



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

MICHAEL LUBINSKI
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

JAIME COULTER
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

CRAIG HUNTER
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

August 31, 2015

Anaheim Police Department
Chief of Police Raul Quezada
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Officer-Involved shooting on March 8, 2015
Fatal Incident involving Monique Janee Deckard
District Attorney Case # SA 15-004
Anaheim Police Department Case # 15-36038
Orange County Crime Laboratory Case # FR #15-43487

Dear Chief Quezada,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officers Kevin Flanagan, Dale Miller, and Jonathan Nooitgedagt. Monique Janee Deckard, 43, Anaheim, died as a result of her injuries. The incident occurred in the City of Anaheim on March 8, 2015.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the March 8, 2015, fatal officer-involved shooting of Deckard. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the APD officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On March 8, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 20 witnesses and obtained and reviewed the following: APD reports, audio recordings, dispatch and radio traffic recordings, and body camera videos; Orange County Sheriff Crime Lab (OCCL) reports including crime scene analysis, toxicology, officer processing, and firearms examination reports; crime scene investigation photographs; coroner's report, medical records and photographs related to the injuries sustained by Deckard; criminal history records; and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all evidence and relevant legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of Anaheim Police Department officers or personnel, specifically Officers Flanagan, Miller, and Nooitgedagt. The OCDA will not be addressing herein any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Nooitgedagt provided a voluntary statement to OCDA Investigators on March 13, 2015. Officer Miller provided a voluntary statement to OCDA Investigators on March 20, 2015. Officer Flanagan provided a voluntary statement to OCDA Investigators on March 23, 2015.

FACTS

As context for its legal analysis, the OCDA provides a summary of the pertinent facts. As noted, OCDASAU obtained these facts through the process outlined above.

Deckard lived alone in an apartment complex in the city of Anaheim. On March 8, 2015, at approximately 3:30 p.m., Deckard's brother, John Doe 1, called APD. John Doe 1 reported to the 911 operator that Deckard had a history of mental illness, although he did not know the diagnosis, and that Deckard had been asking his friends, for the past two days, about getting a gun. APD officers, who were not involved in the subsequent shooting or investigation, responded to Deckard's Anaheim home on South Roberts, in apartment #4. The officers were unable to locate or contact Deckard and Deckard did not answer the phone when the dispatcher attempted to reach her.

At approximately 5:25 p.m., Deckard entered the Express Coin Laundry, located at 926 South Euclid Street in Anaheim. Jane Doe, who was washing her clothes, was sitting at a small table with her brother. As Deckard walked by Jane Doe, Deckard swung a large kitchen knife at Jane Doe, stabbing Jane Doe in the lower left area of her back but only causing a superficial injury. Jane Doe cried out in pain and surprise. Deckard exited the laundromat through the open rear doorway and entered the rear alley behind the business. The on-duty attendant, John Doe 2, witnessed the assault and immediately called the police. Deckard walked across the alley, passed through the pedestrian gate on the westside of the complex, and entered her apartment.

Sergeant Lorenzo Glenn responded to the Express Coin Laundry and interviewed Jane Doe and John Doe 2 about the assault with the deadly weapon. When Sergeant Glenn learned where the suspect, known as "Mo," lived, he requested officers respond to that location. Anaheim Police Department officers Robert Lopez, David DePriest, Miller and Nooitgedagt arrived to her home shortly thereafter. The officers passed through a security gate located on the eastside of the apartment complex and entered the grassy courtyard in the middle of the complex. Apartment # 4 sits on the northwest corner on the first floor of the building that runs from east to west. The front door of apartment # 4

faces east and has a window that faces south looking onto the courtyard.

At the request of Officer Lopez, the dispatcher called Deckard's phone but Deckard did not answer. Officer Lopez, flanked by Officers DePriest and Miller, approached apartment # 4. Officer Lopez knocked on the locked metal security door and asked Deckard to come outside to talk to them. Although the front door was slightly open, Officer Lopez could not see through the metal security door into the apartment. Deckard screamed, "Kill me, mother fucker, kill me." Officer Lopez responded that nobody want to kill her. Deckard continued screaming, saying, "Fucking kill me, I want to fucking die, I want you to fucking kill me." Officer Lopez answered saying, "No we don't want to do that. We want to help you and provide some help. Listen, what can we do to help you?" Deckard did not respond.

Concerned Deckard might be armed with a knife, Officers Lopez, DePriest, and Miller positioned themselves by a small tree located approximately 15 feet southeast of Deckard's front door. Officer Lopez called out to Deckard asking her to come out to talk to them. Officer Nooitgedagt positioned himself next to the south wall of the apartment's laundry room, which was southwest of Deckard's apartment. Officer Nooitgedagt could see Deckard's apartment window, but not her front door. Sergeant Glenn walked over from the laundromat and joined the officers by the tree.

Over the next 10 minutes, the officers were joined by Officers Flanagan, Gerry Verpooten, and Kevin Sanchez. During this time, the officers assessed their options should it become necessary to forcibly enter the apartment or if Deckard came outside intending on hurting herself. Meanwhile, a police negotiator was dispatched and began traveling to the location.

The officers were discussing their options, as well as preparing. Officer Lopez positioned two large, empty residential trash cans adjacent to the small tree to form a barrier. Officer Lopez then stood behind the trashcan that was, as he was facing towards Deckard's apartment, on the left. Officer Lopez continued to periodically call out to Deckard, asking her to come out and talk to them and inquiring if she was hurt and needed any aid. Deckard did not respond. Officer Verpooten evacuated the occupants of apartments #2 and #3, which are next to Deckard's apartment, obtained a medical kit, positioned himself to the left of and behind Officer Lopez, and armed himself with his Taser. Officer Miller stood to the right of Officer Lopez behind the second trashcan and was armed with his handgun. After retrieving a ballistics shield, Officer Flanagan stood to the right of Officer Miller and held the shield in front of Officer Miller. Officer DePriest obtained a less lethal shotgun that fired bean bags and stationed himself behind Officer Flanagan. Officer Kevin Sanchez stood to the right of Officer DePriest and also carried a less lethal gun. Sergeant Glenn stood several feet behind Officers Lopez and Miller. At the request of APD, a paramedics detail staged near the apartment complex.

Ten minutes after Officer Lopez had knocked on Deckard's front door, the negotiator, who had not yet arrived on scene, requested that Officer Lopez try once again to make verbal contact with Deckard. Officer Lopez shouted, "Monique, are you injured? If you step out, step out with nothing in your hands and your hands raised." Ten seconds later one officer yelled "Here she comes, here she comes." The security door swung open quickly and Deckard emerged suddenly with her hands by her side. Officer Lopez told her, "Hey, raise your hands up, Monique." A second officer echoed that command, as Deckard strode quickly and purposefully in the direction of Officers Miller, Flanagan, and DePriest. Deckard raised her hands and the officers saw that she had a large kitchen knife in her right hand and a smaller knife in her left hand. Within a second of exiting her front door, Deckard had traveled halfway to the trashcans and was raising the knives above her shoulder with the knives pointed towards Officers Miller, Flanagan, and DePriest. One of the officers yelled, "Whoa, whoa, whoa!" All the officers began stepping backwards as she advanced. Officer DePriest fired his less lethal shotgun twice to try and stop Deckard.

Fearing for their safety and the safety of their fellow officers, Officer Miller fired seven shots at Deckard and Officer Flanagan dropped the ballistics shield, drew his handgun, and fired eight shots at Deckard. Fearing for the safety of the other officers, Officer Nooitgedagt fired two shots at Deckard. The gunshots stopped Deckard approximately two

to three feet from the trashcans and Deckard collapsed to the ground. Officer DePriest approached Deckard and handcuffed her. Officer Verpooten secured a kitchen knife with an 8" to 10" blade and a folding knife in the locked position with a 4" to 5" blade that were lying next to Deckard.

Less than a minute after the shooting, Officer Lopez led several officers inside apartment #4 and conducted a sweep. At 6:01 p.m., as soon as the small apartment was clear, the paramedics were admitted into the complex and began treating Deckard, who was unconscious, not breathing, and did not have a pulse. The paramedics began cardiopulmonary resuscitation (CPR), assisted her breathing using a bag, valve mask, and initiated an intravenous line to administer epinephrine. Deckard was transported by ambulance to UC Irvine Medical Center. Upon arriving at UCI Medical Center, Deckard was in full cardiac arrest and was not breathing. The on-duty trauma surgeon conducted a thoracotomy, an incision to the chest, and attempted to manually massage the heart to get it started. The doctor saw that the entire chest cavity was full of blood and there was damage to the spinal cord and possibly the heart. The medical staff was unable to resuscitate Deckard and the surgeon pronounced Deckard deceased at 6:31 p.m.

Autopsy:

An autopsy was conducted on March 10, 2015. Orange County Sheriff-Coroner forensic pathologist Dr. Nicole Ellis concluded the cause of death was multiple gunshot wounds. Dr. Ellis noted there were 12 gunshot wounds to Deckard's body. Two gunshot wounds were described as graze wounds to her breast. Two gunshots entered and exited her left arm. The other gunshot wounds damaged the following organs: left lung, left hemidiaphragm, right kidney, right renal vein, left abdominal wall, liver, stomach, pancreas, aorta, lumbar spine, and lumbar spinal cord.

Toxicological Examination:

A sample of Deckard's postmortem blood yielded the following results:

Drug	Matrix	Results & interpretations
Ethanol	Postmortem Blood	0.084 +/- 0.003% (w/v) / 0.147+/-0.005 % (w/v)

EVIDENCE ANALYSIS

Firearms Examination

Officer Flanagan's Glock Model 21 pistol, .45 Auto caliber handgun was received unloaded and with the magazine removed. It was test-fired at the OCCL and operated without malfunction. Based on analysis of the evidence collected at the scene, the OCCL determined that eight cartridge cases were fired from Officer Flanagan's handgun.

Officer Miller's Glock Model 34 Gen4 pistol, 9mm Luger caliber handgun was received unloaded and with the magazine removed. It was test-fired at the OCCL and operated without malfunction. Based on analysis of the evidence collected at the scene, the OCCL determined that seven cartridge cases were fired from Officer Miller's handgun.

Officer Nooitgedagt's Glock Model 34 pistol, 9mm Luger caliber was received unloaded and with the magazine removed. It was test-fired at the OCCL and operated without malfunction. Based on analysis of the evidence collected at the scene, the OCCL determined that two cartridge cases were fired from Officer Nooitgedagt's handgun.

DECKARD'S PRIOR CRIMINAL HISTORY

According to Deckard's State of California criminal record, Deckard was arrested on July 14, 2013 for obstructing a police officer, in violation of Penal Code section 148.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

In order to convict an officer of any criminal charges stemming from this incident, it would be necessary for the prosecution to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*People v. Kilvington* (1894) 104 Cal. 86, 89.) The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.)

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.) The court in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (*Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124. Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving." (*Id.* at 397.) Thus, the Court cautioned that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." (*Id.* at 396.)

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officers Flanagan, Miller, and Nooitgedagt with Monique Janee Deckard.

LEGAL ANALYSIS

In order for Officers Flanagan, Miller, and Nooitgedagt to be charged and convicted of a crime in this incident, the prosecution must prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense or defense of others when they shot Deckard.

It is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.)

Here, Officers Flanagan, Miller and Nooitgedagt had been advised by dispatch and by other officers that Deckard had stabbed someone with a knife, which is a violent offense. After arriving at the apartment complex, Officers Miller and Nooitgedagt were present when Deckard screamed out to the officers to kill her. Although the officers did not know whether Deckard was still armed, they had reason to believe, under the circumstances, that she posed a significant threat of death or serious bodily injury to the officers, as well as to herself. Consequently, Officers Miller and Flanagan, as well as the other officers, took precautions to distance themselves from Deckard's apartment while maintaining verbal contact with her and to prepare less lethal options for detaining Deckard. When Deckard emerged from her apartment, she did not heed Officer Lopez' instructions to exit unarmed and with her hands raised. Instead, she had her hands by her side, with a knife in each hand. She strode quickly in the direction of Officers Miller, Flanagan, and DePriest. She began raising the knives in a menacing manner as she approached the officers. Although Officer Miller was behind the trashcan barrier, Officers Flanagan and DePriest were not.

Officer Miller reported to OCDASAU investigators that Deckard had two kitchen knives and was looking directly at him and Officers Flanagan and DePriest. Officer Miller indicated, reasonably, that he was afraid Deckard was going to stab one of the officers if she could get to them. As a result, he fired seven rounds at Deckard. Clearly, Officer Miller

was acting reasonably under all the circumstances.

Officer Flanagan told OCDASAU investigators that he saw Deckard had a knife in her hand and was charging at him. He was concerned she was going to stab or cut him with the knife, so he shot her. Officer Flanagan stopped shooting when Deckard started to fall. Officer Flanagan indicated that Deckard's body fell within three to four feet from where he had been standing, before he had backed up. Clearly, Officer Flanagan was acting reasonably under all the circumstances.

Officer Nooitgedagt stated to OCDASAU investigators that Deckard charged at the officers with two knives and was closing the distance extremely fast. Officer Nooitgedagt stated that he saw that the officers were retreating to find cover. Officer Nooitgedagt believed that, based on how Deckard was acting and charging with the knife, she would hurt or kill one of the officers. Officer Nooitgedagt therefore fired two shots to protect the other officers. Clearly, Officer Nooitgedagt was acting reasonably under all the circumstances.

A reasonable review of all the evidence shows that Deckard's armed and aggressive advance towards the officers stopped when she was shot, and she collapsed to the ground approximately three feet from the trashcan in front of Officer Miller.

Overall, and based on the entirety of all the evidence, the manner in which Officers Miller, Flanagan, and Nooitgedagt used deadly force was reasonable and justified. Deckard advanced on them with deadly force and the three officers used appropriate force, under the circumstances, to defend themselves and the other officers. Officers Miller, Flanagan, and Nooitgedagt did not commit a crime in connection with this incident; on the contrary, they acted reasonably under the circumstances. For these reasons, the prosecution cannot prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense and defense of others when they shot Deckard.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, it is our legal opinion that there is insufficient evidence of criminal culpability on the part of Officers Miller, Flanagan, and Nooitgedagt, and there is substantial evidence that the officers' actions were reasonable and justified under the circumstances when they shot Deckard on March 8, 2015, causing her death.

Accordingly, the OCDA is closing its inquiry into this incident.



Cyril Yu
DEPUTY DISTRICT ATTORNEY
GANG UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
ASSISTANT DISTRICT ATTORNEY
SUPERVISING HEAD OF COURT – SPECIAL PROSECUTIONS UNIT