



VINCENT J.M. DI MAIO, M.D.
CONSULTANT IN FORENSIC PATHOLOGY
10 CARRIAGE HILLS
SAN ANTONIO, TEXAS 78257

January 27, 2010

George M. Sabga, Jr.
Attorney at Law
4445 East Gate Mall
Suite 200
San Diego, California 92121

Re: Medal of Honor Recommendation: Case of Sgt. Rafael Peralta

Dear Mr. Sabga:

As requested, I have reviewed the following materials in regard to the death of Sgt. Peralta:

1. Investigative Documents generated by the Marine Corp including witness interviews and floor plans
2. the opinions of the neurologist and two neurosurgeons
3. photographs of the scene
4. the autopsy report: photographs of the injuries; x-rays of the body and the opinion of the forensic pathologist

On November 15th, 2004, Sgt. Rafael Peralta, deployed to Iraq as a Scout Team Leader assigned to Company A, 1st Battalion, 3rd Marine Regiment, along with his team was ordered to clear houses in the Battle of Fallujah. After clearing three houses, he entered a fourth house with his team. The first two rooms were empty. As Peralta opened the third door, insurgents in the room opened fire on the marines. Sgt. Peralta, hit in the head by friendly fire, dropped to the floor, severely wounded. The insurgents then threw a grenade at the marines, with the grenade coming to rest near Sgt. Peralta. The other marines in the room with Sgt. Peralta were unable to get out. Despite his wounds, Sgt. Peralta was described as reaching for the grenade and pulling it under his body, absorbing the majority of the lethal blast and shrapnel. The Sgt. died at the scene.

Eleven witnesses to the circumstances of Sgt. Peralta's death were interviewed. Four saw Sgt. Peralta gather the grenade to himself with his right arm; a fifth stated he used his left arm and two didn't mention which arm was used. Two stated the Sgt. had his left cheek on the ground

and three that he had his right cheek. The divergence in the descriptions as to which arm was used and which way the head was facing is reassuring as such contradictions are what one normally expects in stressful situations such as this. What is most significant, however, is that seven witnesses state that they saw him reach for the grenade and pull it to himself.

Examination of photographs and X-rays of Sgt. Peralta's body reveal four grenade fragments in the left side of the head without penetration into the cranial cavity. In addition, there are multiple grenade fragment wounds of the left shoulder; left upper arm, forearm and hand; right forearm and hand, and the left thigh, calf and foot. There is no evidence of any fragment wounds or blunt trauma injuries in the areas of Sgt. Peralta's body covered by armor. Examination of the body armor revealed numerous shrapnel defects of the left side, densely grouped at the left mid chest region with fewer defects superiorly and inferiorly. A piece of the fuse was recovered from his flak jacket.

Present on the back of the head, behind the left ear, in the left parietal-occipital region is a vertically oriented, gaping wound measuring approximately 4 x 1.5 cm. This wound is level with the left ear. The skin extending outward from the lateral aspect of the wound shows confluent abrasion out to a distance of approximately 3.5 cm. Protruding from this wound are fragments of bone. Present in the right occipital scalp, level with the inferior end of the left sided wound, is an approximate 2 x 1 cm irregular wound.

Photographs of the interior of the cranial cavity show an elongated, ragged edged defect of the occipital bone in the left occipital lobe fossa. This defect runs in a para-coronal plain, extending from the left lambdoidal suture to approximately the midline of the head. The lateral end of the wound shows some internal beveling with the rest of the wound having a sharp edged, punched out appearance. Two secondary fracture lines extend from this defect, one to the nine o'clock position of the foramen magnum and the other diagonally across the right cerebella fossa to approximately the right lambdoidal suture. X-rays of the head show fragmentation of bone at this wound site with a few fine metal fragments. Present in the right cerebral hemisphere, in the area of the right temporo-parietal lobe, is the steel penetrator of a 5.56 x 45 bullet. On review of the autopsy, the penetrator was said to have perforated the left occipital lobe penetrating into the right temporo-parietal lobe.

Based on the aforementioned observation, it appears that Sgt. Peralta was struck in the back of the head by a 5.56 x 45 bullet traveling from his left to right. The bullet struck the head at a tangential angle inflicting a gutter wound, fragmenting bone, depositing a few tiny fragments of metal and breaking up. The 10.1 grain steel penetrator entered the cranial cavity penetrating the brain. The wound in the right occipital scalp may represent the exit side for the rest of the bullet or at least a fragment of the bullet that traveled beneath the scalp. The bullet striking the back of the head may represent a ricochet rather than a primary impact especially in view of the extensive area of abrasion along one margin of the wound.

The bulk of the injury to the left occipital pole of the brain was due to the bone fragments produced by the gutter wound and not by the bullet itself or the penetrator. The 10.1 grain penetrator had minimal velocity and, thus, by virtue of this and its' low weight, minimal kinetic energy. This is shown by the fact that the penetrator did not even exit the brain, let alone the

head. By virtue of its low kinetic energy, injury from the penetrator would only be confined to the direct penetrator path, which would average approximately 0.181 inches in diameter.

Two senior Naval neurosurgeons, a Captain and a Commander, a senior Naval neurologist, a Captain, from the Naval Medical Center in San Diego, CA, reviewed the autopsy report and witness statements and came to the conclusion that Sgt. Peralta could well have carried out the actions attributed to him, intentional scooping of a hand grenade beneath his body.

The only person to contend that Sgt. Peralta could not have performed the action attributed to him is the pathologist who performed the autopsy. He states that the gunshot wound would have been immediately incapacitating and instantly fatal and that Sgt. Peralta could not have executed any meaningful options. He also states that there were no significant internal injuries from blunt force trauma of the thorax and abdomen, virtually ruling out a grenade explosion beneath his body. He felt that even with body armor, a military grenade would cause blunt force injury of which there was none.

Based on my experience I would have to respectfully disagree with the opinions of the pathologist. The injuries to the brain consist of injury to the left cerebral pole and a thin wound channel running from the left occipital pole to the right temporo-parietal lobe. No vital area such as the brain stem and basal ganglia were injured. I have seen individuals with head trauma who are alert, conscious and talking even though there was extensive injury to the cranial vault and brain and which "common sense" would tell you is not possible. This opinion of mine is reinforced by the opinions of the two neurosurgeons and the neurologist. Unless a vital area is injured, one should be extremely careful in giving the opinion that an individual was absolutely unable to perform an action.

In regard to the absence of blunt force trauma from the hand grenade, examination of the vest revealed evidence of numerous shrapnel trauma densely grouped in the left mid chest along with the grenade fuse. The armor obviously absorbed a hand grenade detonation at close range. The force would have been distributed over a large surface area by the armor. This may prevent any evidence of trauma underneath the armor.

In conclusion, we are presented with three factors:

1. Seven witnesses who saw Sgt. Peralta scoop a hand grenade to himself
2. Two neurosurgeons and a neurologist who state that the Sgt. Peralta could have performed this action
3. A physician who states that Sgt. Peralta would have been immediately incapacitated and could not have executed any meaningful actions. He also states that the grenade did not detonate beneath the body despite evidence on the armor that it did

Taking into account the circumstances surrounding the incident; the statements of the witnesses; the condition of the body armor; the autopsy findings; the opinion of the neurosurgeons and neurologist and my own experience with head wounds, it is my opinion that, in all medical probability, Sgt. Peralta was not immediately incapacitated by the brain injury, and in fact reached for the grenade and pulled it under his body.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent J.M. Di Maio, M.D.", written in a cursive style.

VINCENT J.M. DI MAIO, M.D