



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Mark A. Peterson
DISTRICT ATTORNEY

January 20th, 2015

Chief Christopher Magnus
Richmond Police Department
1701 Regatta Blvd.
Richmond, Ca, 94804

RE: Death of Richard Perez III

Dear Chief Magnus:

On September 14th, 2014 the District Attorney's Office was notified that the Richmond Police Department (RPD) was invoking the county's protocol on Law Enforcement Involved Fatal Incidents as the result of a fatal Officer Involved Shooting which had just occurred in Richmond.

The county-wide protocol process was developed by the county's Police Chiefs' Association over 30 years ago to investigate incidents when officers or civilians are injured or killed during law enforcement encounters. During such investigations, investigators from the District Attorney's Office and the venue agencies jointly investigate the circumstances surrounding each case.

Every case of this nature is then reviewed by the District Attorney's Office to determine if criminal charges should be filed against any of the involved parties. Over the past three decades, hundreds of cases have been investigated using this format, and it has proven to be a very effective process.

On September 14th shortly after the protocol was invoked, a team of investigators from the District Attorney's Office 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.

A team of Crime Scene Investigators (CSI's) from the Office of the Sheriff's Crime Lab responded to the scene, and later collected all of the evidence and documented the site. Members of the CSI team also were present on the following day during the autopsy of Mr. Perez which was conducted at the County Morgue.

After the shooting, Officer Jensen was sequestered at a local hotel where he met with his attorney, Teri Leone, a representative of the Legal Defense Fund. The officer was cooperative, and after meeting with his attorney, he was interviewed by a Senior Inspector from our office, and a RPD Detective.

Witnesses were interviewed and they provided recorded statements to members of the investigative teams. 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.

Investigators also contacted Mr. Perez's family to notify them of his death, and to obtain information concerning his history.

On December 10th, 2014, a Coroner's Inquest was held in Martinez. I attended the Inquest, and heard the testimony of the pathologist who performed the autopsy, and I also heard the testimony of the other witnesses. Officer Jensen was a key witness at the Inquest, and his testimony was consistent with his previous interview on the day of the occurrence.

After the Coroner's Inquest, I met with 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 had committed any lesser included crimes.

To make this determination, we are guided by the law that states that the prosecution must prove beyond a reasonable doubt that Officer Jensen's actions were not in self-defense. 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. As you are aware, 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 had his weapon at "low ready" when Mr. Perez lunged at him and the officer fired his weapon one time. Mr. Perez then charged at him again and the officer fired his weapon two more times. 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.

Sincerely,

Barry Grove
Deputy District Attorney