

June 16, 2022

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

Prosecutorial review of the incident on August 10, 2020 during which Albuquerque Police Department Lieutenant Jose Sanchez fatally shot Jose Vallejos.

APD # 20-0063703. DA case# 2020-04163-1

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 August 10, 2020, incident in which Lieutenant Jose Sanchez fatally shot Jose Vallejos. 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 Lieutenant Jose Sanchez was not acting under the reasonable belief that he or others faced the threat of death or great bodily harm as a result of Vallejos' 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

The incident on August 10, 2020, which resulted in the death of Jose Vallejos, was the culmination of an ongoing dispute between him and his family and their neighbors, Freddie and Jacklyn Gomez. The dispute started many months earlier when Freddie Gomez whistled while

in the yard; he said he was whistling for his dog, but Vallejos' son claimed Gomez had whistled at his girlfriend. The two families had numerous confrontations after this incident, during which Jose Vallejos often threatened to shoot the Gomez family members. On August 10, 2020, Vallejos' daughter drove aggressively toward Freddie and Jacklyn Gomez as they were driving home from the store. This led to a confrontation in the street between Freddie Gomez and Jose Vallejos. Freddie challenged Jose to a fistfight to settle things, but Jose declined, and said, "Fuck you, I'm gonna shoot you in the head and I'm gonna kill you." When he heard that, Freddie walked back into his house.

Later that evening, the Gómezes hosted a party for their parents' 40th anniversary. They invited an old friend, Joshua Giacci, who attended with his girlfriend Teresa Gomez (Jacklyn's sister), and his daughter and son. As the party wound down toward dusk, Freddie and Jacklyn Gomez walked out with their son, Joseph Salazar, Joshua Giacci, his children and Teresa Gomez. As they walked out, they noticed gasoline on the ground near a car parked in the driveway. Freddie went inside to get some tools to try to find and fix the gas leak, leaving Joshua Giacci standing in the driveway. That's when Jose Vallejos appeared in his driveway, intoxicated, and pointed an AK47 style rifle at Giacci. He called Joshua Freddie and said, "I'm gonna fucking kill you, I'm gonna fucking murder you, you fucking piece of shit." Jacklyn and Joseph ran back into her house. Joshua's nine-year-old daughter, already in the car, dropped down onto the floor in the back seat. Joshua dropped down behind his car, called 911 and told them what was happening.

Joshua Giacci was a Probation and Parole Officer, and a certified law enforcement officer and therefore was carrying a 9 mm. pistol, but he left it holstered, afraid of starting a shootout with his daughter trapped in the car, particularly since he knew that Vallejos' rifle had the type of large bullets that can pass through a car. Instead, he waited until Vallejos turned his head, then ran into the house, hoping to pull Vallejos attention away from the car in which his daughter was hiding. Emma Vallejos, Jose's wife, then appeared. She took the rifle from Jose and drove off hurriedly, returning moments later without it. Her effort to disarm him failed however, because Jose then went into his house and armed himself with a handgun.

In the meantime, three Albuquerque Police Department officers were dispatched to the call: Lieutenant Jose Sanchez, Officer Cameron Walker, and Officer Alexandria Janopoulos.

The three parked down the street and approached the scene on foot. They could hear Vallejos yelling but couldn't make out the words. In the gathering darkness, they saw him step out of his door, into the driveway, still yelling at Joshua Giacci, who had come back out when he realized the police were coming.

When Giacci saw the pistol in Vallejos' hand, he told him, "Police! Drop the gun! Get on the ground!" Giacci was still on the phone with the 911 operator, who told him to stop issuing commands and let the arriving officers take over. Lt. Sanchez called out to Vallejos, "Albuquerque Police! You need to drop the gun! Get on the ground!" Vallejos did not respond. Then Officer Janopoulos commanded Emma Vallejos to drop her phone and raise her hands, which she did. Officer Janopoulos then called out to Jose Vallejos, "Put your hands up, sir! Albuquerque Police Department! Vallejos wife, Emma chimed in "Get on the ground. Don't be stupid!" Vallejos ignored them all, instead he raised the pistol and approached Giacci, aiming the gun directly at Giacci's head, who dropped down behind a car. At that moment, Lt. Sanchez who was about 75 yards away, saw the gun pointed at Giacci, called out "I see a firearm.", and fired a single round from his rifle: because as he would later say, "...it was obvious that he presented a clear and immediate, uh, threat to the life of the 911 caller (Giacci)." Vallejos did not react or drop the gun, so Lt. Sanchez fired a second shot which caused Vallejos to fall down.

When Vallejos dropped, he fell behind some bushes which made it impossible for the officers to see if he was still armed or moving, so they quickly walked Emma Vallejos out of the area, got the child out of the car and waited for backup. When other officers arrived, they called to Vallejos who did not move or respond. They then set off a flash/bang device nearby to see if he reacted, but when he didn't, they moved in and found him face down. They pulled him out from behind the bushes so the paramedics could attend to him. As they moved him, they found a Smith and Wesson, 40 caliber, semiautomatic pistol underneath his body. The pistol was loaded with one cartridge in the chamber and four cartridges in the magazine. The paramedics moved in and determined that Vallejos was dead.



Smith and Wesson pistol

Emma Vallejos was interviewed at the scene; she confirmed the lengthy animosity between her husband and the Gomez family had resulted in a confrontation between her husband

and Freddie Gomez earlier that day in the street. She said she had seen Jose with a pellet rifle earlier in the evening and insisted that when she returned, just before the shooting, Jose was holding a pellet gun. She did, however, indicate that Jose Vallejos owned a pistol.

The autopsy found that Vallejos had died of a single gunshot wound to the chest. Tests of his blood indicated an extremely high level of alcohol in his system 0.192 g/100 ml, or over three times the level at which New Mexico law considers an individual to be too impaired to drive.

LEGAL ANALYSIS

APD Lt. Sanchez was acting in the line of duty, attempting to arrest Jose Vallejos for the Aggravated Assault with a Deadly Weapon he had committed earlier against Joshua Giacci, 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 Lt Sanchez fired, was he acting under a reasonable belief that Joshua Giacci or others were threatened with death or

serious harm? Evidence clearly shows that Vallejos was pointing a pistol at Joshua Giacci after repeatedly threatening to kill him. At the moment Lt. Sanchez fired, Vallejos, gun in hand, was approaching Giacci, arm extended, aimed at Giacci, presenting a clear and imminent threat of deadly force to which Lt Sanchez responded with deadly force. Therefore, no charges will be filed against Albuquerque Police Department Lt. Jose Sanchez. The case will be closed.

Very truly yours,



Michael Cox

Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District

Detective David Gonzales, Albuquerque Police Department

Luis Robles, Attorney for Lieutenant Jose Sanchez

Emma Vallejos: Jose Vallejos' wife