

May 12, 2020

Chief Michael Geier
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, New Mexico 87102

Re: Prosecutorial Review of the April 5, 2019 shooting
of Pedro Escalante by APD Officer James Sullivan.
DA Case #2019-03164-1
APD Case #19-0031543

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the April 5, 2019 shooting of Pedro Escalante by Albuquerque Police Department Officer James Sullivan. After a review of all available evidence, including police reports, witness interviews, lapel videos, surveillance video, photographs, a review of the evidence with Case Agent Michael Davis, and a visit to the scene of the shooting, I conclude that when Officer Sullivan discharged his weapon, he was acting under a reasonable belief that Pedro Escalante's actions posed a significant threat of death or great bodily harm to the officer himself and other responding officers. Accordingly, criminal charges against Officer James Sullivan are not warranted and the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

RELEVANT FACTUAL BACKGROUND

On April 2, 2019, Amber Trujillo called the Albuquerque Police Department (APD) and reported that her red 2011 Hyundai Sonata was stolen from her residence at 238 Tennessee NE in

Albuquerque, New Mexico. In a statement provided to investigators days later, Ms. Trujillo stated that on the morning of April 2, 2019, she had taken her two-year-old son Azzedeen to daycare in her red Hyundai. Ms. Trujillo returned to her apartment and took a nap. When she woke up at approximately 3:00 p.m., she left her apartment intending to drive to the daycare center to pick up her son. Ms. Trujillo discovered that her red Hyundai was missing from where she had parked it earlier. Without any other means of transportation, Ms. Trujillo asked her brother to drive her to the daycare center to pick up Azzedeen. On the way to the daycare center, Ms. Trujillo observed her stolen Hyundai in front of an apartment located at 537 Texas St. NE. Ms. Trujillo again called Albuquerque police, reported that she had found her car, and requested that a police officer meet her at the Texas St. address. Before police arrived, however, an Hispanic male pushed Ms. Trujillo out of the way, entered the red Hyundai and drove off. Ms. Trujillo stated that she observed the Hispanic male start her vehicle with a screwdriver. Ms. Trujillo knocked on the door of the apartment at 537 Texas St. and inquired about the man who just left in her car. Occupants of the apartment identified the man as Pedro Escalante, and one occupant stated that Mr. Escalante tried to sell him the red Hyundai.

On April 5, 2019, Ms. Trujillo again saw her stolen car on the streets of Albuquerque. Ms. Trujillo was on her way to dinner with her mother when she observed her stolen Hyundai in the parking lot of 1100 San Mateo Blvd. NE. Ms. Trujillo requested assistance from Albuquerque police and reported that she had once again found her stolen car and that she believed Pedro Escalante was driving her vehicle. Ms. Trujillo also reported that Mr. Escalante was armed with a handgun. Prior to police arriving, Mr. Escalante drove the red Hyundai out of the parking lot and fled towards Central Ave. Ms. Trujillo and her mother, Mary Trujillo, proceeded to follow the red Hyundai in Mary's white Hyundai Elantra. Ms. Trujillo reported to

APD dispatch that she was in pursuit of her stolen vehicle. Although APD dispatch instructed Ms. Trujillo to wait for police and to stop following the stolen car, Ms. Trujillo refused to stop and instructed her mother to keep following the red Hyundai. Mary Trujillo followed her daughter's instructions and continued to drive after the red Hyundai.

Despite several instructions to wait for police officers and to discontinue following the stolen vehicle, Ms. Trujillo became very uncooperative and belligerent with APD Communications and insisted that she was going to continue following her stolen car. Ms. Trujillo observed an APD patrol vehicle in the area of Central Ave. and San Pedro Dr. and tried to get the attention of the officers as she and her mother were driving by, but she thought the officers did not see her. Officers Hugo Garcia and Maxwell Smith were patrolling together in a marked APD vehicle and, in fact, observed two women waving their hands outside the windows of a white Hyundai Elantra which was proceeding east on Central Ave. The white Hyundai was following a red Hyundai Sonata and the two females were pointing at the red vehicle. Officer Garcia turned his vehicle around and followed the two vehicles east on Central Ave. past Louisiana Blvd. Officers Garcia and Smith observed the vehicles turn south on San Pablo St., and then observed a female passenger in the white Hyundai Elantra lean out of the rear passenger window and discharge a handgun three or four times in the direction of the red Hyundai Sonata as they drove south on San Pablo St. towards Zuni Rd. Officer Garcia reported that he could see the handgun in Ms. Trujillo's hand and could clearly see the "kick" each time Ms. Trujillo fired the gun. Officers Garcia and Smith engaged their emergency equipment and reported to dispatch what had occurred. Officers Garcia and Smith waited for additional APD officers to arrive and attempted to stop both vehicles. Mary Trujillo, driving the white Elantra stopped her vehicle upon seeing the police emergency equipment, but the driver of the red Hyundai continued to flee.

Amber Trujillo and Mary Trujillo were ordered out of their vehicle and were taken into custody. Once Amber and Mary Trujillo were placed in custody, Officer Garcia observed two-year-old Azzedeem standing up in the back seat of the white Elantra. Azzedeem was not in a car seat or restrained in any type of protective device. A handgun was recovered from the rear passenger door compartment of the white Hyundai Elantra.

Officer James Sullivan also received a call for service in reference to the theft of Amber Trujillo's vehicle. Officer Sullivan was informed by radio that the owner of the vehicle found her stolen car in a parking lot located at the intersection of Lomas Blvd. and San Mateo Blvd. N.E. Officer Sullivan met with Officer Maribel Molina and Sergeant Jude Lujan to formulate a plan prior to meeting with Amber Trujillo. Based on Amber Trujillo's statement to APD dispatch, Officer Sullivan was aware that Ms. Trujillo knew the name of the person that stole her vehicle and that the person who stole the car was in possession of a gun. Before Officer Sullivan was able to meet up with Ms. Trujillo, however, he heard over the radio that the driver of the stolen vehicle had driven away from the Lomas location and that Ms. Trujillo was following the stolen vehicle in a separate car. Eventually, Officer Sullivan learned that another officer had located the stolen vehicle and was in pursuit of the driver when that officer observed Ms. Trujillo fire gunshots at the stolen vehicle. Officer Sullivan heard that other officers conducted a felony stop of the vehicle from which Ms. Trujillo fired the gunshots and that the driver of the stolen vehicle fled the area. Officer Sullivan stated that he arrived on the scene of the felony stop and observed officers arrest Amber Trujillo and her mother Mary Trujillo. Officer Sullivan stated that as Ms. Trujillo was being placed in a patrol vehicle, she stated that she was only shooting at the driver of the stolen vehicle because the driver was shooting at her first. Officer Sullivan

stated that this information stuck with him and that he remained aware that the driver of the stolen vehicle was possibly armed with a deadly weapon.

While Officer Sullivan was still at the scene of the felony stop, he was informed that other officers located the stolen red Hyundai on Grove Street near Trumbull Avenue in southeast Albuquerque. Police dispatch requested additional officers in marked patrol vehicles to assist in a felony stop. Officer Sullivan proceeded to the area and positioned his patrol vehicle, along with several other patrol vehicles, just out of sight of the driver of the stolen Hyundai. When Officer Sullivan heard over the radio that Mr. Escalante was starting to drive away northbound on Grove St., Officer Sullivan drove behind the red Hyundai and engaged his emergency lights and siren. Immediately upon seeing the flashing lights, Mr. Escalante drove off at a high rate of speed. Other officers positioned to the north had earlier deployed spike belts at the intersection of Grove St. and Bell Ave SE. Mr. Escalante drove right over the spike belts, but continued through the intersection of Grove St. and Bell Ave., running a stop sign in the process. The red Hyundai crashed into a Toyota Camry that was driving westbound on Bell Ave. When the red Hyundai came to a stop, Officer Sullivan could clearly see Mr. Escalante through the open front window. Mr. Escalante had a frantic look on his face and made erratic movements as if he was looking for something on the passenger seat. Mr. Escalante then quickly exited the disabled vehicle and ran away from officers. Surveillance video captured Mr. Escalante fleeing the scene immediately after the crash. A screen shot of the surveillance video depicting Mr. Escalante after he crashed the red Hyundai is provided below.



Photograph of Pedro Escalante exiting the stolen Hyundai immediately following the crash at Grove St. and Bell Ave. S.E. Officer Sullivan is in pursuit.

Officer Sullivan was the first of a group of officers to pursue Mr. Escalante north on Grove St. Officer Sullivan stated that he drew his firearm because he recalled that Amber Trujillo had previously stated that Mr. Escalante was in possession of a firearm, and it was possible that when he observed Mr. Escalante searching for something on the passenger seat of the Hyundai that Mr. Escalante was grabbing a gun. While in pursuit of Mr. Escalante, Officer Sullivan gave orders for Mr. Escalante to stop and get on the ground. Officer Sullivan repeated the orders multiple times, but Mr. Escalante continued to run away. Officer Sullivan was gaining distance on Mr. Escalante and it appeared that Mr. Escalante was aware that Officer Sullivan was getting closer, because Mr. Escalante tried to evade the pursuing officer by darting left into the yard of a residence located at 335 Grove St. SE. Officer Sullivan observed that Mr. Escalante had a black object in his right hand. Officer Sullivan could not immediately identify the black object, but thought that it could possibly be a gun. Mr. Escalante ran up to a fence in the yard of the residence and Officer Sullivan observed Mr. Escalante make a weak attempt at jumping the fence, but the fence was too tall. Officer Sullivan gave another command for Mr. Escalante to get on the ground. Instead of obeying the officer's commands, Mr. Escalante paused for a moment and then turned

towards the officer with a handgun pointed directly at Officer Sullivan. Officer Sullivan stated that he and Mr. Escalante were seven to ten yards apart. Officer Sullivan observed the barrel of the handgun pointed directly at him and believed Mr. Escalante was going to shoot and kill him. Officer Sullivan believed that the short distance between the two men would not even require Mr. Escalante to aim the weapon to hit his target. Officer Sullivan stated that he feared for his life and believed that he would be killed if he did not shoot Mr. Escalante first. Officer Sullivan discharged his weapon three or four times at Mr. Escalante to stop his threatening actions. Officer Sullivan believed that he must have struck Mr. Escalante with the gunshots because Mr. Escalante laid himself face-down on the ground with his hands extended. Officer Sullivan observed a handgun next to Mr. Escalante. Officer Sullivan did not know whether Mr. Escalante dropped the gun when he was shot or whether he placed it on the ground after he was shot, but the gun was lying a couple of feet away.

Officer Carlo Franco also provided a statement to investigators related to his involvement in the incident. On April 5, 2019, Officer Franco was on a domestic violence call when he heard a “shots fired” call over the radio. Officer Franco learned that a female citizen, later identified as Amber Trujillo, found her stolen vehicle and discharged a handgun at the suspected car thief. After Ms. Trujillo was placed in custody for discharging a handgun, Officer Franco heard over the radio that the stolen vehicle, related to this incident, was found near his location. Officer Franco responded to a request for assistance in conducting a felony stop of the stolen vehicle. Officer Franco approached Grove St., near where the stolen vehicle was located, but stayed out of the line of sight of the stolen vehicle. Officers formulated a plan that certain officers would deploy spike belts on Grove St., other officers would attempt to conduct a felony stop of the stolen vehicle, and if the offender fled, the spikes would disable the vehicle.

Officer Franco stated that when the green light was given for officers to conduct the felony stop, Officer James Sullivan pulled his patrol unit around first and Officer Franco followed in his patrol vehicle. Both officers initiated all emergency equipment on their patrol vehicles. The driver of the stolen vehicle immediately tried to flee. Officer Franco stated that the spikes worked, but right after the stolen vehicle passed the spikes, "it T-boned another car" as it went through the intersection of Grove St. and Bell Ave. After the collision, the red Hyundai drifted sideways for a short distance and then came to a complete stop. The officers drove around the spike belts and then stopped their vehicles near the disabled Hyundai. Officer Franco observed the offender, later identified as Pedro Escalante, get out of the vehicle and run northwest away from officers and the crash site. Officer Franco observed Officer Sullivan get out of his vehicle. Officer Franco retrieved his rifle and followed Officer Sullivan in a foot pursuit of Mr. Escalante. Officer Franco observed Mr. Escalante run into a driveway past a truck and saw Officer Sullivan in pursuit. By the time Officer Franco reached the truck, he heard gunshots. As he ran around the truck, Officer Franco saw Mr. Escalante "turn abruptly towards" Officer Sullivan. Officer Franco approached Mr. Escalante, who was laying on the ground with his hands extended. Officer Sullivan was standing with his gun drawn over Mr. Escalante. Officer Franco observed a Glock handgun with extended magazine on the ground about one to four feet in front of Mr. Escalante. Officer Franco placed Mr. Escalante in handcuffs. As he placed Mr. Escalante in custody, Officer Franco observed a gunshot wound to Mr. Escalante's buttocks area. Officer Franco immediately called for Albuquerque Fire and Rescue and an ambulance to render aid to Mr. Escalante.

Both Officer Franco and Officer Sullivan utilized their on-body recording devices during the incident. Although neither camera captured Mr. Escalante's movements just prior to Officer Sullivan discharging his firearm, Officer Sullivan's lapel camera captured the foot chase, the loud and concise commands to Mr. Escalante to show his hands and get on the ground, audio of the shooting, and the

arrival of other officers to the scene. Officer Franco's lapel camera captured the scene immediately following the shooting. A Glock handgun with an extended magazine can be seen near Mr. Escalante's head. A methamphetamine pipe and lighter were also found in front of Mr. Escalante's hands after he fell to the ground. The lapel video also captured Mr. Escalante's injuries. Mr. Escalante was bleeding from the top of his head, an injury that according to investigators likely occurred during the vehicle collision prior to the foot pursuit. Mr. Escalante was also bleeding from his buttocks area.

While on the ground, Mr. Escalante made several statements. Without prompting, Mr. Escalante stated that he was not going to shoot, that he was just going to toss the gun, and that he was shot in the buttocks. Mr. Escalante also stated, "Those people shot at me", apparently referring to being shot at by Amber Trujillo. A screenshot from Officer Franco's lapel video immediately following the shooting is provided below. The screenshot shows the Glock handgun and the methamphetamine pipe on the ground. Close-up photographs of the Glock handgun and the methamphetamine pipe are also provided below.



Screenshot from Officer Carlo Franco's lapel video: Pedro Escalante face-down on the ground immediately after the shooting.