



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TODD SPITZER, DISTRICT ATTORNEY

March 6, 2019

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

Re: Officer-Involved Shooting on February 17, 2016
Non-Fatal Incident involving Carlos Michael Rodriguez
District Attorney Investigations Case # SA 16-008
Santa Ana Police Department Case # 16-04538
Orange County Crime Laboratory Case # FR 16-42760

Dear Chief Valentin,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Detective Matt Lemmon. Carlos Michael Rodriguez, 30, survived his injuries. The incident occurred in the City of Santa Ana on Feb. 17, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 17, 2016, non-fatal officer-involved shooting of Rodriguez. 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 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 Feb. 17, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 11 interviews were conducted, and 17 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD reports; body-worn camera video recording; audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; and photographs related to the injuries sustained by Rodriguez; Orange County Fire Authority (OCFA) reports; criminal history records related to Rodriguez; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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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 the involved SAPD officers or personnel, specifically Detective Lemmon. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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 not to release the final report regarding the officer involved shooting incident until 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 prejudicial to the right of the defendant to receive a fair trial while his or 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 Operations IV 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, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation is attempting to obtain a statement from the involved officers. Detective Lemmon gave a voluntary statement to OCDA Investigators on Feb. 19, 2016.

FACTUAL SUMMARY

On Feb. 17, 2016, at approximately 3:20 p.m., SAPD Detective Lemmon and Detective Daniel Alcala were working gang suppression in Santa Ana. They were driving in a black and white police vehicle with "Santa Ana Police" clearly marked on each front door, and "Gang Unit" on each rear quarter panel. Detectives Lemmon and Alcala were dressed in the SAPD gang suppression uniform, consisting of an SAPD badge, dark blue polo shirt with "SANTA ANA POLICE" written on the front and "POLICE GANG DETAIL" on the back of the polo shirt, dark blue jeans, and a nylon duty belt holding police equipment. Each detective carried their duty issued firearm in a holster.

Detectives Lemmon and Alcala patrolled the alley of West McFadden Avenue between Fairview Street and Sullivan Street. All gang unit detectives were aware of increased violence and gang activity in the area. The location was populated by numerous gangs living in the same area and competing for territory. This was evidenced by a rise in gang shootings, narcotics crimes, weapons possession and graffiti. One month prior to this incident, an individual was shot in the face in this area. Detectives Lemmon and Alcala were also aware of a murder in gang territory the night before this incident. Upon entering the alley from Fairview Street, the two detectives saw an unoccupied vehicle and recent gang graffiti in several areas. When they were approximately three apartment complexes west of Sullivan Street, Detective Lemmon observed Rodriguez straddling a bicycle, walking south in the area between the apartments on the north side of the alley. Detective Lemmon made eye contact with Rodriguez, who appeared surprised and stopped. The detectives noticed that

Rodriguez had a large prison type tattoo on his neck. Detectives Lemmon and Alcala continued driving for approximately 15 feet and stopped the patrol car. Due to the recent criminal activity in the alley, Detective Lemmon planned to contact Rodriguez to see if he lived in the area and if he was on probation or parole.

When Detective Lemmon exited the car and walked back to contact Rodriguez, Rodriguez dropped the bicycle and started running towards McFadden Avenue. Detective Lemmon chased Rodriguez and yelled, "Stop, police." Detective Lemmon was 15 to 20 feet behind Rodriguez when Rodriguez reached the apartment complex's pedestrian gate. Detective Lemmon told Rodriguez he needed to stop, and Rodriguez responded, "Come and get me" as he opened the gate. Rodriguez ran west on the sidewalk of West McFadden Avenue, with Detective Lemmon 10 to 15 feet behind him. Detective Lemmon yelled, "Stop, police," again as Rodriguez continued to run on the sidewalk. Rodriguez appeared to place his right hand on the right side on his waistband to secure or hold something. Rodriguez continued to run past two apartment complexes before he turned into the courtyard area of 2602 West McFadden Avenue. The courtyard was bordered by a 6-foot high concrete block wall. Detective Lemmon lost sight of Rodriguez as he turned into the courtyard area through an arched doorway. Because he was no longer able to see Rodriguez, Detective Lemmon drew his firearm and approached the entryway to the courtyard. As Detective Lemmon visually checked the area, he turned to his left and saw Rodriguez standing in the grass approximately 10 to 15 feet away. Rodriguez pointed a gun at Detective Lemmon and fired one shot at Detective Lemmon. Detective Lemmon turned his head and ducked to his right. The bullet grazed the left side of Detective Lemmon's head. Detective Lemmon immediately returned fire, shooting three or four times before Rodriguez dropped to the ground.

Detective Lemmon could not tell if Rodriguez still had the handgun. Detective Lemmon ordered Rodriguez to show his hands. Rodriguez started to reach toward his right side and Detective Lemmon could not tell if he was reaching for the same handgun, or another weapon. Detective Lemmon fired two or three more shots at Rodriguez. Detective Lemmon stopped shooting once Rodriguez showed his hands.

Detective Alcala responded to the scene seconds later and observed Detective Lemmon pointing his gun at Rodriguez and directing him to keep his hands visible. Detective Alcala saw a black, semi-automatic handgun within reaching distance of Rodriguez. Detective Lemmon kept his gun pointed at Rodriguez while Detective Alcala handcuffed him. Other officers arrived and Detective Lemmon left the courtyard to have his injuries assessed.

Rodriguez was searched and he stated, "I've got another gun on me, too." Officers pulled a .22 caliber semi-automatic handgun from Rodriguez's right front jacket pocket. The handgun was loaded with six cartridges in the magazine and one cartridge in the chamber. Officers also found in Rodriguez's possession two bags of black tar substance, a glass narcotics pipe containing a white crystalline substance, and a pill bottle containing a white crystalline substance.

OCFA personnel arrived at the scene. Detective Lemmon was treated for a graze wound to his head. Rodriguez was transported to the University of California Irvine Medical Center, where he received treatment for multiple gunshot wounds. Both Detective Lemmon and Rodriguez are expected recover from their injuries.

The Orange County Crime Lab responded to the scene for investigation and evidence collection. During the investigation, a potential bullet hole was observed above the right rear door, in the roof of a Hyundai vehicle. The vehicle was behind Detective Lemmon and in front of Rodriguez at the time of the shooting. The Hyundai was transported to the OCCL for further investigation, where a bullet was extracted and collected as evidence for additional testing. Numerous civilian witnesses observed some portions of the event. John Doe 1 saw Rodriguez in the alley shortly before the shooting. John Doe 1 said Rodriguez was fidgeting with something in his right pocket and was sure Rodriguez was trying to take out a gun. Jane Doe witnessed part of the incident from her apartment window. Jane Doe heard one shot, and then almost immediately heard three more rapid shots, followed by another. She then observed Detective Lemmon by the block wall on the west side of the courtyard entrance. Jane Doe saw blood on the officer's head and said he appeared to be protecting himself from a threat. According to Jane Doe, Detective Lemmon was holding his handgun and pointing it into the courtyard. Jane Doe saw Detective Lemmon fire his handgun once and put it back into his holster. John Doe 2 heard shots, then looked and saw Detective Lemmon fall back a little, and noticed Detective Lemmon's head was bleeding.

Voluntary Statement of Detective Lemmon

Detective Lemmon gave a voluntary statement to OCDA Investigators. Below is a summary of Detective Lemmon's statement.

Detectives Lemmon and Alcala were patrolling the south alley of West McFadden Avenue, between Fairview Street and Sullivan Street, because of a shooting that occurred in the alley in January. The alley is a high crime area, known for unsolved assaults with firearms and narcotics sales and usage. The area is also identified as a problem area in the city of Santa Ana. Detective Lemmon described this area as a "melting pot" for several gangs that surround the area. At one time, a Townsend Street gang member who was on probation lived in one of the apartment complexes, and Townsend Street gang graffiti would be found in the area. Last year, a Sullivan Street gang member was shot at a restaurant, located at the northeast corner of McFadden Avenue and Sullivan Street. The Goldenwest street gang, which is an older gang in the city of Santa Ana, also claims this area as their territory.

Detectives Lemmon and Alcala entered the alley from Fairview Street and drove towards Sullivan Street. While driving through the alley, they ran a record check on an unoccupied vehicle, and the registration returned to an address on Townsend Street, which is one on the city's high crime areas. They also noticed fresh Townsend Street gang graffiti in several areas as they continued eastbound in the alley at a slow pace.

Detective Lemmon observed Rodriguez 10 to 15 feet to his left, straddling a bicycle and walking south in the breezeway between apartments. Detective Lemmon noticed Rodriguez had a large prison type tattoo across his neck. Rodriguez was wearing a dark black sweatshirt and dark blue jeans. Rodriguez made eye contact with Detective Lemmon and stopped in his tracks. Detective Lemmon said Rodriguez's eyes "lit up." Detective Lemmon did not stop the patrol car right away because he was not in a position to safely exit the patrol car. They continued to drive approximately 15 feet past Rodriguez where Detective Lemmon could exit safely. Detective Lemmon returned to the breezeway, and Rodriguez dropped the bicycle on the ground and "bolted" towards McFadden Avenue.

Detective Lemmon wanted to talk to Rodriguez to see if any criminal activity was occurring, based on Rodriguez's reaction and the criminal activity in the area. Detective Lemmon chased Rodriguez in a northbound direction through the breezeway and yelled, "Stop police." Detective Lemmon did not have a good view of Rodriguez's hands as he ran through the breezeway. When Rodriguez arrived at the pedestrian gate to the apartment complex, he had difficulty opening it. Detective Lemmon said, "I'm going to catch you, you need to stop." Rodriguez responded by saying, "Come and get me." Rodriguez eventually opened the gate and ran west on the sidewalk, past two apartment buildings. Detective Lemmon noticed Rodriguez securing or holding something in its place near his waistband two times as he was running down the sidewalk. Based on his observations, Detective Lemmon was concerned that Rodriguez might have a firearm or weapon. Detective Lemmon radioed to Detective Alcala that Rodriguez was doubling back towards the alley as Rodriguez ran through an arched doorway into a courtyard. Detective Lemmon, who was 10 to 15 feet behind Rodriguez, lost sight of Rodriguez behind a 6-foot block wall.

Detective Lemmon had his handgun drawn and he checked the entryway briefly before entering the courtyard. Upon entering, Detective Lemmon saw Rodriguez standing in the grass, 10 feet to the left, pointing a gun at Detective Lemmon's head. Detective Lemmon described Rodriguez as being "in full presentation," meaning the gun muzzle was at chest level, aimed right at Officer Lemmon. As described by Detective Lemmon, "Right when I see him... he fires at me... shoots directly at my head." Detective Lemmon turned his head and ducked to his right, and he felt pressure on his head, but did not know if he had been hit at that time. Detective Lemmon immediately fired three or four shots at Rodriguez. Detective Lemmon was not able to aim, but was "just trying to stay alive." Rodriguez immediately fell straight down on his back. Detective Lemmon did not see a gun in Rodriguez's hand while he was lying on the ground and quickly started searching for it.

While Rodriguez was still on the ground, he began reaching towards his right side. Detective Lemmon believed Rodriguez was committed to killing him, and was concerned Rodriguez might be reaching for the gun he previously fired, or another

weapon. Detective Lemmon fired two more shots at Rodriguez. During this sequence of events, Detective Lemmon yelled, "Show me your hands," multiple times. Once Rodriguez complied, Detective Lemmon stopped shooting.

Detective Lemmon felt a burning sensation on the back left side of his head, but he knew that he wasn't injured badly because he could talk and his eyes were working. Detective Lemmon indicated that he did not feel blood initially; however, 30 seconds after the shooting was over, he reached up again and saw a splotch of blood on his hand. Detective Lemmon announced the shooting over the radio and Detective Alcala arrived within seconds. Detective Alcala handcuffed Rodriguez and Detective Lemmon left the courtyard to receive medical aid. Detective Lemmon was taken to a hospital via ambulance to be assessed for his injuries.

Detective Lemmon believed Rodriguez was trying to kill him and was afraid that he was going to die when Rodriguez shot him. Detective Lemmon described Rodriguez as, "set up to take me out... his intentions were to take my life."

Rodriguez's Statement

Investigators from the OCDA interviewed Rodriguez. When asked whether he shot at the cops, Rodriguez stated that, "the gun fell" and it "discharged." Rodriguez did not know what type of gun he was holding or whether it was his. Rodriguez stated that, "[he] was running and [Detective Lemmon] shot [him]." When asked if he had more than one gun, Rodriguez said, "Get away from me, man," and said he did not want to talk to the investigator any more.

EVIDENCE COLLECTED

The following items of evidence were collected from the scene and examined at the OCCL:

- Six cartridge cases, head stamped Winchester 40 S&W
- One bullet collected at the scene
- One bullet extracted from a Hyundai vehicle
- One Ruger 9 mm semi-automatic pistol, serial# 321-75890 [one of Rodriguez's two guns]
- One Taurus .22 caliber semi-automatic pistol, serial# Y152660 [one of Rodriguez's two guns]
- Two bags containing heroin
- One bag containing methamphetamine
- Prescription bottle containing methamphetamine
- Glass narcotics pipe
- Torch lighter

EVIDENCE ANALYSIS

Firearm and Projectile Examination

Officer Lemmon's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. The six fired cartridge cases were determined to be fired from the Glock pistol of Detective Lemmon.

One of Rodriguez's two guns, the Ruger Model LC9 pistol, 9 mm Luger caliber, serial number 321-75890, was test fired and operated without malfunction. The bullet removed from the Hyundai was microscopically compared to the test fired bullets from the Ruger pistol. The bullet was determined to have been fired from Rodriguez's Ruger pistol.

The other gun collected from Rodriguez's possession, the Taurus Model PT-22 pistol, .22 Long Rifle caliber, serial number Y152660, was test fired, but failed to feed one of the cartridges from the magazine. This Taurus 22 caliber pistol was captured on an officer's body worn camera right after it was removed from Rodriguez's right front jacket pocket. Rodriguez also made statements to the officers at the scene that he was in possession of another handgun, and these statements were captured on the audio of the body worn camera.

RODRIGUEZ'S PRIOR CRIMINAL HISTORY

Rodriguez's criminal history was reviewed and considered. Rodriguez had a California Criminal History that dates back to 2003. Rodriguez has previously been arrested for the following crimes:

- Attempted Murder
- Assault with a Semi-automatic Firearm on a Police Officer
- Assault with a Deadly Weapon on a Police Officer
- Exhibiting a Firearm in the Presence of a Police Officer
- Felon in Possession of a Firearm
- Possession of a Loaded Firearm in Commission of a Felony
- Possession of a Concealed Stolen Firearm
- Possession of a Concealed Weapon with a Prior Conviction
- Possession of a Stolen Loaded Firearm
- Obstructing or Resisting a Police Officer
- Exhibiting a Firearm to Resist Arrest
- Participating in a Criminal Street Gang
- Conspiracy to Commit a Crime
- Felon / Addict in Possession of a Firearm
- Possession of a Dangerous Weapon
- Possession of a Switchblade Knife
- Elder Abuse
- Assault
- Battery
- Possession of Controlled Substance for Sale
- Possession of a Controlled Substance
- Stealing from a Dependent Adult
- Burglary
- Grand Theft
- Vehicle Theft
- Possession of a Stolen Vehicle
- Receiving Stolen Property
- Petty Theft
- Vandalism
- Possession of Burglary Tools
- Possession of Narcotics Paraphernalia
- Contempt of Court

RODRIGUEZ'S POST-INCIDENT CONVICTION

On February 19, 2016, the OCDA filed criminal charges against Rodriguez in Orange County Superior Court Case Number 16CF0455, consisting of Attempted Murder of a Peace Officer, a felony, in violation of California Penal Code section 664(e)-187(a); Assault with a Semiautomatic Firearm on a Peace Officer, a felony, in violation of California Penal Code section 245(d)(2); Possession of a Firearm by a Felon, a felony, in violation of California Penal Code section 29800(a)(1); Possession For Sale of a Controlled Substance, a felony, in violation of California Health and Safety Code section 11351(a); and Possession of a Controlled Substance, a felony, in violation of California Health and Safety Code section 11378(a). Additional enhancements are alleged for Personal Discharge of a Firearm, in violation of California Penal Code section 12022.53(c). The OCDA further alleged that Rodriguez was previously convicted of serious and violent felonies, pursuant to California Penal Code sections 667(d)/(e)(1), 667(a)(1), and 667.5(b). On March 5, 2019, a jury convicted Rodriguez of all the charges.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

The below listed legal principles apply to a shooting by a police officer to determine if the shooting was unlawful and unjustified. The facts in this case show clearly that Detective Lemmon acted lawfully and justifiably. Nonetheless, the standard relating to unjustifiable shootings will be discussed in this letter.

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/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

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

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

LEGAL ANALYSIS

The issue is whether the conduct of Detective Lemmon on Feb. 17, 2016 was criminally culpable and without justification. As stated above, in order to charge Detective Lemmon 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 the police officer's conduct and he did not act in lawful self-defense. If Detective Lemmon'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, supra*, 171 Cal.App.4th at p. 528.)

Detective Lemmon was justified in believing Rodriguez posed a significant threat of death or serious physical injury to himself and others. Detective Lemmon was aware of a murder in the area the night before and escalating gang violence. When he saw Rodriguez, he noted a prison type tattoo and when they made eye contact, he saw that Rodriguez looked surprised. Detective Lemmon was in a clearly marked Gang Unit patrol vehicle and wearing a Santa Ana Police Department Gang Unit uniform. When Rodriguez saw Detective Lemmon, he dropped his bicycle and started to run away from Detective Lemmon down the apartment breezeway. Detective Lemmon wanted to contact Rodriguez to see if he was on probation or parole, and he identified himself as a police officer and ordered Rodriguez to stop several times.

As Detective Lemmon followed Rodriguez, Rodriguez did not stop, but instead told Detective Lemmon, "Come and get me." Detective Lemmon saw Rodriguez manipulating something in his waistband while he was running, and Detective Lemmon was afraid Rodriguez was armed with a gun. Clearly, this fear on the part of Detective Lemmon was reasonable based on all the circumstances. Rodriguez chose to enter a courtyard which was out of Detective Lemmon's sight and with only one entry point, placing Detective Lemmon at a disadvantage. Rodriguez waited in the courtyard, armed with two weapons, to ambush Detective Lemmon as Detective Lemmon approached the entryway.

As soon as Detective Lemmon entered the entryway, he saw Rodriguez in a "full presentation" position, with the muzzle of a gun pointed directly at Detective Lemmon's head. Rodriguez immediately fired a shot straight at Detective Lemmon's head, clearly and undoubtedly with the intent of killing Detective Lemmon. Detective Lemmon ducked to the side and felt pressure on his head. Correctly and reasonably believing Rodriguez was trying to kill him, Detective Lemmon fired three or four shots back at Rodriguez. After Rodriguez fell to the ground, he continued to reach towards his side, causing Detective Lemmon to fire several more shots. Clearly, and based on what we know now about the facts, Rodriguez was reaching for his second gun. Detective Lemmon stopped shooting as soon as Rodriguez complied with his orders and showed his hands.

After the shooting, officers located the loaded gun within reaching distance of Rodriguez. They also found an additional loaded firearm in Rodriguez's jacket, as well as narcotics and paraphernalia.

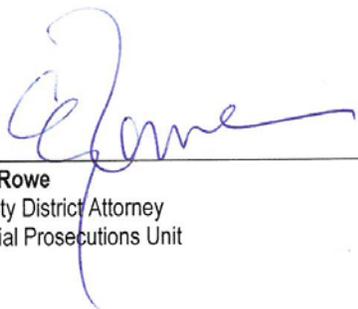
Detective Lemmon feared for his life during this incident. This was a reasonable and justifiable fear. After the incident, Detective Lemmon felt a burning sensation on the left side of his head and knew he had been hit by the bullet. The bullet embedded in the car roof, behind where Detective Lemmon had been standing. This bullet was tested and determined to have been fired from Rodriguez's gun. In addition to the deadly danger posed to Detective Lemmon, the incident occurred at 3:28 p.m. on a weekday afternoon, when numerous civilians were present in the neighborhood and in their homes.

In order for Detective Lemmon 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 Detective Lemmon did not act in reasonable and justifiable self-defense or defense of another when he shot at Rodriguez. As should be apparent from the above-described facts and analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Detective Lemmon to believe that his life and those of others were in danger. Therefore, Detective Lemmon was justified when he shot at Rodriguez. Detective Lemmon did not commit a crime, but instead protected himself and the community from an active shooter intending to kill him, and carried out his duties as a peace officer in a reasonable and justifiable manner. The only individual who committed crimes in this incident is Rodriguez.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence whatsoever of criminal culpability on the part of Detective Lemmon, and there is overwhelming evidence that his actions were reasonable and justified under the circumstances when he shot Rodriguez on Feb. 17, 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 IV