

June 28, 2018

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

APD case # 17-0041637
DA case # 2017-02723-1

RE: Prosecutorial review of the May 2,
2017 shooting of Jacob M. Pacheco by
Albuquerque Police Department Officers
Patrick Casias and Israel Martinez.

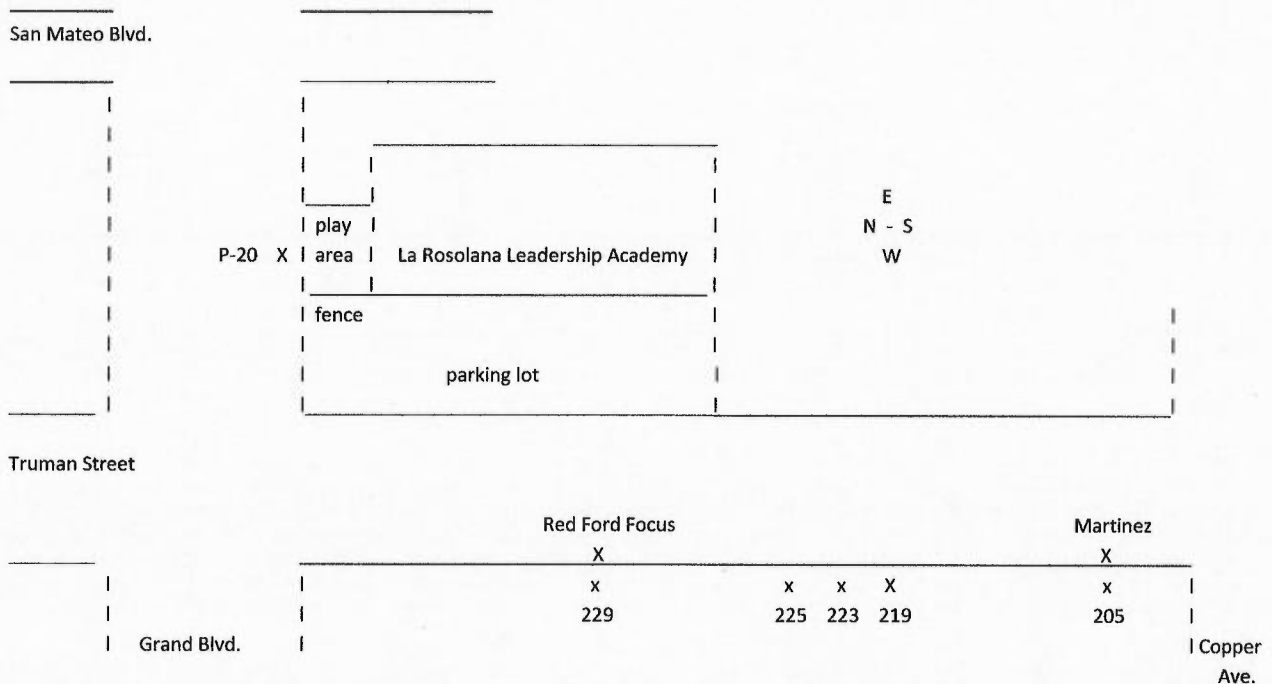
Dear Chief Geier:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of May 2, 2017 for potential prosecution. My role is to determine whether APD Officers Patrick Casias and Israel Martinez should be prosecuted for their actions during this incident. I have reviewed all of the available evidence, including: police reports, witness interview transcripts, criminalistics report, crime scene photos, CAD printouts, criminal history, lapel video's, cell phone and other video's, search warrant, canvass reports, criminal complaint and viewed the scene. I conclude that it is not possible to prove beyond a reasonable doubt that Officers Casias and Martinez were not acting under the reasonable belief that the actions of Jacob Pacheco posed a threat of death or great bodily harm to themselves, to one another, and to children and others in the area. No charges will be filed: the case will be closed. My decision does not limit nor address administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

On May 2, 2017, at about 2:58 p.m., Albuquerque Police Department Officers Israel Martinez and Patrick Casias were dispatched to an armed burglary in progress at the home of David Marquez, located at 219 Truman St. N.E. Eight minutes later, at 3:06 p.m., Martinez reported that shots had been fired. The incident began when Marquez contacted the 911 dispatch operator at 2:55 p.m., and reported that a male intruder, wearing dark colored pants, a white shirt, a bandana covering his face, and carrying a firearm, was inside of his house, and going through his personal items without his permission. Marquez had a security system with wireless cameras installed throughout his home, which both alerted him, and allowed him to view any unwanted trespassers from his cell phone. On May 2nd at about 2:53 p.m., Marquez received an intruder phone alert while at work. He watched as the intruder rummaged through his personal items, and he immediately called 911. Marquez remained on the line with the operator, and provided real time details which the operator relayed to the officers. The intruder's face was clearly exposed on camera when he lowered the bandana, and he was later identified as Jacob Pacheco.

Within minutes, Officer Casias arrived on scene in his marked police car, hereinafter identified as P-20. He parked P-20 facing westbound on the south side of Grand Blvd., just east of the intersection of Grand and Truman Street N.E., and directly north of the La Rosolana Leadership Academy. Casias left P-20 running with the doors locked, and he monitored the residence at 219 Truman from the parking lot west of the Academy. There were children playing in the parking lot, so Casias relocated to the northwest corner of Truman and Grand. The residence at 219 Truman was located about one-half block south of his position on the west side of Truman. He saw when Officer Martinez arrived soon after, and then park his marked vehicle facing northbound in front of 205 Truman. Martinez exited his vehicle and monitored the residence at 219 Truman. Both Martinez and Casias were wearing their police uniforms and badges of office. Neither Casias nor Martinez had their body cameras operating.



Caroline Palma was parked on the west side of Truman, facing southbound in her red Ford Focus, and was waiting for her son to get out of school at the Leadership Academy. She saw Pacheco and described him as “doing a fast walk,” in front of 219 Truman. Palma became terrified when she saw Pacheco toss a duffel bag, and then run directly towards her car with Officer Martinez chasing after him. She immediately locked the doors to her car, and did not realize that both of the rear windows to her car were still open. She then watched as Pacheco reach into the back passenger side of her car, and attempted to open the back door. In the process, he told Palma, “bitch, let me in,” or “let me in, bitch.” Palma tried to hit Pacheco with her purse, and she fled east on foot across the street towards the Academy. Pacheco then fled towards the north side of the Academy, and ran through the parking lot. Martinez was still chasing him, and was closing the distance. Palma was so frightened that she passed out on the pavement in the parking lot for about “three seconds.” She then stood up, and heard the

officer say "stop," and saw him, Martinez, draw his gun. She then heard the sound of gun fire as she fled into the Academy, but did not see who was shooting. Palma was crying and shaking in fear, and believed that she was about to be robbed or kidnapped.

Caroline Criel taught sixth through eighth grade at the Leadership Academy, and saw the two officers in the area. She "knew something was up," and kept an eye on the officers because she wanted to make sure the kids were safe. Caroline heard officer Martinez tell Pacheco, "hey come here," and then saw Pacheco run to Palma's parked red car. She said Pacheco "jumped into the car and yelled, "drive me, drive me." He then jumped out of the car and ran towards the parking lot and around the north side of the Academy. She then heard about "five gun shots in rapid succession, all at once," but did not see who shot because she was busy trying to get the children inside the Academy.

Genesis Anguiano was a fourteen year old student, and was in the parking lot at the Academy. She saw when Pacheco ran to Palma's red car, and stated the following: "he tried to open the door, but the cop was too close to him, so he took out his gun." "I thought he was running with the gun towards me, and I got really scared." "I couldn't move because I got really scared." Genesis thought that she heard two shots, but did not witness the shooting.

Casias provided a written statement that also functioned as the legal "probable cause statement" for the arrest of Pacheco. In his statement, Casias indicated that he observed as Pacheco exited the residence at 219 Truman, and attempted to gain entry into Palma's car. Pacheco then ran across the street to the Academy parking lot with something black in his right hand, and Casias realized that Pacheco was carrying a handgun. The children were still playing in the parking lot, and Casias felt that Pacheco had placed them in a situation that endangered their lives. After crossing the parking lot, Pacheco ran around the north side of the Academy still holding the gun. P-20 remained parked with its engine running. Pacheco attempted to gain entry into P-20, and while doing so, verbally threatened "to shoot" Casias. Pacheco then raised his gun, and pointed it directly at Casias, causing Casias to fear that he "was about to get shot." Casias was also concerned that Martinez, the children, and anyone else in the area were in danger.

Casias did not provide a formal interview with the police, but in addition to the probable cause statement, provided a statement to the police through his attorney, John D'Amato. According to D'Amato, Pacheco had pointed a black handgun at Casias, which was followed by the sound of gunfire. It was after hearing the gunfire that Casias fired his weapon at Pacheco, while Pacheco was still pointing the gun in his direction. The evidence will later show that Pacheco never fired his weapon. Therefore, the statement by Casias indicated that Martinez had fired his weapon before the commencement of Casias firing his weapon.

Justina Montoya was the principal at the Academy, and her office was located on the northeast corner of the Academy. She heard banging on the fence outside of her office, and later interpreted that the banging sound must have been gunfire. After she heard the banging on the fence, she saw Pacheco run past her window on the north side of the academy, followed by Martinez. She saw Martinez then

stop next to the fence, and ordered Pacheco to "stop." Justina then watched Martinez fire his weapon three or four times, and heard someone else say, "we got him." Justina did not see Casias at that time, and stated that the banging sound against the fence was a different type of sound, than the sound of the gunfire when Martinez had fired his weapon. Justina also indicated that there was a tiny space of time between the banging, and when Martinez had fired his weapon, perhaps up to 30 seconds. Justina reported that she had assumed that the banging could have been the sound of Pacheco firing his weapon first at Martinez, and just prior to Martinez shooting back. It should be noted here that Pacheco never fired his weapon, and all of the other witnesses described hearing the weapons fire as being in rapid succession, and without a pause. Pacheco and Casias both identified Martinez as the first person to fire his weapon. Therefore, the prior banging sound against the fence does not appear to be weapons fire, since the only two weapons fired were from Martinez and Casias.

APD Officer Jacob Stuyvesant was the first of multiple officers who arrived on scene immediately after the shooting. Upon his arrival, Pacheco was face down on the ground about five feet away from the south sidewalk on Grand. Pacheco's gun was on the pavement west of Pacheco, and east of P-20. Martinez and Casias both had their weapons pointed at Pacheco, and it was clear to Stuyvesant that a shooting had just occurred, and that Pacheco had been shot, and was in pain. Pacheco was tended to by APD Officer Stella Candelaria who placed a tourniquet on his arm to stop the bleeding. Rescue arrived within minutes, applied a second tourniquet to his other arm, and Pacheco was then taken to the hospital. Soon after his arrival, Stuyvesant had asked Martinez if Pacheco had pointed the gun at him. Martinez directed Stuyvesant to Casias, and responded by saying, "he pointed the gun at him." Stuyvesant also reported the statement during his formal interview, and the conversation between Martinez and Stuyvesant was heard on Stuyvesant's lapel camera. Martinez did not provide a statement.

While still at the scene, and without being asked any questions, Pacheco blurted out the following: "I didn't fire the gun." "I know I fucked up." "I didn't mean to, I'm just a dope fiend, afraid to go to jail." Pacheco apologized to officers several times at the scene, and at the hospital. He blamed his behavior on his heroin addiction, and his fear of incarceration.

Pacheco agreed to a formal interview, and admitted to breaking into, and burglarizing the residence at 219 Truman without permission, and in order to support his heroin addiction. When he exited the residence, Officer Martinez was right outside and said to him, "hey come here, I want to talk to you." Pacheco then ran away because he thought that Martinez was the home owner. He realized that Martinez was a cop when he looked back, but he kept running. Pacheco ran directly to Palma's red Ford Focus, and stated, "I tried to jump into some lady's car, and she wouldn't let me in."

Pacheco told several versions concerning the timing of when he had retrieved the gun from within his backpack. He first said that he pulled the gun out when Palma wouldn't cooperate with him, which was at the same time that he attempted to enter her car, and after telling her to, "let me in." He admitted that he did not know Palma, but that his intention was to force her to drive him away from the scene. In stating that, "I did not intend to steal her car," he seemed to believe that kidnapping Palma was a lesser form of intrusion than was stealing her car. His second version was that he did not pull the

gun out until he saw the cop, and that was when he reached into his bag and grabbed the gun. His third version was that he did not pull the gun out until after he ran from the red car, and admitted to having the gun in his hand as he ran. Pacheco denied ever having any intention to shoot anyone, and while blaming his addiction for his actions stated, "I took off running, and I had a gun, and I just, I'm a heroin addict." "I was just afraid to go to jail, you know, and be sick."

Pacheco then ran through the Academy parking lot with the gun in hand, and saw kids in the parking lot, and stated that he "felt bad about that." Pacheco had not yet seen Casias, and stated that while running away from one cop, "another one popped out." Referring to P-20 he said, "I tried to get in and go." "It was locked." He admitted that he had the gun in his hand when he attempted to steal P-20, and while referring to his gun stated that, "it pointed at the police officer." He denied that he intentionally pointed his gun at the officer, but stated, "I didn't like point it, but I remember when I was trying to open the door, like, with my hands flaring around, and I remember one cop, like, thought I was pointing it at him." "That's when he, like, he was running at me, and he, like, stopped, and like, he jumped back, and that's when the other cop right behind that fence, and that's when he started shooting." "He shot me, boom." "It blew out my bone." "I saw that, so I dropped the gun." "So I put up my right arm, and he keeps shooting me." "They shot me three times, two times after I put the gun down." "I was facing him when he shot me, boom, through here." "I was sideways." "He did what he had to do." "If I was in his situation I would have probably done the same thing." During his interview, Pacheco stated that he last shot up at 9:00 a.m. on the same day.

Pacheco was shot once in his right arm, and three times on his left arm. On the right arm he was hit in the upper area of his right bicep, and the projectile exited through his right triceps. On his left arm he was hit in the following areas: on the top of his left hand with an exit wound on his left wrist; on his left upper arm, with an exit wound on his left inside upper arm; and on his left upper arm just above the elbow, with an exit wound on his upper left arm.

The firearms belonging to Casias and Martinez were collected for testing. They were both black Smith and Wesson, model M & P, semi-automatic handguns. The magazine belonging to Martinez was missing five cartridges, and the magazine belonging to Casias was missing six cartridges. The criminalistics report revealed that a total of eleven Winchester brand, 9mm Luger caliber casings were collected at the scene. Five were collected on Grand near the front passenger side of P-20, and six casings were collected in the parking lot and concrete walkway near the northeast corner of the parking lot. The gun carried by Pacheco was a black Smith and Wesson, model M & P, Shield semi-automatic handgun. It was located on Grand, eleven feet east of the rear bumper of P-20. It had one cartridge in the chamber and one in the magazine. The gun held by Pacheco was reported stolen about three months earlier by Pacheco's grandfather, Robert Lucero. Pacheco admitted to stealing it from his grandfather. The firearms and tool mark comparison report has not been completed, and therefore its conclusions are not included within this report. The report would be helpful in better identifying the shell casings collected at the scene and their connection to the weapons collected from the officers, but the firearm and tool mark report is not necessary for the conclusions reached regarding the purpose of this report.

Pacheco had dropped a black bag holding a laptop when he exited and fled from 219 Truman. Marquez recovered his laptop, and the many other items Pacheco admitted to stealing from his residence. Pacheco had also dropped his camouflage backpack near the driver's side of P-20. The backpack contained drug paraphernalia to include; hypodermic needles, a heroin cooker and a utility blade. The black bandana worn by Pacheco was recovered at the scene as were various burglary tools that belonged to Pacheco.

Pacheco entered into a plea agreement concerning the above case in Bernalillo County District Court, in CR-2017-01969, and was sentenced on January 23, 2018. He was found guilty of one count of Aggravated Burglary (Deadly Weapon), and one count of Aggravated Assault on a Peace Officer. He was sentenced to 12 years prison, with seven of those years suspended, followed by probation and parole. The remaining charges were dismissed, as well as case number CR-2017-02157, charging him with two counts of Disposing Stolen Property. He had four other contacts with law enforcement which resulted in two separate deferred sentences for the charge of careless driving, and two other cases that were dismissed.

LEGAL ANALYSIS

NMSA 1978, Section 30-2-6 is entitled, "justifiable homicide by public officer or public employee," and establishes that a peace officer may justifiably use deadly physical force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. The officer need not prove the suspect posed a threat of death or great bodily harm to another; the officer need only offer evidence that raises the possibility.

Case law has established that under Section 30-2-6, the crucial consideration is the conduct and dangerousness of the suspect, not the classification of the crime that he or she has committed or is alleged to have committed. Under the Criminal Section of the Uniform Jury Instruction, 14-5173, 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 a reasonable doubt about any aspect of the prosecutions claim that the shooting was unjustified, they must acquit the officer.

CONCLUSION

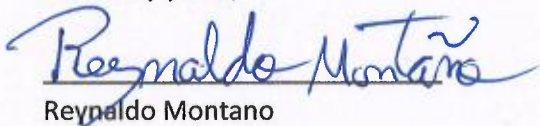
The question presented in this case is whether, when Officers Casias and Martinez fired their weapons at Pacheco, they were acting under the reasonable fear that they or another would be killed or seriously injured by the actions of Pacheco. Pacheco knew that he was being pursued by a police officer as he armed himself with a handgun, as he attempted to steal a police car, as he pointed that same gun at Casias, and then as he threatened to shoot Casias. It was then that Martinez fired his weapon, followed by Casias. Both officers were placed in a life threatening situation as were the children who were playing in the area because of the Pacheco's actions. Pacheco later plead and was found guilty of

Aggravated Assault on a Peace Officer, and therefore, the allegations made by Casias and Montoya, ceased being allegations and became legal fact.

Pacheco had complained that after he was shot the first time, he then dropped his gun, raised his arm, and was then shot two more times after doing so. Assuming that Casias and Martinez were justified when they initially shot at Pacheco, the issue is then, whether that initial justification had lapsed prior to when they had ceased firing their weapons. According to the evidence, Martinez had fired his weapon five times, and Casias had fired his weapon six times, and all in rapid succession. The entire shooting event was described as occurring in seconds. The reaction time for Casias and Martinez to recognize that Pacheco was first hit by a projectile, and then to stop shooting, leaves a very small window of time to react. It is also not clear at what point within that sequence of shots that Pacheco was first hit. Pacheco, in addressing the fact that he was shot by the police because of his own actions stated, "if I was in his situation, I would have probably done the same thing."

The evidence strongly suggests that when Officers Casias and Martinez fired their weapons, they were reasonably concerned for themselves, for one another, and for others within the area, when they responded to the threat of deadly force or serious harm posed by Mr. Pacheco, and then fired their weapons based upon those concerns. Officers Casias and Martinez are therefore entitled to raise the defense of justifiable homicide by public officer. Based upon these facts, there is no reasonable likelihood of successful prosecution: therefore no charges will be filed against Officers Casias and Martinez; the case will be closed.

Sincerely yours,



Reynaldo Montano
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Amanda Wild, APD Detective
John D'Amato, Attorney for Officers Patrick Casias and Israel Martinez
Jacob Pacheco Central New Mexico Correction Facility