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July 7, 2022

MEMORANDUM FOR RECORD: Review of the Officer Involved Shooting (**OIS**) by San Antonio Police Department (SAPD) Officer, Stephen Ramos #954 resulting in the death of John Pena Montez on March 26, 2021.

1. Standard of Review: The purpose of the review for any officer-involved shooting by the District Attorney's Office is to determine whether there is sufficient evidence to prove a criminal offense under state law. To successfully prosecute any case in court, our office must prove every element of a charge beyond a reasonable doubt and overcome all potential defenses and/or justifications, also at a beyond a reasonable doubt standard. A decision based on standards of state criminal law does not address or limit administrative action by the employing law enforcement agency where tactical or procedural issues may be reviewed. Neither does this decision address or limit other civil actions or federal criminal action, where other laws, rules and/or lower levels of proof may apply.

2. Summary of facts: When quotation marks ("...") are used in this document, the language within is taken directly from evidence contained in the investigative file and/or judicial proceedings. The sources for these quotes include witness statements (oral or written); sworn testimony, if available; and oral statements which are captured on either public or private audio or video recordings. Where Body Worn Camera (BWC) footage is referenced, the time stamp of the footage reflects Bexar County local time. Events as described below happened both sequentially and simultaneously.

a. Background of events leading up to the OIS.

(1) On Friday March 26, at 1:29 am, San Antonio 911 received a call from "MS"¹ requesting police and EMS presence at her home – 1344 Brighton Ave – because " ... *my kid's father is outside with a knife, he's threatening to kill himself, and he also smacked me in my face...*". Over the course of the call, MS also states that " ... *he's banging on door...*" The listener can hear a male voice, the sound of collisions and MS shouting "*NO!*" and "*STOP IT!*" MS identifies the male as John Montez, with a date of

¹ "MS" is the common-law spouse of John Montez, and the mother of one of his children. See written statement of MS, given to Det. A. Jackson #2593, March 26, 2021.

birth “12/4/1963”. Before the call ends, MS tells the operator that “... *HE’s IN THE HOUSE! ... GET OUT!*”. [Audio Files\911 Calls SAPD 21054691 Joined.wav](#)

(2) As the operator collects information, she also notifies those SAPD Officers who are in the vicinity, initially assigning the officer with a unit call sign 6340 at 1:30 am.² At 1:33 am, the officer with a unit call sign “6300” asks to be assigned to the call, and specifically asks the operator if “...*do we have the lady on the line?*” The operator responds “ ... *they’re providing live updates... the last report says the male is trying to kick her door in.*” After that report, Officer Ramos unit call sign “6361” instructs the operator to “...*take me off break, I’m a little closer than those other units...*” [Audio Files\Radio Traffic SAPD 21054691 Cut.wav](#)

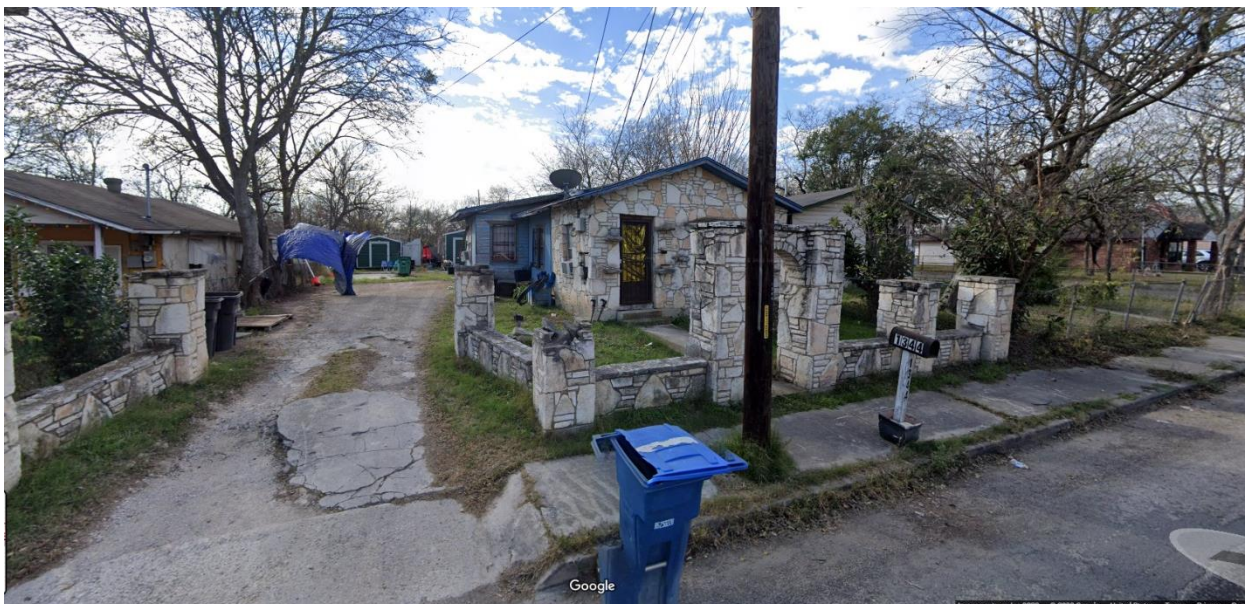


Figure 1 – Google Maps Photograph of 1344 Brighton Avenue

(3) Ofc. Ramos arrives at the residence at 1:35:21 am. Dismounting from his patrol unit, he begins walking to the house and draws his service weapon. At the driveway, he begins to run towards the back of the house, where he finds a male (ultimately identified as John Pena Montez) standing in the open doorway of the kitchen, wearing a blue “V-neck” shirt, jeans and holding a knife as MS described in the 911 call, while MS screams “*GET OUT!*”. Ofc. Ramos immediately commands the male to “*DROP THE KNIFE!*” and “*LET ME SEE YOUR HANDS!*” which goes unheeded, as he closes the door on Ramos, leaving MS trapped inside the kitchen. Ofc. Ramos approaches the door and kicks it open, then backs away to repeat his commands. Ofc. Newsome arrives at 1:36 am and provides support to Ofc. Ramos: the two officers continue to command the male to drop the knife, which the male continues to ignore at one point saying “*you’ve got some civilians here*” while still holding the knife.

(4) At 1:36:40 am Ofc Ramos requests “... *someone go less lethal*”. Ofc. Meynig (arrived at the location at 1:36:25 am) draws his Taser and moves on-line with Ofc.

² Incident Detail Report, Incident Number: SAPD-2021-0369904, Incident Date 3/26/2021 01:29:06

Ramos at the foot of the stairs leading to the kitchen. Ofc. Newsome has to fall back behind the two male officers due to the narrowness and clutter in the entry way. Ofc. Meynig discharges his Taser once, but the short distance between the Taser and the target was insufficient for the prongs to achieve the spread necessary to create neuro muscular failure and debilitate the male. The male responds by closing the door again leaving him alone in the kitchen with MS.

(5) The two officers advanced on the door, and – from the door step - both of them kicked at the door until it opened. Once the door opened, Ofc. Meynig discharged his Taser a second time, but was still unable to debilitate the male or compel him to drop the knife. After the second Taser attempt, the male turns to his left, yells at the officers and advances at Ofc. Ramos, while making an upwards movement with the knife in



Figure 2 - Ofc. Ramos BWC, after kicking the door open the second time

his right hand. Both officers are retreating in order to make space between themselves and the male; Ofc. Ramos discharges his service weapon four times. Ofc. Meynig falls backwards over a cabinet at the base of the stairs. The male falls face first onto the paving stones at the base of the steps. See: [WMV Files\Ofc Ramos BWC Final Clip 30Jun2022.wmv](#) and [WMV Files\Ofc Meynig BWC Final Clip 30Jun2022.wmv](#).

(6) Simultaneous with the shooting, SGT Diaz arrives at 1:37:20 am and can be heard in the background informing dispatch of “shots fired” and requesting EMS. He then assumes duties as the on-scene commander and removes Ofc. Ramos from the scene assigning him to be escorted by Ofc. Miranda. EMS arrived and declared Mr. Montez deceased at 1:46 am.

b. SAPD Investigation. Detective R. Garcia #2598 was assigned as the lead investigator. He led and directed the homicide investigators that interviewed witnesses and directed the collection of evidence. The immediate investigation revealed the following:

(1) Ofc. Ramos was transported to the Public Safety Headquarters, where he gave a statement that morning to Detective Garcia. In his statement he wrote *“The door opened, and I regained sight of the suspect and saw that he was still holding the knife. At this point, I could tell that the woman was close by because her yelling sounded to be close to the door, as the male looked in her direction. I yelled at Officer Meynig to deploy his taser a second time. Officer Meynig discharged a second taser cartridge, but it was also ineffective. I am not sure if the prongs had a fair spread, because the suspect did not react to it. Next I see the suspect turn toward me and officer Meynig. The male lunged at us as he held the knife in his hand. At this point I felt he was trying to stab me, so I discharged my handgun approximately four times.”*³ His service weapon a Smith & Wesson M&P40MM handgun, Serial # NES8143 was collected and

³ Written statement of Officer Stephen Ramos, given to Detective Roberto Garcia, March 26, 2021.

submitted to the Bexar County Criminal Investigation Laboratory for ballistics testing and comparison to the three 40 caliber SW shell casings collected near and under Mr. Montez' body. Testing confirmed that the weapon was in working order, and the recovered casings had been fired from Ofc. Ramos' weapon⁴.

(2) Ofc. Meynig's written report indicated the following: *"Officer Ramos asked for someone to go less lethal. ... I drew my taser and closed the distance to get on line with Officer Ramos ... to get a better angle on S1. S1 continued to hide behind the door frame and I was unable to get a good taser deployment. I was concerned that S1 might turn and begin attacking the people inside the location. S1 moved so more of his body was exposed in the door frame. ... I deployed my taser. The taser failed to stop S1's course of action and he immediately moved backwards and shut the door. ... Officer Ramos was able to kick the door open ... I observed S1 facing a female inside the location. He was still holding the knife and appeared to be moving towards the female. I believed that S1 was about to attack the residents inside the location. I fired the second taser cartridge and it connected with S1. Although I observed S1's upper body tense from the taser, he was able to move his lower body without difficulty. S1 was able to turn around. ... S1 began walking towards officers with the knife in his hand. Officer Ramos and I were shoulder to shoulder as we tried to back away from the residence. S1 lunged forward at us with his knife in hand. S1 stabbed at officers with the point of the knife's blade. I believed my life was in danger and I had to dodge to the right to avoid the knife. I observed the knife move past my left arm and towards Officer Ramos. Due to the speed I was unable to determine if S1 had struck my arm with the knife."*⁵

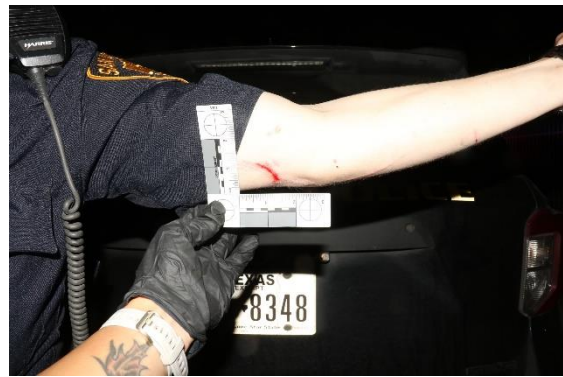


Figure 3 Evidentiary Photograph of Ofc. Meynig's Left Arm

(3) MS provided a written statement to detectives on March 26, 2021. She told police that she and Mr. Montez have a ten-year common-law marriage and have one child together, but they have been separated for the past three weeks. Mr. Montez had come over the Brighton house and argued about their relationship and he left. John then began to call her multiple times giving her directions and information that caused her to be concerned for his wellbeing. MS then called the VA Crisis line and gave them John's number, which further angered him. Approximately 1:00 am, while she was walking her dogs, Mr. Montez came back to confront her carrying the knife with a turquoise handle. *"John pointed the knife towards his ribs and started saying I fucked things up. John then pointed the knife towards me and began walking towards me. ... John swung the knife towards me but stopped before he hit me with it. I think John was going to stab me but changed his mind. John then smacked the right side of my face with the back of his hand. John still had the knife in the same hand he hit me with."*⁶

⁴ Bexar County Criminal Investigation Laboratory Firearms Report, CIL Case # 21-01737, May 3, 2021.

⁵ Report # SAPD 21054691 – Supplement 15 Report, Douglass Meynig #922, Mar 26, 2021 06:13

⁶ Written statement of MS, given to Detective A. Jackson #2593, March 26, 2021.

MS ran inside her home shutting the door, and asked her 17-year-old son to help her barricade the door when Mr. Montez began banging on it, and called 911. The two of them used their body weight “to keep John from getting in.”⁷ Eventually Mr. Montez was able to force his way inside the home, MS saw that “John was really upset and still had the knife in his hand. I thought he was going to try and hurt us. The police showed up and started screaming at John to put the knife down. John put his back up to the left side of the door and started yelling at me this is what you wanted, are you happy now? I tried yelling at John to drop the knife because our kids were there. I don’t know what John was going to do. He was really mad and had already hit me. I thought he was going to try and hurt me or the boys. John walked towards me still asking if I was happy now. John was still holding the knife up in his hand. I saw a red light on John coming from the officers, but I don’t remember what happened next.”⁸

(4) JS the 17 year old son of MS also gave a statement to police on the 26th. He told police that John came back to their house when MS took the dogs outside and that he could hear them arguing “they were arguing for about ten minutes before I heard my mom yell, ‘ow’, like she had been hit. My mom then let the dogs inside ... My mom then came inside holding the right side of her face and was crying. My mom said, ‘he hit me’ (single quotation marks). My mom called 911 again for the police.”⁹ JS helped his mother move a cart against the door, and the two of them braced it with their hands and bodies because “we did not want John coming in. I could hear John yelling at my mom to come get some money. John was yelling about giving my mom money from his stimulus check and just kept repeating it over and over. John sounded really angry ... John pushed the door open and he looked really mad. John was holding a long silver knife with a blue handle. ... I saw the outside door open with the officers outside. I saw John start moving closer to my mom with the knife still in his hand. John was holding the knife up while walking towards my mom. John still looked really mad as he walked towards my mom but I couldn’t hear him saying anything. I wasn’t sure what he was going to do. I thought he was going to hurt my mom or me and my brothers. I have never seen John this mad before. As he moved closer to my mom, the officers tased John in the back. John immediately turned around and ran towards the cops still holding the knife up now pointing towards them. It all happened so fast, I wasn’t sure what he was going to do or why John took off running towards the officers with the knife pointed at them.”¹⁰ In addition to the shell casings recovered at the crime scene, evidence technicians also recovered the knife that Mr. Montez had in his



Figure 4. Knife recovered by Ofc. Meynig

⁷ Supra.

⁸ Supra.

⁹ Written statement of JS, given to Detective A. Jackson #2593, March 26, 2021

¹⁰ Supra

hand when he entered the kitchen, and when he made a sudden forward rush towards Officers Ramos and Meynig.

(5) An autopsy was performed on March 26, 2021. The autopsy determined that Mr. Montez suffered three gunshot wounds, two to the left upper chest (two projectiles recovered) and one to his right foot. The path for all of his wounds was front to back and downward. The report concluded that Mr. Montez's death was caused by the gunshot wounds to the chest, and the manner of death was ruled a homicide.¹¹ The completed investigation was submitted to the Civil Rights Division of the Bexar County District Attorney's Office on July 20, 2021.

3. District Attorney Actions.

After review of the file, MS and Mr. Montez' biological family were hosted by the District Attorney and the Civil Rights Division on January 26, 2022 for an objective viewing of the facts and evidence documented in the SAPD Investigation. At the family's request, a second viewing was provided on or about April 15, 2022.

4. Applicable Law.

a. Texas Penal Code.

(1) **Chapter 9 Justification Excluding Criminal Responsibility** chapter 9 of the code and all of its subchapters and sections provide the statutory basis to examine and assess an actor's use of force and deadly force to determine whether criminal charges – for any use of force – are viable. § 9.02 **Justification as a Defense** specifically states “**It is a defense to prosecution that the conduct in question is justified under this chapter.**”

(2) § 9.22 **Necessity**; conduct is **justified** if the actor reasonably believes the conduct is immediately necessary to avoid imminent harm.

(3) § 9.31 **Self-Defense** a person is justified in using force against another when and the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

(4) § 9.32 (a) (2) **Deadly Force in Defense of Person** the use of deadly force is justified where the actor(s) reasonably believe that deadly force is immediately necessary to protect the actor(s) against another person's use or attempted use of unlawful deadly force.

(5) § 9.33 **Defense of Third Person** the use of deadly force against another to protect a third person if:

(A) ...under the circumstances as the actor **reasonably believes them to be**, the actor would be justified under §§'s 9.31 and 9.32 in using deadly force to protect

¹¹ Bexar County Medical Examiner's Office Autopsy Report 20-02412, September 23, 2020

themselves against the unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(B) The actor reasonably believes that his intervention is immediately necessary to protect the third person.

(6) § 9.51 (c) Arrest and Search; A peace officer is justified in using deadly force against another when and to the degree the officer reasonably believes that deadly force is immediately necessary to make or assist in making an arrest or search or prevent escape after arrest if;

(A) The peace officer reasonably believes the arrest is ... made under a warrant which the officer reasonably believes is valid; and

(B) The peace officer reasonably believes the conduct for which arrest is authorized included the use or attempted use of a deadly weapon.

(C) The peace officer reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(D) There is no duty to retreat before using deadly force justified by section (c).

(7) § 19.02 (b) Murder. A person commits murder if he **intentionally or knowingly** causes the death of an individual or with the intent to cause serious bodily injury, commits an act clearly dangerous to human life that causes the death of an individual.

(8) In addition to the statutory law above, Texas case law has expanded the body of legal justifications to address situations where an actor's reasonable belief is proven factually wrong¹² referred to as the doctrine of "**Apparent Danger**". The Texas Pattern Jury Charge for Apparent Danger instructs jurors.

(A) When a person is attacked with unlawful deadly force, **or he reasonably believes he is under attack or attempted attack** with unlawful deadly force...

(B) ...and there is created in the mind of such person **a reasonable expectation or fear** of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, **viewed from his standpoint at the time** to protect himself from such attack or attempted attack...

(C) ...it is not necessary that there be an actual attack or attempted attack, as **a person has a right to defend his life from apparent danger as fully and to the same extent as he would, had the danger been real**, provided he acted upon a reasonable apprehension of danger...

¹² See *Valentine v. State*, 587 S.W. 2nd 399, Tex. Court Crim. App, Sep 19, 1979.

(D) ...as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

(E) ...if you (the jury) have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, **then you should give the defendant the benefit of that doubt and say by your verdict "not guilty"**.

b. Application of Law to Facts and Prior History.

(1) The evidence in this case clearly establishes that Ofc. Ramos was appropriately dispatched to 1344 Brighton due to an ongoing criminal episode which, (comma) based on MS's 911 call, (comma) appeared to fit the elements of *Burglary of Habitation with Intent to Commit Assault*.¹³ It is significant to note that Ofc. Ramos – who was on a dinner break when the 911 call was initially placed¹⁴ - only asked to be assigned when the radio dispatcher stated, "*the last report says the male is trying to kick her door in*" (see paragraph 2.b.(2) above). When Ofc. Ramos gets to the address, dismounts and runs to the back door, he can see a male in a blue shirt, holding a knife, who is now inside the kitchen, and hear a female voice crying "*GET OUT!*". At this point Ofc. Ramos – in full police uniform - is now witnessing the felony offense of Burglary of a Habitation, and has confirmed that the female is being threatened with a deadly weapon. As a result, he has probable cause to arrest John Pena Montez and the authority to use force to assist in making that arrest in accordance with § 9.51(a). Mr. Montez' recognition of Ofc. Ramos' presence, and comprehension of Ramos' lawful commands is clear when he responds to Ramos' drawing of his service weapon while demanding he drop the knife, by saying "*there are civilians in here.*" His intentional disregard for Ofc. Ramos is apparent when he shuts the door.

(2) When Mr. Montez shuts the door the second time, and Ofc. Ramos kicks it open and directs Ofc. Meynig to use the non-lethal taser a second time, Mr. Montez responds by turning, yelling and taking a sudden forward stride towards the officers while simultaneously making a quick upwards thrust or jab with the knife in his right hand.



Figure 6 Still Photo from Ofc. Meynig's BWC



Figure 5 Still Photo from Ofc. Ramos's BWC

¹³ Texas Penal Code, § 30.02 (a)(1).

¹⁴ Written statement of Officer Stephen Ramos, given to Detective Roberto Garcia, March 26, 2021. "*At approximately 0130 hours I was on my lunch break at a Whataburger restaurant, which is located at Zarzamora and SW Military Drive. While in the drive through, I heard a call for an assault in progress come out over the radio. I heard dispatch crossing officers over from my sector to another, so I looked up the details of the call on my computer. I noticed the details stated there was a man kicking the door in at a residence and that he had a knife. I radioed dispatch and requested to be taken off my break and assign me to the assault in progress.*"

Ofc. Ramos can reasonably perceive that Montez' movement threatens both himself and Ofc. Meynig with illegal deadly force; thus his own use of deadly force was immediately necessary to protect himself and Ofc. Meynig from Montez' unlawful use of deadly force; accordingly his shooting Montez was justified under §§'s 9.32 and 9.33. Ofc. Ramos also had a reasonable belief that deadly force was immediately necessary to make the arrest for the felony offense of Burglary of a Habitation with Intent to Commit Assault as he could reasonably conclude that the same sudden forward stride and simultaneous quick upwards thrust or jab with the knife towards himself and Ofc. Meynig posed a substantial risk of death or serious bodily injury to either of them, if the arrest was delayed. As such, Ofc. Ramos had no duty to retreat before using deadly force as specified in § 9.51 c.(1), c.(2) and (e).

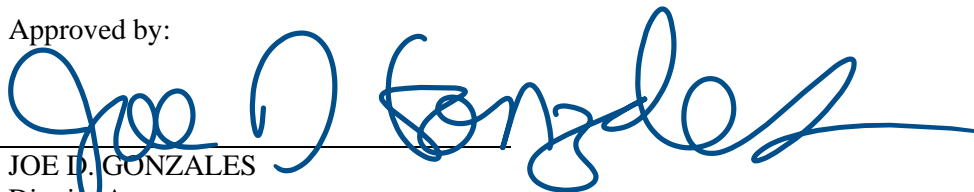
c. The above facts, statements of law and analysis were presented to the grand jury on June 30, 2022 and after deliberation, it declined to return a true bill of indictment. While Mr. Montez' death at the hands of San Antonio Police Officers is regrettable, (comma) we recognize that participating in events leading to a death (no comma) does not mean that one of these officers committed a crime. "Any officer's engagement with a person who presents a legitimate danger to himself, or others contributes to the ultimate outcome of that interaction, but if the officer's actions are appropriate and in accordance with their agencies' policy and applicable law, he or she is not presumed to have committed a crime, even if the eventual outcome is undesired.¹⁵"

Submitted by:



DARYL E. HARRIS
Chief, Civil Rights Division

Approved by:



JOE D. GONZALES
District Attorney

¹⁵ Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez, Sep 18, 2020