



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

JIM TANIZAKI
CHIEF ASSISTANT D.A.

SCOTT ZIDBECK
SENIOR ASSISTANT D.A.
FELONY OPERATIONS IV

TRACY MILLER
SENIOR ASSISTANT D.A.
FELONY OPERATIONS III

EBRAHIM BAYTIEH
SENIOR ASSISTANT D.A.
FELONY OPERATIONS II

KEITH BOGARDUS
SENIOR ASSISTANT D.A.
FELONY OPERATIONS I

HOWARD P. GUNDY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

PAUL M. WALTERS
CHIEF
BUREAU OF INVESTIGATION

JENNY QIAN
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

November 7, 2018

Chief Jorge Cisneros
Anaheim Police Department
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Officer-Involved Shooting on August 23, 2016
Non-Fatal Incident involving Alan Osvaldo Reza, a.k.a. Osvaldo Palomino
District Attorney Investigations Case # 16-028
Anaheim Police Department Case # 16-134271
Orange County Crime Laboratory Case # 16-53825

Dear Chief Cisneros,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officer Jason Smith. Alan Osvaldo Reza, 20, survived his injuries. The incident occurred in the City of Anaheim on Aug. 23, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Aug. 23, 2016, non-fatal, officer-involved shooting of Reza. 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 officer-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 Aug. 23, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted and one additional witness was contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; Anaheim Fire Department (AFD) records; Orange County Crime Laboratory (OCCL) reports, including officer processing, fingerprint, DNA and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Reza; criminal history records related to Reza; business surveillance video recordings; Body Warn Camera video recording, and other relevant reports and materials, including audio recordings of the conducted neighborhood canvass.

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

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

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy to release the final report regarding the officer-involved shooting incident after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that the OCDA does not release any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his/her case is still pending.

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 and 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 Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, 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 a statement from the involved officers. Officer Smith gave a voluntary statement to OCDA Investigators on Sept. 1, 2016.

FACTUAL SUMMARY

On Tuesday, Aug. 23, 2016, at approximately 6:00 p.m., the Anaheim Police Department received a 911 call from an address on West Neighbors Street in Anaheim. The 911 caller reported that she and her boyfriend had been assaulted with a gun, a knife, and a spiked bat by three gang members from a well-documented criminal street gang (GANG). When police arrived, the victims said they were approached by two males and a female who were known as members of the GANG. The suspects asked where the victims were from. In gang culture, this question is to determine which gang one claims, and may be followed by an assault if the response identifies lack of gang affiliation or a rival gang. The victims replied they were not in a gang and the three suspects assaulted them.

A male suspect pulled a silver gun from his waistband and pointed it at the victims. The victims fled and the suspects followed the victims to their apartment. The suspects removed the male victim from the apartment and continued to assault him. The three suspects fled prior to police arrival. The male victim said one of the suspects showed two handguns in his waistband. The victims were shown photographic line-ups of possible suspects and identified Osvaldo Reza as the person holding one gun in his hand and another in his waistband. The victims also identified Frank V. as holding the knife, and Julie B. as holding the spiked bat.

The GANG is known by the APD to be a violent criminal street gang in Anaheim. There is an active injunction against the GANG, due to criminal activity in their claimed territory of Glen Street and Neighbors Avenue in Anaheim, also known as the Glen-Neighbors area. The GANG has committed crimes such as vandalism, assaults with deadly weapons, and homicides. Members of GANG are also known to possess weapons, including firearms. In gang culture, the person asking where another is from is likely to be armed. Gang members are also known to carry firearms to elevate their status, or

that of the gang. Reza is a documented member of the criminal street GANG. The police knew Reza possessed ammunition on an earlier date, and had information that Reza was involved in a shooting three days before with a rival gang, in which one person was shot.

The APD Crime Task Force (CTF) set up surveillance to locate the three suspects and arrest them for the earlier assault. The surveillance team consisted of undercover vehicles, plain clothes officers, and the APD helicopter (Angel). Uniformed officers driving marked, black and white police vehicles, were positioned outside the Glen-Neighbors area, as gang members communicate with each other when a police vehicle is observed. All involved officers were informed of the identities of the subjects and their criminal backgrounds.

At approximately 10:30 p.m., an officer observed Reza and Frank V. between Neighbors Avenue and Glen Street. Both men entered a silver Honda, driven by a third man, Humberto M. Reza sat in the right front passenger seat while Frank V. sat in the right rear passenger seat. Angel followed the Honda and broadcasted its location and direction of travel. The Honda traveled south on Onondaga Avenue then east on La Palma. As the Honda approached Euclid Street, Officer Smith pulled in behind the Honda.

Officer Smith was driving a clearly marked, black and white APD patrol vehicle, equipped with light bars. When Humberto M. turned south on Euclid Street, Officer Smith activated his vehicle's emergency lights and siren in order to perform a car stop. Humberto M. did not yield, although he was driving very slowly and appeared to pull over twice. Officer Smith, joined by five marked, black and white APD patrol vehicles, followed the Honda at excessively low speeds, through several streets, with lights and sirens activated. Officer Smith believed the armed suspects were trying to get back to the Glen-Neighbors area and flee on foot, or engage in a vehicle pursuit, both of which would endanger the public. As the Honda approached La Palma, Officer Smith attempted a Pursuit Intervention Technique (PIT) maneuver, and struck the rear of the Honda with his patrol vehicle. This stopped the Honda, and another officer used his vehicle to block the front of the Honda so it was unable to move.

Reza exited the front passenger door and fled across West La Palma Avenue into a strip mall parking lot. Officer Smith exited his vehicle to chase Reza. Officer Smith knew the strip mall contained a corridor that led into the Glen-Neighbors neighborhood. Officer Smith drew his weapon and ran after Reza, along with three other officers. During the pursuit, Officer Smith recognized Reza and knew he was the GANG member who had been identified as holding the gun earlier in the evening, and was also a suspect in a previous gang shooting.

The officers verbally identified themselves as police officers and ordered Reza to stop and get on the ground. Reza kept running, but not with a normal running stride. Officers observed that Reza ran with one arm moving up and down, while the other arm stayed down toward his waistband. Reza also looked back over his shoulder toward the officers while reaching into his waistband. The officers had previous knowledge that Reza was armed earlier in the evening, and feared he was reaching for a firearm, because they have been trained that gang members carry firearms in their waistbands. Officer Smith believed Reza was looking back to track his location, and the area was lit enough for Officer Smith to see that Reza had something dark in his right hand. Officer Smith ordered Reza to drop what was in his hand, but Reza ignored this order and kept running.

As Reza approached the corridor, Officer Smith was approximately 10 to 15 feet from Reza. Officer Smith saw Reza turn toward him and saw the barrel of a gun come up. Officer Smith believed Reza was getting ready to turn and shoot, and thought Reza was trying to kill him. Another officer thought he saw a weapon come out of Reza's waistband and yelled, "Gun, gun, gun." Officer Smith fired his weapon to end the threat and believed Reza was hit because he saw Reza fall down. At the same time, officers saw something black fly up into the air and heard the sound of metal striking the ground. A black bandanna and a semi-automatic Raven Arms .25 Auto caliber pistol, containing one bullet in the chamber and one bullet in the magazine, was located in the corridor near Reza. Officers administered first aid to Reza until the AFD arrived. The AFD transported Reza to the University of California, Irvine-Medical Center (UCIMC), where he was treated for one gunshot wound, and he was expected to recover from his injury.

No civilians witnessed the event. Humberto M. was interviewed and told the police Reza got nervous when he first saw the police cars. While they were being followed by the police, Reza took a gun out, pointed it at Humberto M., and told him to, "Go, go." Reza pulled on the steering wheel and told Humberto M. to go to the Neighbors area. Humberto M. was afraid Reza would shoot him, and deliberately drove slowly so the police would close in and end the chase. Frank V. was interviewed and told the police that he told Reza to stop pointing the gun at Humberto M.

The entire incident, from the time Officer Smith exited his vehicle to the time of the shooting, was approximately 15 seconds. Officer Smith did not think he had any time from the moment he saw Reza's gun. According to Officer Smith, "if he [Reza] fired, I'd be dead." Officer Smith's Body-Worn Camera captured video of the pursuit, without audio.

INTERVIEW OF REZA

OCDA Investigators spoke with Reza in the hospital on Aug. 25, 2016. When asked what happened, Reza said he started running and got shot. Reza would not talk about the gun found at the scene and told the investigator to speak with his attorney when the investigator asked if Reza had a gun. Reza was asked if he threw a gun and he responded, "I don't know, man, talk to my attorney."

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can 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 is releasing 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>

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One Raven Arms Model MP-25 pistol, .25 Auto caliber
- One black bandana
- Three cartridge cases, head stamp Winchester 45 Auto
- Officer Smith's Glock, Model 21 pistol, 45 Auto caliber
- Bullet collected from Reza

EVIDENCE ANALYSIS

Firearms Examination

The Raven Arms pistol was test fired at the OCCL and operated without malfunction. The Raven Arms pistol was processed for latent fingerprints, but no areas of ridge detail were recovered for comparison.

Officer Smith's Glock Model 21 pistol was test fired at the OCCL and operated without malfunction. The three cartridge cases from the scene were determined to have been fired from Officer Smith's pistol.

DNA Analysis

A DNA sample was obtained from Reza. DNA was also recovered from various locations on the Raven Arms pistol, but was of insufficient quality and/or quantity for comparison.

Toxicological Examination

Reza's blood was screened for drugs at the University of California, Irvine-Medical Center after surgery and tested positive for amphetamines, opiates, benzodiazepines, and THC.

REZA'S PRIOR CRIMINAL HISTORY

Reza's criminal history was reviewed and considered.

REZA'S POST-INCIDENT CONVICTION

On Aug. 25, 2016, the OCDA filed criminal charges against Reza, aka Osvaldo Palomino, in Orange County Superior Court case 16NF2375, consisting of one felony count of Kidnapping, a violation of California Penal Code section 207; one felony count of Assault with a Firearm, in violation of California Penal Code section 245(a)(2); one felony count of Assault with Force Likely to Produce Great Bodily Injury, in violation of California Penal Code section 245(a)(4), one enhancement for Criminal Street Gang Activity, in violation of California Penal Code section 186.22(b)(1), and an allegation of a prior juvenile adjudication of a serious and violent felony, pursuant to California Penal Code sections 667(d) and (e)(1) and 1170.12(b) and (c)(1).

On November 6, 2018, Reza was convicted by a jury of Battery, Assault with a Deadly Weapon, Assault with Force Likely to Produce Great Bodily Injury, Kidnapping during the commission of Carjacking, Assault with a Semiautomatic Firearm, as well as personal use of a firearm and gang related enhancements.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer-involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; 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 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 v. Alkire, 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 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 very much applicable to the circumstances surrounding the interactions of APD Officer Smith with Reza.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Officer Smith on Aug. 23, 2016, was criminally culpable and without lawful justification. As stated above, in order to charge Officer Smith with a criminal violation, it is required that the prosecution have a good faith belief in the ability to prove, beyond a reasonable doubt, that no legal justification existed for his conduct. If Officer Smith's actions were justifiable as lawful self-defense or defense of others, criminal charges will not be warranted.

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* (2009) 171 Cal.App.4th 516, 528.)

Based on the entirety of the evidence, it is clear Officer Smith was justified in believing Reza posed a substantial threat of death or serious physical injury to himself and others. Prior to Officer Smith's contact with Reza, Officer Smith had been informed of Reza's involvement with the violent street GANG and knew Reza was a suspect in recent gang shooting. Officer Smith also knew Reza had been identified earlier in the evening as possessing two firearms, and had taken part in an assault with two other GANG members in the Glen-Neighbors area, known to be GANG territory.

Police surveillance identified Reza and Frank V. in the Honda. Officer Smith and five marked police vehicles followed the Honda with their lights and sirens activated, in an obvious attempt to conduct a traffic stop. The Honda refused to yield but drove excessively slowly. Officer Smith was closest to the Honda and did not want to endanger the public with a vehicle pursuit, or allow the suspects back into the Glen-Neighbors area, when they were potentially armed and could flee on foot.

After using a PIT maneuver to stop the Honda, Officer Smith saw Reza exit the passenger door and run toward a strip mall, which Officer Smith knew contained a corridor entrance to the Glen-Neighbors neighborhood. Officer Smith and his colleagues chased Reza, giving him commands to stop and lay on the ground. Reza knew they were police officers, because he kept looking back over his shoulder, and because he knew police officers had followed the Honda.

Officer Smith recognized Reza. Officer Smith and his colleagues saw Reza running with his hand on his waistband. Police officers are trained that gang members often carry handguns concealed in their waistbands, and the victim in the earlier assault specifically stated Reza had a firearm in his waistband. This was a fact known to Officer Smith, causing him to believe Reza was reaching for a gun in his waistband. As Reza approached the corridor, he was approximately 10 to 15 feet from Officer Smith. Officer Smith saw Reza turn towards him and saw the chrome barrel of a gun come up. Another officer also saw Reza's movement and shouted, "Gun, gun, gun!" Therefore, Officer Smith justifiably and reasonably believed Reza was trying to kill him and immediately fired at Reza. Reza was struck, and officers heard the sound of metal striking the ground. Officers recovered a loaded firearm near Reza and the entire incident lasted approximately 15 seconds.

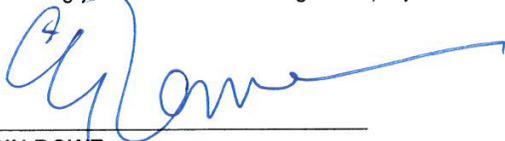
In order for Officer Smith to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove, beyond a reasonable doubt, that Officer Smith did not act in reasonable and justifiable self-defense or defense of another when he shot at Reza. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude it was reasonable for Officer Smith to believe his life, and the lives of his fellow officers, were in danger when Reza pointed a handgun at him from 10 to 15 feet away. Therefore, Officer Smith was justified when he shot at Reza.

Officer Smith did not commit a crime; to the contrary, he carried out his duties as a peace officer in a reasonable and justifiable manner.

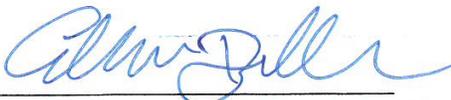
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA and 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 Jason Smith and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Alan Osvaldo Reza on Aug. 23, 2016.

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



ERIN ROWE
Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II