



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Mark A. Peterson
DISTRICT ATTORNEY

July 7, 2016

Honorable Mayor Tom Butt
City of Richmond
440 Civic Center Plaza
Richmond, CA 94804

RE: Death of Richard Perez III

Dear Mayor Butt and Council Members:

When I recently appeared before the Council, Councilmembers requested information concerning the death of Richard Perez III who was shot and killed by Richmond Police Officer Wallace Jensen on September 14th, 2014. I also learned that the parents of Mr. Perez periodically attend Council meetings to demand that criminal charges be filed against the officer.

I would like to explain the process my office follows to investigate Officer Involved Shootings, and also to explain why criminal charges were not filed against the officer in this matter.

Officer Involved Shooting Protocol

As background, over 30 years ago the county's Police Chiefs' Association and the District Attorney's Office created a county-wide protocol to investigate incidents when officers or civilians are shot or killed during law enforcement encounters, or when officers are accused of crimes.

The formal process is entitled the "Law Enforcement Involved Fatal Incidents Protocol." Hundreds of "Protocol" cases have been investigated under this approach, and it has proven to be a very effective means to conduct such sensitive probes. In these cases, a team of investigators from my office join with investigators from the venue agency (i.e., the jurisdiction where the incident occurred) to conduct the investigation, which is overseen by a senior Deputy District Attorney.

The investigations are very thorough and include the interviews of witnesses, police officers, and family members. A forensics team from the Sheriff's Crime Lab processes the scene and the involved individuals. In addition, the teams seek any recordings of the incidents captured on body worn cameras, dash cams, cell phones, or other recording systems (store security

systems or residential cameras). Investigators also attend the autopsy of the decedent to view the wounds, and to discuss the injuries with the pathologist.

Coroner Inquests

By its own policy, and pursuant to the county-wide Protocol, the Contra Costa County Office of the Sheriff/Coroner holds Inquests following virtually every death involving law enforcement officers. These Inquests are open to the public, and are conducted by a private attorney acting as the hearing officer for the Coroner's Office. Such hearings are held in front of a jury of citizens randomly selected from the Superior Court jury pool.

In addition to the statutory purposes for holding Inquests, Inquests are held on these cases to provide the public, the news media, and various interested parties with information through sworn testimony of participants, witnesses and investigators. Inquest testimony also provides another opportunity for investigators and decision-makers to acquire more information about the incidents. The inquests are one means to ensure full transparency of the process in a public forum.

Teams from my office investigate an average of 20 to 25 Protocol cases each year; as a result, the teams are some of the most experienced and proficient in all of California on such probes.

Richard Perez Shooting

The death of Mr. Perez was investigated pursuant to the county's Protocol. Shortly after the shooting, the Richmond Police Department (RPD) contacted my office and requested our assistance in investigating the Officer Involved Shooting. A team of investigators immediately responded to the scene at Uncle Sam's Liquors at 3322 Cutting Boulevard.

Once at that site, it was noted that the scene had been secured by uniformed police officers, and that entry into it was restricted. It was also learned that Richard Perez III had been shot in front of the liquor store by RPD Officer Wallace Jensen during a struggle. Sheriff's Crime Scene Investigators arrived at the site and collected the evidence and documented the location. The CSI team also attended the autopsy of Mr. Perez on the day after the shooting.

After the shooting, Officer Jensen was sequestered at a local hotel where he met with his attorney from the Legal Defense Fund. As part of the criminal investigation, investigators from my office and the Richmond Police Department sought to interview Officer Jensen concerning the death of Mr. Perez. Because of his constitutional rights under both the United States and California constitutions, Officer Jensen did not have to submit to an interview. He chose to waive his rights, and be interviewed.

Officer Jensen said that he had been a Richmond Police Officer for seven years, and he had attended the Napa Police Academy. He had received various in-service training during his career, and he also had received specialized training for canine officers, and in Crisis Negotiations.

Officer Jensen said that on the night of the incident he was working Beat 3 in the Southern District with his assigned police dog. Officer Jensen was wearing a standard Richmond Police Department utility uniform, and his handgun was in a nylon holster which hung down on his right thigh.

Officer Jensen said he had been working the area since the start of the year, and he was aware that there were ongoing problems with loiterers hanging out in front of Uncle Sam's Liquors. The officer said that eliminating this problem was one of his beat projects. Officer Jensen said he periodically contacted people loitering in front of the store and asked them to move on. From February to the middle of August, the problem had been largely abated as his mere presence near the store proved pretty effective.

Shortly before encountering Mr. Perez, Officer Jensen said that he advised Dispatch that he was going to conduct a Security Check at the liquor store, and he parked his patrol vehicle on Stege Avenue just south of Cutting Boulevard. The officer said he left his police dog in the car, and he then walked around the block (his police vehicle could not be seen from the front of the store).

Officer Jensen said that as he walked around the corner, he saw people standing west of the store, and four people then walked westbound away from the store and toward Carlson Boulevard. Officer Jensen said he was walking back toward his car when a Middle-Eastern man believed to be a store employee said that a subject was causing problems in the liquor store, and he pointed out Mr. Perez. Mr. Perez saw the officer and said something, but, the officer could not understand it as Mr. Perez's speech was slurred, and the officer thought he was intoxicated as he was swaying from side to side.

Officer Jensen then asked Mr. Perez to walk outside and sit on the curb. He complied, and the officer took out a Field Interview card and asked Mr. Perez for his identification. Mr. Perez said that he did not have any identification, and Mr. Perez asked if he was being detained. Mr. Perez mentioned that he had been arrested the day before, and that another officer had kept his identification. Mr. Perez used an expletive, and said that an Asian officer had arrested him the night before.

Officer Jensen thought he was referring to Officer Matsui, and Officer Jensen asked Officer Matsui on his police radio if he was near the store. Officer Matsui replied that he was at the police station, at which point Mr. Perez stood up and started walking westbound. Officer Jensen ordered Mr. Perez to sit down, and Mr. Perez said words to the effect that he was leaving.

The officer said he again ordered him to sit down, but, Mr. Perez continued to walk away from him. The officer then grabbed Mr. Perez's arm, and ultimately used a judo move to take Mr. Perez to the ground. Once on the ground, the officer was on top of Mr. Perez, and Officer Jensen tried to gain control of Mr. Perez's arms so he used a control hold to try to handcuff him. Officer Jensen said that as this was occurring, he used his portable police radio to call for assistance, but, he later learned he was on Channel 2, and not the main Richmond PD radio frequency.

Mr. Perez then started to roll over, and Officer Jensen continued to try to gain control of Mr. Perez's arms. Mr. Perez got to his feet, and the officer ordered him to get on the ground and to stop resisting. Officer Jensen then used another judo move to get Mr. Perez back on the ground.

When they hit the ground, Officer Jensen said he lost his grip on Mr. Perez's arm, at which point Mr. Perez used his right hand to grab the officer's left forearm. Once on the ground, the officer added that Mr. Perez flailed his arms and used his legs to spin around on the ground. Because the subject held his left arm, the officer could not get his Taser, nor could he reach his large Streamlight flashlight in his left "Sap" pocket (i.e., the pocket beneath his pants pocket).

Officer Jensen said that as he was holding Mr. Perez down, the officer could feel that Mr. Perez was pulling on the officer's gun which was in his holster hanging on his thigh. The officer added that he could feel his holster moving on his leg. The officer then reached down to put his hand on his gun in the holster, and when he did he felt Perez's hand on the grip of his weapon. Officer Jensen said he then freed himself by pulling his left arm away from Mr. Perez, and they both stood up.

Once on their feet, Officer Jensen said he tried to move away to put distance between himself and Mr. Perez. Officer Jensen said that Mr. Perez still had his hand on the gun, and was trying to pull it out of the holster. Officer Jensen said he then hit Mr. Perez in the chest as he feared that Mr. Perez was going to get his gun to kill him. The officer said he was able to break the hold, and he drew his handgun, and had it in a "Retention Position," at which point Mr. Perez charged at him.

The officer said he thought that Mr. Perez was again trying to get his gun, and the officer fired one round at the subject. Officer Jensen estimated the distance between them was a couple of feet. He added that he did not know if the round hit Mr. Perez. Officer Jensen said he tried to back up, and that Mr. Perez paused, and then charged at him again. The officer fired another shot at Mr. Perez. Officer Jensen said that on the second shot he was moving the gun forward from the Position of Retention. He added that both shots were fired with one hand holding the gun.

The officer said he tried to distance himself from Mr. Perez, and the officer said by then he held his gun with both hands and he extended his arms and pointed his weapon and told Mr. Perez to stop, but, Mr. Perez charged again at him at which point the officer fired his third shot. Mr. Perez immediately grabbed his chest leading the officer to believe that the third round hit him in the chest. Mr. Perez then bent over, and Mr. Perez stumbled into the store.

Officer Jensen said he then spoke into his police radio and said "Shots Fired," however, the dispatch did not respond so the officer checked his radio to see if it was on, and he discovered that he was still on Channel 2. He switched to Channel 1, and then followed Mr. Perez into the store. Officer Jensen again announced that shots had been fired, and he said the suspect was

down and he requested an ambulance respond Code 3. Around that time, the officer confirmed on his radio that he (the officer) was okay.

At that point in the interview, Senior Inspector Jeff Soler asked if Mr. Perez had made any statements at that time, and he replied that he didn't; he only recalled that Mr. Perez was groaning. Senior Inspector Soler then asked if the officer was aware of any witnesses, and the officer replied that after the shooting he heard several voices. He added that when he was struggling with the subject on the ground, a white male subject came over and told Mr. Perez to stop fighting, and he tried to pull Mr. Perez away from the officer. Officer Jensen said he told the white male to back off, and he did. After the shooting, he said he pointed out the white male to Officer Diaz, and told Officer Diaz that he had witnessed the event. Officer Jensen added that he recalled that the white male called Mr. Perez by a name; however, he could not recall the name.

When asked, Officer Jensen said he did not believe he had had any previous encounters with Mr. Perez, and that he did not know him. Officer Jensen was questioned, but, he had no recall of Mr. Perez calling the Richmond Police Department from his cell phone which apparently occurred when Mr. Perez left the store with the officer. Officer Jensen had no recollection of Mr. Perez possessing a cell phone.

Senior Inspector Soler then had Officer Jensen again describe the struggles on the sidewalk in front of the store, particularly the relative positions during the struggles. Officer Jensen added that in July or August he had attended a Defensive Tactics class taught by police personnel on judo take-down maneuvers.

In addition to the interview of Officer Jensen, the investigative teams interviewed many witnesses including store employees, store customers, people in the area at the time of the encounter, police officers, and ambulance and fire department personnel. Witnesses provided recorded statements to members of the investigative teams. Investigators also contacted Mr. Perez's family to notify them of his death, and to obtain information concerning his history.

In addition, it was discovered that there were video recordings of the scene. One was from the store's security system, and the second from a civilian witness. These recordings captured portions of the encounter between Mr. Perez and Officer Jensen.

An autopsy was conducted at the Coroner's Office. A Toxicology Report revealed that at the time of death, Mr. Perez's Blood Alcohol Concentration was .247 (i.e., over three times the legal limit for California drivers).

On December 10th, 2014, a Coroner's Inquest was held in Martinez. Members of my office, including Deputy District Attorney (DDA) Barry Grove attended the Inquest. I myself attended a portion of the Coroner's Inquest. I believe members of the Perez family and their attorney also attended the Coroner's Inquest and heard the entirety of the testimony and evidence presented, including Officer Jensen who was a key witness at the Inquest, and whose testimony was consistent with his previous interview on the day of the occurrence. They also

heard the testimony of the pathologist who performed the autopsy, including the evidence of the toxicology results, and heard the testimony of all of the other witnesses.

DDA Grove is one of the most experienced homicide prosecutors in my office, and has tried nearly 30 murder cases. He also responds to virtually all of the Protocol cases in the county. After the Coroner's Inquest, DDA Grove met with me and other members of the District Attorney's Office to discuss the circumstances surrounding the death, and to review the evidence collected by the protocol teams and to evaluate the testimony of the witnesses.

The purpose of this review was to determine if Officer Jensen committed a crime as identified in the California Penal Code. Specifically, in this case it was to determine if Officer Jensen violated Penal Code §187 (Murder), or if he had committed any lesser included crimes.

To determine if charges should be filed against the officer, we had to determine first if the officer had committed any crime(s), and then evaluate the possibility that we could prove beyond a reasonable doubt to a jury of twelve that the officer committed the offenses. Based on Officer Jensen's statements, this would require that we proved that Officer Jensen's actions were not in self-defense as he stated both in his interview and in his testimony at the Coroner's Inquest.

Self-defense is the reasonable and honest belief that deadly force is necessary to prevent an imminent threat of great bodily injury or death. In examining whether or not the requisite proof necessary to overcome the presumption of self-defense exists, we primarily look at three issues.

First, we look at Officer Jensen's claim that he acted in self-defense, and we try to determine if he honestly believed he was in danger. This claim is examined in its context. Officer Jensen's supervisors had identified Uncle Sam's Liquors as a problem location on Officer Jensen's beat, and they requested that he visit the site to help eliminate problems caused by people loitering in front of the location.

During such a site visit, a citizen complained to Officer Jensen that Mr. Perez was causing problems at the store. Officer Jensen contacted Mr. Perez, and an altercation ensued between him and Officer Jensen. The evidence indicates that Mr. Perez, who was very intoxicated at the time of the incident, instigated the attack on the officer.

During the investigation we found no evidence of any pre-existing animus between Officer Jensen and Mr. Perez; or even any evidence that Officer Jensen had any previous relationship or contact with Mr. Perez. This would suggest that there was a lack of motive for the officer to harm Mr. Perez.

The second factor we examined was if Officer Jensen's belief in the need for self-defense was reasonable. The reasonableness of the officer's action is judged not by the officer's subjective state of mind, but objectively, i.e., under a "Reasonable Person" standard viewed in the circumstances and situation the officer faced.

Here, Officer Jensen was lawfully performing his duties as a police officer when he became involved in a physical fight with Mr. Perez. Officer Jensen testified that during the fight Mr. Perez grabbed the officer's holstered firearm and attempted to remove it. Once he had disengaged from Mr. Perez, Officer Jensen said he held his weapon close to his body when Mr. Perez charged at him and the officer fired his weapon one time. The officer said he fired two additional rounds as Mr. Perez charged at him on two other occasions. It is important to note that during this encounter, Officer Jensen was alone; no other officers were with him, and no civilians attempted to help the officer.

The officer said that he believed that he was in a fight for his handgun, and that he shot Mr. Perez before Mr. Perez was able to get the gun from him and use it against the officer. No information was developed which would refute the officer's description of the events.

Third, we examine if the need for self-defense was imminent, i.e., was the officer responding to an immediate threat. It is not a prospective threat, but one that must be dealt with immediately. Here, Officer Jensen found himself alone and without help from either fellow officers or citizens. During the physical fight, Officer Jensen described how Mr. Perez grabbed the officer's gun which is evidence of Mr. Perez's intent to use the firearm against the officer, and to escalate the encounter to a deadly force situation. The evidence indicates that Officer Jensen believed that he was faced with the choice of using his weapon against Mr. Perez, or having Mr. Perez use it against him.

We carefully considered all three factors in evaluating Officer Jensen's claim that he acted in self-defense. We conclude that not only is it not possible to prove Officer Jensen did not act in self-defense, but the facts and circumstances indicate that the officer acted in lawful self-defense. Based on our review, we believe the officer's actions constitute Justifiable Homicide as identified in Penal Code § 197.

As the elected District Attorney, I understand that one of the key functions of a prosecutor's office is to enforce the law, especially when crimes are committed by law enforcement officers or other government officials. I take this role very seriously. The incident with Mr. Perez occurred in 2014. During 2014, I filed felony charges against three law enforcement officers (officers from the Walnut Creek and Concord police departments, and an officer from the California Highway Patrol). All three of the officers subsequently pled guilty to felonies, and they are no longer employed as officers. Thus, the fact is that our office is willing and able to file criminal charges against police officers when it is appropriate to do so.

As a parent, I understand the Perez family's desire that Officer Jensen be prosecuted for the death of their son. **After the Council meeting, members of my staff offered to meet with Mr. and Mrs. Perez to discuss the investigation, and to explain why charges were not filed against the officer. A letter was sent to the family's residence, and several voicemail messages were left for them; but, the family has not responded to our attempts to arrange a meeting.** This offer will remain open, and I will ensure that my staff will promptly meet with the family if they wish. Chief of Inspectors Paul Mulligan can arrange the meeting; he can be reached at (925) 957-8749.

As I explained at the Council meeting, there is probably little I can do or say to the Perez family which will dissuade them from their belief that charges should be filed against the officer. However, as District Attorney I am constitutionally and ethically required to only file criminal charges against a person when I believe a crime has actually occurred and there's sufficient evidence for a jury to find that person guilty of that crime. In this incident, that is not the case.

Sincerely,

Mark A. Peterson
District Attorney

Cc:
Bill Lindsay, City Manager
Allwyn Brown, Chief of Police
Ben Therriault, Richmond POA President