



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

August 13, 2020

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

Re: Officer-Involved Shooting on April 4, 2019  
Fatal Incident involving Daniel Ramirez III  
District Attorney Investigations Case S.A. 19-007  
Anaheim Police Department Case #2019-46666  
Orange County Crime Laboratory Case #19-44377

Dear Chief Cisneros,

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 Anaheim Police Department Officer Nick Bennallack. Daniel Ramirez III, age 30, died as a result of his injuries. The incident occurred in the City of Anaheim on April 4, 2019.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the April 4, 2019, fatal officer-involved shooting of Ramirez. 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 Anaheim Police Department 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 April 4, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, nineteen (19) interviews were conducted, and five (5) additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Irvine and Anaheim PD reports; body worn camera recordings, 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; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ramirez; criminal history records related to Ramirez including prior incident reports; 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 Anaheim Police Department officers or personnel, specifically Officer Bennallack. 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, 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 personally reviews and approves 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 Bennallack gave a voluntary statement to OCDA Investigators on April 15, 2019.

### **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 Thursday, April 4, 2019, Irvine PD detectives prepared to serve a search warrant at 547 North Harcourt Street, in the city of Anaheim. The search warrant was related to a felony Grand Theft from a Vehicle reported to IPD on March 2, 2019. At approximately 8:55 a.m., officers approached the residence. Unbeknownst to IPD officers, individuals inside the garage had seen officers

approaching the residence via video surveillance cameras. As a result, two suspects, including Ramirez, climbed into the garage attic and hid from law enforcement before officers entered the garage. Irvine PD officers removed and detained, without incident, several individuals from the main residence and five additional individuals from inside the garage.

After the individuals were removed from the garage, officers began an initial search of the garage. IPD Detective Brewer located a loaded Ruger .22 caliber rifle laying in plain sight on a couch. The rifle was equipped with a "banana" clip loaded with ammunition and one round chambered, which were removed from the rifle. Other ammunition was observed in the garage. As the search continued, officers heard sounds of movement coming from the garage attic. The attic access panel was slightly ajar, but officers could not see into the attic and exited the garage. Due to this immediate and unknown threat, the search was abandoned and only the rifle was removed when officers exited the garage. The ammunition clip and loose ammunition were not removed. The garage was then secured from outside until the threat from the attic could be assessed.

After identifying all of the detained subjects from the house and garage, IPD detectives determined Ramirez was still outstanding. Based on the sounds of movement coming from the garage attic, officers believed Ramirez might be hiding in the attic. A short time later, officers gave commands for whomever was in the attic to come out or a dog would be sent in and they would be bitten. There was no reply from the attic. The K-9 dog was eventually sent in to the main garage area to conduct a search.

APD officers Bonczkiewicz and Leist were present to assist Irvine PD with the service of the warrant. Based on their training and experience, the officers believed they were now facing a possible armed barricaded subject. They came to this conclusion based on the following facts: Ramirez was last seen in the garage earlier that morning, a loaded rifle was found in the garage, and there were sounds of movement coming from the garage attic. Based on this information, Officer Leist decided to initiate a Rapid Response SWAT activation to request a small number of additional SWAT resources. Anaheim SWAT officers arrived shortly thereafter. All SWAT officers wore standard green SWAT uniforms, which included green ballistic tactical vests with APD shoulder patches and the word "POLICE" on the front.

In addition to knowing a loaded rifle and ammunition were found in the garage, the garage interior was poorly lit and the only entry was a pedestrian doorway on the east side of the garage. The garage had been converted into a living area and was cluttered and filled with furniture and other items including a room divider that blocked the view of most of the garage. As officers positioned themselves at the entrance of the door, it was difficult to see into the garage and the attic. The officers were backlit by the sun and an air conditioning unit was attached to the outside of the garage pedestrian door that opened inward.

A tactical plan was formed in an effort to safely resolve the incident. SWAT officers donned gas masks anticipating the use of concentrated pepper balls, referred to as "10x." Earlier, officers used a pole found on the property to pull the partition down and then later remove the panel covering the access hatch to the attic to provide better visibility into the garage and attic. Almost immediately after removing the panel from the attic entryway, several metal light fixtures were thrown down through the attic opening. Officer Cossin announced, "Anaheim Police, come out with your hands up." A male voice, believed to be and later confirmed as Ramirez, replied, "fu\*\* no . . . don't send that dog up here."

Consistent with their tactical plan, at approximately 10:59 a.m. Officer Bennalack announced “less lethal,” and began to deploy “10x” into the attic. Officer Bennalack fired approximately twelve (12) rounds of pepper ball. After approximately twenty (20) seconds, Officer Bennalack fired an additional nine (9) rounds of pepper ball into the attic. A male voice yelled out several times, “I’ll shoot back.”

That statement, “I’ll shoot back” caused the officers, including Officer Bennalack, to believe the subject in the attic was armed. They believed they were at a tactical disadvantage, due to limited visibility into the garage and almost no visibility of the attic, the subject’s elevated position, and likely knowledge of their general positioning. In addition, they believed that if the subject began firing down from the attic, the shots would easily penetrate the ceiling and walls of the garage, placing them at risk of being shot or killed. Officers could hear coughing in the attic and Officer McGlade yelled commands to the subject, encouraging him to surrender. After no reply from the subject, Officer Bennalack fired eight (8) more rounds of pepper ball into the attic. A male then announced he was coming out. Officer McGlade gave specific commands for the suspect to follow. In compliance with those commands, a subject appeared at the opening. Officers were surprised as the subject appeared from the opposite end of the attic that the voice seemed to come from and from the direction of where objects were thrown. In compliance with continuing commands, the subject lowered himself from the attic and immediately lay on his stomach and crawled out of the garage as directed. The individual was secured and handcuffed without incident and without the use of any force, and was initially presumed to be Ramirez.

After officers called the subject “Daniel,” the subject said he was not “Daniel” and did not know who “Daniel” was. When asked, the subject said no one else was in the attic. Officers were then aware that this detained subject was not Ramirez. As some officers escorted the suspect from the garage area, Officer Bennalack, who was previously discharging the 10x, took cover at the doorway with his rifle. SWAT officers, including Officer Bennalack, maintaining cover at the garage doorway heard another object thrown from the attic and officers realized there was another subject still in the attic. Ramirez yelled, “get the fu\*\* out of my garage . . . get the fu\*\* out” and “I’m going to shoot.” Ramirez then said he would come down. Officers instructed Ramirez to show his hands first, and he replied, “don’t shoot me with that pepper ball bullshit.” Officer Bonczkiewicz instructed him to place his hands over the opening. Ramirez first showed one hand, then the other.

As Officer Bonczkiewicz continued to give instructions, Ramirez dangled his legs down from the attic. Officers were concerned because there were times when they could not see both of Ramirez’s hands and they were concerned Ramirez may retrieve a weapon. Ramirez continued to tell officers not to shoot him with pepper balls. Ramirez continued to delay lowering himself from the attic. Ramirez asked if he could smoke a cigarette before being taken to jail. He stated there were cigarettes on the bed and asked if the officer could get them for him. Officer Bonczkiewicz declined to get the cigarettes and gave commands to come down. Officer Bonczkiewicz told Ramirez he could smoke a cigarette before going to jail, but he just needed to come down and to follow his instructions. Ramirez then started to lower himself feet first from the attic onto a chair. As he lowered himself, Ramirez remained facing the officers so they were not able to see his back. In addition, Ramirez wore a baggy tee shirt and a large flannel shirt over it. Before and while lowering himself, Ramirez said several times “Don’t shoot me,” and Officer Bonczkiewicz said they would not shoot if he complied with his instructions. After Ramirez stepped down from the chair onto the garage floor, Officer Bonczkiewicz immediately told Ramirez to get on his stomach. However, Ramirez did not comply and continued to face officers with hands raised at about chest height. Officer Bonczkiewicz continued to instruct Ramirez to get on his stomach, but Ramirez refused to comply.

Officers reported that Ramirez pointed his right hand towards them and turned to run further back into the garage. Officer Bonczkiewicz, armed with a less than lethal weapon, fired one (1) sponge projectile that struck Ramirez on his right lower back causing Ramirez to scream. Officer Bonczkiewicz then yelled "Less lethal." Officer Bonczkiewicz paused for a moment, then saw Ramirez grab at his waist. Officer Bonczkiewicz did not believe Ramirez was surrendering, so he fired a second sponge projectile at his legs. Almost immediately after the second foam projectile and approximately five seconds after the initial sponge projectile was fired, Officer Bennallack, who also saw Ramirez reach for his waist and observed a bulge in Ramirez's waistband area above his buttocks, believed Ramirez was concealing a gun. Officer Bennallack yelled, "He's got a gun," and then fired five (5) rounds from his rifle, striking Ramirez. Officer Bennallack then yelled "Gun, gun." Officer Bennallack was pulled back from the door, as other officers maintained cover. Officers then entered the garage to secure the area and render aid to Ramirez. Officer McGlade checked for a pulse on Ramirez, and found none. SWAT first responders were called in as soon as the area was secure.

Although no weapon was found on Ramirez, a subsequent search revealed two additional loaded firearms in the garage. Officers found an additional loaded rifle found near the headboard of the bed, and a loaded revolver located just under the mattress at the foot of the bed toward the interior of the garage. The revolver handle was taped and facing outward in a position where it could quickly be recovered and immediately used. The loaded rifle recovered earlier had been located on the couch near and to the left of where Ramirez lowered himself from the attic. Several other weapons and tools, loose ammunition and areas of concealment or cover were found in the garage during the search. All of these weapons and items were found in the back area of the garage in the general direction Ramirez had turned. Ramirez lived in this converted garage and therefore reasonably knew where each weapon was located.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- One (1) expended cartridge case, headstamped "WMA15"
- One (1) expended cartridge case, headstamped "WMA15"
- One (1) expended cartridge case, headstamped "WMA15"
- One (1) 40 mm, less-than lethal sponge projectile
- One (1) expended bullet
- One (1) expended cartridge case, headstamped "WMA15"
- One (1) expended cartridge case, headstamped "WMA15"
- One (1) 40 mm, less-than lethal sponge projectile
- One (1) .45 cal. Dakota Colt Revolver loaded w/ six (6) .45 auto cartridges
- Two (2) expended bullets

### **AUTOPSY**

On April 5, 2019, Forensic Pathologist Dr. Nicole Ellis of the Orange County Coroner Division conducted an autopsy on the body of Ramirez. The autopsy identified what appeared to be six (6) gunshot entry wounds, with four exit wounds. The cause of death was determined to be multiple gunshot wounds.

### **EVIDENCE ANALYSIS**

#### **Firearms Examination**

Officer Bennallack's LWRC International Model M6IC rifle was test fired in semiautomatic and full automatic mode at the Orange County Crime Lab and fired without malfunction. The LWRC rifle was determined to have fired the five (5) cartridge cases from the scene.

### **Toxicological Examination**

A sample of Ramirez's blood was collected for testing. 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:

<b>DRUG</b>	<b>MATRIX</b>	<b>RESULTS &amp; INTERPRETATIONS</b>
Amphetamine	Postmortem Blood	0.110 ± 0.009 mg/L
Methamphetamine	Postmortem Blood	0.727 ± 0.052 mg/L

### **RAMIREZ'S PRIOR CRIMINAL HISTORY**

Ramirez's criminal history was reviewed and considered. Ramirez had a California Criminal History that dates back to 2006. He has previously been arrested for the following charges:

- Vandalism
- Assault with a Deadly Weapon - not a firearm
- Burglary
- Probation Violation
- Fight/Challenge Fight in Public Place
- Driving Under the Influence
- Obstruct Public Officer
- Theft of Personal Property
- Petty Theft

### **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.

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.) 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.

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.)

Recent amendments to Penal Code Sections 196 and 835a allow an officer to use deadly force only when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury. This also applies to apprehension of a fleeing person whom the officer reasonably believes will cause death or serious bodily injury to another unless immediately apprehended. Penal Code Section 835a requires that, prior to the use of deadly force, the officer shall make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently, and use other available resources and techniques if reasonably safe and feasible to do so. When officers may be forced to make quick judgments about using force, the decision is evaluated based upon the perspective of a reasonable officer in that same situation, taking into account all circumstances known to the officer at the time.

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/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 applicable to the circumstances surrounding the interactions of Anaheim Police Officer Bennallack with Ramirez.

## **LEGAL ANALYSIS**

The facts in this case are determined by considering Officer Bennallack's statements to the OCDA investigators, which was supplemented by other relevant material such as body worn cameras, and witnesses present at the incident.

The issue in this case is whether the conduct of Officer Bennallack on April 4, 2019, is criminally culpable and without legal justification. As stated above, in order to charge Officer Bennallack with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification or necessity existed for the officer's conduct. Therefore, in order to lawfully charge Officer Bennallack with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions that day of Officer Bennallack were legally justifiable and necessary as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the police officer is in the exercise of the privilege of protecting the public peace and order and he 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.) Additional analysis, pursuant to Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Based on the totality of all the available evidence and the circumstances, it is apparent that Officer Bennallack was justified in believing that Ramirez posed an imminent threat of death or serious physical injury to himself and the other officers. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Ramirez leading up to the shooting. Officer Bennallack knew from the on scene briefing that a subject was barricaded in the attic. He also knew that one firearm had been recovered from the garage before officers abandoned the search after hearing noises from the attic. Officers had already detained several subjects in the house and the garage without incident, including the subject who had hidden in the attic with Ramirez. Officers also used commands to get Ramirez to come out of the attic, and then sent a K-9 into the

garage in an attempt to get Ramirez to come out. SWAT officers then used additional commands and pepper balls to get Ramirez to come out of the attic.

Ramirez was clearly aware that the police officers had arrived at the residence and that was the reason he hid in the attic. In addition, announcements were made several times, the uniforms were clearly marked, and Ramirez himself acknowledged that he was going to jail when he came down. Ramirez stated multiple times while in the attic that he would shoot back at the officers. Throughout this incident, Ramirez refused to comply with officers' commands. When officers first removed the hatch covering the attic, Ramirez threw several items from the attic in the direction of the officers. Several times, Ramirez threatened to shoot at the officers. After the first subject from the attic was detained, Ramirez again threw items through the attic opening toward the officers. Throughout this incident, Ramirez continued to make statements to not send the dog into the attic, not shoot him with pepper balls, requesting to smoke before going to jail, and not to shoot him, all of which may have been an effort to delay officers. Ramirez also asked Officer Bonczkiewicz to get Ramirez's cigarettes from the bed that would have required the officer to pass under where Ramirez was perched. This may have been merely to smoke a cigarette before going to jail, but also could have been an attempt to try to attack the officer, take a hostage, get a weapon from the officer, or prevent other officers from shooting if an officer was behind him when he dropped from the attic.

Ramirez had been hiding in the attic and not complying with officers' commands for approximately two (2) hours. After finally coming down from the attic, Ramirez refused to comply with orders to lay down on his stomach. Instead, he pointed at the officers and turned to run further into the garage, where there was no route of escape. Ramirez appeared to be heading toward an area of cover, possibly already armed or to arm himself. Based on all of the circumstances, the specific threats and actions of Ramirez indicated an intent to attack, and cause serious injury or death.

The officers involved reported they were fearful for their lives, for several reasons. Guns were found in the garage prior to discovering Ramirez and another subject hiding in the attic, and they believed Ramirez was barricaded and armed. Ramirez was very aggressive throwing items from the attic toward the officers and yelling threats at the officers, and was defiant. The specificity of the threat by Ramirez to shoot back at officers reaffirmed their fears. Officer Bonczkiewicz felt they were in a dangerous position, as they had poor cover, the subject had an elevated position, and likely knew where the officers were located. Officers could not see into the attic because of poor lighting.

Officer Bonczkiewicz was also concerned because Ramirez's threat to shoot was quickly followed up with agreement to come down. Officer Bonczkiewicz believed this might have been a trick. Officer Bonczkiewicz also noted that they could only see one hand at a time when Ramirez showed them his hand at the attic opening. Ramirez sat in the attic opening dangling his feet delaying the officers. When Ramirez finally lowered himself, he remained facing the officers while he lowered himself, preventing the officers from seeing his entire body, specifically his back. Officer Bennallack, who was located on the left side of the doorway, stated his focus was on Ramirez's hands and face at this time. After coming out of the attic and standing in the garage, officers reported that Ramirez stared at them angrily, with his jaw clenched. As he turned to run further into the garage, he pointed his right hand at the officers. Officer Bennallack also indicated that there was no way of escape where Ramirez turned toward, and this furthered his belief that Ramirez intended to barricade himself in the garage and harm the officers.

Officer Bonczkiewicz first fired his less-than lethal weapon, but did not gain full compliance so after a few seconds he fired a second round. At this point, Officer Bennallack saw Ramirez reach with his right hand toward his waist and saw a bulge in the back right side of his waistband. The waistband is a common place for suspects to hide a firearm. Officer Bennallack believed Ramirez was armed or was going to arm himself. This was not an unreasonable conclusion on the part of Officer Bennallack. Based on these actions, Officer Bennallack believed that he and his fellow officers were in imminent danger of death or serious injury, and yelled, "He's got a gun," and then fired his rifle five (5) times. Officer Bennallack indicated that he felt that Ramirez presented an imminent threat of death or serious harm to him and the other officers, and that lethal force was the only possible response. Based on all the facts, this conclusion was not unreasonable on the part of Officer Bennallack.

Officer Phillips who had cover from the right side of the doorway, stated that once Ramirez was first standing on the garage floor he saw Ramirez twist to his right toward the bed and reach with his left hand toward his waist, but did not see a bulge on the left side of Ramirez's waistband. Officer Phillips did not believe Ramirez had time to grab a gun at this time. Then when Officer Bonczkiewicz fired his less lethal rounds, Officer Phillips stated Ramirez then turned and dove toward the couch. Officer Phillips thought that Bennallack was a "little fast," but also stated he probably gave Ramirez too much time and could have been shot had Ramirez been armed. Officer Phillips had only seen Ramirez's left hand and stated he could not see either hand and was waiting to see both hands again.

The Body Worn Cameras (BWC) footage shows Ramirez's feet first turn to the right and then he moves toward the northwestern interior of the garage. Each officer has a different position in the doorway with Officer Bennallack on the left side of the doorway, Phillips on the right side and Bonczkiewicz in between. Other officers were positioned behind and around these officers. From his position, Officer Bennallack could see Ramirez's right hand and waist area while Officer Phillips said he lost sight of both hands once Ramirez started to move. Although BWC footage are obstructed at times by officers' weapons or bodies, the BWC footage does show general consistency with the officers' statements. Officer Phillips did not have a BWC since he was off duty when he was called to the scene, and did not have time to retrieve his camera from the station.

During a subsequent search of the garage, several additional weapons were recovered including two loaded firearms. In addition, personal items belonging to Ramirez were found, confirming Ramirez was living in the garage and reasonably possessed several firearms and weapons in the garage. Ramirez would have had a significant advantage over officers had he been able to retrieve one of these weapons and take cover in the garage.

In order for Officer Bennallack 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 Bennallack did not act in reasonable and justifiable self-defense or defense of another when he shot at Ramirez. 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 Bennallack to believe that his life and the lives of others were in danger. Therefore, there is a lack of evidence to prove beyond a reasonable doubt that Officer Bennallack was not legally justified when he shot at Ramirez.

**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 insufficient evidence to prove criminal culpability beyond a reasonable doubt on the part of Officer Bennallack. Furthermore, there is substantial evidence that Officer Bennallack's actions were reasonable, necessary, and justified under the circumstances when he shot Ramirez on April 4, 2019.

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



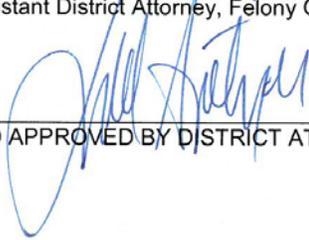
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**ANDREW BUGMAN**  
DEPUTY DISTRICT ATTORNEY  
GANGS UNIT



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



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READ AND APPROVED BY DISTRICT ATTORNEY **TODD SPITZER**