



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

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TODD SPITZER

August 12, 2020

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

Chief Matthew Sheppard  
Fountain Valley Police Department  
102 Slater Avenue  
Fountain Valley, CA 92708

Re: Officer-Involved Shooting on January 20, 2020  
Fatal Incident involving Miguel Segura Mercado  
District Attorney Investigations Case # S.A. 20-002  
Santa Ana Police Department Case # 20-01709  
Fountain Valley Police Department Case # 20-02516  
Orange County Crime Laboratory Case FR # 20-40926  
Orange County Coroner's Office Case # 20-00372-MM

Dear Chief Valentin and Chief Sheppard,

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 Gavin Roelofs and Josh Espadas. Miguel Segura Mercado, age 31, died as a result of his injuries. The incident occurred in the City of Fountain Valley on January 20, 2020.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the January 20, 2020, fatal officer-involved shooting of Mercado. 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 January 21, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 18 interviews were conducted, 13 of which were supplemental canvass interviews. OCDASAU Investigators also obtained and

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reviewed the following: SAPD reports, Fountain Valley Police Department (FVPD) reports, Orange County Fire Authority (OCFA) reports; Orange County Coroner's Office (OCCO) reports; Body Worn Camera (BWC) 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 Mercado; SAPD reports regarding a current investigation regarding Mercado; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass and relevant 911 calls made by neighbors of Mercado.

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, and if the use of force was consistent with the law, on the part of Santa Ana Police Department officers or personnel, specifically Officers Gavin Roelofs and/or Josh Espadas. 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. Officers Roelofs and Espadas declined to give voluntary statements to OCDA Investigators.

### **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 Monday, January 20, 2020, at approximately 11:18 p.m., SAPD Sergeant Dave Lima, Officer Gavin Roelofs, and Officer Josh Espadas went to an apartment on La Hacienda Avenue, in the city of Fountain Valley. Sergeant Lima indicated that the purpose of going there was to contact, try to interview, and arrest Mercado, a suspect in a Penal Code Section 288(a), Lewd and Lascivious Act with a Minor, Investigation. The officers wore traditional navy blue SAPD uniforms, adorned with SAPD police patches on both shoulders and a metal police badge above the left front breast pocket. Moreover, each officer carried and activated their BWC. Upon arrival, Officers Roelofs and Espadas made their way to the front door of apartment #J5, where they activated their BWCs on their approach to the front door. Sergeant Lima positioned himself at the south/west corner of the apartment, to watch a side window, in case Mercado tried to flee. According to Sergeant Lima, after checking Mercado's criminal history prior to arriving at the residence, the only thing that stood out was that Mercado had been an applicant to be a security guard, but they had no further information regarding the application.

Based on the BWC footage, it appears that at approximately 11:19 p.m., Officer Espadas knocked on the door of apartment #J5, with Officer Roelofs standing behind him. At approximately 11:20 p.m., Jane Doe, Mercado's mother, answered the door. Officer Espadas identified himself and his fellow officer as SAPD officers and asked Jane Doe if they could speak to "Miguel," to which she answered yes, and opened the door to allow both officers into the apartment. John Doe, Mercado's father, was standing in the kitchen when Officers Espadas and Roelofs entered the apartment.

In their interviews, subsequent to the incident, both Jane and John Doe indicated that they were not surprised by the police coming to their home. Their daughter had called John Doe two days prior to tell him that Mercado was going to be investigated for doing inappropriate things to other children in the family. John Doe spoke to Mercado about the incident that family members were accusing Mercado of, and told him that if he had done "something bad, consequences would follow." Jane and John Doe both indicated that Mercado was aware family members were accusing him, and that Mercado and the two of them were all nervous and expecting the police at any time.

Once inside the one-bedroom apartment, both officers followed Jane Doe west along a partition wall, then south into the living room, which was converted into a bedroom for Mercado. As they entered the living room, Jane Doe told Mercado that the police were there to speak to him. At approximately 11:20 p.m., Officer Espadas again identified himself and Officer Roelofs as SAPD and asked Mercado, "Do you mind coming out and talking to us please?" to which Mercado replied: "Sure." However, as Officers began to approach Mercado, Mercado began walking toward the sliding glass door that led out to the back patio. Mercado then walked through the open door and out to the patio. Officer Espadas subsequently said, "Wait, no come out this way, man." Mercado did not respond and continued walking toward an approximately four-foot-high patio fence, which separated the patio from the apartment complex courtyard. Both officers followed Mercado out to the patio.

Officers Espadas and Roelofs exited the sliding glass door behind Mercado as Mercado was attempting to climb over the patio fence. Officer Espadas yelled, "Hey, no" and both officers grabbed hold of Mercado. At this point, Officer Espadas' BWC was knocked off during the struggle. Meanwhile, Sergeant Lima stated he heard commotion coming from the patio and began running

toward the patio. The BWC footage shows him running toward the patio. It should be noted that based on the BWC footage, the apartment was dimly lit, and the patio was not lit. There were some building lights on in buildings across from the patio in the apartment complex which gave minimal lighting conditions on the patio on the BWC footage. Sergeant Lima stated he saw the officers struggling with Mercado and that the right side of Mercado's body started to go over the fence. He saw the officers were holding onto Mercado. Sergeant Lima subsequently grabbed hold of Mercado's shoulder and saw a black semi-automatic pistol in Mercado's right hand. The gun was pointed directly at Sergeant Lima's mid-section, just below his ballistic vest. Sergeant Lima stated he thought to himself: "He's going to kill me." Sergeant Lima's gun was holstered, and he realized he could not draw his weapon and shoot Mercado because of where the other officers were positioned. He realized he would "shoot them" if he fired his weapon at Mercado. Sergeant Lima described that he and Officers Roelofs and Espadas were all practically touching each other and within arms-reach at this point. Once Sergeant Lima saw the gun he yelled, "Gun, gun!" Sergeant Lima stated: "I thought I'm dead . . . this guy is gonna shoot me right where I don't have any protection, and I saw the large weapon, a large gun, black handgun in his, uh, right hand coming towards the direction of my stomach." Following Sergeant Lima yelling "Gun, gun," seven (7) gunshots were fired in quick succession.

After the shots were fired, Mercado fell to the ground, inside the patio, with the gun still in his right hand. An officer yelled to him: "Drop the gun." Both officers retreated inside the sliding glass door to cover and Sergeant Lima retreated to the south/east corner of the apartment building and activated his BWC.

Once Officers Roelofs and Espadas retreated, both officers again yelled at Mercado to "Drop the gun, dude." Meanwhile, Jane Doe, ran out onto the patio, past the two officers. An officer told her: "Ma'am, back up, back up, ma'am so we can help. Back up, so we can help him." Jane Doe remained outside and bent over her son, taking hold of the gun. Both officers, speaking in English and Spanish, yelled for Jane Doe to drop the gun, and come back inside the apartment so that they could help Mercado. Jane Doe did not comply and continued to stand over her son, with the gun in her hand, screaming and crying. During the same time, Sergeant Lima was notifying SAPD dispatch that an officer involved shooting had occurred and he subsequently switched to red channel to communicate with FVPD since their units were requested to respond to the scene.

At approximately 11:22 p.m., Sergeant Lima, still positioned outside of the patio, directed the officers to "Tase [Jane Doe]" because she was still hysterical and holding the gun. Officers Roelofs and Espadas continued to yell for Jane Doe to drop the gun. After multiple commands, Officer Roelofs stated, "I'm going to Tase her" and fired his Taser, striking Jane Doe in the upper torso and leg. Jane Doe subsequently dropped the gun over the patio fence. Sergeant Lima then recovered the gun from the dirt just south of the patio. All this sequence was captured on the BWC footage, including the gun in Jane Doe's hand. Sergeant Lima did not check the weapon. He immediately placed it in his back pocket. Once FVPD officers arrived on scene, Sergeant Mosher from FVPD observed the gun in Sergeant Lima's pocket. He could see there was no magazine in the gun. He removed the gun from Sergeant Lima's pocket and cleared it. He noted that the gun was unloaded with no magazine in the magazine well or round in the chamber. It was a Heckler & Koch .45 caliber semi-automatic gun.

After Sergeant Lima seized the gun, Jane Doe continued screaming hysterically as she hunched over Mercado who was still on the patio ground. Officers Roelofs and Espadas continued to command Jane Doe to come inside the apartment so that they could tend to her son. At approximately 11:24 p.m., Jane Doe complied and entered the apartment where she was then

handcuffed. John Doe was also handcuffed and informed that he was not in trouble but that they needed to handcuff him until more help arrived.

At approximately 11:25 p.m., both Officers Espadas and Roelofs entered the patio and handcuffed Mercado and checked him for additional weapons. Officer Roelofs checked Mercado's carotid artery and stated, "He's breathing still." At approximately 11:28 p.m., SAPD Officer Mark Campi arrived and began administering first aid to Mercado and placed several occlusive dressings over Mercado's wounds. Officer Campi requested additional medical supplies. SAPD Officer Luna arrived and provided supplies and dressed one of Mercado's wounds and kept searching for other wounds. Officers Campi and Luna continued to treat Mercado on the ground in the patio area until paramedics (Fountain Valley Fire Department) arrived at approximately 11:36 p.m. Upon paramedic's arrival, an examination revealed that Mercado had sustained several gunshot wounds to the upper buttocks and lower torso. His eyes were nonresponsive, he had no respirations, and no pulse. The automated external defibrillator (AED) was attached and confirmed Mercado was asystole.

Mercado was ventilated and cardiopulmonary resuscitation (CPR) was initiated. An intravenous line (IV) was placed in Mercado's left arm and he was given drip of normal saline and two (2) rounds of Epinephrine. Mercado regained cardiac activity with a pulse rate of 95 beats per minute and was placed in an ambulance. Once inside the ambulance, Mercado returned to asystole. Mercado was given two (2) more rounds of Epinephrine and transported, Code 3, to University of California Irvine Medical Center (UCIMC). Advance lifesaving protocols were continued while in transport.

At approximately 12:15 a.m., Mercado arrived at UCIMC and was transferred to UCIMC Emergency Room (ER) where he was cared for by the treating physician. Mercado had no pulse and no respirations. The treating physician described Mercado as "lifeless upon arrival." The ER staff attempted to revive him through all forms of resuscitation, but their efforts were unsuccessful. At 12:31 a.m., the treating physician pronounced Mercado deceased.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- One 21-foot Taser cartridge with wire
- 8 "Hornady 9 mm Luger" cartridge cases
- 2 "Hornady 9 mm Luger" cartridges
- 4 Bullets
- Mercado's clothing - One pair dark colored pajama pants and one pair of gray underpants
- 1 Axon Body Worn Camera
- 1 gray Taser blast door and one yellow AFID
- Mercado's gun - H&K semi-automatic pistol
- Officer Roelofs' gun - Glock Model 17, 9 mm pistol with (3) magazines, ammunition, and accessories
- Deployed Taser X2
- Swab of apparent blood from Officer Roelofs' right boot
- Officer Espadas' gun - Glock Model 17, 9mm pistol with (3) magazines, ammunition, and accessories
- Swab of apparent blood from Officer Espadas' left front pant leg
- Handcuffs collected at hospital
- Bullets collected at autopsy
- Possible gun powder particles collected at autopsy
- GSW overlays (Mercado)

- Muscle Standard (Mercado)
- 2 Empty additional magazine and 17 cartridges from Officer Roelofs
- Empty additional magazine and 17 cartridges from Officer Espadas

**AUTOPSY**

On January 23, 2020 Forensic Pathologist Dr. Young-Son Kim of the Orange County Sheriff-Coroner’s Office conducted an autopsy on the body of Mercado. Forensic Pathologist Kim indicated Mercado had sustained (7) apparent entry wounds to the back, (1) apparent graze wound to the right pectoral, (1) apparent exit wound below the right pectoral, and (3) or (4) apparent exit wounds (in very close proximity to each other) to the right of the groin. Forensic Pathologist Kim concluded that a round entered Mercado’s lower back, traveled up through the torso, struck the right lung, resulting in mass blood loss. Forensic Pathologist Kim identified the cause of death as, “Multiple gunshot wounds to the upper torso” and the manner of death as, “Homicide.”

**EVIDENCE ANALYSIS**

**Firearms Examination**

Officer Espadas’ Glock 17, 9mm pistol was test fired at the Orange County Crime Lab and fired without malfunction. Six cartridge cases and six bullets that were recovered from the scene were determined to have been fired from Officer Espadas’ Glock pistol.

Officer Roelofs’ Glock 17, 9mm pistol was test fired at the Orange County Crime Lab and fired without malfunction. Two cartridge cases that were recovered from the scene were determined to have been fired from Officer Roelofs’ Glock pistol.

**TASER Examinations:**

Two activations were recorded on Officer Roelofs’ TASER on January 20, 2020. The TASER clock is six minutes and forty seconds ahead of the laboratory computer clock.

Sequence #	Local Date	Local Time (unadjusted)	Duration Time	Battery Power (%)
614	01/20/2020	20:07:41	Armed	69
615	01/20/2020	20:07:41	1	69
617	01/20/2020	23:29:01	Armed	69
618	01/20/2020	23:29:07	5	69

**Toxicological Examination**

A sample of Mercado’s blood was collected at the Orange County Sheriff-Coroner Forensic Science Center. 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
Acetaldehyde	Postmortem Blood	Detected

## **MERCADO'S PRIOR CRIMINAL HISTORY**

Mercado had no criminal history.

## **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 done in compliance with California Penal Code section 835a. 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. Penal Code Section 835a allows a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force. Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, 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 objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officers 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. 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 SAPD Officers Roelofs and Espadas with Miguel Segura Mercado.

## **LEGAL ANALYSIS**

The facts in this case are determined mainly by considering Body Worn Cameras, all witness statements to OCDASAU investigators, and all available evidence that was collected.

The issue in this case is whether the conduct of Officers Roelofs and/or Espadas on January 20, 2020 was criminally culpable and without justification. As stated above, to charge Officers Roelofs and/or Espadas 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, to lawfully charge Officers Roelofs and/or Espadas with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions of Officers Roelofs and/or Espadas were justifiable and necessary as lawful self-defense or defense of others, then criminal charges will not be warranted.

The Court of Appeal held that 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 potentially 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.) 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.

Certainly, it would have been preferable if the OCDA were able to obtain voluntary statements from Officers Roelofs and Espadas regarding their observations and respective states of mind at the time of the shooting. However, Officers Roelofs and Espadas' 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.

Without their statements, the OCDA must look to other competent evidence to determine if Officers Roelofs and Espadas were justified in using deadly force. The OCDA looks to the totality of the circumstances when evaluating this evidence.

In order for Officers Roelofs and/or Espadas to be justly and lawfully charged and convicted with a crime, it is the OCDA's burden to prove beyond a reasonable doubt that the officers in question did not act in reasonable and justifiable self-defense or defense of another at the time of the shooting. Officers Roelofs and Espadas were lawfully discharging their duties when they went to Mercado's residence to try to interview him, and to arrest him for violations of Penal Code section 288(a), Lewd and Lascivious Act with a Minor. The Officers wore traditional SAPD uniforms with SAPD patches and metal badge. When they first saw Mercado, they identified themselves as SAPD officers and asked to speak to him. The evidence also shows that Mercado had been made aware of serious accusations being made against him by family members and he was expecting the police to come contact him. These facts present a reasonable inference that Mercado knew the officers were there to arrest him and he was not entitled to use a weapon to resist arrest.

Officers Roelofs and Espadas pursued Mercado through a poorly lit apartment and patio. Given that a gun was not mentioned by any officer until Sergeant Lima was holding Mercado back from fleeing the patio, it is reasonable that Officers Roelofs and Espadas were unaware at the beginning of the encounter that Mercado was carrying a firearm. The evidence shows they knew he was a security guard applicant but had no information about his employment or whether he carried a weapon. Furthermore, based on the close proximity of all parties – Officers Roelofs and Espadas holding Mercado inside the patio and Sergeant Lima holding him from outside the patio, once the officers had information that Mercado now had a gun- it is reasonable that the Officers deemed Mercado an imminent threat. The firearm that Mercado was holding was pointed directly at Sergeant Lima's mid-section, below his ballistic vest. Had Mercado fired his weapon, it would have likely hit Sergeant Lima where his vest does not protect him. Sergeant Lima, who could not fire his weapon, feared for his life. It was a reasonable belief for all officers that the gun was real and loaded given the lighting and quick manner in which the events unfolded. This, along with Mercado's decision to point the gun at Sergeant Lima's mid-section, gave the officers a legally justified belief that Mercado not only posed a significant threat to Sergeant Lima, but also to their own lives and potentially that of the public.

Based on the above-described facts available at this time, and the foregoing analysis, the prosecution would be unable to carry the legal burden of proof beyond a reasonable doubt that

the officers in question did not act in reasonable and justifiable self-defense or defense of another at the time of the shooting. Further, based on the applicable legal principles, a jury analyzing the facts available at this time would conclude that there is reasonable doubt of the guilt of either one of the officers.

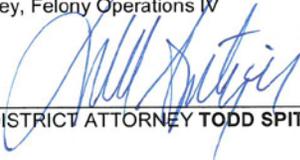
**CONCLUSION**

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 a lack of sufficient evidence to prove beyond a reasonable doubt criminal culpability on the part of Officers Roelofs and Espadas when they shot Miguel Segura Mercado on January 20, 2020.

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

  
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**LEXIE ELLIOTT**  
SENIOR DEPUTY DISTRICT ATTORNEY  
GANG UNIT

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

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