

OFFICE OF THE WASHOE COUNTY DISTRICT ATTORNEY

December 27, 2024



REPORT ON THE AUGUST 22, 2022 OFFICER INVOLVED SHOOTING OF FRANCISCO PENA

Lead Investigation Agency: WCSO #22-4368
Co-Lead Investigation Agency: RPD #22-15694 and SPD #22-6658

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INTRODUCTION¹

On August 22, 2022, at approximately 7:54 p.m., Sparks Emergency Dispatch received a 911 call from Raquel Soliz-Sanchez (hereinafter “Raquel”).

Raquel, who called from a neighbor’s house, reported that her estranged husband, Francisco Pena (hereinafter “Pena”), had just threatened her with a knife at her apartment, located at 1625 Merchant Street, Apartment E, Sparks, Washoe County, Nevada. The ensuing investigation revealed that Pena, in a jealousy driven rage, had threatened her with the knife, armed himself with a gun, and pinned her down by her throat. During the altercation, Raquel’s teenage son, David Pena-Solis (hereinafter “David”), tried to take the knife from Pena and was cut in the process. Regardless, David managed to distract Pena, allowing Raquel to escape to the neighbor’s home and call 911, but David remained in the apartment with Pena.

Sparks Police Department (hereinafter “SPD”) Officer Britt Brown (hereinafter “Officer Brown”) and Officer Tom Radley (hereinafter “Officer Radley”) were the first two SPD officers to arrive on scene. While enroute in separate patrol vehicles, the officers received the above information from 911 dispatch. Given the nature of the call, Officer Brown, who approached the scene westbound on Merchant Street, armed himself with his patrol rifle (hereinafter “rifle”). Similarly, Officer Radley, who approached the scene eastbound on Merchant Street, unholstered his duty pistol (hereinafter “pistol”). The two officers then exited their patrol vehicles and approached Apartment E, a second-floor apartment, on foot. Meeting at the stairwell to the apartment building, the two officers went up the stairs together with Officer Brown in front and Officer Radley in the rear. During their ascent, both officers heard an agitated male, believed to be Pena, screaming from Apartment E. In response, the two started sprinting up the stairs.

Once at the top of the staircase, the officers saw Pena appear at the threshold of Apartment E’s doorway, within a few feet of the officers, screaming belligerently and gripping a knife. The officers also saw David still inside the apartment within one or two feet of Pena.

The officers, who feared for their safety and the safety of David, yelled verbal commands to Pena to “drop the knife” and “[s]how me your hands!” Pena disobeyed the officers’ verbal commands and continued to scream and act belligerent. After several seconds of non-compliance, Officer Brown discharged one shot from his rifle and Officer Radley discharged two shots from his pistol. All three bullets struck Pena, who dropped the knife and fell to the ground inside Apartment E.

¹ The Introduction is synopsised from 911 calls, police reports, witness interviews, Body Worn Camera footage and forensic reports.

After Pena fell to the ground, officers escorted David from inside the apartment while other officers provided aid to Pena until medical personnel arrived on scene. Pena was transported to Renown Hospital and declared deceased at 8:40 p.m. (2040 hours).

Consistent with the regionally adopted Officer Involved Shooting Protocols (hereinafter "OIS"), the Washoe County Sheriff's Office (hereinafter "WCSO") led the Pena OIS investigation. Reno Police Department (hereinafter "RPD") provided secondary investigative support, and the Washoe County Crime Lab (hereinafter "WCCL") provided forensic services. The investigation included witness interviews, examination of physical evidence, review of body worn camera footage (hereinafter "BWC"), and forensic examination of evidence.

WCSO submitted all investigative reports, photographs, documents, BWC, forensic reports, witness statements, and recorded interviews to the Washoe County District Attorney's Office (hereinafter "WCDA") on November 17, 2023. No criminal charges were recommended by WCSO for Officer Brown or Officer Radley, the two SPD officers involved. The WCDA's office evaluation included a review of WCSO's complete investigative file.

Based on the available evidence and the applicable legal authorities, it is the opinion of the WCDA that the shooting of Pena by SPD Officer Brown and SPD Officer Radley was legally justified and not a criminal act.

I. STATEMENT OF FACTS

A. Witness Accounts

The following section contains summaries of recorded statements collected from witnesses during follow-up interviews. The summaries reflect each witness's personal recollections of the events that unfolded, as told to interviewing officers.

1. Officer Britt Brown

On August 23, 2022, at approximately 2:00 a.m., Officer Brown was interviewed at SPD by WCSO Detective Joseph Aceves and RPD Detective Blake Overby. The interview was audio and video recorded.

Officer Brown has been employed as a police officer with SPD for approximately 5 years. At the time of the shooting, Officer Brown was assigned to the patrol division. In addition to his patrol assignment, Officer Brown is a Field Training Officer, a Sniper Team Leader, a member of SPD SWAT, a range staff member and a defensive tactics staff member. Officer Brown wore and activated his Body Worn Camera during this incident.

Officer Brown explained that on August 22, 2022, he was working in a marked patrol unit wearing his full police uniform when he responded to 1625 Merchant Street, Apartment E, Sparks, Washoe County, Nevada, for a call regarding a male (later determined to be Pena) who had threatened a female (later determined to be Raquel) with a knife. As Officer Brown responded, he remembered dispatch saying that Raquel and Pena were in some form of relationship - either married or dating. Additionally, Officer Brown remembered dispatch stating that Raquel's sons² were inside the apartment with Pena. Officer Brown asked dispatch to confirm the sons' ages and then learned that one of the sons inside the apartment with Pena was injured.

Upon arrival at the scene, Officer Brown carefully considered the above-mentioned circumstances in determining his response.³ First, Officer Brown parked a bit closer to the scene than normal. Second, Officer Brown retrieved his rifle before exiting his patrol vehicle. Having approached from westbound on Merchant Street, Officer Brown noticed Officer Radley arriving from eastbound on Merchant Street. Both officers arrived at virtually the same time and began moving from their respective positions towards the building and Apartment E.

² After the incident, Officer Brown discovered David was the only other son inside Apartment E during the incident.

³ Officer Brown was informed that Pena was inside apartment E armed with a knife. Officer Brown believed that dispatch explained that Pena had threatened Raquel with a knife and that there were multiple children still inside the apartment. Officer Brown learned that the children were trying to get the knife away from Pena and while doing so, may have been injured.

On his way to the apartment building, Officer Brown noticed Pena in a black shirt on the building's second floor. Because Pena was turned away, Officer Brown could not yet see Pena's face. As Officer Brown moved closer to Apartment E, he heard Pena yelling aggressively. With Officer Radley close behind, the two officers started running up the stairs. As Officer Brown and Officer Radley got to the top of the stairs, Officer Brown saw Pena inside the doorway to Apartment E. Officer Brown believed he had one foot on the top of the staircase and one foot on the stair when he noticed Pena had a knife clenched in his hand. Officer Brown noted that Pena was yelling, and believed Pena was saying, "shoot me." Officer Brown told detectives that he gave Pena commands to "drop the knife" but Pena did not listen and continued to scream with the knife in his hand.

Officer Brown made several observations during his initial encounter with Pena: (1) Pena did not listen or respond to officer commands to drop the knife; (2) Pena remained in close proximity to Officer Brown and Officer Radley⁴; (3) David was inside the apartment within Pena's direct reach⁵; (4) Pena's muscles appeared clenched, and his entire body was pulsating; and (5) Pena was vibrating as he yelled at Officer Brown and Officer Radley.

Officer Brown told detectives that he gave as many verbal commands as possible. When Pena ignored the commands, Officer Brown believed he could not wait any longer and had to stop Pena from using the knife on either David (who was standing next to Pena in the apartment) or Officer Brown and/or Officer Radley. In fear for his safety, and the safety of David and Officer Radley, Officer Brown believed it necessary to shoot and immediately incapacitate Pena. As he began to pull his rifle's trigger, he heard Officer Radley fire a weapon. Officer Brown was unsure about how many shots were fired.

After shots were fired, Pena fell to the ground. Officer Brown noticed Pena no longer had the knife in his hand, and his arms were above his head as he lay on the ground. At some point during the altercation, Officer Brown noticed blood on David's hands and his forearms.

⁴ According to Officer Brown, Pena was approximately 5-6 feet away from Officer Brown and Officer Radley. Pena was above Officer Brown and Officer Radley as they were still on the stairs. Pena was in the doorway of Apartment E with David beside him in the apartment. The body positions of Pena compared with Officer Brown and Officer Radley contributed to Officer Brown's fear of being harmed by Pena.

⁵ Pena was approximately 1-2 feet away from David.

Officer Brown pulled David out of the apartment and then kept cover on Pena, who had minimal movement with his hands still above his head. After a new officer arrived, Officer Brown conducted a safety sweep of Apartment E as he believed additional children were in the apartment. With Officer Radley's assistance, the two cleared all rooms and did not locate anyone else in the apartment. With the apartment cleared, Officer Brown was removed from the scene and taken to SPD where his BWC and rifle were collected and turned over to the OIS investigative agencies.

2. Officer Tom Radley

On August 23, 2022, at approximately 1:57 a.m., Officer Radley was interviewed at SPD by WCSO Detective Michael Almaraz and RPD Detective Jeffrey Boyd. The interview was audio and video recorded.

At the time of the shooting, Officer Radley had approximately 22 years of law enforcement experience. He worked as a deputy at WCSO from 2000 until December 2004. He then transferred to SPD and was most recently assigned to the SPD K9 unit.

During this incident, Officer Radley wore and activated his BWC. Officer Radley was wearing his SPD K9 uniform during the incident and had his badge and name tape, which included both his name and his K9's name.

Officer Radley recalled being dispatched to a possible domestic where a female caller (later identified as Raquel) reported her husband (later identified as Pena) had a knife. Dispatch advised that Raquel had escaped from the apartment, but Pena was still in the apartment with the knife. While enroute to the scene, Officer Radley learned that two teenage boys were possibly still inside the apartment with Pena and may have suffered injuries trying to take the knife from Pena. When Officer Radley turned onto Merchant Street, his partner, Officer Brown, was also in the area. Officer Brown approached from the east and Officer Radley approached from the west. Officer Radley could see Officer Brown when he parked.

Before Officer Radley exited his vehicle, he asked dispatch if Raquel could meet the officers on Merchant Street away from the scene. Soon after, Officer Radley heard that Officer Brown was deploying his rifle. Additionally, Officer Radley heard over the radio that Pena was possibly coming down the stairs out of the apartment, attempting to locate Raquel. Officer Radley was informed by dispatch that Raquel was possibly outside the apartment looking for officers, but he could not find Raquel upon exiting his vehicle. Officer Radley remembered making eye contact with Officer Brown before noticing a male, later determined to be Pena, coming down the staircase and looking around the parking lot area.

Officer Radley believed Pena saw the officers because Pena quickly returned to the apartment. Upon seeing Pena quickly going up the stairs, Officer Radley and Officer Brown increased their pace. As Officer Radley went up the stairs, he saw a blood trail on the stairwell and heard Pena screaming angrily, “[w]hat the fuck did you do.” In response, Officer Radley and Officer Brown started running up the stairs toward Apartment E, with Officer Brown slightly in front of Officer Radley. Officer Brown had his rifle sitting low as they ran and at some point, Officer Radley took his handgun out of the holster. Officer Radley explained that since dispatch informed officers that Pena was armed with a knife, he contemplated lethal versus less lethal use, and he knew he could transition to his taser if needed.

As the officers went up the stairs, Officer Radley saw Pena just inside the threshold of the doorway holding a knife in his hand. Officer Brown and Officer Radley immediately started giving verbal commands to “drop the knife,” but Pena kept yelling and challenging the officers. Officer Radley explained that due to their close proximity to Pena, he was worried about the safety of Officer Brown and himself. Additionally, as he did not know where Raquel was and he believed children may be in the apartment, Officer Radley did not want Pena to retreat back into the apartment while armed with the knife, thereby creating a dangerous hostage situation.

As Pena continued to ignore officer commands, Officer Radley believed he had no other choice but to shoot, unsure about how many shots were fired. He remembered that Officer Brown shot at either the same time or right after Officer Radley shot.

After being shot, Pena fell to the ground face down. As Officer Radley approached Pena, he heard yelling from the young man in the apartment, later determined to be David. Officer Radley and Officer Brown escorted David out of the apartment and noted apparent wounds on David’s hands. Officer Radley believed he called for medics.

Shortly after, Officer Allen arrived on scene. Officer Radley and Officer Brown cleared the apartment while Officer Allen rendered Pena aid and handcuffed him. While clearing the apartment, Officer Radley noted blood droplets all over the apartment, but no additional victims were located. After the apartment was cleared, Officer Radley returned to SPD with his K9. At that time, his BWC and pistol were collected and turned over to the OIS investigative agencies.

3. Officer Bryan Yee

On August 23, 2022, at approximately 1:36 a.m., Officer Bryan Yee (hereinafter "Officer Yee") was interviewed at SPD by WCSO Detective Joshua Swanson and RPD Detective David Nevills. The interview was audio and video recorded.

On August 22, 2022, Officer Yee and his partner, a clinician, with SPD's Mobile Outreach Safety Team (hereinafter "MOST") were dispatched on a report of a domestic altercation involving a knife at 1625 Merchant Street, Sparks, Nevada. During this response, Officer Yee wore and activated his BWC.

Officer Yee said dispatch informed him that the female, Raquel, was able to get away, but her kids were still inside with Pena who was armed with a knife. While enroute, Officer Yee heard Officer Radley mark his arrival and Officer Brown arrived shortly after. Officer Brown deployed his rifle. Officer Yee arrived at the scene shortly after Officer Radley and Officer Brown and saw the two officers approaching the apartment building.

Upon his arrival, Officer Yee exited his vehicle, leaving his partner in the patrol vehicle, and heard over the radio one of the officers ask for expedited cover. Based upon this request, Officer Yee started running toward Officer Radley and Officer Brown. As Officer Yee approached the building's stairway, he heard someone yell "drop the knife" several times followed by shots being fired. After shots were fired, David exited the apartment and was placed in Officer Yee's patrol car. Officer Yee did not fire his weapon.

4. Raquel Solis-Sanchez

After the shooting, Raquel spoke to Officer Yee on scene and explained that her estranged husband had a gun and had stated he was going to kill himself.

Thereafter, Raquel was interviewed at SPD by Detective Aceves. Raquel explained to Detective Aceves that she and Pena had been married for seventeen years but separated for the last three years. Due to the separation, Raquel resides at 1625 Merchant Street, Apartment E, with her sons, David and Diego, while Pena resides in a separate home. Diego was not at home during the incident.

Raquel explained that Pena was violent and jealous throughout their relationship. He also sent her threatening text messages. The day before the shooting, Pena texted Raquel that he would kill any other man she was with. During that same timeframe, Pena sent Raquel a video of him pointing a gun at his own head.

The day of the shooting, Pena learned that Raquel was out of town with another man. Upon learning this, Pena began harassing Raquel by calling and sending her threatening text messages. At some point that afternoon, Pena went to Raquel's apartment and waited for her to return. Raquel explained that she had no idea he was in her apartment when she arrived home around 7:00 p.m. When she walked inside, Pena was sitting in the living room on the couch. Raquel tried to walk past him and go into her bedroom, but Pena grabbed her. While holding a knife in his hand, Pena told Raquel to call her boyfriend or give Pena his name so he could "cut his dick off".

Originally, Raquel thought Pena only had a knife; however, she saw a firearm as well when he followed her into her bedroom. The two began to struggle and Pena pinned Raquel down by her throat, screaming at her to "call the man, call the man". At some point during the struggle, Pena took Raquel's phone.

Hearing the attack, David entered Raquel's room and unsuccessfully tried to take the knife away from Pena, getting cut in the process. David then saw the gun and managed to take it from Pena, eventually hiding it in David's room. During the struggle between David and Pena, Raquel managed to escape the apartment while David remained inside.

After escaping, Raquel ran to a neighbor's downstairs apartment and used the neighbor's phone to call 911. While downstairs, Raquel kept yelling at David to get out of the apartment. At some point, Raquel saw Pena walk out of the apartment and then go back inside. Raquel believed that Pena was looking for her. After he went back into the apartment, Raquel heard Pena and David arguing.

While Raquel was still downstairs, police arrived at the scene. She saw the officers and then heard the gunshots.

5. David Solis

On August 22, 2022, WCSO Detective Joey Lear (hereinafter "Detective Lear") and RPD Detective David Nevills interviewed David at Renown Regional Medical Center. The detectives learned David turned 18 on April 22, 2022, and attended school at Alpine Academy. David explained that he lived with his mother, Raquel, and brother, Diego, at 1625 Merchant Street, Apartment E, for the past six years. Pena originally lived at the apartment as well but moved out when he separated from Raquel nearly three years prior. After moving out, Pena would occasionally stay at the apartment before going to work. David recalled Pena having threatened Raquel in the past.

On the day of the incident, Diego left the apartment at 8:00 a.m. and did not return. Raquel had left the day before to meet with a man and was not home by

the morning. At approximately 8:45 a.m., Pena picked up David at the apartment and took him to school. On the drive to school, Pena asked David about Raquel's new boyfriend. David responded that he did not know the boyfriend and did not want to be involved. David explained Pena did not like Raquel seeing other men and gets "jealous".

Pena picked David up from school at the end of the day and they arrived back at 1625 Merchant Street, Apartment E, around 5:20 p.m., parking Pena's black BMW in front of the apartment building. Rather than leave, Pena came into the apartment with David to wait for Raquel and meet the man Raquel was with. At some point, Pena left the apartment and returned with an AR-15.

Once Pena came back with the AR-15, David went into his room and got on his computer. At some point prior to the shooting, David noticed Pena's vehicle had been moved and was no longer parked directly in front of the apartment building. While waiting for Raquel, Pena went in and out of Raquel's room and into the living room. David told detectives that Pena sounded like he was "getting ready for war in my living room." Pena smelled heavily of alcohol throughout the evening.

David said Raquel and Pena started arguing immediately after Raquel got back to the apartment. The arguing started in the living room and continued in Raquel's room. Once Pena and Raquel moved to the bedroom Pena started "grappling" with Raquel, causing David to intervene. When David entered the bedroom, he saw Pena on top of Raquel with a knife in his hand and the AR15 on the floor next to him. David tried to take the knife away from Pena but got a cut on his hand. After being cut, David rushed to the bathroom to cover the cut up. He then returned to the bedroom.

Once back in Raquel's room, David pulled Pena off Raquel and grabbed the AR-15. He then took the AR-15 to his own room and hid it under the blankets on his bed.

At some point during the struggle with Pena, David said he had Pena in a "full nelson"⁶ and Raquel was able to exit the apartment. While David was alone with Pena in the apartment, Pena asked David to give him the AR-15 back. Pena went into David's room to retrieve the AR-15 but could not find it. Pena told David he wanted the AR-15 back so he could go out shooting when officers arrived. David then heard the police come up the stairs outside the apartment while he continued to hold Pena in a "full nelson" in the living room area by the front

⁶ Full Nelson is defined as a way of holding someone's arm from behind with both of your arms and holding their neck with your hands, so that it is difficult for them to move, used in wrestling.

<https://dictionary.cambridge.org/us/dictionary/english/full-nelson>

door. Once Pena heard the police coming up the stairway, Pena pulled away from David and went to the doorway of the apartment. While holding the knife in his hand, Pena started yelling at the police. David told detectives, he heard the police yelling “drop the knife, drop the knife, drop the knife”. Meanwhile, he heard Pena yelling “shoot me” while still holding the knife. As the officers continued to yell, David saw them come into view at the top of the stairs. Pena did not drop the knife and then Pena got shot. Once officers shot Pena, the officers took David out of the apartment.

6. Hector Pena

WCSO Detective Almaraz and RPD Detective Boyd interviewed Hector Pena (hereinafter “Hector”) on August 22, 20022 at SPD. Hector is Pena’s adult son. Prior to the shooting, Pena lived with Hector and Hector’s pregnant girlfriend, at 17898 Empire Court, Cold Springs, Nevada, for approximately one month.

According to Hector, Pena and Raquel were legally married but had been separated. Raquel and Pena argued throughout their relationship.

Hector stated Pena drank alcohol daily but did not use drugs.

While Pena did not personally own any firearms, Hector owns an AR-15 which he keeps in his closet at the Cold Springs address. Hector last saw the firearm in his closet the Saturday⁷ before Hector and his girlfriend went to the hospital for their baby’s delivery.

Hector spoke to Pena on the phone the day of the shooting. During this conversation, Hector felt that Pena sounded sad or depressed, but Hector did not have enough time to inquire as to what, if anything, was wrong.

Later that night, Hector received a phone call on Facebook messenger from his brother, David. David was panicked during the phone call and told Hector to “drop everything you’re fucking doing right now, dad’s going crazy, I don’t know what the fuck is happening, but he has your gun, ... and he has a knife too.” After David said that, Hector heard David say “no, no”. Hector then heard a “bunch of cop cars” and then he heard gunshots.

⁷ According to the calendar Saturday prior to the shooting would have been August 20, 2022.

B. Countdown and Forensic Testing of Officer Brown's Firearm

Officer Brown's primary weapon on August 22, 2022, was a Colt M-16 A2, 5.56x45 select fire rifle.

On August 22, 2022, and August 23, 2022, Washoe County Forensic Investigator Shaun Braly (hereinafter "FIS Braly") collected Officer Brown's rifle. His analysis of the rifle and its contents revealed one unfired cartridge in the chamber and one magazine containing twenty-four (24) cartridges "Speer 20 223 Rem" cartridges and four (4) "Speer 18 223 Rem" cartridges. These items were booked into evidence at the WCSO Forensic Science Division.

Firearms testing conducted on Officer Brown's rifle found that the rifle was in normal operating condition with no malfunctions. Analysts determined that one of the three cartridge casings recovered from the scene came from Officer Brown's rifle. Analysts also compared one fired bullet to the rifle but could not determine if the bullet was fired from the rifle due to insufficient detail resulting from damage to the bullet fragment. Accordingly, the result of the bullet fragment examination is inconclusive.

C. Countdown and Forensic Testing of Officer Radley's Firearm

Officer Radley's primary weapon on August 22, 2022, was a Smith & Wesson M&P Pro Series, 9mm Luger pistol.

On August 22, 2022, and August 23, 2022, FIS Braly collected Officer Radley's pistol. His analysis of the pistol and its contents revealed one unfired cartridge in the chamber and one magazine containing 14 cartridges. The magazine has a 17-cartridge capacity. These items were booked into evidence at the WCSO Forensic Science Division.

Firearms testing conducted on Officer Radley's pistol found that the pistol was in normal operating condition with no malfunctions. Analysts determined that two of three fired cartridge casings recovered from the scene were fired from Officer Radley's pistol. Testing also concluded that two fired bullets recovered from the scene were fired from Officer Radley's pistol.

II. PHYSICAL EVIDENCE

A. Shooting Scene

On August 22, 2022, sunrise occurred at 6:19 a.m. Sunset occurred at 7:47 p.m. The weather on August 22, 2022, was reported as warm and clear.

The call for service occurred on August 22, 2022, at approximately 7:54 p.m. at the Open Circles West Apartments, located at 1625 Merchant Street in Sparks, Washoe County, Nevada. The shooting took place at approximately 7:56 p.m.

Lead crime scene detectives were WCSO Detective Jeremy Ghiglieri (hereinafter “Detective Ghiglieri”), WCSO Detective Sergeant Cox, WCSO Detective Sergeant Jenkins, WCSO Detective Fitzmier, and RPD Detective Kleidosty. Detective Ghiglieri arrived and began processing the scene at approximately 9:00 p.m. When he arrived, it was 82 degrees.

1. Exterior Scene Lighting

There are streetlights at regular intervals on Merchant Street, with exterior lights on the apartment buildings.

When the investigation began at 9:00 p.m., it was dark and handheld flashlights were used to better illuminate the scene. The stairwell to the second floor, where apartment E was located, had exterior light fixtures. Again, handheld flashlights were used to better illuminate this particular area.



FIS Photo: Front of Building where Apartment E is located. Stairway circled in red.

2. Interior Scene Lighting

Apartment E had some interior light fixtures in the kitchen, bathrooms, and bedrooms, but was not well lit. Handheld flashlights were used to better illuminate the interior scene.

3. Exterior Scene

Given the small size and location of the exterior area, officers did not conduct an initial walkthrough after the shooting, which better preserved the area for FIS personnel.

Personnel located Pena's locked vehicle, identified as a black BMW sedan bearing Nevada license plate LT57487, parked facing East on Merchant Street along near the Rainbow Market curb.

Nothing of note was observed inside the vehicle through the windows. With no apparent evidentiary value, officers did not obtain a warrant and left the vehicle on scene.

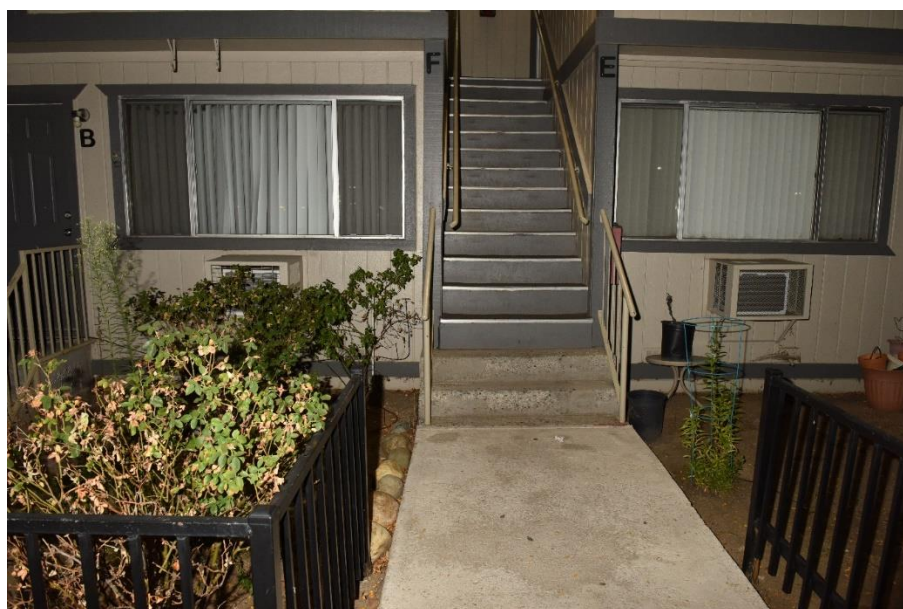
At approximately 9:11 p.m., FIS Krista Smith (hereinafter "FIS Smith") arrived and began processing the exterior scene with assistance from detectives.

The exterior scene was located at 1625 Merchant Street in Sparks, Washoe County, Nevada, with 1605 Merchant Street to the east and 1645 Merchant Street to the west. 1690 Merchant Street is across the street to the north. Looking south towards 1625 Merchant Street, there is an asphalt parking lot, and a concrete sidewalk moving east to west. The 1625 Merchant Street building consists of four apartment units on the north side of the building: Apartment A (bottom right); Apartment B (bottom left); Apartment F (top left); Apartment E (top right). The South side of the building contains four additional apartment units: Apartment D (bottom right); Apartment C (bottom left); Apartment G (top left); Apartment H (top right). Each side of the building contains a stairwell in the center leading to the upper floor units. The North and South stairwells are not connected and are separated by a wall.

A sidewalk running north and south connects the stairwell to the east/west concrete sidewalk. Landscaping consisting of shrubs and dirt immediately borders this sidewalk to the east and west.



FIS Photo: Apartment A, bottom floor to the left is stairway leading up to Apartment E and Apartment F. Stairway circled in red.



FIS Photo: Apartment B, bottom floor, to the right is stairway leading up to Apartment E and Apartment F.

Detectives located multiples areas of note on the exterior of the building's north side.

In the dirt near the stairs, detectives located multiple fired cartridge casings and a black I-Phone. At the top of the stairs, they located an unknown brand knife with red staining. Additionally, the exterior scene contained multiple areas with red staining. FIS collected various swabs of the red staining while processing the exterior scene.

FIS personnel and investigators then collected the following items of evidentiary value:

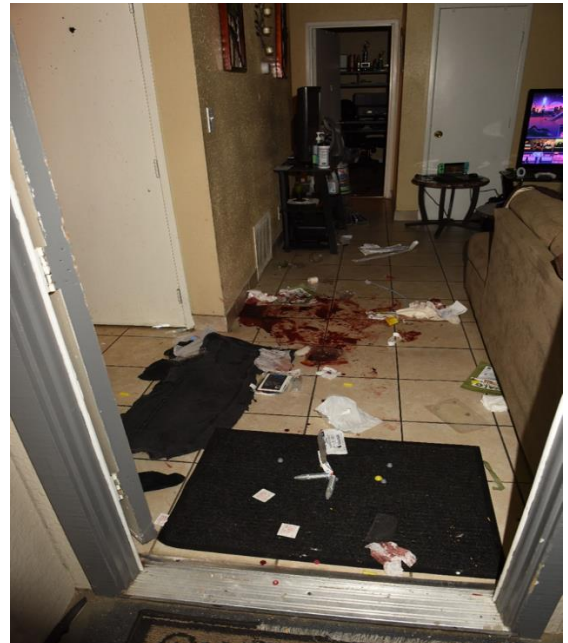
- Two (2) Speer 9mm Luger Fired Cartridge Casings
- One (1) Speer 18 223 REM Fired Cartridge Case
- One (1) Black unknown brand knife with red staining
- One (1) Black I-Phone

4. Interior Scene

There was no initial walk through of the interior scene due to the location and the small area. By not entering the scene it was better preserved for FIS personnel.



FIS Photo: Doorframe of Apartment E with door open.



FIS Photo: Doorway of Apartment E.

FIS and detectives began processing the interior scene at the West-facing doorway looking into Apartment E. To the left of the doorway is the kitchen (southeast corner). To the right is the living room (northeast corner). An “L”-shaped couch runs along the living room’s east wall. On the couch were two cell phones, one pink and one blue. Directly in front of the couch was a hallway leading west towards the bedrooms and bathrooms.

In the kitchen, FIS located a closet door on the west wall with a defect. The defect penetrated through the door and continued through the closet’s interior south wall into the southeast bathroom.

FIS also located a fired bullet with red staining in the hallway near the back of the couch. In the same area, they located black pants with red staining, a gray shoe with red staining, a black sock, and medical supplies. The floor had red staining moving west towards the bedroom.

Continuing westward down the hallway, there is a doorway to the northwest bedroom. In the entryway to this bedroom, FIS located a fired bullet on the floor. Additionally, FIS located the following items in this room:

- A bed in the northwest corner of the room with red staining on the sheets
- Red staining on the wall
- A Rock River Arms LAR-15m with red staining, located on the bed
- An unfired PSD 21 cartridge lying next to the firearm
- A black PMAG 30 magazine, capacity of 30, on a shelf on the southeast wall

Moving to the southeast bathroom, personnel located a fired bullet on the bathroom floor. Additionally, a defect above the mirror on the east wall was connected back to the previously described kitchen closet defect.

The southwest bathroom had red staining on the floor and sink.

The southeast bedroom contained a bed centered on the west wall. On the floor at the foot of the bed, personnel located a pair of broken blue and black eyeglasses.

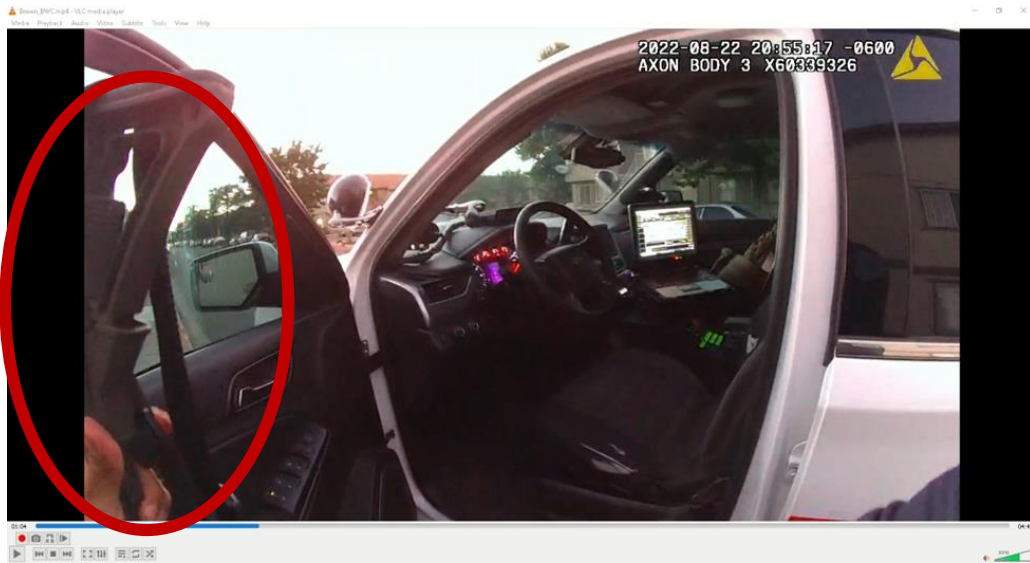
B. Body Worn Cameras

Both Officer Brown and Officer Radley were wearing Body Worn Cameras which were activated during their response. A records comparison shows the BWC clocks were off by one hour. Specifically, the BWC clocks showed 20:54:15 (8:54:15 p.m.) at the start of the recordings. However, 911 records establish the time was actually 19:54:15 (7:54:15 p.m.). Thus, Officer Brown and Officer Radley's BWC clocks were one hour ahead. For this section, the actual time will be used with the displayed BWC time in parentheses.

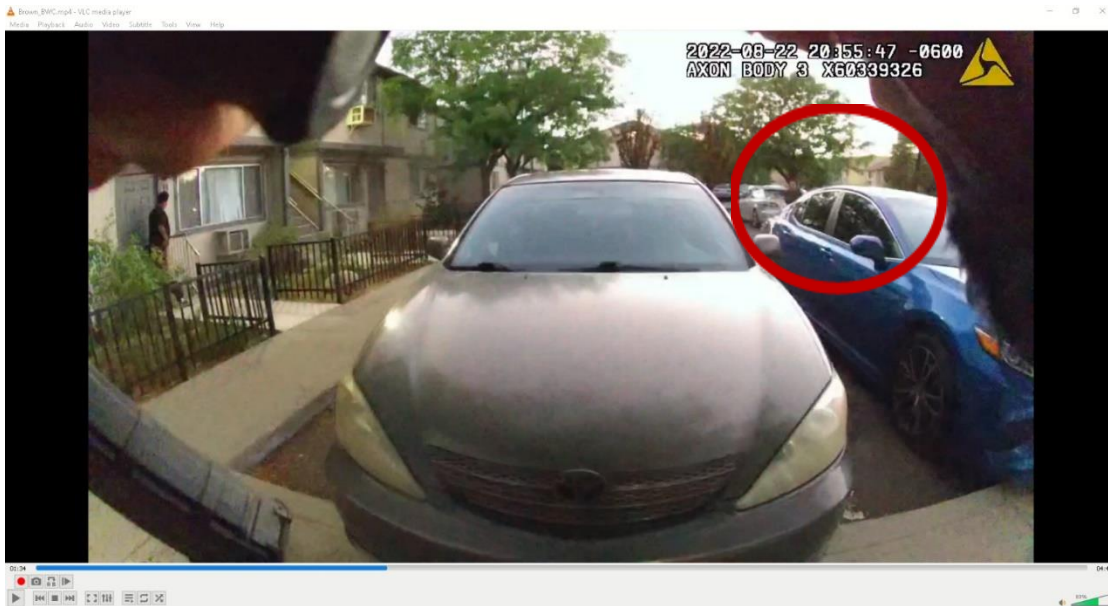
1. Officer Brown's BWC Screen Shots

Officer Brown was enroute to the call, stopped, retrieved his rifle, and exited his vehicle at 7:55 p.m. (20:55:18).

Officer Brown parked on Merchant Street and approached the apartment building from the sidewalk. At approximately 7:55:45 p.m. (20:55:45), a male can be heard yelling. Officer Radley is visible in the parking lot approaching from the opposite direction. Both start running and request expedited cover at around 7:55:50 p.m. (20:55:50).



Screenshot from Officer Brown's BWC:
Officer Brown exits his patrol vehicle with the rifle in his hand.

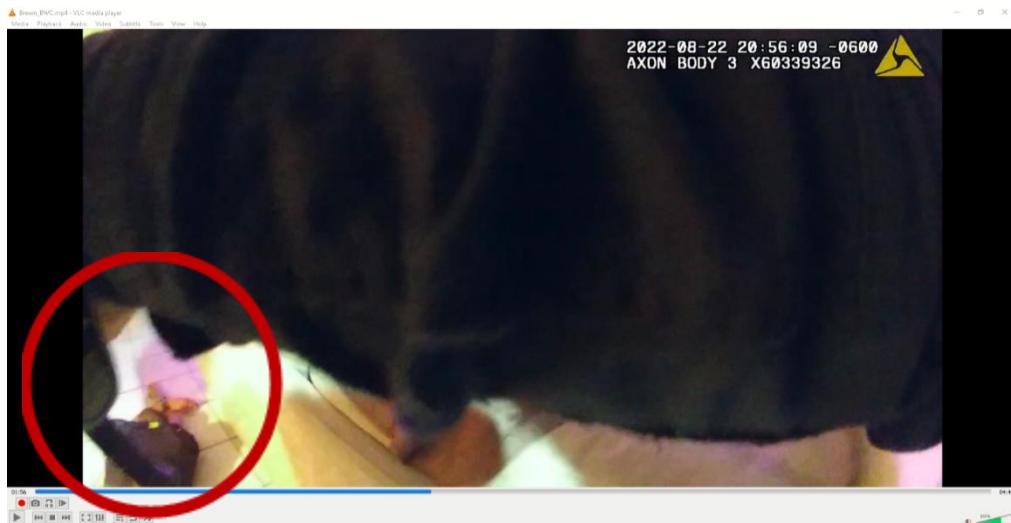


Screenshot from Officer Brown's BWC: Officer Brown approached and heard Pena screaming, Officer Brown saw Officer Radley across the parking lot.



Screenshot from Officer Brown's BWC: Officer Brown at the top of the stairs, when he sees Pena holding the knife, and began making commands.

Officer Brown approaches first, with Officer Radley behind him. Once at the top of the stairs, the yelling is louder. Apartment E's front door is wide open. Officer Brown and Officer Radley appear at the top of the stairs and see the knife at 7:55:56 p.m. (20:55:56). Commands start immediately, such as "face the wall", "show me your hands", and "drop the knife".



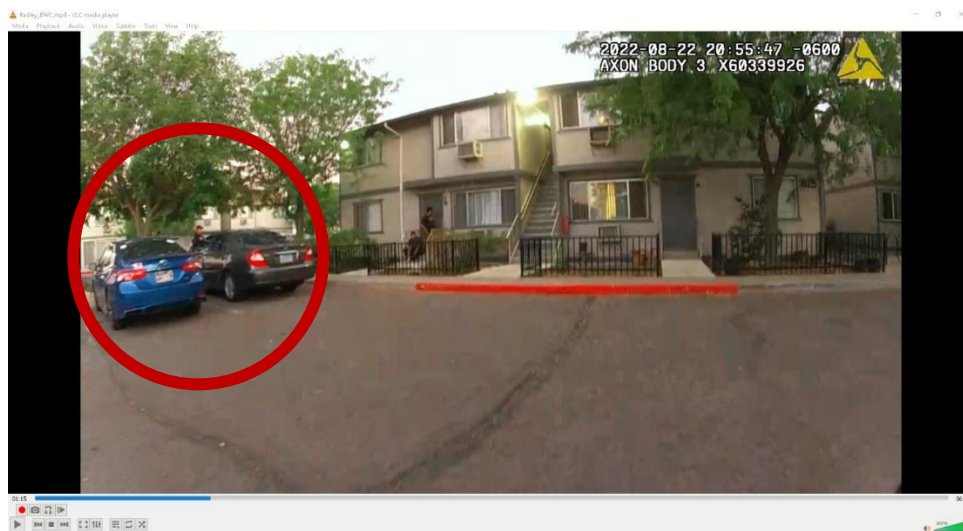
Screenshot from Officer Brown's BWC: Officer Brown's BWC after shots fired, Pena's feet appear in the frame.

Shots are heard at 7:56:01 p.m. (20:56:01).

2. Officer Radley's BWC Screenshots



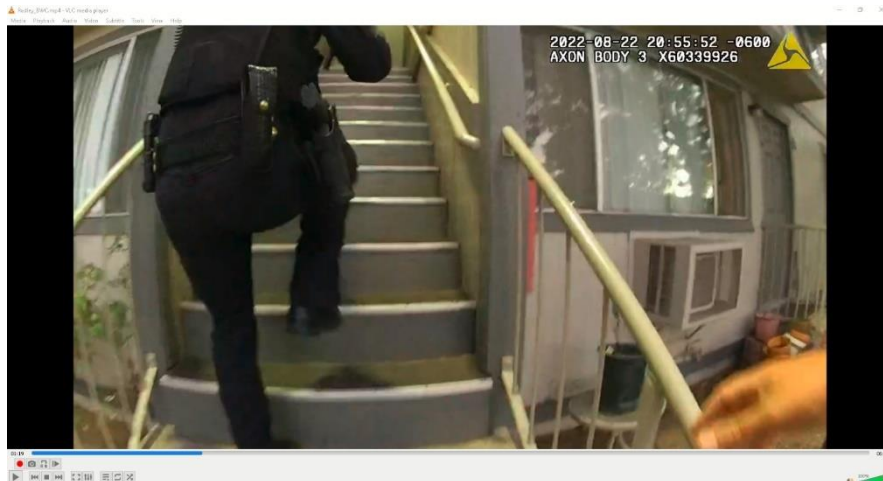
Screenshot from Officer Radley's BWC: Officer Radley arrived on scene at 1625 Merchant Street, Officer Brown parked. (actual time: 7:55:40 pm)



Screenshot from Officer Radley's BWC: Officer Radley heard screams from Pena at 7:55:47 pm, and starts running toward the building, he sees Officer Brown across the parking lot.



Screenshot from Officer Radley's BWC: Officer Radley approached the stairway up to apartment E, on the right at top of stairs. (actual time: 7:55:50 pm)



Screenshot from Officer Radley's BWC: Officer Brown approached first in front of Officer Radley. (actual time: 7:55:52 pm)



Screenshot from Officer Radley's BWC: Officer Radley at the top of the stairway stated he could see the knife in Pena's hand. Pena's shoe is shown in this screenshot. (actual time: 7:55:57 pm)



Screenshot from Officer Radley's BWC: After Pena was shot, Officer Brown to the left of the BWC screenshot, Pena face down on the ground. (actual time: 7:56:05 pm)

C. Evidence Collected

The following relevant evidence was collected and photographed at SPD:

- Collected from Officer Brown:
 - One (1) black, tan, and green "Colt M16" rifle with "Aimpoint" sight and "Surefire X300" light containing:
 - One (1) "Speer 20 223 Rem" cartridge from the chamber
 - One (1) magazine containing twenty-four (24) "Speer 20 223 Rem" cartridges and four (4) "Speer 18 223 Rem" cartridges

- Collected from Officer Radley's duty belt:
 - One (1) black "Smith & Wesson M&P9 m2.0" handgun with Streamlight TLR-1 light containing:
 - One (1) "Speer 9mm Luger" cartridge removed from the chamber
 - One (1) magazine (manufactured capacity 17) containing fourteen (14) "Speer 9mm Luger" cartridges
- Cartridge casings collected from the dirt area outside of residence, including:
 - One (1) "Speer 18 223 REM" fired cartridge case
 - Two (2) "Speer 9mm Luger" fired cartridge casings
- One (1) black knife, unknown brand, with red staining, collected from Apartment E's front porch
- Three (3) fired bullets collected from the following locations:
 - Floor near entryway to Apartment E (Placard 15). Red staining is visible on the bullet
 - Carpet in entryway to northwest bedroom (Placard 17)
 - Floor of southeast bathroom (Placard 20)
- One (1) "PSD 21" cartridge collected from top of mattress in northwest bedroom
- One (1) black "Rock River Arms LAR-15m" rifle with red staining, collected from top of mattress in northwest bedroom
- One (1) black "pmag 30" magazine, capacity 30, with red staining, containing 29 "PSD 21" cartridges, collected from atop shelf along east wall of northwest bedroom



FIS Photo Placard 13 Red staining on east wall of staircase.

Placard 14 One black knife, brand unknown, with red staining on front porch of residence



FIS Photo Placard 14 One black knife, brand unknown, with red staining on front porch of residence



FIS Photo Close up of **Placard 14** One black knife, brand unknown, with red staining on front porch of residence

III. AUTOPSY

The autopsy of Pena was performed by Washoe County Assistant Medical Examiner Dr. Henry McNett on August 23, 2022, at 8:49 a.m. The final Autopsy Report was issued on October 13, 2022. Dr. McNett determined that Pena's cause of death was multiple gunshot wounds. Specifically, the autopsy revealed the following: (1) a tangential gunshot wound of the head (2) a perforating gunshot wound of the left chest (3) a graze gunshot wound of the left chest (4) a perforating gunshot wound of the right paramedian chest. The order of the listed gunshot wounds is arbitrary and not meant to imply the order in which wounds may have been incurred, or the degree of severity. Toxicology results from Pena's blood sample revealed a Blood Alcohol Concentration (BAC) of .069.

IV. LEGAL PRINCIPLES

The Washoe County District Attorney's Office is tasked with assessing the conduct of the officers involved during shootings to determine whether any criminality exists.

In Nevada, there are a variety of statutes that define justifiable homicide. (See NRS 200.120, 200.140, and 200.160) There is also a statute that defines excusable homicide and one that provides for the use of deadly force to effect arrest. (See NRS 200.180 and NRS 171.1455) Moreover, there is case law interpreting justifiable self-defense and defense of others. The aforementioned authority is intertwined and requires further in-depth explanation:

A. The Use of Deadly Force in Self-Defense or Defense of Another

NRS 200.120 provides in pertinent part that justifiable homicide is the killing of a human being in necessary self-defense, or in defense of a person, against one who manifestly intends or endeavors to commit a crime of violence. NRS 200.160(1) further provides in pertinent part that "[h]omicide is also justifiable when committed: In the lawful defense of the slayer, or his or her spouse, parent, child, brother or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished."

The Nevada Supreme Court has refined the analysis of self-defense and, by implication defense of others, in Runion v. State, 116 Nev. 1041 (2000). In Runion, the Court set forth sample legal instructions for consideration in reviewing self-defense cases as follows:

The killing of another person in self-defense is justified and not unlawful when the person who does the killing actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

Despite the fact that actual danger is not necessary to justify a killing in self-defense, a person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe himself to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty. *Id.* 1051-52.

B. Justifiable Homicide by Public Officer

NRS 200.140 provides in relevant part that “[h]omicide is justifiable when committed by a peace officer . . . when necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty” and “[w]hen necessary . . . in attempting, by lawful ways or means, to apprehend or arrest a person” and/or “in protecting against an imminent threat to the life of a person.”

C. Use of Deadly Force to Effect Arrest

NRS 171.1455(1) provides that a peace officer shall use de-escalation techniques and alternatives to the use of force whenever possible or appropriate. These techniques and alternatives should be consistent with the officer’s training and include advisements, warnings, verbal persuasion, and other tactics. If it is necessary for a peace officer to use force, the officer must identify himself or herself if it is possible to do so safely and use only the level of force that is objectively reasonable under the circumstances to bring an incident or person under control and safely accomplish a lawful purpose. To the extent feasible, the level of force used by the officer must be balanced against the force or resistance exhibited by the person and carefully controlled.

NRS 171.1455(2) provides that a peace officer may use deadly force to effect the arrest of a person following a warning, if feasible, but only if there is probable cause to believe that the person has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or, the person poses an imminent threat of serious bodily harm or death to the peace officer or others.

V. ANALYSIS

On August 22, 2022, the use of deadly force upon Pena was justified based upon the imminent danger Pena posed to Officer Brown, Officer Radley, and David. The danger presented was corroborated by witness interviews, BWC, and evidence collected from Apartment E.

The evidence shows that Pena was angry that Raquel had been seeing another man despite being separated for more than two-years. On the day of the shooting, Pena went to Raquel's apartment armed with a knife and a firearm, despite not living there. He had been drinking, was depressed, and was enraged with jealousy. Once near the apartment building, Pena parked his vehicle down the street, thereby hiding it from Raquel's view. He then waited inside her apartment for her return. According to Pena's son, Pena sounded like he was "getting ready for war" while waiting for Raquel to return.

Once Raquel entered the apartment, Pena began attacking her. He followed her into her bedroom, pinned her down, and took her phone. Pena had a knife and a firearm during this altercation. Upon hearing the attack, David, exited his room and tried to help Raquel. David managed to free Raquel from Pena, allowing her to escape. David tried to take the knife from Pena but was cut during the struggle. While David was unsuccessful in getting the knife from Pena, he did manage to take the firearm and hide it in his bedroom.

Upon escaping from the apartment, Raquel called 911 dispatch. Raquel explained the facts as stated: Pena had a knife, and that David was injured when he tried to take the knife from Pena. Dispatch then relayed to both Officer Brown and Officer Radley that Pena was armed with a knife and there was a possible child victim still present in the apartment with Pena.

Once Officer Brown and Officer Radley arrived, they heard Pena angrily screaming near Apartment E on the building's second floor. In response, both officers ran up the stairs to Apartment E. When they reached the top of the stairs, both officers saw Pena in Apartment E's doorway with a knife in his hand. As shown in the photos, there is little space between the top of the stairs and the doorway. As a result, the officers were dangerously close to Pena. Similarly, David, who remained inside Apartment E, was within Pena's immediate reach.

Pena's screaming continued throughout the interaction. Regardless, Officer Brown and Officer Radley tried to verbally engage with Pena, giving numerous commands for him to "drop the knife." Pena clearly ignored those commands. With Pena visibly agitated, holding a knife in close proximity to both the officers and David, and with the knowledge that Pena had reportedly been violent towards his wife and son just prior to officers' arrival, both Officer Brown and Officer Radley felt in fear for everyone's safety and shot Pena, striking him three times.

The officers' observations were corroborated by their BWCs and by evidence collected at the scene, to include the black knife Pena was holding, found at the apartment's entryway, and the firearm described by David, located inside the apartment.

Pena presented an imminent danger by wielding a knife at Officer Brown and Officer Radley and disobeying both officers' commands. Additionally, Pena presented an imminent danger to David and in fact did injure David with the knife. Despite the officers' best efforts, Pena did not obey commands, leaving them in fear for their and David's safety. Therefore, Officer Brown's and Officer Radley's actions were absolutely necessary under the circumstances and carried out for the purpose of attempting to avoid death or great bodily injury to themselves and David.

VI. CONCLUSION

Based on the review of the entire investigation presented and the application of Nevada law to the known facts and circumstances surrounding the August 22, 2022, Officer Involved Shooting of Francisco Pena, the actions of Officer Brown and Officer Radley were absolutely warranted and justified under Nevada law. Unless new circumstances come to light which contradict the factual foundation upon which this decision is made, the District Attorney's review of this case is officially closed.