

February 25, 2022

Chief Harold Medina
Chief of Police
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, NM 87102

Prosecutorial review of the incident on October 16, 2020 during which Albuquerque Police Department Officers Michael Engh and Paul Durham fired shots at Jason Galliard.

APD # 20-0083768. DA case# 2020-05880-1

Dear Chief Medina:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review, for potential prosecution, the October 16, 2020, incident in which Officers Michael Engh and Paul Durham fired shots at Jason Galliard. After a review of all available evidence, including police reports, witness statements, videos, photographs, and a visit to the scene of the incident, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Albuquerque Police Department Officers Michael Engh and Paul Durham were not acting under the reasonable belief that they or others faced the threat of death or great bodily harm as a result of Galliard's actions. No charges will be filed: the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

RELEVANT FACTS

Around 5:00 am on October 16, 2020, residents of the Imperial Inn, located at 701 Central Ave. NE heard shots fired in room 128, where Jason Galliard was staying. Jimmy Wiggins, who was in the room directly above, walked by room 128 on his way to the office. He

saw a bullet hole in one of the windows. He went to the office and told Joan Tarango, the manager and the two of them returned to room 128. Joan Tarango knocked, and hearing no answer tried to open the door with a key, but it wouldn't open. Tarango and Wiggins heard a voice inside the room say "Get away from here before I fuck you up." The two returned to the office, but Wiggins returned to his room to retrieve his phone, and as he passed by room 128 he heard Galliard say "Get the fuck out of here before I shoot you."

Wiggins returned to the office where he met Rachel Bahe, Galliard's girlfriend, who told him and Tarango that she'd tried to take Galliard food, but he didn't answer her knock. She also said that Galliard was using drugs, had spent 20 years in prison, and said he would die before going back. Around this time, another the firing of another shot was heard in room 128. Tarango then called the police.

The first police officers to arrive talked to Tarango and Wiggins, established Galliard's identity, and realizing that they might be dealing with an armed stand-off, notified their superiors so the necessary resources could be brought in to the scene. Additional officers established a perimeter, the SWAT Team was mobilized, a Crisis Negotiation Team arrived, and paramedics were sent to the scene to be on standby. This was the beginning of what would be an eight-hour stand-off with Galliard.

Officers at the Real Time Crime Center quickly discovered that Galliard had an extensive criminal record, including arrests for robbery, aggravated burglary and aggravated battery. Officers at the scene instructed Tarango to call the rooms around 128 and ask the residents to stay in their rooms. As the scene was being secured, another gun shot was heard from room 128. Galliard called the motel office to say that he was going to kill himself. Numerous calls, texts, voice messages, and loud speaker invitations to talk went unanswered. One of the crisis negotiators talked with Rachel Bahe, who told him that Galliard had vowed not to return to prison, that he hated cops, and he would shoot it out with police. After hours of no response, a flash bang device was set off in front of the room in an effort to get Galliard's attention. He responded by firing a shot, but still maintained his silence.

Around 2:00 pm, six hours into the stand-off, a remotely controlled robot was sent to the room. The robot was able to push aside the drapes and the mattress that Galliard had placed in front of the window. Galliard fired a single shot but there was no damage to the robot. It took

over an hour for the robot to clear the mattress and bed frame blocking the window, and Galliard threw additional material into the gap as the robot worked. Eventually the robot cleared a portion of the barricade and the officers could see Galliard in the bathroom at the back of the apartment. It was decided to introduce irritating gas into the apartment. The gas was sent in by the robot and began to fill the room.

Within minutes of the introduction of the gas, Galliard appeared at the window, holding a pistol. He climbed out of the window and ran east, toward the opposite side of the motel, which held some unevacuated residents. In a lightning quick series of events, Officer Nathan Cadroy, armed with a 40 millimeter less lethal launcher, fired a large hard projectile at Galliard, hitting him in the back of the leg. Officer Michael Engh fired once, at which point Galliard dropped, as he started to rise, gun in hand, Officer Paul Durham fired one shot. One of the shots missed, the other grazed Galliard on the chest, causing a superficial wound. As a result of the impacts, Galliard fell onto the sidewalk, rolled onto his back, put the pistol to the side of his head and pulled the trigger, killing himself.

In later interviews, the officers explained their decision to fire at Galliard. Officer Engh said, "I was concerned that he was going to attempt to shoot at officers and attempt to harm them or kill them or start shooting at the, the citizens in that, in that hotel." Officer Durham said, "The suspect began posturing up again trying to get to his feet to possibly shoot at me or other officers."



Officers' positions and line of fire. Officer Engh: red line, Officer Durham: yellow line.

Although Galliard had fallen and stopped moving, he still had the pistol in his hand, so the robot was sent in to remove it before officers approached. The firearm was a Taurus .45 caliber semi-automatic pistol, in the locked back position, indicating that Galliard had used his last bullet on himself. Rescue personnel were called in, but Galliard was pronounced dead at the scene.



Taurus pistol recovered at the scene

The crime scene was processed: nine shell casing were recovered, one each from Officers Engh and Durham rifles, and seven .45 caliber casings fired by Galliard: one from the sidewalk near his body, and six from inside his apartment. A series of bullet holes were found in the apartment, most fired into the bathroom mirror by Galliard.

Galliard's mother, Cheryl Hill, was located living in Los Lunas. She told them that he had recently been released from prison in Kansa after serving five years for domestic violence. She said he had come to live with her in July 2020, and was already using methamphetamine when he arrived. She indicated that while he had no formal mental health diagnosis, she always suspected he was schizophrenic, or possibly bipolar. She also said that for the last three weeks before his death he had been telling her that he wanted to die by police shooting, and that a few weeks earlier, he had threatened her with a pistol while on methamphetamine.

Galliard's criminal history included arrests in Texas and Kansas going back to 1996, for a variety of crimes, most notably burglary, forgery, and aggravated battery, culminating in a conviction for domestic violence and violation of a protection order that resulted in a prison sentence in Kansas.

The autopsy of his body reveled two wounds: a superficial wound to the chest which caused only minor injury, and a contact wound to the right side of the head which caused death. The manner of death was found to be suicide. The analysis of his blood found methamphetamine, amphetamine, fentanyl, and, marijuana. The methamphetamine was at the level that can cause confusion and hallucinations and lead to violent and irrational behavior.

LEGAL ANALYSIS

APD Officers Michael Engh and Paul Durham were acting in the line of duty, attempting to arrest Jason Galliard for the Aggravated Assault with a Deadly Weapon he had committed earlier that day against the residents of the apartments, and therefore would be entitled to raise the defense of Justifiable homicide by public officer, NMSA 1978, Section 30-2-6, under which a peace officer may justifiably use deadly physical force when they believe they or another is threatened with serious harm or deadly force. Under New Mexico law, the officer who uses deadly force need not prove that the suspect posed a threat of death or great bodily harm to another; he need only offer evidence that raises the possibility. 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 in difficult situations about what type of force is necessary. 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. 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 any reasonable doubt as to whether the killing was justifiable, they must acquit the officer, Uniform Jury Instruction-Criminal: 14-5173 Justifiable Homicide.

CONCLUSION

The question presented in this case is whether, at the moment Officers Michael Engh and Paul Durham fired, were they acting under a reasonable belief that they or others were threatened with death or serious harm? Evidence clearly shows that Galliard fired numerous rounds at a variety of targets over a long period, and threatened to shoot motel residents, and to shoot it out with police. At the moment the officers fired, Galliard, gun in hand, was running toward the part of the motel still occupied by residents, and directly toward officers tasked with stopping him, presenting a clear and imminent threat of deadly force, to which Officer Michael Engh and Paul Durham responded with deadly force. And in any event, the officers' use of deadly force did not

kill Galliard: he died by his own hand. Therefore, no charges will be filed against Albuquerque Police Department Officers Aaron Engh and James Jacoby. The case will be closed.

Very truly yours,



Michael Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective Aaron Brown, Albuquerque Police Department

Luis Robles, Attorney for Officer Durham

Taylor Rahn-attorney for Officer Engh

Cheryl Hill- Jason Galliard's mother