



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

October 1, 2019

Chief Dave Valentin
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on July 8, 2018
Fatal Incident involving Ngoc Dang Nguyen
District Attorney Investigations Case # SA 18-022
Santa Ana Police Department Case # 18-16520
Orange County Crime Laboratory Case # 18-49502
Orange County Coroner's Office Case # 10-03127-HO

Dear Chief Dave Valentin,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officers Connor Ahearn and Steven Lopez. Ngoc Dang Nguyen, age 28, died as a result of his injuries. The incident occurred in the City of Westminster on July 8, 2018.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 8, 2018, fatal officer-involved shooting of Ngoc Dang Nguyen. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the SAPD officers involved in the shooting. The format of this 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 July 9, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eight interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: SAPD and Westminster Police Department (WPD) reports, Body Worn Camera (BWC) video, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; Orange County Coroner Office reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Nguyen; criminal history records related to Nguyen including prior incident reports; and other relevant reports and materials.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

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 92832
(714) 773-4480

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

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

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

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

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and 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 SAPD officers or personnel, specifically Officer Ahearn and Officer Lopez. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

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

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced 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 several experienced prosecutors and their supervisors. The District Attorney reviews all officer involved shootings and custodial death letters. 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. Officers Ahearn and Lopez declined to provide a voluntary statement to the OCDA.

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>.

FACTUAL SUMMARY

On July 8, 2018 sometime between 1:00 p.m. and 8:40 p.m., a residential burglary occurred at a residence in Santa Ana. During the burglary, jewelry, camera equipment, documents, cellphones, clothing, bedding and other items were taken from the residence. That same night at approximately 9:56 p.m., SAPD Officers Ahearn and Lopez were assigned to the Patrol Division wearing department issued uniforms equipped with BWC. The officers were driving together in a

marked black and white vehicle; Officer Lopez was driving while Officer Ahearn was in the front passenger seat. The officers were patrolling the area of West 1st Street and Jackson Street, which is known Santa Anita gang territory.

While patrolling the area, officers noticed a red Toyota Camry driven by Nguyen driving out of the residential neighborhood where the residential burglary occurred and onto West 1st Street. The vehicle was driving in a reckless manner at speeds reaching up to 70 mph. Officers Ahearn and Lopez activated both the emergency lights and the siren of their vehicle in order to conduct a traffic stop. A pursuit of Nguyen was initiated after he failed to yield. As the officers were pursuing Nguyen, Officer Ahearn broadcasted on the police radio that Nguyen threw a handgun from his vehicle as he approached the intersection of Euclid Street and 1st Street. This handgun was never recovered. Soon after, Nguyen's vehicle collided with an unknown vehicle, however, Nguyen continued driving without stopping.

The pursuit continued to Bolsa Avenue in the City of Westminster where Nguyen began driving on the wrong side of the street into oncoming traffic. While driving west on the eastbound lanes of Bolsa Avenue, Nguyen collided head-on with a 2010 Toyota Camry occupied by two elderly passengers. As a result of the collision, the airbags in both vehicles were deployed and the vehicles were disabled. The elderly passengers of the 2010 Toyota Camry were both injured and later hospitalized.

Immediately following the collision, both Officer Ahearn and Officer Lopez exited the patrol vehicle with their handguns drawn. The officers yelled commands for Nguyen to remain inside his vehicle. Despite the officers' commands, Nguyen began to exit the driver's door, and then crawled across the front seats eventually exiting through the front passenger door.

As Nguyen exited his vehicle, both officers continued yelling commands, however, Nguyen failed to comply. The officers observed that Nguyen was holding what appeared to be a semi-automatic handgun in his right hand and began to run in a northwest direction across the center divider, which was filled with trees and bushes. As Nguyen was running into the covered area, approximately eighteen gunshots were recorded. Both Officer Ahearn and Officer Lopez fired their department issued firearms (Glock .40 caliber semi-automatic) multiple times, striking Nguyen who eventually fell face down on the pavement adjacent to the north curb of the center divider.

Once Nguyen was down, Officers Ahearn and Lopez continued to yell commands to Nguyen, however, Nguyen did not respond. Additional officers from SAPD and the Westminster Police Department arrived on scene, approached and placed handcuffs on Nguyen. While placing the handcuffs on Nguyen, officers located a loaded Smith and Wesson .45 caliber handgun under Nguyen's upper left torso. It should be noted that many of the facts, as described above, are captured on the officers' BWC videos, including the pursuit, Nguyen disobeying officer commands at the concluding of the pursuit, Nguyen exiting the vehicle while holding what appears to be a firearm, the use of deadly force against Nguyen, and the recovery of the firearm under Nguyen's torso.

The handgun recovered from under Nguyen was loaded in the ready with the safety off, with a cartridge in the chamber and two additional cartridges in the magazine. Officers also located a knife in a sheath on Nguyen's belt and jewelry from the previously mentioned Santa Ana residential burglary in his pockets.

After concluding Nguyen was unresponsive, SAPD officers initiated Cardio Pulmonary Resuscitation (CPR) until Orange County Fire Authority (OCFA) paramedics arrived. When OCFA paramedics arrived, they placed an Electrocardiogram (EKG) and defibrillator monitor on Nguyen and discovered he did not have a pulse or any other electrical heart activity. Additionally, OCFA paramedics inserted thoracotomy needles and an Intraosseous Infusion (IO) was placed in his left tibia. OCFA paramedics continued life-saving attempts and provided information to a base hospital doctor until Nguyen was pronounced dead at approximately 10:19 pm.

Officers then began searching the scene. Officers recovered one .45 caliber expended cartridge case from the westbound lanes of Bolsa Avenue near Nguyen's body. The cartridge was a Winchester .45 Auto, which was the same manufacturer and type as the cartridges in the handgun Nguyen was carrying. The remaining expended and unexpended cartridges recovered at the scene were Winchester .40 caliber.

SAPD Sergeant Oropeza arrived on scene. Officer Ahearn and Officer Lopez told him that they were involved in a shooting. Consequently, Sergeant Oropeza asked Officer Ahearn and Officer Lopez for a safety statement. Officer Ahearn stated he fired approximately ten shots in a westerly direction on Bolsa Avenue and no other suspects were outstanding. Officer Lopez stated he fired approximately three to four shots in a northerly direction.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One cartridge case, Winchester .45 Auto
- One bullet
- One Smith & Wesson M&P Shield .45 semi-automatic firearm
- One folding knife
- One set of car keys
- Seventeen cartridge cases, head stamped Winchester .40 S&W
- Two cartridge head stamped WIN .40 S&W
- Fifteen round magazine with one cartridge, head stamped Winchester .40 S&W
- One Glock, Model 22, .40 caliber, semi-automatic handgun, with a Streamlight TLR-1 flashlight attached to the weapon frame belonging to Officer Lopez
- One .40 caliber cartridge head stamped "Winchester 40mm" from the chamber of the handgun belonging to Officer Lopez
- Nine .40 caliber cartridges recovered from the 15 round capacity magazine of the weapon belonging to Officer Lopez: Seven head stamped "Winchester 40mm," and two head stamped "Win."
- Two fifteen round capacity magazines from Officer Lopez's magazine pouch, each contained fifteen .40 caliber cartridges
- One Glock, Model 22, .40 caliber, semi-automatic handgun with a flashlight attached to the weapon frame belonging to Officer Ahearn
- One .40 caliber cartridge head stamped "Win" from the chamber of the handgun belonging to Officer Ahearn
- Fourteen .40 caliber cartridges recovered from the 15 round capacity magazine of the weapon belonging to Officer Ahearn, all head-stamped "Winchester"
- One fifteen round capacity magazine from Officer Ahearn's double magazine pouch, which contained fifteen .40 caliber cartridges.

AUTOPSY

On July 11, 2018, Forensic Pathologist Dr. Aruna Singhania of the Orange County Coroner's Office conducted an autopsy on the body of Nguyen. Dr. Singhania concluded Nguyen had at least eighteen gunshot wound hole/defects of which two appeared to be through and through gunshot wounds. The wounds were primarily to Nguyen's lower back torso. Nguyen also had a single gunshot wound to his left upper torso, a single gunshot wound to the back of his right knee, two gunshot wounds to his left side torso, and a single gunshot wound to his right elbow, arm and torso. Dr. Singhania concluded the preliminary cause of death was multiple gunshot wounds of the torso, right leg, and right upper extremity. A total of thirteen projectiles were recovered during the autopsy, including eleven lead bullets with copper jackets and cores, two bullet jackets, and two bullet cores.

EVIDENCE ANALYSIS

Firearms Examinations

Officer Ahearn's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. Officer Ahearn's Glock pistol was determined to have fired twelve of the cartridge cases recovered from the scene.

Officer Lopez's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. Officer Lopez's Glock pistol was determined to have fired five of the cartridge cases recovered from the scene.

Nguyen's Smith & Wesson pistol was test fired at the Orange County Crime Lab and fired without malfunction. The Smith & Wesson pistol was determined to have fired the single .45 caliber cartridge case recovered from the scene.

Toxicological Examination

A sample of Nguyen's blood was collected at the Orange County Coroner Division Facility. An Orange County Crime Lab forensic scientist examined the blood sample for the presence of alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Acetaldehyde	Postmortem Blood	Detected
Ethanol	Postmortem Blood	0.078 ± 0.003 % (w/v)
Amphetamine	Postmortem Blood	0.135 ± 0.010 mg/L
Methamphetamine	Postmortem Blood	1.44 ± 0.11 mg/L
Cannabinol	Postmortem Blood	Detected
Carboxy-THC	Postmortem Blood	0.256 ± 0.031 mg/L
Hydroxy-THC	Postmortem Blood	0.089 ± 0.011 mg/L
THC	Postmortem Blood	0.0220 ± 0.0029 mg/L

NGUYEN'S PRIOR CRIMINAL HISTORY

Nguyen's criminal history was reviewed and considered. Nguyen had a California Criminal History that dates back to 2007. He had previously been arrested for the following charges:

- Sale of Marijuana/Hash.
- Possession of Controlled Substance for Sale.
- Possession of Controlled Substance Paraphernalia.

- Transportation of a Controlled Substance.
- Possession of a Loaded Firearm Not the Registered Owner.
- Grand Theft.
- Carry Loaded Firearm in a Public Place.
- Burglary.
- Possession of Burglary Tools.
- Possess/Sell Switch-Blade Knife.
- False Identification to Peace Officer.
- Evading a Peace Officer with Disregard to Safety.
- Driving Under the Influence of Alcohol/Drugs.
- Driving While License Suspended.
- Grand Theft of a Firearm.
- Felon in Possession of a Firearm and Ammo.
- Possession of Cocaine Base for Sale while Armed.
- Hit and Run with Injury or Death.
- Possession of a Controlled Substance.
- Vehicle Tampering.

Nguyen was on California Department of Corrections and Rehabilitation (CDCR) Parole at the time of this incident. On July 6, 2018, a warrant for Nguyen’s arrest had been issued for his failure to report to CDCR Parole as directed.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer’s actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is “charged with a felony” and where the officer has “reasonable cause” to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 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.)

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

This limitation was clarified subsequently by the United States Supreme Court in the 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 certainly applicable to the circumstances surrounding the interactions of SAPD Officers Ahearn and Lopez with Nguyen.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Officers Ahearn and Lopez on July 8, 2018 was criminal and without justification. As stated above, in order to charge Officers Ahearn and Lopez with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers’ conduct. If the actions of Officers Ahearn and Lopez were reasonably justifiable and necessary in any of the ways listed in PC 196, 197 and 835a, as limited by the United States Supreme Court, then criminal charges will not be warranted.

As the Court of Appeal held in a somewhat recent case, it is well settled that “[u]nlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.’ Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.) Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Court of Appeal has 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.)

The totality of the available evidence does not allow us to prove beyond a reasonable doubt that Officers Ahearn and Lopez were not justified in believing that Nguyen posed a significant threat of death or serious physical injury to themselves and others. This conclusion is based on the totality of the circumstances, but primarily on the conduct of Nguyen in the moments leading up to the shooting. Moments prior to the shooting, Officers Ahearn and Lopez observed Nguyen with a firearm in his right hand. Officers Ahearn and Lopez yelled multiple commands to Nguyen, however, Nguyen failed to respond each time and instead continued running with his firearm into an area covered by bushes and trees.

The OCDA will not be able to disprove that Officers Ahearn and Lopez did not rightfully believe that Nguyen was armed and a danger to the public. While in pursuit of Nguyen, the officers witnessed multiple attempts by Nguyen to evade the officers each time causing a grave risk to public safety. Officers Ahearn and Lopez observed Nguyen throw a firearm from his moving vehicle, run multiple red lights, drive the wrong direction into incoming traffic, and crash into two separate vehicles. Further, after Nguyen's vehicle came to a complete halt during the second collision, Nguyen disregarded the officers' commands and continued to evade by exiting his vehicle with a second firearm. After Nguyen exited his vehicle, the officers observed him running with a firearm in his hand toward an area covered with trees and bushes. This area would have made it difficult for the officers to see Nguyen and would have also provided Nguyen with a place of concealment giving him a tactical advantage over the officers if he had decided to use the gun he was holding against them. The totality of the evidence supports the conclusion that Officers Ahearn and Lopez rightfully feared for their lives and for the safety of the public, and that they reasonably believed it was necessary for them to discharge their weapons to protect their lives.

Certainly, it would have been preferable if the OCDA were able to obtain voluntary statements from Officers Ahearn and Lopez regarding their respective state of mind at the time of the shooting. However, Officers Ahearn and Lopez's decisions to decline to give the OCDA a voluntary statement may not legally and ethically be used to draw negative evidentiary inferences regarding their conduct and state of mind.

As previously stated, in order for Officers Ahearn and Lopez to be justly and lawfully charged and convicted with a crime for their conduct in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officers Ahearn and Lopez did not act in reasonable and justifiable self-defense or defense of another when they used deadly force against Nguyen. Based on the circumstances of this event, the prosecution would be unable to carry this burden.


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 evidence including BWC video, reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal conclusion that there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officers Ahearn and Lopez committed a crime when they used deadly force against Nguyen on July 8, 2018.

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



AMY SWANSON
DEPUTY DISTRICT ATTORNEY
SPECIAL OPERATIONS



READ AND APPROVED BY **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II