



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

June 22, 2022

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

Re: Officer-Involved Shooting on March 11, 2021
Non-Fatal Incident involving Gabriel Paniagua Tamayo
District Attorney Investigations Case # SA 21-000822
Costa Mesa Police Department Case # 21-003968
Orange County Crime Laboratory Case # FR 21-43507

Dear Chief Ronald Lawrence,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusions in connection with the above-listed incident involving on-duty Costa Mesa Police Department (CMPD) Officer Eloisa Peralta. Gabriel Paniagua Tamayo, age 28, survived his injuries. The incident occurred in the City of Costa Mesa on March 11, 2021.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the March 11, 2021 non-fatal, officer-involved shooting of Gabriel Paniagua Tamayo. 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 Police Department 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 March 11, 2021, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 9 interviews were conducted, OCDASAU Investigators also obtained and reviewed the following: CMPD reports, audio dispatch and radio traffic recordings, body worn camera (BWC) footage and patrol videos from all officers involved, Orange County Crime Laboratory (OCCL) reports; including officer processing and firearms examination reports, crime scene investigation photographs; medical records and photographs related to the injuries sustained by Tamayo and the victim in this case, video recordings from the scene, criminal history records related to Tamayo including prior incident reports; and other relevant reports and materials including audio recordings of the interviews conducted.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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

☒ MAIN OFFICE
300 N. FLOWER STREET
SANTA ANA, CA 92703
(714) 834-3600

☐ NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92632
(714) 773-4480

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

☐ HARBOR OFFICE
4801 JAMBORSE RD.
NEWPORT BEACH, CA 92660
(949) 476-4850

☐ JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7824

☐ CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3852

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 Police officers or personnel, specifically Officer Peralta. The OCDA will not be addressing any possible issues of 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 as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide, Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Peralta gave a voluntary statement to OCDA Investigators on March 17, 2021.

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 Thursday, March 11, 2021, at approximately 4:30 a.m., Witness 1 called 911 after she and another witness saw a man fighting with the 7-Eleven clerk, located on 2244 Fairview Road in Costa Mesa. 24-hour convenience stores, especially those close to freeways, are prone to robberies. This 7-Eleven is located near the 55 freeway. Officers Fay, Peralta, and Elisarraraz responded to the call. They were each dressed in a navy blue department issued CMPD police uniform and drove marked black and white CMPD police vehicles.

Officer Peralta entered the 7-Eleven with her handgun drawn and yelled "Police!" Officer Peralta observed many of the store items had been thrown to the ground. Officer Peralta heard a man screaming and observed Tamayo covered in blood standing behind the counter. Officer Peralta pointed her gun at Tamayo and ordered him to put his hands up. Tamayo did not comply. At this point, a man continued to scream from behind the counter. Officer Peralta believed the screaming was the victim on the floor in need of serious help.

Officer Peralta was unable to see Tamayo's hands. She feared he was armed and she was not sure if the plexiglass barrier of the counter in front of Tamayo was bullet resistant. Officer Peralta moved deeper into the store behind the counter while Officer Elisarraraz remained on the opposite side of the counter with her gun also drawn. At this point, Officer Elisarraraz yelled, "Do not move!" and Officer Peralta yelled, "Stop right there!" Officer Peralta witnessed Tamayo kick Victim who was on the floor covered in blood, screaming. Officer Peralta yelled, "Leave him alone!" In response, Tamayo proceeded to bend down and stab the victim in the left flank with a knife. Tamayo refused to drop this knife even after around seven commands by both Officer Peralta and Elisarraraz. As Tamayo continued to refuse, he began to move towards the victim.

Officer Peralta feared Tamayo was going to stab Victim again so she fired one round which missed and struck the storefront window. Tamayo kicked Victim again and then looked at Officer Peralta. Tamayo again refused to drop the knife and Officer Peralta fired two more rounds which struck Tamayo. In addition to fearing for the safety of Victim, Officer Peralta was also fearful Tamayo would turn his weapon towards her when she fired. Though hit by the shots, Tamayo continued to hold onto the knife. After several requests by Officer Peralta, Tamayo finally dropped the knife. Officer Peralta then ordered Tamayo to put his hands up and Tamayo ignored the command. Officer Peralta gave orders in English and Spanish. Eventually, Officer Fay handcuffed Tamayo with assistance from Officer Peralta. After Tamayo was moved from the victim's immediate area, Officer Gallardo began to patch up Tamayo's wounds.

According to Costa Mesa Fire Department Paramedics who responded to the scene Tamayo was conscious, alert and oriented. Tamayo was transported to OC Global and treated for two (2) gunshot wounds; one to his upper left abdomen and another below his belly button.

The victim was transported to Hoag Hospital for the following injuries: several cuts inside and outside of both hands, a stab wound below the belly button, chipped front left incisor tooth, swollen left eye, cut outside of the left eye-lid, cut under chin, laceration on the right index finger, and a stab wound on the left buttocks.

Voluntary Statement of Officer Peralta

Officer Peralta gave a voluntary statement to OCDA Investigators. Below is a summary of Officer Peralta's statement:

On March 17, 2021, Officer Peralta was patrolling her typical shift of working 10:00 p.m. to 8:00 a.m. At approximately 4:44 a.m., Officer Peralta was dispatched to a fight in progress call at the 7-Eleven at 2244 Fairview Drive. Responding to the call, Officer Peralta was aware that 24-hour convenience stores, especially those close to freeways, are prone to robberies.

Officer Peralta pulled into the 7-Eleven parking lot, followed by Officer Elisarraraz. Officer Peralta exited her vehicle with her taser drawn. She did so based off of her training and experience during fight calls. Officer Peralta stated that in her experience with these type of fight calls, people react unpredictably, and she was trained to use less lethal force before lethal force if possible. Before entering the 7-Eleven, a reporting party told Officer Peralta he could see two men fighting inside and he saw blood. At this point, Officer Peralta believed she may need lethal force so she put her taser away and unholstered her gun.

As Officer Peralta and Officer Elisarraraz approached the entrance of the 7-Eleven, they could see items within the store had been thrown to the ground including bags of chips and knocked over newspaper stands. As Officer Peralta opened the door, she heard someone screaming for what she believed to be for help. Officer Peralta is familiar with the clerk who works at this location during her normal shift, and when she looked behind the counter, she saw a man she did not recognize, covered in blood. Officer Peralta loudly announced her presence as a CMPD officer. Officer Peralta moved behind the counter to determine where the screaming was coming from. She then saw Victim on the floor, covered in blood, screaming for help. Tamayo held a knife over the victim and Officer Peralta saw Tamayo kick the victim.

Officer Peralta gave around seven commands for Tamayo to "Drop the knife!" Tamayo did not comply and began to stab Victim who was still on the floor screaming in pain. Officer Peralta feared Tamayo would kill Victim. Officer Peralta was aware Victim was injured due to the blood covering Victim, and she was uncertain if Tamayo would turn the knife on her and attack. In addition to fearing for Victim who she knew had a son and wife, Officer Peralta feared for her own life as she is a single mother. Officer Peralta then shot Tamayo twice. After she shot Tamayo, Officer Peralta gave him another command to drop his knife and Tamayo finally complied with dropping his weapon, but he did not comply with putting his hands up. At this point, Officer Fay joined Officer Peralta in giving commands to Tamayo. Officer Peralta gave commands in English and in Spanish.

Tamayo continued to resist commands during his arrest, and both Officer Fay and Officer Peralta had to struggle to handcuff Tamayo. After Tamayo was removed from the immediate area, Officer Peralta began to search Tamayo for additional weapons when Tamayo collapsed to his knees. With assistance from Officer Gallardo, Officer Peralta was able to relocate Tamayo so paramedics could reach and render aid to the victim. When Officer Peralta finished her pat down of Tamayo, Officer Gallardo brought a medical bag to begin patching up Tamayo's wounds.

Before firing her weapon, Officer Peralta did not approach Tamayo to take the knife from him because he was not following commands and was likely to stab her since he had just stabbed the victim in front of her. Officer Peralta ultimately shot Tamayo because she was fearful he was going to kill Victim and/or her. Officer Peralta stopped firing when she saw she had struck Tamayo and no further shots were necessary because Tamayo dropped the knife. Tamayo only ever complied

after Officer Peralta shot him.

EVIDENCE COLLECTED

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

- One apparent bullet fragment
- One apparent bullet jacket
- One apparent bullet core
- One apparent blood swab
- One bloody white metal knife with two metal keys attached
- Men's Clothing
- One bloody black metal folding knife with black handle
- Two blood swabs
- Three bullet casings, headstamped "WIN 9mm LUGER"
- Prescription bottle with "Gabriel Tamayo" on the label
- Chrome metal Rod
- Set of keys, black cellular phone, grey cellular phone, USB charger, wireless earbuds
- Visa card issued to "J Tamayo Hernandez"
- California Driver License issued to "Tamayo Paniagua, Gabriel"

EVIDENCE COLLECTED

The following items of evidence were collected and photographed from Officers Fay, Elisarraraz, and Peralta

- Sig Sauer, model P320 9 mm semi-automatic handgun belonging to Officer Peralta
- One(1) "WIN 9 MM LUGER" cartridge from the chamber
- One (1) seventeen (17) round capacity magazine from the magazine well with fourteen "WIN 9 MM LUGER" cartridges
- Two (2) fully loaded seventeen (17) round magazines from vest magazine pouch
- Peralta's uniform pants with apparent blood
- Two (2) swabs of apparent blood from PERALTA's
 - Taser handle
 - Vest pocket
- Officer Fay's uniform shirt and pants with apparent blood
- One Hundred and Twenty Five (125) color digital photos of Evidence and Officers

EVIDENCE ANALYSIS

Firearm and Projectile Examination

Officer Peralta's SIG Sauer, Model P320, 9 mm, semi-automatic handgun pistol was test fired at the Orange County Crime Lab and fired without malfunction. The SIG Sauer pistol was determined to have fired all three cartridge cases. The projectiles consisted of an expanded bullet jacket from a T-Series jacketed hollow point bullet, a jacket fragment from a jacketed hollow point bullet and a lead core from a jacketed hollow point bullet. The bullet jacket and jacket fragment were consistent. The jacketed hollow point bullet was not suitable for further classification.

TAMAYO'S PRIOR CRIMINAL HISTORY

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

- Driving While Under the Influence –Alcohol/Drugs

- Obstruct and Resist a Police Officer
- Possession of a Controlled Substance
- Inflict Corporal Injury on Spouse/Cohabitant
- Vandalism
- Threaten Crime with Intent to Terrorize
- Violation of Domestic Violence Protective Order
- Disorderly Conduct: Intoxication Drugs/ Alcohol

TAMAYO'S POST-INCIDENT CONVICTION

On March 15, 2021, OCDA filed criminal charges against Tamayo in Orange County Superior Court case 21WF0601 consisting of Attempted Murder, a felony, in violation of California Penal Code section 664(a)-187(a) with premeditation and deliberation within the meaning of Penal Code Section 664(a) and Assault with a Deadly Weapon, a felony, in violation of California Penal Code section 245(a)(1). Additional enhancements are alleged for Personal Use of Deadly Weapon, in violation of California Penal Code section 12022(b)(1) within the meaning of Penal Code section 1192.7; and Great Bodily Injury, in violation of Penal Code section 12022.7(a) within the meaning of 1192.7 and 667.5.

On April 14, 2022, after a jury trial, Tamayo was found guilty of Attempted Voluntary Manslaughter, a felony, in violation of California Penal Code section 664(a)-192(a) and Assault with a Deadly Weapon, a felony, in violation of California Penal Code section 245(a)(1). The additional enhancements for Personal Use of Deadly Weapon, in violation of California Penal Code section 12022(b)(1) within the meaning of Penal Code section 1192.7; and Great Bodily Injury, in violation of Penal Code section 12022.7(a) within the meaning of 1192.7 and 667.5 were all found true. Sentencing is currently set on June 30, 2022 in Department C29 before the Honorable Scott A. Steiner.

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 CMPD Officer Peralta with Tamayo.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officer Peralta’s statements to the OCDA investigators, as well as Victim’s statement, Video footage from the 7-Eleven, and Body Worn Camera footage, which were supplemented by other relevant material and witnesses present at the incident.

The issue is whether the conduct of Officer Peralta on March 11, 2021 was criminally culpable and without justification. As stated above, in order to charge Officer Peralta 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 Peralta with a crime, the prosecution must prove beyond a reasonable doubt that she did not act in lawful self-defense or defense of another. If the actions of Officer Peralta that day 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 Peralta was justified in believing that Tamayo posed a significant threat of death or serious physical injury to herself and the victim. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Tamayo in the moments leading up to the shooting. Upon entering the 7-Eleven, Officer Peralta heard a man screaming and saw Tamayo covered in blood. Merchandise within the store was scattered to the floor. Officer Peralta clearly identified herself, she was in full uniform, and repeatedly ordered Tamayo drop his weapon.

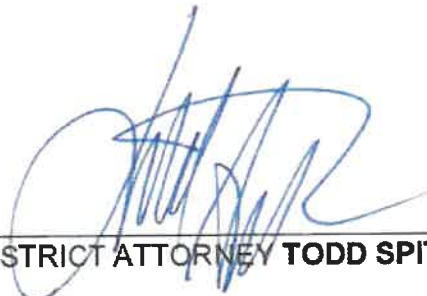
Tamayo refused to comply, choosing to kick and stab the victim. The victim was covered in blood and screaming in pain. After several more requests, Tamayo again refused. Officer Peralta gave one final request before firing her weapon. Officer Peralta's first round missed and Tamayo proceeded to kick Victim and stare at Officer Peralta. Officer Peralta feared that Tamayo would kill the victim and/or herself. Officer Peralta stated she thought about how she is a single mother with a family to go home to and that the victim also has a son and wife. Officer Peralta reacted appropriately to the imminent threat Tamayo posed. Both Officer Peralta and Officer Elisarráz yelld at Tamayo several times to drop the knife and Tamayo refused. Officer Peralta fired her weapon because she was justifiably fearful Tamayo would kill Victim and believed Tamayo would come after her next.

It should also be noted that, in order for Officer Peralta 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 Peralta did not act in reasonable and justifiable self-defense or defense of another when she shot Tamayo. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden. A jury analyzing these facts would justly conclude that it was reasonable for Officer Peralta to believe that her life and the life of Victim was in imminent danger. Therefore, Officer Peralta was justified when she shot Tamayo. Simply stated, Officer Peralta did not commit a crime, to the contrary, she carried out her duties as a peace officer 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 Peralta, and there is substantial evidence that her actions were reasonable and justified under the circumstances when she shot Tamayo on March 11, 2021.

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


BY **BRYAN CLAVECILLA**
Senior Deputy District Attorney
Special Prosecutions Unit
READ AND REVIEWED BY **BRETT BRIAN**
Assistant District Attorney
Special Prosecutions Unit
READ AND APPROVED BY DISTRICT ATTORNEY **TODD SPITZER**