



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 15, 2022

Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza Drive
Santa Ana, CA 92701

Re: Officer-Involved Shooting on October 20, 2017
Non-Fatal Incident involving Cesar Ramon Ayala
District Attorney Investigations Case #17-029
Santa Ana Police Department Case #17-28549
Orange County Crime Laboratory Case #17-57929

Dear Chief Valentin,

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 Santa Ana Police Department (SAPD) Officer David Fernandez. Cesar Ramon Ayala, 18, survived his injuries. The incident occurred in the city of Santa Ana on Oct. 20, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Oct. 20, 2017, non-fatal, officer-involved shooting of Cesar Ramon Ayala. 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 SAPD officer 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 Oct. 20, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, six interviews were conducted, and 24 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, audio dispatch, and radio

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traffic recordings; Orange County Crime Laboratory (OCCL) reports, including latent print reports, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ayala; criminal history records related to Ayala, including prior incident reports; audio recordings and transcriptions of Ayala's jail phone calls, 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 on the part of SAPD officers or personnel, specifically Officer Fernandez. The OCDA will not be addressing any possible issues relating 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 the OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his/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 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 Fernandez declined to give a voluntary statement to OCDA Investigators following this incident.

FACTUAL SUMMARY

On Oct. 20, 2017, at approximately 7:04 p.m., SAPD Officers David Fernandez and Greg Beaumarchais of the Gang Suppression Unit were canvassing the area of 1600 North King Street in a marked black and white SAPD police vehicle, with "Gang Unit" displayed on each side of the police vehicle. According to Officer Beaumarchais, there had been at least five recent gang-related shootings believed to have been committed by members of a criminal street gang in that area. Officers Fernandez and Beaumarchais were patrolling that area for possible leads to the shootings.

According to Officer Beaumarchais, while he and Officer Fernandez were stopped at a red light facing northbound on English Street at 17th Street (one street east of King Street), they observed two pedestrians on foot at the red light, waiting to cross 17th Street, headed northbound. One pedestrian, later identified as Cesar Ramon Ayala, was wearing a black "Angels" baseball hat, gray shorts or pants, a light-colored shirt, and a green backpack on his back. The second pedestrian was wearing a red "Angels" baseball hat, a dark colored shirt or sweatshirt, brown shorts, and an unknown color backpack on his back. Based upon his background, training, and experience, Officer Beaumarchais recognized the hats as symbols commonly associated with a local faction of a criminal street gang.

Officers Fernandez and Beaumarchais watched as Ayala and the second subject activated the traffic signal control button. They noticed the two pedestrians continued to look back at the officers, as if "obviously watching" the officers. When the light turned green and the pedestrian walk sign was illuminated for pedestrians to proceed, both Ayala and the second subject suddenly changed their direction of travel. Both officers discussed their observations with each other and concluded the two males were most probably gang members and should be contacted for questioning. As they approached them from behind, Ayala and the second subject looked back at them and suddenly began running away in opposite directions of each other on 17th Street. Ayala ran westbound and the second subject ran eastbound, past the approaching police vehicle. The officers decided to stay with Ayala and followed him westbound, towards a 7-Eleven convenience store located at 17th and King, on the southeast corner.

According to Officer Beaumarchais, while he and Officer Fernandez started to drive their police vehicle up onto the apron to cut him off, Ayala immediately stopped and started running eastbound. The officers exited their vehicle and gave chase. Officer Fernandez eventually caught up to Ayala at Smile Designer Dentistry, a closed dental office located at 202 West 17th Street. Officer Beaumarchais stated he was about 10 feet behind Officer Fernandez. According to Officer Beaumarchais, during the foot chase, Officer Fernandez pulled off the backpack Ayala was wearing, causing the backpack to fall to the ground and Ayala to spin around. Officer Fernandez's momentum took him past Ayala's location. As a result, Ayala was now facing Officer Beaumarchais, who was still running towards him. Officer Beaumarchais said, "I see him look at me, and he starts to dig his hand deep into one of his pockets. I immediately thought he was going for a gun." At about five to eight feet away from Ayala, Officer Beaumarchais drew his firearm, and pointed it at Ayala, yelling at him to get down on the ground. Ayala failed to follow his command. Officer Beaumarchais stated that due to the fact Officer Fernandez was only a couple feet east of Ayala, he did not feel comfortable shooting Ayala himself, as he may inadvertently have hit his partner officer.

According to Officer Beaumarchais, Ayala continued running eastbound a few more feet until he arrived at the west side of the dental building and entry to its rear parking lot. At this location, there

was a security chain, approximately waist high, draped across the west driveway between two posts to prevent vehicle traffic from entering or leaving the parking lot onto 17th Street. There was, however, room on either side of the posts for a pedestrian to fit through. Ayala ran southbound on the driveway between the building and the east post towards the rear parking lot. Officer Fernandez continued to chase after him. Officer Beaumarchais ran a different direction around the dental building, eastbound on 17th Street, in an attempt to cut off Ayala's anticipated direction of travel through the dental office's parking lot.

As Officer Beaumarchais was rounding the building, he heard a single gunshot. At the time of the gunshot, Officer Beaumarchais's view of Ayala and Officer Fernandez was completely obstructed by the dental building, and thus Officer Beaumarchais did not witness the shooting. After the gunshot, and from a distance, Ayala could be heard yelling in pain. As Officer Beaumarchais continued running towards Ayala and Officer Fernandez's location in the south parking lot, he used his police radio to broadcast a "998 English, just south of 17th Street," which is the radio code for officer-involved shooting, at which time additional SAPD officers were dispatched to the area.

According to the footage recorded on Officer Beaumarchais's Body Worn Camera, approximately eight seconds after the gunshot, Officer Beaumarchais arrived at Ayala and Officer Fernandez's location. Upon his arrival, Ayala was observed on the ground, on his stomach and moaning in pain. Officer Fernandez asked, "Where are you hit?" and Ayala responded, "in the arm."

Officer Beaumarchais assisted Officer Fernandez in taking Ayala into custody. At about the same time, Officer Fernandez told Officer Beaumarchais, "He threw the gun." Officer Fernandez directed Officer Beaumarchais to the location of a gun, approximately 10 to 15 feet southwest of them. The .45 caliber semi-automatic handgun contained ammunition loaded in a magazine clip, which was in the gun. One additional .45 caliber magazine containing .45 caliber ammunition was located on the ground next to Ayala, along with several other items of evidence, including Ayala's wallet containing his California Identification card.

During an interview with John Doe 1, he told investigators was standing on the back porch of his residence when he heard, "Get back, I have a gun, back away," and then one gun shot. Another witness, John Doe 2, said he was entering his residence when he heard yelling and then one gunshot. He said it sounded like someone was yelling verbal commands prior to the gunshot. Neither witness observed the shooting. None of the witnesses contacted personally observed the shooting that evening. Ayala declined to give a statement to the investigators. A short time later, the second male subject who was with Ayala was apprehended by SAPD at 2006 West Meriday Lane in Santa Ana.

At approximately 7:10 p.m., Orange County Fire Authority (OCFA) personnel were dispatched to the area of the incident. At approximately 7:24 p.m., Ayala was transported to the University of California-Irvine Medical Center (UCIMC), in the city of Orange. Ayala had sustained a single gunshot wound to his left upper arm.

It appears Officer Fernandez's Body Worn Camera detached from his uniform when he exited the driver's door of his police vehicle to pursue Ayala, because it was located on the ground beneath his police vehicle.

Ayala made no statements to the OCDA Investigators. However, on Oct. 22, 2017, at approximately 1:26 p.m., Ayala called his mother from the jail. Ayala's mother asked him, "what

did they tell you?" Ayala replied, "they are going to give me gun charges." Ayala further told his mother where he was shot and the injuries he sustained. Later during the phone conversation Ayala's mother asked him, "but why did they shoot you?" and Ayala replied, "they told me to stop because I wanted to throw that when I threw it they shot me I fell on the ground."

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- .45 semi-automatic pistol, a cartridge from the chamber, and a loaded magazine
- Loaded magazine
- Cartridge case
- Hat and red rag
- Paint can
- Keys on lanyard
- Pens, flashlight, and lighter
- Sweatshirt
- White t-shirt
- Bag with pen and speaker
- Sunglass bag and loaded magazine from bag
- Black zipper bag with miscellaneous items
- Glass pipes
- Medicine bottle with white rock substance

EVIDENCE ANALYSIS

Officer Fernandez's Glock Model 21 pistol was test fired at the OCCL without malfunction. The fired cartridge case from the scene is Winchester brand, .45 automatic caliber. It was microscopically compared to the test fired cartridge cases from the Glock pistol. The cartridge case from the scene was determined to have been fired from Officer Fernandez's Glock pistol.

AYALA'S PRIOR CRIMINAL HISTORY

Ayala's criminal history was reviewed and considered. Ayala has a California Criminal History that dates back to 2016, and he has previously been arrested for the following charges:

- Grand Theft Auto
- Possession of Stolen Property
- Participation in a Criminal Street Gang
- Hit and Run
- Evading the Police
- Obstruction of Police
- Possession of Burglary Tools
- Possession of a Firearm in a School Zone

AYALA'S POST-INCIDENT CHARGES

On Oct. 24, 2017, the OCDA filed criminal charges against Ayala in Orange County Superior Court Case 17CF2594, consisting of the following felony charges: Count 1, Carrying a Concealed and Loaded Unregistered Firearm while Engaged in Criminal Street Gang Activity, a violation of Penal Code Section 25400(a)(2)/(c)(6); Count 2, Carrying a Loaded Unregistered Firearm in Public while Engaged in Criminal Street Gang Activity, a violation of Penal Code Section 25850(a)/(c)(6); Count

3, Street Terrorism, a violation of Penal Code Section 186.22(a); and Count 4, Gang Related Possession of Graffiti Tools, a violation of Penal Code Section 186.22(d)-466.

Subsequent to the incident at issue in this report, and after the charges were filed, Ayala was released on bail and was arrested again in December of 2017, and charged as follows in Orange County Superior Court Case 17CF3173: Count 1, Attempted Murder, a violation of Penal Code Section 664-187(a); Count 2, Assault with a Firearm, a violation of Penal Code Section 245 (a)(2), Count 3, Second Degree Robbery, a violation of Penal Code Section 211/212.5(c); Count 4: Assault with a Firearm, a violation of Penal Code Section 245 (a)(2); Count 5: Street Terrorism, a violation of Penal Code Section 186.22(a); Count 6, Carrying a Loaded Unregistered Firearm in Public, a violation of Penal Code Section 25850(a)/(c)(6), and Count 7, Carrying a Concealed, Loaded, Unregistered Firearm in Public, a violation of Penal Code Section 25400(a)(2)/(c)(6).

Both cases were presented to the Grand Jury and an indictment of the combined cases was issued on February 24, 2021 in case number 21ZF0002.

On November 29, 2021, the defendant pled guilty to all the charges and enhancements in the indictment and was sentenced to 27 years in state prison.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal on-duty shooting include attempted murder [Penal Code Section 664/187]; 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 peace officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (Kortum v. Alkire (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (Id. At 333.)

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 any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "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 reasonable force to effect the arrest or to prevent escape or to overcome resistance." The Court of Appeal in Kortum further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (Kortum v. Alkire, supra, 69 Cal.App.3d at p. 333.)

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 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.)

LEGAL ANALYSIS

The facts in this case are determined by considering all relevant information and material associated with the incident, especially the statement of Officer Beaumarchais.

The issue in this case is whether the conduct of Officer Fernandez on Oct. 20, 2017 was without justification, rising to the level of criminally culpability. As stated above, in order to charge Officer Fernandez 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 officer's conduct. Therefore, in order to lawfully charge Officer Fernandez with a crime, the prosecution must prove beyond a reasonable doubt he did not act in lawful self-defense. If the actions of Officer Fernandez 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 "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in Brown noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (Brown v. Ransweiler, supra, 171 Cal.App.4th at p. 528.)

Based on the statement of Officer Beaumarchais and the fact that Ayala was armed, a reasonable argument can be made that Officer Fernandez was justified in believing that Ayala posed a significant threat of death or serious physical injury to himself and others. This conclusion may reasonably be drawn based on the totality of the circumstances, but mainly based on the conduct of Ayala in the moments leading up to the shooting. As discussed above, Officers Fernandez and Beaumarchais were patrolling the area for possible suspects to five gang shootings that had recently taken place. Upon seeing Ayala and his companion dressed in clothing associated with a known criminal street gang the two officers approached the suspects who then, in turn, ran. Both officers followed Ayala on foot. When Officer Fernandez grabbed hold of Ayala and pulled his backpack off, Ayala dug into his pockets, in a manner that suggested that he was reaching for a gun. This is further corroborated by Officer Beaumarchais' statement that he would have shot Ayala if Officer Fernandez was not in the close proximity of Ayala.

When the pursuit continued around the Smile Designer Dentistry building, there were no witnesses to the incident except Officer Fernandez and Ayala. Regrettably, Officer Fernandez declined to give a voluntary statement following the incident. However, what is known is that Officer Beaumarchais, just moments prior, was involved in a situation in which he thought it was appropriate to draw his gun and fire if he could have safely done so, when Ayala reached into his waistband.

Based on the totality of the available evidence, there is a reasonable argument to be made that once behind the dental office, Ayala threw his gun as Officer Fernandez chased him, meaning, Ayala most likely had to dig into his pockets to reach for his firearm before he threw it to the side. The discovery of the gun, the ammunition, and its proximity to the area where Officer Fernandez and Ayala were located corroborates the reasonable conclusion that Ayala possessed a gun. In fact, Ayala eventually pleaded guilty to being in possession of the gun in question. Moreover, a witness stated that he heard someone yelling, "Get back, I have a gun, back away," which could reasonably be interpreted as an indication that Ayala threatened Officer Fernandez. Therefore, it

would be reasonable to conclude that Officer Fernandez had the same interaction with Ayala as Officer Beaumarchais, causing Officer Fernandez to reasonably believe he needed to fire his gun.

Certainly, it would have been preferable if the OCDA were able to obtain a voluntary statement from Officer Fernandez regarding his state of mind at the time of the shooting. However, Officer Fernandez's decision to decline to give the OCDA a voluntary statement may not legally and ethically be used to draw negative evidentiary inferences regarding the conduct and the state of mind of Officer Fernandez.

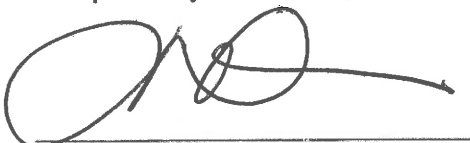
It should also be noted that, in order for Officer Fernandez to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officer Fernandez did not act in reasonable and justifiable self-defense or defense of another when he shot Ayala. As should be apparent from the above-described analysis, the prosecution would be unable to carry the burden in this case since there is a reasonable interpretation of the evidence providing legal justification for Officer Fernandez's conduct. Therefore, the OCDA will not be able to prove beyond a reasonable doubt that Officer Fernandez did not act in lawful self-defense.

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 we do not have sufficient evidence to prove beyond a reasonable doubt that Officer Fernandez committed a crime when he shot Ayala on Oct. 20, 2017.

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

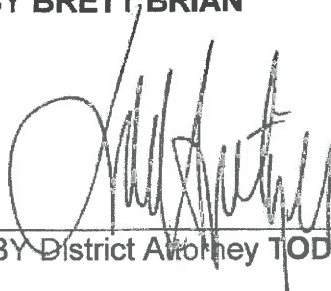
Respectfully submitted,



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READ AND APPROVED BY District Attorney TODD SPITZER