

March 12, 2019

Michael Geier, Chief of Police
Albuquerque Police Department
400 Roma Ave. NW
Albuquerque, NM 87102

Re: Prosecutorial Review of the January
7, 2018 shooting death of Daniel Saavedra
by Albuquerque Police Officers Amy
O'Dell, Elisa Valdez, Emmett Fritz, and
Bryce Willsey.

APD Case # 18-0002113; DA Case # 2018-03785-1

Dear Chief Geier:

I have been appointed as a Special Prosecutor by Raul Torrez, the Second Judicial District Attorney, to review the January 7, 2018, shooting death of Daniel Saavedra by Albuquerque Police Department Officers Amy O'Dell, Elisa Valdez, Emmett Fritz and Bryce Willsey for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and autopsy reports, officer body camera footage, photographs, and a visit to the scene of the shooting, I conclude that sufficient evidence exists to establish that Daniel Saavedra, while under the influence of methamphetamine, charged at the officers with a knife and metal pipe prior to the use of deadly force by the officers. Officers O'Dell, Valdez, Fritz and Willsey were acting under the reasonable belief that Mr. Saavedra's actions posed a significant threat of death or great bodily harm to themselves or other officers. Accordingly, criminal charges against Officers Amy O'Dell, Elisa Valdez, Emmett Fritz and Bryce Willsey for the shooting of Daniel Saavedra 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 January 6, 2018, just before midnight, Sean Duran, the property manager for the Luna Lodge, located at 9119 Central Ave. NE, observed a male, later identified as Daniel Saavedra, acting suspiciously near an apartment that was not being rented at the time. Mr. Duran heard what he described as a “kicking sound,” and when he looked back in the direction of the vacant apartment, he observed Mr. Saavedra enter the apartment. Mr. Duran also heard the dead bolt of the apartment door being engaged. Because no one had permission to be in the apartment, Mr. Duran called the Albuquerque Police Department (APD) and reported this activity.

Just after midnight, on January 7, 2018, APD Officers Amy O’Dell, Elisa Valdez, Emmett Fritz, Bryce Willsey, and Sergeant Andrew Quillman were dispatched to the Luna Lodge apartment complex in response to the commercial burglary call. The APD officers discussed the situation with Mr. Duran, who reported that he observed an unknown male forcing entry into the vacant apartment unit and that the male then locked himself inside the apartment. Sergeant Quillman assigned Officer Valdez to handle primary announcements. The officers knocked on the door of the apartment in which Mr. Saavedra entered, and Officer Valdez identified herself and the other officers as Albuquerque police officers and ordered Mr. Saavedra to exit the apartment. After making announcements at the door of the apartment for approximately 90 minutes with no response from anyone inside the apartment, the officers forced open the front door. From the open doorway, Officer Valdez gave additional announcements, again identifying herself and other officers present as Albuquerque police officers and ordering Mr. Saavedra to exit the apartment with his hands up. These announcements were repeated. After the additional announcements and no response from anyone in the apartment, the officers entered the apartment and began to search for anyone inside.



Knife recovered at the scene.



Metal pipe recovered at the scene.

Sergeant Quillman gave the officers conducting the search their assignments. Officer Willsey was armed with a .223 caliber rifle and acted as the lead officer during the search. Officers O'Dell, Valdez and Fritz were directed to assist in the search and were each armed with a 9mm handgun. The officers cleared the living room/kitchen, the bathroom, and the southwest bedroom. The officers eventually entered a second bedroom located at the northwest end of the apartment. Officer Valdez and Officer Fritz entered the bedroom while Officer O'Dell and Officer Willsey held a position just inside the doorway to the bedroom. Officer Valdez proceeded to open the door to a closet inside the room at which time Mr. Saavedra lunged out of the closet, swinging an open 3½-inch folding knife in his right hand and a 12-inch metal pipe in his left hand. All the officers gave commands for Mr. Saavedra to freeze and to show his hands. Officer Fritz, who was standing in Mr. Saavedra's direct path, retreated into the corner of the bedroom opposite the closet to create some distance between himself and Mr. Saavedra. In a later interview, Officer Willsey stated that Mr. Saavedra was deliberately looking for a target or somebody to attack and the closest person to him was Officer Fritz. In an attempt to stop Mr. Saavedra's forward progression, Officer Willsey deployed an Electronic Control Weapon (Taser) at Mr. Saavedra. The Taser was ineffective at stopping Mr. Saavedra's attack. Mr. Saavedra continued to advance in the direction of Officer Fritz while wildly swinging the knife in a slashing motion. A still photo taken from Officer O'Dell's body camera showing Mr. Saavedra advancing toward Officer Fritz while swinging a knife is included in this review. After the Taser proved ineffective and Mr. Saavedra continued to advance on Officer Fritz, the four officers simultaneously discharged their weapons at Mr. Saavedra to stop his threatening actions. Mr. Saavedra suffered numerous gunshot wounds and died at the scene.

After the shooting, certain evidence was collected at the scene. There were a total of seventeen bullet casings recovered at the scene. There were nine .223 caliber casings and eight 9mm casings recovered in the bedroom where the shooting occurred. All nine .223 casings came from Officer Willsey's rifle. Based on the ammunition count of the other officers' weapons, Officer Fritz fired six 9mm Luger caliber cartridges, Officer Valdez fired two 9mm Luger caliber cartridges, and Officer O'Dell fired one 9 mm Luger caliber cartridge. An open black folding knife with a 3 ½" blade and a metal pipe were recovered from the bedroom. Photographs of these two items are included in this review. The Taser that was used during the incident was also recovered from the scene. The square footage of the bedroom, in which the shooting took place, was calculated to be less than 150 square feet.

On January 15, 2018, Officer Bryce Willsey provided a voluntary statement to investigators. Officer Willsey stated that when he first saw Mr. Saavedra exit the closet while swinging a knife and a pipe, he feared for his life and the lives of his fellow officers. Officer Willsey stated that Mr. Saavedra's actions, swinging a knife in a small room and in close proximity to the officers, posed an immediate threat of great bodily harm to Officer Willsey himself and to other officers. Officer Willsey believed that if he did not respond to Mr. Saavedra's actions with deadly force, he or other officers would suffer great bodily harm or death. Officer Willsey stated that after the shooting, Mr. Saavedra was still holding onto the knife. Officer Willsey was the officer who removed the knife from Mr. Saavedra's hand.

ADDITIONAL CONSIDERATION

An autopsy was conducted on the body of Daniel Saavedra. The autopsy revealed that Mr. Saavedra died of multiple gunshot wounds to the head and abdomen. An initial blood screening indicated the presence of methamphetamine in Mr. Saavedra's blood. A confirmation

toxicology test indicated that a sample of Mr. Saavedra's blood contained 340 ng/ml of methamphetamine and 2.0 ng/ml of THC, the active ingredient in marijuana. Blood concentrations of methamphetamine ranging from 150 ng/ml to 560 ng/ml have been reported in methamphetamine abusers showing violent and irrational behavior.

Detective Tod Babcock, the investigating officer, interviewed Daniel Saavedra's mother the day after the shooting. Angelique Saavedra's description of Daniel's behavior in the weeks prior to the shooting was consistent with Daniel Saavedra's behavior on January 6-7, 2018. Ms. Saavedra stated that Daniel's behavior caused her to suspect that Daniel was using methamphetamine. Daniel had been exhibiting paranoid behavior. Ms. Saavedra stated that Daniel always carried a knife, because he believed that "they" were after him. Daniel never told his mother who he thought "they" were. Daniel's behavior scared his mother to the point where she had to ask police to remove him from her home. Ms. Saavedra had last seen Daniel approximately one week prior to the shooting.



Photo taken from Officer O'Dell's Body Camera footage.

LEGAL ANALYSIS

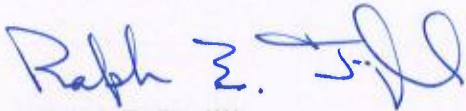
Officers Amy O'Dell, Elisa Valdez, Emmett Fritz and Bryce Willsey were in the performance of their lawful duties when responding to a burglary call at the Luna Lodge on January 6, 2018. The officers shot Daniel Saavedra in response to deadly force and would therefore be entitled to raise the defense of Justifiable Homicide by Public Officer pursuant to Section 30-2-6, NMSA 1978, which establishes that a peace officer, while in the performance of his duties, may justifiably use deadly physical force when he believes he or another is threatened with serious harm or deadly force. Under New Mexico law, an 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. The burden then falls on the prosecution to prove, beyond a reasonable doubt, that the use of deadly force was not justified. The reasonableness of the officer's actions is an objective analysis evaluated from his or her perspective at the time of the incident with the understanding that officers must often make split-second decisions in difficult situations about what type of force is necessary. If the jury has a reasonable doubt as to whether the killing was justifiable, the jury must find the officer not guilty. Uniform Jury Instruction-Criminal 14-5173.

CONCLUSION

The question presented in this case is whether Officers O'Dell, Valdez, Fritz and Willsey, at the moment they fired their weapons, were acting under a reasonable belief that Daniel Saavedra presented a threat of death or serious harm? Evidence clearly shows that when Mr. Saavedra emerged from the closet door, he lunged in the direction of the officers while wildly swinging a knife in one hand and a 12-inch metal pipe in the other hand. As Officer Fritz retreated to create a distance between himself and Mr. Saavedra, Mr. Saavedra continued to

advance towards Officer Fritz with the knife raised and continued to swing the knife in the direction of Officer Fritz. This evidence establishes that the officers were in fact acting out of a reasonable fear for their own safety as well as for the safety of their fellow officers, and could therefore successfully argue that their split-second decision to use deadly force was justified under Section 30-2-6, NMSA 1978. Moreover, the absence of any evidence to prove, beyond a reasonable doubt, that the officers' actions were not reasonable under the circumstances, there is no reasonable likelihood of a successful prosecution. No charges will be filed against Officers Amy O'Dell, Elisa Valdez, Emmett Fritz or Bryce Willsey. The case will be closed.

Very truly yours,



Ralph E. Trujillo
Special Prosecutor

Cc: Raul Torrez, District Attorney, Second Judicial District
Michael Geier, Chief of Police – Albuquerque Police Department
T.S. Babcock, Detective – Albuquerque Police Department
Sam Bregman, Attorney for Officer Emmett Fritz
Luis Robles, Attorney for Officer Bryce Willsey
John D'Amato, Attorney for Officers Amy O'Dell and Elisa Valdez
Angelique Saavedra, Mother of Daniel Saavedra