

May 2, 2018

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

APD case # 16-0099988
DA case # 2017-01463-1

RE: Prosecutorial review of the October 22,
2016 incident in which Albuquerque Police
Department Officer Steven Arias shot at
Michael Pacheco.

Dear Chief Geier:

I have been appointed Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the incident of October 22, 2016 for potential prosecution. My role is to determine whether Albuquerque Police Department Officer Steven Arias should be prosecuted for his actions during this incident. I have reviewed all of the available evidence, including: criminal complaint, two search warrants, police reports, interview transcriptions, criminalistics report and photos, firearm & tool mark report and photos, crime scene photos, 911 audio recordings, CAD printouts, criminal history, lapel video's, a viewing of four scenes, cell phone video, and a video from Freddy's Steak Burgers. I conclude that it is not possible to prove beyond a reasonable doubt that Officer Arias was not acting under the reasonable belief that the actions of Michael Pacheco posed a threat of death or great bodily harm to himself, and to other police officers. 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 October 22, 2016, at about 1:25 p.m., Lisa Pacheco called 911 to report a domestic disturbance at 9143 San Nicholas N.W., the home of her mother, Patricia Pacheco. Lisa said that her brother, Michael Pacheco, was kicked out of her mom's home about three to four weeks earlier, because he refused to seek assistance for a suspected drug issue, which created many issues at home. They were fearful of him, because Pacheco was known to have weapons, had threatened to kill Patricia, and had shot at her in the past, and had purposely flung a brick at Patricia, which struck her. He had also recently flattened the tires to Patricia's car, by slicing them with a knife. Pacheco had returned to Patricia's home without permission on three occasions since being kicked out. The first time he broke in through a window, then through the back door, and they were fearful because he returned again through the garage, and was still there.

At about 1:42 p.m., APD Officers Clarence Garcia and Chris Luttrell met with Lisa and Patricia at Jimmy Carter Middle School at their request, because Pacheco was still at Patricia's house. When asked whether or not Pacheco had committed any violence on that day, Patricia stated that, "he pointed his finger like a gun in her direction." Police later learned that about four to five months prior, Pacheco shot at Patricia while inside the house, and later repaired the hole in the wall where the bullet had struck.

Patricia never called the police to report it, because Pacheco threatened, that if she were to, "call the cops, someone will get shot." Lisa reported that Pacheco had become progressively more violent with her mother, and believed that, "he acted as if he was on narcotics." Patricia lived in fear when Pacheco was at the house, and stated she had placed furniture up against her locked bedroom door, while he manipulated his gun from outside the door, seemingly in an attempt to frighten her. Pacheco still had some of his personal belongings at the house, and Patricia just wanted him to get his property, and then leave, but felt she needed the assistance of the police to ensure it was done in a safe manner. Patricia and Lisa had recently observed Pacheco in possession of a hand gun and a rifle, and believed that he was not supposed to have guns, because he was a convicted felon. The guns also concerned Lisa, because "he acts paranoid, like everyone is after him." Luttrell then ran Pacheco's name through the system, and reported that he had a felony conviction for Forgery, and therefore should not be in possession of a gun.

At about 1:59 p.m., Pacheco drove past Jimmy Carter Middle School, in a white Chrysler Sebring, with New Mexico license plate number NTG937. As he passed by, Patricia and Lisa pointed him out to Officers Garcia and Luttrell. He pulled into the Potters House Christian Center parking lot, located east of the middle school. He then turned around in the parking lot and exited, and continued eastbound towards the intersection of Bluewater and Unser. Garcia and Luttrell immediately entered their vehicles, and drove up behind Pacheco, with the intent to stop him under the suspicion of being a felon in possession of a firearm. They engaged their emergency equipment at Bluewater and Unser when the light changed to green. Pacheco then turned south on Unser, but did not stop for the police. He ran the red light at the intersection of Unser and Central, and sped in and out of traffic, while going eastbound on Central towards Coors Blvd. The dispatch officer stated that the vehicle was reported stolen, but later corrected the statement, and indicated that the license plate was reported stolen. The license plate owner, Tianna Anaya, would later tell police that she had reported it stolen, did not know Michael Pacheco, and that he did not have permission to take, or to possess her license plate.

The pursuit continued as Pacheco turned north off Central, into the Smiths and Walgreens parking lot, located on the northwest corner of the Coors and Central intersection. APD Officer Steven Arias was aware that Pacheco was potentially armed when he pulled into the parking lot from westbound Central. He pulled in directly behind Pacheco, followed by Officer Garcia, APD Officer Francisco Chavez, and Officer Luttrell. All officers were driving marked units, and had their emergency equipment activated. There were numerous shoppers within the parking lot, yet Pacheco continued to drive in an erratic fashion. Arias observed a light haired female in Pacheco's front passenger seat, and she would later be identified as Tiffany Ethridge. Pacheco continually looked in his rear view mirror at Arias. He then drove into the turn bay between Dion's and Walgreens, and then to the east side of Dion's. He raised a dark shotgun barrel towards the sunroof in his car, and then, while starring at Arias, turned the barrel directly towards Arias. Arias did not give a verbal statement, but he wrote the following in his report; "I saw the muzzle of the barrel pointing right at me, and I could see partially down the barrel." "I was in immediate fear of being shot in the face by Pacheco." "I responded in self-defense, felt a grave threat to my life, and fired my rifle at him." Arias fired his rifle at Pacheco in a northern direction, through his front windshield, from the inside of his police car. This left a bullet hole in the driver's side of the front windshield of his police car. His lapel camera was not working at the

time, and none of the other officers were in position to see Pacheco's actions within his car. Arias immediately reported over the radio that shots had been fired.

Pacheco then fled in his car with the police in pursuit to the parking lots east exit road. This exit road connected to the southbound Coors traffic, and was located between Dion's Pizza to the south, and Freddy's Steak Burgers to the north. The police obtained video footage from Freddy's, in which the white Sebring was observed driving up to the east exit with Arias in pursuit directly behind. The Sebring was forced to stop behind a car that was waiting on traffic, prior to exiting onto southbound Coors. Tiffany then exited from the front passenger side of the Sebring, then quickly walked away heading south towards Dion's. Arias then briefly exited his car, and he and Garcia were observed on foot approaching the Sebring with their weapons drawn. Pacheco then drove over the median to get passed the car in front of him, and in the process, almost struck two other vehicles. When Tiffany was later interviewed she said that after Pacheco shot the gun, the police officer bumped the back of their car. Pacheco then continued to flee, but before getting onto southbound Coors, she unbuckled her seatbelt when he was forced to stop for southbound Coors traffic. She then exited the Sebring without any comment being made by Pacheco prior to her leaving. On the video, the white Sebring then sped southbound on Coors, and was pursued by Arias, Luttrell and Chavez. Garcia ran back to his car, and continued the pursuit behind Luttrell and Chavez. The video does not show when Arias fired his weapon, and it does not show Pacheco's activities within his car. Up to this point, only several minutes had passed since the beginning of the pursuit.

Pacheco continued to flee eastbound on Central to southbound 65th, then eastbound on Churchill, and finally northbound on 64th. The pursuit ended in front of the residence at 240 64th Street S.W., near the intersection of 64th and Churchill. During the pursuit, Pacheco did not stop nor decrease his speed for stop signs, and he refused to respond to the police emergency equipment. APD Officer Vicente Martinez had turned into southbound 64th Street, approaching Pacheco, as Pacheco fled northbound on 64th with multiple police cars in pursuit behind him. Martinez then drove his car in front of Pacheco's, blocking his path, and Pacheco veered off to the right in an attempt to avoid contact and to escape, but the two vehicles collided.

The front of the police car remained in contact with the front driver's side wheel area of the Sebring. The air bag control module and the Powertrain Control Module from Officer Martinez' police car was downloaded, and showed that just prior to the impact the police car driven by Martinez was traveling at 15 mph, and at the time of impact, the speed of the police car was "zero mph". Therefore, according to the experts, the police car was either stopped, and the Sebring crashed into the police car at a low speed, or it was slowing to a stop, and collided at a very low impact speed. They concluded that no serious injury could have occurred from the dynamics of the crash alone. Both vehicles suffered damage, but there were no serious injuries as a result of the collision. Pacheco was later booked after being cleared from the hospital. He had two dogs in his car that were cared for by animal control, and there was no indication that the dogs suffered an injury.

When he was taken into custody, Pacheco was wearing body armor. Police thought this very odd, but when questioned, he said that he wore the body armor because he "thought it was cool," and nothing more. He told Officer Garcia that he was moving out of his mother's house, "and just wore it, he had no place else to put it." Tiffany was later located and interviewed, and parroted his response, indicating that there was nothing nefarious about Pacheco wearing the body armor. She stated that "he loves his vest, no plans, he thinks it's cool." There was no further discussion or investigation that resulted from Pacheco wearing the body armor.

All windows in the Sebring were closed except for the sunroof. In order to get Pacheco out of the car, Luttrell broke out the driver's side window, and Pacheco was then pulled out through the window by Officers Martinez, Luttrell and APD Sargent J. Sanchez. Two officers received minor injuries as a result of the broken glass, and a third required stitches. It appeared to the officers that Pacheco was uncooperative, because he did not immediately exit his vehicle as ordered. Instead, it took several minutes after the collision to get him out. His driver's side door was jammed, and in order to remove him from the car, his seatbelt had to be cut off. He was also later observed interacting with the nursing staff at the hospital, and his responses appeared to be somewhat incoherent, according to APD Officer Joseph Gumble. It is unknown whether he had drugs in his system. All of this may have contributed to the perception that Pacheco was being uncooperative, but his level of cooperation was unclear from the video alone. Pacheco later complained that police struck him several times with their flashlights, when they removed him from the car, and when they held him on the ground. However, his removal from the Sebring was recorded on multiple police lapel cameras, and his allegations are not supported by any of the videos. The police were very aware of the allegation that a firearm was involved. The lapel videos showed that once the police had a hold of his hands, they purposely did not release them until he was secured, and in handcuffs. Pacheco had laceration to the left side of his face, and small abrasions on his forehead from the broken glass. He also had small cuts on both of his knees that he believed occurred when the officers extracted him from his car, and placed him on the pavement.

Pacheco provided an interview to the police later that evening, but Tiffany Ethridge was not located and interviewed until October 25th, 2016. The statement provided by Pacheco was contradicted by Tiffany in several areas. They both stated that they were obtaining some of Pacheco's belongings from his mother's house, knowing that he had been kicked out about three weeks earlier. Tiffany added that after Pacheco opened the garage to obtain some of his belongings, words were exchanged between him and his mother. Pacheco admitted that he fled from the police at Bluewater and Unser because, "when the police got behind me, I saw the lights, and sirens, and panicked, I got scared." He further stated that, "I felt bad for putting everybody else in danger, I was stupid." Tiffany said that when the police started to chase them, she told Pacheco several times that she was scared, and did not understand why he would not pull over. Tiffany also stated that, "he was driving like a maniac."

Pacheco was reluctant to identify the "light haired female," as described by Officer Arias, and as stated, it took the police three days to locate her. Pacheco first said that her name was, "Tiffany, not sure last name, only met her couple of days prior." When later asked her identify, he stated that he

"only knew her as Ethridge." Tiffany however, told the police that she had known Pacheco for about five months, and had spent the previous night before his arrest with him.

During the separate interviews, both Tiffany and Pacheco believed that the shotgun had been fired from inside of the Sebring, and Pacheco thought that after the shotgun went off, that the police may have also fired at him. He made the following statements to the police; "The shotgun went off, and might have been shot by police after that." "The cops started chasing me, and I tried to take off and then, I tried to shoot myself while I was driving, and the girl I was with tried to take the gun away, and it went off." "I went to put the gun to my head, and she pulled it back towards the passenger side, I've been really depressed lately." Also, prior to the interview, and while still at the crash scene, Pacheco told Officer Garcia the following; "it was an accident, my girlfriend grabbed the shotgun, and I was trying to pull it away from her, and it went off." "My girlfriend was trying to grab the shotgun; it was interfering with the brake." Tiffany did not support Pacheco's statement, and denied ever trying to take the shotgun away from Pacheco, and denied ever reaching for the shotgun. She said "I know he did not put the gun out the window and shoot at the officer, the only thing open was the sunroof." "I did not see how he was holding it and driving." Tiffany repeated several times during the interview that Pacheco had fired the weapon, and that she was not looking at him at the time, and therefore was not able to relay specific details how the shotgun was being maneuvered by Pacheco. She was however sure, that he had to have fired it out of the sunroof, because it was the only open window in the car. The inspection of the Sebring would later reveal that there was no indication that shots were fired at any of the interior windows in the Sebring.

Pacheco made the following statements, while denying that the shotgun belonged to him; "The girl I was with had the shotgun with her." "Tiffany always has a shot gun with her." Tiffany denied that the shotgun was hers. She said that she first saw the gun in the car on Pacheco's left hand side, and then, "when they were being chased by the police he pulled it out." She described it as "a foot long, not a handgun." She insisted that the shotgun belonged to Pacheco, and added, "I'm sure it was his gun, I'm sure he shot it, I heard it." "Mike is stupid, and fucked up in the head right now." "The day before he said he gonna shoot himself."

The police also collected two rifles from the Sebring. One was a loaded .22 long caliber rifle, several gun magazines, along with a black ski mask, located in a gun case, and sitting on the back seat of the Sebring. The other was a Silver Streak, 5m pellet rifle, collected from the trunk of the Sebring. There was a huge box of ammunition sitting on the back seat, and a large bag carrying various types of ammunition. Overall, there were around 400 rounds of ammunition collected from the Sebring. Pacheco denied ever seeing the gun case in the Sebring, and asserted that he did not own any firearms or ammunition. Tiffany again did not support his claim, and stated that she recalled "when he got the rifle a couple of weeks ago because he showed it to me." Tiffany was adamant that neither the ammunition, nor the firearms belonged to her, and stated that they belonged to Pacheco.

A pill bottle containing suspected methamphetamine with the name, Tiffany Ethridge on the label, was located in the vehicle. Both Pacheco and Tiffany denied using drugs. Tiffany explained that

she was in the Drug Court Program for a DWI conviction, and if she were to use drugs, she would get caught, because she was regularly tested. She also denied that the suspected methamphetamine located in the Sebring had belonged to her. Tiffany said that she was not aware of Pacheco using drugs. The suspected methamphetamine was never tested, and there was no further information concerning the suspected drugs.

The APD Criminalistics Unit collected the PSW, Model MK1, 223 Wylde caliber, semi-automatic rifle belonging to Arias. It had pulverized glass on the muzzle brake consistent with being fired next to the windshield. They also collected one .223 caliber Speer casing from behind the passenger seat, on the floorboard of his vehicle. No comparisons were made nor needed, because Arias admitted to firing the round through his police car windshield, and there is no other evidence to the contrary.

The shotgun was collected from the driver's side floorboard of the Sebring. It was an H & R brand, model 088, 12 gauge single shotgun, with a barrel length of 12 inches, and an overall length of 18 inches. It was loaded with .243 caliber cartridges that were wrapped in black electrical tape. The experts determined that the shotgun was never fired during the incident, because the ammunition inside the shotgun was wrapped in black electrical tape, and had not been fired, and there was no indication that a firearm was discharged from inside of the Sebring.

There was however positive lead lifts obtained from the sunroof of the Sebring, believed to have come from the round fired by Arias, and the glass on the sunroof was broken. The testing around the sunroof revealed the following; that the underside of the back left corner of the sunroof tested positive for lead; that the exterior of the frame of the front left corner of the sunroof tested positive for lead; that the vehicle roof in the left corner where the sunroof closes tested positive for lead; and that the front left corner of the sunroof frame appeared to have a bullet defect. The bullet traveled back to front, starting from the glass in the sunroof to the front frame of the sunroof, and finally towards the front edge where the sunroof meets with the vehicle roof. The experts believe that what Pacheco and Tiffany heard, was the sound of the round that was fired by Arias from behind, as it impacted the sunroof, despite the statements provided by Pacheco and Tiffany to the contrary.

His criminal history revealed that Michael Pacheco was a 29 year old male, with numerous police contacts as of October 22, 2016. In 2006, he was indicted for the charges of "False Imprisonment" and "Battery Against a House Hold Member." In 2007, he was indicted for the charges of "False Imprisonment," "Aggravated Assault Against a House Hold Member" and "Violation of a Protective Order." He pled in both cases as charged in 2007, and received a conditional discharge on the two False Imprisonment charges, and a deferred sentence in the remaining charges. In a separate case in 2007 he was charged with "Battery Against a House Hold Member," "Use of The Telephone to Harass and Intimidate," "Possession of a Controlled Substance" and "Failure to Appear." He pled guilty to the Failure to Appear charge, and the remaining charges were dismissed. In 2016 he was charged with "Attempt to Commit a Felony, To Wit; Forgery of a Credit Card," and he pled guilty in 2017. In the current case he was charged with "Aggravated Assault Upon a Peace Officer," "Aggravated Fleeing," "Assault" and "Reckless Driving." In 2017 all charges were dismissed in a plea agreement. In the

agreement, Pacheco pled guilty in two separate cases, to one count in each case of "Receiving or Transferring a Stolen Motor Vehicle." On February 27, 2018, Pacheco absconded from probation, and a warrant has been outstanding for his arrest since that date, and up to the date of this report.

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 he reasonably believes that he 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; he 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 Officer Arias fired at Michael Pacheco, he was acting under the reasonable fear that he or another officer would be killed or seriously injured by the actions of Pacheco. Officer Arias was certainly surprised and horrified while looking down the barrel of a shotgun, as Pacheco starred and pointed it directly towards his face. The description of events as described by Arias showed Pacheco to be very deliberate in his actions with the shotgun, and Arias had not observed any struggle from within the vehicle. Arias would have had no other way of knowing that Pacheco had a shotgun in the car, but for Pacheco handling it as he described. Tiffany did not support Pacheco's version of events in that, she denied struggling with him to gain control of the shotgun, and she denied ever reaching for the shotgun. If Tiffany did not struggle with Pacheco over the shotgun, then Pacheco was not being truthful about trying to shoot himself. He also, would have had no reason to grab his shotgun while being pursued by police, and then to raise it up to the sunroof, other than to threaten Officer Arias, irrespective of pointing it at Arias.

Tiffany did not understand why Pacheco fled from police while "driving like a maniac" and then grabbing a shotgun while being pursued by police. Pacheco's sister, Lisa, may have provided an explanation for his irrational behavior when she stated that "he acts paranoid, like everyone is after him." Pacheco's actions, and his willingness to risk his own life, the life of Tiffany, and to place others in danger with no reasonable explanation, demonstrated his state of mind. He possessed two rifles and a shotgun, had over 400 rounds of ammunition while wearing body armor. This evidence suggests that the wearing of the body armor was more than just "being cool."

The evidence strongly suggests that Officer Arias fired in self-defense, and was reasonably concerned for himself, and for the other officers involved, in responding to the threat of deadly force or serious harm posed by Mr. Pacheco, and fired his weapon based upon those concerns. Officer Arias is