

April 30, 2020

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

APD case # 14-0035101
DA case # 2014-02371-1

RE: Prosecutorial review of the April 21,
2014 shooting of Mary Hawkes by
Albuquerque Police Department Officer
Jeremy Dear.

Dear Chief Geier:

We have been appointed as Special Prosecutors by Raul Torrez, the Second Judicial District Attorney, to review the shooting incident that occurred on April 21, 2014 for potential prosecution. Our role is to determine whether APD Officer Jeremy Dear should be prosecuted for his actions during this incident. We have reviewed all of the available evidence, including: police reports and supplemental reports written by the Albuquerque Police Department, the New Mexico State Police, and the Bernalillo County Sheriff's Department, car wash videos and still photos, all lay witness interviews, all officer and detective interviews and depositions, and their related transcripts, affidavit by Reynaldo Chavez, phone and face book records of Mary Hawkes and related search warrants, criminal history of Mary Hawkes, warrants, civil case documents, including motions and rulings, videos, criminalistics reports to include; the shooting scene, DNA, Firearm and Tool mark, and fingerprint analysis, viewed crime scene photos, CAD printouts, all lapel videos, cell phone and face book printouts, canvass reports, DNA report by Julie Heinig, deposition of Dr. Zumwalt, OMI autopsy and investigative reports and related photos, Rebuttal letter and accompanying documents from Plaintiff's Attorney in the civil case, expert reports written by Chiles, Reisman, Fredericks, and Fries, to include Fries 6/8/17 declaration, and his 3/8/17 deposition, and several trips to view the scene. We have carefully considered the assertions and demurrals made by Ms. Shannon Kennedy, the attorney representing the Mary Hawkes estate in the civil case. Some of them may deserve attention and investigation by others, however many of them are outside the scope of our concern, which is a narrow one: Are we confident that there is sufficient admissible evidence to prove, beyond a reasonable doubt, to a unanimous jury, that Officer Dear committed a crime? The remaining objections Ms. Kennedy makes are either speculative, not relevant, unlikely to be admissible at trial, or insufficient to undermine our conclusion. We address most, but not all, of the points she raises. We conclude that it is not possible to prove, beyond a reasonable doubt,

that Officer Dear was not acting under the reasonable belief that the actions of Mary Hawkes posed a threat of death or great bodily harm to him, and to others. Therefore, no charges will be filed and the case will be closed. Our decision does not limit nor address administrative or criminal action by other agencies, or civil actions by other parties.

STATEMENT OF FACTS

Stolen Truck/Search For Mary Hawkes:

On April 21, 2014, just after 3:00 a.m., Albuquerque Police Officer Sonny Molina was on duty driving his marked police unit, wearing his uniform and badge of office, when he observed a young woman later identified as Mary Hawkes driving a black Ford F-150 truck. The truck would later be identified as belonging to Vincent Ortega, and it had been reported stolen from Ortega's residence on April 10, 2014. Officer Molina was traveling eastbound on Chico Rd. NE, and Hawkes was traveling northbound on Pennsylvania NE. The two vehicles came to a stop at that intersection at about the same time. The driver's side windows on both vehicles were down, and as Hawkes turned westbound on Chico, she said "hi" to Molina as she passed his unit, and he responded in kind. Molina had a good look at her face and observed that Hawkes had brown hair combed either in a bun or a ponytail and was wearing either a black hoodie or a black sweater. Molina believed that Hawkes was initially hesitant in her direction of travel, and as she passed his unit he turned and obtained the license plate number on the truck, identified as 362PWK. He quickly ran it through the NCIC database system and learned that the plate number was not in the system.

Molina then made a U-turn and attempted to locate and stop the truck. He traveled westbound on Chico, and observed some vehicle lights north of Chico on Charleston NE. He could see that the vehicle appeared to have "jumped a curb." The vehicle then came to a stop at 313 Charleston NE, on the west side of the street. While approaching the vehicle he could see that it was a truck, and saw the lights flashing as if they were being controlled by remote, to either lock or to unlock the doors. The truck was vacant, and Molina verified that it was the same truck he had just observed with license plate number 362PWK. Molina ran the truck's VIN number and discovered it had been stolen on April 10, 2014. The woman who had abandoned the truck and fled, who would later be identified as Mary Hawkes, never returned to the scene and, at 3:05 a.m., Molina called out over the radio that the driver had fled the scene.

The owner of the truck, Vincent Ortega was contacted, came to the scene, and took possession of his truck with his extra set of keys. When questioned at a later date, Ortega indicated that he had rented a room at his residence to a person named Mario Romero. He stated that a woman named Mary stayed at his residence with Mario during the time that the keys to his truck had gone missing, and prior to the truck being stolen. Ortega was also shown a picture of Mary Hawkes at the scene, and he identified her as the same person that stayed at his house with Mario when the keys had gone missing. Mario Romero was also located at a later time, and he also stated that he had rented a room from Ortega in March of 2014. He identified Mary Hawkes as the female who had stayed with him for two weeks during the time when the keys to Ortega's truck had gone missing, and just prior to the truck being stolen from Ortega's driveway.

At the scene a black cricket cellular phone had been located by Officer Molina inside the console of the truck and, still at the scene, Ortega told Molina that the phone did not belong to him. Molina observed that the phone was logged into a Facebook account under the screen name "Mary DaBoss." When later contacted, the parents of Mary Hawkes told the police that Mary possessed a Facebook account under the name of "Mary DaBoss." Officer Molina had also located an email address for "mhawkes" from within the same Facebook account which included several photographs of Hawkes. The photographs matched the description of the woman he had earlier seen driving Ortega's truck. He then completed a search of the police database system and located a picture of Mary Hawkes. Officer Molina then positively identified Mary Hawkes as the person that he had earlier seen driving the stolen truck and, at 4:45 a.m., he identified Mary Hawkes by name over the air. A warrant was later obtained for the Facebook account of Mary DaBoss. One of the entries within that Facebook account was on April 20, 2014 at 11:54:20 from Mario to Hawkes that stated, "I'm way beyond hurt with you." When later questioned about this statement, Mario indicated that his message was sent to Hawkes as his response to her, because he believed that she had stolen Vincent's truck.

On the same day that Vincent Ortega's truck was stolen, April 10, 2014, there were entries in Hawkes's phone records indicating that she had tried to sell a stolen truck to seven different individuals. Several of the entries were: "I have a nice G-ride nice ass truck need to sell it," "I got a truck where u at" "need to sell it asap," "Hmu 554-7801 ask fa me ill meet u to see truck. 500 \$" "I got a g ridde hmu need to sell these shardies too they kill and got some dro." According to investigating officers the term "g-ride" is slang for a stolen vehicle, and the term "shardies" refers to methamphetamine. There were multiple entries after April 10, 2014, on

Mary Hawkes's Facebook account that also referred to the truck. All of this strongly suggests that Mary Hawkes was in possession of Ortega's truck, had tried to sell it, was the driver who had abandoned it, and then fled from Officer Molina. Fingerprints were collected from within the truck and were later compared to known prints belonging to Hawkes. The police were unable to obtain prints from her phone, but latent prints collected from inside of the truck were identified as belonging to Mary Hawkes.

Mary Hawkes Located/Perimeter Set Up:

APD Officers Jeremy Dear and Tanner Tixier were dispatched to assist Molina. Once Hawkes's identity was known it was broadcast over the radio by Molina. Dear tried to locate her by investigating her last known addresses discovered in the police database system, but was unsuccessful, and Tixier helped with scene security. Just prior to 5:00 a.m., while still trying to locate Hawkes in the area of Virginia and Zuni SE, Molina observed a silver and grey Honda Accord driving in what he called, "an indecisive manner." He saw it swerve across the centerline of the roadway, and was able to obtain the license number, 881SHT. He then saw a subject wearing dark clothing with a hooded sweater walking eastbound on Zuni toward Wyoming, and believed that the subject could not have been at that location from his prior observations unless the subject had just been dropped off by the driver of the Honda. It would later be discovered that the owner of the Honda Accord was identified as Callie Pruitt. When later interviewed Pruitt admitted to having dropped off Hawkes near Virginia and Zuni SE in the early morning hours of 4/21/2014, and when she did so, she saw a police car behind her. Prior to being dropped off, Hawkes had informed Callie that she had just run from the police.

Molina turned his spotlight in the direction of the subject, and recognized that it was Mary Hawkes, the same female he had earlier observed driving the stolen truck. He shouted at Hawkes to "come here." Hawkes said "no," and ran eastbound into a trailer park located at 201 Wyoming SE, on the southwest corner of Zuni and Wyoming SE. Molina observed that as she ran into the trailer park, Hawkes was continually reaching into her right pocket. At 5:00 a.m., Molina called out over the radio that Mary Hawkes was running from him. At 5:05 a.m., Molina announced over the radio that officers should use caution because of the way Hawkes was reaching into her right front pocket. During his police interview, Molina indicated that he felt that he needed to back off from Hawkes for his safety, because at that time he was concerned that she had a weapon.

Immediately after Hawkes fled into the trailer park, Molina set up a perimeter, along with other officers, to box in Hawkes within their boundaries. The officers involved in securing the perimeter were APD Officers Sonny Molina, Jeremy Dear, Tanner Tixier, Isaac Romero, Jon Friedfertig, Adam Portillos, Sargent Brian Maurer, and also Officers Mike Hernandez and Dan Brokaw, who were assigned to assist as K-9 officers. The plan was to utilize the K-9 officers and their dogs to force Hawkes to come out of the trailer park, and for her to surrender without incident. Officer Hernandez went around the entire perimeter of the trailer park and made at least sixteen announcements over a loudspeaker, warning Hawkes that she was surrounded, and that the dogs would be deployed if she did not surrender. At about 5:33 a.m. the announcements were completed at all perimeter positions. At 5:48 a.m., Hernandez advised dispatch that the K-9 search was going to begin. One minute later at 5:49:15 a.m., Maurer advised dispatch that the subject was exiting the trailer park, and was running eastbound, across Wyoming SE, and into the carwash. Maurer saw a subject, later identified as Hawkes, climb over the east side wall of the trailer park. He then saw her run directly east across Wyoming towards the Brillon Brothers carwash. Less than one minute later, at 5:50:12 a.m., Maurer advised, over the radio, that shots had been fired. It was later learned that Mary Hawkes had been shot and killed by Officer Jeremy Dear. There were photos taken at the scene that showed a handgun located on the ground close to her body. That handgun was later identified as a Davis Industries Model P-32 pistol, serial number VN520180.

History Of Handgun Collected At Scene:

Prior to focusing on the 57 seconds that elapsed between Hawkes fleeing from the trailer park, to when she was shot and killed, it is important to establish the history of the firearm located at the scene. APD conducted an investigation into the history of the Davis Industries Model P-32 handgun, serial number VN520180, that was located at the scene. It is not clear why the initial part of this investigation was conducted by a detective from outside of the homicide unit, however, the investigation appears to have been conducted in a professional, expedient and successful manner, and without any undue influence. It was determined that the gun discovered and recovered from scene, immediately adjacent to Hawkes's body, was sold to David McClelland on November 11, 1998. McClelland was interviewed by APD Detective Jessie Carter, and McClelland told Carter that he had sold the gun back in 2002 to an unknown individual whose name he could not recall. However, at the time of the sale he had seen that person's identification and had recorded the name in the affidavit he was legally required to fill out that accompanied the sale of the gun. McClelland indicated that his ex-wife, Lisa Farina, had retained the affidavit. Carter met with Lisa Farina but she was

unable to locate the affidavit, and the name of the individual to whom the firearm was sold was not located.

That same firearm was then documented by APD, less than three months prior to the shooting of Hawkes, on January 29, 2014, in APD case number 14-0008466. In that case a search warrant had been issued for the residence of Michael Gaddy, located at 10820 Crandell Rd. SW. In the course of the search, a handgun was located in Gaddy's bedroom closet. At that time the police examined and documented the handgun, to include running and recording the serial number identified as VN520180. Because the gun was not reported stolen, and was not relevant to that investigation, it was released back to Gaddy.

Detective Jessie Carter interviewed Michael Gaddy, and recorded the interview on May 22, 2014. In the interview Gaddy stated that he had initially purchased the gun from an individual on the street for forty dollars. He also confirmed that the gun had been returned to him by APD on the same day they had examined it during the search warrant execution. Gaddy's Uncle, William Flook, was also present when the police located the gun at Gaddy's residence on Crandell. He also recalled that the gun had been returned to Gaddy on the same day that it was examined by the police.

Between January 29, 2014, and April 21, 2014 Gaddy had moved from his address on Crandell to 63rd and Bluewater NW, and when he moved he brought the gun with him. Gaddy told Carter that he had kept the gun, along with some drugs, in a black cash box in his bedroom. He had the gun in his possession up until one day when he was visited by two young women. While these women were still in his residence, he had stepped out of his bedroom for a moment, leaving them alone. Right after they left Gaddy noticed that his gun and the drugs had gone missing, and he believed that one of the two women had stolen them. Gaddy identified one of the women as Theresa LNU, and the other as Mary. He identified Mary as being the same woman who had been shot and killed by the police in an officer involved shooting, which he learned about from watching the news. He positively identified Hawkes, from a booking photo shown to him by Carter, as one of the two women who was at his residence when his gun was stolen. He said that he also saw a picture of his gun on the news and identified it as his 32 auto Davis Industries handgun.

There was a posting on Hawkes's Facebook page on April 21, 2014, at 9:24:16 p.m., from an individual named "Dopey Loco". Dopey Loco was later be identified as Erik Hawke (no

relation to Mary Hawkes). This entry on April 21st was from Erik to Mary, and reads, "I cant believe u did that shit... taking from my house wtf is wrong with you mary i thought i could trust you and some more shit... u take my piece and think imma forget about it... thatx fucked up i juzt see where true colorz lie..." When interviewed by Detective Carter, Erik indicated that he was present when Mary was at Gaddy's house the day that the gun was stolen. Erik stated he has known Mary since he was eight years old. Erik initially told Carter that he never saw the gun, but then corrected himself, saying that the gun had been shown to him on a couple of occasions about two weeks prior to it being stolen, but that he had never really paid attention to it. Erik indicated that when he was at Gaddy's residence, Mary and Theresa were also there and, at one point, they were alone in Gaddy's bedroom, while Erik was present in another room. Erik remembered that Mary left suddenly.

Erik was upset and told Carter that, "she stole my homies 32 small, 7 shot, it was under his bed." Eric said that he was so upset that he wrote to Mary on Facebook about stealing from him and accused her of stealing the gun. The information that Erik provided directly tracks the information provided by Gaddy, to include that the gun being stolen from under the bed. Both Erik and Gaddy were reluctant, and declined to name one another, but Gaddy made it clear that the gun was his. Erik was also clear that the gun did not belong to him, but to an unnamed friend. They both said that they were present on the day the gun was stolen, and it was stolen at the time when Hawkes and another female were present and briefly alone in Gaddy's bedroom, where the gun was kept. (see photos of gun, serial number VN520180, collected at scene)



There was also evidence from Hawkes's Facebook account that indicated she wanted a firearm and had obtained one prior to April 21, 2014. On April 11, 2014, two of Hawkes's

entries referred to her wanting to obtain a "strap." The term strap is another slang term known to law enforcement, meaning a firearm. In the first entry, written on April 11, 2014, at 4:04:22 p.m., Hawkes wrote, "I need a strap they took my phone." Five minutes later at 4:09:26 p.m., in a separate entry she wrote, "I need a strap these ffuckers took my keys annnd trukkk I'm on Wyoming and Zuni at trailer park." Then on April 20, 2014 at 8:06:09 p.m., only nine hours before she was killed, she wrote "plz hurry im in a bad spot to have a flat this wher they tried to kill me for the truk an I don't wanna shoot nobody but I will." The words, "I don't wanna shoot nobody but I will," shows Hawkes had obtained a firearm sometime after April 11, 2014, but before April 21, 2014.

Carwash Video:

On April 21, 2014, at 5:49:15 a.m., Hawkes climbed over the east wall of the trailer park located just south of Zuni. She ran eastbound across Wyoming Blvd., and Sargent Maurer notified the perimeter team on air that a subject was exiting the trailer park and heading towards the carwash. After crossing Wyoming, as Hawkes ran eastbound through one of the carwash bays at the Brillon Brothers Carwash, she was recorded by three video cameras within the bay as she ran through it. The image quality is not ideal, but an object can be seen in her right hand as she flees through one of the bays. The City of Albuquerque hired a Certified Forensic Video Analyst, Mr. Grant Fredericks, to examine the car wash videos frame by frame, to determine whether he could identify the object that Hawkes was carrying that was protruding from her right hand.

Fredericks has extensive experience in the recovery of audio and video recordings with scientific examinations and evaluations of such recordings, and had been doing so continuously since 1984. From 1999 to 2012 he was the principal instructor for Forensic Video Analysis courses, and has trained over 2,800 law enforcement video analysts. He has been qualified as a court expert in over one hundred and fifty cases all over the world. Based upon his training and experience Mr. Fredericks conducted a verification process to determine whether the videos were authentic, or if they had been tampered with. He concluded that the car wash videos were authentic and had not been changed or tampered with.

Fredericks was also able to synchronize the views of Hawkes captured on all three cameras as she ran through the carwash bay. In the videos Hawkes is seen carrying an object that extended beyond her right hand and protruded over the area of her index finger. Fredericks explained that the object was reflective in the light, and that the videos