



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

January 21, 2021

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

Re: Officer-Involved Shooting on
Fatal Incident involving Taveonte Art Emmanuel (A.K.A. Jonathan Ivan Muldrew)
District Attorney Investigations Case # S.A. 19-025
La Habra Police Department Case # 19-183477
Orange County Crime Laboratory Case # 19-56882

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 Sergeant Gustavo Maya, Corporal Gregory Stys, and Officer Larry Michael Fleet. Taveonte Art Emmanuel, age 34, died as a result of his injuries. Emmanuel was also known as "Jonathan Ivan Muldrew" but will be referred to as "Emmanuel" in this letter. The incident occurred in the City of Anaheim on December 12, 2019.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the December 12, 2019, fatal, officer-involved shooting of Taveonte Art Emmanuel. 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 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 December 13, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, six (6) interviews were conducted, and five (5) additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Anaheim Police Department (APD) reports; Body-Worn Camera (BWC) video recordings; audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing, vehicle processing, firearms examination, hospital reports, and fingerprint and DNA reports; crime scene investigation photographs; firearms

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photographs; Orange County Sheriff-Coroner's Office reports and photographs; Anaheim Fire Department care reports; medical records and photographs related to the injuries sustained by Emmanuel; Emmanuel's criminal history records and 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 Anaheim Police Department officers or personnel, specifically Corporal Stys, Sergeant Maya, and Officer Fleet. 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 Fleet gave a voluntary statement to OCDA Investigators on December 17, 2019. Corporal Stys and Sergeant Maya gave voluntary statements to OCDA Investigators on December 19, 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, December 12, 2019, at approximately 10:20 p.m., Jane Doe #1 called the Anaheim Police Department to report that Emmanuel was attempting to enter her apartment. Jane Doe #1 reported that Emmanuel was banging on the windows and door and demanding they open the door. Jane Doe #1 told dispatchers that she suspected that Emmanuel was under the influence of drugs. Approximately twenty (20) minutes earlier, Jane Doe #1 had let Emmanuel's wife, Jane Doe #2, into her apartment.

Jane Doe #2 had previously lived in Emmanuel's apartment at 150 North West Street #212, Anaheim, with their thirteen-year-old daughter, Minor Jane Joe. However, Jane Doe #2 was restrained from having contact with Emmanuel due to an active domestic violence restraining order. That night, Jane Doe #2 brought dinner to the apartment at the request of Minor Jane Doe. When Emmanuel found Jane Doe #2 in his apartment, he punched her several times in the head, causing her head to bleed. Jane Doe #2 fled to the neighbor Jane Doe #1's apartment. Jane Doe #1 first called the assistant apartment manager, who came to their apartment and escorted Emmanuel back to his apartment. Jane Doe #2 took Minor Jane Doe, got in her vehicle, and left. Jane Doe #2 drove to a hospital for evaluation of her injuries.

At approximately 10:32 p.m., APD Corporal Stys and Officer Fleet, who were on patrol together, self-dispatched to the location. Corporal Stys and Officer Fleet drove in a black and white patrol vehicle clearly marked with "ANAHEIM POLICE" on each front door and the rear. Corporal Stys, Sergeant Maya, and Officer Fleet were dressed in full navy-blue police uniforms adorned with "Anaheim Police" patches. Each officer wore a body-worn camera (BWC) which was activated during the incident.

At approximately 10:38 p.m., Corporal Stys and Officer Fleet arrived at the scene and briefly spoke with Jane Doe #1 and her co-residents. Corporal Stys and Officer Fleet saw Emmanuel standing outside of his apartment during their interview. From the first-floor courtyard, Corporal Stys attempted to discuss the domestic violence allegations with Emmanuel who was standing on the outdoor second floor walkway. Emmanuel was uncooperative and returned to his apartment.

At approximately 10:46 p.m., Corporal Stys left Officer Fleet at Jane Doe #1's apartment while he went to the underground parking structure to contact APD for advice on handling the incident. Sergeant Maya responded to the scene and met Corporal Stys in the parking lot. Shortly after, Emmanuel walked down to the first floor and briefly asked Officer Fleet about Minor Jane Doe. Emmanuel then descended the stairs to the underground parking structure where he encountered Sergeant Maya and Corporal Stys.

Corporal Stys and Sergeant Maya contacted Emmanuel at the base of the parking structure stairs. Emmanuel was standing with his right hand in his right pant pocket while he spoke to the officers. Corporal Stys told Emmanuel that he wanted to speak with him regarding the domestic violence allegation. Emmanuel became uncooperative. Corporal Stys requested Emmanuel sit on the stairs with his hands behind his back while they investigated. Emmanuel repeatedly refused to follow the instructions and became angry. Emmanuel denied involvement in any incident and repeatedly tried to walk past Corporal Stys into the parking structure to access his car. Corporal Stys extended his arm toward Emmanuel's chest to prevent him from leaving. Corporal Stys told Emmanuel not to "make it more than it needs to be" and reminded him that the officers were only "investigating." Corporal Stys commanded Emmanuel to sit with his hands behind his back, but Emmanuel refused each time. Emmanuel kept his hand in his pocket during the contact. The officers indicated that they suspected Emmanuel was armed.

Officer Fleet descended the stairs and stood behind Emmanuel. After multiple failed requests, Corporal Stys and Officer Fleet attempted to control Emmanuel's hands. A struggle ensued between

Emmanuel, Corporal Stys, Officer Fleet, and Sergeant Maya. At the onset of the struggle, Officer Fleet's BWC recorded a glimpse of a green-colored object in Emmanuel's right pant pocket. The struggle quickly pushed inside of the parking structure. Officer Fleet grabbed Emmanuel around the back of the head, Sergeant Maya grabbed Emmanuel's legs, and they all fell to the ground. Emmanuel was on top of Officer Fleet, face to face. Corporal Stys, who was on top of Emmanuel's back, attempted to apply a carotid restraint but was unsuccessful. During this struggle, Sergeant Maya and Corporal Stys' BWCs fell off and landed on the ground face down.

While Emmanuel maintained his position, Officer Fleet felt his left hip start to lift off the ground. Officer Fleet reached down to his waist and felt Emmanuel's hand on his holster containing his gun. Officer Fleet immediately realized Emmanuel was "going for" his gun. Officer Fleet called out to Corporal Stys and Sergeant Maya that Emmanuel was trying to take his handgun. Officer Fleet began to fear Emmanuel would gain control of his gun. Officer Fleet thought "this is a fight for my life . . . this is a life or death situation." Officer Fleet recalls his mindset shifting and thinking "we need to control this subject...he's trying to take my gun and now he's trying to take my life. He's trying to kill me." Officer Fleet saw Emmanuel's hand tilt the holster towards his face. Officer Fleet reassessed the situation in anticipation of being shot. His immediate concerns were: "if he shoots me now I'm no longer rendered useful to detaining him and . . . is he gonna go back up and shoot the reporting party for causing . . . us to arrive." In an attempt to distract Emmanuel, Officer Fleet punched him approximately four (4) times in the right side of his face with no effect. Officer Fleet stated that he decided not to use his Taser during the incident because he felt it was insufficient to mitigate "an immediate threat for my life."

Corporal Stys, who still attempting to apply a carotid restraint, saw Emmanuel's hand on Officer Fleet's gun. Corporal Stys reached for the gun and felt Emmanuel pulling the gun out of the holster. He struggled with Emmanuel for the gun and felt the gun release from the holster. At one point during the struggle, the gun pointed in the direction of Officer Fleet and Sergeant Maya and Corporal Stys recalls thinking "Oh, s*** they're about to get shot." Then, the gun quickly turned and pointed toward Corporal Stys and he remembers thinking "I'm about to get f***ing shot."

When Corporal Stys and Officer Fleet were fighting with Emanuel for the gun, Sergeant Maya said "I was in immediate fear for my life, and I thought he was gonna shoot and kill me . . . at that very moment, um, based on that fear, I, I, I remember seeing my little girl's face, and, . . . my wife." Sergeant Maya also stated he feared Emmanuel was going to shoot Corporal Stys or Officer Fleet who were "right on top of him." Although Sergeant Maya wanted to shoot to protect himself and his partners, he refrained because he did not want to risk accidentally shooting Corporal Stys and Officer Fleet. Sergeant Maya could tell that Emmanuel, who he believed was under the influence of drugs, had an advantage over his partners, and that they were losing the fight for the gun. Sergeant Maya realized that his partners needed to either seize the gun immediately or let it go and take cover, so multiple times he commanded Officer Fleet and Corporal Stys to move.

Officer Fleet released Emmanuel and rolled out from underneath him. Officer Fleet reached for his backup handgun and realized it had been dropped during the struggle, so he took cover behind a concrete pillar. During this movement, Emmanuel gained control of Officer Fleet's handgun. All three officers indicated that they saw Emmanuel holding Officer Fleet's gun. Sergeant Maya was only a few feet away from Emmanuel and saw him holding the gun at his chest. Emmanuel was in a position where he could easily make a quick turn and shoot Sergeant Maya or Corporal Stys.

Meanwhile, Corporal Stys continued to fight with Emmanuel for the gun and thought to himself, "I'm not letting go of this gun right now or else we're all getting shot." Corporal Stys eventually managed

to seize the gun from Emmanuel. Corporal Stys took a couple steps back and realized he was holding the gun in an "awkward manner," without a "regular grip" on the gun. As he attempted to reposition his grip, Sergeant Maya drew his handgun, assumed a shooting stance, and fired two (2) rounds at Emmanuel from a distance of approximately five (5) feet to the right.

Seconds after Sergeant Maya fired, Corporal Stys obtained a shooting grip on Officer Fleet's handgun and pointed it at Emmanuel. Emmanuel had risen from the ground and was in a kneeling position, attempting to stand. Corporal Stys did not see Emmanuel react to being shot and believed Sergeant Maya might have missed. Corporal Stys was standing only about five (5) feet to Emmanuel's left and could not see Emmanuel's right arm or right hand. At that time, Corporal Stys did not know whether Emmanuel was armed with other weapons. Corporal Stys indicated that he knew that Emmanuel, was much larger and stronger. He also indicated that he knew that Emmanuel had fought the officers and successfully disarmed Officer Fleet. Corporal Stys fired one (1) round at Emmanuel from approximately five (5) feet and again, Emmanuel did not react. Since Emmanuel showed no reaction, Corporal Stys fired three (3) additional rounds to "mitigate the threat that he was presenting" to the officers. Sergeant Maya was positioned to the right of Emmanuel's body, slightly behind where Corporal Stys was standing. Officer Fleet believes that "Officer Stys and Sergeant Maya saved my life."

While Corporal Stys and Sergeant Maya still had their guns drawn, Officer Fleet recovered his backup handgun from the ground near Emmanuel. Officer Fleet never fired any shots. Corporal Stys alerted the two officers that he had repossessed Officer Fleet's gun. Sergeant Maya and Officer Fleet approached Emmanuel and handcuffed him. Sergeant Maya removed a green metal kitchen knife from Emmanuel's pant pocket. Paramedics were summoned and additional APD officers who had arrived at the scene administered medical aid to Emmanuel.

At approximately 11:03 p.m., an Anaheim Fire Department (AFD) truck arrived. AFD paramedics saw several APD officers had placed medical seal patches on Emmanuel's gunshot wounds. Paramedics examined Emmanuel and determined that he had sustained several gunshot wounds to the chest. Emmanuel was unresponsive and not breathing. He was connected to an Electro-Cardiogram (EKG) which showed a heart rate of 63 beats per minute. He was provided oxygen through a bag-valve-mask.

At approximately 11:12 p.m., Emmanuel was placed in an ambulance for transportation to UCI Medical Center. An intravenous (IV) access was established using an Intraosseous (IO) tube in the right tibia, and saline and epinephrine were administered. While in transport, Emmanuel became asystole and paramedics initiated cardiopulmonary resuscitation (CPR).

At approximately 11:23 p.m., the ambulance arrived at UCI Medical Center and patient care for Emmanuel was transferred to trauma medical staff. When Emmanuel arrived, he was unresponsive and apneic. He was intubated by an emergency room resident. A trauma resident doctor completed a cardiac ultrasound which confirmed Emmanuel had no cardiac activity. At 11:26 p.m., Emmanuel was pronounced deceased.

On December 13, 2019, Minor Jane Doe, Emmanuel's daughter, was interviewed and stated that there had been a green knife in their apartment kitchen which she and her father used for cutting fruit. Minor Jane Doe stated that when Emmanuel returned to their apartment from neighbor Jane Doe #1's apartment, he told her that he was not going to jail that day and would rather get shot.

Jane Doe #2, Emmanuel's wife, was also interviewed and stated that she believed Emmanuel was under the influence of methamphetamine during the incidents. She and Minor Jane Doe both informed law enforcement that Emmanuel had attempted suicide twice on August 24, 2019; first, by

attempting to hang himself (APD Case #19-124766) and later that evening, by attempting to jump from a vehicle traveling at 70 miles per hour.

Investigators canvassed the neighborhood and interviewed five (5) neighboring apartment residents. The residents who were in their apartments during the incident saw police officers and heard gunshots, but none had actually seen the officers interacting with Emmanuel. One resident witnessed the events prior to police arrival. She observed her neighbors, a female and a male, arguing outside of their apartment. She stated that the female was trying to escape but the male chased after her. She saw the female run downstairs and the male stop at the staircase to throw a set of keys at her. She saw the female get in a car and drive off.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One (1) Smith & Wesson pistol, 9mm Luger caliber, (Officer Fleet's service weapon)
- One (1) Glock pistol, 9mm Luger caliber, (Sergeant Maya's service weapon)
- Six (6) cartridge cases, head stamped "WIN 9mm Luger"
- One (1) bullet
- One (1) bullet jacket
- Two (2) bullet jacket fragments
- Two (2) bullet core fragments
- One (1) pair of black boots
- One (1) pair of black sweatpants
- One (1) broken pair of eyeglasses
- One (1) black Lincoln car key
- One (1) green paring knife, labeled with "goodcook nonstick"
- One (1) bullet collected from autopsy
- Deep muscle standard from decedent Emmanuel

The following items were examined by the OCCL DNA Unit:

- Nine (9) swabs from Officer Fleet's S&W handgun and magazine
- Buccal swabs from Corporal Stys
- Buccal swabs from Officer Fleet
- Officer Fleet's duty belt and holster
- Deep muscle tissue from decedent Emmanuel

AUTOPSY

On Monday, December 17, 2019, Forensic Pathologist Dr. Nicole Ellis of the Orange County Sheriff-Coroner Forensic Science Center, conducted an autopsy on the body of Emmanuel. Dr. Ellis concluded that Emmanuel had sustained five (5) gunshot wounds: to the left chest, right lateral bicep, right flank, left hand, and left leg. Dr. Ellis identified the cause of death as "multiple gunshot wounds" and the manner of death as "homicide." Dr. Ellis documented five (5) gunshot wounds as follows:

1. Gunshot Wound #1: Entry was in the left chest. There is an exit wound located at the center of the chest. The path of the gunshot wound involves the skin and soft tissue of the chest. The projectile traveled from back to front, left to right, and downwards.
2. Gunshot Wound #2: Entry was at the right medial biceps. There is an exit wound located 9 inches from the top of the shoulder. The projectile traveled from left to right and straight across.

3. Gunshot Wound #3: Entry is over the right flank. There is no exit wound. The path of the gunshot wound begins at the skin and soft tissue of the right flank and continues to the inferior aspect of rib 10, then to the abdominal aorta, then to the duodenum, to the stomach, to the left lower lung, and into the intercostal space between ribs 6 and 7. The projectile was recovered from the left chest cavity and it traveled from front to back, right to left, and upwards. This wound was determined to be the fatal shot that ultimately killed Emmanuel as it travelled in an upward trajectory, striking the aorta and other vital organs.
4. Gunshot Wound #4: Entry was at the left hand. There is an exit wound located over the dorsal left thenar space. The projectile traveled from back to front, right to left, and downwards.
5. Gunshot Wound #5: Entry is over the left anterior thigh. There is an exit wound located at the left medial thigh. The projectile traveled from back to front, left to right, and upwards.

Dr. Ellis documented small abrasions on the right temporal scalp, left lower and upper lip, right upper thigh, bilateral knees, right dorsal wrist, and left elbow.

EVIDENCE ANALYSIS

Firearms & Projectile Examinations

Officer Fleet's Smith & Wesson pistol, and Sergeant Maya's Glock Model 17 pistol were test fired at the Orange County Crime Lab.

Officer Fleet's Smith & Wesson pistol fired each of the test fire cartridges, but experienced a problem feeding one cartridge from the magazine. The cartridge jammed on the feed ramp of the pistol. Four (4) cartridge cases collected from the scene were determined to have been fired in Officer Fleet's Smith & Wesson pistol. One (1) bullet and one (1) jacket from the scene were determined to have been fired from Officer Fleet's Smith & Wesson pistol.

Sergeant Maya's Glock pistol was test fired and operated without malfunction. Two (2) cartridge cases collected from the scene were determined to have been fired in Sergeant Maya's Glock pistol. One (1) bullet from the autopsy shares class characteristics with the Glock pistol, but it could not be determined if the bullet was fired from the pistol.

DNA Examination

The Orange County Crime Lab DNA Unit collected and examined DNA samples from Officer Fleet's firearm, gun holster, and duty belt. The results and interpretations were as follows:

1. There is very strong scientific support that Emmanuel was the second main contributor to the DNA mixture sampled from the grip of Officer Fleet's firearm.

A DNA mixture consistent with Officer Fleet (a main contributor), a second main contributor, and at least three trace contributors was obtained from the sample from Officer Fleet's gun grip. Assuming there were five DNA contributors, it is at least one trillion times more likely to observe this DNA mixture if Officer Fleet was the main DNA contributor and Emmanuel was the second main DNA contributor, along with three random unrelated contributors than if the DNA mixture was from Officer Fleet and four random unrelated contributors.

2. In addition to DNA consistent with Officer Fleet, foreign DNA was detected in samples from his gun holster and duty belt, but the results were not suitable for database entry or comparison.

3. In addition to DNA consistent with Corporal Stys, foreign DNA was detected in the sample from the rear of the slide from Officer Fleet's firearm, but the results were not suitable for database entry or comparison.
4. Results from samples of the trigger and trigger guard from Officer Fleet's handgun were not suitable for database entry or comparison.

Toxicological Examination

A sample of Emmanuel's postmortem blood was collected for testing 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
Ethanol	Postmortem Blood	0.014 + 0.004 % (w/v)
Amphetamine	Postmortem Blood	0.0338 + 0.0025 mg/L
Methamphetamine	Postmortem Blood	0.236 + 0.017 mg/L
Cannabidiol	Postmortem Blood	0.0157 + 0.0024 mg/L
Hydroxy-THC	Postmortem Blood	0.0459 + 0.0053 mg/L
THC	Postmortem Blood	0.0020 + 0.0003 mg/L
Carboxy-THC	Postmortem Blood	0.190 + 0.023 mg/L

EMMANUEL'S PRIOR CRIMINAL HISTORY

Emmanuel's criminal history was reviewed and considered. Emmanuel had a California Criminal History that dates back to 2000. He has previously been arrested for the following charges:

- Petty Theft
- Assault with a Firearm on a Person
- Possession of Controlled Substance Paraphernalia
- Possession of a Controlled Substance
- Carrying a Concealed Weapon on a Person (Loaded)
- Receiving Known Stolen Property
- Transportation of a Controlled Substance
- Burglary
- Driving Under the Influence of Alcohol
- Violation of Parole
- Inflicting Corporal Injury on a Spouse/Cohabitant
- Willful Cruelty to a Child

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 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/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.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officer 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 had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

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 Department Sergeant Maya, Corporal Stys, and Officer Fleet with Emmanuel.

LEGAL ANALYSIS

The facts in this case were determined by considering the statements of Sergeant Maya, Corporal Stys, Officer Fleet, statements by other witnesses, as well as video recordings of the incident captured by body worn cameras.

The issue in this case is whether on December 12, 2019, Sergeant Maya and/or Corporal Stys were justified in how they handled the encounter with Emmanuel. As stated above, in order to support charging Sergeant Maya or Corporal Stys with a crime, the prosecution must prove beyond a reasonable doubt that no legal justification existed for the police officers’ conduct. If Sergeant Maya and Corporal Stys acted in lawful self-defense or defense of others, then criminal charges are not legally or ethically justified or 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.

A thorough analysis begins when the officers arrived on scene. All of the officers involved were dressed in Anaheim Police Department uniforms. The officers were legally discharging their duties when they responded to a domestic violence emergency at Emmanuel's apartment complex. Dispatch informed the officers that Emmanuel was likely under the influence of drugs. Upon first contact with Emmanuel, Corporal Stys identified himself as an APD officer. Immediately, Emmanuel was uncooperative and returned to his apartment without providing any information. Upon returning to his apartment, Emmanuel told his daughter that he was not going to jail that day and that he would rather get shot.

After failing to get any information from Emmanuel, Corporal Stys retreated to the parking structure to call for backup. Sergeant Maya responded to the scene. Corporal Stys and Sergeant Maya then encountered Emmanuel in the parking structure when he came down the stairs. The officers repeatedly asked to speak to Emmanuel about a reported domestic violence incident. Emmanuel refused to provide any information. Instead, Emmanuel attempted to push past Corporal Stys while stating that he wanted to get to his car and leave. Officers gave Emmanuel commands to sit on the stairs and remove his hands from his pant pockets. Emmanuel became belligerent, refused to cooperate, and kept his hand in his pocket which led officers to suspect that he had a weapon. Emmanuel again ignored commands to put his hands behind his back and made another attempt to push past Corporal Stys. When the officers attempted to restrain him, Emmanuel fought the officers. The struggle forced Officer Fleet, Corporal Stys, and Emmanuel to the ground. Once on the ground, Emmanuel grabbed Officer Fleet's gun. Based on the totality of all the circumstances, the conduct by all the involved officers was reasonable, necessary, and justified.

Both Corporal Stys and Officer Fleet attempted to use less than lethal force to gain Emmanuel's compliance. Corporal Stys attempted to put Emmanuel in a carotid restraint and Officer Fleet punched Emmanuel. None of these efforts had the desired effect on Emmanuel. Instead, Emmanuel continued to reach for Officer Fleet's gun. At some point during the struggle, Emmanuel pointed the gun towards the officers. Sergeant Maya stood within five (5) feet of the struggle. Officer Stys feared that either he or Officer Fleet would be shot. Such fear was reasonable and justified based on all the known facts. The officers knew that in a split second, Emmanuel could gain control of Officer Fleet's gun and shoot all three of them.

Sergeant Maya saw that Officer Fleet and Corporal Stys were losing the fight for the gun and commanded the officers to move out from underneath Emmanuel and take cover. When Officer Fleet released Emmanuel, Emmanuel gained possession of the gun. By grabbing for the Officer's gun, Emmanuel demonstrated that he was willing to do anything in his power to escape the police. Emmanuel could have easily turned and shot any of the three officers. Weaponless, Officer Fleet reasonably feared for his life. Emmanuel had successfully overpowered three officers and seized one officer's gun. At this point, all three officers reasonably and justifiably felt an imminent threat of death to themselves and their fellow officers.

Corporal Stys refused to allow Emmanuel to retain possession of the gun and continued to try to gain control. Although Corporal Stys ultimately took control of the gun from Emmanuel prior to the shooting, the threat of serious bodily injury and death did not evaporate in such a split second. Corporal Stys reasonably believed Emmanuel still had another weapon hidden in his pocket. This belief was based on Emmanuel's previous refusal to remove his hand from his pocket. Sergeant Maya also believed Emmanuel posed a deadly threat. At the time of the shooting, Sergeant Maya thought that Emmanuel was armed. The prosecution will not be able to prove beyond a reasonable

doubt that such state of mind by Sergeant Maya was unreasonable. Sergeant Maya never saw Corporal Stys take control of the gun. Therefore, it is reasonable to conclude that the threat of serious injury and death remained imminent when the officers ultimately shot Emmanuel.

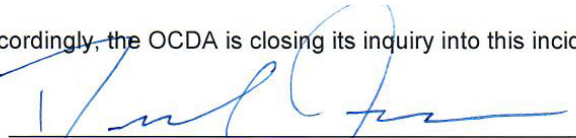
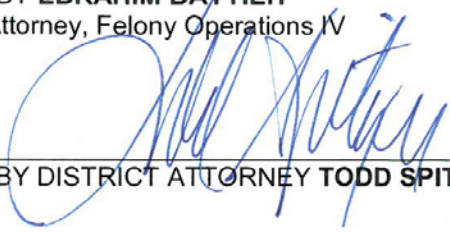
The fundamental question in this case is whether the officers' actions were reasonable and necessary. In their interviews, all of the officers explained their belief that each officer was in imminent danger of great bodily injury and death because Emmanuel overpowered them and seized Officer Fleet's gun. The officers observed the gun pointed in each officer's direction. DNA evidence from the grip of Officer Fleet's gun corroborates the fact that Emmanuel had control and/or possession of the gun. The officers' belief that Emmanuel posed a threat of great bodily injury or death to themselves and others was reasonable based upon the totality of the circumstances. There can hardly be any other way to interpret Emmanuel's effort to take the officer's gun. It is important to note that the incident took place in an underground parking structure beneath an apartment building. Residents and other citizens could have descended the stairwell or entered the driveway to access their cars during the incident and would have been in danger of suffering serious bodily injury or death.

In order for Sergeant Maya and Corporal Stys to be justly charged and convicted of a crime, the OCDA must prove beyond a reasonable doubt that the officers did not act in justifiable self-defense or defense of another. As is apparent from the analysis above, the prosecution would be unable to meet this burden. A jury analyzing these facts would justly conclude that it was reasonable for the officers to believe that their lives and the lives of others were in 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 a lack of evidence to prove beyond a reasonable doubt any criminal culpability on the part of Sergeant Maya or Corporal Stys. There is reliable evidence that Sergeant Maya and Corporal Stys' actions were reasonable and justified under the circumstances when they shot Emmanuel on December 12, 2019.

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


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