

May 30, 2019

Chief Tim Johnson
New Mexico State Police
PO Box 1682
Santa Fe, NM 87504-1628

RE: Prosecution review of use of deadly force by Sergeant Jeremy Vaughn in the apprehension of Michael Ray Nieto

NMSP case 18-03994
DA case 2018-08333-1

Dear Chief Johnson,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the March 15, 2018, use of deadly force by New Mexico State Police Sergeant Jeremy Vaughn, which occurred during the attempted apprehension of fugitive Michael Nieto. I have reviewed all relevant evidence, including police reports, crime lab reports, witness statements, photos, and audio and video recordings. I also visited the scene where the confrontation took place.

RELEVANT FACTS

On March 15, 2018, the New Mexico State Police (NMSP) Auto Theft Suppression Unit, in conjunction with the New Mexico Corrections Department Security Threat Intelligence Unit (STIU), were conducting a joint operation to apprehend persons who were on probation or parole for charges related to auto theft or stolen vehicles, and had warrants outstanding. A team was assembled consisting of NMSP Sgt. Jeremy Vaughn, NMSP Agent Anthony Luna, and STIU agents Wes Hatley, Emily Hunt, Martin Aragon, and Rob Morris. Around 11:00 am, the team attempted to make contact with Michael Ray Nieto, who was on probation for auto burglary and unlawful taking of a motor vehicle. Mr. Nieto was residing with

his mother at 504 Candelaria NW, Apt. 2, which is where contact with Mr. Nieto was attempted. Nieto had a warrant outstanding for failure to check in with Probation authorities.

There was no answer when agents knocked on the door. Agents noticed that the electric meter was running fast, making it more likely that someone was home. Pursuant to the broad search authority probation officers have over probationers and their homes, and believing that Mr. Nieto was probably home, STIU officers slid open a front bay window on the apartment. At that point verbal contact was made with Mr. Nieto. Nieto yelled that he had just gotten out of the shower, and denied that he was Michael Nieto. It should be noted that the curtains on the front bay window were closed. STIU agents identified themselves and ordered Mr. Nieto to come out of the residence. Mr. Nieto refused. He continuously yelled things that were mostly unintelligible. He was heard to say that agents could not come in his house, and then he yelled, "I'll fucking shoot you right through the fucking door." At that point matters escalated quickly.

Three agents at the scene had belt tapes running during the incident. They were: State Police Agents Vaughn and Luna, and STIU Agent Hartley. The belt tapes reveal the following sequence of events surrounding the shooting in this case. Agents Emily Hunt, Wes Hatley and Rob Morris, who were at the front of the apartment, quickly took cover after Nieto threatened to shoot them. Sgt. Vaughn retrieved his Remington R-15, .223 caliber rifle from his unmarked police vehicle and took a position of cover behind the passenger side of his vehicle, which had the passenger door open. The following aerial photo shows the scene with the positions of the agents at the time they took cover. It also shows where Sgt. Vaughn's police vehicle was located during the incident. It should be noted the Sgt. Vaughn's vehicle was moved out the of the scene after the shooting to allow SWAT vehicles access to Nieto's apartment.



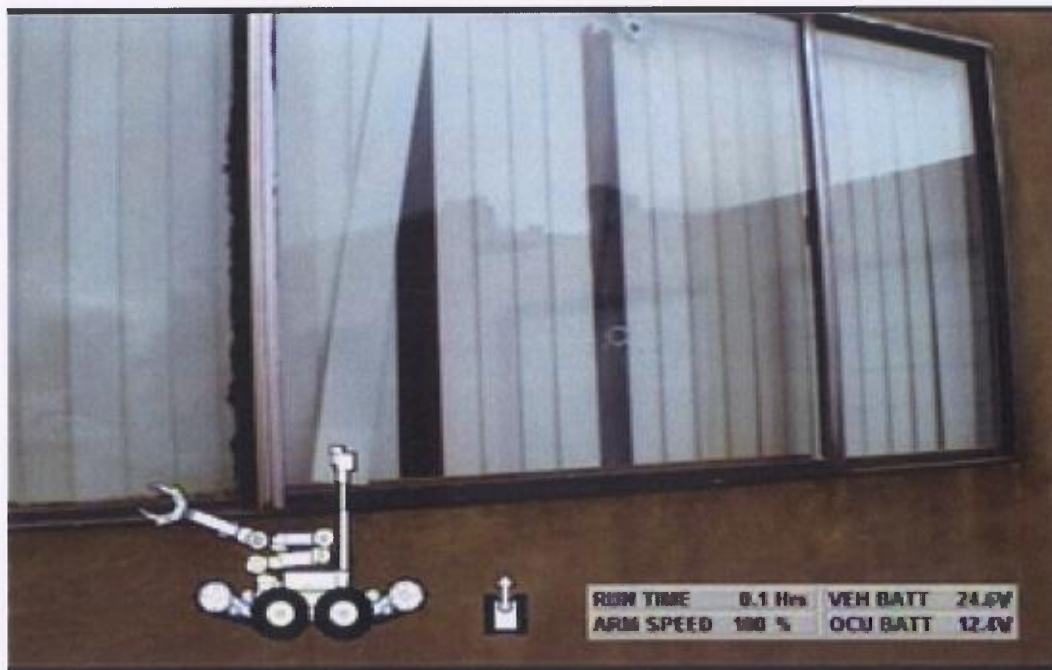
Almost immediately after Nieto threatened to shoot officers, and they took cover, a sharp noise is heard on Agent Luna's belt tape. Agent Luna is heard asking, "What was that?" No one really answers. Nieto continues yelling, and is heard to yell again that he will shoot. Everyone is told to back up. A little over a minute later, a loud noise or "pop" is heard. Someone asks, "Is that a shot?" It sounds like Agent Luna replies "yup". Wes Hatley's belt tape reveals, however, that *he* says "no". Right after that, "gunshot" is broadcast over the air. Approximately thirty seconds after this, Sgt. Vaughn says: "Door, door. Window, window. He shut the window. He shut the window." Sgt. Vaughn asks Agent Luna to contact radio and ask them to send additional units and to lock down the street. During this time agents continued to secure cover and take measures to ensure their safety.

About seventy seconds after the broadcast about shutting the window, Sgt. Vaughn yells: "He's got a gun. He's showing it to us." Agent Luna says: "I just saw the gun in the window." Sgt. Vaughn yells, "Gun in the window." About ten seconds later, Sgt. Vaughn says, "Wes, watch it. He's pointing that gun toward you." Approximately forty seconds after that, Sgt. Vaughn yells that, "He's pointing a gun out the

window.” Within two seconds a loud gunshot is heard. Sgt. Vaughn broadcasts: “That’s me. That’s me. Shot fired.... That’s a blue shot.”

As soon as Sgt. Vaughn fired his rifle, Agent Hatley and Agent Morris took cover in the apartment next door to Nieto’s. They stayed there with the female resident until the TACT (SWAT) team was able to safely extract them at a later time. Sgt. Vaughn, Agent Luna and Agent Hunt continued holding their weapons on the front of the residence while they awaited the arrival of the TACT team.

Within two minutes of Sgt. Vaughn’s shot, someone asks what type of gun Nieto had. Vaughn answers: “[A] revolver. Black handgun revolver. Looks like it might be a 38.” It was unknown whether Mr. Nieto was struck by Sgt. Vaughn’s shot. As agents waited for the TACT team, additional noise was heard from the apartment, but Nieto did not come out. As lighting conditions became better, it was noticed that there were two apparent bullet holes in the center portion of the front bay window, as shown in the following photo.



The TACT team arrived approximately an hour and fifteen minutes after Sgt. Vaughn fired his weapon. They safely extracted all the agents who had been holding on the apartment, as well as Agents Hatley and Morris and the woman in whose apartment they took cover. The TACT team sent the NMSP Robot to the front of the apartment, where it broke out the left section of the three-part bay window. The Robot tore down several of the curtain panels and extended its arm with a camera attached into the interior of the apartment. Mr. Nieto is seen at that point sitting on a couch in front of the right side of the window. It is learned that he is not injured. Mr. Nieto refused to come out and surrender. He asks why agents shot at him, and shot his window. When asked to come to the window, he said, "I did that the first time. He started shooting at me." As the camera films Nieto, he is seen continuously and nervously shuffling a bundle of papers. He appears fidgety and is constantly rubbing his head.

The TACT team used the Robot to deliver a throw phone through the broken window to Mr. Nieto. Although he used the phone to communicate with the agent from the Crisis Negotiating Team (CNT), he still would not come out of the apartment. Eventually noise flash diversionary devices ("flash-bangs") were detonated outside the apartment, but they had no effect in convincing Mr. Nieto to come out. After that it was decided to use the NMSP Rook armored vehicle to break out the door on the upper level of the apartment. This was done so that chemical munitions ("teargas") could be introduced into the upper level of the apartment to keep Nieto from taking refuge upstairs and possibly gaining a high ground position of advantage on the officers. The Rook then moved to the front of the apartment and broke out the remainder of the large bay window and blinds covering it. Nieto is seen in front of the window yelling, "What are you doing?". Almost immediately thereafter, Nieto comes out of the apartment and is taken into custody. This occurred at approximately 3:00 pm, some four hours after initial contact was attempted with Michael Nieto.

WITNESS STATEMENTS

Jeremy Vaughn

Sergeant Vaughn gave a formal statement to lead investigator Jesse Whitaker and A.P.D. Detective David Gonzales on March 22, 2018. He was accompanied by his attorney, Luis Robles. Sergeant Vaughn stated that he had been a New Mexico State Police officer for fifteen years, and the sergeant of the newly formed Auto Theft Suppression Unit for nineteen days. He said that he had never before used deadly force in his fifteen years with State Police.

In addition to what the belt tapes revealed and has already been discussed, Sgt. Vaughn related the following concerning the incident: Sgt. Vaughn's vehicle was parked directly in front of Mr. Nieto's apartment, approximately twenty yards back. Sergeant Vaughn heard what he thought was a gunshot from inside Nieto's apartment shortly after he was told of the threats Nieto was making to shoot officers. Agent Luna confirmed the he also thought it was a gunshot. Soon thereafter Sgt. Vaughn heard what he thought was a second gunshot from inside the apartment. Shortly after that, Nieto shut the open window. Sgt. Vaughn noted that soon thereafter, "I observed an arm and a hand holding a black revolver handgun between the white vertical shade and the window glass. The gun appeared to be held in a standard firing position. The barrel of the gun was pointed directly at Agent Hatley in front of apartment 3." The hand and gun were withdrawn, but appeared again a short time later, "pointed directly at Agnet Hatley, exactly as before." Again, the hand was withdrawn. Sergeant Vaughn said the hand and gun appeared again for a third time, and again was pointed at Agent Hatley. At that point Sgt. Vaughn aimed his gun at center mass of the gun he observed and pulled the trigger one time. As to why he fired at that point: "My specific intentions of doing so was to stop Michael Nieto's actions of pointing a firearm at Agent Hatley or any

other officer in the immediate area of the apartment complex.” He also said that he was concerned for the safety of other residents in the area.

Sergeant Vaughn never saw any of Michael Nieto’s body but his hand. When asked why he didn’t shoot the first two times he saw the gun, he stated that he was trying to get into position, and did not have time to get off a shot.

Sergeant Vaughn made note of the holes in the window that he observed. He felt like the lower hole was consistent with where his shot would have gone. He noted that the upper hole had a lot of shattering or patterning around it, which to him indicated the bullet was probably tumbling after it hit an intermediate object and before it hit the glass. He surmised that the intermediate object would have been one of the blind panels. It is noteworthy that the footage taken by the Robot of the holes in the window shows that the blind panel directly in front of where the two holes are seen appears to be missing.

Michael Nieto Interview

Michael Nieto was interviewed shortly after he was taken into custody. He denied pointing a gun at anyone, or that he fired any shots. He stated he did not own a gun or anything that resembled a gun. He was asked if his mother owned a gun, and he stated that there were no guns of any kind in the house. Mr. Nieto acknowledged that he saw police insignias on some of the agents, and that a woman had announced “Probation and Parole”. He denied that he had any kind of conversation with officers or made any threats before shots were fired. He stated that he did not come out of the house because officers had shot at him. Nieto denied consuming any drugs or alcohol that day. About eighteen minutes into the interview, Mr. Nieto said he didn’t want to answer any more questions without a lawyer, and the interview was terminated.

Other Officers

STIU Agent Martin Aragon was interviewed immediately after the TACT team relieved him of the cover position he had held pending the arrival of the TACT team. Agent Aragon stated the Mr. Nieto had threatened to get his gun and shoot them. Agent Aragon at one point saw a hand come between the blinds and the glass. The hand was holding what appeared to be a black handgun that was four to four and one-half inches in length. Shortly after that Agent Aragon heard a "pop" from inside the apartment. He was quite sure that what he heard was a gunshot. Not long after that he heard another shot, followed by someone yelling that the shot was from an officer ("blue shot").

STIU Agent Wes Hatley was interviewed the same afternoon as the standoff with Mr. Nieto. He stated that he was at the front of Nieto's apartment while Agent Aragon was talking to Nieto through the open window. He could not see Nieto, but heard him yelling to Agent Aragon. While that was happening, Agent Hatley heard a loud boom, which to him sounded like something being thrown toward the open window. At that point he heard the person inside say something about a gun, and threatening to shoot. Immediately after that it sounded like more things were being thrown inside the apartment. He and Agent Rob Morris moved to the apartment to the immediate west of Nieto's apartment. As they were asking the woman who lived there if they could come inside, Agent Hatley heard a loud gunshot. He and Agent Morris and the woman occupant quickly took cover in the apartment where they stayed until the TACT team arrived and extracted them. Agent Hatley never saw a gun. He remembers only one clearly identifiable gunshot, which was identified as "blue shot".

STIU Agent Emily Hunt was also interviewed the afternoon of the incident. She recounted that she was at the front of Mr. Nieto's apartment, off to the side, when contact was made with Nieto. Agent Hunt heard Nieto yelling at Martin Aragon that they couldn't come inside. He said he was going to shoot them. She stated she heard, "two, kind of bangs from inside the apartment, but it was kind of muffled."

That was followed soon after by a very loud bang, and Sgt. Vaughn called out that he was the one who had shot. Agent Hunt took cover behind a tree. Agent Aragon came for her with a shield, and helped her move to a position of cover behind Sgt. Vaughn's police vehicle. She remained there until the TACT team arrived.

State Police Officer Anthony Luna was apparently not interviewed. STIU Agent Rob Morris also apparently was not interviewed.

Other Witnesses

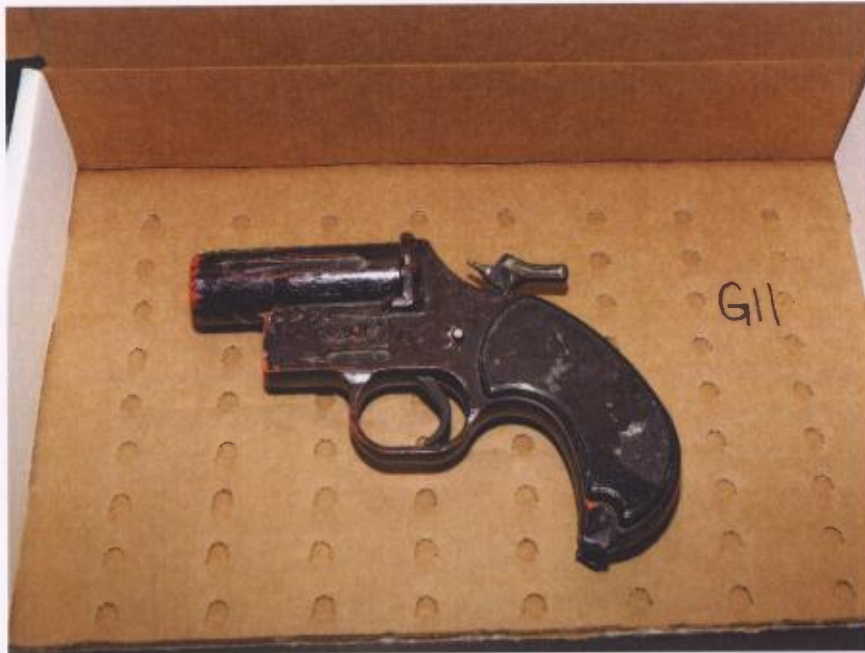
Michael Nieto's mother, Juanita Nieto, was interviewed. She was at a funeral on the morning of March 15, 2018, and had no idea what was unfolding at her home until she arrived back at her apartment later in the day. She told the interviewing agent that Michael was on meth, and also had some mental health issues. She said that Michael did not have a gun, that she does not allow guns in her house, and that she had never seen Michael with a gun. She also stated that there was no damage to her front window prior to the morning of March 15th.

The neighborhood surrounding the standoff was extensively canvassed by officers. Although various neighbors heard or saw parts of the events that unfolded, none had information that added anything of relevance to this report.

PHYSICAL EVIDENCE AND CRIMINALISTICS

The physical evidence in this case had some interesting and unusual aspects. Michael Nieto's apartment was thoroughly searched pursuant to a search warrant that was obtained before the TACT team made entry. No firearm was found. Although the apartment was in somewhat of a state of disarray before the search, several agents repeatedly searched for a handgun, but came up empty. A specialized tank scope was used to check a hole in the upstairs bathroom wall where a chemical weapons canister

fired by TACT agents penetrated two walls and actually ended up in the bathtub of the neighboring apartment. The hole was big enough to conceal a handgun, but none was found. A “concealed firearms canine” was also brought in from Customs and Border Patrol to search for a firearm, to no avail. Agents did, however, find a black flare gun on top of a box in a closet in the upstairs bedroom. A picture of the flare gun is shown below.



Agents also found a backpack that contained one hundred fifty .38 mm bullets. The backpack was found in the living room area close to where Michael Nieto was seen sitting on the couch by the Robot cam.

In the parking lot in the front of Michael Nieto’s apartment, in the area where Sgt. Vaughn had taken up position during the standoff, one Winchester .223 REM casing was found. This was obviously from the round that Sgt. Vaughn fired at Michael Nieto.

Also collected as evidence was a flowered-patterned curtain. The curtain had what appeared to be a bullet hole through it. The curtain was originally located in front of the slatted blinds that were visible