

December 20, 2018

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

Prosecutorial review of the August 19, 2017 shooting of
Jeremias Robertson by Albuquerque Police Department
Officer Steve Arias.

APD case # 17-0080440 DA case # 2018-02759-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Jeremias Robertson on August 19, 2017, 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 the evidence establishes that Officer Arias was acting under the reasonable belief that Robertson posed a threat of death or great bodily harm to police officers or the public in general. 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

STATEMENT OF FACTS

In the late afternoon of August 19, 2017, an individual called 911 to report that a black man with orange/red hair, wearing a blue shirt was threatening people with a gun near Lomas and 2nd Street NW. Albuquerque police officers responded from all directions. Officer Steve Arias found the man, later identified as Jeremias Robertson, in a parking lot near 1st Street and Lomas, NW. When Officer Arias got out of his police car, rifle in hand, Robertson began rapidly walking away. Robertson followed, passing two tow truck drivers hooking up a vehicle. As Officer Arias approached Robertson, he saw a black object in Robertson's hand. He called

out to Robertson, "Show me your hands!", but Robertson kept walking. As Arias got closer, he could see that the object was a small caliber pistol. When Robertson pointed it at him, Officer Arias took cover behind a car. He considered taking a shot, but saw people in the vicinity of the nearby Cell Theater behind Robertson and decide he could not risk shooting. Arias repositioned himself and ordered Robertson to drop the weapon and show his hands. Robertson responded "I haven't done anything. I'm only 18. Don't shoot me." Robertson then turned and pointed the pistol at Arias a second time. As Officer Arias expressed it, "I was like, okay, I'm about to get shot at, or I'm about to get shot, um, and I thinking about the tow truck driver behind me that I was telling to watch my car, he's back there. So I'm thinking I'm gonna get shot or this kid's gonna miss and he's gonna shoot the tow truck driver, or he's gonna shoot a kid across the street." Officer Arias had a clear shot from his new position and fired a single round at Robertson, striking him in the left torso. Robertson fell to the ground and dropped his gun near his head.

Arias stayed in his position of cover, about 30 or 40 yards from Robertson, waiting for backup, which arrived within seconds. Arias called to Robertson, "Hey, show me your hands. Start crawling away from the gun. Don't pick it up." Once other officers had arrived, they approached as a group. Robertson tried to grab the gun as they neared him, but an officer was able to kick it away. The officers took Robertson's backpack off and rendered first aid until the rescue unit arrived. Officer Arias' lapel video was activated but does not show Robertson at the moment of the shooting, due to the angle and the obstruction of the rifle, but does support Arias version of events. More importantly, his video and those from other officer's lapel cameras clearly show the pistol lying near Robertson's hand long before any officers approach him.

Robertson was transported to the hospital and made a full recovery. Soon after his arrival at the hospital Robertson went on an expletive laden rant, claiming his gun was in his pocket the whole time. He also said, "It's gonna be do or die. I'm gonna be dead or I'm going back to the joint, and I ain't going back to the joint. They gonna have to shoot me down." He added, "I should've killed that police motherfucker when he drove up."



Robertson's pistol, a black Bersa .380 caliber semi-automatic, was recovered at the scene. It was fully loaded, with a round in the chamber, but the safety was in the on position. His backpack contained a box of ammunition with 41 rounds of .380 cartridges inside.

Three men in the parking lot (possibly homeless) who saw the incident refused to give formal statements, but did tell the officers what they saw. One said, "The guy waived a gun and that guy shot him.", while another said, "He shot at you guys first."

Investigators located Robertson's step-father in Las Vegas, Nevada, who told them that Robertson had anger issues and a history of mental illness. He also indicated that Robertson traveled between Las Vegas and Wisconsin, where he had been in prison for attacking someone. A records check established that Robertson had a series of arrests and convictions in Wisconsin, Minnesota, and Nevada dating back to 2009, mostly for Battery, Domestic Violence, and Disorderly Conduct, culminating in a 2013 conviction in Wisconsin for Aggravated Battery with Intent to Commit Great Bodily: he was sentenced to three years in prison. After his release in July of 2016, he was arrested in Nevada in January of 2017 for Intimidating a Public Officer and then in April of 2017 he was arrested in Albuquerque on a Wisconsin warrant for Aggravated Assault Against a Household Member. He was returned to Wisconsin and spent 47 days in jail, and was released on July 31, 2017.

After he recovered, Robertson was charged in Federal Court with being a Felon in Possession of a Firearm, based on the August 19, incident. He pled guilty on January 16, 2018, and was sentenced on August 14, 2018 to serve 84 months in prison.

LEGAL ANALYSIS

Officer Arias was responding to reports that Robertson was threatening people with a gun, and would therefore be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 3-2-6, which 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 not justified. If the jury has a reasonable doubt as to whether the killing was justifiable, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable homicide; public officer or employee.

CONCLUSION

The question presented in this case is whether, at the moment Officer Arias fired, was he acting under a reasonable belief that Robertson presented a threat of death or serious harm to Officer Arias or innocent bystanders? All available evidence indicates that Robertson pointed the pistol at Officer Arias, including the call from the citizen that he was threatening people on the street, the bystanders who saw the gun being brandished, the presence of the pistol near Robertson's hand immediately after the shooting, and his own statements that they'd have to shoot him down before he'd go back to prison and that he should've shot the officer when he first saw him. All these facts establish that Officer Arias was in fact acting out of a reasonable fear for his safety, and the safety of others; and in the absence of any evidence to prove, beyond a reasonable doubt, that he was not, there is no reasonable likelihood of a successful prosecution; therefore, no charges will be filed against Officer Arias. The case will be closed.

Very truly yours,



Michael D. Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Todd Babcock, Albuquerque, Police Department

John D'Amato-Attorney for Officer Arias

Jeremias Robertson