

JAN 15 2015

SECOND JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

Ann T. Robles
CLERK DISTRICT COURT

Case Number: D-202-CR-2015000104
Case Number: D-202-CR-2015000105
DA No.: 2014-01565-1 and 2014-01565-2

STATE OF NEW MEXICO,

Plaintiff,

vs.

KEITH SANDY
DOMINIQUE PEREZ,

Defendants.

**DEFENDANTS' JOINT MOTION TO DISQUALIFY
THE SECOND JUDICIAL DISTRICT ATTORNEY'S OFFICE**

The Defendants, Dominique Perez through his counsel Robles, Rael and Anaya, P.C. (Luis Robles, Esq.), and Keith Sandy, through his counsel Bregman & Loman, P.C. (Sam Bregman, Esq.), respectfully moves the Court to exercise its equitable jurisdiction and disqualify the Second Judicial District Attorney's Office from prosecuting this matter for its conflict of interest.¹ For their Motion, Defendants state:

INTRODUCTION

This case arises from the March 16, 2014 shooting of James Boyd by Albuquerque Police Department officers. The two officers who shot James Boyd were Dominique Perez ("Officer Perez") and Keith Sandy ("Detective Sandy"). On January 12, 2015 the Office of the Second Judicial District Attorney, Kari Brandenburg, filed an Information with this Court charging

¹ Defendants contacted counsel for the State on January 15, 2015 via e-mail to determine whether this motion was opposed. The State opposes this motion.

Detective Sandy with an open count of murder. That same day, District Attorney Brandenburg's Office also filed a separate Information charging Detective Sandy's fellow officer Dominique Perez with an open count of murder.

The Second Judicial District Attorney's office must be disqualified from prosecuting this matter. Numerous serious conflicts of interest preclude the Second Judicial District Attorney's Office ("District Attorney's Office") from prosecuting the above charges.

First, Officer Perez, Detective Sandy, and the Albuquerque Police Department have a long standing professional relationship with the District Attorney's Office that has required both Detective Sandy and Officer Perez to be witnesses for the District Attorney on several occasions.

Second, the Albuquerque Police Department recently referred its investigation of the District Attorney herself for bribery and witness intimidation allegations to the Attorney General's Office for review. This creates an obvious conflict of interest. The politically charged nature of this case creates the impression of bias or impartiality that is imputed to the District Attorney's entire office in light of the potential charges against District Attorney Brandenburg. Recusal is appropriate, especially in light of the District Attorney's personal conflict of interest with the Albuquerque Police Department.

LEGAL STANDARD

When seeking disqualification of a member of the district attorney's staff, the defendant bears the initial burden of persuasion. See State v. Pennington, 1993-NMCA-037, ¶115 N.M. 372, 378-79, 851 P.2d 494, 500-01. A trial court should determine whether prosecution by a member the district attorney's office is inconsistent with a particular standard of professional conduct, justifying disqualification of that person. State v. Gonzales, 2005-NMSC-025, ¶ 28, 138 N.M. 271, 278-79, 119 P.3d 151, 158-59. Then, in considering vicarious disqualification, a

court should determine “whether a reasonable person standing in the shoes of the defendant should be satisfied that his or her interests will not be compromised.” State v. Gonzales, 2005-NMSC-025, ¶ 31, 138 N.M. 271, 279, 119 P.3d 151, 159 (quoting State ex rel. Romley v. Superior Court, 184 Ariz. 223, 908 P.2d 37, 42 (Ct.App.1995)). The State has the burden of proof when an appearance of unfairness or impropriety arises because a member of a district attorney’s office is disqualified to show that the conflict should not be imputed to the entire office. State v. Gonzales, 2005-NMSC-025, ¶ 30, 138 N.M. 271, 279, 119 P.3d 151, 159.

LEGAL ANALYSIS

New Mexico has no statute on recusal of district attorneys. State v. Chambers, 1974-NMCA-058, P16, 86 N.M. 383, 385, 524 P.2d 999, 1001 overruled on other grounds by State v. Pennington, 1993-NMCA-037, 115 N.M. 372, 851 P.2d 494. Instead, where a conflict exists and a defendant seeks recusal of the prosecutor in his case, he may present the request to the court and the court will exercise its equitable discretion.

A prosecutor is a public officer with duties quasi-judicial in nature. Her obligation is to protect not only the public interest but also the rights of the accused. State v. Hill, 1975-NMCA-093, ¶ 14, 88 N.M. 216, 219, 539 P.2d 236, 239. It is vital that the prosecutor in a case “not only be disinterested and impartial but must also appear to be so.” Id. That is, “[p]ublic confidence in the office in the exercise of broad powers demands that there be no conflict of interest or the appearance of a conflict.” Id. “[T]he ultimate goal is to maintain both public and individual confidence in the integrity of our judicial system.” Id. at 43. Important to the determination is “whether the facts support [a] conclusion that the ‘public would perceive continued prosecution by the district attorney’s office ... as improper and unjust, so as to undermine the credibility of

the criminal process in our courts.” State v. Gonzales, 2005-NMSC-025, 138 N.M. 271, 279, 119 P.3d 151, 159 (citing Palomo, 31 P.3d at 882).

I. PROSECUTION BY THE SECOND JUDICIAL DISTRICT ATTORNEY’S OFFICE WOULD VIOLATE SEVERAL SPECIFIC STANDARDS OF PROFESSIONAL CONDUCT.

As noted above, when determining whether to disqualify a district attorney’s office, the Court should determine whether the participation of a member of the district attorney’s office is inconsistent with a particular standard of professional conduct, justifying disqualification of that person. Gonzales, 2005-NMSC-025, ¶ 28. Under New Mexico law and national standards, prosecutors’ professional judgment must not be influenced by private interests. See Gonzales, 2005-NMSC-025, ¶ 38, 138 N.M. 271, 281, 119 P.3d 151, 161 (citing State v. Hill, 1975-NMCA-093, 88 N.M. at 219, 539 P.2d at 239; State v. Chambers, 1974-NMCA-058, 86 N.M. at 387, 524 P.2d at 1003). “For a prosecutor, this means at a minimum that private interests may not adversely affect his representation of the public and pursuit of a fair trial.” Id. Where a prosecutor’s private interests might adversely affect her representation, a conflict exists. See also NMRA 16-107(A)(2) Rules of Professional Conduct (stating that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if... there is a significant risk that the representation of one or more clients will be materially limited by...a personal interest of the lawyer).

“The books are replete with cases indicating that any appearance of evil in connection with the administration of public office should and must be avoided; and particularly is this true of those offices involved in the enforcement of the law.” Chambers, 1974-NMCA-058, ¶ 30, 86 N.M. 383, 388, 524 P.2d 999, 1004 (internal citations omitted) overruled in part on other grounds by State v. Pennington, 1993-NMCA-037, 115 N.M. 372, 851 P.2d 494. The New

Mexico Supreme Court has compared the standards for determining whether a prosecutor should be recused with the standards under which a judge should recuse herself for bias. Gonzales, 2005-NMSC-025, ¶ 46; compare NMRA Rule 21-211 (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned...”). The focus on applying the standard to prosecutors should be the potential for bias or interest to affect the proceedings. Id. ¶ 47. (referencing Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 807-08, n.18 107 S. Ct. 2124, 2137, 95 L. Ed. 2d 740 (1987) (observing that an actual conflict of interest exists where the potential for misconduct is considered intolerable and that a determination of whether misconduct has occurred is not necessary)).

These propositions are certainly relevant here, where on November 25, 2014, APD Chief Gordon Eden submitted a lengthy case file and a request to the New Mexico Attorney General’s Office to review APD’s investigation of District Attorney Brandenburg for possible charges of bribery and intimidation of a witness. This story was widely publicized and covered by the local press. See Mike Gallagher, DA Under Investigation, Albuquerque Journal, December 7, 2014 at A1 (attached as *Exhibit A*). Following the news that the Albuquerque Police Department asked the Attorney General’s office to look into Ms. Brandenburg’s possible involvement in a crime, she herself acknowledged that she might need to reexamine her role in the investigation of the James Boyd matter. See Mike Gallagher, DA Brandenburg denies bribery, witness intimidation allegations, Albuquerque Journal, December 8, 2014, at A1 (attached as *Exhibit B*). There is little doubt that a conflict of interest exists in District Attorney Brandenburg prosecuting two of the Albuquerque Police Department’s officers following the department’s request that she herself be investigated.

Case law also makes clear that a prior professional relationship between prosecutor and defendant creates the real possibility that a prosecutor's motivations might be influenced by more than just prosecutorial judgment. Gonzales, 2005-NMSC-025 ¶ 44. A prior professional relationship further creates the real possibility that the public will perceive improper influence to have happened, whether it does or not. Id.

The professional relationship between the District Attorney's office and the Albuquerque Police Department is necessary and ongoing. The District Attorney's office has a professional relationship not only with the two officers accused, but with their entire department. It is an unavoidable truth that the District Attorney's office works closely with the Albuquerque Police Department to prosecute crimes. It is appropriate and required that it does so. However, because of the close professional relationship that the District Attorney's office has with the entire department, it "creates the real possibility that the public will perceive" the prosecutors' motives to be affected, either for good or evil. See Gonzales, 2005-NMSC-025 ¶ 44.

Not only does the entire police department have a professional ongoing relationship with the District Attorney's office, but Detective Sandy has been a witness in numerous felony and misdemeanor cases that were prosecuted by the Second Judicial District Attorney's Office. Officer Perez has also personally been a witness in several felony and misdemeanor cases prosecuted by the Second Judicial District Attorney's Office. Defendants' professional relationship with the District Attorney's Office is not theoretical, it is personal. It is well known that a district attorney's office will often decline to prosecute one of its regular witnesses because of this conflict and the difficulties that arise. Thus, there is a clear conflict in allowing the Second Judicial District Attorney's office to proceed in prosecuting this matter.

There is no reason another District Attorney's Office or special prosecutor could not prosecute the charges to avoid any appearance of impropriety related to the personal conflict between the Second Judicial District Attorney and the Albuquerque Police Department or any complication of the District Attorney's Office's relationship with the various Albuquerque Police Department officers it relies on as witnesses. In the interest of justice and the efficiency of government officials, the Court should disqualify the Second Judicial District Attorney's office from prosecuting this case.

II. BECAUSE THE DISTRICT ATTORNEY IS DISQUALIFIED BY A PARTICULAR CONFLICT, VICARIOUS DISQUALIFICATION OF THE ENTIRE OFFICE IS APPROPRIATE GIVEN THE NATURE OF THIS CASE.

New Mexico has rejected a per se rule of disqualifying an entire prosecutorial staff if a conflict arises with a particular member of the prosecutorial staff. See State v. Pennington, 1993-NMCA-037, ¶ 11, 115 N.M. 372, 376, 851 P.2d 494, 498. However, there are certainly occasions where if one prosecutor within a district attorney's office has a conflict, then the conflict is imputed to the entire office. This likelihood is especially marked when the individual with the conflict of interest is the District Attorney him or herself. See, 2005 Op. Att'y Gen. No. 05-01 (advising that where a recently elected district attorney was conflicted by representation of a defendant in prior private practice, that conflict was imputed to the entire office, and the entire office was disqualified).² As the courts have explained with regard to conflicts that arise from prior representation, "the entire staff ordinarily need not be disqualified from prosecuting the defendant if the staff member who had previously worked for the defendant is isolated from any participation in the prosecution of the defendant." Pennington, 1993-NMCA-037 ¶ 10, (emphasis added). Admittedly, this situation differs in that no member of the District Attorney's

² A copy of this Opinion is attached for the Court's convenience as *Exhibit C*.

office had previously represented the defendant; however, screening the staff member with a conflict remains equally important, regardless of the conflict's source. Where the staff member with the conflict is the District Attorney herself, it will be nearly impossible to screen her from the prosecution of such a high profile case, especially when the decision to file the Information was made directly by the District Attorney. Indeed, it is too late to do so. The decision to charge Officer Perez and Detective Sandy was the District Attorney's.

The high profile and politically charged nature of the case is significant. New Mexico law has repeatedly held that the recusal of an entire prosecutorial staff is often more appropriate where the case is high profile. While acknowledging that not every conflict of interest within the prosecutors' office will require recusal of the entire staff, the courts have acknowledged the importance of appearances to confidence in the judicial system, especially where a case is politically charged and in the public eye.

The New Mexico Supreme Court explained that, without more, "we think that the fact that a case is high profile, politically charged, or both, is insufficient for disqualification of a member of the prosecution team." Gonzales, 2005-NMSC-025, ¶ 50, 138 N.M. 271, 283, 119 P.3d 151, 163. However, "after a determination that a member is disqualified, the nature of the case may be relevant in determining that there is an appearance of unfairness or impropriety no curative measure can dissipate." Id. (emphasis added). "If the prosecution is of such great political importance that the result could affect the political future of a district attorney, one might question whether the pressures on the prosecutorial staff are any less influential than those on private counsel." Pennington, 1993-NMCA-037, ¶ 13, 115 N.M. 372, 376-77, 851 P.2d 494, 498-99. As a sister state observed,

people are motivated by more than economics. Since we are here dealing with "appearance," both to the public as well as to individual defendants, trial courts

must carefully scrutinize any case with, for example, a high public profile or strong political overtones. We emphasize again that the ultimate goal is to maintain both public and individual confidence in the integrity of our judicial system.

State ex rel. Romley v. Superior Court In & For Cnty. of Maricopa, 184 Ariz. 223, 229, 908 P.2d 37, 43 (Ct. App. 1995). See also People v. C.V., 64 P.3d 272, 275 (Colo. 2003) (“In determining whether to disqualify a district attorney, the trial court should focus on whether disqualification appears reasonably necessary to ensure the integrity of the fact-finding process, the fairness or appearance of fairness of trial, the orderly or efficient administration of justice, or public trust or confidence in the criminal justice system.”) (internal citation omitted)

The case at issue is exactly the type of high-profile and politically charged case where it is proper to disqualify the entire District Attorney’s Office. Defendants are not necessarily questioning the District Attorney’s motivation in filing charges against Albuquerque Police Department officers for the first time in her tenure shortly after an APD official stated he thought there was probable cause to charge her with several crimes and forwarded the Department’s investigation to the Attorney General’s Office. However, the Court need only review the comments posted to various local news media articles to see that the public is asking questions about her motivation. See Mike Gallagher and Ryan Boetel, Officers Charged with Murder, Albuquerque Journal, January 12, 2015, at A1 – highlighted reader comments (attached as *Exhibit D*). One commenter states “Until now, Kari Bran[d]enburg has never once prosecuted an APD officer for use of excessive force. Suddenly since she’s been investigated by them for alleged bribery and intimidation in a case regarding her son, she files murder charges against two officers.” *Exhibit D at 11*. Another comment opines “If it were not for the investigation(s) taking place on her personal conduct she would not even be doing this much. She needs to change the headlines and get the focus off of her.” *Exhibit D at 7*.

Moreover, the public questions regarding the District Attorney's relationship with APD cut both ways. In an article published January 13, 2015 regarding the release of District Attorney Brandenburg's son from jail, a commenter stated "hurry up and indict her, so she'll get taken off the Boyd shooters cases...she'll throw those to curry police favor otherwise." See Regina Ruiz, [DA Brandenburg's son now out of jail](#), KOAT News, January 13, 2015, - highlighted user comment, attached as *Exhibit E*. It is clear that regardless of what the public perceives as the District Attorney's motivation, there are widespread questions about her impartiality in this matter.

In her recent press conference, District Attorney Brandenburg, to her credit, acknowledged that she did not "want to do anything to jeopardize the integrity" of the instant proceedings. Video: Brandenburg Press Conference (January 12, 2015), at 4:14, attached as *Exhibit F*. However, immediately thereafter, the District Attorney referenced her "personal problems with the police department" and said she would "not be intimidated" by the investigation against her. *Exhibit F at 4:37-5:45*. The statements imply that there was some sort of animosity or retaliatory intent in the Albuquerque Police Department's investigation of District Attorney Brandenburg. District Attorney Brandenburg then went further, inviting the press to "speculate all you want, I think the motivation is pretty transparent," regarding APD's timing in sending her case to the Attorney General. *Exhibit F at 5:12-5:45*. This only adds to the list of reasons that public confidence would be best served by prosecution through a different entity.

Indeed, there seem to be increasingly mounting tensions between the District Attorney's Office and the Albuquerque Police Department based on a recent news report stating that the District Attorney's Office's representative was not allowed into a briefing on a January 13, 2015

officer-involved shooting. See Jeff Proctor, DA: My office kicked out of police shooting investigation, KRQE News 13, January 13, 2015, attached as *Exhibit G*. According to the news report, the District Attorney's Office was told by counsel for the City that their office had a conflict of interest because they had decided to charge the officers in this matter. *Exhibit G*. As the article notes, there is a written agreement that requires the District Attorney's Office to be involved in investigating police shootings. However, it seems the City's concerns with a conflict of interest are also reasonable. Recusal of the District Attorney's Office from this prosecution would presumably eliminate some of these concerns. Moreover, the news article serves as further evidence of the perception that there is a conflict of interest in the District Attorney's Office's involvement in this prosecution.

Likewise, the city's largest newspaper, the Albuquerque Journal, published an editorial questioning the appropriateness of the District Attorney's Office investigating APD shootings to determine whether officers used excessive force while APD filed a report concluding there was probable cause to file felony charges against the District Attorney. Albuquerque Journal Editorial Board, Editorial: Brandenburg should take leave for sake of office, Albuquerque Journal, December 15, 2014, attached as *Exhibit H*. The editorial was published "unsigned as it represents the opinion of the newspaper rather than the writers." *Exhibit H*. The editorial highlighted the inherent conflict that arises between the two offices under these circumstances. "The Justice system operates on the premise of neutrality... Already, Brandenburg has criticized the investigation [against her] and APD has defended it. Would she allow an assistant DA under similar circumstances to handle APD cases?" *Exhibit H*. The answer is no, and the reason is that the investigation into her personal conduct gives the impression that the District Attorney cannot possibly do her job in prosecuting two APD officers in a fair and evenhanded way.

Following the decision to charge Officer Perez and Detective Sandy with an open count of murder, the Albuquerque Journal went further, publishing an editorial on January 14, 2015 that specifically opined that the District Attorney should appoint a special prosecutor in light of the investigation into her personal conduct. As the paper noted “handing over the case against Sandy and Perez would remove any hint of a conflict of interest that could delay or otherwise interfere with the case.” Albuquerque Journal Editorial Board, Editorial: Boyd charges right call, but DA should step aside, Albuquerque Journal, January 14, 2015, attached as *Exhibit I*.

Moreover, questions regarding the ability of the District Attorney’s Office to conduct an impartial prosecution are not only occurring on a local level, but on a national level. On January 13, 2015, the New York Times published an article juxtaposing the investigation against District Attorney Brandenburg with her decision to charge Albuquerque Police Department officers with a crime as a result of the use of force for the first time in her fourteen year tenure. Associated Press, Murder Charges Against Police Put New Mexico DA in Spotlight, New York Times, January 13, 2015. Attached as *Exhibit J*.

As the New York Times article notes:

Brandenburg’s move to seek charges marked a major shift from her previous decisions not go after Albuquerque officers linked to more than 40 police shootings since 2010. It also pointed to growing tensions between her office and the troubled Albuquerque Police Department, which suspects Brandenburg of reimbursing burglary victims to protect her son.

Exhibit J. The appearance of fairness in criminal prosecution is paramount and the courts have repeatedly emphasized the need for the public to be confident in its criminal justice system. That goal simply cannot be accomplished in the current climate if the District Attorney’s Office proceeds with the prosecution.

Finally, as if the foregoing were not enough to demonstrate the public perception of a conflict of interest, the City of Albuquerque's Chief Administrative Officer ("CAO") sent a letter directly to District Attorney Brandenburg just last night, January 14, 2015. *See* Correspondence from Robert Perry to Kari Brandenburg, dated January 14, 2015, attached as *Exhibit K*. In the letter, CAO Robert Perry outlined a number of issues that cause the City concern with the District Attorney's Office continuing to be involved in the investigation of officer involved shootings.

Specifically, Mr. Perry noted the City's concerns that Chief Deputy District Attorney DePalo had potentially violated two separate rules of professional conduct by being both the District Attorney's representative on scene during initial briefings in the Boyd case and being the attorney who filed a criminal information against the Defendants. *Exhibit K* at 1. The idea that Ms. DePalo might have been on scene giving legal advice to the officers before reviewing all the evidence, then participating in the decision later to charge them with an open count of murder is troublesome for obvious reasons. While Mr. Perry acknowledged Ms. Brandenburg's reasons for deciding to charge Defendants, he stated "to say that the role of you or your staff does not compromise the impartiality of the decision is counterintuitive." *Id.*

As Mr. Perry further noted, District Attorney Brandenburg is the subject of an APD criminal case which was "referred to the Attorney General's Office for multiple reasons, not the least of which is the fact that you are the prosecuting authority for police shootings." *Exhibit K* at 2. Mr. Perry then went on to characterize Ms. Brandenburg's recent statements to the press regarding the District Attorney's role in investigating officer involved shootings as "reckless." *Id.* He also claimed that in saying the City violated its agreement with the District Attorney's Office by refusing to allow a representative on the scene of a recent officer involved shooting,

Ms. Brandenburg was already “judging the integrity of the investigation.” *Id.* Mr. Perry’s point is perhaps best captured in his statement that “[o]ur community and officers have the right to know that the attorney that is involved in both the investigation and prosecution of these cases is completely unbiased, personally uninvolved and free of all appearance of conflict of interest.” *Id.* The law entirely supports that position. The District Attorney’s Office simply cannot move forward with this prosecution without casting shadows of doubt on the entire proceeding.

Public confidence in the state’s justice system is supremely important. The fact that this question of impartiality is being repeatedly addressed by community members, City leadership, the District Attorney herself, and the local and national media, mandate that the Second Judicial District Attorney’s office be disqualified from prosecuting the case against Defendants further. Should this case be prosecuted by the Second Judicial District Attorney’s office, there will be a justifiable lack of public confidence in the proceedings, regardless of the ultimate outcome. There is no reason to open the proceedings up to claims that they were motivated by ill-will against the Albuquerque Police Department in the wake of its investigation against District Attorney Brandenburg, or that District Attorney Brandenburg’s Office did not vigorously present its case in an effort to curry favor with the Department as a result of her own personal issues. Nor is there reason to open this matter up to the belief that the District Attorney’s office is not doing everything in its power to prosecute because of the professional relationship between the police department and the District Attorney’s office. In sum, there is simply no way for this matter to proceed under the control of the Second Judicial District Attorney’s office without sacrificing public confidence. Where such appearance is unavoidable, law and good sense mandate that the Court disqualify the entire District Attorney’s office.

CONCLUSION

Both the existence and appearance of propriety are incredibly important to the criminal justice system. There are clearly several layers of conflict in this matter that require disqualification of the Second Judicial District Attorney and her office. Because the case is one of a high-profile and politically charged nature, case law is clear that the conflict of interest between the District Attorney herself and the Albuquerque Police Department must be imputed to the entire office. This is to say nothing of the conflict between the District Attorney's office and the defendant officers as witnesses in past and ongoing prosecutions or the growing tensions between the District Attorney's office and the City in general.

The right to a fair trial is one of the justice system's most jealously guarded rights. It is important in each and every criminal case. However, given the attention this story has received on both the local and national stage, these proceedings will be subject to incredible scrutiny. It is therefore all the more important to take every opportunity to avoid the appearance of bias, prejudice and conflicts of interest. In short, regardless of whether the Second Judicial District Attorney's Office believes it can give Defendants the fair prosecution they deserve, the appearance of impropriety demands that the District Attorney and her office be disqualified from prosecuting this matter. Case law, professional standards, and common sense all dictate this result.

WHEREFORE Defendants respectfully request that the Court exercise its equitable jurisdiction and disqualify the Second Judicial District Attorney's Office from prosecuting this case.

Respectfully submitted,

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By: _____

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I hereby certify that the foregoing was
filed with the Second Judicial District Court
and sent via e-mail on this 15th day of January
2015 to all counsel of record.

Luis Robles

DA under investigation

Mike Gallagher / Journal Investigative Reporter

CITY OF ALBUQUERQUE

Albuquerque Police Department

Gorden E. Eden, Jr., Chief of Police



Personal and Confidential

Hand Delivered

November 25, 2014
Re: Request for Prosecutorial Review

Margaret McLean
Deputy Attorney General

Santa Fe, New Mexico

Dear Ms. McLean:

During the investigation of three incidents occurring in 2013 (larceny over \$2,500 under \$20,000 and two residential burglaries), information arose regarding possible violations of Sec. 30-24-3 (bribery and intimidation of a witness) in two of the cases. Extensive investigation, including witness statements and production of documents obtained pursuant to search warrants, supports there is probable cause that the cited statute was violated.

400 Roma NW

Albuquerque

New Mexico 87102

www.cabq.gov

Because this investigation involves a member of the Bernalillo County District Attorney's Office, I have been unable to pursue the usual course of working with an ADA to discuss and review the investigation. It is for this reason I am requesting the expertise of your office to review the report and investigation and make any recommendations regarding the charges that you believe are appropriate. I have included the full report and supporting documentation for your review. Thank you for your consideration.

Sincerely,

APD Detective David Nix



BRANDENBURG

Victims have told police the DA reimbursed them after they accused her son of thefts.



KOCH

DA's son is awaiting trial on felony and misdemeanor larceny charges.

EXHIBIT

A

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Albuquerque Police detectives believe they have probable cause to file felony charges against District Attorney Kari Brandenburg for violating the state law prohibiting bribery and intimidation of a witness in connection with burglary cases involving her 26-year-old son, Justin Koch.

For the last year, detectives have been investigating Brandenburg for her role in contacting victims in two burglaries and a larceny in which her son was a suspect – cases that involve thousands of dollars in property, including a 9mm Smith & Wesson.

In late November, APD forwarded its lengthy case file to the state Attorney General's Office for review and any recommendations regarding the charges.

The letter to the AG's Office from Detective David Nix said the extensive investigation "supports there is probable cause" that the bribery and witness intimidation statutes had been violated. Because it involves a member of the District Attorney's Office, Nix said, APD has not been able to consult with local prosecutors.



The Journal obtained the APD report on Justin Koch and Kari Brandenburg through an Inspection of Public Records Act request but personal information was redacted. (Dean Hanson/Albuquerque Journal)

The **Journal** obtained the reports Thursday in response to a request made under the state's Inspection of Public Records Act. The city redacted or removed identifying information such as Social Security numbers and sealed search warrant affidavits from the file.

In one burglary case, the victims gave written statements to police saying Brandenburg contacted them and agreed to reimburse them for the items her son took in the burglary if they didn't tell police about Koch's involvement.

In the larceny case, Brandenburg was involved in conversations and email arranging for the couple to get reimbursement for a handgun they believe Koch had stolen and then sold on Craigslist. The couple received a check for \$800 drawn on Koch's trust account.

Attorney General Gary King's spokesman Phil Sisneros said Friday that he couldn't comment on the report at this time.

Albuquerque attorney Peter Schoenburg, known for criminal defense and civil rights work, responded to **Journal** requests for comment sent to Brandenburg and to her office.

"Ms. Brandenburg knew nothing about this report until today (Friday), although it had already been released to the newspaper," he told the **Journal**. "When we have had a chance to read it, we will have more to say. Kari has always conducted herself in a moral, ethical and transparent manner during her 14 years as District Attorney. Her integrity is beyond reproach. She has never deviated from this, in either her professional or personal life."

Justin Koch is facing criminal charges in other larceny cases but has not been charged in the cases detailed in the report obtained by the **Journal**. His attorney could not be reached for comment.

Losses in burglary recovered

In October 2013, APD burglary detectives were tracking a man they believed was a "serial burglar" when they contacted Ryan Sena and Shane Anaya about the July burglary of their Northeast Heights home.

But Sena and Anaya had a different story to tell than police expected, pointing a finger at their former friend Justin Koch, the son of District Attorney Brandenburg through her marriage to the late criminal defense attorney Ron Koch.

Justin Koch had been with Sena and Anaya during the day but failed to meet them that July evening when the burglary occurred.

Based on Koch's statements to friends (who were later interviewed by detectives), Sena and Anaya believed Koch had stolen an X-box and other items worth more than \$1,000 from their home.

"I told Kari over the phone we had proof Justin broke in our home," Ryan Sena said in a written statement to police. "She then asked if I had called the police yet. That I told yes, just to dust for prints. She then said if I don't call the police she would reimburse us for what was taken."

Anaya's statement said that "Kari also contacted Ryan Sena asking us not to press charges and that she would pay us the amount of everything Justin took."

Sena said he and Brandenburg communicated through email and Facebook.

"We talked about writing up everything that was stolen and would be reimbursed. I dropped off the list of stolen items. She then called me and said she can't afford to pay us back. So we were left screwed."

Sena described himself as a childhood friend of Koch's and told police that Koch had a drug habit. Other witnesses told police Koch was addicted to heroin.

Koch has not been charged with drug offenses but is awaiting trial on felony and misdemeanor larceny charges.

Sena said he wrote about the burglary on Facebook and heard from others that Koch had stolen from other friends including Andrew and Victoria Barros, who said they were victims.

Detectives interviewed the Barros couple and found they had been victimized twice.

In April 2013, they were away from home on a trip when more than \$10,000 of electronics and jewelry was stolen from their home.

Koch lived with the Barros for 18 to 24 months, and Andrew Barros suspected Koch staged the burglary because a month earlier they found him stealing some cash. He was never charged with any crime in reference to the theft of cash allegation.

Koch continued to live with the Barros couple until July, when they believe he stole a handgun from their bedroom.

After the handgun was stolen, Andrew Barros tried to contact Koch unsuccessfully and finally contacted Kari Brandenburg via Facebook about the theft.

She called Andrew Barros and according to the police report, "Kari expressed great concern for Justin and his addiction to illegal narcotics. She also seemed concerned for Andrew and Victoria's well being and asked Andrew if he had reported the handgun stolen. When Andrew told Kari that he had, Kari told Andrew 'Good you want to protect yourself on that end...'"

Barros told detectives that Brandenburg advised him on having Koch evicted.

She then asked him, according to the report, how much the handgun cost as well as the insurance deductible Andrew Barros paid for the April 30 burglary and offered to reimburse him for both.

After several weeks of dealing with Brandenburg about the stolen gun, Barros began dealing with Koch's aunt Deborah Manchester about repayment for the handgun and holster.

He said he received a check from Manchester for \$800 drawn on Koch's trust account.

According to detectives, Barros said after receiving the check he was satisfied with the outcome.

Barros told police that Brandenburg never told him she would pay for the gun and the insurance deductible if they did not pursue criminal charges against Koch.

When asked about Brandenburg's involvement, Barros told detectives, "I guess it is an old school train of thought, I mean a wrong was righted."

The records show a search warrant was served seeking information from Brandenburg's personal Facebook account but the affidavit laying out grounds for the warrant was removed from the records produced by APD in response to the **Journal's** IPRA request because it is still sealed.

DA reviews APD shootings

Brandenburg's office reviews the criminal investigations into officer-involved shootings and decides whether to file criminal charges against the officer.

Now in her fourth term as the county's top prosecutor, she has never charged an officer for his or her role in a police shooting.

At a press conference in November, Brandenburg said she was reviewing the police shooting of the James Boyd case herself. Boyd, a mentally ill camper, was shot by APD Detective Keith Sandy and officer Dominique Perez in the Sandia foothills in March.

At the press conference she said her office was expecting to complete its review of several officer-involved shootings by Christmas.

An attorney speaking for Brandenburg says she was not aware of the APD investigation report.

DA Brandenburg denies bribery, witness intimidation allegations

Mike Gallagher / Journal Investigative Reporter



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DA Denies Allegations

District Attorney Kari Brandenburg denied allegations of bribery and witness intimidation during a Monday morning press conference held at the offices of Albuquerque attorney Peter Schoenburg, whom Brandenburg described as a friend. "I never at any time violated the law," Brandenburg said. The allegations, which were reported in a Journal story Sunday, involve an Albuquerque Police Department investigation into Brandenburg's role in contacting victims in two burglaries and a larceny in which her son, Justin Koch, was a suspect. The cases involve thousands of dollars in property, including a 9mm Smith & Wesson. Brandenburg said she has yet to see any of the police reports in the case and that the leak of information to the Journal calls into question the integrity of the investigation.

ABQ Journal

DA Denies Allegations

District Attorney Kari Brandenburg denied allegations of bribery and witness intimidation during a Monday

EXHIBIT
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DA Denies Allegations

District Attorney Kari Brandenburg denied allegations of bribery and witness intimidation during a Monday morning press conference held at the the offices of Albuquerque attorney Peter Schoenburg, whom Brandenburg described as a friend. "I never at any time violated the law," Brandenburg said. The allegations, which were reported in a Journal story Sunday, involve an Albuquerque Police Department investigation into Brandenburg's role in contacting victims in two burglaries and a larceny in which her son, Justin Koch, was a suspect. The cases involve thousands of dollars in property, including a 9mm Smith & Wesson. Bradenburg said she has yet to see any of the police reports in the case and that the leak of information to the Journal calls into question the integrity of the

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- Wooden Toys For Needy Children
- Protest of Ferguson Decision
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- Bus Crash on Route 66
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- Suspect In Police Shooting Captured
- Officer Shot During Traffic Stop
- Dead Man Brought To E.R.
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- APD officer shot and injured during traffic stop
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- 3 Teens Charged With Murder
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- UNM Medical Students Stage Die-In
- Cowboy Hat Clad Thief Takes Bait Car
- Families Demand Indictments
- Truck Careens Into Canyon
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- Woman Survives Dramatic Bus Crash
- City Bus Crashes Into Home
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Responding to revelations that she has been under investigation by Albuquerque police detectives for more than a year, District Attorney Kari Brandenburg told a press conference Monday, "It will be business as usual at the DA's Office."

She said, however, she may re-evaluate her role in personally reviewing the APD shooting of mentally ill camper James Boyd in the Sandia foothills in March.

APD detectives concluded in a lengthy report forwarded to the state Attorney General's Office that it appeared there was probable cause to believe Brandenburg had violated state laws against witness bribery and intimidation in connection with alleged thefts of thousands of dollars worth of property by her 26-year-old son, Justin Koch.

"I have never at any time violated the law," Brandenburg told reporters and later said that included any violations of ethical, moral or professional codes.

Speaking to reporters at the office of attorney Peter Schoenburg, the county's longtime top prosecutor also said she knew nothing of the APD investigation until contacted by the **Journal** on Friday. The **Journal** published a story on the report Sunday, after the newspaper obtained the document through a request under the Inspection of Public Records Act.

The report by APD burglary detectives focused in part on whether Brandenburg offered to make good on the losses of burglary victims if they didn't report her son to police or pursue criminal charges.

Brandenburg said she couldn't discuss the factual details in the report because she had not yet obtained copies.

But she said, "We have serious concerns about the investigation. Key people were not interviewed including myself."

APD spokesman Tanner Tixier said the police department "conducted a fair investigation and submitted the results to the state Attorney General's Office for a decision on possible charges. We stand by the thoroughness of the investigation."

The Attorney General's Office has refused comment and Brandenburg said Monday that she has not been contacted by state prosecutors.

Devastating

Brandenburg said the allegations raised by the police reports were "devastating" to her family.

She said she has been dealing with her son's drug addiction for several years through "tough love."

"I hold him 100 percent accountable for everything," she said, adding that she had never bonded him out of jail. He currently is in the Metropolitan Detention Center after failing to meet terms of a preprosecution diversion program for alleged crimes unrelated to those outlined in the lengthy APD report.

That prosecution is being handled by District Attorney Lemuel Martinez of the 13th Judicial District.

"He has a heart of gold but he's a drug addict," Brandenburg said of her son.

She said her three other children are all doing well – a son in college, a daughter in law school and another daughter working full-time.

Koch is facing charges that he forged a check and stole jewelry from the home of his aunt Deborah Manchester in

September 2013. The case is assigned to District Judge Jacqueline Flores of Albuquerque and, according to court documents, she has scheduled trial for March 2015.

Brandenburg said her office policy is to transfer any case involving a staff member's family to another prosecutor's office.

She also said the allegations contained in the APD investigation would not deter her or her office from continuing to review the criminal investigations into officer-involved shootings.

A handful of protesters gathered Downtown on Monday to protest Brandenburg's failure to charge any officer in a fatal shooting during her 14 years in office.



Four protesters outside District Attorney Kari Brandenburg's press conference call for her resignation over the lack of prosecutions in APD fatal-shooting cases. (Greg Sorber/Journal)

At a press conference in November, Brandenburg said she was reviewing the case of the police shooting of James Boyd herself. Boyd, a mentally ill camper, was shot by APD Detective Keith Sandy and officer Dominique Perez in the Sandia foothills in March.

On Monday she said she hoped to have that investigation completed early next year.

She said she might examine her role in that case in light of the APD investigation but for now, "I will continue to do my job," she said.

APD investigation

Last October detectives from APD's burglary unit were looking into a possible serial burglar when they interviewed a couple who were victims of a burglary, according to the APD report.

The victims, Ryan Sena and Shane Anaya, didn't know the serial burglar but identified Justin Koch as the person who stole their Xbox, PlayStation 3 and video games.

They told detectives they had been in contact with Koch's mother, Kari Brandenburg, about getting reimbursed for the theft. They also told detectives about other potential victims and witnesses.

Sena and Anaya were not reimbursed, but another victim did receive an \$800 check from Koch's trust account to pay for a handgun stolen from his house.

The police investigation continued into this fall until detectives sent the file to the Attorney General's Office stating they believe they had probable cause to charge Koch with the property crimes and a member of the District Attorney's Office with "Bribery and Intimidation of a Witness." The detectives' supplemental reports identified Kari Brandenburg as a suspect.

January 14, 2005

OPINION
OF
PATRICIA A. MADRID
Attorney General

Opinion No. 05-01

BY: Arthur W. Pepin
Assistant Attorney General

TO: Richard D. Flores
District Attorney, Fourth Judicial District
P.O. Box 2025
1800 New Mexico Avenue
Las Vegas, New Mexico 87701

RE: DEATH PENALTY PROSECUTION FOR THE MURDER OF PRISON
GUARD RALPH GARCIA; CONFLICT OF INTEREST FOR DISTRICT
ATTORNEY AND HIS ENTIRE STAFF

QUESTION:

Is Richard D. Flores, the newly elected District Attorney in the Fourth Judicial District, who worked in private practice with an attorney presently representing a defendant in a capital case (including representing the defendant at least once at a hearing), subject to disqualification from the prosecution of that case? If the District Attorney is disqualified, are other members of his DA office similarly disqualified?

CONCLUSION:

The incoming District Attorney, Richard D. Flores, and all members of his District Attorney's office, are clearly disqualified from prosecuting the death penalty case against the District Attorney's and his colleague's former client. Any involvement by DA Flores or his staff would jeopardize any conviction obtained in the prosecution of Robert Young for the murder of Ralph Garcia

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FACTS:

On January 1, 2005, Richard D. Flores took office as the newly elected District Attorney for the Fourth Judicial District. Pending in the Fourth Judicial District is a death penalty murder prosecution against Robert Young for the murder of prison guard Ralph Garcia in August 1999 during a prison riot at Santa Rosa. The Special Prosecutions Division of the Office of the Attorney General has been closely involved in this matter since September 1999. This office has participated in fifteen cases arising from the Santa Rosa riot, and the Attorney General has been the attorney of record in the Young case since his indictment. Eleven of the Santa Rosa cases have resulted in plea dispositions in which the Attorney General was directly involved. Of the four remaining cases, three are death penalty cases, including the prosecution of Young, and the remaining case is a non-death penalty murder case.

The Attorney General has been lead counsel in all of the extensive motions and hearings in Young's case. The Santa Rosa prosecutions have included more than 300 interviews and depositions and generated 70,000 pages of documents to date. The Attorney General worked in partnership with the predecessor to District Attorney Flores, devoting extensive resources to these cases. It would be extremely difficult, if not impossible, to fully inform DA Flores or any other Special Prosecutor that he may appoint of all of the relevant information in the Young prosecution that has been developed since 1999.

In seeking an Opinion from this office, District Attorney Flores states that he worked with the defense attorney for capital murder defendant Robert Young, "in a three member legal association in Las Vegas, New Mexico" where the three lawyers "freely shared our files with one another in terms of court settings, phone calls and deadlines." Regarding Robert Young, District Attorney Flores states "I have read his file, discussed the case with Mr. Baca [Young's defense attorney] and attended one hearing on Mr. Young's case." Mr. Baca will continue to represent Young in the pending capital murder case.

DISCUSSION:

A lawyer's professional conduct precludes the lawyer from participating in a matter as a public official when the lawyer "participated personally and substantially while in private practice" unless it appears that no one else can act in the lawyer's stead. RPC 16-111(C)(1) NMRA 2004. In addition, "A lawyer who has formerly represented a client in a matter shall not thereafter" either represent a different person in that matter who has interests adverse to the former client or use information gained from the former client to the former client's disadvantage. Rule 16-109, NMRA 2004. When a District Attorney perceives a conflict of interest with a defendant, or for "other good cause," the District Attorney may appoint another member of the bar to prosecute the matter. N.M.S.A. 1978, Section 36-1-23.1 (1984).

Guidance on the question of an incoming District Attorney's ability to act personally, or through the office he or she heads, can be drawn from New Mexico precedents. After reviewing these precedents as well as cases from other jurisdictions, it is clear that the

District Attorney, as the elected official responsible for the operation of the prosecutor's office, is personally disqualified from continuing in this case, and others in his office are also disqualified under these circumstances.

Two decades ago the Court of Appeals was faced with a situation where the attorney who represented the defendant at his first trial later became an assistant district attorney in the office prosecuting the defendant's retrial. Although the attorney recused himself from participation in the retrial, the appellate court's extensive review of cases on the subject "all lead us to believe that from the foundation of our government to the present day, under the facts of this case, the fair and impartial administration of justice compels us to hold that the Grant County District Attorney's Office is precluded from prosecuting the defendant" and that a special prosecutor or the Attorney General could prosecute the case. State v. Chambers, 86 N.M. 383, 388, 524 P.2d 999 (Ct.App.), cert. denied, 86 N.M. 372, 524 P.2d 988 (1974), overruled in part, State v. Pennington, 115 N.M. 372, 851 P.2d 494 (Ct.App.), cert. denied, 115 N.M. 409, 852 P.2d 182 (1993).

In Pennington, 115 N.M. at 376, the New Mexico Court of Appeals rejected the Chambers rule that automatically disqualifies an entire prosecutor's office and instead adopted a rule that would permit others in the office to prosecute a case "when the disqualified member of the staff is isolated from the prosecution of the defendant. Instead we leave to the sound discretion of the district court whether the circumstances of the specific case require disqualification of the entire staff."

The court held in Pennington, 115 N.M. at 380, that the disqualified staff member in that case, an investigator who previously worked for the defendant as a private investigator during his first trial, was properly insulated from the retrial by careful measures adopted by the District Attorney to exclude the investigator from any contact with the retrial in any fashion. This is the majority rule followed in most states.

In applying Rules 16-109 and 16-111, the New Mexico Court of Appeals has adopted "a presumption that confidential information was disclosed in cases that are substantially related" when considering disqualification of a prosecutor who was formerly the defendant's counsel. State v. Barnett, 1998-NMCA-105, ¶19, 125 N.M. 739. The court held that a prosecutor who formerly represented the defendant in cases unrelated to the present prosecution, but where the prior convictions were used at sentencing, had a conflict of interest that required her disqualification. Barnett, 1998-NMCA-105, ¶24.

Thus, under existing precedents in New Mexico, it is clear that New Mexico follows the longstanding majority view that a defendant's former attorney cannot himself have any involvement in the prosecution of the defendant on the same matter. See Ward v. State, 242 P. 575, 576 (Okla.Crim.App. 1926) ("Where one appears for an accused as his attorney, whether he be paid for his services or not, and whether he is informed by his client of the facts surrounding his defense or not, such appearance precludes him from subsequently appearing or participating on the other side of the same case"). Accord Fitzsimons v. State, 218 N.W. 83, 84 (Neb. 1928). In the facts presented here, it is clear that the newly elected District Attorney is disqualified from having any personal involvement in the prosecution. See e.g. Commonwealth v. Lux, 484 S.E.2d 145, 570 n.2

(Va.App. 1997), citing Commonwealth v. Kilgore, 426 S.E.2d 837, 842-43 (Va.App. 1993) (a prosecutor is disqualified from the present prosecution after “working as a member of a firm in which a partner represented the accused in the same matter”).

While it is possible as discussed in Pennington to erect barriers that insulate an investigator or Assistant District Attorney from the prosecution of a former client, no such possibility has been recognized when the defendant being prosecuted is the former client of the elected District Attorney.

The Fourth Judicial District Attorney’s Office consists of twelve assistants in three courts (Las Vegas, Mora and Santa Rosa) under the direct supervision of the District Attorney. The capital case at issue arose in Santa Rosa. The District Attorney appoints the assistants and “[e]very such appointment may be revoked by the district attorney making it,” so that the District Attorney has supreme authority over the assistants. N.M.S.A. 1978, Section 36-1-2.

It is difficult if not impossible to hypothesize how the District Attorney could be adequately insulated from the prosecution of a death penalty case in an office where he appoints and supervises all of the twelve assistants. The peculiar power of the District Attorney has been examined in this context by other courts, which have found that disqualification of the elected prosecutor demands disqualification of his staff as well.

The closest factual analogy appears to be found in State v. Stenger, 760 P.2d 357, 360-61 (Wash. 1988), where the defendant’s former defense counsel in an earlier, non-death penalty case was now the Clark County Prosecuting Attorney responsible for administrative control over the office, and he then filed a notice of intent to seek the death penalty in a case in which the Prosecuting Attorney had never represented the defendant. There was no doubt that the Prosecuting Attorney himself could not be involved in the capital prosecution. Ibid. In addition, the Washington Supreme Court found that the prior attorney-client relationship required disqualification of the elected prosecutor’s entire office:

The factual information the prosecuting attorney obtained from the accused by virtue of the prosecuting attorney’s previous legal representation of the accused, including information about the defendant’s background and earlier criminal and antisocial conduct, is information closely interwoven with the prosecuting attorney’s exercise of discretion in seeking the death penalty in the present case. In short, privileged information obtained by the prosecuting attorney when he was the defendant’s counsel in the previous case could well work to the accused’s disadvantage in this case where the death penalty is sought.

Stenger, 760 P.2d at 360-61 (footnotes omitted).

Even though the elected prosecutor in Stenger had not represented the death-penalty defendant in the capital case, his representation in a different, earlier case disqualified his

entire office. A number of non-death penalty cases reach the same conclusion. For example, in People v. Doyle, 406 N.W.2d 893, 899 (Mich.App. 1987), the court upheld disqualification of the entire prosecutor's office due to a conflict in a pending case by the elected Genesee County Prosecutor. The appellate court upheld the finding that "the elected prosecutor and his chief assistant [are] too intertwined in the chain of command to permit their staff to conduct these prosecutions." Ibid.

The court in Doyle relied in part on a collection of cases supporting the following proposition: "The general rule is that a conflict of interest involving the elected county prosecutor himself requires recusal of the prosecutor and the entire staff. Since assistant prosecutors act on behalf of the elected county prosecutor and are supervised by him, the policies of fairness to the defendant and the avoidance of an appearance of impropriety require this result." Doyle, 406 N.W.2d at 899, citing 31 A.L.R.3d 953. See also State v. Burns, 322 S.W.2d 736, 740 (Mo. 1959) (where the defendant's counsel later took office as the St. Francois County Prosecutor, reversal of the defendant's conviction was required by the appearance of impropriety arising from the conflict of interest, despite absence of demonstrated prejudice).

In People v. Lepe, 211 Cal.Rptr. 432, 434 (Cal.App. 1985), the Imperial County District Attorney, Thomas W. Storey, had formerly represented a defendant in two criminal cases. The Court held that the District Attorney "must be recused" and his position required disqualification of his entire office: "As the deputies are hired by Storey, evaluated by Storey, promoted by Storey and fired by Storey, we cannot say the office can be sanitized such to assume the deputy who prosecutes the case will not be influenced by the considerations that bar Storey himself from participation in the case." Ibid.

As in Lepe, the prosecutor challenged disqualification of himself and his entire staff in State v. Tippecanoe County Court, 432 N.E.2d 1377, 1379 (Ind. 1982), where the prosecutor had represented the defendant in two prior cases, the most recent of which had been five years earlier. The Indiana Supreme Court upheld disqualification because "the prosecutor who had the administrative control over the entire staff was the one who had formerly represented the particular defendant involved and, therefore, the trial court properly disqualified the entire staff of deputies." Ibid.

The court in State v. Tate, 925 S.W.2d 548, 554 (Tenn.Crim.App. 1995), found an actual conflict of interest when a judge who heard some motions from the defendant then became the Knox County District Attorney prosecuting the defendant. In addition the court held that the usual rule permitting insulation of the former counsel and prosecution by other members of the office did not apply in these circumstances. Although a "trial judge does not have the same duties as defense counsel" and there "is a lesser degree of shared confidences", the court felt that "in these particular circumstances, the more cautious approach is to disqualify the office and appoint an entirely new prosecution team. That preserves the integrity of the criminal justice system." Tate, 925 S.W.2d at 557-58.

As these cases demonstrate, the integrity of the criminal justice system, and proper respect for a defendant's right to due process and a fair trial, demand that the elected District Attorney be disqualified from participation in a case against a defendant he represented in the same case now being prosecuted. These considerations also require the disqualification of the entire prosecutor's office given the District Attorney's role as supervisor and employer of the deputies, assistants and investigators who might otherwise proceed in the case. When in addition to all of this the nature of the pending case against Robert Young as a death penalty prosecution is added, with the attendant lengthy and complicated process that demands close, focused attention by the attorneys involved, the disqualification of the District Attorney and his office is clearly required here. The Office of the Attorney General has been deeply, actively involved in the prosecution of Robert Young since 1999. In light of the conflict of interest created by the election of Richard D. Flores as District Attorney, the continued prosecution of the death penalty case against his former client, Robert Young, should be by the Office of the Attorney General.

Patricia A. Madrid
Attorney General
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Arthur W. Pepin
Assistant Attorney General
Director, Criminal Appeals

Officers charged with murder

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Detective Keith Sandy, far right, moves up the ridge behind an APD K-9 officer in last March's confrontation with James Boyd in a photo taken from officer Dominique Perez's helmet video camera. (Source: Albuquerque Police Department)

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By Mike Gallagher And Ryan Boetel / Journal Staff Writers

UPDATED: Monday, January 12, 2015 at 11:23 pm

PUBLISHED: Monday, January 12, 2015 at 9:46 am

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Detective Keith Sandy, far right, moves up the ridge behind an APD K-9 officer in last March's confrontation with James Boyd in a photo taken from officer Dominique Perez's helmet video camera. (Source: Albuquerque Police Department)

Officers In Shooting Face Murder Charges

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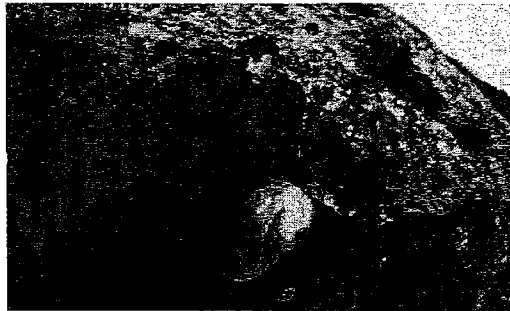


Declaring that "I have a job to do and I'm doing it," District Attorney Kari Brandenburg said her office was filing murder charges against two Albuquerque police officers in the shooting of a mentally ill homeless camper in the Sandia foothills last spring in a case captured on a police video that shocked the nation.

The charges filed Monday against officer Dominique Perez and recently retired Detective Keith Sandy appear to be the first against an APD officer for an on-duty fatal shooting in at least 50 years. Both men are charged with an open count of murder for the March 2014 shooting death of James Boyd following a four-hour standoff.

Brandenburg said Perez and Sandy would not be booked into jail until after a preliminary hearing is held to determine if there is enough evidence for either of them to stand trial on any of three charges -- first-degree murder, second-degree murder or voluntary manslaughter.

"We have enough evidence of probable cause," Brandenburg told reporters. "We can meet that standard in this case."



APD Detective Keith Sandy, center, during the confrontation with James Boyd.
(Source: Albuquerque Police Department)

Sandy's attorney, Sam Bregman, said that charging the officers was a "terrible, terrible decision."

"There is not one shred of evidence to support any ... criminal intent on the part of Keith Sandy," Bregman said.

Luis Robles, who represents Perez, did not respond to **Journal** telephone messages left with his receptionist.

Brandenburg said that neither the high-profile nature of the

Boyd shooting with widespread airing of the video, nor recent cases around the country where police were not charged by grand juries, entered into her decision to file the charges and proceed with a preliminary hearing.

Perez has been on administrative assignment since the shooting. Sandy was allowed to retire from the department eight months after the shooting.

Brandenburg said the preliminary hearing will allow all of the evidence to come out in public. She declined to discuss the specific facts that led her office to conclude it had enough evidence to proceed.

District Judge Alisa Hadfield has been assigned the case. No hearing has been scheduled.

At the conclusion of the preliminary hearing, a judge will have to decide whether to bind either man over for trial and on what charge.

Typically, preliminary hearings are held within 60 days of the charges being filed, but Brandenburg's office said defense attorneys have agreed to waive any time limits on scheduling the hearing.

Brandenburg said her office had used the preliminary hearing route before to charge police officers in other matters, but not in any shooting cases.

Bregman said that in one sense he welcomed the preliminary hearing process.

"I'm not so upset with her for doing this process because it is transparent and I want the public to understand what happened here," he said.

"I personally don't find fault with the idea of going to a prelim instead of a grand jury proceeding. I do find fault with even bringing criminal information to begin with."

The shooting

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Officers charged with murder

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PEREZ: Preliminary hearing to be scheduled



SANDY: Lawyer says he had no criminal intent

Boyd,
36,
had
been



BOYD: Suffered from paranoid schizophrenia



District Attorney Karl Brandenburg speaks to the media on Monday. (Roberto E. Rosales/Journal)

camping in a restricted area of open space in Albuquerque's foothills when he was told to leave by Open Space officers.

Boyd, who had a history of mental illness and run-ins with police, refused and brandished at least one of the two small knives he carried during the standoff with police.

More officers were called to the scene, with more than 20 present at one point.

Officer Perez's helmet-mounted camera captured the final moments of the standoff, when Boyd appeared to be complying with commands to leave. As he bent down to gather his belongings, an officer throws a flash-bang grenade at his feet. Another officer sends a police dog at Boyd, who pulls the knives out of his pockets again.

As he appears to turn away from the officers, Sandy and Perez fire three rounds apiece from assault-style rifles, striking Boyd in the back. Officers continue to yell at him to drop the knives.

"Please don't hurt me anymore. I can't move," Boyd says as he lies on the ground.

Officers fire bean-bag rounds at him as he's on the ground, then let loose a police dog, which grabs his leg and shakes it. He doesn't move. Officers then approach and cuff him.

Boyd, who suffered from paranoid schizophrenia, died the next day at the hospital.

Bregman, at a news conference Monday, said Sandy shot Boyd because the officer handling the dog didn't have his weapon drawn and was just 8 feet from Boyd.

At the time, newly appointed Police Chief Gorden Eden told reporters that based on his preliminary review the shooting appeared to be justified.

The incident occurred shortly before the U.S. Department of Justice released findings that APD had a pattern or practice of using excessive and fatal force in APD shootings investigated prior to Boyd's death.

Mayor Richard Berry, who later said the chief spoke too quickly and called the Boyd shooting a "game changer," asked the FBI to investigate. That is a separate investigation and is ongoing, although information has been shared with investigators from APD, Bernalillo County Sheriff's Office and State Police.

On Monday, Elizabeth M. Martinez, assistant U.S. Attorney, released a statement: "The Justice Department will be closely monitoring the local prosecution arising out of the officer involved shooting of James Boyd. The federal investigation into this matter remains open."

Berry also issued a statement Monday.

"We trust the judicial system will provide the family, our community and the officer a fair, transparent and unbiased opportunity to explore and present the facts as they relate to this tragic event," he said. "It is important for all of us to allow the process to progress without prejudice in order for our community to move forward."

Last fall, APD released dashboard camera footage taken before the shooting in which Sandy is heard talking to New Mexico State Police Sgt. Chris Ware about Boyd, calling him a "f***ing lunatic."

Bregman acknowledged that Sandy talked about using force against Boyd just as the officer arrived on scene. In a recording, Sandy appears to tell the State Police officer that he planned to shoot Boyd with a less-lethal shotgun that fires a Taser.

"He said he was going to shoot with a Taser shotgun. Now does a Taser shotgun sound like lethal force? No," Bregman said in a news conference he scheduled for the same time as Brandenburg's.

"They were called out there, Keith particularly, because that unit had Taser shotguns. That's what was said on that (the tape recording). You don't shoot someone with a Taser shotgun because you are premeditating killing them."

Earlier cases

All shootings by APD officers are reviewed by Brandenburg's office. No officer has faced criminal charges as a result of those reviews, but one officer involved in a shooting during that time was fired

as a result of APD's investigation.

Albuquerque police are implementing a series of reforms negotiated between the U.S. Department of Justice and the city after the DOJ issued a report concluding Albuquerque police had a pattern of using excessive force, which included police shootings. The Boyd shooting was not one of those reviewed.

Brandenburg said that for 30 years "investigative grand juries" supervised by her office and her predecessors reviewed all police shootings in Bernalillo County.

In spring 2012, Brandenburg and District Court judges agreed that she would temporarily stop using the "investigative grand juries" after **Journal** stories made the inner workings of those proceedings public.

In January 2013, Brandenburg announced her intention to resume using the special grand juries to review police shootings, but state District Court judges put a halt to that.

Attorneys for victims' families have called the investigative grand jury process a "sham" in court filings.

In halting the "investigative grand juries," the judges told Brandenburg "that the appearance of a lack of impartiality is impossible to avoid, especially given that the procedure is used only for police officers and specifically limited to officer-involved shootings."

Journal stories about the internal workings of the grand juries showed that grand jurors were provided instructions on different versions of justified shootings, but no criminal statutes; prosecutors met with officers to review testimony; and prosecutors asked officers leading questions.

Brandenburg has been the subject of an APD investigation in which detectives recently found probable cause to charge her under state law that prohibits bribery or intimidation of a witness in connection with a burglary investigation of her son. APD has sent that case to the state Attorney General's Office for review.

In response to a question at her news conference, Brandenburg said that investigation had nothing to do with her decision to charge the officers. She said her office had made a "preliminary" decision to file charges against Perez and Sandy before she learned of the APD probe.

Police helmet cam: Camper turning from officers when shot

ABQ Journal



Brandenburg's release



January 12, 2015 - FOR IMMEDIATE

Contact: Kayla Anderson, Public In

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ALBUQUERQUE JOURNAL

DOJ INVESTIGATION

In April, federal officials found that APD violates citizens' rights
what has happened after that

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Terri Maestas · Works at City of Albuquerque

Should we have to choose a human life or a police dogs life?? Don't get me wrong, I love animals and I have a large dog that lives inside my house...Could the dog not have been set loose to attack the man instead of the officer shooting him????

Reply · Like · 2 minutes ago



Moe Kinney · Top Commenter

I was going to share this on FB but I didn't know that my Friends would have to take a quiz before they could read it. I'll find a link to another news article. There are plenty.

Reply · Like · 1 · 5 hours ago



Forrest Byers · Top Commenter · Capitalist at Private Investor

The innocence or guilt should be decided by a jury, but I must say, the video from the helmet cam is atrocious and possibly damning!

Reply · Like · 2 · 6 hours ago



Amy Morinharris · Student at BibleInteract Institute

i cannot believe this is happening. We will have no police force soon enough, if our force knows they have the potential to be charged with murder. For goodness sakes, pack up and leave ABQ. There is little left to protect us—we civilians think we know more and better, well, here's your chance to prove your point. Protect the masses, even the asses who harass because its their right as citizens. But police, they do their duty, and bam! Charged with murder. Wow. We are not a civilized city. We are divisive and ignorant. God bless this city, because the crap is getting ready to roll out.

Reply · Like · 1 · 11 hours ago



Micheal Planck · Top Commenter · Melbourne, Victoria, Australia

Their duty is shooting a sick man armed with steak knives when they outnumber him 20 to 1? WTF is wrong with you? No, seriously... what is your malfunction? In the rest of the civilized world the police seem to get by without shooting 2,000 people a year. And the rest of the world has just as many crazies. So, you know, maybe it's your cops.

Reply · Like · 10 · 6 hours ago



Ron Hamilton · Top Commenter · BENT OVER at An Emergency Department in Cincinnati

Watch the video, Amy. Jesus may not have liked this...

Reply · Like · 3 · 5 hours ago



Paul Maguire · Serial Entrepreneur at Entrepreneur

You are much more likely to die from being shot by the police than a terrorist attack. Any reasonable observer can see this guy was shot for no reason. There was no threat to the officers. This appears to be murder clear as day. Police do NOT have the right to just shoot people, kill them, and have no recourse or review. They DO know that. Clearly there is a difference of opinion, so the jury can do what juries do. Most police shootings are justified. They also get shot AT! The big question comes again back to training. If these officers were trained to act this way, how can they be made wrong for their training and following what they were trained to do. It seems the training has changed over the years with more guns drawn, more shootings. On the flip side, people are much more violent today and less respectful and compliant with police as they were in the old days. Its problematic all the way around. More often then not when people do not comply with police demands the situation escalates. Its a difficult job. Rarely do you have video like this. We will see what the judge says and the jury says.

Reply · Like · 3 · Edited · 4 hours ago

[View 8 more](#)



Mearl Rose · Top Commenter · University of Utah

It took 10 months to decide this? Better late than never.

Reply · Like · 2 · 11 hours ago

bubbabob7491 (signed in using yahoo)

Brandenburg realized that we're all sick of her crap and that if she didn't indict, she risked being run out of town on a rail.

Reply · Like · 3 · 12 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

Poster Glenn McBride wrote "The answer lies in the fact that the police went into the situation with the desire and intention of killing a citizen. They just want to kill someone. Anyone." Is this a statement that has a jaundiced view of the men and women of law enforcement? McBride isn't the only poster to blame all LEOS for the actions of a few whose action in a given encounter is questionable. Don't such strong comments feed a belief ALL cops are bad people? The Federal stats show few LEOS shoot a person. They also show most of those shot are people with a criminal history and some are shot while they are committing felony crimes or using a gun to resist arrest.

The Boyd shooting appears to be the rare event that only proves some times cops make mistakes, terrible mistakes. Should we judge ALL officers because of the failure of a few?

Reply · Like · 1 · 13 hours ago



Marlene Keller · Works at State of Arizona DES, Sunset Lounge, Independent Contractor

We judge all cops because of the failures of many, many cops. The facts substantiate that cops nationwide have been in a killing frenzy that began two decades ago and recently has escalated to fever pitch. Cops are murdering citizens at an appalling rate, too appalling for us to give them any more breaks by benefit of doubt. There is no doubt remaining and, as more facts have surfaced it is doubtful that giving cops our trust, the benefit of doubt, or letting them slide was ever warranted or deserved. How many people would still be alive if cops had not been allowed to murder citizens with impunity and immunity? We might not ever know the exact number of lives snuffed out by kill happy cops, but we do know now it is certain to be a substantial one. They lie on reports, omit information, embellish facts not in evidence, contradict... See More

Reply · Like · 5 · 11 hours ago



Marlene Keller · Works at State of Arizona DES, Sunset Lounge, Independent Contractor

Glenn McBride is right: "The answer lies in the fact that police went into the situation with the desire and intention to kill a citizen. They just wanted to kill someone. Anyone." This

is tact. The cops stated they wanted to kill someone and that they intended to kill someone for two hours prior to choosing their victim. This made it premeditated murder in the 1st degree and that's how they should be tried. Shooting a homeless man who had already dropped his tiny pocket knives had turned away from the cops and he was walking away at a distance too far for them to start claiming they were in fear for their lives. I believe it will be proven that it was a homeless man whom was chosen by the cops to be executed because they did not think anyone would care because he was homeless. Sadistic cruelty and lack of empathy or compassion... See More

Reply · Like · 2 · 8 hours ago



Ron Hamilton · Top Commenter · BENT OVER at An Emergency Department in Cincinnati

Marlene Keller: Just edit out the very last sentence and you have a great summation of the situation. That single sentence puts it over the top. Thank you

Reply · Like · 5 hours ago

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Jim Buchanan · Top Commenter · Reverse Engineer at Indentured Servitude, Inc.

By any measure this is national.

Brandenburg has integrity, there is ample public video and audio, Justice is watching and these two don't seem up to coming off as upstanding public servants.

I can hear the sighs from all the good cops in town, there are many, who need this case to set things straight with the population.

The bad apples, and there are too many, won't catch on until the hammer drops on these two then they will be shocked.

Reply · Like · 3 · 13 hours ago



Don Walk · Top Commenter · Westminster College

Brandenburg has no integrity. If it were not for the investigation(s) taking place on her personal conduct, she would not even be doing this much. She needs to change the headlines and get the focus off of her.

As far as the charges against the Officers, hopefully something comes out that justifies their actions. If not, then at the very least a form of Manslaughter should be the charge. Just don't give Brandenburg undue accolades when all she is trying to do is get the focus off of her own headlines.

Reply · Like · about an hour ago



Jim Buchanan · Top Commenter · Reverse Engineer at Indentured Servitude, Inc.

Don Walk - you need to go sell that on another street corner Don.

And if you really want to pursue this tack at least try to come up with something that shows an iota of intelligence. Your extremely simplistic viewpoint demonstrates that big pictures to you are 8 x 10 inches and in a cheap plastic frame.

Reply · Like · 1 · 36 minutes ago



Larry Grant · Top Commenter · University of Wisconsin-Green Bay

I just can't understand how these people could shoot down a man armed with pocket knives with such a great distance BETWEEN THEM? What about tear gas, or a tazer? Cameras were rolling, as the world can see the whole event, how is this in anyway rational?

Reply · Like · 2 · 14 hours ago



Brian Fejer · Top Commenter · University of New Mexico

adrenaline

Reply · Like · 1 · 14 hours ago



Larry Grant · Top Commenter · University of Wisconsin-Green Bay

Adrenaline... of which I have always been a junkie. Training is the key to control it otherwise soldiers would be shooting each other in the asp every time they held a weapon. are not police officers not trained? Don't get me wrong, I am all for supporting the officers of the laws, but as we see from these comments, there are rabid Anarchist who want nothing more than to see our society collapse into chaos. If this situation was ongoing as it appears to me, there should have been someone in strategic command, controlling events.

Reply · Like · 2 · 14 hours ago



Marlene Keller · Works at State of Arizona DES, Sunset Lounge, Independent Contractor

Larry Grant Our society has already collapsed into chaos

Reply · Like · 1 · 11 hours ago

[View 3 more](#)

klyde61 (signed in using yahoo)

Hope theyboth get to visit BUBBA for a couple of years.....pigs dont last long in the big house

Reply · Like · 3 · 15 hours ago



Larry Grant · Top Commenter · University of Wisconsin-Green Bay

you sound like you have been there, say hi to bubba for me the next time you see him.

Reply · Like · 3 · 14 hours ago



James Vetzell · Top Commenter · Ivy Tech Community College

Two Words: Justified shooting!

Reply · Like · 15 hours ago



Marlene Keller · Works at State of Arizona DES, Sunset Lounge, Independent Contractor

In the back???

Reply · Like · 1 · 11 hours ago

**Robert Barnett** · Works at Northwest Airlines

no they deserve to be tried for sure just I don't see the stores being looted and burned to the ground.

Reply · Like · 2 · 15 hours ago

**Damon Brewer** · Top Commenter

Ok yall cop lovers are throwing red herrings faster than I can type.

What does "try riding a day with them"... "they risk their lives"...

WTF does any of those things have to do with shooting a man in the back?

Reply · Like · 6 · 15 hours ago

**Joe Hoffman**

@Damon Brewer: I won't try to throw up any "red herrings" to you. I'll simply tell you that these officers will not be convicted. Period.

Reply · Like · 12 hours ago

**Marlene Keller** · Works at State of Arizona DES, Sunset Lounge, Independent Contractor

Joe Hoffman I wish I could be on that jury -- and 11 more just like me--there would be a righteous conviction preceding death row

Reply · Like · 11 hours ago

**Joe Hoffman**

"Joe Hoffman I wish I could be on that jury -- and 11 more just like me--there would be a righteous conviction preceding death row"

Marlene Keller- Your idiotic comment just goes to show why bigots like you are eliminated during the jury selection process.

Reply · Like · 1 · 11 hours ago

**James Bali** · Kihel, Hawaii

Hope they get some time for taking everything away from someone who had nothin.

Reply · Like · 3 · 16 hours ago

**Robert Barnett** · Works at Northwest Airlines

I guess because victim wasn't black there is no uproar or Sharpton or Jackson.

Reply · Like · 16 hours ago

**Damon Brewer** · Top Commenter

Dude, there is an uproar. I was linked here while reading The Telegraph. Ya know, in Europe.

But what I can't get is what race has to do with this issue.

Reply · Like · 2 · 16 hours ago

**James Vetzal** · Top Commenter · Ivy Tech Community College

Damon Brewer You haven't been very observant of late, does "Ferguson, Mo. Ring a bell?"

Reply · Like · 2 · 15 hours ago

**Stephanie Padilla** · Top Commenter

There was certainly an uproar here in Albuquerque, Robert Barnett.

Reply · Like · 11 hours ago

**Jim Buchanan** · Top Commenter · Reverse Engineer at Indentured Servitude, Inc.

Good. It shows poor judgment to appoint yourself judge, jury and executioner then deem illegal camping a capital offense. In fact, it's downright insane.

In any event, this is legitimately a capital offense and should rate a legally appointed real judge and jury.

Reply · Like · 6 · 16 hours ago

**Kerry Loge**

Bad plan... Why resort to force in the first place? The dude is coming down? If you had reason to deploy a flash bang and rush in the first place.. Officer one should have been the take down guy. Officer 2 have the beanbag.. Officer 3 and 4 flanked, ready with deadly force. Was the dog called back??? He should of been there after the flash bang and on him..before the take down officer got there. If the dog was scared off because of the flash bang then officer 2 should have fired a beanbag immediately. None of that happen... The dog moved back allowing him time to pull his knives and what is the officer at the top right doing? His LOS looks like it has two officers and the camper in it. Move up the hill and get a better angle so the other 2 officers aren't in your way. I don't know the whole story. May be some body can fill in the blanks.

Reply · Like · 17 hours ago

**Yolande Long** · Top Commenter · Mother Cabrini High School

I watched the video. It's disgusting, cold blooded murder.

Reply · Like · 5 · 17 hours ago

**Fahadieb Al Fahad** · Top Commenter

The police serve the people and not to kill them

Reply · Like · 1 · 17 hours ago

**Fahadieb Al Fahad** · Top Commenter

ty Dennise for the like :)

Reply · Like · 17 hours ago

**Boris Scharf** · Tarzana, California



The chief should resign, no every action by a cop should b supported by the Chief of any PD.

Reply · Like · 3 · 18 hours ago

youshouldcarenow (signed in using yahoo)

You have no idea the difficulty in dealing with a person with mental illness, most police officers aren't this deranged. James Boyd should have shown better judgement.

Reply · Like · 18 hours ago



Gerry Schneider · Top Commenter · Associate Broker/Realtor at Shaw and Shaw Ltd., Realtors

He HAS mental illness. He can't show judgement. Lord save us!

Reply · Like · 17 hours ago



Brian Fejar · Top Commenter · University of New Mexico

So should have Officer Keith Sandy, he seems to be mentally ill as well!

Reply · Like · 2 · 17 hours ago



Damon Brewer · Top Commenter

You should care now to not use your real name....that is why you are hiding like the coward you are...just like cops.

Reply · Like · 16 hours ago

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Xenubarb Goromasu · Top Commenter · Tilden, Nebraska

Where are the anal probe complaints?

Reply · Like · 19 hours ago



Jimmy Abrego Wilson · Top Commenter · Test Pilot at Bell Helicopter

he didn't look like a threat at all to me...some cops are trigger happy

Reply · Like · 19 hours ago



Glenn McBride · Top Commenter · Eastern High School

Some?

Reply · Like · 19 hours ago



Jimmy Abrego Wilson · Top Commenter · Test Pilot at Bell Helicopter

ya some

Reply · Like · 19 hours ago



Glenn McBride · Top Commenter · Eastern High School

Jimmy Abrego Wilson I subscribe to the Frank Serpico model of police corruption. So I would bump the "some" up to "most, if not all".

Reply · Like · 2 · 19 hours ago

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Amy Borchardt

<http://krqe.com/2014/03/21/apd-officer-involved-shooting-was-justified/>

The link above is stating the event that happened before he was shot.

Based on reading the story I posted and after viewing the story here with the video, I have a lot of questions still.

Why would the officers use a flash grenade and a K9 to go after the man once he was (as could be seen) complying with orders that were given? The above article says the man was shouting and threatening the officers but his remarks were that of someone who was mentally ill. Saying he was with a government agency and he could legally kill the officers etc... Once they discharged their weapons why were they still shooting at the man? You can clearly see he was no longer alive to be responsive to any orders given. My opinion is there were alternatives to killing the man, he didn't need to die.

Though, deeming the officers murders seem more of a political issue here, not a police force one. Had they thought this was a horrible offense they would have pressed charges after it happened back in March of last year and the DA wouldn't be forcing it though with no evidences. The man had 2 knives in his hands when he was shot by the officers. That is considered a deadly weapon. So, as sad as it is. This is a justified shooting. It's not right, it is horrible, but based on the law it was justified for the officers to take him down.

Reply · Like · 1 · 19 hours ago



Glenn McBride · Top Commenter · Eastern High School

The answer lies in the fact that the police went into the situation with the desire and intention of killing a citizen. This is very typical of law enforcement at all levels, and is one of the primary motivators of police officers. They just want to kill someone. Anyone.

Reply · Like · 2 · 19 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

Glenn McBride "The answer lies in the fact that the police went into the situation with the desire and intention of killing a citizen." Really? What proof do you have of your belief? What proof do you hve of your belief "They just want to kill someone. Anyone.?" Please tell us.

Reply · Like · 1 · 19 hours ago



Gabriel Hayes · Fresno Adventist Academy

Phillip Howell Keith Sandy was recording saying he was going to shoot Boyd. "In the recording, Sandy is heard using foul language and telling a State Police sergeant that Boyd was a "unatic" whom he planned to shoot. The sergeant later said Sandy was referring to using a stun gun." <http://www.foxnews.com/us/2014/10/01/albuquerque-police-chief-officer-comments-before-fatal-shooting-were/>

Reply · Like · 2 · 18 hours ago

View 2 more



Elaine Marquez · Top Commenter

It's hard not to be cynical about the DA's reasons that charges are finally being brought and why it took so long. Obviously, Sandy expected them since he retired so that he wouldn't lose his pension if/when convicted. In a way, this is probably a relief to those good cops that are part of APD. It has been a dark cloud hanging over them and the citizens of Albuquerque for a long time.

Reply · Like · 20 hours ago



Jess James · Top Commenter

What good cops? The good cops who turn blind eyes to internal PD crime and treachery? Those are not "good" cops, those are accessories to crime

Reply · Like · 1 · 19 hours ago



Timothy Wilson · Works at United States Air Force

Jess your suggestion that God cops turn a blind eye is rather close minded and ignorant. As a patrol officer it is not your duty or responsibility judge, investigate, or even talk to officers about their unbecoming actions. There is internal affairs for that reason, and I assure you IA is far harsher on officers than any judge or jury would be. An officers actions are generally highly scrutinized within his department. It is not for you or me to decide if there was any wrong doing, it is up to the democratically elected DA and a jury of his peers.

Reply · Like · 2 · 19 hours ago



Jess James · Top Commenter

Timothy Wilson Really IA is hard on cops? Ridiculous...What crime must a cop commit for this "harsh" IA to come down on them?? Certainly not...excessive force, unprofessional behavior, KILLING UN-ARMED citizens, constitutional violations etc. In the eyes of cops the only crime cops can commit is ratting on other cops...There is a new day of justice coming in USA, the days of out-of-control cops is coming to a slow end...These men will face a jury of citizens (not a rigged GJ) And I hope they are convicted and punished severely (life in a metal box) And I hope it will set an example of what citizens can do to stop the worst kind of crime-Crime under the shield of authority.

Reply · Like · 2 · 19 hours ago

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Kevin Smith · Duvall, Washington

The DA should do Ride-along with the APD. Before anyone exits the car, she should determine if lethal force is going to be necessary. If she feels it may be necessary, she accepts full responsibility and the officers proceed as usual. If she feels lethal force should not be employed, she should exit the car alone and 'talk the suspect down'. Only if she is physically attacked will the officers engage.

Everyone wins.

Reply · Like · 20 hours ago



Fred Garvin · Irving, Texas

Reply · Like · 20 hours ago



Fred Garvin · Irving, Texas

The officers must have been terrified for their lives, however could they defend against a man with two knives?

Other police departments are trained in his to apprehend a suspect without killing them first, maybe the APD could learn to do the same.

Reply · Like · 1 · 19 hours ago



Ron Hamilton · Top Commenter · BENT OVER at An Emergency Department in Cincinnati

Kevin Smith: If you are a cop with the APD, or actually, a cop ANYWHERE at all, your comment explains so much about the level of intelligence not required to pass the civil service exam to be a LEO...

Reply · Like · 1 · 19 hours ago

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Freedom Law Center

She is a relentless political hack who is doing this to shift the focus off herself. Shame, Shame, shame. How can she continue to prosecute ANY case which involves APD?

Reply · Like · 3 · 21 hours ago



Gerry Schneider · Top Commenter · Associate Broker/Realtor at Shaw and Shaw Ltd., Realtors

As you know, she usually doesn't.

Reply · Like · 17 hours ago



Cynthia Rael · Xyngular Distributor at From Home

Glad someone said it!

Reply · Like · 8 hours ago



Freedom Law Center

Bingo, Kevin Quail, Bingo! You got it. APD had immunity, until they came after her. NOW, all of a sudden she cares.

Reply · Like · 1 · 21 hours ago



Kevin Quail · Top Commenter · Albuquerque, New Mexico



Until now, Kari Branenburg has never once prosecuted an APD officer for use of excessive force. Suddenly, since she's been investigated by them for alleged bribery and intimidation in a case regarding her son, she files murder charges against two officers:

<http://www.koai.com/news/district-attorney-may-face-charges-police-say/30113596>

The Justice Department had to come in to oversee the APD, but she never filed any charges at all until now?

Reply · Like · 2 · 21 hours ago



Rick Baca · Top Commenter

I have tried very hard not watch this video every time it comes up. I never watch the shooting but I am always distressed by the behavior of the officers involved prior to the shooting. Their interactions with Mr. Boyd are troubling and indicative of the Albuquerque Police Department's behavior when interacting with the people they're sworn to protect. The department as a whole is surly, rude dictatorial and down right nasty even in everyday interactions with the citizenry of Albuquerque.

The object of police work should be to enforce the law and calm incendiary situations such as these. The behavior of the officers should be to deescalate, calming the citizen and themselves. An overstimulated cop is apt to make poor decisions.

My avatar is my father, now passed away, a retired police APD Sergeant. At his funeral I told ...
See More

Reply · Like · 13 · Edited · 22 hours ago



Stephanie Padilla · Top Commenter

I wish I could "like" this comment more than once. Your dad was an exemplary officer, Rick Baca.

Reply · Like · 10 hours ago



Will McReynolds · Top Commenter

The video says everything. Sure, the guy did not comply however there are many other methods to subdue this camper who was a mentally unstable character...probably known to the cops. We tend to hire ex-military that have not left the battlefield in Iraq or Afghanistan

Reply · Like · 3 · 22 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

Are you claiming these two officers are former military who saw action in a war theatre? Please tell us the source of your claim.

Reply · Like · 1 · 22 hours ago



Brian Fejer · Top Commenter · University of New Mexico

<http://krqe.com/2014/03/19/cop-involved-in-sunday-shooting-had-rocky-past-performances/>

Reply · Like · 1 · 22 hours ago



Ken Westcott · Top Commenter · University of Florida

His source, and I read it three times, says they were busted ex state cops not military. This does not excuse the behavior as seen on the video.

Reply · Like · 1 · 21 hours ago

View 2 more



James Gavin · Works at Ex Irish army

murder is murder

Reply · Like · 2 · 22 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

yes it is when a jury says so. What does your posting have to do with this case?

Reply · Like · 19 hours ago



P.J. Hancock DePotter · Top Commenter · Medical Laboratory/patient care. at Santa Barbara Cottage Hospital

We shall see if these officers are actually convicted....

Reply · Like · 1 · 22 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

Yes, the presumption and jury system will decide the facts.

Reply · Like · 1 · 22 hours ago



P.J. Hancock DePotter · Top Commenter · Medical Laboratory/patient care. at Santa Barbara Cottage Hospital

Phillip Howell true.....I wish we had less violence in such a wonderful city :(

Reply · Like · 22 hours ago

lobodog719 (signed in using yahoo)

While I can't say the shooting was justified in any way, I can't help but think that if James Boyd followed the requests of the officers who first responded to put his hands up and come down from his position that he would still be alive. Did he need to be shot? No. But he didn't need to ignore a lawful order either.

Reply · Like · 22 hours ago



Brian Fejer · Top Commenter · University of New Mexico

It looks like he was picking up his belongings and was planning to walk down when APD fired a flash grenade, which stunned him, sicced the dogs on him, and shot in the back?

Reply · Like · 2 · 22 hours ago



Phillip Howell · Top Commenter · Bishop Dubois

lobodog.. your basic argument is correct, the however is at no point in the 4+ hour standoff did Boyd present a danger to any person.

APD trainers and leadership should be indicated co-conspirators for failing to properly train all the officers involved and the leadership- superior officers- resulting in Boyd's death. NO officer should be involved in a 4 hour standoff, the emotional toll lays the groundwork for them to make significant errors of judgement. A captain should have taken command of the engagement. Once it was determined Boyd did not have a gun, posed NO immediate danger the officers should have been backed off 100 or more feet so ONE person could have calmly talked to Boyd. People who are not mental will not react calmly when you have 5 or more armed men shouting at you. Officers do not either.

DA, why haven't you indicated the watch commander?

Mayor, when are you going to tell everyone of the changes in training that will reduce the potential for such violent outcomes?

Reply · Like · 2 · 22 hours ago

lobodog719 (signed in using yahoo)

Brian Fejer I agree with all that you say that happened Brian. However that was after 4 hours of standing off to the officers, issuing threats to the officers and their families. Why not just come down right away? Let the officers set him up with someone to provide adequate shelter indoors with meals and a shower? Why stand off for 4 hours??

Reply · Like · 21 hours ago

View 5 more



Dennis Wallace · Top Commenter · Odessa College, Odessa, TX

Oh boy..he was shot in each arm...what was the danger...one more in the back for good measure.Now they are shooting each other...who is the blame? Department of Justice's investigation into APD, during the announcement of their findings, the DOJ cited the shooting, and Eden's comments about it, as evidence of the systemic problems at APD. NO LEADERSHIP!

Reply · Like · 1 · 23 hours ago



Annie Wood · Top Commenter · Independent Distributor at Thirty-One Gifts

thank god even if they aren't indicted...at least its out there in the open! you pigs up north need to adjust your attitudes. I hate you pathetic losers, thanks for being to lazy to actually write my accident report a few months ago!!!! its a scary place when cops can lie to civilians, i was told there would be a report in regards to the hit n run and instead my employer went to find it and since you pig never took the time to write it i lost my job. so i didnt get shot, but my ability to provide for my family including my disabled son, was taken cuz one of you APD was to lazy. its sad, you pigs need to realize you are supposed to be helping, not harming. this video in particular is disgusting, the shooting is AGGRESSIVE body, step need to read

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SANTA FE – Republican Gov. Susana Martinez is scheduled to unveil her budget recommendations as her administration and the Legislature.....



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The attitude of the masses is often... "well its not happening to me." or to unquestioningly accept what media says, accept the response from other ANY government organization even when it is not appropriate has brought us here. Too many people not holding these entities accountable lets officers, once held to higher standards, go about with this dangerous attitude of superiority or being "untouchable". Maybe Rick, your life hasn't been negatively affected by a pigs pompous attitude, but there are people whose lives have been changed ... In so many ways ..and some even have had their lives taken because cops are all doped up on power trips. It's not an over reaction. You tell the family if this slain man their overreacting. You tell my son who is disabled why he can't have what he needs that it's just an overreaction. S... See More

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Anthony Robbin · Top Commenter

that just means the judge will let them go

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Phillip Howell · Top Commenter · Bishop Dubois

Really? You know the outcome of the future?

Reply · Like · 22 hours ago



Valerie Hubbard

What took so long!

Reply · Like · 1 · 23 hours ago



Jim Baca · Top Commenter · Works at Retired

The video says it all really. The question is, what took so long.? That is where a real story could be found.

Reply · Like · 3 · 23 hours ago



Tim Mahoney · Top Commenter · Works at Retired

How much is a search for justice? How much is driven by the politics of political correctness? Or is it rude to even ask the question anymore?

Reply · Like · 2 · Yesterday at 8:53am



Tracy Boateng · Top Commenter · North Texas

Have you not seen the video. They murdered him in cold blood.



Reply · Like · 8 · 23 hours ago



Gerry Schneider · Top Commenter · Associate Broker/Realtor at Shaw and Shaw Ltd., Realtors

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DA Brandenburg's son now out of jail

Kari Brandenburg: 'They simply said I'm a suspect'

UPDATED 9:41 PM MST Jan 13, 2015

By Regina

BIO

Text Size: A A A

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ALBUQUERQUE, N.M. — District Attorney Kari Brandenburg made national headlines when she filed murder charges against two Albuquerque police officers accused of shooting and killing a man in the foothills.

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The filing came at the same time as the Albuquerque Police Department wrapped up a criminal investigation into Brandenburg. The case focused on whether Brandenburg stepped in to get her son out of trouble.

The investigation into Brandenburg is currently in the hands of the attorney general.

He'll look into whether she should face charges of bribery or intimidation of a witness. As of this week, the AG's office said the case is still being reviewed.

In December, Brandenburg had to publicly deal with the problem, which involved her son Justin Koch.

"He has a heart of gold. I mean, he truly has so many incredible qualities. But he's a drug addict, and I can't tell you how it breaks my heart to be here and to have to say that, but it's the truth," she said at the time.

Koch has faced a number of charges since 2008, including larceny and home burglary, according to court records. In 2013, police began investigating claims Brandenburg paid her son's alleged victims.

An ex-roommate told police she offered to reimburse him for a gun he said Koch stole.

An officer asked the roommate how they felt about her possibly offering to pay the deductible.

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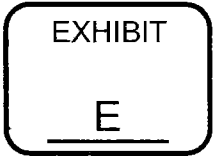
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"It's like an old school train of thought, but I just felt like, you know, you're aware of what's wrong and you try to make it right," the person said in a police recording.

Brandenburg said again this week that she's done nothing criminal.

"They haven't filed anything against me, they simply said I'm a suspect," she said.

Mobile users: Tap for video

She said her decision to file charges against the two officers involved in James Boyd's death had nothing to do with APD's investigation into her.

"I'm not going to be intimidated," she said. "As long as I have a breath in my body I will do what I think is right for the people that I represent."

Police handed over nearly two-dozen discs and hundreds of pages of police reports to the AG's office.

Koch was most recently arrested and charged with shoplifting. He pleaded not guilty.

He has since bonded out of jail, and officials said no name or bonding company was listed next to his release.

KOAT Action 7 News reporter Laura Thoren contributed to this report.

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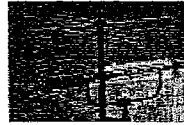
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abernat • 18 hours ago

Stupid kid is probably going to consider himself untouchable and commit some other crime soon.

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outpost • 20 hours ago

Koch is fortunate he hasn't been shot by any homeowner as quite a few career thieves have found out. When a person's home is broken into it will leave them feeling in danger because the thief may come back. If a child is home when a thief breaks in, it will really affect the child. Where does this guy work when he's not stealing or in Jail? Is he on Welfare or Food Stamps?

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David Stauffer  **outpost** • 20 hours ago

I'm sure that if Mr. Koch found himself with a case of acute lead poisoning the individual defending his/her home from invasion would soon find themselves on charges of murder brought on by non other than Kari Brandenburg.

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Guest  **David Stauffer** • 19 hours ago

Yep. And it wouldn't take her any 10 months to do it. She would see to it murder charges were filed 5 minutes after her darling, but very criminal son, expired.

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slimelaws • 18 hours ago

Hurry up and indict her, so she'll get taken off the Boyd shooters cases....she'll throw those to curry police favor otherwise. We need a real prosecutor to do a real job with those two murderers....

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timi • 16 hours ago

Good job begman get those killers off the hook how can those cops afford a lawyer like him discredit the DA like you devil lawyers do

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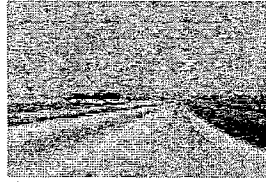
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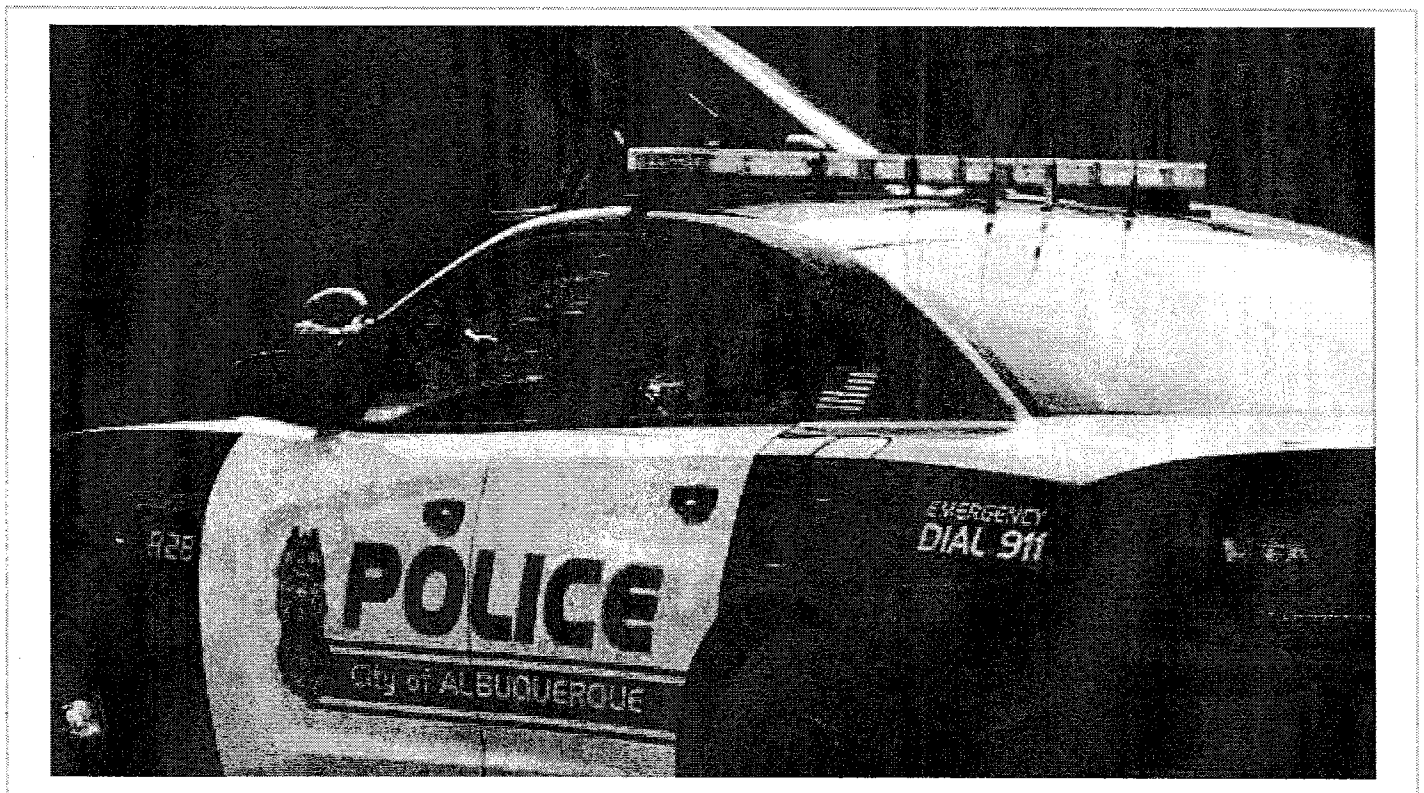
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KRQE NEWS 13

DA: My office kicked out of police shooting investigation

By Jeff Proctor

Published: January 13, 2015, 10:38 pm | Updated: January 13, 2015, 11:17 pm



ALBUQUERQUE (KRQE) – A top prosecutor for District Attorney Kari Brandenburg’s office was shut out of a briefing after a fatal police shooting near San Mateo and Constitution NE on Tuesday evening, Brandenburg told KRQE News 13.

Police officials and others were gathering to discuss the most recent developments in the investigation a few hours after the shooting, Brandenburg said. Chief Deputy DA Sylvia Martinez attempted to join the briefing, but Deputy City Attorney Kathryn Levy would not let Martinez attend.

EXHIBIT

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What Brandenburg said happened Tuesday evening would be an unprecedented move by city of Albuquerque officials, and it comes a day after Brandenburg charged two APD officers with murder in the March shooting death of homeless camper James Boyd.

Levy invoked the charges in barring Martinez from the briefing, according to Brandenburg.

"Sylvia was told that our office has a conflict of interest because we charged the officers," she said.

Reached by telephone for comment Tuesday evening, Levy, who has for years worked as APD's attorney, refused to answer questions.

Police said officers went to the area of San Mateo and Constitution after a report of "suspicious activity" shortly before 5 p.m. Tuesday. They took one man into custody, but another man fled on foot. That man fired shots at two officers, who chased him on foot, according to police.

The chase and shootout ended when the officers shot and killed the man, according to police.

The DA's Office plays an integral role in investigating police shooting cases. Prosecutors are involved from the very beginning of the process, from providing legal advice and approving search warrants right after an officer shoots someone to deciding whether the shooting was justified at the end.

Levy also told Martinez that APD "wouldn't be needing any legal advice or help" and that Martinez "could go home," Brandenburg said. "They told her we could call another prosecutor's office to come down."

Prosecutors' presence at the scenes of police shootings and inside the investigatory briefings has been ubiquitous for decades here. In fact, the DA's participation in the investigations is memorialized in a written agreement with APD and other agencies signed in 2004.

"I have never seen anything like this. Ever," Brandenburg said in a telephone interview, referring to a city official shutting one of her prosecutors out of a briefing. "Clearly, this could compromise the integrity of the investigation of this shooting."

The written agreement that governs police shooting investigations in Bernalillo County says representatives from APD, the county Sheriff's Office, New Mexico State Police and the DA's Office are to designate representatives to take part in the inquiries. The agency that employs the shooting officer "shall be designated the lead agency," the agreement says.

Last fall, Mayor Richard Berry's administration signed a settlement agreement with the U.S. Justice Department of Justice to implement hundreds of reforms at APD. The agreement came after an 18-month DOJ investigation in which federal officials found widespread use of excessive

force by APD officers, including in police shootings.

The Justice Department, as part of ongoing reform efforts, adopted the local agreement that spells out the process for police shooting investigations.

"It is my opinion that the city violated" the agreement, Brandenburg said. "And that means they violated their agreement with the DOJ."

After Brandenburg announced the murder charges against officer Dominique Perez of the APD SWAT team and former detective Keith Sandy in the Boyd shooting on Monday, Berry issued a written statement.

"We trust the judicial system will provide the family, our community and the officers a fair, transparent and unbiased opportunity to explore and present the facts as they relate to this tragic event," Berry said in the statement. "It is important for all of us to allow the process to progress without prejudice in order for our community to move forward."

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KRQE News 13

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miltfarrow · 14 minutes ago

we have a real serious problem in that the Police have been shoveled a wheel barrel of manure, By the Executive , Bush and Now Obama, as well as some miscreant C.E.O's before them -That they are to become the "BIG BAD DOGS ON THE BLOCK " to bolster that B*****T The Executive has had the DOD offer Form # 1033 which is a Back door to all the killing apparatus of the "Corporation" *Note I said Corporation, as we do not have legitimate Government, it is a foreign maritime corporation for the profit of the banks-

The cops will have to decide if they will abide by the Organic constitution, or follow the desires and orders of the C.E.O. OF CORPORATION UNITED STATES--We must take back our nation, and provide for a Grand Jury of the people (NOT THE MURDER INCORPORATED we are dealing with--This makes Al Capone's Organization look like kindergarden-The rape of the USA by these people is onerous. The cops will become an expendable tool if they continue rampant murder--This is what they are being taught by the D.O.D and 'School of Americas" a school for assassins. We have no rule of legitimate laws other than Admiralty and Roman Law-- if we put up with it, then we deserve to have neither freedom, nor liberty. "the death of the usa 1871, continued in 1933"

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Editorial: Brandenburg should take leave for sake of office

Albuquerque Journal Editorial
Board

In light of the Albuquerque Police Department report concluding there's probable cause to file felony charges against Bernalillo County District Attorney Kari Brandenburg, it's hard to imagine it can be "business as usual" in her office.

But Brandenburg, who denies any wrongdoing, says that's what it's going to be – even though much of what her office does involves handling cases investigated by APD.

To complicate things further, her office investigates APD shootings to determine whether officers used excessive force.

APD detectives, after a year-long investigation, sent their case to the state Attorney General's Office, stating they felt there was probable cause for charges under state law dealing with witness bribery and intimidation, but asking for review and advice. The report was obtained by the Journal under the state Inspection of Public Records Act.

The allegations arose from an APD investigation into a series of burglaries and alleged thefts of thousands of dollars worth of property in which Brandenburg's 26-year-old son, Justin Koch, is implicated. The report includes allegations that Brandenburg offered to reimburse victims' losses if they didn't report her son to police or pursue criminal charges.

Detective David Nix in a letter to the AG's Office says APD cannot consult with local prosecutors because the case involves "a member of the District Attorney's Office." Normally, police send cases to the DA's Office for possible prosecution.

The Justice system operates on the premise of neutrality. Judges routinely recuse themselves from cases in which they have a conflict or perceived conflict. Already, Brandenburg has criticized the investigation and APD has defended it. Would she allow an assistant DA under similar circumstances to handle APD cases?

There should be no rush to judgment. But Brandenburg should take the necessary steps to protect the integrity of the office, which is so central to the justice system. That could be accomplished by putting herself on leave while calling for a quick determination on charges by the AG's office.

As in any other criminal investigation, both Brandenburg and the public she represents are entitled to justice.

This editorial first appeared in the Albuquerque Journal. It was written by members of the editorial board and is unsigned as it represents the opinion of the newspaper rather than the writers.

EXHIBIT

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Editorial: Boyd charges right call, but DA should step aside

Albuquerque Journal Editorial
Board

EXHIBIT

Bernalillo County District Attorney Kari Brandenburg made the right decision to file open murder charges against two Albuquerque Police Department officers who shot mentally ill homeless camper James Boyd after a four-hour standoff.

Now it's up to the judicial system to determine in open court whether the March 2014 shooting in the Sandia foothills was justified – for instance, if the two officers acted based on reasonable fear for the life of another officer – or if the case should proceed to trial.

The Boyd shooting, coming after a years-long string of officer-involved shootings and as the U.S. Department of Justice was wrapping up its investigation into possible civil rights violations by APD, elevated the conversation about police interactions with mentally ill people. The FBI is also investigating the Boyd shooting.

Filing criminal complaints against officer Dominique Perez, who remains on administrative leave, and recently retired detective Keith Sandy means the process will move forward with an open preliminary hearing rather than a grand jury proceeding that is conducted in secret.

Previously, Brandenburg's office had taken officer-involved shootings to special investigative grand juries. No recommendations for criminal charges against officers investigated for fatal on-duty shootings ever emerged from the process. District Court judges ended the practice in 2013.

Brandenburg's decision to pursue criminal charges is believed to be the first such action against an APD officer for an on-duty fatal shooting in at least 50 years, and the district attorney says she has enough evidence of criminal conduct to proceed.

Now, evidence and testimony will be presented in open court for all to see and hear. And by filing open murder counts it will be up to a judge, not the DA, to decide what level of charges – first- or second-degree murder or manslaughter – are pursued, or whether there isn't enough evidence for the case to proceed to trial at all.

A widely aired video of the shooting shocked the community and prompted protests locally. Brandenburg said neither the video nor recent cases elsewhere in the country where grand juries declined to indict police officers played into her decision.

There is another good decision Brandenburg should make: appoint a special prosecutor outside her office to take the case from here.

She has been under investigation by APD for possible bribery or intimidation of a witness in connection with a burglary investigation of her son. In fact, detectives found there was probable cause to file charges but forwarded the case to the state Attorney General's Office for review.

Brandenburg said she had basically decided to charge the officers before she learned of the investigation. But at this point, handing over the case against Sandy and Perez would remove any hint of a conflict of interest that could delay or otherwise interfere with the case.

Although defense lawyers have waived time limits that normally govern the time track for such cases, a fast and

impartial resolution of the charges is important to the officers, families of people shot by police and to the entire community.

This editorial first appeared in the Albuquerque Journal. It was written by members of the editorial board and is unsigned as it represents the opinion of the newspaper rather than the writers.



The New York Times | <http://nyti.ms/1stol2u>

U.S.

Murder Charges Against Police Put New Mexico DA in Spotlight

By THE ASSOCIATED PRESS JAN. 13, 2015, 4:25 P.M. E.S.T.

ALBUQUERQUE, N.M. — For most of her career, Kari Brandenburg has been a low-key district attorney in New Mexico's largest county.

But at a time when police shootings have elicited huge protests nationwide, the Albuquerque Democrat took a rare step — charging two police officers with murder. Now she's in the national spotlight, and she's simultaneously battling bribery allegations from the same police force.

"I'm going to let you guys speculate to that," Brandenburg told reporters when asked if the bribery claims were efforts to prevent her from seeking charges. "I am not going to be intimidated. As long as I have a breath in my body, I will do what I think is right for the people that I represent."

On Monday, Brandenburg announced she was seeking murder charges against Albuquerque SWAT team member Dominique Perez and former detective Keith Sandy for the shooting death of James Boyd, a 38-year-old homeless man.

Boyd, who authorities later said suffered from schizophrenia, was shot during a standoff in March in the foothills of the Sandia Mountains. Video of the shooting showed Boyd appearing to surrender before Perez and Sandy opened fire.

Attorneys for the officers say their clients did nothing wrong.

Brandenburg's move to seek charges marked a major shift from her previous decisions not to go after Albuquerque officers linked to more than 40 police shootings since 2010. It also pointed to growing tensions between her

EXHIBIT

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office and the troubled Albuquerque Police Department, which suspects Brandenburg of reimbursing burglary victims to protect her son.

The district attorney said she had been working on the Boyd case before she heard of those allegations and her decision to seek charges was based on the facts.

"I think the motivation is pretty transparent," she said.

No charges have ever been filed against Brandenburg, and she denies any wrongdoing. The case has been sent to the New Mexico Attorney General's Office, and that office has refused to comment.

The situation is unfolding not long after Albuquerque signed an agreement with the U.S. Justice Department to overhaul its police force to address allegations of excessive force.

First elected in 2000 as the county's first female district attorney, the 60-year-old Brandenburg was born in Albuquerque and came to the office after spending most of her legal career as a defense attorney. Her father, Jim Brandenburg, held the same job from 1972 to 1976.

But while celebrating career successes, Brandenburg also endured personal tragedies — the deaths of two husbands and a 4-month-old adopted daughter. She is the mother of four adopted children, all grown, including 26-year-old Justin Koch, who has been implicated in theft cases and who police say was the one Brandenburg sought to help through bribery.

During her tenure as district attorney, Brandenburg has drawn praise for aggressively prosecuting a man charged with the 2006 killing of a deputy during a traffic stop. She and her prosecutors won a conviction against Michael Astorga for the slaying of deputy James McGrane. Astorga was sentenced to life in prison.

"She did an amazing job. I could always call her," said Darren White, a former Bernalillo County Sheriff and a Republican.

However, former attorneys who worked under Brandenburg said her staff was often overworked because she refused to be flexible on plea agreements and regularly ordered attorneys to take cases to trial regardless of the chances of success. Meanwhile, she declined to seek charges against officers, even

when evidence was strong.

"She pursued cases against the average person with little to no evidence," said defense attorney Cynthia Armijo, who worked under Brandenburg from 2004 to 2006. "But this is the first time she's charging officers. I think it might be politically motivated."

Criminal defense attorney Grant Marek, who also worked in Brandenburg's office, said the office maintained strict policies, and attorneys often followed those practices "blindly" and "didn't use their discretion."

Specifically, he said, the office refused to consider reducing drunken-driving charges, which can affect defendants' future chances at jobs.

Still, Ralph Arellanes, president of the Albuquerque chapter of the League of United Latin American Citizens, or LULAC, said Brandenburg was able to win four terms with large margins because she's an effective campaigner.

"She's very personable and she's a very good communicator," said Arellanes, a critic of the police department. "People generally like her."

Arellanes said he's been disappointed with Brandenburg's refusal to charge officers until now.

"Hopefully, this is a change for her," he said.

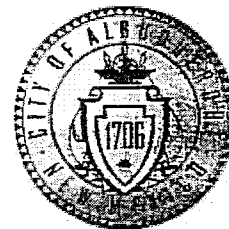
Nancy Denker, owner of the Albuquerque printing company Focus Ink, said Brandenburg showed "tremendous courage" by filing charges against the officers in the Boyd shooting. Denker prints Brandenburg's campaign material and said she strongly supports her.

"She's not always perfect," Denker said. "But right now, I'm very proud of her. I hope her decision leads to a national conversation."

Follow Russell Contreras at <http://twitter.com/russcontreras> .

CITY OF ALBUQUERQUE

Office of the Mayor/Chief Administrative Officer



January 14, 2015

Kari Brandenburg, District Attorney
Office of the District Attorney
Second Judicial District
520 Lomas Blvd. NW
Albuquerque, NM 87102

Dear District Attorney Brandenburg:

I write you with respect and acknowledgement of the difficulty you face in making prosecutorial decisions in Officer Involved Shooting (OIS) cases and the need for transparency for the public in these highly important matters. I am outlining a number of concerns that have arisen related to your office's involvement in these cases. I am submitting a proposal designed to advance transparency to the public, address concerns of the Department and its officers, and adherence to the Rules of Professional Conduct of attorneys, and ultimately ensure that the legal process utilized and applied in OIS cases includes unquestionable objectivity, impartiality and justice.

I respectfully request that you consider the selection and appointment of an independent Special Assistant District Attorney (SADA) to receive a Commission from your Office to participate in Officer Involved shooting cases. This individual would be on-call for participation in the Multi-Jurisdictional OIS Investigations task force. We could craft an agreement that outlines independence and funding of the SADA. Given recent incidents, it is imperative the Community have confidence in the Police Department, prosecution, and justice system.

Some of the Department's concerns are as follows:

Objectivity/Impartiality – Previously, under the Grand Jury system, although closed to the public, members of the Grand Jury made determination(s) as to probable cause. Now, your office makes a preliminary decision of whether you believe probable cause exists to charge officers by way of a "criminal information –charging document" on open counts of murder. I recognize your prerogative and rationale for this decision. However, to say that the role of you or your staff does not compromise the impartiality of the decision is counterintuitive.

Take for example the Boyd case. Chief Deputy District Attorney DePalo is listed in the official police report as being the District Attorney's representative present on scene during the initial briefings by detectives and other fact witnesses (see attachment #1). We have determined that Ms. DePalo asked questions of those parties, reviewed and approved search warrants, as well as provided legal advice. Ms. DePalo is the same deputy district attorney who filed the Criminal Information in the Boyd case (see attachment #2), stating that she accuses the named officers of murder. At this point, Ms. DePalo has become not only a witness and prosecutor but also made a preliminary legal determination as to the existence of probable cause.

Ms. DePalo's involvement may violate the New Mexico Professional Code of Conduct, Rules 16-307 (Lawyer as witness) and 16-308 (Special responsibility of prosecutor). Certainly the defense can call Ms. DePalo as a witness as to her conduct at the scene and legal advice provided, but she will also have to disclose any evidence or information she personally learned that negates the guilt of the accused or mitigates the offense. She has become a necessary witness on many foundational issues of the case.

EXHIBIT

K

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New Mexico 87103

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The selection of an SADA would allow the process to proceed as contemplated by criminal procedure which does not require a judge to make a determination of probable cause in every case. Your approach essentially finds that grand juries cannot make decisions as to this "class" of defendants. I am hard pressed to believe that serving in an investigator role with the multi-jurisdictional task force, legal advisor to APD for criminal procedure at the scene, prosecutorial team member in determining probable cause, and trial prosecutor does not create an inextricable conflict of interest.

As you know, you are the subject of an APD criminal case that involves you and family members. I will not pass judgment whatsoever on the merits of the case. However, it was referred to the Attorney General's Office for multiple reasons, not the least of which is the fact that you are the prosecuting authority for police shootings.

I am attaching a copy of the news story (see attachment #3) written by KRQE reporter Jeff Proctor, published on January 13, 2015 at 10:38 pm MST. Mr. Proctor attributes the following statements to you; "It is my opinion that the city violated the agreement", Brandenburg said". And that means they violated their agreement with DOJ" and additionally "Clearly, this could compromise the integrity of the investigation of this shooting". At a minimum, these statements are reckless and make it clear you are already judging the integrity of the investigation. As to the MOU, the role of your office is to provide legal advice, not to conduct the investigation. Neither the MOU nor the DOJ Agreement have been violated and it is highly inappropriate to provide your unsubstantiated opinions to the public. I will be sending a copy of this letter to the Department of Justice to highlight these issues.

Our community and officers have the right to know that the attorney that is involved in both the investigation and prosecution of these cases is completely unbiased, personally uninvolved and free of all appearance of conflict of interest. It is imperative that both our agencies work together to ensure that all parties involved in an OIS receive equal and transparent treatment through the legal system.

In closing, Lady Justice stands with a blindfold over both eyes for a reason. It is imperative that together we bring transparency to the public, seek justice in these difficult cases, and support law enforcement with a confidence in impartial investigations and prosecutions. Please join me in arranging for the appointment of an Independent Special Assistant District Attorney.

Best regards,



Robert J. Perry
Chief Administrative Officer

Cc: Luis Saucedo, Department of Justice
Elizabeth Martinez, US Attorney's Office
Chief Gordon Eden, Albuquerque Police Department