

**Fatal Officer Involved Shooting of
Eriberto Penaloza
Long Beach Police Department
Officer Alex De La Torre, #10947**

J.S.I.D. File #23-0384



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

November 27, 2024

MEMORANDUM

TO: CHIEF WALLY HEBEISH
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Eriberto Penaloza
J.S.I.D. File #23-0384
L.B.P.D. File #230055766

DATE: November 27, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 8, 2023, fatal shooting of Eriberto Penaloza by Long Beach Police Department (LBPB) Officer Alex De La Torre. We have concluded that Officer De La Torre acted in lawful self-defense at the time he fired his service weapon, reasonably believing, based on the totality of the circumstances, that deadly force was necessary to defend against an imminent deadly threat.

The District Attorney's Command Center was notified of the shooting on November 8, 2023, at 11:10 a.m. The District Attorney's Response Team responded and was given a briefing and walk-through of the scene by LBPB Homicide Sergeant Robert Trout.

The following analysis is based on body-worn video camera (BWV), the 9-1-1 recording, investigative reports, audio recordings of witness interviews, medical and autopsy reports, and crime scene photographs submitted to this office by LBPB Detective Juan Carlos Reyes on June 18, 2024. No compelled statements were considered as part of this analysis.

INTRODUCTION

On November 8, 2023, at 8:49 a.m., operators received a 9-1-1 call stating that 38-year-old Eriberto "Eddie" Penaloza (Penaloza) stabbed himself and his mother [REDACTED] multiple times. Penaloza was armed with a knife and threatening to kill his mother and his brother [REDACTED], who were locked in her bedroom.

LBPB Officer Alex De La Torre (De La Torre) responded to the location. He was advised by dispatch that [REDACTED] was stabbed multiple times and bleeding. De La Torres arrived at the location and saw Penaloza standing in the kitchen, armed with a large knife. De La Torre entered the home and made repeated commands for Penaloza to drop the knife. Penaloza refused and charged at De La Torre. De La Torre fired his service weapon multiple times at Penaloza. Penaloza was shot and transported to the hospital where he was pronounced deceased.

FACTUAL ANALYSIS

9-1-1 Call

On November 8, 2023, at 8:49 a.m. LBPD dispatch received a 9-1-1 call from [REDACTED], the mother of Penalzoza, who told the operator, “My son, he has a knife.” [REDACTED]. was distraught and bleeding from multiple stab wounds. Her other son, [REDACTED], took the phone from his mother and told the operator that, “[Penalzoza] is inside the house and started stabbing himself . . . He is walking around and he keeps saying that he needs to kill us, but he can’t . . . we are locked in my mom’s bedroom.”

[REDACTED]. told the operator that his brother is a security guard and owns a gun. [REDACTED] also stated that his 57-year-old mother had been stabbed multiple times and she was bleeding from the bottom right of her stomach.”

[REDACTED]

[REDACTED] told investigators that on the morning of the incident, he was in the bathroom when he heard his mother screaming, “Eddie stop! Eddie stop!” [REDACTED] exited the bathroom and saw Penalzoza holding a knife. Penalzoza approached [REDACTED] and told him, “I have to kill you, but I can’t.” [REDACTED] believed Penalzoza had killed his mother and was about to kill him. Penalzoza kept approaching [REDACTED] with the knife until [REDACTED] backed outside of the house.

[REDACTED] stated he saw Penalzoza repeatedly stab himself in the neck and chest. When Penalzoza stated that he, “Needed a better knife,” and went into the kitchen, [REDACTED] ran past Penalzoza to check on their mother who was in her room. [REDACTED] used his body to close and barricade the bedroom door.

[REDACTED] was on the phone with the 9-1-1 operator. However, [REDACTED] could see that she was bleeding from multiple stab wounds. He took the phone from her to update the operator. [REDACTED] stated when the police arrived, he heard the officers tell Penalzoza multiple times to put the knife down and get down on the ground. [REDACTED] heard gunshots and then heard additional orders for Penalzoza to put the knife down before hearing officers tell him and his mother to come out.

[REDACTED] told investigators that his mother told him that she had taken Penalzoza’s gun away from Penalzoza before the incident because Penalzoza was “not acting right, having panic attacks, and missing work.”

[REDACTED]

[REDACTED] told investigators that she had finished showering and was drying off in the bathroom when Penalzoza forced the door open. Penalzoza told her to, “Forgive him,” and he immediately began stabbing her all over her body with a knife. [REDACTED] used both of her hands to defend herself while Penalzoza stabbed her. She told investigators that she believed that Penalzoza was going to kill her.

[REDACTED]

Investigators interviewed Penalzoza’s brother [REDACTED], after the incident. [REDACTED] stated that Penalzoza had been acting strange for several days and had stopped eating several days earlier. [REDACTED] asked

Penaloza if he was “on drugs” when ██████ heard Penaloza repeatedly talking to himself. ██████ offered to take Penaloza to a doctor. Penaloza denied using drugs and refused to go a doctor. On the day of the incident, Penaloza called ██████ ██████ drove to the house to convince Penaloza to see a doctor. When ██████ arrived, the police were already on scene.

██████████, another one of Penaloza’s brothers, told investigators that on the morning of November 8, Penaloza called him and told ██████, “Hey, I don’t know what’s going on. I’m hearing voices and they’re telling me to kill you guys. And I need you (██████████) to kill yourself because I can’t get to you.” ██████ stated that the line disconnected. ██████ immediately called back but Penaloza hung up on him. ██████ called his mom’s phone and ██████ answered. ██████ told ██████ that Penaloza was hearing voices. ██████ said, “Yeah, we know,” and then hung up the phone.

Officer De La Torre

After the incident, De La Torre wrote a report. He wrote that he was dispatched to a “[high] priority attempt/suicide” call and believed that he was responding to a “murder suicide” scene.¹ While he was enroute, De La Torre was updated by dispatch that Penaloza was trying to kill his family, had stabbed his mother in the stomach, and had access to a gun.

De La Torre arrived at the location at 8:58 a.m. He attempted to open the front door, but it was locked. De La Torre believed the situation was exigent and drew his service weapon as he walked around the house toward the back entrance. While outside, De La Torre looked through a window and saw Penaloza standing in the kitchen, holding a knife and covered in blood. De La Torre entered the home and held his service weapon in the “low-ready position.”²

Penaloza is heard on De La Torre’s BWV saying, “They told me to do it. I didn’t want to do it.” De La Torre’s BWV showed Penaloza wearing a bloodied shirt and standing on a bloody floor. De La Torre stood at the slider door approximately 10 feet away from Penaloza and identified himself as a police officer. He ordered Penaloza to drop the knife, but Penaloza refused, blocking De La Torre’s access to the bedrooms where the victims were hiding.

Officer Sandra Diarte (Diarte) stood behind De La Torre on the back porch and updated communications that Penaloza was uncooperative and armed with a knife. Diarte moved behind De La Torre as De La Torre stepped into the home.

Without warning, Penaloza raised the knife and charged at De La Torre while yelling, “AHHH!” Penaloza came within approximately seven feet of De La Torre when De La Torre fired his service weapon.³ (Figure 1)⁴

¹ De La Torre was dressed in a blue short sleeved LBPDP uniform and black outer bullet proof vest. The uniform had LBPDP patches on each shoulder and the vest had an embroidered LBPDP police badge on the front.

² The back door was left open when ██████ ran out the back, away from Penaloza.

³ Measurements were taken at the scene by LBPDP Officer Christian Garcia.

⁴ The video quality of the BWV was poor due to the low lighting conditions inside the home. Penaloza held the kitchen knife up as he ran toward De La Torre.

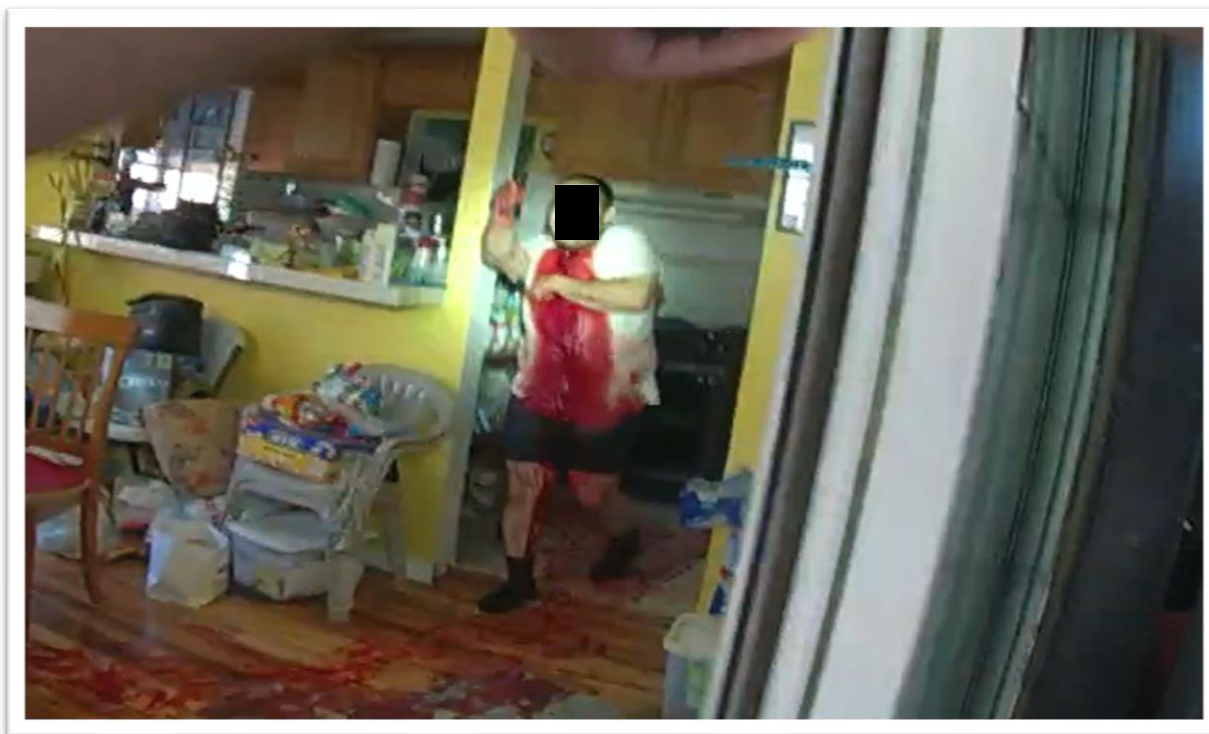


Figure 1: Penaloza raised the knife and yelled while charging toward De La Torre.



Figure 2: Penaloza held onto the knife (circled in black) after being shot by De La Torre.

De La Torre did not have enough time to align the sights of his weapon at Penalzoza's torso. De La Torre fired five shots at Penalzoza however Penalzoza continued to move toward De La Torre. De La Torre fired an additional three shots at Penalzoza. (Figure 2)

De La Torre feared for his life and believed that if he did not use deadly force to stop Penalzoza, "[Penalzoza] would cause great bodily injury or death to me or Officer Diarte."

After firing the second volley of rounds, Penalzoza got up and moved toward the hallway where the victims were hiding. De La Torre believed that Penalzoza was still trying to kill his family and he yelled at Penalzoza, "Stay on the ground!"



Figure 3: After being shot multiple times, Penalzoza refused to drop the knife and moved toward the direction of the bedrooms.

However, while still holding the knife, Penalzoza crawled an additional two feet in the direction of his mother's bedroom. (Figure 3) De La Torre fired his service weapon two more times at Penalzoza before Penalzoza fell to the ground. BWV shows Penalzoza fall forward and roll over while maintaining a grip on the knife.

The location where Penalzoza fell blocked the officer's access to the bedrooms. De La Torre announced their presence and told the victims to exit the front door. However, when no one responded, De La Torre believed the victims were close to death or dead.

De La Torre and Diarte formed a plan for Diarte to grab the knife while De La Torre provided lethal cover. Diarte removed the knife while additional officers contacted [REDACTED] and [REDACTED] by entering through a front window of the house. De La Torre and Diarte began rendering aid to Penalzoza until the paramedics arrived.

Evidence Collected

Penalzoza was holding a Cuisinart 7-inch chef knife with black blade and brown handle when he was shot by De La Torre. That weapon was recovered from the dining room floor. Additional knives used as stabbing implements were photographed and collected from the kitchen counter. Those weapons included a Hessler 7.5-inch chef knife and two Messermeister 5-inch steak knives. (Figure 4)



Figure 4: (L) The 7-inch knife that Penalzoza was holding when he was shot and (R) additional blood-stained knives used by Penalzoza.



Figure 5: The brochure addressed to [REDACTED] with the handwritten words, “I’m sorry they told me to.”

LBPD investigators identified blood stains throughout the house and an “Anthem” brochure on the dining room table addressed to ██████████ with a bloody handprint and the handwritten words, “I’m sorry they told me to.” (Figure 5)

Ballistics Evidence

De La Torre fired a total of 10 rounds at Penaloza. De La Torre was standing in the doorway when he fired the first volley of five rounds from approximately 6 feet 10 inches. De La Torre stepped inside the residence when he fired the second volley of three rounds at Penaloza from 7 feet 4 inches away and De La Torre was inside the dining room when he fired the third volley of two rounds at Penaloza from 9 feet 8 inches.⁵ (Figure 6)

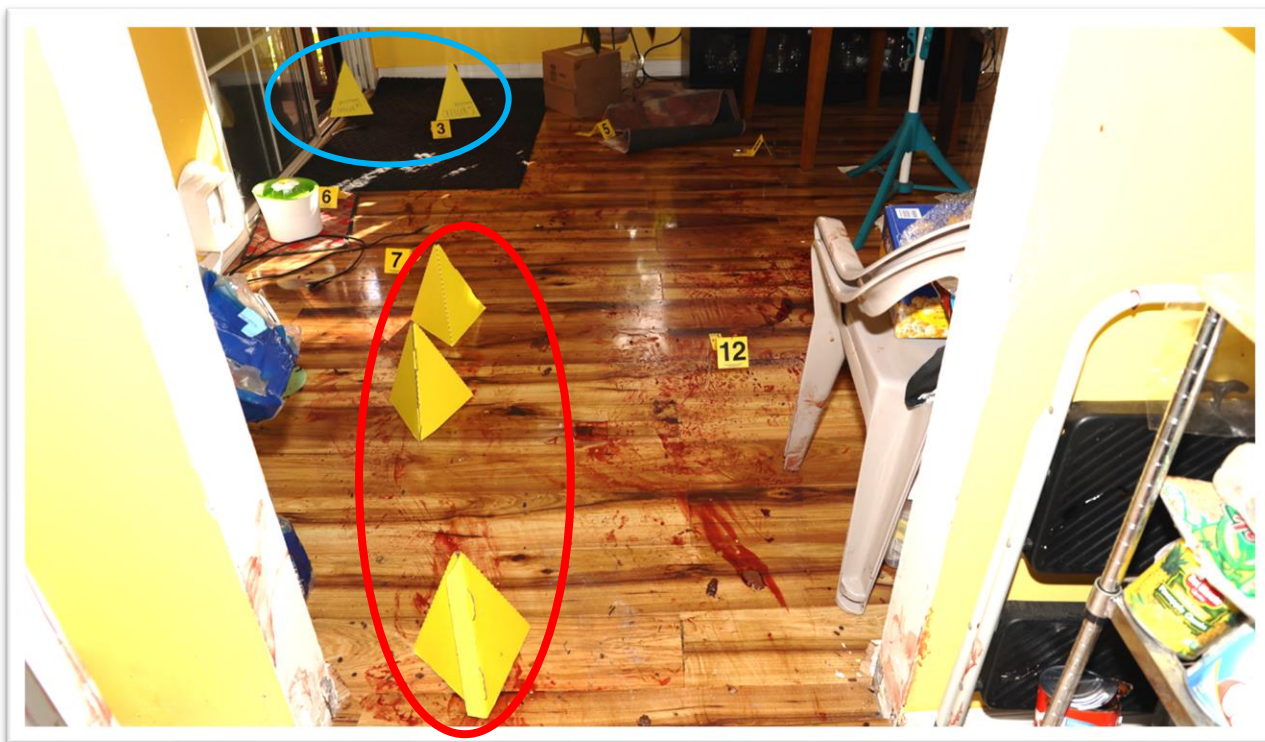


Figure 6: De La Torre’s positions (blue circle) at the time of the officer involved shooting. Penaloza’s relative positions (red circle) during the shooting.

Medical records

Penaloza was transported to MemorialCare Medical Center and pronounced deceased at 9:54 a.m., by Dr. Preston Rich.

██████████ was also transported and treated at MemorialCare Medical Center. She had 18 stab wounds to her body: seven stab wounds to her right shoulder, one to her right upper arm, two to

⁵ Evidence cones and measurements were taken after review of the BWV and a walk-through with De La Torre.

her right forearm, two to her right breast, one to her right upper abdomen and pelvis, two to her left axilla (armpit), two to her left breast, and one to her left forearm.

Autopsy Report

On November 14, 2023, Los Angeles County Associate Deputy Medical Examiner Sami Souccar performed the postmortem examination of Penaloza's remains. Dr. Souccar classified the manner of death as a homicide and ascribed the cause of death as, "[M]ultiple gunshot wounds, with multiple sharp force injuries as a contributing condition."

Dr. Souccar identified nine gunshot wounds. The bullets struck both of Penaloza's lungs, his liver, his stomach, and his mesothorax.

Penaloza also had multiple self-inflicted sharp force injuries to his neck, abdomen and left wrist. He had 14 stab wounds to his neck, 10 stab wounds to his abdomen, and multiple linear superficial incise wounds on his left wrist. Dr. Souccar listed the self-inflicted injuries as a "contributing condition" to the manner of death.

According to his family members, Penaloza had no prior history of mental illness or drug use.

Toxicology

A toxicology analysis conducted on Penaloza's femoral blood tested positive for the presence of alcohol (0.366g%) and ketamine.

LEGAL ANALYSIS

The Law

A peace officer is justified in using deadly force when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code section 835a(c)(1)(A) &(B).

Deadly force shall be used "only when necessary in defense of human life," and officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code section 835a(a)(4) and (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

The evidence shows that on November 8, 2023, Penalzoza intended to kill his family. Several days before Penalzoza attacked his mother, his family members noticed a change in his personality. His mother hid his gun in her closet and his brother ██████ heard Penalzoza talking to himself. On the day of the shooting, Penalzoza told his brother ██████ and his mother that he needed to kill them.

When Penalzoza attacked his mother in the bathroom, she was defenseless and unclothed. He stabbed her 18 times before she could get away from him, stabbing her in vulnerable places on her body including the left side of her breast near her heart and her abdomen.

Penalzoza believed that he was being told to kill his family when he called ██████ and told ██████ to kill himself because Penalzoza was hearing voices telling him to kill his family and Penalzoza was not close enough (in distance) to kill ██████ himself. Additionally, Penalzoza documented the voices he was hearing by writing on the brochure, "I'm sorry they told me to," before he was shot by De La Torre.

De La Torre believed he was responding to a murder/suicide incident, and when he arrived, he saw blood all over the floors and a bloodied Penalzoza armed with a knife. De La Torre was told that ██████ had been stabbed in the stomach. De La Torre was afraid that she was dying in one of the bedrooms and he reasonably believed the situation was critical. De La Torre announced his presence and stood in a shooting stance with his service weapon drawn while he ordered Penalzoza to drop the knife.

Instead of retreating away from the officer, Penalzoza charged toward De La Torre with the knife held in a striking position. The dining room was small and Penalzoza came within approximately seven feet of De La Torre before De La Torre fired his service weapon. Since De La Torre was aware that Penalzoza had stabbed himself and his mother multiple times, De La Torre reasonably believed that his life was in danger when he shot Penalzoza.

Even after Penalzoza was shot multiple times, Penalzoza refused to drop the knife and continued to move toward De La Torre. Penalzoza was shot multiple times when he got up and turned toward the direction of the bedrooms, where the wounded victim was hiding. De La Torre wrote in his report that he believed at the time he fired his weapon he was defending the lives of the victims.

Based on the totality of the circumstances, Officer De La Torre reasonably believed that Penalzoza was a deadly threat and that deadly force was necessary to defend against an imminent threat of death or great bodily injury.

CONCLUSION

For the foregoing reasons, we find that Officer De La Torre acted lawfully in self-defense and defense of others when he used deadly force against Eriberto Penaloza.