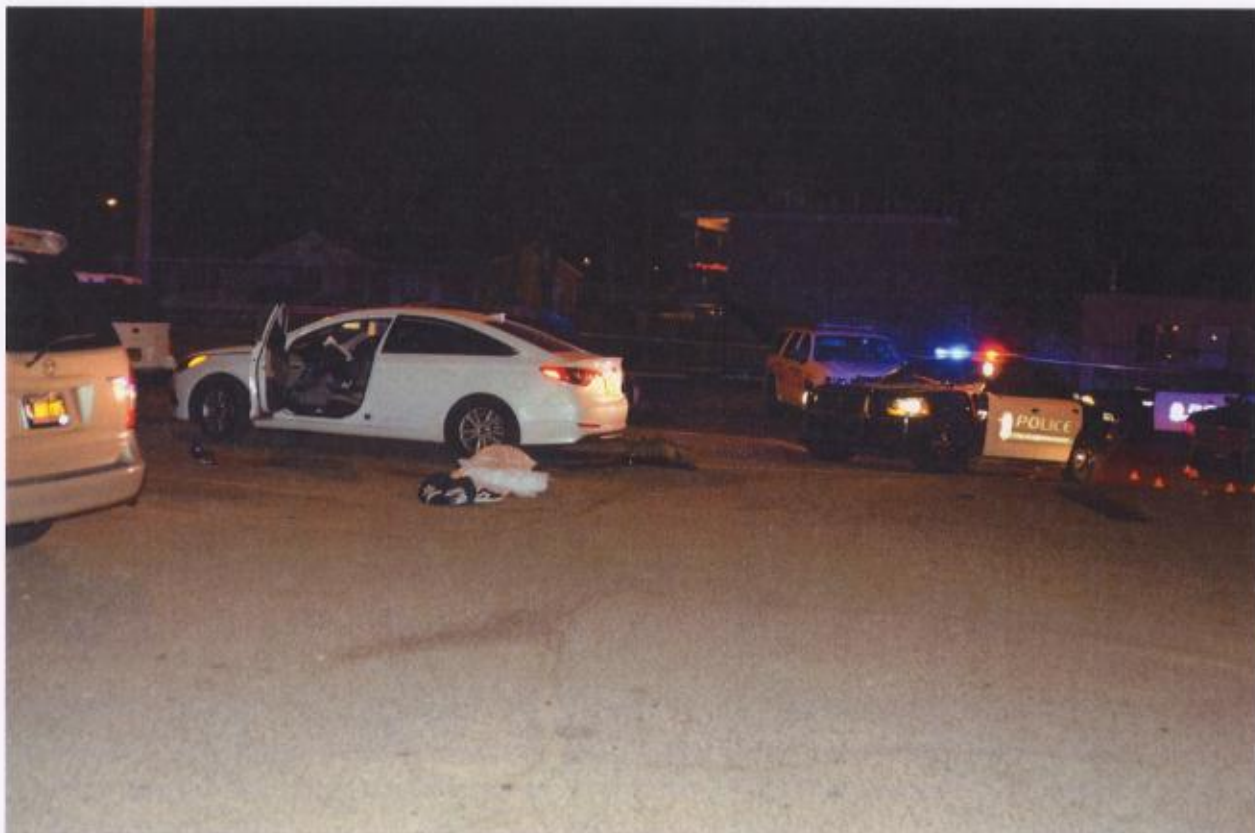
I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the December 23, 2018, use of lethal force by Albuquerque Police Department (APD) Officers Christopher Duda, Elliott Padilla, Robert Sanchez, Jordan Trujillo, and Bryce Willsey. This incident occurred during the attempted apprehension of Jason Perez for possession of a stolen vehicle. I have reviewed all relevant evidence provided, including police reports, witness statements, photos, and numerous audio and video recordings. I also visited the scene where the incident took place, and spoke with Jason Perez's mother.

RELEVANT FACTS

On December 23, 2018, at approximately 7:00 pm, Jason Perez, age thirty six, was driving a white 2017 Hyundai Sonata in the area of Pennsylvania and Central, N.E. The vehicle had been reported stolen on December 18, 2018. In the vehicle with him was Ashlea Borman. Albuquerque Police Department officer Elliott Padilla was on patrol in the area and ran the license plate of the Sonata when he noticed it near Pennsylvania and Chico St. N.E. When the license plate came back to a stolen car, he turned around and began to follow it. Mr. Perez quickly turned into the parking lot of an apartment complex at 308 Pennsylvania St. N.E. Officer Padilla pulled in behind where Perez had parked the Sonata in a parking space, and

turned on his emergency lights. He positioned his patrol car approximately a car length behind, and at an angle to the Sonata, facing the passenger side. Ms. Borman immediately got out of the car and started to walk away from the vehicle. Officer Padilla ordered her to stop walking and put her hands up, which she did. She later took cover behind some vehicles at the northeast corner of the parking lot.

Backup officers quickly arrived at the scene. Officer Garrett Maxson was the first to arrive. He parked his police vehicle behind Officer Padilla's vehicle. Other officers arrived and parked their vehicles at various locations close to where Mr. Perez had parked the Sonata, and where Officer Padilla had positioned his police vehicle. These officers included Acting Sgt. Robert Sanchez, Christopher Duda, Jordan Trujillo, and Bryce Willsey, among others. The following photo shows where Mr. Perez parked the stolen Sonata, and the position of Officer Padilla's police vehicle relative to the Sonata.



Officer Padilla gave commands to the driver of the Sonata to exit the vehicle. Mr. Perez did not comply. At one point Mr. Perez started rolling up the windows in the car. He was ordered not to roll up windows. The only window that was not rolled up at that point was the rear passenger door window. There was a two to three inch gap at the top of the window which allowed officers to gain some visual of Mr. Perez. The officers' view of Mr. Perez was not good, however, because of the limited view through the rear passenger window, and because the Sonata had dark tinted windows.

Officers deployed a spike strip and a stop stick behind the Sonata to thwart any attempt by Perez to flee the scene in the Sonata. Officer Padilla and other officers gave commands for Mr. Perez to show them his hands and to exit the vehicle with his hand up and empty. Mr. Perez continued his noncompliance, and would reach down in the vehicle toward the passenger side, fumble around with something, and come back up. At one point he did show his hands to officers, but then went back to reaching down and doing something with his hands. He was told repeatedly to stop reaching, and told that if he did not exit the vehicle, force would be used on him. He was told the car was stolen, and that he was under arrest. At one point Perez yelled something to the officers to the effect of, "Why should I get out?". What he yelled is unintelligible on the lapel videos, but officer Willsey recalled his exact words to be "Man, fuck you. This shit ain't stolen".

Most of the officers who arrived on scene stationed themselves around Officer Padilla's police vehicle and generally on the west, or passenger side, of the stolen Sonata. Officer Christopher Duda, however, took up a position in the parking lot to the northeast of the Sonata. This gave him a view of the driver's side of the stolen car. He used a pickup truck in the parking lot for cover. The previous photo is taken from Officer Duda's approximate position.

Officers discussed a force array as they realized that Mr. Perez was not complying with orders to come out of the stolen vehicle. Officer Duda was armed with a Smith and Wesson M & P 15, .223 caliber rifle, as well as his department-issued 9 mm handgun. Officer Padilla was armed with a Smith and Wesson M & P, 9 mm handgun. Officer Sanchez was also armed with a Smith and Wesson M & P, 9 mm handgun. Officer Trujillo returned to his vehicle and retrieved

his Wylde .223 caliber rifle. Officer Bryce Willsey was told to arm with "less-lethal". He retrieved a 40 mm less-lethal launcher from his vehicle. The 40 mm less-lethal is apparently a projectile made of some sort of sponge that can disable a suspect without killing him or her. Officer Willsey was also armed with his Smith and Wesson M & P, 9 mm handgun.

Approximately five minutes into the standoff, things changed drastically. Jason Perez fired a shotgun through the lower front passenger door in the general direction of officers. Most of the shot hit the rear passenger door frame of a vehicle parked just to the west of Mr. Perez. Officers at first were not sure what exactly had happened. They asked each other who had shot, and if it was one of them. They yelled to Officer Duda, asking if he had shot, to which he replied, "that was not me." Officers quickly realized that Perez had shot through the front passenger door, and moved quickly for better cover behind vehicles. It was decided that Officer Willsey would use the 40 mm less-lethal launcher to attempt to shoot out the rear passenger window of the Sonata to gain a better view of Mr. Perez and what he was doing. The shot went through the window, but did not break it out. Officer Willsey immediately fired a second 40 mm round at the rear window, but the round hit the window frame and did not break out the window.

Almost immediately after Officer Willsey fired the second less-lethal round, Mr. Perez fired a second shot from the Sonata. This second shot came through the rear passenger window that was partially open, and was fired straight toward officers. Officer Sanchez asked if that was "him". He was told, "That was not us". Right after that statement, Officer Duda is told that "he shot out the window". That is followed immediately by a volley of gunfire that lasts approximately five seconds. Officers Christopher Duda, Robert Sanchez, Elliott Padilla, and Jordan Trujillo all discharged their firearms at Mr. Perez. Officer Bryce Willsey also fired his 9 mm handgun. After he fired the second less-lethal round, Officer Willsey had immediately transitioned from the 40 mm launcher to his handgun. The following photo shows the passenger side of the Sonata after the shots were fired, with evidence markers indicating impact points, including the hole in the lower front passenger door from the first shot fired by Mr. Perez.



During the volley of gunfire, Jason Perez came out of the driver's door armed with the shotgun. He came out in what was described as rolling out of the vehicle in a crouching position. He appeared to turn with the shotgun in the direction of officers to the west of him. He did not see, or at least pay any attention to, Officer Duda, who was the only officer with a clear view of the driver's side of the Sonata. Officer Duda fired numerous shots at Mr. Perez.

Jason Perez was struck by gunfire and was only able to take a step or two once he came out of the Sonata before he fell. His shotgun landed partially under his body. Officers gave commands to Mr. Perez not to move and not to reach for the gun. A plan was formulated to move up, separate Mr. Perez from the gun, take him into custody, and render aid. Officers moved up approximately four minutes after the shooting. The shotgun was separated from his body and Mr. Perez was taken into custody. By that time Mr. Perez was no longer moving. Officers rendered first aid to Mr. Perez, including by Officer Sean Callinan, who is a Tactical

Emergency Medical Services (TEMS) trained officer. Rescue arrived shortly thereafter. It was determined that Mr. Perez had succumbed to his injuries and was deceased.

VIDEO CAMERAS

All of the officers who fired a gun at Mr. Perez had a body camera running during the incident, with the exception of Officer Duda. Officer Duda in his statement to investigators said that he thought he turned his camera on right after he arrived at the scene, but it did not work for some reason. Various other officers on the scene who did not fire their weapon also were running their lapel cameras during the incident. Review of the body camera footage from all the officers sheds light on, and corroboration of, important aspects of this shooting incident.

Officer Elliott Padilla's lapel camera starts with him pulling in behind the Stolen Hyundai Sonata. After he stepped out of his police car, and from behind the open driver's door of his police car, he gave Mr. Perez commands, as discussed above. At one point Officer Padilla and Officer Sanchez tried giving commands in Spanish, in case Mr. Perez did not understand English. It quickly became clear the Mr. Perez did understand English.

Just under five minutes after Officer Padilla stepped out of his patrol car, Mr. Perez fired the shotgun through the front passenger door. An officer is heard saying, "Did he shoot?" A reply is heard, "Yeah, he did". Someone yells, "Duda, was that you?" A reply comes, "No, that was not me". Acting Sgt. Sanchez asks, "Was that any of you guys?" Officers are heard replying that it was not. Thirteen seconds after Mr. Perez fired his shotgun through the door, an officer is heard saying, "Ok. He just shot out the..." The last part of the sentence was not intelligible.

Thirty seconds after Mr. Perez shot through the door, Officer Willsey fired the first 40 mm non-lethal round. He informed the other officers, "That was me. That was me". He told the other officers that "I'm gonna 40 the window again", and ten seconds after the first less-lethal round, Officer Willsey fired a second less-lethal round. Within about one second of Officer Willsey's second less-lethal round, what sounds like another shot is heard, that apparently came from Mr. Perez. Someone yells, "Was that him?", to which a reply is heard: "That was not us." Someone then yells, "He shot out the window, Duda." As soon as that statement is made, multiple shots are heard. It cannot be discerned from the videos how many

shots were fired at that point. They occurred simultaneously, and within a span of about five seconds. The time between Mr. Perez's second shot until the volley of gunfire from officers ends is approximately eleven seconds.

Body cameras show that after the shooting ends, officers continued to point their guns at Jason Perez, as he lay on the ground beside the driver's side of the stolen Sonata. Officers eventually move up, take Mr. Perez into custody, and render aid, as discussed previously. Approximately one minute and fifteen seconds after the volley of shots ends, and before officers move up to take Mr. Perez into custody, the following statement is heard on several lapel cameras: "He shot directly through that back right window at us!"

A surveillance camera was located at the apartment complex that overlooked the parking lot. The camera pointed west, and provided a view of the driver's side of the Sonata. The footage is in black and white, very grainy, and has no sound. Certain things are visible from the surveillance footage, however. The video shows Mr. Perez driving the white Sonata into the parking lot. It shows Ashlea Borman getting out of the passenger side and walking away from the car. Officer Padilla pulls in behind the Sonata, and Officer Maxson pulls in almost immediately behind Officer Padilla. Ms. Borman, who was walking away from the officers, stops, puts her hands up, and moves out of the picture. At the point of the shooting, a cloud of what looks like smoke emanates from the passenger side of the Sonata. Within about three seconds of that, the driver's door opens and Mr. Perez starts coming out in what appears to be a crouching position turning toward the back of the car. He has a black object in his right hand. He barely makes a step out of the car before he falls to the ground. He makes what appear to be involuntary movements. Fifteen seconds after he exits the car, however, he raises his right arm and waves his hand in the air for a couple seconds. The video shows officers eventually moving up, separating Mr. Perez from the shotgun, taking him into custody, and rendering aid.

OFFICER STATEMENTS

All five officers who fired at Jason Perez gave formal statements to investigating detectives. All appeared with their attorney. Officer Bryce Willsey gave his statement on January 2, 2019. The other four officers gave their statement on January 4, 2019. Officers who

did not fire their weapon, but were present, gave statements to investigating detectives on December 23, 2018.

Elliott Padilla

Officer Padilla had been a sworn officer with APD for two and one-half years at the time of the shooting. Officer Padilla described how he ran the license plate of the Hyundai Sonata, and followed the car when the plate came back to a stolen car. He described the sequence of events leading up to the shooting as outlined above. Officer Padilla said when the first shot came through the passenger side door of the Sonata, it took a minute to compute and realize that Mr. Perez had fired a shot. He described what happened next:

[M]oments pass and I hear another.... I hear another loud bang, and glass shatter and I feel, I hear glass hit my vehicle and hit, uh hit me, and it was at this time that, yes, I know for sure he is shooting at us. He is trying to kill me and my partners. Knowing that he was shooting at us, two times now, I had no doubt in my mind that he was trying to kill me. No doubt at all.... I aim my firearm...at where I last saw him and I fired my pistol at least one time.

When asked later in the interview what his intentions were when he fired his handgun, Officer Padilla responded, "My intentions were to stop his actions. My intentions were, he was trying to kill us, my, I was going... I was not going to allow that to happen."

Bryce Willsey

Officer Willsey had been an APD officer for three and one-half years at the time of this incident. Officer Willsey described in detail the events leading up to the shooting. He noted that officers were not trying to use any kind of force to extract Mr. Perez, and wanted him to be taken into custody peacefully. He assumed officers from the Canine Unit or S.W.A.T would be called in to try to peacefully resolve the standoff if necessary.

Officer Willsey described Mr. Perez's first shot through the front passenger door as sounding "like a bomb going off inside of the car". He was at first unsure if it was an officer or Perez who fired a shot. He asked Officer Duda if he fired. He received a negative response from Officer Duda, and other officers confirmed that they did not shoot. He noted that the realization that Perez had just shot from inside the car, "scared the shit out of me, that explosion, um, and it scared the other officers, because I remember everybody ducking down. Like I didn't know if an officer got hit at this point." It was quickly decided that Officer Willsey would use the 40 less-lethal launcher to try to take out the rest of the back window of the Sonata. He described firing the first round at the back passenger window, but it only "cracked about an inch off of the back window, off the top of it." He then fired a second non-lethal at the rear window, but the round hit the window frame and flew up in the air. He went on to outline in detail what happened next:

[A]s I'm coming down with my 40 millimeter, that's when everything kind of slowed down, and...I heard the second gunshot. And it was even more loud than the first gunshot, and it was an explosion.... As I look through the back window, um, I could see the barrel of the 12-gauge shotgun and...it was...a standard size of a 12-gauge shotgun, but it looked like six inches. It was a huge black barrel, and it was sitting, resting on the, on the windowsill, and I could see his arm. He is in the driver's seat reaching back with the shotgun, shooting up, uh, shoot, uh, that he just shot out the back window. And at that point I immediately transitioned...from my 40. I put it down to my side and then grabbed my pistol. [A]s I came back up on to target, I could still see the barrel of the shotgun still pointing out, and the only thing I'm thinking about is, 'Oh, oh shit. It's a shotgun. It's pointed at me, and I, I'm probably gonna get hit. I'm, I'm probably gonna die'.... I then took a step left, away from the door...and then I deployed between one to three rounds with my, my duty pistol.... I mean, in order to stop the male, this male subject that is obviously armed with a shotgun, that is currently shooting at us,

at me and my partners... And I'm, I don't remember how many people exactly were there, but my biggest concern was the guy closest to me. And I didn't want Elliott shot. I didn't want him killed. And then I knew that if we stood exactly where we were gonna stand, he was gonna kill one of us.

Officer Willsey went on to describe taking Mr. Perez into custody and officers rendering aid until Rescue arrived.

Robert Sanchez

Acting Sgt. Robert Sanchez had been with APD for three years. When he arrived on the scene he took up a position behind Officer Padilla on the driver's side of Officer Padilla's vehicle. After the first shot from Mr. Perez through the passenger door, Officer Sanchez was not sure at first what had happened. He confirmed that none of the officers had shot, and realized that Perez had a gun and fired it out of the car in their general direction. Officer Willsey fired the less-lethal rounds. Officer Sanchez then described his perception of what happened next:

[I]mmediately after, I saw the driver of the stolen vehicle, um, go around, go around his driver seat so he'd be facing us. So looking out the right rear passenger window, and it looked like a large gun. Um, I couldn't verify what type of gun it was at that time, but I knew it was a large, large black gun.... [I] remember when he turned and he pointed the, the gun at us, I saw the barrel and it looked huge. It looked huge. It looked like it was just inches away from my face. [M]oments later he, uh, he fired another round and I remember the glass of that rear passenger window shatter—like exploding toward us. And in that moment I was like, I, I, I didn't know how I didn't get shot.... I, I was actually in even disbelief that this guy was trying to kill us, trying to kill me, you know, and I still can't believe that I wasn't shot.