



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

JIM TANIZAKI
CHIEF ASSISTANT D.A.

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

SCOTT ZIDBECK
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

JENNY QIAN
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

October 3, 2017

Acting Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on Nov. 6, 2016
Fatal Incident involving David Gaeta Contreras
District Attorney Investigations Case S.A. #16-033
Santa Ana Police Department Case #16-29348
Orange County Crime Laboratory Case FR #16-57792
Orange County Sheriff Coroner Case #16-04718-CO

Dear Acting Chief Valentin,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officers Saul Esquivel and Dorin Buchanan. David Gaeta Contreras, 33, died as a result of his injuries. The incident occurred in the city of Santa Ana on Nov. 6, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions based on the evidence currently available to the OCDA as a result of the OCDA's investigation of the Nov. 6, 2016, on-duty fatal officer-involved shooting of Contreras. 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 SAPD officers involved in the shooting. The format of this letter was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Nov. 6, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, interviews were conducted of 13 individuals. In addition, 11 more individuals were contacted during the supplemental canvass interviews. The OCDA also obtained and reviewed the following: SAPD reports; Orange County Fire Authority (OCFA) reports; Orange County Crime Laboratory (OCCL) reports; Orange County Coroner's Office (OCCO) reports; incident scene photographs; radio traffic communication; and all other relevant reports and materials.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.OrangeCountyDA.com

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and impartially reviewed all evidence available to the OCDA as well as the legal standards. The scope of this review is expressly limited to determining whether any criminal conduct occurred on the part of SAPD officers or personnel, specifically Officers Esquivel and Buchanan. The OCDA will not be addressing 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, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as non-fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit, who 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 statements from the involved officers. Officers Esquivel and Buchanan declined to give voluntary statements to OCDA Investigators.

FACTUAL SUMMARY

On Nov. 6, 2016, at approximately 11:31 p.m., an SAPD officer initiated a "998" (officer-involved shooting) broadcast over his SAPD police radio that occurred in the area of Sullivan and Edinger Avenue in Santa Ana and requested paramedics.

At approximately 11:34 p.m., SAPD Corporal Frank Gutierrez, the Acting-Sergeant for the area, arrived on the scene. Corporal Gutierrez obtained public safety statements separately from Officers Esquivel and Buchanan. Officer Esquivel said that he and Officer Buchanan were working as partners and driving a two-person marked SAPD vehicle when they stopped a truck at 2509 W. Edinger Avenue and contacted the male driver. During the contact, a physical altercation ensued between the two officers and the male, who was later identified as Contreras. Officer Esquivel told Corporal Gutierrez that he (Officer Esquivel) was injured when a Taser was discharged with one of the probes striking him on the left leg. Officer Esquivel said he fired one shot from his weapon in a northwest direction at Contreras.

Officer Buchanan told Corporal Gutierrez that he fired three shots. Corporal Gutierrez's May 8, 2017, report indicates that Officer Buchanan told him that the three shots were fired "toward the ground," while Corporal Gutierrez's May 15, 2017, report indicates that Officer Buchanan told him that he "fired three shots from the ground in a northwest direction at Contreras." On Sept. 19, 2017, OCDA Investigators re-interviewed Corporal Gutierrez to clarify the inconsistent statements. Corporal Gutierrez said that he reviewed his notes from the night of the shooting when preparing the May 15, 2017, report. Corporal Gutierrez said that the accurate statement from Officer Buchanan was contained in his May 15, 2017, report where he stated that Officer Buchanan told him that he fired three shots "from the ground."

Subsequent investigation revealed that Contreras was driving a stolen white 2005 Ford F-150 pick-up truck with a California license plate number of 9****A2. The truck had been reported stolen earlier that morning by the truck owner at approximately 7:45 a.m. The stolen truck had an original California license plate number of 7J****3. The license plate on

the truck at the time of the shooting had been stolen from another vehicle.

A female passenger, Jane Doe 1, was riding in the front passenger seat at the time of the stop but she was not located to be interviewed the day of the incident because she fled on foot after the traffic stop. Subsequent investigation, including DNA testing, later revealed the identity of Jane Doe 1. She was interviewed on March 6, 2017, while in custody at the Orange County Women's Central Jail in Santa Ana for an unrelated case. At the outset of the interview, Jane Doe 1 appeared confused as to what incident investigators were attempting to speak with her about. After some clarification, Jane Doe 1 explained that she was "delayed" and has "special needs," but acknowledged that she knew about the incident where a male who she knew by the name of "Junior" (Contreras) was killed.

Jane Doe 1 said that she met Contreras for the first time at a carwash near the intersection of Edinger Avenue and Fairview Street in Santa Ana about four hours prior to the shooting. Jane Doe 1 said that Contreras drove her around for approximately four hours, stopping at various locations so that they could smoke methamphetamine together. Jane Doe 1 said that at the time of the stop, she was high and Contreras was "super high." Jane Doe 1 said she witnessed Contreras smoke two to three bowls of methamphetamine. At some point, Contreras informed Jane Doe 1 that the truck that he was driving was a stolen vehicle.

Jane Doe 1 said that around midnight or 1:00 a.m., Contreras and Jane Doe 1 were traveling on Sullivan Street when Contreras stopped abruptly at a stop sign. A police vehicle with two officers started following the truck and activated the emergency lights to stop Contreras. According to Jane Doe 1, Contreras "kept on going fast" and did not want to stop the truck so Jane Doe 1 told Contreras to stop. Contreras pulled over in a parking lot of a liquor store in the area of Sullivan and Edinger in Santa Ana and did not park the truck correctly. Jane Doe 1 said that before the officers approached, Contreras wanted to run but Jane Doe 1 told him not to run. One officer approached her as she was seated in the passenger seat and the other officer approached Contreras who was seated in the driver seat. Jane Doe 1 said that Contreras was "really high" and "his hands were moving too much." Jane Doe 1 heard the officer tell Contreras "put your hands in the air, don't move, don't move," but Contreras did not listen to the police officer. Jane Doe 1 said that the officers should have been concerned based on Contreras' behavior.

Jane Doe 1 saw an officer point his gun at Contreras. When the gun was pointed at Contreras, Jane Doe 1 saw Contreras "sock" the officer in what she believed was the officer's face. According to Jane Doe 1, Contreras was seated at the time he "socked" the officer. The second officer then ran from the passenger's side to the driver's side. Jane Doe 1 saw both officers trying to control Contreras and she described Contreras as not letting himself get arrested. Jane Doe 1 heard Contreras using profanity like "f*** you cops." Jane Doe 1 saw Contreras on the ground and the officers trying to arrest him but Contreras was resisting arrest.

Contreras told Jane Doe 1 to leave, stating "just leave" in Spanish so she walked away towards Fairview. Jane Doe 1 said that as she was walking away from the scene and just before reaching the gas station on the corner of Edinger and Fairview, she heard five gunshots coming from the area of the car stop at Sullivan and Edinger. Jane Doe 1 claimed she did not see what happened directly before she heard the shots. Per Jane Doe 1, she walked away from the scene at a normal pace. According to Google Maps, the gas station is 0.2 miles away from the location of the stop or a four-minute walk. Jane Doe 1 also indicated she did not see any weapons in Contreras' possession and she did not observe Contreras reach for anything. Jane Doe 1 also said that she did not possess any weapons. Jane Doe 1 said that she observed several vehicle burglary tools inside the truck. Jane Doe 1 said that she did not report the incident to the police because she had anxiety and was scared.

Jane Doe 1 told investigators that she does not have cell phone video of the incident. Jane Doe 2 was not present at the time of the shooting. Jane Doe 2 claimed to other people that she had video of the shooting incident. Jane Doe 1 indicated that she met Jane Doe 2 while both were in custody on other cases. OCDA Investigators located and interviewed Jane Doe 2. Jane Doe 2 said that she might have the alleged video but she did not know where it was located. Subsequently, an OCDA investigator made six follow-up telephone contacts and one in-person contact with Jane Doe 2 in an attempt to view or acquire a copy of the alleged video. Prior to meeting in-person, Jane Doe 2 said she would bring a copy of the

alleged video to provide to the OCDA Investigator. Instead of providing the video, however, Jane Doe 2 asked whether the OCDA Investigator could help her with her pending charges on an unrelated case. The investigator told Jane Doe 2 to speak with her attorney about the situation. Ultimately, Jane Doe 2 never produced the video to the OCDA's office. Jane Doe 2's claims of possessing a video do not appear to be credible.

Jane Doe 3, was standing outside in her front yard with her husband at the time of the shooting incident. When Jane Doe 3 first observed the situation, she saw the suspect's truck stopped and a police car with lights activated in the parking lot across the street from her residence. Jane Doe 3 saw a male fighting with a police officer outside of the vehicle, next to the driver's door of the truck. Jane Doe 3 saw the police officer and the male fighting on the ground and observed them rolling towards the back of the truck and the front of the police vehicle. Jane Doe 3 did not observe any swinging motions but could tell they were fighting. Jane Doe 3 then saw an officer standing by the taillight of the male's vehicle. Jane Doe 3 heard three gunshots and then saw an officer run back to the patrol car, possibly to get a radio. According to Jane Doe 3, other officers responded to the scene shortly after the officer ran back to the patrol car. Jane Doe 3 did not know whether there were one or two officers during the shooting and she could not determine whether the officer standing by the taillight when she heard the gunshots was the same officer who had been involved in the altercation with the male. Jane Doe 3 could not hear whether the suspect or the officer said anything during the altercation.

A surveillance video camera located at 2502 West Edinger recorded a vehicle traveling southbound on Sullivan Street approaching Edinger Avenue with a police vehicle traveling behind it, with the rotating red and blue lights activated. While the video quality is very low, the video appears to show the suspect's vehicle did not immediately yield but continued traveling southbound on Sullivan and then westbound into the parking lot of a retail complex located at 2506 West Edinger Avenue, where it stopped out of the camera's view. The video did not capture any portion of the officer's contact with Contreras or Jane Doe 1, and/or the officer-involved shooting incident.

Officer Steve Meyers heard the police radio of an officer-involved shooting and arrived on scene. Officer Meyers observed officer Esquivel and Buchanan attempting to cuff a subject on the ground at the left rear bumper of a white Ford pickup truck. Officer Meyers cleared the unoccupied pickup truck. Officer Meyers observed that Officers Esquivel and Buchanan were struggling to place handcuffs on the subject so he assisted by placing his own handcuffs on the subject.

Separately, Corporal Jose Mendoza heard the police call at 11:32 p.m. of a "998" and arrived on scene at 11:33 p.m. Corporal Mendoza observed the suspect's vehicle unoccupied with both doors open and a SAPD police vehicle three feet behind the suspect's vehicle. Corporal Mendoza observed Contreras handcuffed behind his back with blood on his chest and left leg. Corporal Mendoza searched Contreras for weapons and found one screw driver sticking out of one of his front pockets, and another screw driver or ice pick in one of his rear pants pockets.

At approximately 11:43 p.m., Orange County Fire Authority (OCFA) Engine 77 personnel arrived on the scene. OCFA personnel directed SAPD personnel to remove the handcuffs from Contreras and chest compressions were initiated. Contreras was treated for two wounds in the left leg and one in the right chest. Contreras was unconscious and had irregular breathing. Chest compressions were immediately stopped because with each compression, blood exited the chest wound. An occlusive dressing was placed over the chest wound and the chest compressions were reinitiated. OCFA personnel attempted to insert an advanced airway but were unsuccessful because Contreras's airway was obstructed by vomit. Contreras's airway was cleared and ventilation, via an air-bag-valve, was initiated. Paramedics were unable to get a pulse. Monitors were placed on Contreras and the monitor indicated pulseless electrical activity.

Contreras was placed on a gurney and loaded aboard a CARE ambulance. At approximately 11:52 p.m., Contreras was transported to the University of California Irvine, Medical Center (UCIMC). OCFA paramedics rode in the back of the ambulance with Contreras and continued to administer care, including Cardiopulmonary Resuscitation (CPR). Throughout their care of Contreras that night, paramedics administered a total of four doses of epinephrine with one milligram in each dose.

At 12:00 a.m. on Nov. 7, 2016, Contreras arrived at UCIMC and emergency room trauma personnel continued to provide care to Contreras. CPR was initiated and then an ultrasound of the chest was performed, which showed no cardiac activity. The attending Emergency Room physician pronounced Contreras deceased on Nov. 7, 2016 at 12:05 a.m.

VEHICLE SEARCH AND EVIDENCE COLLECTION

A subsequent search of the truck Contreras was driving revealed a crowbar in the driver seat/floorboard area. No firearm was found inside of the truck. The interior of the truck was strewn with trash and debris. No bullet holes or strike marks were observed underneath the bed of the truck.

EVIDENCE COLLECTION

The following items of evidence were collected:

- One X26 SAPD Taser
- Handcuffs (serial # 870340) "W.F. Heim"
- Clothing: gray sweatshirt, gray T-shirt, all with apparent blood, and one Taser wire
- Handcuffs (serial # 284545) "700c" with apparent blood
- Apparent blood, two screwdrivers, one pen, and one pair of reading glasses
- One black touch screen ZTE cell phone
- One Taser probe
- "S. Esquivel" name plate
- One cartridge case, head stamp WIN 40 S&W
- One cartridge case, head stamp WIN 40 S&W and one cartridge case WINCHESTER 40 S&W
- One cartridge case, head stamp WINCHESTER 45 AUTO
- Two necklaces with religious medallions
- One silver watch
- White/Blue Reebok Cross Fit shoes (size 7.5) with apparent blood
- One blue knee brace
- One pair of blue jeans with apparent blood
- One black belt
- One Glock, model 22 semi-automatic handgun, serial #LXT298, (1) cartridge from the chamber, (1) magazine from gun containing (12) cartridges, and (2) fully loaded magazines from gun belt (capacity 15) – collected from Officer Buchanan
- One Glock, model 21 semi-automatic handgun, serial #HAY924, (1) cartridge from chamber, (1) magazine from gun containing (12) cartridges, and (2) fully loaded magazines from gun belt (capacity 13) – collected from Officer Esquivel
- One green beanie
- One black women's blouse
- One black fifteen inch crow bar, collected from driver seat/floorboard area
- DNA swabs from the interior and exterior of the vehicle
- Latent fingerprints from the vehicle
- Two California License plates (number 96935A2)
- One Hewlett Packard laptop computer
- Three bullets recovered during the autopsy
- One surveillance video

EVIDENCE ANALYSIS

Autopsy

Forensic Pathologist, Dr. Etoi Davenport of the OCCO, conducted an autopsy of Contreras' body. Dr. Davenport determined the cause of death to be a result of the penetrating gunshot wounds of the right chest and left thigh.

Dr. Davenport observed a gunshot entrance wound on Contreras' right chest. Dr. Davenport observed the bullet to have perforated the skin, tissues, and muscles of the right chest, the ribs, the lung, and the spinal column. Dr. Davenport also observed a laceration to the liver. The bullet was located in the right chest cavity. Dr. Davenport opined that given standard anatomic positioning of the body, the direction of this bullet was front to back, right to left and downwards.

Dr. Davenport observed two gunshot entrance wounds on Contreras' left thigh with one wound toward the mid-anterior thigh and the other towards the anterior lateral left thigh. The bullet related to the wound in the mid-anterior left thigh was found embedded within the right side of the soft tissue at the bladder/prostate junction. Dr. Davenport opined that given standard anatomic positioning of the body, the direction of this bullet was front to back, left to right, and upwards.

The bullet related to the anterior lateral left thigh wound was found embedded in the skeletal muscles of the lateral left hip. Dr. Davenport opined that given standard anatomic positioning of the body, the direction of this bullet was front to back, upwards, and slightly left to right.

All three bullets were recovered in Contreras' body and no exit wounds were located.

Crime Scene Investigation of Officers Buchanan and Esquivel

Officer Buchanan had an injury to his right hand and left knee. Officer Buchanan's uniform shirt was torn at the elbow and the left front shirt pocket. There was also ripped fabric on the left backside of Officer Buchanan, and his left pant leg had a scuff at the knee.

Officer Esquivel had an injury to his left elbow, right forearm, right hand index finger, and left thigh. The taser probe that struck Officer Esquivel created a puncture wound in his left thigh. Officer Esquivel's uniform had stitching come out on the right pocket and no name plate. There was also a small hole on the back side of the left pant leg and some discoloration on the left upper part of the pant leg. Officer Esquivel's name plate was later found at the scene and was collected.

Firearms and Taser Examination

Both Officer Esquivel and Officer Buchanan's pistols were test fired without malfunction by a Forensic Scientist at OCCL. One cartridge case from the scene was determined to have been fired from Officer Esquivel's pistol, and one of the three bullets from the autopsy shared class characteristics with Officer Esquivel's Glock pistol. Three cartridge cases from the scene were determined to have been fired from Officer Buchanan's pistol, and two of the three bullets from the autopsy shared class characteristics with Officer Buchanan's Glock pistol.

The Taser was tested and the dot sight, illuminator, and automatic five-second pulse operated properly without malfunction. Five activations were recorded on the Taser on Nov. 6, 2016. The Forensic Scientist from OCCL observed that the fired Taser cartridge received in the firing bay had a portion of one of its two blast doors still attached with undeployed wire visible behind the door piece. This is consistent with the fact that a portion of the blast door was obstructed when the Taser cartridge was fired.

Toxicological Examination

A sample of Contreras' postmortem blood was collected for testing to examine the presence of drugs and alcohol. The following results and interpretations were documented:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.127 ± 0.008 mg/L
Methamphetamine	Postmortem Blood	0.974 ± 0.064 mg/L

CONTRERAS' PRIOR CRIMINAL HISTORY

Contreras' criminal history was reviewed and considered. Contreras has a California Criminal History that dates back to 2002, which included incarcerations in County jail and state prison. Contreras' criminal history revealed arrests and/or convictions for the following charges:

- Vehicle thefts
- Vehicle theft with Prior
- Possession of stolen property
- Unlicensed driver
- Illegal entry into the United States of America - Bench warrant
- Resisting arrest by police officer
- False identification to a police officer
- Second degree burglary
- Possession of controlled substance
- Possession of controlled substance for sale
- Vandalism
- Second degree robbery
- Inflict corporal injury on spouse or cohabitant and willful cruelty to child
- Simple battery
- Possession of open container - Bench warrant

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at p. 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."

The Court of Appeal 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, supra*, 69 Cal.App.3d at p. 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/herself 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.) 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 physical injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (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 rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at pp. 396-397.)

LEGAL ANALYSIS

The facts in this case are determined by considering witness statements and all the available evidence that was collected.

The issue in this case is whether the conduct of Officers Buchanan and/or Esquivel on Nov. 6, 2016, was criminally culpable and without justification. As stated above, in order to charge Officers Buchanan and/or Esquivel with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge Officers Buchanan and/or Esquivel with a crime, the prosecution must prove beyond a reasonable doubt they did not act in lawful self-defense or defense of others. If the actions that day of Officers Buchanan and/or Esquivel were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

The Court of Appeal held that 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, citations and quotation marks omitted.)

Certainly, it would have been very helpful to this investigation if the OCDA were able to obtain voluntary statements from Officers Buchanan and Esquivel, specifically regarding their observations, respective state of mind, and the conduct of Contreras immediately before the shooting. However, Officers Buchanan and Esquivel's decisions to decline to give the OCDA a voluntary statement may not legally and ethically be used to draw negative evidentiary inferences regarding their conduct and their respective state of mind.

Not having the benefit of complete voluntary statements from the involved officers, the OCDA must make a decision based on the available competent evidence. As discussed above, the video surveillance evidence does not capture the officer-involved shooting incident.

Jane Doe 1 describes Contreras' erratic behavior shortly before the shooting as follows: Contreras was very high; Contreras did not immediately yield to the police; Contreras "socked" one of the officers; Contreras resisted arrest when the officers tried to control him, and Contreras yelled profanities at the officers. Although Jane Doe 1 left the scene before shots were fired, Jane Doe 3 observed a physical struggle between an officer and male subject on the ground in the moments just prior to the shooting. Further, the public safety statements obtained by Corporal Gutierrez corroborate the physical struggle leading to the shooting. Corporal Gutierrez noted that Officer Buchanan told him that he fired three shots from the ground. The physical evidence of the damage to the officers' uniforms and injuries upon the officers further corroborates the witnesses' observations of a physical struggle.

The OCDA has to make a determination based on the available evidence at this time of whether Officers Buchanan and/or Esquivel were justified in their actions of firing their weapons on Nov. 6, 2016, causing the death of Contreras. It is clear that Contreras who was driving a stolen truck was not cooperative with the officers when they attempted to effectuate a traffic stop, and subsequently a physical struggle took place between the officers and Contreras. In order for Officers Buchanan and/or Esquivel to be justly and lawfully charged and convicted with a crime, it is the OCDA's burden to prove beyond a reasonable doubt that the officers in question did not act in reasonable and justifiable self-defense or defense of another at the time of the shooting. Based on the above-described facts available at this time, and the foregoing analysis, the prosecution would be unable to carry this burden in this case. Further, based on the applicable legal principles, a jury analyzing the facts available at this time would justly conclude that there is reasonable doubt of the guilt of either one of the officers.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA at this time, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officers Buchanan and Esquivel committed a crime when they shot and killed Contreras on Nov. 6, 2016.

Accordingly, the OCDA is closing its inquiry into this incident. Should additional evidence become available, this matter may be re-opened by the OCDA.



ERIKA PENNINGTON
Deputy District Attorney
Homicide Unit



Read and Approved **EBRAHIM BAYTIEH**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit