



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

September 19, 2020

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

Re: Officer-Involved Shooting on August 22, 2019
Fatal Incident involving Rafael Chavez-Franco
District Attorney Investigations Case #19-019
Garden Grove Police Department Case #19-047426
Westminster Police Department Case #19-06872
Orange County Crime Laboratory Case #19-51213

Dear Chief DaRe,

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 Garden Grove Police Department Officers Bradley Lowen and Matthew Marchand. Rafael Chavez-Franco, age 26, died as a result of his injuries. The incident occurred in the City of Westminster on August 22, 2019.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the August 22, 2019, fatal, officer-involved shooting of Chavez-Franco. 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 Garden Grove Police Department 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 August 22, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, nine interviews were conducted, and seven additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Garden Grove and Westminster Police Department reports, audio dispatch and radio traffic recordings; video and audio recording of the incident; 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

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Chavez-Franco; criminal history records related to Chavez-Franco including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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 Garden Grove Police Department officers or personnel, specifically Officers Bradley Lowen and Matthew Marchand. 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 Bradley Lowen gave a voluntary statement to OCDA Investigators on August 28, 2019. Officer Matthew Marchand gave a voluntary statement to OCDA Investigators on August 28, 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, August 22, 2019 between 14:30 and 14:45 Officers Lowen and Marchand were involved in a Controlled Delivery Operation with an Anticipatory Search Warrant. The operation involved officers from the Garden Grove Police Department's Special Investigations Unit (SIU), Career Criminal Apprehension Team (CCAT), and the Gang Suppression Unit (GSU). Officer Marchand is a member of the CCAT and Officer Lowen is a member of the GSU.

During the operation, Officer Lowen was wearing a black GGPd t-shirt with Gang Unit patches on both sleeves, a black tactical vest with "POLICE GANG UNIT" on the front and back and a police badge on the front, blue jeans, a dress belt with a badge attached, black tennis shoes, and his service weapon attached at the hip.

During the operations, Officer Marchand was wearing a beige and black baseball style cap, a blue-gray t-shirt, a black tactical vest "POLICE" on both the front and back; navy blue shorts, black tennis shoes, a black gun belt, and his service weapon holstered on the right thigh.

The operation was initiated in order for an undercover officer to deliver a package of 14.9 pounds of methylenedioxymethamphetamine (MDMA) pills. The package was identified by United States Immigration and Customs Enforcement (ICE) upon entering the country. The package was addressed to Alejandro Chavez at an address in the 14000 block of Taft Street, Garden Grove. The area was known to be home to heavy gang activity. The undercover officer was to deliver the package to the address and once the package was inside, officers from the involved units would execute a search warrant for that address to retrieve the package and apprehend any suspects.

Officer Lowen was with Officer Benjamin Elizondo in a black Ford Crown Victoria near the delivery address as a *Takedown* vehicle to intercept the package in case it went mobile. Officer Marchand was near the delivery address in a silver Ford F-150 pickup truck as an undercover vehicle to surveil the surrounding area for anybody coming or going to the delivery address for the package.

Upon delivery, the receiver of the package never brought it inside the delivery address so the various police units could not serve the warrant. Instead, several subjects in a black Cadillac CTS arrived at the house, picked up the package, and drove away. Officers followed the black Cadillac CTS to an apartment complex in Santa Ana. Officers continued to watch the package and the black Cadillac CTS. Officers then observed Chavez-Franco drive up to the complex and park a white Range Rover. They saw him talking on his phone, exit the vehicle, and enter the apartment complex. They observed him exit the apartment complex, and he walked back towards the white Range Rover with the package in his hands. One of the undercover officers, Sergeant Dalton, relayed his observations of Chavez-Franco with the package in his hands. Officers observe Chavez-Franco enter the white Range Rover and drive away with the package.

At this point, the officers were advised to intercept the white Range Rover driven by Chavez-Franco. He drove the white Range Rover west onto 1st Street from southbound Cooper Street in Santa Ana. GGPd GSU Sergeant Loffler was parked in the center median of 1st Street. His patrol vehicle camera footage shows Chavez-Franco make a right turn onto 1st Street and then shows Officer Marchand make a right turn onto 1st Street in his Ford F-150. Officers Elizondo and Lowen then are seen making a right turn in front of Officer Marchand onto 1st Street from Starboard Street. At this point, Officers Elizondo and Lowen, Loffler, and Marchand were tailing Chavez-Franco when he began to accelerate.

Officers Elizondo and Lowen initiated a pursuit of Chavez-Franco and activated their emergency lights and siren. Officer Loffler followed closely behind with emergency lights and siren activated and Officer Marchand followed further behind. Officer Loffler's patrol vehicle video footage shows Chavez-Franco lead the officers on a pursuit at a high rate of speed on Bolsa Avenue. Chavez-Franco is seen weaving in and out of traffic lanes, not using turn signals, and speeding through moderate to heavy traffic and through a construction zone. Chavez-Franco then drove towards the intersection of Bolsa Avenue and Ward Street. This intersection is controlled by a traffic signal. As Chavez-Franco approached the intersection, the light phased from green, then to yellow, then to red. Chavez-Franco continued to accelerate and drove through the intersection against the solid red traffic signal. He then turned south onto Fleming Street and then east onto Tennyson Avenue, which is a residential area. Chavez-Franco is seen speeding down the neighborhood street and executing sharp turns at high rates of speed.

As the pursuit continued, Chavez-Franco arrived at a U-turn in the cul-de-sac of Tennyson Avenue and was now facing pursuing officers with no avenue of escape. It should be noted that this cul-de-sac has a standard size sidewalk that surrounds the road of the cul-de-sac. A large stone wall standing more than five feet tall and several inches thick surrounds the far side of the sidewalk separating the sidewalk from private property. When Officer Elizondo's vehicle reached the white Range Rover, he intentionally collided with the white Range Rover's front right bumper to terminate the evading and effectuate the traffic stop. Officer Loffler, following closely behind, drove his vehicle to the front left bumper without colliding with the Range Rover. Officer Loffler attempted to position his vehicle to the left of the Range Rover which would prevent Chavez-Franco from escaping to his left. Officer Marchand parked his undercover vehicle behind Officers Loffler and Elizondo's vehicles when he moved on foot near Officer Lowen on the south side of Officer Loffler's vehicle.

Believing Chavez-Franco's vehicle was trapped, Officers Elizondo and Lowen exited their vehicle and Officer Elizondo positioned himself on the front passenger side of the Range Rover. Officer Elizondo ordered Chavez-Franco to turn the car off while another officer warned Chavez-Franco he will be shot if he did not surrender. Instead of peacefully surrendering, Chavez-Franco reversed his vehicle away from officers, over a curb, colliding with trash containers behind him. Chavez-Franco continued to reverse until he came up against the large stone wall surrounding the sidewalk. Chavez-Franco turned the wheels of the Range Rover directly at Officer Elizondo. Seeing this, Officer Loffler drove his vehicle forward colliding with the front left bumper of the white Range Rover trying to prevent Chavez-Franco from using his vehicle as a weapon against the officers who were on foot outside of their vehicles or as a means to escape. At this point, Officer Elizondo was again approaching the passenger side of the Range Rover.

Chavez-Franco began revving the Range Rover's engine in an attempt to break free of Officer Loffler's vehicle while the wheels of the Range Rover continued to be pointed directly at Officer Elizondo. Chavez-Franco was intentionally driving his vehicle into Officer Loffler's vehicle. The Range Rover was able to move toward Officer Elizondo's position but Officer Loffler's vehicle prevented Chavez-Franco from driving into Officer Elizondo momentarily allowing Officer Elizondo to start to retreat. Officer Elizondo was in immediate danger of being run over if the Range Rover was in fact able to break free from Loffler's vehicle. At approximately 15:39 hours, seeing Chavez-Franco intentionally driving his vehicle at Officer Loffler's vehicle, and seeing Officer Elizondo in imminent danger of being killed, Officers Marchand and Lowen fired 12 rounds at Chavez-Franco within 3 seconds. At the sound of gunfire, Officer Elizondo continued to retreat to prevent himself from being run over by the Range Rover driven by Chavez-Franco. As Officers Marchand and Lowen discharged their weapons, the Range Rover was able to break from Officer Loffler's vehicle. Chavez-

Franco accelerated the Range Rover directly at Officer Elizondo who was barely able to get out of the way as Chavez-Franco drove the vehicle directly at Officer Elizondo. Chavez-Franco narrowly missed Officer Elizondo and drove the vehicle through the large stone wall on the north side of Tennyson Avenue and entered a church parking lot.

The Range Rover continued toward the church at a low rate of speed, eventually coming to rest against the church's south wall. Officers Elizondo, Marchand, and Lowen approached the Range Rover on foot across the parking lot as additional GGPD officers arrived. Officers gained access to the vehicle via the passenger side door and saw that Chavez-Franco appeared to be deceased. At approximately 15:43 hours, Orange County Fire Authority (OCFA) arrived on the scene. The OCFA paramedics approached the Range Rover and assessed Chavez-Franco for signs of life, eventually pronouncing him dead at 15:47 hours. A search of the vehicle yielded several items of significance, including a loaded firearm, thousands of dollars in cash, and the target of the operation, the brown cardboard box which contained the suspected MDMA pills.

EVIDENCE COLLECTED

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

- From the scene:
 - 12 cartridge cases, head stamp "WIN 9MM LUGER."
 - 1 apparent bullet fragment
 - 1 expended bullet
- From Chavez-Franco's vehicle:
 - 1 brown cardboard box, unopened, weighing approximately fourteen pounds, containing suspected MDMA pills.
 - US Currency totaling \$6,990.00
 - 1 Smith & Wesson M&P 9mm semi-automatic pistol
 - Loaded 7 round capacity magazine in the magazine well
 - Three bullets
 - Bullet and jacket fragments
 - 1 Gucci backpack
 - 1 gray Apple laptop computer
 - 3 cellular phones
 - 15 counterfeit California Driver's Licenses
 - 2 pieces of paper containing addresses
 - 1 file folder containing military discharge papers

AUTOPSY

On August 23, 2019, Forensic Pathologist Dr. Kim of the Orange County Coroner's Office conducted an autopsy on the body of Rafael Chavez-Franco. Dr. Kim documented 6 gunshot wounds as follows:

1. Gunshot Wound 1: Entry was in the middle forehead. There is no exit wound and the projectile entered from front to back, downwards, and left to right.
2. Gunshot Wound 2: Entry was in the left lateral upper neck close to the jawline. There is no exit wound and the projectile entered from left to right, upwards, and back to front. This wound was determined to be the fatal shot that ultimately killed Chavez-Franco.
3. Gunshot Wound 3: Entry was in the right anterior inner shoulder. There is no exit wound and the projectile entered from left to right.

4. Gunshot Wound 4: Entry was in the left anterior upper arm. There is no exit wound and the projectile entered from left to right, upwards, and front to back.
5. Gunshot Wound 5: Entry was in the left anterior upper arm. There is an exit wound located at the left inner upper arm. The projectile traveled from left to right, upwards, and straight.
6. Gunshot Wound 6: Entry was at the left lateral outer leg interior to the knee. There is an exit wound located 18 inches above the top of the heel. The projectile traveled from left to right, upwards, and front to back.

EVIDENCE ANALYSIS

Firearms & Projectile Examinations

Officer Lowen's Glock 9mm Luger pistol was test fired at the Orange County Crime Lab and fired without malfunction. Seven of the twelve cartridge casings collected as evidence at the scene were determined to have been fired from Officer Lowen's pistol.

Officer Marchand's Glock 9mm Luger pistol was test fired at the Orange County Crime Lab and fired without malfunction. Five of the twelve cartridge casings collected as evidence at the scene were determined to have been fired by Officer Marchand's pistol.

Toxicological Examination

A sample of Chavez-Franco's blood was collected at the Orange County Coroner Division Facility. 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
Cannabinoids	Postmortem Blood	Presumptive Positive

CHAVEZ-FRANCO'S PRIOR CRIMINAL HISTORY

Chavez-Franco's criminal history was reviewed and considered. Chavez-Franco had a California Criminal History that dates back to 2010. He has previously been arrested for the following charges:

- VANDALISM
- PETTY THEFT
- ROBBERY
- POSSESSION OF A LOADED FIREARM
- RECKLESS DRIVING
- ILLEGAL SPEED CONTEST

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 Penal Code section 835a. 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 should 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 law requires that 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 lawfully 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/her 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/her right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance. 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/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 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 Garden Grove Police Department Officers Lowen and Marchand with Chavez-Franco.

LEGAL ANALYSIS

The facts in this case are determined by considering statements made by witnesses present at the incident, including Officers Lowen and Marchand’s statements to the OCDA investigators, reviewing the videos captured by body worn cameras and patrol vehicle cameras, and all evidence collected from the scene.

The issue in this case is whether the conduct of Officers Lowen and Marchand on August 22, 2019 was criminally culpable and without justification. As stated above, in order to charge Officers Lowen and Marchand 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 Officers Lowen and Marchand 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 that day of Officers Lowen and Marchand 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 2009 case, 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 California 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 the circumstances, the OCDA will not be able to prove beyond a reasonable doubt that Officers Lowen and Marchand were not justified in believing that Chavez-Franco posed an imminent threat of death or serious bodily injury to others before they fired their weapons. First, officers observed Chavez-Franco driving in a dangerous manner placing officers and citizens in imminent danger of great bodily injury and death during the vehicle pursuit. The patrol vehicle camera captured Chavez-Franco's driving leading up to the vehicle collision in the cul-de-sac. Chavez-Franco is seen driving at excessive speeds which were clearly unsafe for road conditions, traffic flow, time of day, and obstructions present. This car chase took place between 3:00 PM and 4:00 PM on Bolsa Avenue in Westminster. Bolsa Avenue is a three lane road. On this date and time, vehicle traffic was described as moderate to heavy, which can clearly be seen in the video. There was construction taking place on Bolsa Avenue which increases the danger to drivers due to possible obstructions on the road. Driving through a construction zone requires drivers to reduce speed and exercise more caution because lanes could be shut down or shifted, construction workers could be present on-site, and obstructions from the construction site may be present. Instead, Chavez-Franco drove through the construction zone at excessive speeds, changed lanes erratically without signaling, executed turns abruptly, without signaling, and at unsafe speeds, and drove through a four way intersection controlled by a traffic signal against a solid red light. This driving, alone, is not sufficient for the officers to believe that they were in imminent danger of great bodily injury or death justifying lethal force. However, the observations are certainly relevant to the reasonableness of Officers Marchand's and Lowen's later belief that the officers were in danger of suffering great bodily injury or death.

Second, Chavez-Franco demonstrated that he was willing to do anything in his power to escape the police that day, including injuring and killing police officers. Upon entering the cul-de-sac of Tennyson Avenue, Officer Elizondo drove his vehicle into the front right bumper of Chavez-Franco, attempting to end the pursuit. Officer Elizondo and Lowen immediately exited the patrol vehicles, drew their service weapons, and yelled out commands to Chavez-Franco. After leading police on a high speed chase, colliding with a patrol car, and having officers point weapons at him and order him to submit to their detention, Chavez-Franco continued his dangerous behavior by reversing his vehicle over a curb and into trash containers. It is clear from the video that he was trying to position his vehicle in a way so that he could escape. The officers observed this dangerous behavior and quickly realized that Chavez-Franco was going to do whatever it took, including harming and killing police officers and/or citizens, in order to effectuate an escape.

Third, the officers were in a vulnerable position exposing them to great bodily injury and death before any shots were fired. Upon colliding with Chavez-Franco's vehicle, Officers Elizondo, Lowen, and Marchand all exited their patrol cars. They attempted to detain Chavez-Franco and began approaching his vehicle on foot. This placed each of them in a vulnerable position. Chavez-Franco remained in control of his vehicle. He could have used his vehicle as a weapon to inflict great bodily injury and death upon any of those officers. It is noteworthy to recognize the kind of vehicle that Chavez-Franco operated. He was driving a Range Rover SUV. This is a powerful vehicle capable to generating incredible force which could be directed against the officers. The officers on foot were not the only officers who were in harm's way. Officer Loffler was in his vehicle in front of Chavez-Franco and he attempted to block in Chavez-Franco's vehicle with his patrol car. After Officer Loffler executed this maneuver, Chavez-Franco began driving the Range Rover into and against Officer Loffler's patrol car. This conduct constitutes an assault with a deadly weapon upon a police officer. Officer Loffler was trapped because he was directly in front of Chavez-Franco who was driving the

Range Rover into his patrol car. Officer Loffler also could not get out of his car and run because Chavez-Franco could have driven the Range Rover away from the patrol car and into Officer Loffler who was trapped with no way to escape Chavez-Franco's continued assault.

Finally, Chavez-Franco committed an assault with a deadly weapon upon Officer Elizondo justifying the fears of the officers that he posed a threat of great bodily injury and death upon the officers. This analysis is one of reasonableness. The fundamental question is, knowing all that the officers knew, seeing everything they saw, was their belief that Chavez-Franco posed a threat of great bodily injury and death to officers reasonable? Chavez-Franco removed any doubt as to the reasonableness of the officers' fears by doing exactly what they feared: attempting to run over Elizondo with his SUV. All of the officers in their interviews explained how they believed that officers were in danger of great bodily injury and death because they believed that Chavez-Franco was going to use his vehicle and run them over. This fear is corroborated by a couple of key facts.

First, Officer Elizondo was standing exactly where Chavez-Franco planned his escape. The overhead photos and the Body Worn Cameras show the positioning of the patrol vehicles at the time of shooting. To the rear of the Range Rover was the thick, strong wall. Officer Loffler's vehicle was against the front, left bumper of the Range Rover preventing any escape to the left. Behind Officer Loffler's vehicle, Officer Marchand parked his truck. Officer Elizondo's vehicle was to the front, right bumper of the Range Rover, but was several feet away because Chavez-Franco had reversed after the collision. This allowed Chavez-Franco to conclude his only avenue of escape was to the right of the Range Rover. The Body Worn Cameras footage show Officer Elizondo standing, then approaching, exactly where Chavez-Franco was trying to drive. Chavez-Franco was successful in moving the vehicle towards Officer Elizondo until Officer Loffler's vehicle stops him from moving too far.

Second, Chavez-Franco was attempting to drive out of the escape route in a reckless, dangerous manner. After he decided on an escape path, Chavez-Franco turned the wheels of the SUV toward the right and began depressing the accelerator. The officers could hear and the Body Worn Cameras captures the engine working hard to accelerate the vehicle by overpowering Officer Loffler's vehicle. The direction of the wheels and sound of the engine all indicated that the vehicle was about to accelerate with incredible force away from Officer Loffler's vehicle and into Officer Elizondo.

Third, Chavez-Franco drove his vehicle at Officer Elizondo, nearly hitting him, confirming the officers' concerns. As Officer Elizondo approached, before any shots are fired, Chavez-Franco drives the car forward, with the wheels facing Officer Elizondo. Luckily, Officer Loffler's vehicle prevents the Range Rover from moving forward significantly. After seeing this, Officers Lowen and Marchand open fire. Even as officers are firing upon Chavez-Franco, he continues to accelerate his vehicle. As he continues to use the strength of the Range Rover, it overpowers Officer Loffler's vehicle and breaks free. Chavez-Franco then drove the vehicle towards Officer Elizondo who turned and ran for his life. Officer Elizondo is able to avoid getting hit and severely injured (and possibly killed) while Chavez-Franco makes a sharp right turn through the stone wall and into the neighboring parking lot. The act of nearly running over Officer Elizondo confirms the danger the officers were in and Chavez-Franco's willingness to do anything he could to escape.

It should also be noted that, in order for Officers Lowen and Marchand 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 the two officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Chavez-Franco. 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 necessary for the officers to act the way they acted, and that it was reasonable for Officers Lowen and Marchand to believe that their lives and the lives of others were in deadly 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 insufficient evidence to prove beyond a reasonable doubt that Officers Lowen and Marchand committed a crime when they fired at Chavez-Franco, and there is substantial evidence that their actions were reasonable, necessary, and justified under the circumstances when they shot Chavez-Franco on August 22, 2019.

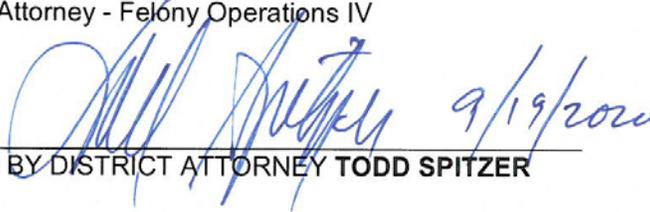
Accordingly, the OCDA is closing its inquiry into this incident.



NICHOLAS THOMO
DEPUTY DISTRICT ATTORNEY
GANGS UNIT



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



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