

January 5, 2021

Harold Medina, Interim Chief of Police
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, New Mexico 87102

Re: Prosecutorial Review of the March 30, 2020 shooting
of Valente Acosta-Bustillos by APD Officer Edgar Sandoval.
DA Case #2020-02217-1
APD Case # 20-0027606

Dear Chief Medina:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the March 30, 2020 shooting of Valente Acosta-Bustillos by Albuquerque Police Department Officer Edgar Sandoval. After a review of all available evidence, including multi-agency police reports, witness interviews, belt tapes, photographs, a review of the evidence with Primary Agency Case Agent Detective Aaron Brown, and a visit to the scene of the shooting, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Officer Sandoval was *not* acting under a reasonable belief that he faced the threat of great bodily harm as a result of Mr. Acosta-Bustillos' actions. Accordingly, criminal charges against Officer Sandoval 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 the morning of March 30, 2020, Abel Montaña called the Albuquerque Police Department (APD) and requested that officers conduct a welfare check on his fiancée's father, Valente Acosta-Bustillos. Mr. Montaña stated that it had been four to five days since any family member had seen or heard from Mr. Acosta-Bustillos, that his phone was turned off, and that he had not reported to work or picked up his latest check from his place of employment. Mr. Montaña added that this was unusual behavior for Mr. Acosta-Bustillos.

At approximately 12:58 p.m., APD Officers Edgar Sandoval and Joseph Bush were dispatched to 917 Edith Blvd. SE to conduct the welfare check. The officers were informed by APD dispatch that Mr. Acosta-Bustillos possibly had an outstanding arrest warrant. When the officers first made contact with Mr. Acosta-Bustillos, they had not yet confirmed whether there was an outstanding warrant, but the officers were very familiar with Mr. Acosta-Bustillos as a result of numerous prior police encounters. Officer Bush, in his voluntary interview, estimated that in the previous twelve months he and Officer Sandoval received between ten and fifteen separate complaints associated with Mr. Acosta-Bustillos. Mr. Acosta-Bustillos had been exhibiting paranoid behavior for many months, and in the few weeks prior to March 30th, the paranoid behavior had escalated to violent behavior. Veronica Ajanel, Mr. Acosta-Bustillos' daughter, had made numerous calls requesting assistance from APD. Ms. Ajanel lived with her father and would often call police when her father was not acting normal. Ms. Ajanel told officers that Mr. Acosta-Bustillos believed people were watching him and trying to hurt him. She stated that he was an alcoholic, that he drank every day, and that he recently started using drugs. During these police encounters, Mr. Acosta-Bustillos also acknowledged to officers that he used cocaine and methamphetamine.

According to Ms. Ajanel, Mr. Acosta-Bustillos would not sleep for days at a time because he believed that people were following him and that he would tie wires all over the house from one door to another door in order to alert him of any intruders coming onto his property. He believed that holes in the walls of his house contained cameras and that people were watching him. He would walk around the house with a powerful chemical that could burn your skin. Mr. Acosta-Bustillos also thought the neighbor was trying to break into his home and trying to hurt his daughter, so in an attempt to prevent an unauthorized entry into his home, Mr. Acosta-Bustillos tied cables to doorknobs in the house and in buckets of water, and he would plug the cables into electric wall sockets. During one police encounter, Mr. Acosta-Bustillos denied that he was trying to electrocute anyone; he just wanted to make it harder for someone to break into his home. Mr. Acosta-Bustillos acknowledged, however, that he was willing to hurt anyone who tried to hurt him or his daughter or tried to enter his home. Photographs of the inside of Mr. Acosta-Bustillos' home also showed that he had placed nails on the floors of certain rooms of his house with the sharp ends pointed upwards, apparently as a type of booby trap. During another police encounter, Mr. Acosta-Bustillos was found walking outside his house with a shovel. He stated that he believed there were people trying to get into his house and trying to hurt him.

Some complaints came from Mr. Acosta-Bustillos' neighbors. The officers responded to one complaint where Mr. Acosta-Bustillos shut off the electric power to the neighbor's house. The officers were unable to make contact with Mr. Acosta-Bustillos on this occasion. In early March 2020, the same neighbor called police and complained that Mr. Acosta-Bustillos "pistol-whipped" him. The neighbor told the officers that he was walking near his home when Mr. Acosta-Bustillos came out of the alley and "blind-sided" him, hitting him on the back of the head with a gun, and knocking him to the ground. Officers Sandoval and Bush quickly responded to the call and found Mr. Acosta-Bustillos near the alley where the neighbor was attacked. The officers found Mr. Acosta-Bustillos in possession of a hammer,

but they never found a gun. The officers asked the neighbor if it was possible that Mr. Acosta-Bustillos used a hammer to commit the battery, but the neighbor was certain that he was hit with a gun and not a hammer. The neighbor stated that after getting hit in the head and knocked to the ground, Mr. Acosta-Bustillos “cocked” the gun, pointed it right at the neighbor’s face, and threatened to shoot and kill him. The neighbor stated that he got a very good look at the gun, describing it as a black and silver gun with scratches on the slide. Mr. Acosta-Bustillos was arrested and charged with aggravated battery with a deadly weapon and aggravated assault with a deadly weapon.

Also over the past year, Officers Sandoval and Bush attempted to get Mr. Acosta-Bustillos medical and psychological assistance on numerous occasions. On at least two separate occasions, the officers took Mr. Acosta-Bustillos to the University of New Mexico Mental Hospital (UNMH) for emergency mental health evaluations. Following these visits to UNMH, however, the officers received subsequent calls to Mr. Acosta-Bustillos’ residence with complaints that he was continuing to exhibit paranoid behavior. The officers learned that the medical professionals believed that Mr. Acosta-Bustillos’ behavior was drug related, so there was not much they could do for him. On at least one occasion, Officer Sandoval called out APD’s mobile crisis team (MCT), which employs a mental health clinician and deals with people that are suffering from mental illnesses. The MCT provides resources and tries to maintain contact with the subjects. In this case, however, the MCT representative told Officer Sandoval that because Mr. Acosta-Bustillos paranoia was the result of his drug abuse, there was not much they could do for him. The MCT representative advised Officer Sandoval to take Mr. Acosta-Bustillos to Lovelace Hospital rather than UNMH, because unlike UNMH, Lovelace will not turn away patients that are using drugs. According to the MCT representative, Lovelace Hospital will hold the patient until the drugs leave the patient’s system and then provide a mental health evaluation. Following this advice from the MCT representative, Officer Sandoval took Mr. Acosta-Bustillos to Lovelace

Hospital. After this trip to the hospital, the officers had not heard from Mr. Acosta-Bustillos until early March when the neighbor complained that he was assaulted by Mr. Acosta-Bustillos.

When Officers Sandoval and Bush made contact with Mr. Acosta-Bustillos on March 30th, he was apparently doing some yardwork outside his residence. Mr. Acosta-Bustillos was wearing gloves and holding a full-sized shovel with a wooden handle and square blade. Although Mr. Acosta-Bustillos could speak English, his first and preferred language was Spanish, so Officer Sandoval spoke to Mr. Acosta-Bustillos in Spanish during the entire encounter. Officer Sandoval told Mr. Acosta-Bustillos that the officers were just checking on him because they received a call that he had not been to work. Mr. Acosta-Bustillos told the officers that he had not been to work because he had been fired from his job. Investigators later learned that Mr. Acosta-Bustillos just stopped reporting to work, and that he had not been fired. According to Officer Sandoval, Mr. Acosta-Bustillos was obviously not happy and acted very disturbed. After a short exchange, Mr. Acosta-Bustillos walked away from the officers and went to the front door of the residence. Officer Sandoval followed Mr. Acosta Bustillos to the front of the residence and continued to talk to him. Officer Sandoval surmised that Mr. Acosta-Bustillos was upset based on his observations that Mr. Acosta-Bustillos was clenching his jaw and the muscles on the side of his head would contract and release.

Officer Sandoval and Mr. Acosta-Bustillos continued talking, primarily about prior contacts and the visits to the different hospitals. Mr. Acosta-Bustillos complained that the visits did not help him. While Officer Sandoval was interacting with Mr. Acosta-Bustillos, he asked Officer Bush to check whether Mr. Acosta-Bustillos had any outstanding warrants. Officer Bush confirmed through NCIC that Mr. Acosta-Bustillos had an outstanding felony arrest warrant connected to the aggravated battery with a deadly weapon charge. Officer Bush relayed this information to Officer Sandoval. Officer Sandoval informed Mr. Acosta-Bustillos about the warrant, but Mr. Acosta-Bustillos stated that he had not missed

any court dates and denied that there was a warrant out for his arrest. Mr. Acosta-Bustillos acknowledged, however, that he had received some court papers, but he believed they were fake. Officer Sandoval told Mr. Acosta-Bustillos that he was going to have to come with the officers. As soon as Officer Sandoval told Mr. Acosta-Bustillos that he was going to be arrested, Mr. Acosta-Bustillos immediately tried to run into the house and shut the front security door behind him, but Officer Sandoval was close enough to where he was able to catch the door prior to Mr. Acosta-Bustillos closing it. The officers entered the residence in pursuit of Mr. Acosta-Bustillos. Because Mr. Acosta-Bustillos still had the shovel with him, Officer Sandoval drew his firearm, holding it at the low-ready position, and Officer Bush drew his Taser. Officer Bush ordered Mr. Acosta-Bustillos to put the shovel down, but Mr. Acosta-Bustillos took a two-handed grip of the shovel and raised it to his right side, with the metal blade of the shovel off the ground. Mr. Acosta-Bustillos backed his way further into the house and the officers continue to follow him. Mr. Acosta-Bustillos then raised the shovel as if he was going to swing it at the officers like a baseball bat. At one point, Mr. Acosta-Bustillos told the officers to shoot him. The officers continue to give verbal commands for Mr. Acosta-Bustillos to stop and drop the shovel. Officer Bush again threatened to use his taser on Mr. Acosta-Bustillos unless he dropped the shovel. Officer Sandoval stated that he continued to follow Mr. Acosta-Bustillos through the house and continued to keep him in sight, because Officer Sandoval believed that Mr. Acosta-Bustillos may have had a firearm in the house based on the prior incident with the neighbor. Officer Sandoval did not want Mr Acosta-Bustillos to retrieve a firearm and start shooting.

Mr. Acosta-Bustillos continued to walk away from the officers and went into a dark bedroom towards the back of the house. The officers followed him into the room. Officer Bush again gave a command for Mr. Acosta-Bustillos to drop the shovel or get tased. Mr. Acosta-Bustillos continued to argue with the officers in Spanish. In an attempt to prevent Mr. Acosta-Bustillos from continuing to flee

and from raising the shovel again, Officer Bush tased Mr. Acosta-Bustillos. The taser, however, failed to have any effect on Mr. Acosta-Bustillos. The room was dark, but Officer Bush could see Mr. Acosta-Bustillos walk over towards the bed and lean over a little bit. Officer Bush did not know if Mr. Acosta-Bustillos was grabbing a weapon or picking up the shovel, but he could see him bend over.

Seconds later, Mr. Acosta-Bustillos raised the shovel to his right side with a two-handed grip and swung the shovel in a downward motion toward Officer Sandoval, striking the edge of the bed. When Mr. Acosta-Bustillos swung the shovel, Officer Sandoval backed out of the bedroom doorway. Mr. Acosta-Bustillos charged through the doorway and at the officers. He again raised the shovel in a clear attempt to swing the shovel at the officers a second time. Officer Sandoval believed that Mr. Acosta-Bustillos was going to hit him in the head with the blade of the shovel. Knowing the damage that the blade of a shovel could cause if it hit him in the head, Officer Sandoval fired his weapon at Mr. Acosta-Bustillos. Officer Sandoval fired his weapon twice, but Mr. Acosta-Bustillos did not go down, so Officer Sandoval fired several more times until Mr. Acosta-Bustillos turned his body and stopped his aggressive actions. Mr. Acosta-Bustillos walked back toward the laundry room and sat down on the ground. Officer Sandoval followed Mr. Acosta-Bustillos and continued to give him commands to get on the ground and stay on the ground. Paramedics were called and Mr. Acosta-Bustillos was transported to the hospital.

Both Officers Sandoval and Bush had their body worn cameras on during the entire encounter with Mr. Acosta-Bustillos. Screen shots from Officer Sandoval's lapel video showing Mr. Acosta-Bustillos swinging the shovel at officers are provided below.



Mr. Acosta-Bustillos swinging a shovel at officers inside the back bedroom.



Mr. Acosta-Bustillos charging at officers through the bedroom doorway and swinging the shovel a second time.

ADDITIONAL CONSIDERATIONS

Following the shooting, Mr. Acosta-Bustillos was transported to the hospital where emergency surgery was performed and multiple units of blood were transfused. Mr. Acosta-Bustillos died during surgery. An autopsy was performed, which revealed gunshot wounds to Mr. Acosta-Bustillos right arm

and torso. One gunshot wound damaged the liver, stomach, small intestine and multiple blood vessels, causing bleeding in the abdomen. Mr. Acosta-Bustillos also received two gunshot entry wounds to his right arm. According to the toxicology report, no drugs were detected in Mr. Acosta-Bustillos' system.

At the time of his death, Mr. Acosta-Bustillos had three criminal charges pending, both related to the aforementioned incident with his neighbor. On March 8, 2020, Mr. Acosta-Bustillos was charged with Aggravated Battery with a Deadly Weapon, Aggravated Assault with a Deadly Weapon, and Battery.

LEGAL ANALYSIS

The question presented in this case is whether Officer Edgar Sandoval, at the moment he fired his weapon, was acting under a reasonable belief that Valente Acosta-Bustillos presented a threat of death or serious harm? Under New Mexico law, a peace officer while in the performance of his or her lawful duties may justifiably use deadly force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. § 30-2-6 NMSA 1978. An officer who uses deadly force need not prove that a suspect actually posed a threat of death or great bodily harm to another; he need only offer evidence that the suspect's actions raise the possibility of death or great bodily harm. Once an officer who uses deadly force raises the possibility that a suspect's actions posed a threat of death or great bodily harm, the burden is on the prosecution to prove beyond a reasonable doubt that the use of deadly force was *not* reasonable. This inquiry is an objective standard, viewed from the perspective of the officer at the time of the incident with the understanding that officers often must make split-second decisions about the amount of force that is necessary in a particular situation under circumstances that are tense, uncertain, and rapidly evolving. It requires only a finding that a reasonable person in the same circumstance as the officer would have come to the same conclusion that the use of force was necessary because of the threat of death or great bodily harm posed by the suspect.

State v. Mantelli, 2002-NMCA-033. If the jury has a reasonable doubt as to whether the shooting was justifiable, the jury must find the officer not guilty. Uniform Jury Instruction-Criminal 14-5173 NMRA.

Evidence shows that on March 30, 2020, Officer Edgar Sandoval was acting in the performance of his lawful duties when he and Officer Joseph Bush responded to a call for service to conduct a welfare check on Valente Acosta-Bustillos. When officers made contact with Mr. Acosta-Bustillos, he was in possession of long-handled shovel with a square, metal blade. Although the officers told Mr. Acosta-Bustillos that they were there only to conduct a welfare check, it was obvious to the officers that Mr. Acosta-Bustillos was upset and disturbed. While talking to Mr. Acosta-Bustillos, the officers learned that Mr. Acosta-Bustillos had an outstanding felony arrest warrant. Officer Sandoval informed Mr. Acosta-Bustillos that he would be taken into custody. Initially, Mr. Acosta-Bustillos denied that he had an arrest warrant, and then he tried to flee from the officers and get inside his house. Officer Sandoval was aware that over the past year, Mr. Acosta-Bustillos had been exhibiting paranoid behavior and that this behavior had escalated into violent behavior. Officer Sandoval was also aware that Mr. Acosta-Bustillos may have had access to a firearm, based on the neighbor's complaint that Mr. Acosta-Bustillos used a firearm to commit an aggravated battery. Based on this information and the fact that Mr. Acosta-Bustillos had an active felony warrant, the officers pursued Mr. Acosta-Bustillos into the residence. Commands were given to Mr. Acosta-Bustillos in both English and Spanish to stop and drop the shovel. Mr. Acosta-Bustillos never showed any signs of complying with the officers' commands. Instead, he raised the shovel in a threatening manner. The officers displayed an array of force, with Officer Sandoval armed with his handgun and Officer Bush armed with his taser. Officer Bush gave additional commands for Mr. Acosta-Bustillos to stop and drop the shovel. Mr. Acosta-Bustillos refused to comply with the commands. Officer Bush deployed his taser, but the taser was ineffective and failed to stop Mr. Acosta-Bustillos' actions. Mr. Acosta-Bustillos swung the shovel at the officers,

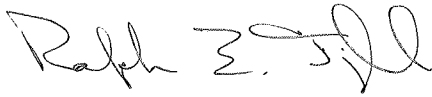
striking the bed in front of the officers. The officers backed out of the bedroom in which Mr. Acosta-Bustillos had fled, but Mr. Acosta-Bustillos charged at the officers with the shovel raised in a threatening manner. Officer Sandoval then fired his weapon multiple times until Mr. Acosta-Bustillos stopped his aggressive actions.

Based on the statement provided, Officer Edgar Sandoval believed, at the moment he discharged his weapon, that Mr. Acosta-Bustillos posed a threat of great bodily harm to himself and Officer Bush. Under the circumstances, Officer Edgar Sandoval would be entitled to raise the defense of Justifiable Homicide by Public Officer. § 30-2-6 NMSA 1978.

CONCLUSION

To convict at trial, the prosecution would have to prove that Officer Edgar Sandoval's use of force was *not* reasonable. The evidence establishes that the officer was acting out of a reasonable fear for the safety of himself and Officer Bush, and could therefore successfully argue that a decision to use deadly force was justifiable under § 30-2-6 NMSA 1978. A jury, confronted with substantial evidence that Mr. Acosta-Bustillos possessed a tool that was capable of inflicting dangerous wounds or great bodily harm, that he was uncooperative and disregarded officers' orders to get on the ground and drop the tool, that he twice attempted to use that tool to hit the officers, and that less-lethal force failed to stop his aggressive actions, would be required to acquit the officer for the shooting. Moreover, the absence of any evidence to prove beyond a reasonable doubt that Officer Sandoval's actions were not reasonable under the circumstances, there is no reasonable likelihood of a successful prosecution. No charges will be filed against APD Officer Edgar Sandoval. The case will be closed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ralph E. Trujillo". The signature is fluid and cursive, with the first name "Ralph" being the most prominent.

Ralph E. Trujillo
Special Prosecutor
Second Judicial District Attorney's Office

Cc: Raul Torrez, District Attorney, Second Judicial District
Chuck Barth, Chief Deputy District Attorney, Second Judicial District
Detective Aaron Brown, Primary Agency Case Agent, Albuquerque Police Department
John D'Amato, Attorney for APD Officer Edgar Sandoval
Mark Caruso, Attorney for the family of Valente Acosta-Bustillos