



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

December 23, 2019

Chief Tom DaRé
Garden Grove Police Department
11301 Acacia Parkway
Garden Grove, CA 92840

Re: Officer-Involved Shooting on September 18, 2018
Fatal Incident involving Disanzo
District Attorney Investigations Case # SA 18-032
Garden Grove Police Department Case # 18-054703
Orange County Crime Laboratory Case # FR 18-53388

Dear Chief DaRé,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed fatal shooting incident involving on-duty Garden Grove Police Department (GGPD) Officer Bobby Anderson. Steve Disanzo, age 46, died as a result of his injuries. The incident occurred in the City of Garden Grove on September 18, 2018.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the September 18, 2018, fatal, officer-involved shooting of Disanzo. 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 GGPD 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 September 18, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 20 interviews were conducted, and 22 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: GGPD reports, audio dispatch and radio traffic recordings; in-car camera video; Orange County Crime Laboratory (OCCL) reports, including toxicology, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Disanzo; criminal history records related to Disanzo; and other relevant reports and materials including video and 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 GGPD officers or personnel, specifically Officer Anderson. 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. Officer Anderson gave a voluntary statement to OCDA Investigators on September 18, 2018.

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 Tuesday, September 18, 2018, at approximately 2:56 p.m., GGPD Officer Anderson was dispatched to the Ralph's supermarket parking lot located at 12051 Euclid Street, in Garden Grove, in reference to a domestic dispute. Dispatch informed reporting officers that a male and

female were in a gray or silver sedan in the supermarket parking lot. Dispatch further advised that the calling party stated that the female was screaming “[s]top it. I cannot breathe”.

Officers later identified the male as Disanzo and the female as Jane Doe 1. Disanzo and Jane Doe 1 (Disanzo’s ex-girlfriend) had met up on the day of the incident after she had received a telephone call from Disanzo. Jane Doe 1 and Disanzo had known each other since 2013 and were in a dating relationship for a year between 2015 and 2016. In 2016, Jane Doe 1 ended their relationship, but stated that Disanzo continued to consider her his girlfriend.

On the day of the incident, between 2:30 p.m. and 3:00 p.m., Jane Doe 1 received a telephone call from Disanzo who had recently been released from jail. Jane Doe 1 had not spoken to Disanzo for a few months and had previously blocked Disanzo’s communications. During that phone conversation, Jane Doe 1 sensed something was wrong with Disanzo and “against [her] better judgment,” decided to meet with him. Shortly thereafter, Jane Doe 1 picked Disanzo up in her car and drove to the Ralph’s supermarket.

As Jane Doe 1 drove, she noticed Disanzo was acting weird. She knew Disanzo was a frequent user of marijuana, heroin, and methamphetamine and described Disanzo’s behavior as overly calm and constantly trying to touch her. Disanzo repeatedly told her, “We have been here before.”

At approximately 2:45 p.m., Jane Doe 1 and Disanzo parked in the Ralph’s parking lot, with Jane Doe 1 in the driver’s seat and Disanzo in the front passenger seat. As Jane Doe 1 went to exit the driver’s door, Disanzo grabbed her around the waist and pulled her back into the car, across the driver’s seat and center console, and onto the passenger seat in front of him. Jane Doe 1 struggled to escape and pleaded with him to let her go; Disanzo continued to restrain her and told Jane Doe 1 to “wait a second” and “be quiet for a second.” Jane Doe 1 bit Disanzo on the hand and pulled on the steering wheel in an attempt to break free. At one point, Jane Doe 1 was able to open the passenger door, but was not able to break free. Jane Doe 1 begged Disanzo to let her go; she told him, that she could not breathe but Disanzo continued to hold her in the car. At no point did Disanzo loosen his grip on Jane Doe 1.

Jane Doe 1 saw people walking by the car as she struggled. She screamed asking for help, but no one came to her aid. At one point, Jane Doe 1 saw a woman talking on her cell phone and hoped that the woman was calling the police. Jane Doe 1 told Disanzo the woman was calling the police, Disanzo replied, “So.”

At this time, John Doe 1 saw Disanzo and Jane Doe 1 inside the car; it appeared to John Doe 1 that Disanzo was holding Jane Doe 1 in a bear hug. John Doe 1 could hear Jane Doe 1 yelling, “let me go,” and heard Disanzo saying, “you’re not going to get away, we are going to work this out.” John Doe 1 believed Jane Doe 1 was being held against her will. Jane Doe 2 then walked by Jane Doe 1’s car. Jane Doe 2 saw Disanzo and Jane Doe 1 inside the car and could hear Jane Doe 1 screaming, “please stop, I can’t breathe.” Jane Doe 2 continued into the supermarket and called 9-1-1 and reported her observations.

At approximately 3:03 p.m., Officer Anderson arrived in the Ralph’s parking lot and parked his marked black and white GGPd police unit in the parking lane just west of Jane Doe 1’s car. Officer Anderson then approached the open driver’s door of Jane Doe 1’s car and could see Jane Doe 1 and Disanzo inside the vehicle struggling. Officer Anderson had his service weapon drawn and was pointing it in the direction of the open car door. Officer Anderson saw Jane Doe 1 lying on her back across the front seats of the car, kicking her feet up and down. Disanzo was seated in the

right front passenger seat of the car and had his right arm across Jane Doe 1's neck in a chokehold. Officer Anderson stated he believed Disanzo was choking Jane Doe 1.

Officer Anderson heard Jane Doe 1 yelling "he's crazy", "he's going to kill me", and "I can't breathe." Officer Anderson ordered Disanzo to release Jane Doe 1 and to show him his hands multiple times. Officer Anderson heard Disanzo mumble something, but could not understand what he said. Disanzo did not comply with Officer Anderson's commands and continued to choke Jane Doe 1.

John Doe 1 stated he saw the police officer arrive and approach the driver's side of Jane Doe 1's car. He heard the officer say "let her go, release her" and "get your hands off her." Officer Anderson described Disanzo as looking very tense and grinding his teeth. Officer Anderson recognized this behavior as being consistent with individuals who were under the influence of a controlled substance. Officer Anderson heard a "gurgling" sound coming from Jane Doe 1 and believed it was due to Disanzo choking her.

At approximately 3:04 p.m., almost a minute after arriving on scene, Officer Anderson moved to the passenger side of Jane Doe 1's car and opened the passenger door. Officer Anderson again ordered Disanzo to release Jane Doe 1 and to show him his hands. Disanzo failed to comply with the orders given by Officer Anderson.

Officer Anderson continued to hear a gurgling sound coming from Jane Doe 1 and described her screams as becoming fainter. Officer Anderson was "in fear that [Disanzo] would kill her based off of him you know chokin' her out." Officer Anderson wanted to stop Disanzo from harming or killing Jane Doe 1 and felt lethal force was necessary. Officer Anderson fired two shots into the area of Disanzo's right rib cage. After Officer Anderson fired the shots, Disanzo went limp and Jane Doe 1 was able to break free and exit the car through the open driver's door. The entire incident occurred within a 5-minute time frame.

Officer Anderson immediately notified GGPD dispatch of the officer involved shooting and requested medics. Officer Anderson removed Disanzo from the car and began to render first aid and CPR. Shortly thereafter, Garden Grove Fire Department paramedics arrived on scene and took over care for Disanzo until he was transported to the UCI Medical Center where he subsequently died.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Two expanded projectiles
- Three possible gunpowder particles
- Hand swabs
- Muscle Standard
- Overlay of gunshot wounds in right chest
- Bags from hands

AUTOPSY

On September 18, 2018, Forensic Pathologist Nicole Ellis of the Orange County Sheriff – Coroner Forensic Science Center conducted an autopsy on the body of Disanzo. Forensic Pathologist Ellis indicated Disanzo had sustained two overlapping gunshot wounds to his right upper chest. Forensic Pathologist Ellis concluded the cause of death was multiple gunshot wounds.

EVIDENCE ANALYSIS

Firearms and Projectile Examination

Officer Anderson's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. The two fired cartridges were determined to have been fired from Officer Anderson's Glock. The presence of fabric distribution at the hole in Disanzo's shirt and the presence of abrasions surrounding the wound indicate the muzzle of the Glock pistol was likely in contact with or at near contact (less than one (1) inch) distance when the Glock pistol was fired.

Toxicological Examination

A sample of Disanzo's blood was collected at the conclusion of the autopsy. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.018 + 0.003% (W/V)
Amphetamine	Postmortem Blood	0.0470 + 0.0035 mg/L
Methamphetamine	Postmortem Blood	0.661 + 0.047 mg/L
THC	Postmortem Blood	0.142 + 0.019 mg/L
Hydroxy-THC	Postmortem Blood	0.0211 + 0.0024 mg/L
Carboxy-THC	Postmortem Blood	0.122 + 0.013 mg/L
Cannabinol	Postmortem Blood	0.0212 + 0.0023 mg/L
Cannabidiol	Postmortem Blood	Detected

DISANZO'S PRIOR CRIMINAL HISTORY

Disanzo's criminal history was reviewed and considered. Disanzo had a California Criminal History that dates back to 1994. He has previously been arrested for the following charges:

- Burglary
- Forgery
- Vandalism
- Petty theft
- Possession of controlled substance
- Possession of paraphernalia
- Probation violation
- Under the influence of controlled substance
- False ID to Police
- Trespassing

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a 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 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/she 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/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 GGPD Officer Anderson with Disanzo.

LEGAL ANALYSIS

The facts in this case are determined by considering Officer Anderson's statements to the OCDA investigators and the video footage, which was supplemented by other relevant material and witnesses present at the incident, including the statement of Jane Doe 1 and the other civilian witnesses.

The issue in this case is whether the conduct of Officer Anderson on September 18, 2018 was criminally culpable and without justification. As stated above, in order to charge Officer Anderson with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge Officer Anderson with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the actions that day of Officer Anderson were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a 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 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.)

Based on the totality of all the available evidence, it is our conclusion that Officer Anderson was justified in believing that Disanzo posed a significant threat of death or serious physical injury to Jane Doe 1. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Disanzo in the moments leading up to the shooting.

Right before the shooting, Officer Anderson feared for the life of Jane Doe 1. Officer Anderson continued to hear a gurgling noise coming from Jane Doe 1, a noise he recognized as one that an individual makes when they cannot breathe. Officer Anderson was aware that the chokehold being applied by Disanzo had been obstructing Jane Doe 1's breathing for several minutes. Officer Anderson wanted to stop Disanzo from hurting or killing Jane Doe 1 and felt lethal force was necessary. Officer Anderson described Disanzo as looking very tense and grinding his teeth. Officer Anderson recognized this behavior as being consistent with individuals who were under the influence of a controlled substance. Disanzo's consistent refusal to comply with Officer Anderson's commands caused Officer Anderson to be fearful for the life of Jane Doe 1. As Jane Doe 1's screams became fainter, he knew he had to take measures in order to ensure her safety and save her life.

It should also be noted that, in order for Officer Anderson 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 Anderson did not act in reasonable and justifiable self-defense or defense of another when he shot at Disanzo. 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 that it was reasonable for Officer Anderson to believe that the life of Jane Doe 1 was in imminent danger.

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 of criminal culpability on the part of Officer Anderson, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Disanzo on September 18, 2018.

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



HARRIS SIDDIQ
DEPUTY DISTRICT ATTORNEY
GANGS UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
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