

November 17, 2022

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

Re: Prosecutorial Review of the October 12,
2020 fatal shooting of Matthew Montoya, APD
case # 20-0082480, DA case # 2020-05879-1

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 fatal shooting of Matthew Montoya which occurred on October 12, 2020. After a review of all available evidence, including police reports, witness statements, laboratory and medical reports, audio recordings, surveillance video, lapel video, photographs, search warrants, a review of the evidence with Case Agent Tod Babcock and a visit to the scene of the shooting, I conclude that it is not possible to prove beyond a reasonable doubt the Officers Koury Church, Tyler Rahn, Geoff Stone, Chris Maes, and Sergeant Eric Brown were not acting under a reasonable belief of death or great bodily harm to themselves or others as a result of Matthew Montoya'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.

Statement of Facts

On October 12, 2020, at 8:45 in the morning Matthew Montoya shot his estranged wife Eva Montoya in the parking lot of 1420 San Pedro NE. Matthew Montoya approached Eva as she left church and was heading for her car. After a short exchange of words Matthew produced a handgun and shot Eva four times. Eva died a short time later as rescue administered emergency treatment. Eva's murder was witnessed by several churchgoers who like Eva had just left church. Churchgoer Damian Lopez witnessed the shooting, was able to identify Matthew as well as his silver 2001 Dodge Caravan.

Matthew fled the area and drove to Holy Child Catholic School in Tijeras NM., where he attempted to remove his nine year old daughter from school. School officials aware of custody issues between Matthew and Eva refused to release the child to Matthew's custody. Surveillance footage of Matthew and the Dodge van at the school was viewed by Albuquerque Police Department Detective T Benavidez. This footage was forwarded

to all police units now looking to locate and arrest Matthew Montoya.

At 9:43 about one hour after Matthew shot Eva he drove to the home of Robert Wall located at 3724 Chelwood NE. Robert Wall was a good samaritan who helped outcasts in the area by providing them with food and temporary shelter. Matthew Montoya was one of these individuals. Matthew told Robert Wall that he wanted to get back with his wife. At the time of this conversation Robert was unaware that about an hour earlier Matthew Montoya had murdered his wife. Matthew Montoya backed his van into Robert Wall's driveway and began calling and texting friends as well as his adult daughter. The basic theme of Robert's texts and calls were of fatalistic nature telling people to pray for him and that the police were coming after him and that the police are going to kill him. At about noon detectives were able to "ping" Montoya's phone and locate him parked in the Robert Wall's driveway. After repeated requests by the Investigative Support Unit (ISU) yelling to Montoya that he was under arrest and to come out of the van, Mathew Montoya armed himself with a handgun and pointed it at officers who were just ten yards away. ISU detectives then responded with a volley of rifle fire. Matthew Montoya was shot one time and died at the scene.

Matthew was found dead from a gunshot wound to his head. He was positioned on the drivers side of the van behind the drivers seat with his index finger still on the trigger of the gun. The gun was loaded with the hammer cocked back in the firing position. (Hector Chavez Major Crime Scene Report.) Five officers came forward as having fired their rifles at Matthew Montoya, Officer Koury Church, Officer Tyler Rahn, Sgt. Eric Brown, Officer Geoff Stone, and Officer Chris Maes. All stated that they fired after first being threatened by Matthew Montoya pointing a handgun at them or at their fellow officers.

Legal

Officers Church, Rahn, Brown, Stone, and Maes were in the process of arresting Matthew Montoya for the murder of his estranged wife Eva Montoya. This would allow the five officers to raise the defense of justifiable homicide by a public officer, NMSA 1978 Section 30-2-6(A)(2). This section of the criminal code allows a peace officer to use deadly force when committed in overcoming actual resistance to the execution of a legal process or other legal duty.

Under New Mexico law an officer 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 of death or great bodily harm. The burden then falls on the prosecution to prove beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was justified, they must acquit the officer. The reasonableness of an individual officer's action is an

objective analysis evaluated from the perspective of the officer at the time of the incident, and is necessarily a factual inquiry, State v. Mantelli, 2002 NMCA-033, 131 N.M. 692.

Analysis

Five officers came forward as having fired their rifles at Matthew Montoya. Officer Koury Church, Officer Tyler Rahn, Sgt. Eric Brown, Officer Geoff Stone, and Officer Chris Maes. All five gave multiple statements and diagrams regarding the events of the shooting. Each of the officers stated that they fired as result of Matthew Montoya first pointing a pistol at the individual officer or their fellow officers.

Officer Koury Church: It was about this time that I remember seeing the gun for the third time. Um this time it was very different. Like I said the first two times I just saw the gun briefly...Um the third time when I saw the gun, Mr. Montoya was pointing the gun....it was pointing out the windshield towards Officer Rahn and Detective Stone....Um I remember actually anticipating to see and hear gunfire from the gun at that point. I believed at that moment that Officer Rahn and Detective Stone were in immediate danger of being shot...It was my intent at the time to shoot Mr. Montoya in order to stop him from shooting Officer Rahn and Detective Stone...I saw the gun a fourth time..He was pointing it again at Officer Rahn and Detective Stone....At this moment, I felt like I had no other choice but to shoot Mr. Montoya...I shot two rounds from my department rifle, uh in quick succession through the tinted window on that slider door.

Officer Tyler Rahn: I could see Montoya's head, so I could see the left side of his head. He appeared to be sighting the firearm at Detectives Church and Maes and Sergeant Brown. Believing that Montoya was about to engage them, as he had already committed a homicide and what I believed a violent, or attempted kidnapping, I didnt't put it beyond him to attempt to kill police officers, so in order to protect those law enforcement personnel before they were engaged, I fired a volley of what I believe to be three rounds at Montoya.

Detective Geoff Stone: So after the first initial gunshots go off and I believe it's Matthew is the one that had shot these rounds, I see the gun get pointed between the driver's seat and the passenger seat, and I can now see the muzzle of the gun, his hand all the way

up to his elbow, and the way it looks like he is positioned, and again bear with me with my crude drawings, the pistol is coming through here. It looks like he is pointing it, well, it doesn't look like he is pointing it, he is pointing it at Detective Steve Walsh and Tyler Rahn... I put my reticule through the driver's door window where I believe the center mass of his body and his head is, and I fire one round...I fired that round because I knew that I had to stop him from shooting and murdering Steve or murdering Tyler.

Detective Chris Maes: As I was walking back I observed, in the van, I observed a silver handgun come up, what I recall to be a silver handgun come up from the, like backseat area of the van... It pointed, from what I remember seeing, it pointed directly at the ceiling of the van... Um, from what Church what I believed was Church saying, he pointed his handgun at officers on at least two occasions, it could've been more. I just remember specifically two times Church saying that...and then the erratic movements that he was making within the van attempting to conceal himself and use the van, the interior of his van as cover and or concealment, in his opinion, um it appeared to me as if he was acting aggressively and attempting to shoot at officers...and the fact that it appeared he was looking toward Sergeant Brown and Detective Church, and he wasn't making an overt, um, movement to surrender to arrest and stop his actions, I discharged my department-issued rifle...I was in fear that he was gonna, that he was gonna shoot at and potentially strike, uh, Sergeant Brown or Detective Church, uh, with his handgun. I believed he was going to shoot them, uh, so the reason I discharged my firearm at him was to stop that threat towards them and, and in defense of them.

Sergeant Eric Brown: So I heard multiple commands of police hands up...and almost immediately after I heard the commands of police, hands up...I heard Detective Stone from the right side say he's got a gun...So my belief at that point I heard multiple officers advise that he had a gun, but I hadn't heard gunfire... but my belief was that at this point he wasn't like an immediate threat with the gun, that maybe he was just sitting there...or maybe he was threatening suicide. All of a sudden I saw a arm extend completely out, and uh, it was the right arm... because I could see the back hand, and in that hand was a semi-automatic handgun...I could see what appeared to me to be the figure searching for a target. Um, the gun would move a little bit left, right, like he

was manipulating trying to level the sight so maybe trying to identify what he was gonna shoot at...but I felt like at that point that the person inside the car was actively attempting to shoot or kill one of the officers that worked for me and that I had to do something to try and stop that...I fired one round through the side of the car.

Criminalistics Major Crime Scene Report

In the aftermath of the shooting criminalistics personnel from the Albuquerque Police Department processed the scene.

“The suspect (Matthew Montoya) was found lying stretched across the rear section of the van on his back. His feet were behind the front passenger seat with his head leaning against the left side interior just behind the sliding door. Both of his hands were in his lap with the right hand holding a silver handgun. The index finger of his right hand was on the trigger, the hammer of the gun was cocked, and the gun was loaded with one cartridge in the chamber and six cartridges in the magazine.”



Matthew Montoya immediately after being shot by police

All five officers activated their body cameras to document the incident. A detailed review of the video from the cameras corroborates each officer's recitation of the shooting. From the time of the first shots being fired to the time when all shooting stops is twenty one seconds. It is not possible to see the figure of Matthew Montoya on the video footage due to a heavy reflection of light on the windshield of Montoya's van. However at 2:59 on the body cam footage of Det. Tyler Rahn there appears to be an image of what could be a weapon. This footage coincides with the audio of officers warning about the presence of a gun. There is no evidence that Montoya ever discharged his weapon, that being said there is nothing on the video footage which contradicts any of the officers actions nor their statements made in the aftermath. The video and audio supports the use of deadly force by the officers. Each acted in defense of a deadly threat to themselves or fellow officers.

Reasonableness of Officers Actions

Because the reasonableness of the officers actions necessarily are a factor when a claim of justifiable homicide by a public officer is raised, evidence of information provided to the officers prior to the shooting would be admissible in court. There are many factors which would support the reasonableness of the officers actions.

First, there was an eye witness to Matthew Montoya murdering his ex wife. Eva's murder was particularly heinous, in that Eva was defenseless and no attempt was made by Montoya to conceal his person from onlookers. Montoya fired three bullets into Eva's chest, then walked away, returned and fired a fourth bullet into her back as she lay dying on the ground. Police know from this eyewitness account they are dealing with a determined hateful individual who has not stayed at the scene to turn himself in but instead has fled.

Second, because Montoya has fled it is reasonable to assume that Montoya still has his gun with him as officers are looking for Montoya. It is also reasonable for police to assume that Montoya possesses additional ammunition. In the hours after Eva Montoya's death and in the moments before Montoya was shot no information had been provided to law enforcement that Montoya had discarded the weapon. It is reasonable for officers to expect that Montoya once located, will still be in possession of the gun. It is also reasonable to assume that he will not hesitate to use the gun.

Third, immediately after shooting Eva, Montoya drove to his 9 year old daughter's school in an attempt to take custody of her by lying about a dental appointment. Officers learned from Father Albert at the scene of Eva Montoya's death, that Eva had told him that Matthew told her that he was would kill Eva then kill their 9 year old daughter. The

obvious concern to law enforcement was that Montoya's attempt to take custody of his daughter was an attempt to kill her as well. This being the case it is reasonable to conclude that Montoya was in a desperate state of mind. It is also reasonable to conclude that should Montoya succeed in killing his daughter that additional family members might be next.

Fourth, Montoya was suspected of killing Eva Montoya's new boyfriend an individual named Kay Inn Shon. Little information is known about about Kay Inn Shon, except that Shon was last seen with Matthew Montoya before Shon disappeared. All of these factors would be introduced at trial to show that the officers actions were reasonable when they fired on Montoya.

Montoya's State of Mind

Matthew Montoya's state of mind on the day he was shot by officers is relevant to show the motivation for his behavior. There is evidence to support that Montoya was inducing a "suicide by cop" situation to facilitate his own death.

In the minutes and hours preceding his death Montoya contacted friends and family who were familiar with his history. This contact provides a window into Montoya's thinking just prior to his death. A brief time line is helpful in reconstructing Montoya's state of mind.

Montoya was shot and killed at approximately 1:13 in the afternoon. At 1:11 Montoya had a phone conversation with a friend named Lucille Torres-Long.

Torres-Long: He called right before he, he was, I thought he was suicidal... and he had been pretty upset about the whole situation with his wife... I was concerned for his safety because I just thought he could have been suicidal...and he called and he said the police are gonna come, they're coming after me, and I said, well, what'd you do? So he called me at 1:23 and he said they're gonna kill me, and I told him why are they gonna kill you? What did you do? And then he wouldn't tell me what he did. And then I said make sure you raise your hand, though. He said I'm not gonna do that. And I said, Well what happened? And he said, um, he didn't tell me. He never admitted....He just said they're here and he was like scared. You know? He was scared and, but very odd, very odd. I mean he wasn't scared enough to raise his hands when I suggested it.

At 11:44 Montoya had a conversation with another friend Mary Ruckman.