



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

February 4, 2022

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

Re: Officer-Involved Shooting on September 18, 2020
Fatal Incident involving Thien Nguyen
District Attorney Investigations Case # S.A. 20-023
Orange County Sheriff's Department Case # 20-031243
Orange County Crime Laboratory Case FR # 20-51013
Orange County Coroner Case # 20-04870-LB

Dear Sheriff Barnes,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Orange County Sheriff's Department Deputy David Leathers. Thien Nguyen age 26, died as a result of his injuries. The incident occurred in the City of Stanton on September 18, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the September 18, 2020 fatal deputy-involved shooting of Thien Nguyen. 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 deputy 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 September 18, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, multiple interviews were initially conducted, and additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Orange County Sheriff's Department reports, Deputy Leathers' personnel file, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Thien Nguyen; criminal history records related to Orange County Sheriff's Department including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

A scene recreation was done to get a more accurate perspective of the circumstances of the shooting. During the recreation, Investigators from the OCDASAU used vehicles of the same makes and models of the vehicles involved in the shooting. The placement of the vehicles was based on scene photographs and markers that showed the correct position, location, and angle of each car prior to the shooting and at the time of the shooting. While the video surveillance recovered from the scene depicted the incident, it lacked perception and ability to access depth. The scene recreation was aimed at providing further insight into depth and space.

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 Orange County Sheriff's Department deputies or personnel, specifically Deputy David Leathers. The OCDA will not be addressing any possible issues of 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. Officer David Leathers gave a voluntary statement to OCDA Investigators on September 18, 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

On September 18, 2020, at approximately 5:16 p.m., Deputy Kenneth Kocher was assigned to patrol the City of Stanton in a black and white marked vehicle. While driving eastbound on Chapman Avenue, Deputy Kocher used his Mobile Data Terminal (MDT) to run the license plate on a white 2012 Infinity G37. The MDT indicated that the vehicle was stolen on September 13, 2020 out of the City of Garden Grove. Deputy Kocher provided dispatch with the license plate number and dispatchers confirmed that the vehicle was stolen. The driver of the stolen vehicle was later identified as Thien Nguyen. Immediately after dispatchers confirmed this information, Nguyen began to evade Deputy Kocher. Kocher radioed the direction of travel and multiple deputies began travelling towards the provided direction. Nguyen's speed increased significantly as the pursuit continued northbound on Dale Ave and Deputy Kocher eventually lost sight of Nguyen. Deputy David Leathers who was just beginning his shift at the time, was in his patrol vehicle on Katella Avenue when he saw Nguyen speed past the intersection. Deputy Leathers pulled his patrol vehicle behind Nguyen and continued the pursuit.

As Deputy Leathers continued the pursuit, Nguyen was travelling at a speed of approximately 100 mph and was going north in the southbound lanes in a highly congested area. Nguyen turned east on Cerritos Avenue and north into the small driveway of New Horizon Senior Living Facility. An automated fence prevented Nguyen from going further down the driveway. At this time, Deputy Leathers drove into the same driveway behind Nguyen's vehicle and essentially blocked Nguyen in. Nguyen reversed into the front of Deputy Leathers' vehicle causing a collision between the two vehicles. At this point, the two vehicles formed the shape of an "L." Deputy Leathers was just about to exit his vehicle at the time of the collision. Deputy Leathers stated he did not feel as though his life was in imminent danger at the point of collision, as only his vehicle was damaged. Deputy Leathers then exited his vehicle and stood behind the open driver's door of his patrol vehicle. Nguyen's vehicle had its window partially down, Deputy Leathers stated he gave Nguyen verbal commands to "stay in the vehicle or get bit by the [K9]." However, in comparing the patrol video, Deputy Leathers did not mention getting bitten by the K-9, but did warn Nguyen to stop or Deputy Leathers will "shoot."

Deputy Leathers' vehicle and a large tree blocked Nguyen from making a safe exit from the driveway. The only option of escape for Nguyen would have been to drive the stolen vehicle in between Deputy Leathers' vehicle and the large tree. Deputy Leathers stated he and Nguyen made direct eye contact and Nguyen revved his engine. Deputy Leathers recalled Nguyen having a look of anger and, "pure desperation to do anything he could to evade arrest." Deputy Leathers also stated that Nguyen looked directly at Deputy Leathers and accelerated the vehicle. Deputy Leathers stated that he knew based on where he had positioned his patrol car, in a tight parking spot between himself, the stolen vehicle, and the tree, there was no space for the vehicle to pass safely through. Deputy Leathers stated that the vehicle would have "[hit] [him] directly on or from the side of the vehicle and . . . [grind] [him] against [his] own patrol car." In that moment, Deputy Leathers stated he felt that his life was in imminent danger and that Nguyen was going to run him over or hit him in order to escape.

Nguyen turned the wheels of the stolen vehicle toward Deputy Leathers, put the car in drive and accelerated forward. Deputy Leathers fired nine (9) shots from his department issued semi-automatic pistol. The bullets hit the vehicle and Nguyen. After Deputy Leathers fired the shots, the

stolen vehicle continued forward, collided with the tree, and came to a stop. Deputy Leathers retreated behind his patrol vehicle.

At 5:18 p.m., immediately after the shooting, Deputy Leathers broadcasted, "906k shots fired" over the radio. Almost simultaneously, Deputy Kocher arrived on the scene. Deputy Leathers called for medics and told Kocher, "[h]e tried to run me over." Deputy Leathers also told investigators that he felt he had to go into the street because of the threat. The video collected shows Deputy Leathers move into the street after the shots were fired. At 5:19 p.m., more deputies arrived on scene. After the vehicle was cleared and the scene was marked safe, Nguyen was removed from the vehicle and deputies gave medical aid while they waited for Orange County Fire Authority (OCFA) Paramedics. Deputies performed chest compressions on Nguyen, added compression gauze to pack Nguyen's gunshot wounds, and used a blood clotting agent to help stop the bleeding.

At 5:27 p.m. the Orange County Fire Authority (OCFA) engine 46 arrived on scene. Paramedic Adam Melker observed Nguyen supine on the ground between the stolen vehicle and Deputy Leathers' patrol vehicle. Nguyen appeared to be lifeless. Deputies were still performing CPR and applying combat gauze to Nguyen's wounds. Paramedics placed a cardiac monitor on Nguyen and it showed that he was asystole. Nguyen had no pulse, fixed and dilated pupils, and a significant amount of blood loss. After observing these details, Melker concluded the resuscitation efforts were futile based on the location of the wounds and the amount of blood loss. Nguyen was pronounced dead on the scene by OCFA paramedics at 5:31 p.m.

Investigators were called to the scene and around 6:50 p.m., OCDA Investigators arrived and canvassed the neighborhood. They interviewed three (3) nearby residents. One (1) resident was outside of his home and witnessed part of the incident as it occurred. Witness #1 saw a white vehicle pull into the driveway of New Horizon Senior Living Center and stop in a parking stall. Witness #1 said he saw the deputy vehicle with lights and sirens activated pull into the driveway behind the white vehicle. He witnessed the white vehicle reverse and crash into the deputy vehicle and begin to drive out of the driveway. Witness #1 said he then heard an unknown number of gunshots. Witness #1 did not visually see the shooting because he ran behind a van that was parked in the parking lot. Witness #2 did not see the incident, but said she heard approximately 10 gunshots. Witness #3, the sister of Witness #2, also heard approximately seven (7) to eight (8) gunshots. Witnesses #4 and #5 were inside of their home at the time of the shooting and heard approximately six (6) to seven (7) "bangs." They then looked out and said they saw a white car and the deputies on the scene talking to each other.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Glock model 17, Gen 5, 9mm semi-automatic handgun (Deputy Leathers' weapon).
- EM #1 One cartridge case, head stamped "FC 9MM Luger" on the ground, northeast of the right front wheel of the stolen vehicle (Vehicle #2).
- EM #2 One cartridge case, head stamped "FC 9MM Luger" on the ground, north of Evidence Marker #1.
- EM #3 One cartridge case, head stamped "FC 9MM Luger" on the ground, west of Evidence Marker #1.
- EM #4 One cartridge case, head stamped "FC 9MM Luger" on the ground, north of Evidence Marker #6.
- EM #5 One cartridge case, head stamped "FC 9MM Luger" on the ground, west of Evidence Marker #2.

- EM #6 One cartridge case, head stamped “FC 9MM Luger” on the ground, west of Evidence Marker #3.
- EM #7 One cartridge case, head stamped “FC 9MM Luger” on the ground, south of Evidence Marker #5.
- EM #8 One cartridge case, head stamped “FC 9MM Luger” on the driver’s side floorboard of the stolen vehicle (Vehicle #2).
- EM #9 One bullet on the ground, south of a shattered double paned sliding glass door at the New Horizon Senior Living Center.
- One wallet from Nguyen
- One cell phone from Nguyen
- Carabiner, CVS card, USB drive, and a keychain
- Two socks and two shoes
- Shirt, pants, belt, and underwear
- Watch, metal medallion, metal chain, vape pen, and eyeglasses

AUTOPSY

On September 23, 2020, Independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy on the body of Thien Nguyen. Dr. Luzi observed multiple gunshot wounds: three (3) gunshot wounds to the left side of the neck, two (2) gunshot wounds to the left side of the back, one (1) gunshot wound on the left forearm, one (1) gunshot wound of the left hand, and one (1) gunshot wound of the left thumb. Dr. Luzi also observed abrasions over the left cheek, abrasions to the right clavicle, abrasions and contusions over the left clavicle, abrasions to the left side of the chest, and abrasions over Nguyen’s back. Additionally, Dr. Luzi observed abrasions on the right forearm, and abrasions, contusions, and lacerations over the left arm. Dr. Luzi determined the cause of death to be “multiple gunshot wounds” and the manner of death a “homicide.”

EVIDENCE ANALYSIS

Firearms & Projectile Examinations:

Deputy David Leathers’ Glock 17, Gen 5, 9mm pistol was test fired at the Orange County Crime Lab and fired without malfunction. The Glock 17 pistol fired nine (9) cartridge cases recovered at the scene. It was determined that the nine (9) cartridge cases found at the scene were all fired from Deputy Leathers’ Glock 17 pistol.

Toxicological Examination

A sample of Nguyen’s blood was collected at Orange County Sheriff-Coroner Forensic Science Center. An Orange County Sheriff’s Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamines	Postmortem Blood	0.251 ± 0.019 mg/L
Carboxy-THC	Postmortem Blood	0.0305 ± 0.0037 mg/L
Etizolam	Postmortem Blood	0.0035 ± 0.0006 mg/L
Hydroxy-THC	Postmortem Blood	0.0042 ± 0.0005 mg/L
Methamphetamine	Postmortem Blood	2.69 ± 0.20 mg/L
THC	Postmortem Blood	0.0245 ± 0.0032 mg/L

THIEN NGUYEN'S PRIOR CRIMINAL HISTORY

Nguyen's criminal history was reviewed. Nguyen had a California Criminal History that dates back to 2012. He has previously been arrested for the following charges:

- Domestic Battery
- Vandalism
- Driving with a Suspended License
- Possessing Marijuana While Driving
- Possession of Unlawful Paraphernalia
- Receiving a Known Stolen Property
- Assault by Means Likely to Produce Great Bodily Injury
- Tampering With a Vehicle
- False Representation of Identity to Peace Officer
- Robbery
- Possession of a Controlled Substance
- Possessing a Stolen Vehicle
- Taking Vehicle Without Consent

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 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 Orange County Sheriff's Department Deputy David Leathers with Nguyen.

LEGAL ANALYSIS

The facts in this case are determined by considering both Deputy Leathers' statement to the OCDA investigators, which was supplemented by other relevant material, and the statements of the witnesses present at the incident.

The issue is whether the conduct of Deputy David Leathers on September 18, 2020 was without justification, which would implicate criminal culpability. As stated above, in order to charge Deputy Leathers 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.

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 potentially 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.

It cannot be proven that Deputy Leathers was not justified in believing that Nguyen posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Nguyen in the moments leading up to the shooting. As Deputy Leathers continued his pursuit of Nguyen in the stolen vehicle, Nguyen pulled into the driveway of New Horizon Senior Living Facility. Deputy Leathers observed Nguyen searching for an escape route. Nguyen was not putting his hands up and was actively looking for a direction to escape. Nguyen then backed the stolen vehicle into the patrol vehicle. Almost instantaneously, Nguyen turned the wheel towards Deputy Leathers' direction and per Deputy Leathers, the two made direct eye contact as Nguyen revved his engine. Leathers stated he saw pure anger and desperation to get away. While maintaining eye contact with Deputy Leathers, Nguyen accelerated forward. Deputy Leathers was still standing behind the open patrol vehicle door, in between his vehicle and the stolen vehicle.

Deputy Leathers stated he believed that because the patrol vehicle was blocking the driveway and there was a tree to the other side of the stolen vehicle, Nguyen's only escape would be to run him over. As the stolen vehicle moved forward, Deputy Leathers stated he thought his life was going to end and he told investigators, "As he's driving towards me all I could picture was my two

children and that fact that . . . today I played softball with my daughter and . . . I honestly . . . thought that was the last time.” Deputy Leathers stated he felt his life was in imminent danger of being seriously injured and he discharged his Glock 17 into the front driver’s side window of the white Infinity. After Deputy Leathers fired the shots, he retreated toward the back of his patrol vehicle. Deputy Leathers recalled his fear saying, “I thought this guy was trying to kill me to a point where . . . as I was backing up I actually backed up into a major intersection . . . I felt like I’d just gone through a life or death situation to a point where I didn’t know I was standing in the middle of traffic.” When the shooting occurred, Deputy Leathers was directly in between his patrol vehicle and Nguyen’s vehicle.

In analyzing the issue at hand, the fundamental question is whether Deputy Leathers’ actions were reasonable and necessary. In his interview, Deputy Leathers explained that in the moment Nguyen accelerated forward, he reasonably believed that he was going to be crushed against his patrol vehicle and killed. Nguyen had showed signs of determination to avoid arrest leading up to the incident by driving recklessly, speeding, and crashing the stolen vehicle into Deputy Leathers’ patrol vehicle. Therefore, it was not unreasonable that Deputy Leathers believed that Nguyen would run him over in order to achieve his escape. In examining all of the evidence, there is no evidence to rebut a claim that Deputy Leathers’ actions were reasonable and necessary based on the totality of the circumstances.

When the suspect vehicle tried to move forward after striking Deputy Leathers’ vehicle, Deputy Leathers was outside of his vehicle ready to effectuate an arrest. The position of Deputy Leathers outside of the vehicle when Nguyen turned the wheel in the direction of Deputy Leathers and accelerated forward placed Deputy Leathers in a dangerous position. Deputy Leathers could have reasonably believed that he was going to get crushed in between Nguyen’s vehicle and his own vehicle. Further, as heard on captured video, Deputy Leathers yelled for Nguyen to stop immediately after Deputy Leathers got out of his vehicle. Nguyen either disregarded or did not hear the command and accelerated the stolen vehicle, at which time Deputy Leathers fired multiple rounds.

Based upon the scene re-creation, the space that Deputy Leathers occupied at the time of the shooting was very small and tight. The lack of space in which to either retreat or for Nguyen’s vehicle to safely pass Deputy Leathers, is consistent with Deputy Leathers’ statement that he fired his weapon because he believed he was in imminent danger. Deputy Leathers stated that Nguyen’s vehicle would “[hit] [him] directly on or from the side of the vehicle and . . . [grind] [him] against [his] own patrol car.” In analyzing the recovered video, as well as the scene recreation, Deputy Leathers might not have been hit “directly on” by Nguyen’s vehicle. The hood of the vehicle was already past Deputy Leathers when the shots were fired. However, it appears that a reasonable argument exists for Deputy Leathers to believe he could have been hit by the side of Nguyen’s vehicle, thereby trapping and crushing Deputy Leathers in between the two vehicles. Deputy Leathers saw the wheels of Nguyen’s vehicle turn towards Deputy Leathers’ direction and the car jolt forward. This is corroborated by the video surveillance, as well as the patrol video. Deputy Leathers stated that he believed that he “would basically hit [Deputy Leathers] or grind [Deputy Leathers] against [his] own patrol car.” Based on the investigation and the evidence reviewed, his stated belief does not appear unreasonable.

It must also be noted that Deputy Leathers was in a marked patrol car with lights and sirens active when pursuing Nguyen. Further, prior to the shooting, Deputy Leathers warned Nguyen that force may be used if Nguyen did not stop. This conduct further shows Deputy Leathers’ compliance with Penal Code 835a.

While Deputy Leathers was lawfully able to use deadly force to protect himself, he is also able to use such force 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. Here, prior to the shooting, Nguyen was evading police by driving at approximately 80-100 miles per hour. Further, Nguyen was evading in a reckless manner weaving through traffic on residential and commercial streets. Deputy Leathers stated that he feared for the safety of the public based on the speeds Nguyen was driving. To further add to the danger, the streets had a high amount of traffic as the chase took place a little after 5:00 pm on a weekday. That erratic and dangerous driving could have reasonably illustrated to Deputy Leathers that Nguyen had a conscious disregard for the safety of the public, justifying the force used.

Further, as stated above, an officer need not retreat to effectuate the arrest of a suspect. Therefore, Deputy Leathers had no requirement to try and get out of the way of the suspect vehicle. However, even if there were a requirement to retreat, it appears that there would not have been enough time or a place to retreat to. When Deputy Leathers got out of his patrol vehicle, almost instantly Nguyen drove the stolen vehicle forward quickly and unexpectedly. Further, there was not a location for Deputy Leathers to retreat to. To the front and both sides of Deputy Leathers were the vehicles involved. The only area for Deputy Leathers to have retreated would have been behind him, which was the direction of Nguyen's vehicle. The lack of options for retreat further supports Deputy Leathers' belief that his conduct was reasonable and necessary to stop the threat of Nguyen's vehicle causing imminent harm to himself or others.

Timing is also an important factor in analyzing Deputy Leathers' actions. Deputy Leathers pulled into the parking area to block in Nguyen. Within seconds Deputy Leathers' vehicle was rammed by Nguyen. Deputy Leathers got out of his patrol vehicle to arrest Nguyen and almost immediately Nguyen turned his wheels tight to the left (the direction of Deputy Leathers) and accelerated. Deputy Leathers, between the two vehicles, fired immediately.

It should also be noted that, in order for Deputy Leathers 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 Deputy Leathers did not act in reasonable and justifiable self-defense or defense of another when he shot at Nguyen. 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 could justly conclude that it was reasonable for Deputy Leathers to believe that his life 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 sufficient evidence to prove beyond a reasonable doubt criminal culpability on the part of Deputy Leathers when he shot Nguyen on September 18, 2020.

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

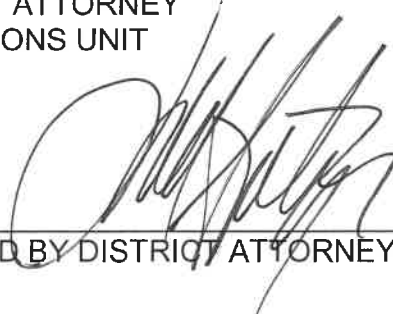
Respectfully submitted,



BRADLEY SCHOENLEBEN
SENIOR DEPUTY DISTRICT ATTORNEY
GANGS UNIT



READ AND REVIEWED BY **BARBARA KIM**
ASSISTANT DISTRICT ATTORNEY
SPECIAL PROSECUTIONS UNIT



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