

FINDINGS OF DISTRICT ATTORNEY MARIAN T. RYAN REGARDING OFFICERS
INVOLVED IN THE FATAL SHOOTING ON MARCH 26, 2016, IN LOWELL, MA

The Middlesex County District Attorney's Office, the Massachusetts State Police assigned to the Middlesex County District Attorney's Office along with the Lowell Police Department have concluded the investigation into the fatal shooting of Jose Perez, 39, of Lowell, MA, who was shot by Lowell Police on Cambridge Street on March 26, 2016.

A thorough investigation into the circumstances surrounding the fatal shooting of Mr. Perez has revealed that Officer Guillermo Rojas and Gang Officer Chase Suong fired only after Mr. Perez advanced on the officers armed with a substantial knife in each hand, and after he had already refused multiple demands to drop the knives. Under the circumstances, Officers Rojas and Gang Officer Suong acted reasonably and lawfully. Therefore, no criminal charges are warranted.

I. INTRODUCTION

The District Attorney's Office, by statute, has the duty and authority to direct and control all death investigations within Middlesex County. As such, the primary goal of the investigation was to determine if any person bears criminal responsibility in connection with Mr. Perez's death. I designated my Chief of Homicide, Adrienne Lynch, to direct the investigation.

During the course of our investigation, recordings of the 911 calls as well as police radio communications were gathered and reviewed. A canvas of the neighborhood was conducted and interviews were conducted with the family members of the deceased. The two officers who fired their department issued firearms wrote police reports and were interviewed, other responding officers wrote police reports which were also reviewed. Police reports concerning two prior encounters the Lowell police had with Jose Perez- one dated July 15, 2009 and the other dated February 17, 2012; were also reviewed. Additionally, ballistics tests were conducted, and results of those examinations were reviewed. Police reports, witness statements and the autopsy report were reviewed along with photographs of the scene and of the autopsy.

II. APPLICABLE LAW

My office's analysis of whether the actions of the involved police officers constitute a criminal act was guided by applicable case law and legal precedent on the use of force by law enforcement. In order for use of deadly force to be lawful, the actions of the officer must have been objectively reasonable in light of all circumstances confronting the officer at the time.

As stated by the United States Supreme Court, in Graham v. Connor, 490 U.S. 386, 396-397 (1989), "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation."

The standard for use of deadly force in Massachusetts is that a person may use deadly force to defend him or herself or another if the person has reasonable ground to believe, and actually believes, that he or she is in imminent danger of death or serious bodily injury, and that no other means would suffice to prevent such harm. The person using deadly force must actually believe that he or she or other persons are in imminent danger of death or serious bodily harm. In addition, the circumstances as perceived and understood by the person using deadly force must be such that a reasonable person would believe that he or she or another person was about to be attacked, and that he or she was in immediate danger of being killed or seriously injured.

Our review of the facts reveals that in the totality of the circumstances, Officer Rojas and Gang Officer Suong were justified in their use of deadly force. Both Officer Rojas and Gang Officer Suong fired their department issued firearms: Rojas six times, Suong twice. Officer Rojas was reasonable in his belief that he and Gang Officer Suong, and possibly others inside the dwelling at Cambridge Street who had called the police for help, were in imminent danger of being stabbed and suffering death or serious bodily injury at the hands of Jose Perez. Similarly, Gang Officer Suong was also reasonable in his belief that he and Officer Rojas, and possibly others inside the dwelling at Cambridge Street, were in imminent danger of being stabbed and suffering death or serious bodily injury at the hands of Jose Perez.

III. INVESTIGATIVE FINDINGS

What follows is a summary of the findings in the investigation and is not exhaustive of all information reviewed:

a. Incidents at Cambridge Street

On Saturday, March 26, 2016, as a result of two 911 calls to the Essex Regional Emergency Communications Center, one from the deceased Jose Perez, and the other from his girlfriend's seventeen year old daughter, Lowell police officers were dispatched to 75 Cambridge Street in Lowell. The first call, which was from the deceased, demanded the dispatcher to send the police right now because he was "going to kill all everybody." The second call, from the seventeen year old female reported that there was a suicidal person in the house at 75 Cambridge Street, with two knives, who wants to kill himself. She described him and what he was wearing. This information was broadcast as it was being received to Lowell police officers including uniformed Officer Guillermo Rojas and plainclothes Gang Officer Chase Suong.

The first officers on the scene were Officer Guillermo Rojas and Officer Chase Suong, and each reported firing their department issued firearm during the incident. There were four civilian witnesses, the girlfriend of the deceased and her three daughters, ages 17 – 11 years, who were outside the house and down the block, when the shooting occurred, and two police officers on scene at the time of the shooting. Troopers from the Crime Scene Services Section responded and documented the scene. Troopers from the State Police Firearms Identification Section also responded and collected ballistics related evidence including the department issued firearms of the two officers who each discharged their firearm during the incident

b. 911 Calls

On Saturday, March 26, 2016, at 10:53:20 p.m., the Essex Regional Emergency Communications Center received the first of two 911 calls. The first call was from a person, later identified to be the deceased, Jose Perez, date of birth: 12/25/77. During that recorded call Perez told the dispatcher to “send the cops to 75 Cambridge Street,” and “Send it right now ‘cause I’m gonna kill all everybody.” The Regional Dispatcher relayed the information to the Lowell police dispatcher at 10:53:50 p.m. This information was then, in turn, broadcast to patrol units by the Lowell dispatcher.

As this was occurring, the Essex Regional Emergency Communications Center dispatcher received a second 911 call concerning 75 Cambridge Street at 10:57:50. This call was from the 17 year old daughter of Perez’s girlfriend, requesting “can we please get a cop or anybody, um, at 75 Cambridge Street. We – we have a suicidal” and “Please hurry up.”

The call was immediately transferred to the Lowell dispatcher, who picked up the call at 10:58:40 p.m. During the call, it was reported to the Lowell dispatcher that “I have a suicidal at my house. He has two knives and he wants to kill himself.” The female caller provided a description of him as a Hispanic male, with curly hair, wearing a white shirt and jeans. Simultaneously this information was being broadcast by another dispatcher to Lowell officers on the street, as the original dispatcher remained on the line with the female. One minute and thirty-four seconds into the conversation (11:00:14 p.m.) with the Lowell dispatcher, females can be heard to become hysterical. A younger female then got on the line and said “the police shot him coming out of the house.”

c. Officer Guillermo Rojas

Officer Guillermo Rojas was working as a uniformed police officer assigned to marked cruiser B1 as a district response officer. He was parked on Appleton Street when he heard the radio transmission directed to area 10 cars concerning a 911 call from a man at 75 Cambridge Street saying he was going to kill everyone and to send the police. Officer Rojas’ location was a short distance from 75 Cambridge Street so he decided to respond as a backup. He responded without use of blue lights or siren. As he approached Cambridge Street, he saw an unmarked cruiser, operated by Gang Officer Chase Suong from the Gang Unit turning on to Cambridge Street. Officer Rojas advised Lowell Dispatch that he was going off on Cambridge Street. Shortly after that a tone on the Lowell Police radio was issued followed by a dispatch stating that there was a man holding knives in the residence. At that time Officer Rojas unholstered his department issued firearm and held it straight down against the right side of his body as he continued walking towards 75 Cambridge Street, which is located in a thickly settled residential neighborhood. Rojas and Suong were now walking together and Rojas again advised Lowell dispatch that he and Suong were “going off.”

Meanwhile, Lowell Dispatch had provided a description of the male as a male with curly hair, a white t-shirt and jeans. The officers continued walking towards the front doorway of 75 Cambridge Street which was wide open. The front doorway opens to a hallway with a staircase

going upstairs on the right and a hallway leading to the first floor apartment to the left. Officer Rojas walked up two of the cement steps leading up to the front door and stopped at the top step. As he looked through the open front door he saw the door to the first floor apartment was closed and the stairs to his right. Realizing this was a multi-family residence Officer Rojas advised dispatch of this and sought further information. As he was requesting additional information via radio, Gang Officer Suong told him the male was right there on the interior stairs. Officer Rojas looked to his right and saw a man in a white t-shirt and blue jeans coming down the stairs at a fast rate of speed with a look of “aggression” on his face. The man was closer to the top of the stairs leading to the second floor when he first saw him. The man had one hand above his body holding a large metallic steak knife. In the other hand he could see the man was holding something but Officer Rojas’ attention was focused on the large steak knife.

Officer Rojas was in full police uniform, but, nevertheless, in a loud voice, identified himself as a Lowell police officer and yelled for the man to “drop the knife.” Officer Rojas could also hear Gang Officer Suong give the man the same verbal commands. The man responded by saying that he wasn’t dropping anything. As these verbal commands were being given and ignored, the man continued down the stairs towards the officers, refusing to drop the knife, holding it above his head in an assaultive manner towards the officers. Officer Rojas was on the top exterior step and took one step back, in an effort to create immediate distance between himself and the man, and briefly lost his balance as he missed the step behind him. As he was taking the step backwards the man continued to charge towards him and Gang Officer Suong, showing no sign of slowing down, stopping or lowering the knife. Officer Rojas aimed his firearm at the man and, as the man got closer, at the bottom of the interior stairway around five to seven feet from the officers, Rojas believed he was facing an imminent threat of serious bodily injury or death to himself and/or Gang Officer Suong, and discharged his firearm aimed at the man’s center mass. Officer Rojas said he fired until he was able to identify that the serious assault had been neutralized. After being shot, the man fell face down on the landing in front of the officers.

Officer Rojas immediately notified the Lowell dispatcher that shots had been fired and requested paramedics. He could hear the man moaning and breathing heavily. The man still held a knife in his right hand. Rojas and Suong decided that Rojas would re-holster his firearm and pull the man towards them by the legs, while Gang Officer Suong provided cover, hoping that Perez would release the knife in his hand and be in a better position to receive emergency medical treatment.

As other officers began to arrive, Officer Rojas was able to see a second knife. As the responding officers took over medical treatment, Officer Rojas and Gang Officer Suong proceeded to the second floor (where the man had come from); in an effort to determine if there were any injured persons in the apartment. While clearing the apartment, Officer Rojas observed some disarray as if a struggle had taken place and there was blood in the kitchen and on a broken lamp on the floor in a bedroom. As they finished clearing the apartment, Officer Rojas noticed

that the back door to the apartment was wide open. Rojas and Suong exited the apartment through that door and met up with the other officers outside.

Officer Rojas turned over his department issued firearm at the scene.

d. Gang Officer Chase Suong

Gang Officer Suong was assigned to the Lowell Police Department Gang Unit in plainclothes with a police badge around his neck and operating an unmarked cruiser equipped with lights and siren. At approximately 10:55 p.m. he heard the radio transmission reporting that Lowell Dispatch was notified by Essex Dispatch that a male residing at 75 Cambridge Street is “going to kill everyone” and that he wants police there. At the time Gang Officer Suong believed there were possible victims at the house and it was also relayed that the man in the house had a knife.

Gang Officer Suong was nearby so he activated his blue lights and siren and headed toward Cambridge Street, given the serious nature of the call. Upon arrival, he waited several seconds for an additional unit to respond; that was Officer Rojas in a marked cruiser and in uniform. As they were approaching the front of the house together a “priority one tone” was given by dispatch regarding the address and added that the male caller is in the hallway armed with a knife. Gang Officer Suong drew his department issued firearm and held it to his side pointing down as he and Rojas proceeded to the main front entryway with Rojas to Suong’s left.

There were several steps outside the building leading to the main door which was open. Gang Officer Suong could see there was a short hallway on the left which lead to the door to the first floor apartment and to the right a stairway leading to the second floor. Upon visually clearing the left first floor hallway, Gang Officer Suong took a couple of steps forward on the front steps when his attention was drawn to the top of the right interior stairway where he saw a man, later identified to be Jose Perez, walking down the stairs. Suong took a step back and notified Rojas. Perez quickly came down the stairs holding two knives: a butcher knife in his left hand and a common kitchen knife in his right hand. Perez had what appeared to be blood on his hands, which led Suong to believe there could be victims inside the apartment. Suong pointed his firearm at Perez and made loud, verbal commands for him to stop and drop the knives. Perez ignored these commands as he continued to walk down the stairs towards the officers and said “no, no, no.” Suong continued to tell Perez to stop as he continued down the stairs while shaking his head and still saying no. Perez continued towards the officers at a faster pace and raised both his arms while still wielding both knives. Once Perez made it down to the bottom of the interior stairs, Suong was at the foot of the cement steps outside as Perez was at the bottom of the interior stairs and speeding up. The distance was now between and 6 and 8 feet between Perez and the officers. Gang Officer Suong feared for his life and the life of Officer Rojas and was also concerned that there were possibly other victims inside the house. Gang Officer Suong said that he could not have taken quick enough steps to his rear or to his right out of attacking range

without knowing Officer Rojas would do the same. He said, with no other options, he shot a round from his department issued firearm aiming at the center mass to stop Perez. As he did so, Suong heard simultaneous shots coming from Officer Rojas, who was directly to his left.

Despite being shot, Perez did not stop immediately and was still standing after several seconds. He then made a right hand turn as he was dropping to the floor, still holding onto both knives. Once Perez was on the ground in a prone position facing away from the officers, Suong saw Perez was still moving with his right hand holding the kitchen knife. Suong noticed that by this point Perez had let go of the butcher knife which had been in his left hand, although it was still within Perez's reach. Suong could see Perez moving his right hand and clenching and unclenching his grasp of the knife. Suong commanded Perez to let go of the knife and to show his hands free of any weapons. When Perez did not respond the officers grabbed Perez by the feet and pulled him away from the knives. As they did so, Perez released the knife in his right hand. At that point Suong grabbed the butcher knife and tossed it down the hall, away from Perez.

Other officers arrived on scene and took over medical treatment of Perez. At that time, Rojas and Suong proceeded to the second floor apartment in order to do a search for other potential victims. Walking up to the door, Gang Officer Suong observed blood in the doorway. After announcing "Lowell Police", Gang Officer Suong and Officer Rojas entered checked for other victims. They observed blood in the kitchen area and the rear door to the apartment open. After determining that there were no injured persons inside, he and Officer Rojas left the apartment.

Gang Officer Suong turned over his department issued firearm at the scene.

e. Police Radio Communications

Lowell police radio transmission recordings were also reviewed as part of this investigation. The transmissions confirm the sequence and timing of events as reported by the officers. Track 3 of the recording begins with the broadcast reporting Essex Communications report of a male caller who told them he was going to kill everyone and send the police. At fifty-two seconds into track 3, Officer Rojas transmits that he is "going off on Cambridge." At one minute and twenty-six seconds, the "tone" is transmitted. At one minute and fifty-two seconds, "B1 (Rojas) and G4 (Suong) off on Cambridge" is transmitted. At one minute and fifty-six seconds, a description is broadcast. At two minutes and five seconds, Officer Rojas radios, "it's a two level building, do we -" and the transmission stops. At two minutes and thirteen seconds the radio transmission of "shots fired, shots fired. Call an ambulance right now," is transmitted. Thus, from the time the officer radioed inquiring about which floor of the building to the time of "shots fired" being transmitted was 8 seconds.

IV. OFFICE OF THE CHIEF MEDICAL EXAMINER

Dr. Mindy Hull of the OCME performed an autopsy on March 27, 2016. Upon examination, Dr. Hull noted six penetrating gunshot wounds and three perforating gunshot wounds, although those three perforating wounds could have been the result of a single shot (e.g., entering, exiting and re-entering).

The penetrating wounds were described, as follows:

Wound A: entrance at the central upper chest and bullet recovered at the right armpit with a directionality to the right and slightly backwards;

Wound B: entrance in the lower chest and bullet recovered in the left pericardial sac with a directionality to the right and slightly backwards – injury to the heart;

Wound C: entrance in left lower chest, bullet recovered in the tight chest wall, posterior, with a directionality to the right and slightly backwards – injury to lungs and lower aorta;

Wound D: entrance in the left lateral lower chest bullet recovered in left musculature/peri-spinal (abdomen/lower back) with a directionality to the right, backwards and slightly downward, through soft tissue, near the kidney, ending in large muscle of the spine;

Wound E: entrance wound of the left abdomen, bullet recovered in the right (opposite) side of the abdominal wall/flank, directionality rightward and slightly back across the body – injury to intestines

Wound F: entrance wound of the left posterior shoulder, bullet recovered in the right chest near the clavicle, directionality rightward and slightly backwards.

There were three perforating injuries to the left upper arm, which by their appearance could have been caused by one or more than one shot.

The injuries observed were all consistent with the description provided by each officer about the shooting concerning where they were and where Perez was and what his movements were at the time of the shooting.

Jose Perez was described to be morbidly obese with a height of 5'8" and a weight of 281 lbs. recorded at autopsy.

Toxicology results showed positive results for recent cocaine use (Cocaine and metabolites) and a positive result for blood alcohol with a whole blood result in the comparable range of a .20 - .23 g. %. There were also positive results for levamisole (possibly used as cutting agent for cocaine), mirtazapine (an antidepressant) and possible chloroquine metabolite.

V. BALLISTICS EVIDENCE

At the scene troopers assigned to the Massachusetts State Police Firearms Identification Section recovered two spent projectiles, one spent projectile fragment and eight discharged cartridge casings. Six spent projectiles and one spent projectile fragment were recovered at the autopsy of Jose Perez. Additionally, both officers' .40 Smith & Wesson M & P40c semi-automatic pistols were submitted. Both firearms had one live round of ammunition in the chamber.

Test firings demonstrated that both of the officers' guns were working firearms. Lieutenant David Cahill of the Firearms Identification Section did a comparative analysis between test firings from each of the two firearms and evidence recovered at the scene and at autopsy. Based on his examination of the evidence as well as his education training and experience in the field, Lt. Cahill has rendered the following opinions:

- Six of the discharged cartridge cases were fired by the Rojas firearm
- Two of the discharged cartridge cases were fired by the Suong firearm
- Four of the six spent projectiles recovered at autopsy were fired by the Rojas firearm
- Two of the six spent projectiles recovered at autopsy were fired by the Suong firearm
- Two of the spent projectiles recovered at the scene had similar class characteristics and some similar individual markings to Rojas' firearm, however, due to damage to the bearing surfaces of the projectiles there was insufficient correlation of individual markings and thus his results are inconclusive
- The projectile fragments recovered at the scene and at autopsy possessed no markings of value

The ballistics evidence was consistent with the officers' descriptions of the shooting.

VI. SCENE EXAMINATION

State police personnel assigned to the Crime Scene Services Section responded and documented the scene and assisted in evidence collection. In addition to the ballistics evidence documented herein, investigators located two knives in the first floor common hallway area of 75 Cambridge Street, Lowell, MA. One was a black handled knife found at the base of the interior stairway leading up to the second floor and the other a meat cleaver/butcher knife with a black

handle. A broken cell phone was also located on the floor of the first floor hallway leading towards the first floor apartment door.

Examination of the second floor apartment revealed the presence of blood on the doorway and inside the apartment, as described by the officers and witnesses, as well as the broken floor lamp. A plastic baggie with residue was observed in the master bedroom where Perez had been seen with it by a witness.

VII. JOSE PEREZ'S PRIOR INVOLVEMENT WITH LOWELL POLICE AND THE COURT SYSTEM

Investigation revealed that the deceased had a previous criminal history and involvement with the Lowell Police Department. In 2009, Lowell Police received a phone call from Jose Perez and responded to Sixth Street, Lowell, where he was living. He told the police he was depressed and wanted to go to Saints Medical Center voluntarily. He was subsequently transported there by Trinity Ambulance. On a second occasion in 2012, Lowell police were dispatched to Cumberland Road in Lowell for a man who had just stabbed himself in the stomach. Upon arrival, Lowell police spoke with Jose Perez, the man who had stabbed himself. Perez was transported to Lowell General where he was scheduled to be med-flighted to Boston. A section 12 petition, i.e., involuntary commitment as a danger to himself or others, was filed.

A review of Perez's record reveals three closed restraining orders from 2001, 2008 and 2009 that had issued against Perez on application of three different women. His record consists of no convictions. In 1999, he received a continuance without a finding for a domestic assault and battery and malicious destruction of property less than \$250 and a 2004 continuance without a finding for leaving the scene of a property damage collision.

VIII. CONCLUSION

The totality of evidence reviewed showed that at the time of the shooting, Mr. Perez was under the influence of both alcohol and drugs, including cocaine. He also had a history of mental illness and had, in the past, attempted suicide by use of a knife. Perez was a large man and as he came down upon the officers from the second floor, armed with a substantial knife in each hand, which he wielded in a threatening, assaultive manner at the officers, he was an imposing figure. The officers repeatedly demanded that he drop the knives and he explicitly told them he would not. The officers tried to create distance between Perez and themselves, but their position on the exterior concrete stairs, and having to back up and away from him in the confines of that space was precarious for them. Perez himself called 911 to report that he intended to kill himself and everyone there and to ask that the police be sent. He also told witnesses that he intended to kill them, if they didn't leave, and kill himself. Taken together, these are all factors which substantiate the reasonableness of officers' belief that Perez intended to cause death or serious bodily injury. According to the radio transmission of shots fired, the time of the actual shooting, from the time that Officer Rojas first observed Perez on the interior stair way coming

towards him, to the time of the transmission of shots fired was no more than eight seconds. The officers both described that even after they had fired their weapons and Perez was shot and on the floor in the hallway, Perez still had one of the two knives in his hand and he was still moving. In all of these circumstances, the officers were reasonable in their belief of imminent death or serious bodily injury and they used no more force than was necessary to prevent that occurrence.

Therefore, based on the totality of the evidence reviewed, the use of lethal force by Officer Guillermo Rojas and Gang Officer Chase Suong was justified based on the need of each officer to protect himself, his fellow officer, and possible victims inside the apartment, from the immediate threat of death or serious bodily harm from Jose Perez. The use of lethal force by each of the officers was not excessive in the circumstances and, therefore, the shooting was justified in the reasonable exercise of self-defense, under Massachusetts law.

This matter is now referred to the Lowell Police Department for whatever internal review may be deemed appropriate.



Knife from Perez's right hand



Knife from Perez's left hand



View of the front of 75 Cambridge Street from the street