

July 18, 2023

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

Prosecutorial review of the shooting of John Withers on
April 6, 2022 by Albuquerque Police Department Officer
Shay Babcock, Bryce Willsey and Greg Reams

NMSP # 2022-7522. DA case# 2022-02799-1

Dear Chief Medina:

I have been appointed as a Special Prosecutor by Sam Bregman, the Second Judicial District Attorney, to review, for potential prosecution of the April 6, 2022, incident in which Albuquerque Police Officers Shay Babcock, Bryce Willsey, and Greg Reams shot and killed John Withers. After a review of all available evidence, including police reports, witness statements, videos, lapel cameras, and photographs, I conclude that there is not sufficient evidence to prove, beyond a reasonable doubt, that Albuquerque Police Department Officers Shay Babcock, Bryce Willsey, and Greg Reams were not acting under the reasonable belief that they or others faced the threat of death or great bodily harm as a result of Hunter'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

On April 6, 2022, Issac Saiz was car jacked for his 1994 Green BMW 525. The incident took place at the Chauteau apartments off Osuna where an individual pointed a handgun at Mr. Saiz and told him to exit his vehicle. The individual then took off in Mr. Saiz's BMW. Mr. Saiz had left his cell phone, a backpack and wallet in the vehicle. Mr. Saiz immediately called 911 to report his car was stolen at gunpoint. Albuquerque Police officers responded to the 911 call.

Undercover armed robbery detectives were working the Westside of Albuquerque responded to the call along with marked APD units. Officer Reams and Willsey were two of the undercover detectives that responded to the call. Both officers were driving undercover units with no markings and looked like regular civilian vehicles. Both detectives wore street clothes but did carry vests with them that had APD markings on them. Both detectives arrived in the area of Osuna and Academy. The suspect was still in the area driving the BMW. The detectives at different times observed the BMW in the Academy area and observed marked APD units try a traffic stop on the BMW. Both detectives observed the BMW fleeing the marked units and started to drive recklessly on the wrong side of Academy. Marked units then disengaged pursuit of the BMW for fear of an accident occurring. Both detectives observed the driver of the BMW during different times during the pursuit. Detective Reams started following the BMW in his unmarked unit up Osuna. Detective Reams followed the BMW up Osuna until the street came to a dead-end in a neighborhood just past Eubank. Detective Willsey and other marked APD units were following further back from Detective Reams.

Once the BMW came into a dead-end in the neighborhood where Osuna ended, the suspect then fled on foot towards an arroyo with a backpack. Detective Reams put on his APD vest and pursued the suspect on foot. The suspect reached a path running along an arroyo. Detective Reams yells at the suspect "stop, police," at which point the suspect dropped the backpack and started running. Detective Reams noticed a handgun in the suspect's right hand. Detective Reams again yelled "stop, police" at which time the suspect turned and started to raise the handgun toward Detective Reams. The suspect and Detective Reams fired their handguns simultaneously. Detective Reams could see projectiles striking the brush near him and could hear projectiles whizzing by him. The bullets whizzed by Detectives Reams and Willsey and

Officers Babcock and Defrates who were coming up behind Detective Reams and also heard the gunfire. On the lapel cameras of the officers the gunfire and the whizzing of bullets are clearly heard. Detective Reams said he only fired one shot at the suspect. The suspect then ran down into the arroyo and started to go up the other side of the arroyo. As the suspect was going up the arroyo, he turned toward police officers and started to raise the hand gun again. Detective Willsey and Officer Babcock engaged the suspected with their long rifles. The suspect struck by the bullets rolled into the arroyo. Detective Reams said at that time, he didn't fire his weapon because he didn't acquire a good sight picture, but if he had, he would have shot, as well.

Detective Willsey was coming up behind Detective Reams with his long rifle. Detective Willsey hears Detective Reams yell "police" and saw the suspect turn around, take a shooting stance, raising the handgun and fire several rounds. Detective Willsey felt the rounds hit the concrete wall next to him and a round going over his head, he then observed the suspect run into the arroyo. As the suspect was climbing up the other side of arroyo, he started to raise his right hand with the handgun, Detective Willsey then fired his rifle. Detective Willsey stated he was scared shitless, and engaged the suspect with his rifle several times until the suspect actions stopped. Detective Willsey also heard another Officers firing a weapon at the same time as him. The suspect was struck by the bullets and rolled into the arroyo.

Officer Babcock was coming up behind Detective Willsey when he heard a swishing sound over his head and then heard the crack of a gun. He realized that the suspect was firing in the officer's direction. Officer Babcock observed the suspect run down into the arroyo and on to the other side of the arroyo. When the suspect was going up the arroyo, he saw the suspect raise his right arm toward the officers. Officer Babcock engaged the suspect with his rifle and was also aware that another officer was firing his weapon. The suspect rolled down into the arroyo after being struck by the officer's bullets.

Albuquerque Police Department criminalistics recovered a Glock .45 about (10) ten feet from the suspect. The criminalistics team found a wallet on the suspect and it was Issac Saiz's wallet with his credit cards and driver license inside the wallet. The backpack that the suspect dropped was also Issac Saiz's backpack from his BMW. The criminalistics team recovered four (4) .45 shell casings from the area where the suspect fired at the police officers. They also found

one nine-millimeter shell casing from Detective Reams firing his handgun. They recovered eight (8) shell casings from .223 rifle which were fired by Detective Willsey and Officer Babcock.

The Office of Medical Investigation found five gunshot wounds in the suspect at autopsy. The gunshot wounds were by the buttock, the leg, torso, and two in the shoulder of the suspect. A toxicology report showed the suspect had methamphetamine, fentanyl, and methadone in his system at the time of his death. The suspect was later identified as John Withers.

LEGAL ANALYSIS

When APD Officers Shay Babcock, Bryce Willsey and Detective Greg Reams shot John Withers they were acting in the line of duty, attempting to arrest John Withers for Armed Robbery with a firearm, 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 Albuquerque Police Officers Shay Babcock, Bryce Willsey and Detective Greg Reams fired, were they acting under a reasonable belief that they or others were threatened with death or serious harm? Officers were aware that Mr. Withers committed an armed robbery with a firearm before they contacted him.

Evidence clearly shows that Mr. Withers, was a clear and imminent threat of using deadly force when he fired his .45 caliber Glock at police officers, to which Officers Shay Babcock, Bryce Willsey and Detective Greg Reams responded with deadly force; therefore, no charges will be filed against Officers Shay Babcock, Bryce Willsey and Detective Greg Reams. The case will be closed.

Very truly yours,

Troy J. Davis/S

Troy J. Davis
Special Prosecutor

Cc: Sam Bregman, District Attorney, Second Judicial District
Detective Miguel Gayton, New Mexico State Police
John D'Amato, Attorney for Detective Willsey
Louis Robles Attorney for Detective Reams
Taylor Rahn Attorney for Officer Shay Bobcock