

November 20, 2019

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

RE: Prosecutorial review of the August 19th, 2018 shooting of Lambert Joe by Albuquerque Police Department Officer Ian Ross and Officer Richard Whitten.

APD case # 18-0079560; DA case # 2018-05671-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the shooting of Lambert Joe on August 19, 2018, for potential prosecution. I reviewed all available evidence, including police reports, witness statements, videos, and photographs, and I have visited the scene of the incident. Based on my review, I conclude that it is not possible to prove, beyond a reasonable doubt, that the police officers were not acting under the belief that Joe's actions posed a threat of death or great bodily harm to police officers or the public in general. No charges will be filed: the District Attorney's 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

On the morning of August 19, 2018, Lambert Joe was upset and drinking heavily- a combination which had resulted in violent incidents in the past, against his long time girlfriend, Jeanette Mendoza, his step-son Manuel Baca , and his neighbors, including Kenneth Therrell who was beaten so badly by Joe that he ended up in the hospital. On this morning, he was upset over the breakup with his girlfriend and drinking in the apartment of one of his neighbor, Roger Hensley. Joe drank a fifth of Southern Comfort and became unsteady, falling into and breaking

one of Hensley's tables, which prompted him to ask Joe to leave the apartment. Joe left, but he was clearly very angry. Soon after, when Hensley went outside to empty his trash, Joe was waiting for him in the parking lot, armed with a long rifle. Hensley recognized the rifle as an replica antique that Joe had once tried to sell to him. Joe was yelling unintelligibly at Hensley, and shot the rifle once in the air. Fearing for his life, Hensley retreated to his apartment, locked his door, and called 911.

Joe tried to follow, but was stopped by the locked door. He pounded and yelled, but couldn't get in, so he moved to the next-door apartment of another neighbor, Bryan Edgar. Edgar, however had seen Joe's angry approach and locked his screen door before Joe could open it. Joe pounded and yelled, "I'm gonna kill you." And "I want to die." Edgar quickly closed his inner door. He heard what sounded like two rifle shots and two pistol shots. He took refuge in the back of the apartment hid and called 911, as did other neighbors who heard the commotion.

When Joe couldn't get into either apartment, he returned to his apartment, which was just across the small parking lot, but he had trouble opening the door with his key. He then walked around for a bit, waving the rifle and yelling. One of the neighbors noticed a pistol in Joe's back pocket.

Police officers began to arrive. They assembled nearby to formulate a plan to approach Joe. Their research revealed his violent past. They also talked with a pastor in a nearby church who knew Joe and had seen him earlier, who told them about Joe's history of problems with alcohol and methamphetamine; the pastor also told them that Joe might be suicidal. The police set up a perimeter and assigned roles to the officers, including Officer Elisa Valdez, a member of the Enhanced Crisis Intervention Team, who was to try to talk Joe into surrendering peacefully.

Officer Ross positioned himself, along with another officer, across the street from the apartments in the parking lot of another apartment building, a place with little cover, but a good view of Joe's apartment. Officer Whitten was down the street, behind a police car that had been

parked in the street. (See figure 1)



Figure 1-Showing the officer's position and Joe's positions as he approached the street.

Once everyone was in position, Officer Valdez called Joe who was angry and crying and told Officer Valdez that he was crying because his girlfriend had left him: he also said he wanted to die. Officer Valdez's efforts to persuade Joe that they would get him help if he could just walk out without any weapons, were unsuccessful. The police tried switching to a male negotiator, with no more success, and eventually brought in Joe's girlfriend, his brother, and his step-son all of who tried to convince him to surrender.

At one point, Joe walked out with the rifle and waved it around, without pointing it at anyone. Over a loudspeaker, the police told him they could guarantee his safety if he dropped the gun, but he screamed in response that he wanted the officers to kill him. At one point he yelled out, "You motherfuckers-you're gonna get shot. Fuck you cops!" He then went back into his apartment.

Joe's girlfriend, Jeanette Mendoza, was near the scene, about a block and a half down the street. She at first assured the officers that Joe had no firearms, but, when informed that he was carrying a rifle, admitted that he owned a "piece of crap gun", which fired balls that were loaded down the barrel. She also said it probably didn't work anymore. In the moments before the shooting, during a call with Joe, Jeanette urged him to surrender, telling him, "Put down the rifle, Lambert."

Later, Joe emerged again, rifle held low in his right hand. The officers ordered him several times to drop it, but he responded, "No, I'm not going to do that." He advanced on the police officers across the street, pointing the rifle. Officers shouted, "Joe, drop the rifle, put it down". Officer Ross said, "I see the barrel of the gun and it's pointed right at me. Like, I just remember thinking-he's gonna shoot me, I'm gonna die." Officer Ross fired his AR-15 rifle three times, one bullet struck the stock of the rifle, another passed through the metal fence between Officer Ross and Joe, the third also passed through the fence and hit a truck in the small parking lot between the apartments. The officers called out again, "drop the rifle," Joe bent over for a moment, then straightened up and advanced rapidly toward the officers, at which point Officer Whitten fired two shots, one of which pierced the stock of the rifle and may have struck Joe in the groin area. He fell to the ground and dropped the rifle, arms outstretched. Over the loudspeaker, he was ordered to roll away from the rifle, which he did.

Officers approached, handcuffed him and began to administer first aid. The paramedics arrive quickly and took over. He was taken to the hospital and recovered from his wound. At the scene, the officers found a flintlock rifle, with two bullet impacts in the stock, which, along with the wood splinters seen in Joe's wound, indicated that one of the shots had struck the stock and then continued into his groin. The rifle appeared to be inoperable.



Figure 2-Flint- lock rifle in the weeds

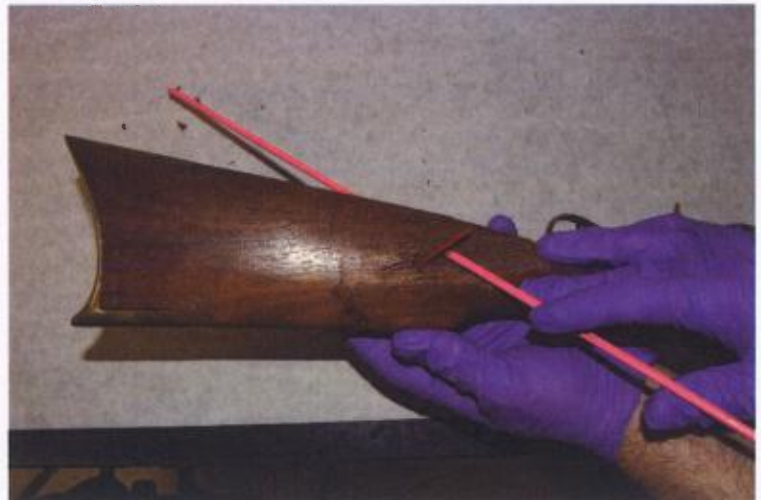


Figure 3-Stock of rifle showing bullet path

In Joe's apartment they found a 38. Caliber pistol, and numerous rounds of ammunition for a variety of firearms.

Immediately after the shooting, Jeanette Mendoza, ran down the street, along with her son, Manuel Baca, shouting that Joe was unarmed and surrendering. Joe's brother, Virgil Chee, also ran toward the scene, yelling that they were murdering Joe. He refused to stop at the perimeter, fought with the officers, and was tazed. All three claimed that Joe was walking, hands up, without a weapon, and the officers shot him without warning. They also claimed to have phone videos to prove it. This account, however, is contradicted by the officers at the scene, the neighbors who witnessed the shooting, and a grainy lapel video, which shows Joe walking out with and what appears to be a rifle in his hands, which he drops when he is shot the second time.

Police investigators never received the videos that the family claimed would support their version of events. In addition, the threatened lawsuit was never filed, and Joe chose not to offer the family version as a defense in the criminal case filed against him.

The most likely explanation for this discrepancy between the family's version and the other witnesses, videos, audio recording, and the physical evidence is that the family was unable to see the actual shooting and jumped to conclusions. When the first shots were fired, the family members were far away, outside the police perimeter, and their view was blocked by both the police cars in the road and a low fence between them and the apartment parking lot where the shooting occurred. They ran toward the scene, after the shooting and were able to see Joe crumpling to the ground, hands in front of him to brace himself as he fell. The family members were stopped and never reached the point nearer the scene where the rifle was clearly visible. Therefore, all they saw was Joe-unarmed and falling, and may have assumed the rest. In any event, on March 5th, 2019, Joe pled no-contest to one count of Aggravated Assault on a Peace Officer with a Firearm, for pointing the rifle at Officer Ian Ross, and Negligent Use of Deadly Weapon. He was sentenced to three years of probation.

LEGAL ANALYSIS

The officers who shot Joe were in the process of investigating a reported aggravated assault with a firearm 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

The officers shot Joe after he pointed a rifle at them and therefore fired in self-defense. The only evidence to contradict this, the family's version of events, was deemed insufficiently believable on which to base either a civil lawsuit or a defense in the criminal case, and therefore

would not support a criminal prosecution against the officers. There is no evidence to suggest, much less prove beyond a reasonable doubt, that they shot him for any other reason than self-defense. In the absence of such evidence, a jury will almost certainly accept this element of the defense, which would lead them to the next question: were the officers' fears unreasonable under the circumstances? Evidence establishes that Joe was drunk, angry, and prepared to fight to the death that night, and was advancing on the officers and threatening them with his rifle. The fact that the rifle may have been inoperable is not relevant to this analysis, because it is the appearance of the threat which would justify the self-defense claim. In addition, by pleading no-contest to Aggravated Assault on a Peace Officer with a Firearm, and Negligent Use of Deadly Weapon Joe has admitted that sufficient evidence exists to persuade an independent fact finder that he was threatening Officer Ross with a firearm, which implicitly supports the officer's claim of self-defense. 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 Ian Ross or Officer Richard Whitten . 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 Pearse-probation officer for Lambert Joe

John D'Amato, attorney for Officer Ian Ross and Officer Richard Whitten