

February 28, 2020

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

RE: Prosecution review of use of deadly force by Albuquerque Police Officers Christopher Duda, Elliott Padilla, Robert Sanchez, Jordan Trujillo, and Bryce Willsey in the December 23, 2018, fatal shooting of Jason Scott Perez at 308 Pennsylvania St. N.E.

APD case # 18-0122233  
DA case # 2018-09008-1

Dear Chief Geier,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the December 23, 2018, use of lethal force by Albuquerque Police Department (APD) Officers Christopher Duda, Elliott Padilla, Robert Sanchez, Jordan Trujillo, and Bryce Willsey. This incident occurred during the attempted apprehension of Jason Perez for possession of a stolen vehicle. I have reviewed all relevant evidence provided, including police reports, witness statements, photos, and numerous audio and video recordings. I also visited the scene where the incident took place, and spoke with Jason Perez's mother.

#### RELEVANT FACTS

On December 23, 2018, at approximately 7:00 pm, Jason Perez, age thirty six, was driving a white 2017 Hyundai Sonata in the area of Pennsylvania and Central, N.E. The vehicle had been reported stolen on December 18, 2018. In the vehicle with him was Ashlea Borman. Albuquerque Police Department officer Elliott Padilla was on patrol in the area and ran the license plate of the Sonata when he noticed it near Pennsylvania and Chico St. N.E. When the license plate came back to a stolen car, he turned around and began to follow it. Mr. Perez quickly turned into the parking lot of an apartment complex at 308 Pennsylvania St. N.E. Officer Padilla pulled in behind where Perez had parked the Sonata in a parking space, and

turned on his emergency lights. He positioned his patrol car approximately a car length behind, and at an angle to the Sonata, facing the passenger side. Ms. Borman immediately got out of the car and started to walk away from the vehicle. Officer Padilla ordered her to stop walking and put her hands up, which she did. She later took cover behind some vehicles at the northeast corner of the parking lot.

Backup officers quickly arrived at the scene. Officer Garrett Maxson was the first to arrive. He parked his police vehicle behind Officer Padilla's vehicle. Other officers arrived and parked their vehicles at various locations close to where Mr. Perez had parked the Sonata, and where Officer Padilla had positioned his police vehicle. These officers included Acting Sgt. Robert Sanchez, Christopher Duda, Jordan Trujillo, and Bryce Willsey, among others. The following photo shows where Mr. Perez parked the stolen Sonata, and the position of Officer Padilla's police vehicle relative to the Sonata.



Officer Padilla gave commands to the driver of the Sonata to exit the vehicle. Mr. Perez did not comply. At one point Mr. Perez started rolling up the windows in the car. He was ordered not to roll up windows. The only window that was not rolled up at that point was the rear passenger door window. There was a two to three inch gap at the top of the window which allowed officers to gain some visual of Mr. Perez. The officers' view of Mr. Perez was not good, however, because of the limited view through the rear passenger window, and because the Sonata had dark tinted windows.

Officers deployed a spike strip and a stop stick behind the Sonata to thwart any attempt by Perez to flee the scene in the Sonata. Officer Padilla and other officers gave commands for Mr. Perez to show them his hands and to exit the vehicle with his hand up and empty. Mr. Perez continued his noncompliance, and would reach down in the vehicle toward the passenger side, fumble around with something, and come back up. At one point he did show his hands to officers, but then went back to reaching down and doing something with his hands. He was told repeatedly to stop reaching, and told that if he did not exit the vehicle, force would be used on him. He was told the car was stolen, and that he was under arrest. At one point Perez yelled something to the officers to the effect of, "Why should I get out?". What he yelled is unintelligible on the lapel videos, but officer Willsey recalled his exact words to be "Man, fuck you. This shit ain't stolen".

Most of the officers who arrived on scene stationed themselves around Officer Padilla's police vehicle and generally on the west, or passenger side, of the stolen Sonata. Officer Christopher Duda, however, took up a position in the parking lot to the northeast of the Sonata. This gave him a view of the driver's side of the stolen car. He used a pickup truck in the parking lot for cover. The previous photo is taken from Officer Duda's approximate position.

Officers discussed a force array as they realized that Mr. Perez was not complying with orders to come out of the stolen vehicle. Officer Duda was armed with a Smith and Wesson M & P 15, .223 caliber rifle, as well as his department-issued 9 mm handgun. Officer Padilla was armed with a Smith and Wesson M & P, 9 mm handgun. Officer Sanchez was also armed with a Smith and Wesson M & P, 9 mm handgun. Officer Trujillo returned to his vehicle and retrieved

his Wylde .223 caliber rifle. Officer Bryce Willsey was told to arm with "less-lethal". He retrieved a 40 mm less-lethal launcher from his vehicle. The 40 mm less-lethal is apparently a projectile made of some sort of sponge that can disable a suspect without killing him or her. Officer Willsey was also armed with his Smith and Wesson M & P, 9 mm handgun.

Approximately five minutes into the standoff, things changed drastically. Jason Perez fired a shotgun through the lower front passenger door in the general direction of officers. Most of the shot hit the rear passenger door frame of a vehicle parked just to the west of Mr. Perez. Officers at first were not sure what exactly had happened. They asked each other who had shot, and if it was one of them. They yelled to Officer Duda, asking if he had shot, to which he replied, "that was not me." Officers quickly realized that Perez had shot through the front passenger door, and moved quickly for better cover behind vehicles. It was decided that Officer Willsey would use the 40 mm less-lethal launcher to attempt to shoot out the rear passenger window of the Sonata to gain a better view of Mr. Perez and what he was doing. The shot went through the window, but did not break it out. Officer Willsey immediately fired a second 40 mm round at the rear window, but the round hit the window frame and did not break out the window.

Almost immediately after Officer Willsey fired the second less-lethal round, Mr. Perez fired a second shot from the Sonata. This second shot came through the rear passenger window that was partially open, and was fired straight toward officers. Officer Sanchez asked if that was "him". He was told, "That was not us". Right after that statement, Officer Duda is told that "he shot out the window". That is followed immediately by a volley of gunfire that lasts approximately five seconds. Officers Christopher Duda, Robert Sanchez, Elliott Padilla, and Jordan Trujillo all discharged their firearms at Mr. Perez. Officer Bryce Willsey also fired his 9 mm handgun. After he fired the second less-lethal round, Officer Willsey had immediately transitioned from the 40 mm launcher to his handgun. The following photo shows the passenger side of the Sonata after the shots were fired, with evidence markers indicating impact points, including the hole in the lower front passenger door from the first shot fired by Mr. Perez.



During the volley of gunfire, Jason Perez came out of the driver's door armed with the shotgun. He came out in what was described as rolling out of the vehicle in a crouching position. He appeared to turn with the shotgun in the direction of officers to the west of him. He did not see, or at least pay any attention to, Officer Duda, who was the only officer with a clear view of the driver's side of the Sonata. Officer Duda fired numerous shots at Mr. Perez.

Jason Perez was struck by gunfire and was only able to take a step or two once he came out of the Sonata before he fell. His shotgun landed partially under his body. Officers gave commands to Mr. Perez not to move and not to reach for the gun. A plan was formulated to move up, separate Mr. Perez from the gun, take him into custody, and render aid. Officers moved up approximately four minutes after the shooting. The shotgun was separated from his body and Mr. Perez was taken into custody. By that time Mr. Perez was no longer moving. Officers rendered first aid to Mr. Perez, including by Officer Sean Callinan, who is a Tactical

Emergency Medical Services (TEMS) trained officer. Rescue arrived shortly thereafter. It was determined that Mr. Perez had succumbed to his injuries and was deceased.

#### VIDEO CAMERAS

All of the officers who fired a gun at Mr. Perez had a body camera running during the incident, with the exception of Officer Duda. Officer Duda in his statement to investigators said that he thought he turned his camera on right after he arrived at the scene, but it did not work for some reason. Various other officers on the scene who did not fire their weapon also were running their lapel cameras during the incident. Review of the body camera footage from all the officers sheds light on, and corroboration of, important aspects of this shooting incident.

Officer Elliott Padilla's lapel camera starts with him pulling in behind the Stolen Hyundai Sonata. After he stepped out of his police car, and from behind the open driver's door of his police car, he gave Mr. Perez commands, as discussed above. At one point Officer Padilla and Officer Sanchez tried giving commands in Spanish, in case Mr. Perez did not understand English. It quickly became clear the Mr. Perez did understand English.

Just under five minutes after Officer Padilla stepped out of his patrol car, Mr. Perez fired the shotgun through the front passenger door. An officer is heard saying, "Did he shoot?" A reply is heard, "Yeah, he did". Someone yells, "Duda, was that you?" A reply comes, "No, that was not me". Acting Sgt. Sanchez asks, "Was that any of you guys?" Officers are heard replying that it was not. Thirteen seconds after Mr. Perez fired his shotgun through the door, an officer is heard saying, "Ok. He just shot out the..." The last part of the sentence was not intelligible.

Thirty seconds after Mr. Perez shot through the door, Officer Willsey fired the first 40 mm non-lethal round. He informed the other officers, "That was me. That was me". He told the other officers that "I'm gonna 40 the window again", and ten seconds after the first less-lethal round, Officer Willsey fired a second less-lethal round. Within about one second of Officer Willsey's second less-lethal round, what sounds like another shot is heard, that apparently came from Mr. Perez. Someone yells, "Was that him?", to which a reply is heard: "That was not us." Someone then yells, "He shot out the window, Duda." As soon as that statement is made, multiple shots are heard. It cannot be discerned from the videos how many

shots were fired at that point. They occurred simultaneously, and within a span of about five seconds. The time between Mr. Perez's second shot until the volley of gunfire from officers ends is approximately eleven seconds.

Body cameras show that after the shooting ends, officers continued to point their guns at Jason Perez, as he lay on the ground beside the driver's side of the stolen Sonata. Officers eventually move up, take Mr. Perez into custody, and render aid, as discussed previously. Approximately one minute and fifteen seconds after the volley of shots ends, and before officers move up to take Mr. Perez into custody, the following statement is heard on several lapel cameras: "He shot directly through that back right window at us!"

A surveillance camera was located at the apartment complex that overlooked the parking lot. The camera pointed west, and provided a view of the driver's side of the Sonata. The footage is in black and white, very grainy, and has no sound. Certain things are visible from the surveillance footage, however. The video shows Mr. Perez driving the white Sonata into the parking lot. It shows Ashlea Borman getting out of the passenger side and walking away from the car. Officer Padilla pulls in behind the Sonata, and Officer Maxson pulls in almost immediately behind Officer Padilla. Ms. Borman, who was walking away from the officers, stops, puts her hands up, and moves out of the picture. At the point of the shooting, a cloud of what looks like smoke emanates from the passenger side of the Sonata. Within about three seconds of that, the driver's door opens and Mr. Perez starts coming out in what appears to be a crouching position turning toward the back of the car. He has a black object in his right hand. He barely makes a step out of the car before he falls to the ground. He makes what appear to be involuntary movements. Fifteen seconds after he exits the car, however, he raises his right arm and waves his hand in the air for a couple seconds. The video shows officers eventually moving up, separating Mr. Perez from the shotgun, taking him into custody, and rendering aid.

#### OFFICER STATEMENTS

All five officers who fired at Jason Perez gave formal statements to investigating detectives. All appeared with their attorney. Officer Bryce Willsey gave his statement on January 2, 2019. The other four officers gave their statement on January 4, 2019. Officers who

did not fire their weapon, but were present, gave statements to investigating detectives on December 23, 2018.

Elliott Padilla

Officer Padilla had been a sworn officer with APD for two and one-half years at the time of the shooting. Officer Padilla described how he ran the license plate of the Hyundai Sonata, and followed the car when the plate came back to a stolen car. He described the sequence of events leading up to the shooting as outlined above. Officer Padilla said when the first shot came through the passenger side door of the Sonata, it took a minute to compute and realize that Mr. Perez had fired a shot. He described what happened next:

[M]oments pass and I hear another.... I hear another loud bang, and glass shatter and I feel, I hear glass hit my vehicle and hit, uh hit me, and it was at this time that, yes, I know for sure he is shooting at us. He is trying to kill me and my partners. Knowing that he was shooting at us, two times now, I had no doubt in my mind that he was trying to kill me. No doubt at all.... I aim my firearm...at where I last saw him and I fired my pistol at least one time.

When asked later in the interview what his intentions were when he fired his handgun, Officer Padilla responded, "My intentions were to stop his actions. My intentions were, he was trying to kill us, my, I was going... I was not going to allow that to happen."

Bryce Willsey

Officer Willsey had been an APD officer for three and one-half years at the time of this incident. Officer Willsey described in detail the events leading up to the shooting. He noted that officers were not trying to use any kind of force to extract Mr. Perez, and wanted him to be taken into custody peacefully. He assumed officers from the Canine Unit or S.W.A.T would be called in to try to peacefully resolve the standoff if necessary.



Officer Willsey described Mr. Perez's first shot through the front passenger door as sounding "like a bomb going off inside of the car". He was at first unsure if it was an officer or Perez who fired a shot. He asked Officer Duda if he fired. He received a negative response from Officer Duda, and other officers confirmed that they did not shoot. He noted that the realization that Perez had just shot from inside the car, "scared the shit out of me, that explosion, um, and it scared the other officers, because I remember everybody ducking down. Like I didn't know if an officer got hit at this point." It was quickly decided that Officer Willsey would use the 40 less-lethal launcher to try to take out the rest of the back window of the Sonata. He described firing the first round at the back passenger window, but it only "cracked about an inch off of the back window, off the top of it." He then fired a second non-lethal at the rear window, but the round hit the window frame and flew up in the air. He went on to outline in detail what happened next:

[A]s I'm coming down with my 40 millimeter, that's when everything kind of slowed down, and...I heard the second gunshot. And it was even more loud than the first gunshot, and it was an explosion.... As I look through the back window, um, I could see the barrel of the 12-gauge shotgun and...it was...a standard size of a 12-gauge shotgun, but it looked like six inches. It was a huge black barrel, and it was sitting, resting on the, on the windowsill, and I could see his arm. He is in the driver's seat reaching back with the shotgun, shooting up, uh, shoot, uh, that he just shot out the back window. And at that point I immediately transitioned...from my 40. I put it down to my side and then grabbed my pistol. [A]s I came back up on to target, I could still see the barrel of the shotgun still pointing out, and the only thing I'm thinking about is, 'Oh, oh shit. It's a shotgun. It's pointed at me, and I, I'm probably gonna get hit. I'm, I'm probably gonna die'.... I then took a step left, away from the door...and then I deployed between one to three rounds with my, my duty pistol.... I mean, in order to stop the male, this male subject that is obviously armed with a shotgun, that is currently shooting at us,

at me and my partners... And I'm, I don't remember how many people exactly were there, but my biggest concern was the guy closest to me. And I didn't want Elliott shot. I didn't want him killed. And then I knew that if we stood exactly where we were gonna stand, he was gonna kill one of us.

Officer Willsey went on to describe taking Mr. Perez into custody and officers rendering aid until Rescue arrived.

### Robert Sanchez

Acting Sgt. Robert Sanchez had been with APD for three years. When he arrived on the scene he took up a position behind Officer Padilla on the driver's side of Officer Padilla's vehicle. After the first shot from Mr. Perez through the passenger door, Officer Sanchez was not sure at first what had happened. He confirmed that none of the officers had shot, and realized that Perez had a gun and fired it out of the car in their general direction. Officer Willsey fired the less-lethal rounds. Officer Sanchez then described his perception of what happened next:

[I]mmediately after, I saw the driver of the stolen vehicle, um, go around, go around his driver seat so he'd be facing us. So looking out the right rear passenger window, and it looked like a large gun. Um, I couldn't verify what type of gun it was at that time, but I knew it was a large, large black gun.... [I] remember when he turned and he pointed the, the gun at us, I saw the barrel and it looked huge. It looked huge. It looked like it was just inches away from my face. [M]oments later he, uh, he fired another round and I remember the glass of that rear passenger window shatter—like exploding toward us. And in that moment I was like, I, I, I didn't know how I didn't get shot.... I, I was actually in even disbelief that this guy was trying to kill us, trying to kill me, you know, and I still can't believe that I wasn't shot.

After that second shot from Mr. Perez, Officer Sanchez took a step to the right, so he was at the back passenger tail light of Officer Padilla's vehicle. "I remember firing two rounds at, at the driver's headrest and then, oh, tons of gunfire was around." When asked later in the interview what his intentions were when he fired his handgun, he replied: [M]y intentions was to stop him from trying to hurt myself or other officers that were there." After the shooting, Officer Sanchez coordinated the officers to move up and take Mr. Perez into custody. He checked Mr. Perez and applied aid in the form of a chest seal to one of his wounds.

#### Jordan Trujillo

Jordan Trujillo had been with APD for about three years at the time of the shooting, and been an officer for about a year. When he arrived on-scene, after arming himself with his rifle, he positioned himself on the passenger side of Officer Padilla's vehicle behind Officer Maxson. Upon Jason Perez's first shot, Officer Trujillo noted that they heard a loud bang, and "I saw a hole come through the front passenger door, on like the low rim of the door like a big gray hole out the door." After Officer Willsey fired the less-lethal round, Officer Trujillo saw Mr. Perez turn and look back at officers. Officer Trujillo moved to a position of better cover. He described what happened then:

[W]ith my flashlight I was able to see he quickly... I could see a black muzzle of a shotgun, or a rifle at the time I thought, come up, essentially coming up pointing from, was initially pointing west. It came up and immediately after, a loud bang and bunch of glass. Initially, I thought I had been shot, but a bunch of glass hit my elbow and my knuckles, at which time I began to return fire. Where I could see the, the driver's body. So I continued to fire into the rear passenger door until I could no longer see his body. And once...I couldn't see his body in my optic, I stopped...

Officer Trujillo thought at the time that he had shot two rounds. He said after that his hearing went out. He went and counted casings and rounds after the shooting, and realized he had fired five shots. When asked what his intentions were when he fired at Mr. Perez, he replied: "To stop the threat from him shooting myself or other officers."

Christopher Duda

Officer Christopher Duda had been with APD for three years at the time of the shooting. His position during this incident was unique in that he was the only officer who was positioned to the east of the stolen Sonata, and had a view of the driver's side of the vehicle. Officer Duda described hearing Mr. Perez's first shot, and the initial confusion over where the shot came from. He recalls another officer saying, "He's shooting at us". He then described his involvement in the shooting:

"[R]ight after that second pop came from the car, um, the driver door opened, um, and a male exited, uh, the driver's side of the vehicle. He turned his head very quickly and looking straight at them, and didn't even, didn't look like or give me a second look... He turn-, spinned his head straight at those officers. Um, in his right hand I saw a, uh, pistol grip for a like shotgun. I could see the trigger pack and I could see the handle sticking out from his hand. And as he was spinning to turn, um, the shotgun on those officers, I discharged my rifle, um, at him.

Officer Duda stated that he had "auditory exclusion" as he began to fire his rifle, and did not even hear the shots that he fired, or those fired by any other officer. He did perceive that at least one of his shots hit Mr. Perez, and he fell immediately to the ground. When asked what he thought was going to happen at the point Mr. Perez came out of the Sonata, Officer Duda

stated: "I believe that he was going to pull that shotgun up and shoot them. And with their distance, a shotgun would have struck multiple officers."

#### Other officers

Other officers who were present related the same series of events told by the five officers who fired their gun. Officer Garrett Maxson was the second officer on the scene. He took up a position on the passenger side of Officer Elliott Padilla's police vehicle while the standoff unfolded. Of note from Officer Maxson's statement was his view of the passenger door when Mr. Perez fired the first shotgun round through the passenger door. He stated that he heard the "boom" from the shot and saw the front door "splinter open". Officer Maxson did not fire his weapon because he had taken cover behind Officer Padilla's vehicle, and did not have a view of Mr. Perez at the time Perez fired the second shot. After the shooting, Officer Maxson assisted in taking Mr. Perez into custody by placing handcuffs on him. He then assisted with pulling off Mr. Perez's clothing to look for wounds, and helped apply chest seals. He noted a gunshot wound to Perez's upper left shoulder, his abdomen, and his cheek.

#### OTHER WITNESS

The only civilian witness who saw anything relevant to this report is Ashlea Borman, the woman who was in the stolen Sonata with Jason Perez and who got out of the car as soon as it stopped. Ms. Borman told officers she was forced into the white car earlier in the day by two males in the white car. She claimed she was held at gunpoint, and the males said they were going to take turns "banging" her. At some point the male passenger was dropped off at an unknown location. The driver made her get in the front seat, and continued driving around,

holding what she described as a big silver gun to her ribs. When the driver saw a cop turn around and begin to follow them, he pulled into the parking lot, and she got out and started walking away. The officer told her to put her hands up and get down, which she did. Later she was directed by an officer to move by a fence and some cars at the east end of the parking lot.

Ms. Borman said that the driver refused to get out of the car and was not cooperating. Ms. Borman stated she was out in the open during this time. She stated she heard one shot, and officers saying it wasn't them. She then stated: "I remember after the first shot, another shot going off. And I remember seeing a window on the car bust. The shot had come from inside the car, I guess.... I just seen the window shatter. It was back passenger." Ms. Borman said she ran behind a car as shots were being fired. After all the shots, she saw the driver come out of the driver's side of the car.

#### PHYSICAL EVIDENCE

Crime scene investigators (CSI) collected and documented many items of physical evidence. All officers on-scene were photographed that night, and their firearms and ammunition were documented. The weapons of the officers who fired at Mr. Perez were taken for evidence purposes.

Twenty cartridge casings from bullets apparently fired by officers were documented and collected by CSI detectives. Based on the caliber, the brand name, and the location where recovered, it appears the officers fired shots as follows: Officer Jordan Trujillo fired five shots from his .223 caliber rifle. Officer Bryce Willsey fired four shots from his 9 mm handgun. Officer Christopher Duda fired eight rounds from his M & P .223 rifle. Officer Robert Sanchez

and Elliott Padilla were apparently both using the same ammunition in their 9 mm handgun. Three cartridge casings were found which could be attributed to either officer. This is consistent with Officer Sanchez recalling that he fired two rounds, and Officer Padilla remembering that he fired “at least one” shot.

The shotgun possessed by Jason Perez was collected from the scene outside of the stolen Sonata. The gun was a Billerica model 372, 12 gauge pistol-grip shotgun. Also found outside the Sonata by Mr. Perez’s body was a nylon ammunition butt-stock sleeve containing five shotgun rounds. The following photo shows the shotgun and ammunition sleeve found at the scene which Mr. Perez possessed when he exited the Sonata.



When the stolen Sonata was searched, several notable items of evidence were recovered. Various bullet fragments from shots fired by officers were located. Numerous

impact points were noted and documented. Three, 380 auto cartridge casings were found inside the car, although no additional firearms were found in the car. A 40 mm, S & W cartridge casing was located in the rear floorboard. A 12 gauge shotgun shell was located on the floor between the passenger seat and the door. A 40 mm sponge round projectile was collected from the back seat of the car. Also found in the car were two glass pipes with white residue inside.

Although it seems clear from lapel cams and officer statements that Mr. Perez fired his shotgun twice during this incident, a second spent shotgun shell was not located. Additionally, even though Officer Willsey fired two rounds at the Sonata from the 40 mm less-lethal launcher, only one round was located by criminalistics detectives.

#### AUTOPSY

The autopsy of Jason Perez revealed three gunshot wounds. All gunshot wounds were determined to be of indeterminate range. The wound that most likely caused death was from a bullet that entered the left side of his neck, traveled front to back, right to left, and downward. It lacerated blood vessels, punctured his lung, and broke seven ribs. This wound caused internal bleeding in the chest cavity, which compressed his lung. The bullet causing this wound fractured into multiple small metallic fragments that did not exit the body.

A second gunshot entered Mr. Perez's middle abdomen. This bullet traveled front to back, right to left, and downward. It traveled through subcutaneous tissue, entered the left side of his pelvis, and penetrated the left femur, where a projectile was recovered from the left femoral head. This bullet did not enter the abdominal cavity. The recovered bullet was determined to be 50.6 grains. It is unclear if the projectile was taken into evidence by CSI detectives for further testing.

The third gunshot was a superficial wound that traveled through the soft tissue of the left cheek and exited. Its trajectory was front to back, right to left, and downward. The pathologist noted the distinct possibility that this wound may have been caused by the same bullet that entered the left side of Mr. Perez's neck.



Toxicology analysis was performed as part of the autopsy. The results showed that Mr. Perez had methamphetamine in his system at the time of his death. He also had alcohol in his system, at a level of .012.

#### CRIMINAL HISTORY AND CHARGES

Jason Perez had one prior felony conviction. In 2000, when he was a juvenile, he was convicted of armed robbery in Missouri, given an adult sentence, and sentenced to fifteen years in prison. He apparently had no felony arrests since. At the time of his death, Mr. Perez had two pending misdemeanor cases in Bernalillo County, both involving domestic violence charges. In the past five years, Mr. Perez was convicted in several misdemeanor cases out of Chaves County. These included DWI; battery on a household member; resisting, evading or obstructing an officer; and telephone harassment. Had Mr. Perez survived, he would have been charged with multiple counts of assault with intent to commit a violent felony on a peace officer, with firearm enhancement.

#### FAMILY INPUT

On February 21, 2020, this writer and a victim advocate held a phone conversation with Jason Perez's mother, Mary Perez. Mrs. Perez lives in Hobbs, New Mexico. Mrs. Perez had not seen Jason for about a year, since he left southeast New Mexico for Albuquerque. Mrs. Perez had seen the surveillance video from the rooftop of the apartment which captured the incident. It had been posted on YouTube. She had also seen the autopsy report.

Mrs. Perez was obviously quite traumatized by what she saw on the video, which captured her son's last moments of life. She did not understand why it took officers so long to move up and render aid. She felt it was eight to nine minutes before officers moved up to take Mr. Perez into custody, when he appeared to be deceased almost immediately after he was shot. It was explained to Mrs. Perez the caution officers must take for their safety in these type of situations, and that the lapel cameras show the time was a little over four minutes. She was also upset that Mr. Perez was stripped naked, and left in the parking lot for an extended period of time before his body was removed.

## LEGAL FRAMEWORK

Under New Mexico law, a peace officer, acting in the course of regular duties, is entitled to legally use deadly force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. NMSA 1978 § 30-2-6. An officer who uses deadly force does not have to prove that a suspect actually posed a threat of death or great bodily harm--only that the suspect's actions would cause a reasonable person to believe there is the possibility of such.

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 at the trial of an officer charged with a crime, 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, keeping in mind that officers often must make split-second decisions in difficult situations. It only requires 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, 42 P.3d 272.

## CONCLUSION

When Officers Elliott Padilla, Bryce Willsey, Robert Sanchez and Jordan Trujillo fired at Jason Perez, they did so as a result of Mr. Perez shooting at them through the back passenger window of the stolen Sonata. When Officer Christopher Duda fired at Mr. Perez, it was as a result of Mr. Perez having fired a shot at fellow officers, and coming out of the driver's side of his vehicle in a manner that made Officer Duda believe that Mr. Perez was about to fire again on officers who were taking cover behind the APD police vehicles.

The officers were acting in the legitimate course of their duties by trying to contact and apprehend Mr. Perez for a possession of a stolen vehicle. From the point that officers contacted Mr. Perez, he refused to follow officers' directions to show his hands, to stop reaching down, and to come out of the vehicle. When he eventually fired the first shotgun round through the front passenger door in the general direction of officers, he was acting in a reckless manner, seemingly regardless of danger to human life or property. It is noteworthy

that no officers fired at Mr. Perez at that point, and responded with less-lethal force. Mr. Perez was also likely under the influence of methamphetamines.

Officers Padilla, Willsey, Sanchez and Trujillo perceived an imminent and real danger when Jason Perez pointed his shotgun out the rear passenger window and fired a shot in the direction of the officers. Given Mr. Perez's actions up to that point, it was completely reasonable for Officers to believe and fear that that they themselves or fellow officers were about to be shot. When they fired shots at Mr. Perez, they were acting reasonably. Mr. Perez had just fired a shotgun at approximately six officers who were trying to take cover behind police vehicles that were barely a car length or two away from the car from which Perez was firing. They did what needed to be done at that moment to protect the life and safety of themselves and other officers, as well as potential civilian victims in the area. The reasonableness of their perception of the danger Mr. Perez presented at that moment is bolstered by the fact that all four of these officers perceived the same danger at the same time and began firing simultaneously. The four officers' use of deadly force was reasonable.

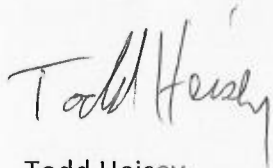
Officer Christopher Duda was in a different situation than Officers Padilla, Willsey, Sanchez and Trujillo when he fired his rifle at Mr. Perez. He was physically in a different location, and his justification for shooting at Mr. Perez differed somewhat from the other four officers. Although Mr. Perez presented a generalized threat to Officer Duda by his willingness to fire a gun at officers, he did not ever point the gun at Officer Duda. After Officer Duda was informed that Mr. Perez had just shot out the window, and officers began returning fire, Officer Duda saw Mr. Perez come out of the driver's door in a crouching posture with the shotgun in his right hand. Perez began to wheel toward the back of the car and in the direction of the officers taking cover behind Officer Padilla's vehicle. Officer Duda had a reasonable perception and a reasonable fear that Mr. Perez was about to fire again at fellow officers. Officer Duda fired multiple shots from his rifle to protect his fellow officers from serious injury or death. His use of deadly force was reasonable.

Although it is not known who fired the shots that actually struck Jason Perez, it appears likely that Officer Duda fired the two shots that struck Mr. Perez in the neck and in the abdomen. This is likely so because of the better view Officer Duda had of Mr. Perez generally,

and particularly at the point Mr. Perez came out of the car. The trajectory of both wounds seems to be consistent with Mr. Perez's body being in more of a horizontal or crouching position when he was hit, consistent with what Officer Duda described and what is observed on the surveillance video from a nearby apartment about Mr. Perez's exit from the car. Also, Officer Duda perceived that at least one of his shots hit Mr. Perez. It does not matter who actually inflicted the gunshot wounds in this matter, however. All five officers who fired their weapons were acting reasonably at the point they shot at Mr. Perez.

If any of the five officers who fired their weapon were to be prosecuted for using deadly force against Jason Perez, a jury would not be able to find beyond a reasonable doubt that the individual officer's actions in attempting to stop Jason Perez from shooting again were *not* a reasonable and justifiable use of deadly force. There would be no reasonable likelihood of a successful prosecution. No charges will be filed, and this case will be closed.

Sincerely,



Todd Heisey  
Special Prosecutor

Cc: Raul Torrez, Second Judicial District Attorney  
Detective Michael Davis, lead case detective  
John D'Amato, esq., attorney for Officers Elliott Padilla, Robert Sanchez, Jordan Trujillo,  
and Christopher Duda  
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