



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

January 21, 2021

Sheriff Don Barnes
Orange County Sheriff's Department
550 N Flower St
Santa Ana, CA 92703

Re: Officer-Involved Shooting on June 24, 2020
Fatal Incident involving Sunshine Kamille Salac
District Attorney Investigations Case # S.A. 20-015
Orange County Sheriff's Department Case # 20-020164
Orange County Crime Laboratory Case # 20-46216
Orange County Coroner Case # 20-03134-CO

Dear Sheriff Barnes,

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 Orange County Sheriff's Department Deputies Jose Arvizo, Matthew Peterson, Brent Richards, and Rodrigo Ruelas. Sunshine Kamille Salac, age 28, died as a result of her injuries. The incident occurred in the City of Lake Forest on June 24, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the June 24, 2020, fatal, officer-involved shooting of Sunshine Salac. 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 Orange County Sheriff's Department (OCSD) deputies 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 June 24, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eleven interviews were conducted, and seventeen additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: OCSD reports, audio dispatch and radio traffic recordings; Video recordings from OCSD patrol vehicles, Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer

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processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Salac; criminal history records related to Salac, 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 OCSD deputies or personnel, specifically Deputies Jose Arvizo, Matthew Peterson, and Brent Richards. 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. Deputies Arvizo, Peterson, and Richards all gave a voluntary statement to OCDA Investigators on June 30, 2020, while Deputy Rodrigo Ruelas gave his voluntary statement on June 24, 2020.

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

Sunshine Kamille Salac is a 28-year-old female who lived in Lake Forest, with her father and several other family members.

Approximately four years ago, Salac was diagnosed with severe depression. She was treated by a psychiatrist and had been prescribed Wellbutrin, Trazadone, and Vistaril at one point. More recently, she had been prescribed Abilify and Lexapro.

On May 17, 2020, Salac was admitted to Saddleback Medical Center for having suicidal thoughts. She was evaluated and transferred to College Hospital, where her prescribed medication was changed to Prozac. She was subsequently discharged the following day.

On May 26, 2020, Salac intentionally overdosed by taking approximately sixty pills of Abilify, Lexapro, and Prozac. She was rushed by ambulance to Saddleback Medical Center and stabilized. On May 30, 2020, while still reporting to be suicidal, Salac was placed on a 5150 hold for psychiatric evaluation. She was subsequently discharged from the hospital on June 2, 2020.

On June 24, 2020, at 1:03 AM, Orange County Communications Center received a 911 call from a cell phone number that was subsequently discovered to be that of Salac. During the 911 call, Salac reported that she lived at 22851 Loumont Drive, Lake Forest, and that someone had broken a window to the front of the house and entered the residence. 22851 Loumont Drive is around the corner and approximately 175 yards away from Salac's actual residence.

At 1:04 AM, Deputy Rodrigo Ruelas was dispatched to 22851 Loumont Drive, regarding a residential burglary in progress. Dispatch advised that the reporting party reported hearing a front window break and believed someone was inside her house. Based on the nature of the call and their relative proximity to the reported location, Deputies Jose Arvizo, Matthew Peterson, and Brent Richards elected to respond. Deputies were also advised that the reporting party had stated that she was hiding in the bathroom and her boyfriend was hiding in a closet. While responding, deputies learned that the reporting party's call had suddenly disconnected, and the dispatcher's attempts to reestablish contact with the reporting party were unsuccessful, as attempts to call back went unanswered. At 1:09:00 AM, Deputy Arvizo arrived on Loumont Drive and turned his lights off as he turned the corner. He parked four houses west of 22851 Loumont Drive. Deputy Arvizo exited his vehicle and walked east toward 22851 Loumont Drive, using his flashlight. At 1:09:58 AM, as Deputy Arvizo approached a gray sedan parked on the street in front of 22855 Loumont Drive, he heard a noise to his right. He turned toward the noise and saw Salac standing on the south sidewalk, under a tree, approximately 25–30 feet south of his location. Salac was dressed in all black and had the hood of her sweatshirt pulled up over her head. Deputy Arvizo was "startled" and "scared" by Salac's sudden appearance. Deputy Arvizo drew his weapon and illuminated Salac with his flashlight. Deputy Arvizo became "scared" when he saw Salac holding a black handgun in her right hand.

Deputy Arvizo immediately drew his handgun, pointed it at Salac, and began to back away toward the sedan. He yelled at Salac: "Let me see your hands!" "Get on the f*****", get down!" "Get down!" "On the f***** floor!" "On the floor!" and "On the ground now! Now!" Salac did not comply with any of his commands. Deputy Arvizo took cover behind the sedan and broadcasted to responding units that he had a suspect at gunpoint. Deputy Peterson noted that Deputy Arvizo "seemed fearful in his radio transmission," whereas he is "usually pretty calm, cool, and collected on the radio."

At 1:10:17 AM, Deputy Arvizo yelled at Salac: "Hands up, throw that!" "What do you got in your hands?" "Put it down!" He then broadcasted, "Subject looks like she has a hand- a handgun." At 1:10:22 AM, Salac began to walk across the street toward Deputy Arvizo. As she did, she held the

handgun in the “high-ready position” – both hands on the weapon, handgun at shoulder height, and the muzzle pointed upward. At that point, Deputy Arvizo again repeatedly yelled commands to Salac: “Let me see your hands!” “Drop it!” “Drop it!” “Drop it!” “Drop the f***** gun!” “Drop the f***** gun!” “Drop the gun!” “Drop the gun!” “Drop the gun!” Again, Salac refused to comply.

While Deputy Arvizo was yelling these commands, Salac walked toward him at the back of the sedan that he was using for cover. As she did, Deputy Arvizo moved around the side of the sedan toward the front, in an attempt to maintain his distance and keep the car between him and Salac. Deputy Arvizo said he was scared, but he did not fire because he had the sedan for cover and he felt he did not have a good shot. At 1:10:31 AM, Salac suddenly turned around and began walking back to her original position under the tree. Deputy Arvizo did not fire at Salac as she walked away, because the handgun was pointed up and away from him. When Salac reached the sidewalk, she turned around again and faced Deputy Arvizo. Despite numerous orders by Deputy Arvizo to “Drop the gun,” Salac remained noncompliant. At 1:10:49 AM, Deputies Ruelas and Richards arrived and parked on Loumont Drive, approximately 25–30 feet northeast of Salac. Salac was facing north toward Deputy Arvizo and was holding the black handgun, with both hands, in the high-ready position.

Deputy Arvizo broadcasted a request to Deputy Ruelas and Richards to put their unit spotlights on Salac. Both deputies activated their spotlights, in order to illuminate Salac and prevent her from seeing them. Deputy Ruelas took cover behind the open driver door of his vehicle and Deputy Richards took cover on the rear passenger side of Deputy Ruelas’s vehicle, near the trunk. At 1:11:04 AM, Deputy Peterson arrived and parked 15–20 feet west of Deputy Arvizo, who was crouched down in the grass on the north sidewalk, still using the sedan for cover. Deputy Peterson also illuminated Salac with his unit spotlights.

Salac was still standing on the south sidewalk, east of a tree, facing Deputy Arvizo. She was still holding the black handgun, with both hands, in the high-ready position. At 1:11:08 AM, Deputy Peterson ran from his unit to Deputy Arvizo’s location. Deputy Arvizo asked if anyone had a rifle. Deputy Peterson told Deputy Arvizo that he did, but it was in his unit. Deputy Arvizo told Deputy Peterson that he would cover him while he ran back to his unit to retrieve his rifle. Deputy Peterson spoke of having no cover and feeling “exposed” once he left the cover of the sedan. He felt it was imperative that Deputy Arvizo covered him in the event Salac decided to shoot at him. As Deputy Peterson retrieved his rifle, Salac began to move her head side to side, and appeared to be looking at each deputy’s position. At 1:11:30 AM, Deputies Ruelas and Richards yelled at Salac, “Put the gun down” and “Put both your hands up and drop the gun” but Salac again would not comply with any commands. Meanwhile, Deputy Arvizo broadcasted a request over the radio for a K-9 unit.

At 1:11:37 AM, Salac looked east toward Deputy Ruelas, then suddenly turned her body in his direction and widened her stance by taking two steps, while simultaneously dropping her hands and extending her arms out away from her body. Deputy Ruelas repeatedly ordered her to “Put the gun down!” By 1:11:39 AM, she was pointing the handgun directly at Deputy Ruelas, and Deputy Richards yelled, “Don’t do it!” Deputy Ruelas again yelled, “Put the gun down!”

With Salac still pointing the handgun at Deputy Ruelas, a volley of rounds were fired by the other three deputies. For a brief moment, Salac bent forward slightly at the waist and allowed her arms to fall forward toward the ground, however, she quickly raised the handgun back up with her right hand and pointed it directly toward Deputy Ruelas again. Deputies continued firing and Salac fell to the ground and dropped the gun at 1:11:44 AM. A combined ten shots were fired by the three deputies within approximately four seconds.

Deputy Arvizo stated that when Salac pointed the handgun toward Deputies Ruelas and Richards, "I was concerned for my partners' safety and lives and I fired three shots." He later added that he "was in fear for Deputy Ruelas' and Richards' life and safety." He also noted that a handgun from Salac's distance would "absolutely" be "lethal."

Deputy Richards said, when Salac took "a firing stance" and pointed the gun in his direction, he felt "an adrenaline rush" and "an immediate fear for [his] life." He fired five rounds and stopped firing when Salac fell to the ground and dropped the gun. Deputy Richards later described that he stopped firing "when [he] felt like she was no longer a threat."

Deputy Peterson said that he had just retrieved his rifle from his trunk and was running toward the front driver side of his police unit when he heard a shot. He did not see who fired the shot, but he "was fearful that [his partners] were about to get shot or had been shot at." Deputy Peterson looked toward Salac and saw she was pointing her handgun at deputies. He believed Salac had fired at his partners. Deputy Peterson raised his rifle and fired one round, which struck the tree next to Salac. Deputy Peterson saw Salac was still pointing the handgun toward his partners, and therefore, "the threat was still ongoing at that point." Deputy Peterson felt he "had to stop the threat," so he fired a second round. After he fired that round, Salac fell to the ground and dropped the handgun.

Deputy Ruelas saw Salac point the handgun at him and instantly believed, "she's possibly going to shoot me," and that his life was in danger. Deputy Ruelas explained that he did not fire because, when Salac lowered the handgun and pointed it at him, he was in the process of giving her commands, and he therefore did not have his gunsights trained on her. Deputy Ruelas stated that because of the position he was in, he wasn't going to just "blindly start shooting" without first making sure he had "a good clean shot."

At 1:11:53 AM, Deputy Ruelas requested paramedics. Deputies Richards and Ruelas approached Salac, and Deputy Ruelas kicked the handgun away from her reach. Upon kicking the handgun, Deputy Ruelas immediately realized that "it didn't feel like a real gun." Deputy Peterson also stated that when Deputy Ruelas kicked it away, "it sounded like plastic...but at the same time, I realized the gun is straight exactly what I saw, a black-looking gun, that kind of looked like a Beretta."

Deputies assessed Salac's condition and determined she had sustained multiple gunshot wounds to the upper torso. Deputy Richards, along with several other deputies, rendered aid to Salac until paramedics arrived.

At 1:14:25 AM, Deputy Arvizo made contact with one of the residents at 22851 Loumont Drive, who informed Deputy Arvizo that they had not called 911. He and his family had been asleep at the time of the 911 call, and no one from the residence had reported a break-in. Another deputy later showed the resident the phone number that had called 911, and the resident confirmed it did not belong to anyone in the house. Shortly after, another deputy called the phone number from which the 911 call had originated, and the cell phone found in Salac's possession immediately began to illuminate and vibrate.

At 1:19 AM, Orange County Fire Authority Engine #19 arrived. Firefighter-Paramedics saw several OCSO deputies rendering aid to Salac, and immediately contacted the hospital base station and expedited the ambulance response. Salac had a pulse, but her breathing was labored. At 1:27 AM, Care Ambulance departed the scene and transported Salac to Mission Hospital. While in transport, paramedics established an Intraosseous Infusion (I/O) line in Salac's left tibia and administered 250

milliliters of saline and also applied dressings to her gunshot wounds. At 2:00 AM, the ambulance arrived at Mission Hospital and released patient care to Mission Hospital medical personnel. The attending Trauma Surgeon and his team immediately began to treat Salac.

Salac arrived in cardiac arrest, with no pulse and no blood pressure, and her pupils were fixed and dilated. She was intubated and an emergency thoracotomy was performed allowing medical personnel to manually massage her heart. Once Salac's heart began to beat, the attending surgeon saw she had sustained a major injury to an artery in the left upper chest, resulting in massive blood loss. The medical staff followed advanced lifesaving protocols for over thirty minutes, but was unable to save Salac. The attending physician pronounced Salac deceased at approximately 2:36 AM.

Salac's boyfriend, John Doe, had stayed the night at Salac's house the night of the shooting. He woke up between 3:00 AM and 3:30 AM to discover that Salac was gone. He looked at his phone and saw that she had sent him a text at 1:09 AM that read, "I love you." Because Salac suffered from severe depression and had recently attempted suicide, John Doe became concerned. He woke up Salac's father and told him she was missing. They searched the house and yard but could not find her. They then initiated a search of the surrounding neighborhood. During their neighborhood search, John Doe turned onto Loumont Drive and saw yellow police tape and several OCSD units. He immediately feared the worst and reported his findings to the Salac family.

Due to her recent suicide attempt, Salac's father said that when his daughter's boyfriend woke him up and told him his daughter was gone, he immediately feared for her safety. Both Salac's father and John Doe later verified Salac's cell phone number, which matched the number used to make the original 911 call at 1:03 AM. Salac's father also confirmed that they kept a realistic-looking replica "Beretta" handgun at their house.

Video footage from the deputies' patrol vehicles captured part of the interactions between the deputies and Salac and corroborated the statements made by the deputies.

EVIDENCE COLLECTED

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

- Two .223 Speer cartridge cases on Loumont Drive
- Three .40 caliber casings located along the north sidewalk gutter of 22855 Loumont Drive. The two casings were head stamped "FEDERAL 40 S&W" and the other "F.C. 40 S&W"
- Five .40 caliber casings, all head stamped "FEDERAL 40 S&W," located on the street in front of 22851 Loumont Drive
- One black Powerline by Daisy 340 BB Spring Repeater Pistol, located on the south sidewalk across from 22855 Loumont Drive.
- One black and white shirt with apparent blood; one black hooded sweatshirt with apparent blood; one California Driver's License Number F5479601; one phone unknown make or brand with a black and white case
- One BCM Rifle, Model BCM4.

AUTOPSY

On July 2, 2020, independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy on the body of Sunshine Kamille Salac. Dr. Luzi noted that one gunshot wound to the torso had entered at the left shoulder, had followed a path striking the left lung, left clavicle, and left subclavian artery, and exited over the left clavicle. Salac also sustained a tangential gunshot wound to the chin, a superficial perforating gunshot wound to the lower jaw, a gunshot wound to the abdomen, as well as a gunshot

wound to each arm. The cause of death was determined to be a gunshot wound to the torso and the manner was determined to be homicide.

EVIDENCE ANALYSIS

Firearms Examination

Deputy Arvizo's Glock, .40 caliber semi-automatic handgun was test fired at the Orange County Crime Lab and fired without malfunction. There was one cartridge, head-stamped "Federal 40 S&W," in the chamber, and twelve cartridges, head-stamped "Federal 40 S&W," seeded in the fifteen cartridge capacity magazine.

Deputy Peterson's BCM Rifle, Model BCM4, was test fired at the Orange County Crime Lab and fired without malfunction. The rifle had a thirty round capacity magazine inserted into the magazine well. The magazine had twenty-two .223 rounds head-stamped "Speer 17 223 REM." There was a live round in the chamber with the same head stamp. After the incident, that weapon was secured in the rear of a marked unit at the scene. That weapon was processed, photographed, and collected as part of the scene investigation.

Deputy Richards's Glock, Model 22, .40 caliber semi-automatic handgun was test fired at the Orange County Crime Lab and fired without malfunction. The pistol was loaded with a round in the chamber and ten cartridges seeded in the fifteen cartridge capacity magazine, each round was head-stamped "FEDERAL 40 S&W."

Toxicological Examination

A sample of Salac's blood was collected at Mission Hospital. An Orange County Crime Lab 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	0.026 + 0.004% (w/v)
1-(3-chlorophenyl)-piperazine	Postmortem Blood	Detected
1-(4-chlorophenyl)-piperazine	Postmortem Blood	Detected
Bupropion	Postmortem Blood	0.331 + 0.047 mg/L
Bupropion metabolites	Postmortem Blood	Detected
Hydroxyzine	Postmortem Blood	0.267 + 0.025 mg/L
Nicotine	Postmortem Blood	Detected
Trazodone	Postmortem Blood	Detected

SALAC'S PRIOR CRIMINAL HISTORY

Salac had no prior 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 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 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/she is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

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

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment’s “objective reasonableness” standard. The Supreme Court further stated that the determination of the reasonableness of an officer’s use of force “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.* at 396-397.)

The United States Supreme Court’s analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of OCSD Deputies Arvizo, Peterson, and Richards with Salac.

LEGAL ANALYSIS

The facts in this case are determined by considering the statements of Deputies Arvizo, Peterson, and Richards to the OCDA investigators, which were supplemented by other relevant material, especially the video recording of the interactions between Salac and the deputies.

The issue in this case is whether the conduct of Deputies Arvizo, Peterson, or Richards on June 24, 2020 was criminally culpable and without justification. As stated above, in order to charge Deputies Arvizo, Peterson, or Richards 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 deputies’ conduct. Therefore, in order to lawfully charge Deputies Arvizo, Peterson, or Richards 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 Deputies Arvizo, Peterson, and Richards were necessary and justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held, it is well settled that “unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.’ Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court’s definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer’s use of deadly force

is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.” (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Deputies Arvizo, Peterson, and Richards were all justified in believing that Salac posed a significant threat of death or serious physical injury to themselves or others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Salac in the moments leading up to the shooting. Deputy Arvizo arrived in response to a residential burglary in which it was reported that there was an intruder in the reporting party’s house who then subsequently did not answer her phone, causing the deputies to believe that something may have happened to the 911 caller. Next, Salac was dressed in all black in the middle of the night and had the hood of her sweatshirt pulled up over her head. Moreover, she was holding a black handgun that was not recognizably fake until after Deputy Ruelas kicked it. Deputy Arvizo was “scared” when he saw Salac suddenly near him, dressed in all black late at night, and he was “scared” when he saw that she was holding a gun. Deputy Peterson noted that Deputy Arvizo “seemed fearful in his radio transmission,” not his usual “calm, cool, and collected” self.

Salac ignored repeated commands to “drop the gun,” to “get down,” and to show her hands. Instead, she walked toward Deputy Arvizo, then back to her original position, all while holding the gun in a high-ready position. At the time, Deputy Arvizo believed that Salac was trying to “get close to [him] enough where she feels comfortable to shoot [him].” The three other deputies were all aware that Salac was holding what appeared to be a firearm. When Deputy Ruelas shined his spotlight on Salac and started shouting commands, Salac continued to ignore the deputies and hold her gun in a high-ready position. Deputy Peterson went to retrieve his rifle from his unit, and he felt “exposed” as he ran.

When Salac suddenly assumed a “firing stance” and pointed her gun directly at Deputy Ruelas, Deputy Arvizo fired three shots because he “was in fear for Deputy Ruelas’ and Richards’ life and safety.” This expressed fear by the deputy is reasonable based on all the circumstances. He also noted that a handgun from Salac’s distance would “absolutely” be “lethal.”

When Deputy Richards saw Salac take “a firing stance” and point the gun in Deputy Ruelas’ and his direction, Deputy Richards felt “in immediate fear for [his] life” and fired five rounds until he “felt like [Salac] was no longer a threat.” This expressed fear by the deputy is reasonable based on all the circumstances.

Deputy Peterson did not see who fired the first shot, but he “was fearful that [his partners] were about to get shot or had been shot at.” At the time, he believed that Salac was “going to shoot one of [his] partners,” so he fired one round, and then another, after Salac pointed her gun toward Deputy Ruelas a second time. Deputy Peterson fired a second round because he felt he “had to stop the threat” and that “the threat was still ongoing at that point.” This expressed fear by the deputy is reasonable based on all the circumstances.

Finally, Deputy Ruelas did not shoot because he did not have Salac in his gunsights and did not want to “blindly start shooting,” but he believed Salac was “possibly going to shoot [him]” and that his life was in danger.

Each of the deputies stated that they feared for their life and safety and/or the life and safety of others, especially the life and safety of Deputy Ruelas. None of the officers fired a single round until that fear materialized when Salac assumed a firing stance and pointed her gun at Deputy Ruelas. The deputies continued to fear for Deputy Ruelas' life and safety when Salac raised her gun a second time and pointed it toward Deputy Ruelas.

It should also be noted that, in order for Deputies Arvizo, Richards, and Peterson 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 Deputies Arvizo, Peterson, and Richards did not act in reasonable and justifiable self-defense or defense of another when they shot at Salac. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Deputies Arvizo, Peterson, and Richards to believe that their lives and/or the lives of others were in danger and that their actions were necessary in order "to defend against an imminent threat of death or serious bodily injury to the officer or another person." Therefore, Deputies Arvizo, Peterson, and Richards were legally justified when they shot at Salac.

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 a lack of evidence to prove beyond a reasonable doubt any criminal culpability on the part of Deputy Arvizo, Deputy Richards, and/or Deputy Peterson, and there is substantial evidence that their actions were reasonable and legally justified under the circumstances when they shot Salac on June 24, 2020. Salac's death was tragic but it was not the result of any criminal conduct by any of the involved deputies.

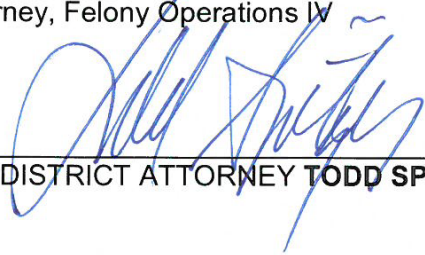
Accordingly, the OCDA is closing its inquiry into this incident.



DEVIN CAMPBELL
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**