



Statement on D.A.'s Decision Not to Charge Deputy for Killing of David Pelaez-Chavez

November 20, 2023

We, the Committee for Law Enforcement Accountability Now (CLEAN) and the NAACP Santa Rosa – Sonoma County, offer our thoughts and concerns about the Officer Involved Incident Report issued by the Sonoma County District Attorney regarding the killing of David Pelaez-Chavez.

CLEAN is a community-based organization dedicated to improving law enforcement oversight and accountability. CLEAN pursues its mission through coalitional campaigns, public education, electoral advocacy, and monitoring of local legislative implementation.

The Santa Rosa - Sonoma County NAACP Branch was established in 1953. As a branch of the oldest civil rights organization, NAACP Sonoma is committed to seeing equity and justice throughout Sonoma County.

David Pelaez-Chavez was killed by Sonoma County Deputy Sheriff Michael Dietrick on July 29, 2022. The killing was recorded on body-worn cameras worn by Dietrick and Deputy Sheriff Anthony Powers after an hour-long foot pursuit through a heavily wooded area in unincorporated Sonoma County. .

Over 15 months after the killing, the Sonoma County District Attorney decided not to pursue criminal charges against Deputy Sheriff Dietrick for the killing of David Pelaez-Chavez and issued a report justifying the decision. That report was accompanied by a report from a police practices expert hired by the District Attorney's Office, Jeffrey Noble, and an autopsy report from the Marin County Coroner. The Santa Rosa Police Department was the agency charged with conducting the criminal investigation and the report relies heavily on the SRPD work.

We are dismayed that District Attorney, in her report, failed to acknowledge the trauma Mr. Pelaez-Chavez' killing inflicted on his family, the families of other people who have been killed or severely injured by Sonoma County law enforcement agencies, the deputies who participated in the killing and their families, and the entire Sonoma County community.

We are also disappointed that the report does not acknowledge a critical and on-going problem in Sonoma County: the lack of mental health responders and the lack of Spanish-speaking law enforcement officers.

While neither of these concerns are central to the District Attorney's decision of whether to charge Deputy Dietrick, there is a reasonable expectation that, as an elected leader, District Attorney

Rodriguez would attempt to place this killing in a community-based context.

On the contrary, the District Attorney's report is not a neutral analysis leading to findings but, rather, a justification for the decision reached. The report contains no critique of the fact-finding process and no weighing of witness credibility or evidence, but, rather, reflects a bias against Mr. Pelaez-Chavez, which follows a long pattern and practice of attacking the reputations of people killed by Sonoma County Sheriff's deputies. Following are specific issues we believe are worthy of the community's consideration in reading this report.

Concern #1:

The "Summary of Facts" section regarding the "Decedent's Background" is the first, and most glaring, example of discrediting Mr. Pallaez-Chavez. This background is legally irrelevant to the determination the District Attorney needed to make as none of it was known to Dietrick or Powers at the time of the killing. Rather, it appears that this information is offered solely to tarnish Mr. Pelaez-Chavez' character by disclosing two prior criminal convictions that occurred at least a decade before Mr. Pelaez-Chavez was killed; by denigrating his relationships with his family and girlfriend; and by reference to his drug and alcohol use.

Similarly, the section on "Events Leading Up to July 29, 2022" seems calculated to justify the decision reached despite the fact that the deputies knew none of those facts when Deputy Dietrick fired his weapon at least three times, hitting Mr. Pelaez-Chavez in the head and chest and grazing his arm.

The legal standard for the District Attorney's decision is outlined at pages 27-28 of the report. Importantly, the assessment is to be made "from the perspective of a reasonable officer on scene" (*Graham v. Connor* (1989) 490 U.S. 386, 396) and "based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight..." Cal. P.C. §835a.

Since the deputies knew none of this information at the time Deputy Sheriff Dietrick fired the fatal shots, the character assassination of Mr. Pelaez-Chavez and the *post hoc* recounting of his actions the night before the killing are irrelevant to the District Attorney's decision and should not have been part of this report.

Concern #2

That the deputies were not interviewed until two days after the killing is also very troubling. This two day window would allow the deputies to confer with each other and legal counsel to coordinate their justification for killing Pelaez-Chavez. The report states that they were interviewed by Santa Rosa Police Department detectives; it does not state whether the interviews were conducted in the presence of counsel for the deputies or Sonoma County Deputy Sheriff's Association representatives. It also does not state what evidence the deputies and/or their counsel or representatives had available to them prior to the interviews. Yet, the deputies' statements are reported without any discussion of credibility. Had those interviewed not been deputies, we are confident credibility would have been a factor in the decision-making.

A number of the statements by the officers appear self-serving rather than illuminating. For example:

“Deputy Powers tried to build rapport with Mr. Pelaez-Chavez, trying to make this as safe as possible. Deputy Powers was also trying to get Mr. Pelaez-Chavez to put the weapons down. Deputy Powers believed there was a language barrier, but Deputy Powers knows some words in Spanish. Deputy Powers was asking if Mr. Pelaez-Chavez wanted to call his family and asking if he wanted water.” One hears on the BWC footage, not those questions but rather, single words yelled out such as, “familia,” “agua,” “abajo.” (Report, p. 12.)

“The dangers this created for Deputy Powers were: ‘I was shin deep in water. And he had made it out of the water. So he was a little higher than me. I was thinking that if he threw it at me, it would have hit me in the face, and I would have been in, like a foot and a half, two deep, three feet of water.’ Deputy Powers was concerned about being rendered unconscious and drowning.” Frankly, that reads like a *post hoc* rationale rather than a fully formed thought at the time. (Report, p. 13.)

Deputy Dietrick explains that he “kinda held off for a second. Um, you know, I knew it was a risk, but I was just trying to buy a little bit more time, until you know, maybe Deputy Powers could come up with the Taser.” (Report, p. 17.)

Given that use of the hand tools were never threatened against the deputies, the repeated references to them as weapons rather than tools seem calculated to increase the purported danger from Mr. Pelaez-Chavez from what it actually was. (Report, pp. 14, 16.)

Concern #3

The collection of the physical evidence and the creation of the measurement log raise several questions.

1. Why does the District Attorney not know definitively whether anyone “identif[ied] or collect[ed] the specific rock or rocks that were utilized by Mr. Pelaez-Chavez after he reached the river.”? (Report, p. 26) Given that said rock was supposedly the dangerous weapon that justified the killing, one would think that question would not be left unanswered. If the rock or rocks were not identified, was there any effort to do so? If not, why not?
2. Why were the hammer and pickaxe found several feet from Mr. Pelaez-Chavez’ body if he was holding them in his hand when he was shot? (Illustration in Attachment B (Report, unnumbered (PDF p. 45).)
3. Why wasn’t the distance of the body from the three casings determined? (Measurement Log in Attachment B (Report, unnumbered (PDF p. 44).) (One might be able to extrapolate those distances from the available data but that was apparently not done by either the District Attorney or the expert.)
4. Similarly, why weren’t the distances between the deputies and Mr. Pelaez-Chavez calculated? Deputy Dietrick estimates that he was “approximately ten feet, fifteen feet maybe away from me.” (Report, p. 17.). Whether Deputy Dietrick’s concern that Mr. Pelaez-Chavez could hit him with the rock was reasonable would seem to be at least partly dependent on that distance.

Concern #4

The expert's report does not include the actual referral question the District Attorney asked him to research and answer. It is standard practice for experts to do so and the failure to quote it here raises questions about the communications between the expert and the District Attorney. Similarly, the attachment to the expert's report listing all of the materials he received to conduct his analysis is missing. Although the District Attorney's report includes a footnote listing some materials, it does not purport to be a complete list. (Report, p. 29, fn 2.)

It does not appear that the expert actually visited the scene of the killing, which would seem to be a basic step for an expert to take before rendering an opinion. Rather, he relies on Deputy Dietrick's statement that he was 10-15 feet from Mr. Pelaez-Chavez without apparently questioning whether that was true.

The District Attorney's Analysis and Findings lack a neutrality that the community has a right to expect from their elected officer. Rather, the analysis and findings read as a justification for the conclusion reached; not a weighing of the evidence to reach a conclusion. Take for example, the sentence, "The dangerousness of a rock is more than theoretical; the District Attorney is aware of cases, including murder cases, in which a rock was used as a deadly or dangerous weapon." That is not analysis or findings; it is a conclusory statement meant to bolster the decision reached by claiming information the reader does not have. It is also a false equivalency. If the District Attorney truly wants to justify Deputy Dietrick's killing of David Pelaez-Chavez, she should cite cases with identical fact patterns, ones where a fully armed law enforcement officer was struck and rendered unconscious by a rock thrown from "ten to fifteen feet" away.

Given the state of the law, we cannot state with certainty that Deputy Dietrick should have been criminally charged. What we can say, however, is that Sonoma County deserves a more neutral, objective, and thorough analysis of why and how District Attorney Carla Rodriguez reached the decision she did.

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