



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

May 11, 2022

Chief Ronald Lawrence  
Costa Mesa Police Department  
99 Fair Dr.  
Costa Mesa, CA 92626

Re: Officer-Involved Shooting on December 31, 2019  
Non-Fatal Incident involving Steven Fernandez  
District Attorney Investigations Case # S.A. 19-027  
Costa Mesa Police Department Case # DR 19-08830  
Orange County Crime Laboratory Case #FR 19-57703

Dear Chief Lawrence,

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 Costa Mesa Police Department (CMPD) Officers Trevor Jones and Erick Fricke. Steven Fernandez, age 26, survived his injuries. The incident occurred in the City of Costa Mesa on December 31, 2019.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the December 31, 2019, non-fatal, officer-involved shooting of Steven Fernandez. 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 Costa Mesa PD officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On December 31, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 10 interviews were conducted, and 16 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Costa Mesa PD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

☒ MAIN OFFICE  
300 N. FLOWER ST.  
SANTA ANA, CA 92703  
P.O. BOX 808 (92702)  
(714) 834-3600

☐ NORTH OFFICE  
1275 N. BERKELEY AVE.  
FULLERTON, CA 92832  
(714) 773-4480

☐ WEST OFFICE  
8141 13<sup>TH</sup> STREET  
WESTMINSTER, CA 92683  
(714) 896-7261

☐ HARBOR OFFICE  
4601 JAMBOREE RD.  
NEWPORT BEACH, CA 92660  
(949) 476-4650

☐ JUVENILE OFFICE  
341 CITY DRIVE SOUTH  
ORANGE, CA 92668  
(714) 935-7624

☐ CENTRAL OFFICE  
700 CIVIC CENTER DR. WEST  
SANTA ANA, CA 92701  
(714) 834-3952

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 Steven Fernandez; criminal history records related to Steven Fernandez 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 Costa Mesa PD officers or personnel, specifically Officer Jones and Officer Fricke. The OCDA will not be addressing any possible issues related to policy, training, tactics, or civil liability.

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy not to release the final report regarding the officer involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his or her case is still pending.

#### **INVESTIGATIVE METHODOLOGY**

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured or killed 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.

Officer Jones and Officer Fricke both elected not to give a voluntary statement to OCDA Investigators.

## **FACTUAL SUMMARY**

On December 31, 2019, Steven Fernandez and his friend were speaking on the phone with each other discussing their plans for New Year's Eve. During their conversation, Fernandez brought up the fact that he was having relationship problems with his roommate, and appeared emotionally distraught and began crying. Fernandez told his friend that he had two guns and that he was going to hurt himself or "go on a rampage" and "take the three kids out" that he saw in the street. That same day, Fernandez also threatened his roommate that he was going to blow up her house and shoot himself in the head or have someone else do it. At around 1400 hours, Fernandez took a picture of himself with his mouth around the muzzle end of a pistol and texted the photo to his roommate. Fernandez's roommate called Fernandez's friend and told him about this. Fernandez's friend then drove to the house where Fernandez was staying and saw that the roommate's .380 pistol and a 9mm pistol were missing. Based on these events, Fernandez's friend called police at 1541 hours and informed them that Fernandez was in the alley of 238 Palmer Street, Costa Mesa, and was armed with two loaded firearms and wanted to commit "suicide by cop." Fernandez was described as a male white, 27 years old, 5' 9", 120 pounds, with tattoos on his face and neck.

Several Costa Mesa PD officers, including Officer Jones, were dispatched to 238 Palmer St., Costa Mesa and were advised that Fernandez was suicidal and in possession of two loaded firearms. At 1552 hours, Officer Jones arrived on scene and saw Fernandez near the alley. Within a minute of arriving on scene, Officer Jones broadcasted "shots fired." Officer Jones radioed to dispatch that Fernandez was shooting at him and that he was "pinned down" behind his marked police unit. The sound of gunfire was audible over the radio. Officer Jones believed Fernandez fired at him four times. After being shot at, Officer Jones fired one round at Fernandez before losing sight of him. Fernandez continued to fire at Officer Jones over the next minute.

Over the next 20 minutes, Fernandez continued to run and hide throughout the neighborhood, periodically firing at officers and threatening neighbors. He intentionally pointed the gun at multiple residents in a threatening manner; he discharged his firearm into the air in front of a person; and he entered the backyard of a residence on Knox Place and put a gun to that resident's head and stated, "you move, I'm going to kill you." Fernandez then entered the garage at 220 Knox Place, and when that resident opened the garage door Fernandez fired multiple rounds at her as she was inside her car. This resident reported feeling glass hitting her body from the gunfire and saw Fernandez with a firearm in each of his hands pointing it directly at her and yelled at her to "get the hell out of here." The resident then drove away and Fernandez shut the garage door.

During this span of time, CMPD dispatch received numerous calls from neighbors reporting hearing shots fired and witnessing Fernandez in possession of a handgun. CMPD's Special Weapons and Tactics (SWAT) Team was activated and responded to the area along with the Costa Mesa Fire Department (CMFD). When they arrived, both units began staging the area.

To determine Fernandez' exact location, CMPD detectives pinged Fernandez's cell phone and heard it ringing near the rear of 220 Knox Place. CMPD personnel believed Fernandez was hiding in the garage so a perimeter was established to contain him. Around 1815 hours, Detective Jacobi, a CMPD SWAT Negotiator, initiated announcements to Fernandez in an effort to get him to come out peacefully. Police personnel made numerous attempts to gain Fernandez's compliance and surrender peacefully. Detective Jacobi stated that he heard Fernandez yelling back but was unable to understand what was being said.

During this time, CMPD SWAT team snipers were deployed to find elevated positions in the area. Officer Fricke found a position on the roof of 216 Knox Place and was joined shortly after by Officer Barnes, who was unable to find another suitable position. Officer Barnes estimated that they were 50-feet away from Fernandez and stated that they could see Fernandez through a window on the side door to the garage. Barnes indicated that he could see Fernandez sitting in a chair, pointing a gun at his own head and chin. At approximately 1835 hours, Officer Barnes saw Fernandez point the gun through the window directly at him and Officer Fricke. Officer Fricke fired one round, which struck Fernandez in the head. Fernandez fell out of view. Officer Fricke broadcasted that shots were fired and that Fernandez was down. Officer Barnes would later tell OCDA Investigators that he perceived Fernandez pointing a gun at both him and Officer Fricke as an immediate threat to their lives, and stated that he would have fired if he had been in position to shoot.

After Officer Fricke fired, members of CMPD SWAT moved closer to the garage and could hear Fernandez moving around inside and yelling for help. CMPD SWAT then utilized their armored vehicle to pull the garage door down, which had been disabled by Fernandez. Fernandez was found lying on the garage floor, near the side garage door in the fetal position. Two handguns were located in the corner adjacent to Fernandez. CMFD arrived on scene and administered medical aid. Fernandez sustained a single gunshot wound, which resulted in a fractured nasal/mandible, significant damage to his teeth and jaw, as well as the loss of part of his left middle finger. Fernandez underwent surgery to control the bleeding and his injured finger was amputated. According to medical personnel, Fernandez was expected to make a full recovery.

On Friday January 3, 2020, at 1100 hours, OCDA Investigator C. Gonzales interviewed Fernandez at his hospital bedside where Fernandez was recovering from his injuries and surgery. Investigator Gonzalez noted that Fernandez was unable to speak but would move his head in agreement or give a thumbs up or down in response to questioning. During the interview, Fernandez admitted to hearing the police and remembered them asking him to put the gun down and surrender. Fernandez indicated that he recalled facing the pedestrian garage door but said he could not see outside because the garage door was closed and it was too dark to see through the door window. Fernandez also remembered raising the gun to his chin and contemplating suicide, although he could not recall placing the barrel of the gun to his head or pointing the gun out the garage door. Fernandez' physical condition and attention span began to deteriorate and the interview was concluded.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- EM #1 One cartridge case, head stamped "9mm Luger Speer"
- EM #2 One cartridge case, head stamped "9mm Luger GFL"
- EM #3 One cartridge case, head stamped "9mm Luger "
- EM #4 One cartridge case, head stamped "9mm Luger FC"
- EM #5 One pair black sunglasses
- EM #6 One cartridge head stamped "223LE"
- EM #7 One M&P folding knife
- EM #8 One Ruger LCP 380 Semi-Automatic Pistol
- EM #9 One Kahr CW9 (serial# ED8419) Semi-Automatic Pistol
- EM #10 One cartridge case, head stamped "380 auto CB/C +P"
- EM #11 One cartridge case, head stamped "380 auto CB/C +P"

- EM #12 One Baseball cap
- EM #13 One yellow metal ring
- EM #14 One Colt Carbine CAL 5.56 mm Serial # LE509603 with magazine and 23 cartridges
- EM #15 One cartridge case, head stamped "WINCHESTER 223 REM"
- EM #16 One cartridge case head stamped "380 auto CB/C +P"
- EM #17 One Velcro sling and one pair Ray ban sunglasses
- EM #18 One 6 round capacity 380 magazine (empty)
- EM #19 One cartridge case, head stamped "9mm Luger Speer"
- EM #20 One cartridge case, head stamped "9mm Luger Speer"
- EM #21 One cartridge case, head stamped "9mm Luger WIN"

## **EVIDENCE ANALYSIS**

### **Firearms Examination**

Officer Jones' Sig Sauer 9mm Pistol was test fired at the Orange County Crime Lab and operated without malfunction. No cartridge cases were located at the scene for this firearm.

Officer Fricke's Colt M4 5.56 x 45 mm caliber Carbine Rifle was test fired at the Orange County Crime Lab and operated without malfunction. The rifle was determined to have fired one cartridge case collected from the scene (EM 15).

Fernandez's Ruger LCP .380 Auto Pistol was test fired at the Orange County Crime Lab and operated without malfunction. The handgun was determined to have fired all three .380 Auto caliber cartridges collected from the scene (EM 10, 11, and 16).

Fernandez's Kahr Arms CW9 9mm Pistol had an apparent bullet strike to the frame, was jammed and inoperable. The handgun was repaired to complete a function test and determined to have fired all seven 9mm Luger caliber cartridges collected from the scene (EM 1, 2, 3, 4, 19, 20, and 21).

### **Toxicological Examination**

A sample of Steven Fernandez's blood was not collected.

### **STEVEN FERNANDEZ'S PRIOR CRIMINAL HISTORY**

Steven Fernandez's criminal history was reviewed and considered. Fernandez had a California Criminal History that dates back to 2009. He has previously been arrested for the following charges:

- Assault with a Deadly Weapon
- Possession of Marijuana
- Sale/Furnish Marijuana
- Grand Theft Auto
- Evade Peace Officer
- Possession of a Stolen Vehicle
- Carrying a Concealed Dirk or Dagger
- Theft
- Battery of Spouse/Ex-Spouse

### **FERNANDEZ'S POST-INCIDENT CONVICTION**

On January 10, 2020, OCDA filed criminal charges against Steven Fernandez in Orange County Superior Court, case number 20WF0017. Charges included: attempted premeditated murder upon a peace officer, attempted premeditated murder, discharging a firearm at an inhabited dwelling, grossly negligent discharge of a firearm, four counts of assault with a semiautomatic firearm, criminal threats, and multiple firearms related enhancements. On March 18, 2022, Steven Fernandez plead guilty to all of the above listed charges and enhancements, and was sentenced to a total of 21 years state prison.

### **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 Costa Mesa Officer Jones and Officer Fricke with Steven Fernandez.

## **LEGAL ANALYSIS**

The facts in this case are determined by considering officers' statements to the OCDA investigators, which were supplemented by other relevant material and witnesses present at the incident, including statements made by Steven Fernandez.

The issue is whether the conduct of Officer Jones and/or Officer Fricke on December 31, 2019, was without legal justification making them criminally culpable. As stated above, in order to charge Officer Jones and/or Fricke 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, to lawfully charge Officer Jones and/or Officer Fricke 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 Officer Jones and/or Officer Fricke 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.

Officer Jones was justified in believing that Fernandez 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 Fernandez in the moments leading up to and during his shooting spree. Earlier on that day, prior to Officer Jones arriving on scene, Fernandez was acting emotionally distraught and told his friend that he had two guns and was going to hurt himself and could "take the three kids out" that he saw in the street and "go on a rampage" with the guns. Fernandez also threatened to blow up his roommate's house and was going to shoot himself in the head or have someone else do it. As Officer Jones was on his way to the scene, CMPD Dispatch broadcasted that Fernandez was suicidal and in possession of two firearms. Within one-minute of his arrival, Fernandez began shooting at Officer Jones and had him "pinned down" by gunfire behind the officer's marked police unit. The sound of gunfire was audible over

the radio. Officer Jones believed Fernandez had fired at him four times. Officer Jones was in a life-threatening situation, and fired back at Fernandez one time in self-defense. Fernandez continued to fire at Officer Jones who then lost sight of him. Fernandez went on to threaten multiple residents with his firearms and continued to shoot at other residents and police officers. By firing his service weapon one time at Fernandez, Officer Jones' conduct was reasonable and necessary under those circumstances to defend himself and others from Fernandez's repeated attacks.

Officer Fricke was justified in believing that Fernandez posed a significant threat of death or serious physical injury to himself and others. Likewise, this conclusion is based on the totality of the circumstances, but mainly based on the conduct of Fernandez in the moments leading up to him being shot. When CMPD first arrived on scene, Fernandez had already shot multiple rounds at Officer Jones. Over the course of the next twenty minutes Fernandez continued shooting at several other officers, he threatened to kill other residents in the neighborhood, had discharged his firearm into the air, and even shot at one of the residents. In response to all of this, members of CMPD SWAT team, which included Officer Fricke and Barnes, took tactical positions in order to contain Fernandez from committing further acts of violence. It wasn't until Fernandez pointed his pistol directly at Officer Fricke and Officer Barnes, did Officer Fricke shoot at Fernandez. Based on the totality of the circumstance, Fernandez' actions of pointing his pistol at the two officers posed an imminent and significant threat of death or serious injury to both officers. Officer Fricke fired at Fernandez in self-defense and defense of others, and his conduct was reasonable and necessary to defend against this threat.

It should also be noted that in order for Officer Jones and/or Officer Fricke 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 Officer Jones and Officer Fricke did not act in reasonable and justifiable self-defense or defense of others when they shot at Fernandez. 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 Officer Jones and Officer Fricke to believe that their lives and the lives of other people were in danger. Therefore, there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officer Jones and Fricke committed a crime when they shot at Fernandez. Instead, the only reasonable conclusion that can be drawn based on the weight of all the evidence is that Officer Jones and Fricke 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 Officer Jones or Officer Fricke, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they fired at Fernandez on December 31, 2019.

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

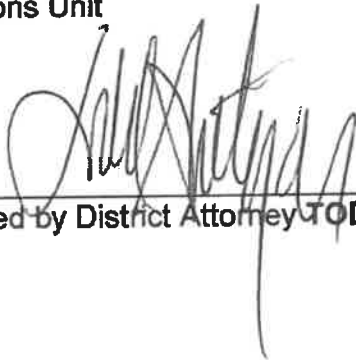
Respectfully submitted,



**CRAIG WILLIAMS**  
Deputy District Attorney  
Special Operations Unit



Read and Reviewed by **BRETT BRIAN**  
Assistant District Attorney  
Special Prosecutions Unit



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