



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

PAUL M. WALTERS
 CHIEF
 BUREAU OF INVESTIGATION

JENNY QIAN
 DIRECTOR
 ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
 CHIEF OF STAFF

January 3, 2018

Sheriff Sandra Hutchens
 Orange County Sheriff's Department
 550 N. Flower Street
 Santa Ana, CA 92703

Re: Officer-Involved Shooting on September 22, 2017
 Fatal Incident involving Dillan J. Tabares
 Orange County Sheriff's Department Case DR # 17-037595
 Orange County Crime Laboratory Case FR # 17-56519
 Orange County Coroner Office Case # 17-04247EK

Dear Sheriff Hutchens,

Please accept this letter the Orange County District Attorney's Office (OCDA) conducted a legal review of the Orange County Sheriff's Department's (OCSD) investigation of the Sept. 22, 2017, fatal shooting incident by Officer Eric Esparza from the Huntington Beach Police Department (HBPD). The shooting took place in the city of Huntington Beach and Dillan J. Tabares, 27, died as a result of his injuries.

Please note that the scope and findings of our legal review are **expressly** limited to determining whether any criminal conduct occurred on the part of any HBPD personnel, specifically Officer Esparza, as it relates to the above-listed shooting. Our office will not be addressing any possible policy, training, tactics, or civil liability issues.

FACTUAL SUMMARY

At the time of the shooting, Tabares was a 27-year-old transient male residing in different locations throughout Huntington Beach. Tabares had a history of mental issues, drug abuse, and combative encounters with law enforcement. According to his brother, Tabares was previously arrested for being violent with the police, and he was a methamphetamine user.

This officer-involved shooting incident occurred on Sept. 22, 2017 at approximately 9:35 a.m. outside a 7-Eleven convenience store located at 6012 Edinger Avenue in the city of Huntington Beach. Officer Esparza was the only law enforcement officer present when he shot Tabares. The investigation did not reveal the reason behind Officer Esparza's initial contact with Tabares before the shooting incident. Officer Esparza declined to give a voluntary statement to OCSD investigators regarding the incident.

Officer Esparza began his shift at approximately 6:30 a.m. on Sept. 22, 2017. According to the HBPD daily activity log, Officer Esparza was assigned four calls for service that morning. Tabares was not named in any of these calls. At approximately 9:03 a.m., Officer Esparza was dispatched to a call for service at Ace Hardware located at 15960 Springdale. According to the log, Officer Esparza ended up not going to this location, and he was available for other service calls at 9:04 a.m. The hardware store is directly across the street from the 7-Eleven where the officer-involved shooting incident occurred.

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

According to 7-Eleven security camera footage, at approximately 9:34 a.m., a marked HBPD police patrol car drove through the 7-Eleven parking lot. The patrol car left shortly afterward. Tabares arrived in the parking lot on foot about 40 seconds later and was immediately followed by the patrol car. According to several witnesses, this was the same patrol car that had driven through the 7-Eleven parking lot earlier. Tabares looked back at the police car and then walked to the other side of the 7-Eleven building, out of the security camera's view. The patrol car was being driven by Officer Esparza who then exited the patrol car and followed Tabares out of the 7-Eleven camera's view.

Jane Doe, a civilian witness who was in the parking lot of the 7-Eleven, observed the rest of the incident from inside her car, which was parked in a stall directly in front of where the incident occurred. Jane Doe saw Officer Esparza exit his patrol car and immediately motion to Tabares, who was walking through the parking lot. Officer Esparza told Tabares to stop. Tabares did not stop and continued to walk away from Officer Esparza westbound on the sidewalk past the driver door of Jane Doe's car. Jane Doe, who is a registered nurse, saw Officer Esparza give commands to Tabares, and she indicated Tabares "looked out of it," and she thought he was under the influence of a drug. Jane Doe stated she saw Tabares shouting or arguing with the officer, and then saw him walk directly toward Officer Esparza and swing at him. Officer Esparza attempted to block the punch thrown by Tabares. According to Jane Doe, it did not appear Officer Esparza was expecting Tabares to punch him.

At some point, Jane Doe started recording the incident on her cell phone which showed the following:

Tabares and Officer Esparza walked toward the sidewalk in front of Jane Doe's car. Tabares walked toward Officer Esparza, and Officer Esparza walked backwards while holding his Taser outward in his right hand and keeping it toward Tabares, who was about two feet from the Taser. Officer Esparza shot the Taser at Tabares which appeared to have no effect. Tabares continued walking toward Officer Esparza with a quick pace while Officer Esparza appeared to be attempting to talk into his radio which was in his left hand. Tabares continued forward until he was close enough to punch Officer Esparza once in his face.

With his left arm, Officer Esparza grabbed Tabares around his neck in a headlock-type grip. Officer Esparza and Tabares wrestled for a few seconds while standing before both going to the ground. Officer Esparza and Tabares were wrestling on the ground for about 30 seconds. Officer Esparza was attempting to punch Tabares, while Tabares was beneath him attempting to kick Officer Esparza. While Tabares was beneath Officer Esparza, Tabares reached up and grabbed something from Officer Esparza's duty belt near his left back pocket. This is the same duty belt where Officer Esparza had his duty weapon. Officer Esparza was able to back up a few feet into the parking lot, and Officer Esparza fired six consecutive shots at Tabares. Officer Esparza then fired a seventh shot after a few seconds as Tabares was still standing on the sidewalk near a window. Tabares fell to the sidewalk while Officer Esparza kept his gun pointed at Tabares. Officer Esparza then picked up his radio, and appeared to talk into the radio. Officer Esparza walked northbound on the sidewalk toward Jane Doe's vehicle.

At approximately 9:30 a.m., Officer Delwin Jensen heard Officer Esparza via radio requesting a "Code Three back at Springdale/Edinger." Officer Jensen believed Officer Esparza was either in a foot pursuit or an altercation based on the tone of Officer Esparza's voice. While approaching the location, Officer Jensen heard Officer Esparza transmit he was in an officer-involved shooting and needed paramedics at his location. Upon arrival, Officer Jensen saw Officer Esparza standing outside the 7-Eleven north of a parked vehicle, and Tabares was lying down on the ground next to the building. Officer Jensen noticed Officer Esparza was out of breath. Officer Jensen asked Officer Esparza if there were any outstanding weapons he needed to be concerned about. Officer Esparza said he did not think so, but commented his Taser was missing and that Tabares kept reaching for his (Officer Esparza's) gun. Officer Jensen approached Tabares and saw Officer Esparza's Taser and sunglasses on the ground. According to Officer Jensen, the Taser "was right next to the suspect," approximately one foot from his body. Tabares was laying on his right side, facing north with his right hand concealed underneath his body. Officer Jensen noted that Tabares was making a gurgling sound, but did not say anything. Officer Jensen then handcuffed Tabares and kicked the Taser away from his body. Officer Jensen checked Tabares for a pulse but was unable to locate one.

Paramedics arrived and rolled Tabares over. Officer Jensen saw a flashlight underneath Tabares' body. At the direction of paramedics, Officer Jensen un-cuffed Tabares. The paramedics then placed Tabares on a gurney and into an ambulance. Tabares was then transported to University of California, Irvine Medical Center where he received emergency care. At approximately 10:13 a.m. lifesaving efforts were stopped and Tabares was pronounced deceased.

It should be noted Officer Esparza had a second handgun holstered on his ankle at the time of his struggle with Tabares and at the time of the shooting. This weapon was not fired.

Post-Incident, Voluntary Interviews with Civilian Witnesses

Jane Doe

While recording the incident on her cell phone, Jane Doe observed the following: Officer Esparza and Tabares walked toward the sidewalk in front of Jane Doe's vehicle. The officer pulled out a Taser and shot it at Tabares. The Taser did not appear to affect Tabares. They continued walking toward her right (westbound) on the sidewalk. They started fighting and wrestling. Jane Doe saw Tabares pull something black from the officer's belt while they were both wrestling. The officer stepped back and fired several shots at Tabares.

It should be noted that Jane Doe is a registered nurse, and she indicated she has seen numerous people under the influence of drugs. Jane Doe indicated Tabares' behavior and glazed look led her to conclude he was under the influence of a drug.

John Doe 1

John Doe 1 was driving his car into the 7-Eleven parking lot when he noticed Tabares walk by the passenger side of his car. John Doe 1 parked in front of the store entrance glass doors. John Doe 1 indicated Tabares looked "completely out of it" as he passed by him. John Doe 1 was not aware anything was wrong until he walked into the store and heard a female subject yelling that Officer Esparza and Tabares were wrestling on the ground. Another witness came into the store and told John Doe 1 the officer Tasered Tabares. John Doe 1 walked towards the window of the store and saw Officer Esparza wrestling with Tabares on the ground. John Doe 1 saw Officer Esparza and Tabares struggling for something with both hands, but John Doe 1 could not see what it was.

John Doe 1 indicated Officer Esparza was struggling as hard as he could, but Tabares seemed to have "super strength" since the officer was unable to overpower Tabares. John Doe 1 thought Tabares was possibly "high" on drugs based on Tabares' strength and the glazed look on his face. John Doe 1 asked another witness to assist him in helping Officer Esparza because it looked like the officer's life was in danger. As John Doe 1 and the other witness walked out of the store, John Doe 1 saw Officer Esparza back up and shoot Tabares.

John Doe 1 did not hear any verbal communication between Officer Esparza and Tabares, but John Doe 1 stated he saw Tabares grab something from Officer Esparza's body before Tabares was shot. John Doe 1 indicated he believed Officer Esparza was fighting for his life while they were wrestling.

John Doe 2

As John Doe 2 passed the 7-Eleven store in his car, he saw Officer Esparza walking toward Tabares. John Doe 2 saw Tabares throw a punch at Officer Esparza, but did not know if Tabares landed the punch on Officer Esparza. John Doe 2 parked his car and walked to the northwest corner of the 7-Eleven, where the front doors are located. Officer Esparza and Tabares were now on the ground, on the west side of the store. Tabares was on his back and the officer was on top of him trying to subdue him. According to John Doe 2, he saw Tabares trying to grab items off of the officer's belt, possibly his gun. John Doe 2 believed Tabares was able to get a hold of one of the officer's magazines from his belt. After Tabares removed an item from Officer Esparza's belt, Officer Esparza stood up, drew his weapon, and started backing away from Tabares. John Doe 2 saw Tabares get up on his feet. John Doe 2 heard Officer Esparza order Tabares to "get on the ground." John Doe 2 indicated Tabares was standing up as Officer Esparza started backing up and drawing his weapon. John Doe 2 then saw Officer Esparza shoot at Tabares. According to John Doe 2, Tabares still had the object (which was

later determined to be a flashlight) that he grabbed off the officer's belt in his hand until he fell against the window after being shot.

Statements from Tabares' Family

Sister

Tabares' sister had not seen Tabares in approximately two years, but maintained contact with him through social media and phone calls. On Facebook, Tabares would post incoherent public messages. Tabares would often post "word salad" or combination of "non-sensical words" put together to create sentences that were illogical. Often times, the only way Tabares' sister knew he was alive was when he posted something online.

Brother

Several months ago, Tabares' brother invited him to stay at his residence to sober up, but Tabares ultimately refused the help. According to his brother, Tabares has been arrested in the past for being violent with police. Tabares was also a methamphetamine user. Last year, Tabares was arrested by an HBPD officer for assaulting a Del Taco employee. According to his brother, Tabares was "truly resentful toward the police officer who had arrested him because he felt like it was a wrongful arrest."

According to Tabares' brother, Tabares was arrested by the Norfolk Virginia Police Department towards the end of Tabares' military career in 2012. The brother indicated Tabares also resented the police officer who arrested him in Norfolk. The brother added, "anytime he got arrested, he felt it wasn't his fault...I think a lot of this comes from, his sense he did nothing wrong." The brother believed Tabares' mental health had deteriorated from paranoid delusions to "delusions of grandeur." Tabares believed himself to be on a "higher plane of existence than everybody else" and possibly, "indestructible."

Mother

Tabares' mother said Tabares joined the Navy at age 18, but was "kicked out" due to a combination of drug use and mental health issues. Tabares had never officially been diagnosed bipolar/schizophrenic, but had paranoid delusions of the "Illuminati" and police. Tabares' mother indicated the family tried to get Tabares assistance through the drug court. Tabares was prescribed medication, but he would not take it. As a result, the court system stopped assisting him.

Step-Father

Tabares' step-father stated HBPD has had contact with Tabares numerous times and they should have known Tabares was schizophrenic. The step-father said Tabares was a "good kid" but "mental." The step-father added, "Tabares wasn't a violent guy. He was more of a philosopher." Tabares often spoke of the "Illuminati" and spirits who would talk to him.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Seven bullet casings
- Bullet fragments from outside stucco wall
- One Taser probe
- One X26 Taser
- Taser aphids
- Copper wiring
- Clump of hair
- A white sock
- A rubber glove
- One black Bic lighter
- Small black flash light
- Black sunglasses
- Two swabs of apparent blood

- Photographs of the crime scene
- Three videos recorded by witnesses' cellphones
- Body worn camera recordings from Officer Esparza and Officer Jensen
- One surveillance video from a business in the parking lot

AUTOPSY

On Sept. 27, 2017, Dr. Etoi Davenport, a Forensic Pathologist with the Orange County Coroner's Office, conducted an autopsy on the body of Tabares. During the autopsy, Dr. Davenport documented five gunshot wounds to the following areas: 1) superior left shoulder, 2) lateral left arm, 3) lower left back, 4) middle right back, and 5) front left abdomen. Dr. Davenport also documented two possible puncture marks to the right and left side of Tabares' abdomen. These puncture marks are consistent with injuries sustained from a Taser. Dr. Davenport concluded Tabares died as a result of multiple gunshot wounds.

EVIDENCE ANALYSIS

DNA Analysis

The Orange County Crime Lab examined evidence collected in this case and determined that Tabares' DNA was located on Officer Esparza's Flashlight, Flashlight Holder, Magazine Holder, and the grip of Officer Esparza's Glock pistol.

Toxicological Examination

A sample of Tabares' postmortem blood was collected for testing. The blood was examined for the presence of drugs and alcohol, and the result showed that Tabares' blood came back positive for the presence of Ethanol and Methamphetamine.

TABARES' PRIOR CRIMINAL HISTORY

On Sept. 14, 2017, eight days before the officer-involved shooting incident, Tabares was released from state prison after completing a 2-year sentence for felony battery causing serious bodily injury. Tabares was directed by the California Department of Corrections and Rehabilitations to check in with his parole agent on Sept. 15, 2017. Tabares failed to check in with his assigned parole agent. On Sept. 20, 2017, two days before the officer-involved shooting incident, a superior court judge signed a "Parolee at Large" arrest warrant for Tabares (PAL Warrant Number 1709183225).

Tabares' criminal history was reviewed and considered. Tabares had a California Criminal History that dated back to 2011 showing arrests for the following crimes:

- Reckless Driving
- Driving under the influence of alcohol
- Possession of a dangerous weapon
- Obstructing, delaying, or resisting a peace officer
- Possession of a control substance paraphernalia
- Battery with serious bodily injury

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes releasing video and audio evidence of officer-involved shooting and custodial death incidents may assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA will release to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in an on-duty fatal 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 is 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 835(a).

California Penal Code Section 196 provides that the 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 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 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 835(a) allows any police officer who has reasonable cause to believe 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 v. Alkire, supra*, 69 Cal.App.3d at p. 333.)

In addition, Penal Code section 834(a) 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 or upon another person. In doing so, such person may immediately use all force and means which he 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 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 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are applicable to the circumstances surrounding the interaction between HBPD Officer Esparza and Tabares.

LEGAL ANALYSIS

The facts in this case are determined by considering all statements made by the civilian witnesses and Officer Jensen, which were supplemented by other relevant material and recordings of the incident.

The issue in this case is whether the conduct of Officer Esparza on Sept. 22, 2017, was criminally culpable and without justification. As stated above, in order to conclude Officer Esparza committed 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 officer's conduct. Therefore, in order to lawfully charge Officer Esparza with a crime, the prosecution must have a good faith belief in the ability to prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the actions by Officer Esparza on the date of the incident were justifiable as lawful self-defense or defense of others, criminal charges would not be warranted.

As the Court of Appeal held in a recent case, 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/she 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 potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted the United States Supreme Court's definition of reasonableness is comparatively generous toward 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.)

It is clear in this case, based on the totality of all the available evidence, Officer Esparza was justified in believing Tabares posed a significant threat of death or serious physical injury to Officer Esparza and possibly other civilians in the parking lot. This conclusion is based on all of the circumstances, particularly the conduct of Tabares leading up to the shooting. Tabares physically assaulted the officer by punching him in the face and trying to grab his gun. Because Tabares resisted Officer Esparza outside of a busy 7-Eleven convenience store, there were multiple bystanders and patrons nearby that could have been harmed by Tabares had he managed to obtain the officer's weapon. It is clear from the statements of the witnesses and from reviewing the video recordings that Tabares initiated the physical altercation with Officer Esparza by running towards him and punching him. Officer Esparza tried using his Taser to regain control of the situation, however he was not successful because the Taser did not have an impact on Tabares. Thereafter, Tabares increased the dangerousness of the situation by fighting Officer Esparza and trying to grab his weapon. Officer Esparza therefore had to act with even greater caution to ensure the safety of not only himself, but also innocent bystanders. This legal conclusion is not negated simply because we do not have direct evidence regarding the reason why Officer Esparza made the initial contact with Tabares. It is lawful for a police officer to attempt to make consensual contact with a pedestrian in a public area, and the pedestrian is not legally permitted to respond to such contact by charging at the officer and punching him.

Prior to Officer Esparza shooting Tabares, several witnesses saw Tabares refusing to follow the officer's commands. Instead, Tabares physically attacked the officer and refused to submit during the struggle. Officer Esparza first deployed a non-lethal Taser gun on Tabares, but it appeared to have no effect. According to one witness, in response to the Taser being used, Tabares "accelerated a little bit and he lunged towards the officer."

Certainly, it would have been preferable if OCSD obtained a voluntary statement from Officer Esparza regarding his state of mind at the time of the shooting, as well as the reason behind Officer Esparza's initial contact with Tabares. However, Officer Esparza's decision to decline to provide a voluntary statement to OCSD may not legally and ethically be used to draw negative evidentiary inferences regarding the conduct and the state of mind of Officer Esparza.

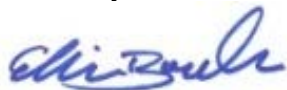
In order for Officer Esparza to be justly and lawfully charged and convicted of any crime based on this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officer Esparza did not act in reasonable and justifiable self-defense or defense of another when he shot Tabares. As is apparent from all the evidence and the above-described analysis, the prosecution would be unable to carry such a burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Officer Esparza to believe his life and possibly the lives of others were in imminent danger. Therefore, Officer Esparza was legally justified when he shot Tabares.

CONCLUSION

Based upon a review of all of the evidence provided to the OCDA, 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 no evidence of criminal culpability on the part of Officer Esparza, and there is substantial evidence his actions were reasonable and justified under the circumstances when he shot and killed Tabares on Sept. 22, 2017.

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

Sincerely,



Ebrahim Baytieh
Assistant District Attorney
Supervising Head of Court - Special Prosecutions Unit
ebrahim.baytieh@da.ocgov.com
714-347-8601