



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER, DISTRICT ATTORNEY

February 8, 2022

Chief Darin Lenyi
Westminster Police Department
8200 Westminster Blvd.
Westminster, CA 92683

Re: Officer-Involved Shooting on November 14, 2020
Fatal Incident involving Tho Xuan Ngo
District Attorney Investigations Case # SA 20-031
Westminster Police Department Case # 20-08433
Orange County Crime Laboratory Case # 20-53958

Dear Chief Lenyi,

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 Westminster Police Department Officers Engelberto Delgado and Robert May. Tho Xuan Ngo, age 46, died as a result of his injuries. The incident occurred in the City of Westminster on November 14, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the November 14, 2020, fatal, officer-involved shooting of Tho Xuan Ngo. 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 Westminster 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 November 14, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eight interviews were conducted, and nine additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following Westminster Police

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Department reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent prints, officer processing, and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Tho Xuan Ngo; criminal history records related to Tho Xuan Ngo, 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 Westminster Police Department officers or personnel, specifically Officers Engelberto Delgado and Robert May. The OCDA will not be addressing any possible issues related 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, TARGET/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 Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer-involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officers Delgado and May gave voluntary statements to OCDA Investigators on November 15, 2020.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of an 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 Friday, November 14, 2020, at approximately 6:51 p.m., the Westminster Police Department (WPD) received a call from Jane Doe 1. Jane Doe 1, Tho Xuan Ngo's daughter, reported that her father struck her sister, Jane Doe 2, on the head with a plastic vacuum cleaner tube and threatened to kill her. She also reported that Ngo was possibly under the influence of drugs, hallucinating and acting erratically. Jane Doe 1 was instructed to wait outside until officers arrived.

At approximately 6:54 p.m., WPD Officers Delgado and Chavez were dispatched to Ngo's residence, 15821 La Nubes Street in the city of Westminster, and were advised that Ngo was acting erratically, verbally combative, tried to assault the reporting party, and was possibly under the influence of methamphetamine.

15821 Las Nubes Street is a two-story residence. There was a staggered height white cinderblock wall surrounding the courtyard outside the front door. On the date of this incident, the area within the cinderblock wall appeared to be under construction with several gardening tools, a partially built pergola, planters, loose gravel, and pavers. Ngo shared the residence with his common-law wife and three adult daughters.

At approximately 7:03 p.m., Officer Delgado arrived at the residence and contacted two of Ngo's daughters, Jane Doe 1 and Jane Doe 2, in front of the residence. Officer Delgado learned that Ngo had a history of drug abuse and was acting delusional. In the present instance, he barged into a bedroom, threatened to choke Jane Doe 2 to death and hit her in the head with a plastic vacuum cleaner tube. Delgado was informed Ngo spoke and understood English and was inside the residence with his common-law wife, as well as his 18-month-old grandson. Jane Doe 2 told the officer that she had removed a decorative sword from Ngo's room out of fear her father would hurt someone with it.

At approximately 7:07 p.m., Officer May joined Delgado as he spoke with Jane Doe 1 and Jane Doe 2. Officer May had self-dispatched to the call for service, as he was close by and believed an additional officer may be needed based on the circumstances of the call. Officer Chavez arrived on the scene shortly after Officer May.

The officers then formulated a tactical plan whereby Jane Doe 1 would telephone her mother and direct her to exit the rear of the residence with the child and the family would then wait down the street until the incident was resolved. The officers intended for Officer Delgado to be the primary officer responsible for communicating with Ngo and he would be armed with lethal force in the form of his duty weapon. Officer Chavez would be less-than-lethal and be armed with a taser, while Officer May would be the "hands" guy responsible for handcuffing Ngo when necessary.

Officers Delgado and Chavez saw Ngo inside his house standing by an open window facing them. They asked Ngo to come out and speak to them and Officer Delgado told him, "You are not in trouble." Ngo responded that he was eating. Jane Doe 2 then removed the family dog from the courtyard at which point Ngo became extremely agitated and began cursing in Vietnamese. He told the officers in English not to come inside his house. Ngo then asked, "who the fuck are you?"

To which Officer Delgado responded, "Westminster Police Department, we need to talk with you." Officers May and Chavez called out, "Cảnh sát" which means police officer in Vietnamese.

At approximately 7:15 p.m., Ngo climbed out of the window of his home into the courtyard holding what officers described as a three- to four-foot (3- to 4-foot) long board or "metal sword." Officer Delgado drew his duty weapon and pointed it at Ngo. Officer Delgado repeatedly ordered Ngo to drop the object. Ngo refused and climbed back into the residence through the open window.

Officers then repeatedly asked Ngo to come out of the house and talk with them and he responded by extending his middle finger and flipping them off.

At approximately 7:17 p.m., in an attempt to deescalate the situation, Officer Delgado told Ngo he was going to holster his weapon. Once the weapon was holstered, Ngo climbed out of the window, picked up a 4-foot long metal-handled floor scraper and held it like it was a baseball bat. Ngo then bent down, grabbed a handful of rocks, and threw them at the officers. Officer Chavez broadcasted over the radio that the officers were assaulted with rocks. Officer May deployed his pepper spray at Ngo. However, the officers were too far away from Ngo for the pepper spray to be effective. Officer Delgado directed Officer Chavez to deploy the Taser, however Officer Chavez did not do so as he believed they were too far from Ngo and outside of the Taser's effective range.

Jane Doe 3, Ngo's upstairs tenant, was looking out an open window during this incident and saw Ngo aggressively swinging a long wooden or metal stick and challenging the officers to fight, "One by one...". She heard the officers repeatedly directing Ngo to put the stick down. Ngo would not comply.

Officer Delgado ordered Ngo to drop the object. Ngo refused and stated, "Mother fucker, shoot go ahead," in Vietnamese. Ngo, armed with the floor scraper, and holding it like a baseball bat, advanced towards the officers who were just outside the open courtyard gate.

At approximately 7:17:29 p.m., Officer Delgado instructed the other officers to backup and told Officer Chavez to use the Taser if the opportunity presented itself. As the officers retreated towards the street, Ngo picked up a steel four-tine cultivator. At that time, Ngo was armed with the cultivator in his left hand and the floor scraper in his right.

At about 7:17:43 p.m., Ngo rushed out the open gate of the courtyard towards the officers who had now backed up into the street. As he approached the officers he momentarily paused before continuing to lunge at Officer Delgado. Officer Delgado saw Ngo raise the floor scraper and twist his body as if winding up to swing the floor scraper. Officer Delgado again yelled, "Put it down." When Ngo was within five to ten feet (5 to 10 feet) of Officer Delgado. Officers Delgado and May, who was just to the right of Delgado, fired multiple shots at Ngo, stopping when Ngo collapsed to the ground.

Officer Chavez broadcasted, "shots fired," and paramedics were requested. The officers rolled Ngo onto his stomach, handcuffed him and searched him for additional weapons. Ngo was then placed onto his left side as the officers initiated first aid. Officer Delgado saw Ngo had sustained a gunshot wound to his right torso and applied pressure in an attempt to control the bleeding.

At approximately 7:20:39 p.m., WPD Sergeant Ryan Reyes arrived on the scene and directed the handcuffs to be removed from Ngo in preparation for treatment by paramedics. Ngo was determined to have wounds to his torso, back, arm, eye, and hand.

At about 7:23:29 p.m., Officer Delgado performed CPR on Ngo, while Officer May held his head back to keep his airway open. Officer Chavez maintained pressure on Ngo's torso.

Orange County Fire Authority (OCFA) paramedics arrived on the scene at approximately 7:27:12 p.m. and provided treatment to Ngo. They determined that he had no pulse and gunshot wounds to the lower right abdomen, left shoulder, right eye, and an avulsion on the left hand between the thumb and forefinger. Paramedics continued to perform CPR and administered oxygen, saline, and six rounds of epinephrine.

At approximately 7:43 p.m., the ambulance transported Ngo to the UC Irvine Medical Center, where it arrived at 7:55 p.m. Upon arrival, Ngo was unresponsive and in cardiac arrest. Advanced life-saving measures were unsuccessful and at 7:58 p.m., Ngo was pronounced deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- EM #1 One cartridge case headstamped "WIN 9mm Luger"
- EM #2 Two cartridge cases headstamped "WIN 9mm Luger"
- EM #3 One cartridge case headstamped "WIN 9mm Luger"
- EM #4 One cartridge case headstamped "WIN 9mm Luger"
- EM #5 One cartridge case headstamped "WIN 9mm Luger"
- EM #6 One cartridge case headstamped "WIN 9mm Luger"
- EM #7 One cartridge case headstamped "WIN 9mm Luger"
- EM #8 One garden rake and metal pipe
- One lighter, one plastic canister, one LG cell phone and one wallet

AUTOPSY

On November 18, 2020, Forensic Pathologist Dr. Aruna Singhania of the Orange County Coroner's Office conducted an autopsy on the body of Tho Xuan Ngo.

Dr. Singhania found that Ngo had sustained nine (9) apparent entry wounds and three (3) apparent exit wounds. The entry and exit wounds were to the head, left shoulder and right hip. The bullet wound to the head caused no structural damage to the brain, but caused the brain to hemorrhage. The bullet wounds to the upper torso resulted in damage to the liver, spleen, diaphragm, kidney and intestines. The cause of death was multiple gunshot wounds.

EVIDENCE ANALYSIS

Firearms Examination

The pistols of Officers Delgado and May were test fired at the Orange County Crime Lab and fired without malfunction. It was determined that two of the eight cartridge casings recovered at the scene were fired from Officer Delgado's handgun. These were the cartridge cases at evidence marker EM1 and one of the two cases at marker EM2. The remaining six cartridge cases were fired from May's handgun. These being the cartridge casings at evidence marker EM3 to EM7 and one of the cases at EM2.

Projectile Examination

The copper jacket recovered from Ngo's left pelvis shares class and individual characteristics with May's handgun, but due to damage, it could not be identified as having been fired from that handgun, and the results of the comparison were inconclusive.

One of the bullets in Ngo's left abdomen shares class and individual characteristics with Officer Delgado's handgun, but due to corrosion and damage, it could not be identified as having been fired from that handgun, and the results of the comparison were inconclusive.

The other bullet recovered from Ngo's left abdomen and the bullet from Ngo's left chest share class characteristics with both Officer Delgado's and May's handguns; but due to corrosion and damage, could not be identified as having been fired from either weapon. The results of the comparison were inconclusive.

The remaining projectiles recovered from Ngo's body were not suitable for microscopic comparison.

Toxicological Examination

A sample of Ngo's postmortem blood was collected for testing. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Acetaldehyde	Postmortem Blood	Detected
Amphetamine	Postmortem Blood	0.499 +/- 0.037 mg/L
Amphetamine	Brain	1.09 +/- 0.08 mg/kg
Methamphetamine	Postmortem Blood	3.51 +/- 0.25 mg/L
Methamphetamine	Brain	7.68 +/- 0.55 mg/kg
Ethanol	Postmortem Blood	0.017 +/- 0.004% (w/v)

THO XUAN NGO'S PRIOR CRIMINAL HISTORY

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

- Attempted Robbery
- Sexual Battery – Touch For Arousal
- DUI – Alcohol/Drugs
- Probation Violation
- Evading Police
- False Imprisonment
- Assault With Deadly Weapon – Not Firearm
- Vandalism
- Under the Influence of Controlled Substance
- Obstruct Public Officer
- Battery Against Police Officer

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a 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.

California Penal Code Section 196 provides that the use of deadly force by a public officer is justifiable when done in compliance with California Penal Code section 835a. California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California 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.

California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the 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 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 very much applicable to the circumstances surrounding the interactions of Westminster Police Department Officers May, Delgado and Chavez with Tho Xuan Ngo.

LEGAL ANALYSIS

The facts in this case are determined by considering Officer May's and Officer Delgado's statements to the OCDA investigators, which was supplemented by other relevant material and witnesses present at the incident.

The issue is whether the conduct of Officers May and Delgado on November 14, 2020 was without justification, resulting in criminal culpability. As stated above, in order to charge Officers May and Delgado 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 May and Delgado with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of Officers May and Delgado 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 recent case, it is well settled that “[u]nlike 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.

Officers May and Delgado were justified in believing that Tho Xuan Ngo posed a significant threat of death or serious physical injury to themselves and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Tho Xuan Ngo in the moments leading up to the shooting.

The officers responded to a 911 call in which a woman stated her father had threatened to kill her sister and struck her sister on the head. Upon arrival they learned that the caller's father, Tho Xuan Ngo, was acting delusional, was possibly under the influence of methamphetamine, and that one of his daughters had removed a sword from the home for fear of what he might do with it.

After being contacted by officers, Ngo exited his home and picked up a club-like object, at which point officers trained their weapons on Ngo and ordered him to “put the fucking stick down” and threatened to shoot. Ngo continued to act erratically and then entered his home through a window. After officers continued to tell Ngo to come out of his home and offered to put their weapons away, Ngo became agitated, exited his window and picked up another object that could be used as a weapon. Officers attempted to pepper spray Ngo but he was too far away. Officers again told Ngo to drop the weapon and threatened to shoot. In the Body-Worn Camera footage, when a taser was mentioned, one of the officers concluded that they were too far from Ngo. Officer Delgado directed the other officers, “let's get space,” and they backed away from Ngo and his home. At that point in the footage, one of the officers was heard stating that the object Ngo picked up had a blade, and another stated that he had a rake. After backing away from the house, Ngo charged out of the gate on his property with weapons in both hands. Despite officers commanding him to put down the objects, he continued charging at Officer Delgado. It was only at that point Officer Delgado and Officer May shot Ngo multiple times. In the aftermath of handcuffing Ngo, the officers attempted lifesaving measures on the mortally wounded Ngo, prior to the arrival of paramedics.

The officers attempted to resolve the situation non-lethally on multiple occasions and had just retreated away from the defendant moments before he charged them. The officers were aware that he was potentially under the influence of methamphetamine and acting erratically. They ordered Ngo multiple times to drop his weapons and threatened multiple times to shoot him prior to doing so. Ngo's daughter stated that he spoke and understood English. In Body Worn Camera footage, the officers are heard saying they think he has a blade. In his interview after the shooting, Officer Delgado mentioned a fear that Ngo might "decapitate" him. The situation happened very quickly and officers were reasonable to fear death or serious injury if Ngo was able to make physical contact with them. The officers ceased firing after Ngo collapsed.

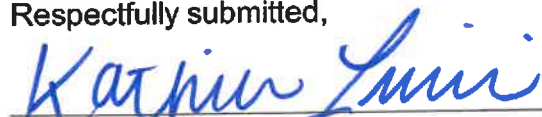
It should also be noted that, in order for Officers May and Delgado to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officers May and Delgado did not act in reasonable and justifiable self-defense or defense of another when they shot at Tho Xuan Ngo. 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 Officers May and Delgado to believe that their lives and the lives of others were in danger. Therefore, Officers Delgado and May were justified when they shot Tho Xuan Ngo. Simply stated, Officers May and Delgado did not commit a crime, to the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner.

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 no evidence of criminal culpability on the part of Officers May and Delgado and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Tho Xuan Ngo on November 14, 2020.

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

Respectfully submitted,



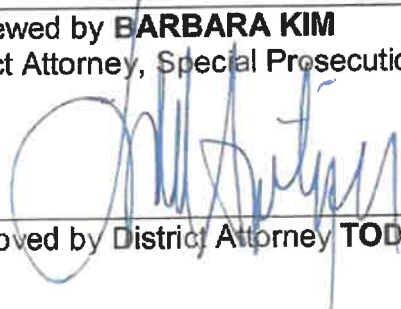
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Read and Reviewed by **BARBARA KIM**

Assistant District Attorney, Special Prosecutions Unit



Read and Approved by District Attorney **TODD SPITZER**