



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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November 27, 2006

Captain Kris Pitcher
Force Investigation Division
Los Angeles Police Department
150 Los Angeles Street
Los Angeles, California 90012

RE: J.S.I.D. File No. 05-0410
L.A.P.D. File No. 05-1819702

Dear Captain Pitcher:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 10, 2005, fatal shooting of Jose Raul Lemus Pena and Suzie Marie Pena by Los Angeles Police Officers Matthew Valencia, Jeff Ennis, Samuel Marullo, Gina Holstrom, John Rusth, Dennis O'Sullivan, Benjamin Santero, Dan Sanchez, William Casey, Robert Gallegos, Jr. and Eduardo Perez. We have concluded that the officers acted lawfully in self-defense and in defense of others.

The following analysis is based upon reports prepared by the Los Angeles Police Department submitted to this office by Detective Craig Kaul on May 30, 2006 and September 29, 2006. The District Attorney Command Center was notified of the shooting at approximately 7:15 p.m. on July 10, 2005. The District Attorney Response Team, comprised of Deputy District Attorney Valerie Aenelle-Rocha and District Attorney Senior Investigator Javier Beltran, responded to the scene. They were given a briefing of the circumstances surrounding the shooting and a "walk-through" of the scene. Departmentally compelled statements were considered as a part of this analysis.

FACTUAL ANALYSIS

On July 10, 2005, at approximately 3:44 p.m., Los Angeles Police Department Southeast Division received a 911 call from Raul's Auto Sales, a small used car lot located at 10420 South Avalon Boulevard, Los Angeles. The caller, later identified as Ilsy Depaz, told the operator that her stepfather was verbally threatening her. A radio call of a family dispute was broadcast and assigned to Southeast Division Police Officers Robert Weidlein and

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John Rusth. At approximately 4:05 p.m., the operator received a second 911 call from Raul's Auto Sales and the incident was upgraded to a Code 3 response.¹

Officers Weidlein and Rusth responded to the Code 3 call via the MDT and arrived at Raul's Auto Sales at approximately 4:13 p.m. A young female Hispanic, Ilsy Depaz, was standing in the middle of the car lot behind a locked wrought iron gate. Depaz advised the officers that her stepfather, Jose Pena, was inside the car lot office with her baby sister, Suzie. She warned the officers that her stepfather had a gun.

While the officers spoke with Depaz, Jose Pena exited the office. He was holding nineteen month old Suzie Pena and was visibly upset by the officers' presence. The officers asked him to open the locked gate and Pena refused their request. They asked if he was armed with a weapon. Pena responded that he did not have a gun and turned around so the officers could view the back of his waistband area. Pena told the officers to go ahead and shoot him.

Officer Weidlein repeatedly asked Pena to put the child down, to unlock the front gate and to talk to him. Pena refused all of his requests. The car dealership had a six foot wrought iron fence which surrounded the lot.² Weidlein attempted to enter the lot but the front gate was locked. After a brief conversation with the officers, Pena quickly walked back to the office.

The officers requested an additional unit and help for a "415 man with a gun" incident. Southeast Division Police Officers Rickey Crowder and Sergio Sanchez arrived at the location and parked their marked unit north of Weidlein's police vehicle. They immediately requested two additional units via the radio. Crowder and Sanchez went to the alley at the rear of the business to locate a second entrance. Southeast Division Police Officers Sylvia Moreno and James Quiones arrived at the used car lot and deployed to the rear alley.

At approximately 4:20 p.m., Jose Pena exited the office while cradling Suzie in his right arm. Pena held Suzie in a manner so that her head covered the lower part of his face. Pena stood at the office door and raised a 9mm semiautomatic handgun with his left hand and began firing at Officers Weidlein and Rusth. In response, Rusth drew his service revolver and fired one round. Weidlein dove for cover and directed Depaz to get down on the ground. Weidlein moved behind his police vehicle and drew his service pistol. He aimed his service weapon at Pena but did not fire because Pena shielded his body with Suzie and he was concerned that a bullet could strike the child. From behind his police vehicle, Weidlein heard additional rounds as they struck his vehicle. Once again, Pena retreated to his office.

Several officers responded to a 4:20 p.m. broadcast of "officer needs help, shots fired," including officers from Southeast Division, Southwest Division, Metropolitan Division, 77th Street Division, Newton Division, Southeast Detective Division, and South Bureau Division.

¹ Code 3 denotes the highest level of an emergency call authorizing officers to use their vehicle's lights and sirens and to proceed to the location immediately.

² Two sliding gates, one in the front and one in the back, offered access to the interior of the lot.

Although Officers Weidlein and Rusth attempted to rescue Depaz, they were unable to breach the fence.

Officers Jeff Ennis, Lyman Doster, Benjamin Santero and Gina Holstrom covered Officers Weidlein, Steve Grimes, David Hance, Maura Tercero and Sean Kinchla as they attempted to rescue Depaz. Pena fired his semiautomatic handgun several times towards the officers. Ennis, Holstrom and Santero fired their UPRs (urban police rifles) in response. Ennis fired seventeen rounds, Holstrom fired eight rounds and Santero fired sixteen rounds. After the unsuccessful attempts, Special Weapons and Tactics Team (SWAT) Officer Enrique Anzaldo and Officer David Hance finally breached the fence and removed Depaz from the car lot.

Two of Pena's employees, Ivan Guzman and "Parriente"³ were also locked inside the auto sales lot. Several officers were able to extract them from the area without anyone sustaining injury even though officers exchanged gunfire with Pena during the extraction.

Meanwhile, officers evacuated several civilians from the car wash located next to Raul's Auto Sales. As the civilians were evacuated, Officer James Quiones observed Pena fire a gun in their direction from the rear bay door. Officers Samuel Marullo and Matthew Valencia returned fire with their service weapons. Marullo fired six rounds and Valencia fired twelve rounds. Officers also used the public address system to order all of the civilians in the nearby apartment building to remain inside.

Several 77th Street Officers, including Officer Robert Quiroz, met Lorena Lopez, Jose Pena's live in girlfriend, at 601 East 104th Street. This apartment was located around the corner from Raul's Auto Sales. Upon their arrival, Lopez was speaking to Pena on the telephone. Quiroz, a Spanish speaker, spoke with Pena in order to gather background information. During Quiroz' conversation with Pena, Pena stated, "...I'm going to hell. Me and the baby will go to hell before I ever leave this baby with my wife."⁴ Pena continued rambling that he was the character Tony Montana from the movie "Scarface."

Sergeant Gerald Tomic and Officer Louis Reyes arrived at Lorena Lopez' apartment and Reyes took over the negotiations with Jose Pena. At approximately 6:15 p.m., the phone call between Reyes and Pena was disconnected. Reyes was unable to recontact Pena.

SWAT Sergeant Alex Rodriguez directed the tactical situation and SWAT Sergeant Douglas Reid worked the command post. Officer Anzaldo directed Officers Tim

McCarthy and Keith Bacon to locate a Sierra position⁵ on the west side of Avalon Boulevard. Anzaldo also directed Officers Neil Coward and Steve Gordon to form a

³ This individual was known by the nickname "Parriente" which means buddy in Spanish. After "Parriente" was rescued from the used car lot, he was detained briefly at the command center and then walked away from the location before anyone could obtain his identifying information.

⁴ Quiroz' conversation with Pena took place in Spanish, and Quiroz provided investigators with the English translation of Pena's statements.

⁵ A two man sniper contingent is referred to as a Sierra team.

Sierra team and find high ground on the north side of the car lot. Officer Chester McMillion joined other SWAT officers in the north-south alley east of Avalon Boulevard and north of 105th Street. McMillion was briefed on the situation and requested the Bear Cat⁶ be deployed to the rear alley.

Officer Anzaldo directed Officer Dan Sanchez to establish an Emergency Assault Element (EAE)⁷ and pointed to a black and white police vehicle that was parked in the alley near the rear entrance to 10420 Avalon Boulevard. Officer McMillion took charge of the EAE and directed the officers to replace the black and white police vehicle with the Bear Cat. The EAE was initially comprised of Officers Eduardo Perez, Dan Sanchez, Robert Gallegos, Jr. and Officer McMillion. After the Bear Cat was moved into position, McMillion ordered Officer Dennis O'Sullivan to the hatch area because it offered an elevated position of advantage should Jose Pena attempt to exit via the east bay door. Anzaldo and Officers Joseph Rubert, Bill Casey and Todd Rheingold joined the EAE in the rear alley.

As the negotiations continued with Jose Pena, Officer McMillion learned from Officer Ryan that Pena had become irrational and believed he was Tony Montana from the movie "Scarface." Pena also indicated that he had cameras⁸ in place and was watching the perimeter of the business and the officers. He indicated that he had a 9mm handgun and two shotguns in the office trained on the officers and warned that if any of the cameras were disconnected he would come out shooting and kill everyone. Pena threatened to kill anyone attempting to enter the auto lot. Pena also stated that he was going to kill his daughter and would not be taken alive.

At approximately 6:20 p.m., Jose Pena, holding Suzie Pena, walked out of his office toward the alley and to the threshold of the east bay door. Pena walked toward the EAE officers in the alley. Officer Sanchez ordered Pena to put the baby down and give himself up. Officer O'Sullivan was watching Pena through a rifle scope. O'Sullivan notified Officer McMillion that Pena had a pistol in his waistband and his left hand was moving wildly. As Pena stood in the door, O'Sullivan believed he had a clear opening for a shot. O'Sullivan told McMillion that Pena was reaching for the pistol and was beginning to draw the gun when he fired one round toward Pena. McMillion saw Pena flinch to the left and downward as if he had been struck by a round. Pena retreated back into the bay area and out of the officers' view.

Officer McMillion ordered the EAE team to initiate the emergency assault. As the EAE team entered the open bay door, McMillion expected to see Pena on the ground with the girl. When McMillion realized that Pena was not on the floor he knew Pena must have retreated into the office. The EAE lined up on the outer south wall of the office. Perez was the first to enter the office, followed by Sanchez who was responsible for the noise flash device. Gallegos and

⁶ The Bear Cat is an armored vehicle used by Metropolitan Division SWAT.

⁷ The Emergency Assault Element (EAE) is a forward element in a hostage situation designed to respond to a suspect's violent behavior. If information is received that a suspect is attempting to inflict great bodily harm or kill their victim or victims, the EAE is a rapid deployment element to prevent the deadly behavior and rescue the victims.

⁸ Pena had previously installed a video surveillance system which he could monitor from his office. Cameras were installed around the business which allowed him to monitor all areas of the auto sales lot.

McMillion entered the office after Sanchez. Following the first set of officers into the bay and later into the office were Officers Casey, Rubert, Rheingold and Anzaldo.

While lined up at the wall, McMillion heard shots being fired from inside the office. Sanchez deployed a noise flash device and EAE entered the office. Both Officers Anzaldo and Rubert saw rounds coming through the wall from inside the office. Prior to Officer McMillion entering the office he heard gunfire from Pena's handgun and the SWAT officers' weapons. Officer Casey entered just before McMillion and moved toward Officer Sanchez. Sanchez yelled out that he was struck by a bullet. Casey moved in front of Sanchez to protect him and McMillion stepped past Sanchez and Casey.

When McMillion entered the office, Pena was holding the baby in his right hand and the pistol was near his left hand. McMillion could see that Pena was shot and was starting to slump down behind a desk in the northeast corner. As Pena's body fell to the ground, the baby came to rest on his lap.

Officer McMillion directed the EAE members to retrieve the baby while Officers Perez and Gallegos covered Pena. Either Officer Casey or Officer Rubert grabbed Suzie Pena⁹ and removed her from Pena's lap. After picking her up the officer realized that she had been fatally shot and put her down. Simultaneously, Pena looked in Perez' direction and reached for his pistol with his left hand. Fearing Pena would fire the weapon both Gallegos and Perez fired rounds striking Pena in the head ending the threat.

Events Preceding the Hostage Situation

On July 10, 2005, between 1:00 p.m. and 2:00 p.m., a distraught and frantic Lorena Lopez approached Officer John Banuelos, the Southeast desk officer. She stated that her boyfriend, Raul Pena, was at her apartment, 601 East 104th Street, with a gun and had threatened her life and her seventeen month old baby's life earlier. Banuelos assigned the call to Officers Jason Burcham and Manuel Castaneda.

Officer Castaneda interviewed Lorena Lopez in Spanish in front of her apartment building. Lopez stated that Pena had already left the apartment. Lopez indicated that on the evening of July 9, 2005, Pena started arguing with her and pulled a firearm out of the side of his pants. Lopez was extremely frightened when Pena chambered a round. Pena told her that he was going to kill her and kill himself. He also stated that he was going to

take their daughter away from her. When Pena went to the restroom she locked the door. Lopez explained that Pena left the home early in the morning and later returned and argued with her. She left during the argument and went to the Southeast Police Station to file her complaint.

⁹ According to Officer McMillion, he saw Officer Casey grab Suzie from Pena's lap. According to Officer Rubert, he removed Suzie from Pena's lap in response to McMillion's request.

Officer Castaneda advised her to call 911 when Pena returned and not allow him to enter the home. Castaneda gave Lopez the yellow copy of the report and advised her to show the copy to the responding police officer. Castaneda explained that the police could arrest Pena for the threats he made to her.

Investigators interviewed Dulce Sandoval and Herman Pena, Jose Pena's brother. Sandoval is married to Herman Pena and they shared the apartment at 601 East 104th Street with Lorena Lopez and Jose Pena. Sandoval heard Jose Pena arguing with Lopez at approximately 1:00 to 1:30 a.m. on July 10, 2005. Pena had a loaded handgun and threatened to kill himself or kill Suzie if Lopez did not listen to him. Herman Pena took the gun away from Jose Pena.

Civilian Witnesses

On July 10, 2005, investigators interviewed Pena's common-law wife Lorena Lopez at approximately 7:35 p.m. and 9:02 p.m. She indicated that she lived at 601 East 104th Street with Jose Pena, their daughter Suzie, and her sixteen year old daughter Ilsy Depaz. Their apartment was around the corner from Raul's Auto Sales. Lopez explained that Pena was depressed because he had financial problems. Lopez noted that Pena complained daily that he wanted to die because he owed people lots of money and could not take it anymore.

Lopez filed a police report between 2:00 p.m. and 2:30 p.m. on July 10, 2005 because of an argument on July 9, 2005. Lopez tried to talk to Pena earlier in the day and he asked her to give her daughter Ilsy to him.

When she returned from the police station, she had a conversation with Ilsy about Ilsy's relationship with Pena. Ilsy left for the used car lot and approximately four minutes later Pena arrived at the apartment.

When Pena came over she was holding Suzie, and Pena asked for her. She gave Suzie to him. As he was leaving, Pena said, "we will see what happens now but I'm not going to give you my little girl." He said your "daughter," referring to Ilsy, called the police. Pena stated, "Today I'm going to die. I'm not going to leave alive. They're not going to capture me."¹⁰ At first she thought that Pena was joking, but then Lopez went to get

Suzie at the used car lot and she saw two police officers. She told them not to shoot because her baby was inside.

Crying and upset, Lopez returned to her apartment. She briefly spoke with Pena on the phone before giving the phone to Officer Quiroz. During their conversation, Pena threatened to kill himself and Suzie if the police came into the business. He told her he did not want to go to jail.

¹⁰ Detective Robert Solorza interviewed Lorena Lopez on July 10, 2005. The interview was conducted in Spanish and recorded on an audio-tape. Myrna Sepulveda from Lyndon, J. & Associates, Inc. translated the interview from Spanish into English and transcribed the English translation. The pertinent parts are noted in the follow-up interview, page 25, lines 4 through 8, and page 30, lines 6 through 8.

Investigators interviewed Ilsy Depaz on July 10, 2005, at approximately 7:21 p.m. at the command post. She indicated that her mother, Lorena Lopez, and her step-father, Jose Pena, argued yesterday and today. This morning she and Suzie went to her Grandmother's house after her mother and step-father argued. Later her mother called and asked her to come home to talk. She brought Suzie back to the apartment.

Depaz' mother, Lorena Lopez, asked if she was having a sexual relationship with Pena. Depaz denied any sexual relationship with Pena. Depaz went to the used car lot to confront Pena. She argued with Pena and he told her not to go anywhere. When Pena left, she called 911. Depaz told the police that her stepfather was harassing her and would not let her leave the location. When Pena returned with her little sister, Suzie, he told her that no one was leaving. Depaz told him that she had already called the police. Pena sent Ivan Guzman, an employee, to lock the gate and she was unable to leave the car lot.

Pena was upset and told Depaz that no one was going to leave. She called 911 a second time but Pena yanked the telephone cord and disconnected the phone. Depaz explained how she grabbed Pena's cell phone from the desk and called the police a third time. When Pena realized she was actually talking to someone, he snatched the phone from her causing it to break into two pieces.

Pena threatened that if he went to jail no one was going to come out alive. Pena was very upset. Depaz watched Pena remove a 9mm handgun from his desk. Depaz was about to grab her little sister when he grabbed Suzie and told her to leave. Pena stated, "I'm just going to kill myself. And I'm gonna kill--I'm gonna take everyone else with me."¹¹ He threatened to kill her and take Suzie with him. He pushed her outside the office but refused to unlock the gate for her. Depaz was standing by a car in the lot when the police arrived.

She warned the officers not to get near the window since Pena had a gun. The officers asked Pena to go to the gate but he refused. Pena argued with the police for approximately five minutes and then went inside the office. Approximately ten minutes later, Pena began shooting at the officers. Depaz was near the gate and the officers told her to lie down on the ground. She did not move from that position until they were able to get her out.

Crime Scene/Forensic Evidence

The Los Angeles Police Department Scientific Division recovered a clear plastic bindle with a white powder which was later determined to be cocaine from the office floor. They also recovered Pena's computer with the video of the incident.¹²

¹¹ See transcript of taped interview of Ilsy Depaz by Detective Tracey Benjamin which was prepared by Lisa Hess, Lynden J. & Associates, Inc., specifically page 14, lines 8 through 12.

¹² The surveillance video recovered from Pena's computer includes video footage of the incident. The video depicts the main and rear entrance, the outdoor lot, the bay area including the doorway, the outer south wall of the office, as well as individuals entering and exiting the premises. The video does not depict the interior of the office, but is limited to the office door. There are several incidents depicting Pena exiting his office and firing a handgun in the direction of the officers.

Investigators recovered a Beretta 9mm semiautomatic pistol with an empty magazine from the office floor near Pena's body. They also recovered two magazines each containing fifteen live 9mm Luger cartridges from the office and twenty-three live 9mm Luger cartridges from a black plastic tray. The Los Angeles Police Department Firearm's Division examined the forensic evidence from the crime scene. The Firearm's Division recovered sixty-three .223 Remington discharged cartridges and forty-six 9mm Luger expended cartridges from the crime scene. The examiners determined that Officer O'Sullivan fired one round from his Colt M-4 carbine .223 mm caliber rifle, and Officer Casey fired nine rounds from his HK model MP5 9mm Luger caliber submachine pistol. Examiners also determined that Officers Gallegos, Perez and Sanchez were armed with Colt M-4 carbine .223 mm caliber rifles and fired twelve rounds, twenty-eight rounds, and eleven rounds respectively.

The Firearm's Division determined that the bullet recovered from Officer Sanchez's shoulder was fired from Pena's 9mm semiautomatic pistol.

Injuries

Officer Dan Sanchez was transported by RA 257 to Harbor-UCLA Medical Center. He was treated for a single gunshot wound to his shoulder. Officers Maura Tercero and Benjamin Santero were both treated at the scene for minor injuries.

Coroner Results

Deputy Medical Examiner Yulai Wang, M.D., conducted an autopsy upon the body of Jose Raul Lemus Pena on July 12, 2005. Dr. Wang concluded that Pena died as a result of multiple gunshot wounds consistent with high velocity rifle wounds and had sustained a total of six gunshot wounds. Toxicology reports revealed the presence of Amphetamine, Ethanol, Benzoyllecgonine, Cocaethylene, Cocaine and Methamphetamine in Pena's system.

An autopsy was also conducted on the body of Suzie Pena by Deputy Medical Examiner James Ribe, M.D. He determined the cause of death to be the result of a fatal gunshot wound to the head. She also sustained one non-fatal gunshot wound to her left leg. Dr.

Ribe further determined that the fatal wound was caused by a high velocity rifle fired from a distance. The autopsy also revealed the presence of cocaine metabolite in her system.

CONCLUSION

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. People v Williams (1977) 75 Cal. App.3d 731.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar

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circumstances, to be necessary to prevent injury which appears to be imminent. California Jury Instructions-Criminal 5.30 and 5.31.

When the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v Collins (1961) 189 Cal. App.2d 575.

On July 10, 2005, Jose Pena initiated an armed confrontation with LAPD officers when the officers responded to a 911 call and attempted to rescue his step-daughter from the locked used car lot. Pena began his assault by firing 9 mm rounds directly at Officers Weidlein and Rusth while they spoke with Ilsy Depaz. In direct response to Pena's attack, Officer Rusth fired one round from his service pistol. The evidence gathered in this investigation shows that Jose Pena continued to fire at various officers as they attempted to extract Ilsy Depaz, Ivan Guzman and "Parriente" from the locked used car lot. Pena ignored the SWAT officers repeated requests to release Suzie Pena and give himself up. When the SWAT officers entered the bay area to rescue Suzie, Pena continued to fire several rounds through the office wall at the officers. Officers William Casey, Robert Gallegos, Eduardo Perez and Dan Sanchez entered the office where Pena held Suzie hostage, and in fear for their lives and the lives of others, the officers fired several rounds at Pena. As he entered the office, Officer Sanchez was struck by a bullet in his shoulder. Pena reached for a handgun and was shot by officers ending the threat. Suzie Pena was inadvertently hit with rounds fired in the incident and died from the wounds.

We conclude that Officers Matthew Valencia, Jeff Ennis, Samuel Marullo, Gina Holstrom, John Rusth, Dennis O'Sullivan, Benjamin Santero, Dan Sanchez, William Casey, Robert Gallegos, Jr. and Eduardo Perez acted lawfully in self-defense and in defense of others when they used deadly force against Jose Pena. We are therefore

closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By

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c: Officer Matthew Valencia, Serial #34503

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Officer Jeff Ennis, Serial #26861

Officer Samuel Marullo, Serial #33567

Officer Gina Holstrom, Serial #27397

Officer John Rusth, Serial #37095

Officer Dennis O'Sullivan, Serial #27237

Officer Benjamin Santero, Serial #32805

Officer Dan Sanchez, Serial #27159

Officer William Casey, Serial #25537

Officer Robert Gallegos, Jr., Serial #30619

Officer Eduardo Perez, Serial #30602