



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

August 17, 2022

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

Re: Officer-Involved Shooting on June 2, 2021
Non-Fatal Incident involving Eduardo Herrera, Jr.
District Attorney Investigations Case # 21-001977
Santa Ana Police Department Case # 21-11882
Orange County Crime Laboratory Case # 21-47014

Dear Chief Valentin,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA's) investigation and legal conclusions in connection with the above-listed incident involving on-duty Santa Ana Police Department Sergeant James Rose. Eduardo Herrera, Jr., age 27, survived his injuries. The incident occurred in the City of Santa Ana on June 2, 2021.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the June 02, 2021, non-fatal officer-involved shooting of Eduardo Herrera, Jr. 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 Santa Ana Police Department (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 June 2, 2021, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, ten interviews were conducted, and fifteen additional witnesses were contacted during supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Santa Ana Police Department reports; audio dispatch and radio traffic recordings; 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 Eduardo

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Herrera, Jr.; criminal history records related to Eduardo Herrera, Jr.; other relevant reports and materials, including audio recordings of officers' canvass of the surrounding neighborhood.

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 SAPD officers or personnel, specifically Sergeant James Rose. 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, 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 will 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. In the presence of his attorney, Sergeant Rose declined to provide a voluntary statement to OCDA.

FACTUAL SUMMARY

On June 2, 2021, at approximately 8:35 a.m., John Doe 1 was working as a groundskeeper for Calvary Chapel-Santa Ana Campus (Calvary Chapel), located at 3232 W. MacArthur Boulevard in the city of Santa Ana. At that time, he noticed a suspicious male, later identified as Eduardo Herrera, Jr. (Herrera), standing next to a truck in the Calvary Chapel parking lot. John Doe 1 recognized the vehicle and knew the owner of the truck was at a nearby sports field. Believing Herrera was burglarizing the vehicle, John Doe 1 confronted him and asked what was in his hands. Using his right hand, Herrera partially revealed what John Doe 1 described as a "greyish black pistol" handle. Herrera began yelling and threatening him, stating "I'll fuck you up." Fearing for his safety, John Doe 1 backed away and telephoned his supervisor, John Doe 2.

When John Doe 2 arrived, he saw Herrera near the vehicle approximately 35 feet away. John Doe 1 warned him not to approach, as he believed Herrera was armed with a gun. Herrera then displayed the handle portion of what John Doe 2 believed to be a greyish black handgun. During the incident, Herrera displayed the object several times and continued making threatening statements, including "I'll fuck you up," "Come on, get some," and "You want some, Ese?" Herrera then fled the scene.

At 8:39 a.m., SAPD received a 911 call from John Doe 2, reporting a male subject burglarizing a vehicle and pointing a gun at him and other Calvary Chapel employees. He described the subject as wearing a dark blue windbreaker and black pants.

At 8:40 a.m., SAPD officers were dispatched to Calvary Chapel. SAPD communications provided the responding officers with the following information: A male subject was trying to burglarize a vehicle at Calvary Chapel and had pointed a gun at the reporting party. Sergeant James Rose self-dispatched to the call for service. Sergeant Rose wore his SAPD-issued uniform and drove in a marked black and white SAPD police vehicle. He wore a body worn camera on the front of his uniform. However, the body worn camera was not on at the time of the shooting. SAPD dispatch requested and received assistance from the Orange County Sheriff's Department (OCSD) helicopter, "Duke."

At 8:47 a.m., SAPD officers contacted the reporting parties and provided updated information to SAPD dispatch, advising that Herrera had brandished a gun but did not point the gun at the parties. The officers updated the description of the suspect as follows: Male Hispanic, 5 feet, 8 inches tall, tattoos on his face, wearing a blue sweater and black faded jeans.

At 8:57 a.m., the OCSD helicopter arrived and spotted Herrera, who matched the suspect description, in the southwest corner of the nearby Home Depot parking lot. Herrera appeared agitated and flipped off the helicopter as he walked south across Lake Center Drive towards the businesses along the 3500 block of West Lake Center Drive. When OCSD deputies in the helicopter observed the arrival of SAPD ground units, they directed the officers to Herrera's location. Because the helicopter was circling the location, the deputies lost sight of Herrera for periods of 4-5 seconds, due to trees and buildings obstructing their view. Deputies in the helicopter observed Sergeant Rose make contact with Herrera and appeared to be giving him

commands, though the deputies were unable to see what either Rose or Herrera were doing with their hands. They then observed Herrera fall to the ground in an odd manner and heard "998" (indicating an officer-involved shooting) broadcast over the radio seconds later. The helicopter was equipped with a video camera. However, the camera was not activated until after the 998 radio broadcast.

During the same time, SAPD officers, including Sergeant Rose, arrived in the area and began searching for the suspect along the 3500 block of West Lake Center Drive. The OCSD helicopter directed them toward the service alley between 3506 and 3518 West Lake Center Drive. Sergeant Rose entered the alley from the west and assisting officers entered from the east.

When SAPD Officer Acosta (Acosta) turned into the alley from the east, he saw Herrera facing Sergeant Rose before abruptly turning away and running east, in his direction. Believing Herrera was armed and fearing for his safety, Acosta placed his patrol vehicle in park and opened the door to exit when he heard two gunshots coming from Sergeant Rose's direction. Looking up, he saw Herrera fall to the ground and a silver object resembling a firearm tumbling in front of him.

At 9:00 a.m., Sergeant Rose broadcasted "998," notifying dispatch and officers of an officer-involved shooting. Medical assistance was requested and the area was secured.

SAPD officers handcuffed Herrera and provided medical assistance until Orange County Fire Authority (OCFA) arrived on scene at 9:07 a.m. The officers used shears to remove his clothing in order to assess his injuries and render aid. SAPD officers and then OCFA observed a single gunshot wound to Herrera's left buttock. Herrera was treated and transported by ambulance to Orange County Global Medical Center (OCGMC). While in transport, Herrera admitted to paramedics he had smoked marijuana and methamphetamine earlier in the day.

At 9:30 a.m., Herrera arrived at OCGMC and his care was relinquished to emergency room personnel, who determined he sustained a bullet entry wound to his left buttock, a broken femur, and had a bullet lodged in his scrotum. Herrera was sedated shortly after arriving at the hospital. Preliminary blood results indicated the presence of amphetamines. Herrera was scheduled for surgery at 4:30 p.m. to repair his femur and remove the bullet from his scrotum. Following surgery, Herrera was placed into custody for an outstanding warrant and remained hospitalized pending transfer to the county jail.

Video Surveillance

SAPD officers canvassed the area and located video surveillance footage from a number of locations, including 3518 W. Lake Center Drive, unit A. Approximately 13 seconds into this video, Herrera can be seen running eastbound along the north side of 3518 West Lake Center Drive, holding a metal object in his right hand. He appears to skip before falling to the ground and dropping the object from in his right hand. Officers then approach, place him in handcuffs,

remove his pants, and render medical assistance until paramedics arrive. The video did not capture the shooting officer and did not contain audio.

Surveillance footage from additional locations captured Herrera walking away from Calvary Chapel toward Lake Center Drive, but there was no footage of the initial confrontation with Calvary Chapel employees or of Sergeant Rose at the time of the shooting.

Herrera Interview

On June 3, 2021, officers from SAPD and OCDA contacted Herrera at OCGMC. Herrera was advised of his Miranda rights and then spoke freely about the incident during an audio-recorded interview.

During the interview, Herrera admitted to being next to a truck at Calvary Chapel when he was contacted by two male subjects asking what he was doing. Herrera stated he was under the influence of methamphetamine and in possession of a paint spray gun at the time of the contact. When he was asked to leave the premises, he displayed the paint spray gun in a threatening manner. He explained, "I guess he [the employee] got scared 'cause it looked like a gun." He also admitted he "was smoking [methamphetamine]" and "not thinking right."

After leaving the premises, Herrera said he heard and saw the OCSD helicopter flying above him and knew the helicopter was probably in the area for him. Herrera walked over to the businesses along the 3500 block of West Lake Center Drive. He was feeling paranoid and feared that he was going to be kidnapped.

According to Herrera, hearing the helicopter above and observing the doors closing at nearby businesses increased his paranoia. While walking in the service alley between the businesses, Herrera saw a law enforcement vehicle east of his location (Acosta). Herrera turned away from that vehicle and saw another law enforcement vehicle approaching from the west (Rose). Herrera stated he believed the officers were FBI agents who were there to kidnap him.

Herrera confirmed he pointed the paint spray gun in Rose's direction, realizing the object resembled a gun, and then turned to run away from Rose when he was shot. After being shot, Herrera said he realized the officers present were local police officers, not FBI agents, and discarded the paint spray gun so he would not be shot again. Herrera admitted the paint spray gun looked like a firearm and that if he had been in the officers' positions, "I think it will be a gun too and, like, I'll shoot them, you know, too." Ultimately, he said, "It was my fault, it was not the officers."

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Two keys on a keyring
- Bic lighter and
- One black plastic box containing miscellaneous items
- One pair of white Puma sneakers

- One pair of black pants with a navy blue cloth belt
- One pair of shorts
- One blue hooded sweatshirt, cut into two pieces
- One black watch
- One silver colored metal paint spray gun
- Two expended Hornaday 9mm Luger cartridge casings
- Two apparent bullet jacket fragments
- Multiple apparent bullet fragments
- Projectile with plastic cup
- One small Ziploc baggie containing a white crystalline substance resembling methamphetamine
- One hundred seventy-eight digital color photographs of the scene
- Forty-nine digital photographs documenting officer processing
- Twenty-one photographs of Herrera
- Video surveillance from the surrounding buildings
- Copy of aerial camera footage taken from OCSD helicopter
- Glock Model 17, 9mm, semi-automatic handgun, serial number BKPP245 with a flashlight attached to the weapon frame
- One 9mm cartridge headstamped "Hornady 9mm Luger" from the chamber of the handgun
- One seventeen-round capacity magazine, containing fifteen 9mm cartridges, all with headstamp "Hornady 9mm Luger"

EVIDENCE ANALYSIS

Firearms Examination

The Orange County Crime Lab examined Sergeant's James Rose's Glock, Model 17, 9mm Luger Caliber, serial number BKPP245. The gun was test fired and operated without malfunction. The submitted cartridge cases, the bullet, and one of the jacket fragments were determined to have been fired by the Glock pistol serial number BKPP245.

Projectile Examinations:

The bullet was examined and determined to be consistent with a 9mm Luger caliber round from a Hornady Critical Duty cartridge. The two cartridge cases collected from the scene were labeled Hornady brand, 9mm Luger caliber.

Toxicological Examination

A sample of Eduardo Herrera, Jr.'s blood was collected at Orange County Global Medical Center. An OCGMC nurse stated that Eduardo Herrera, Jr.'s preliminary blood results returned and tested positive for amphetamines.

EDUARDO HERRERA, JR'S PRIOR CRIMINAL HISTORY

Eduardo Herrera, Jr.'s criminal history was reviewed and considered. Eduardo Herrera, Jr. has a California Criminal History that dates back to 2013. He has previously been arrested for the following charges:

- Tampering with a Vehicle
- Possession of Unlawful Paraphernalia
- Arson of Another's Property
- Probation Violation
- Disorderly Conduct
- Theft of Lost Property
- Possession of a Controlled Substance
- Taking Vehicle Without Consent
- Receiving Known Stolen Property
- Possession of a Stolen Vehicle
- Possession of Nitrous Oxide
- Mail Theft
- Trespassing on Railroad Property
- Petty Theft

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. John Doe* 2 (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 subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court held 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 held 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 guidance in *Graham* are directly applicable to the interactions of Santa Ana Police Department Sergeant James Rose with Eduardo Herrera, Jr.

LEGAL ANALYSIS

Our factual conclusions in this case have been determined by review of the witnesses' accounts, Herrera's statements, and all other relevant material. In the presence of his lawyer, Sergeant Rose declined to make a statement in this investigation.

The central issue in this matter is whether the conduct of Sergeant Rose on June 2, 2021, specifically the shooting of Eduardo Herrera, Jr., was criminally culpable and without legal justification. As stated above, in order to charge Sergeant Rose with a criminal violation, the prosecution must be able to prove beyond a reasonable doubt that no legal justification existed for the officer's conduct. Thus, the prosecution must prove beyond a reasonable doubt that Sergeant Rose did not act in lawful self-defense. If the actions of Sergeant Rose were justifiable as lawful self-defense or defense of others, criminal charges will not be warranted.

As held by the California Court of Appeal, 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 acknowledged 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.

Based on our review of the evidence and application of the law, we find Sergeant Rose was legally justified in acting on a belief that Herrera posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, including the information the officers received and the conduct of Herrera in the moments prior to the shooting.

Although there is no statement from Sergeant Rose or video of the shooting itself, video surveillance, interviews, and Herrera's statements provide consistent and substantial evidence of what occurred. The Calvary Chapel employees stated they believed Herrera brandished a gun at them when they initially confronted him, just as the officers believed Herrera was holding a gun when he began running toward Officer Acosta. This is corroborated by surveillance footage, physical evidence, and Herrera himself, who stated that he brandished the paint spray gun that resembled a firearm at the Calvary Chapel employees. Herrera noted that the employees at Calvary Chapel looked scared because the object he held looked like a gun.

Herrera further explained that he pointed the paint spray gun in the direction of Sergeant Rose for the specific purpose of getting him to move, as he feared Sergeant Rose was an FBI agent who was there to kidnap him. Because people do not generally attempt to intimidate others by brandishing painting equipment, this conduct supports an inference that Herrera recognized the paint spray gun resembled a firearm. Herrera acknowledged he was shot after pointing the paint spray gun toward Sergeant Rose and began running east, in the direction of Officer Acosta. After he was shot, Herrera immediately threw the paint spray to the ground so that he would not be shot again, further reflecting his awareness that the object resembled an actual firearm. Confirming this in his interview, Herrera stated that he was at fault because he knew the object resembled a firearm and that he too would have believed the object was a gun.

The paint spray gun located at the scene further corroborates the statements of Officer Acosta, Herrera, and the Calvary Chapel employees. It is a metal object that is shaped like a firearm and designed to be held like a firearm, with a grip for holding it, a nozzle in the location of a gun barrel, and a trigger designed to be depressed with the pointer finger, in the same manner as the trigger of a gun. Herrera was holding the paint spray gun as if it was a firearm and brandishing it in the direction of the officers when he felt threatened. Therefore, it was reasonable for Sergeant Rose to conclude it was a real gun. In fact, it is difficult to imagine a reasonable person in his position reaching any other conclusion.

Finally, in the initial call for service, Sergeant Rose and the other SAPD officers received information that Herrera had brandished a gun at the civilian employees in the parking lot. When they made contact with Herrera a short time later and a short distance away, Herrera was noncompliant, unpredictable, and acted emboldened. This is consistent with the conduct of a person who would brandish a gun in a church parking lot at 8:30 in the morning. The previous

reports, coupled with Herrera's unpredictable behavior and the presence of what appeared to be a firearm, which Herrera was holding and brandishing, would lead a reasonable person in Sergeant Rose's position to believe that Herrera was armed with a gun he was willing and able to use. This further supports a finding that Sergeant Rose reasonably believed Herrera posed a serious threat to the officers and civilians present in the alley. As previously stated, it would be difficult to imagine Sergeant Rose reaching any other conclusion.

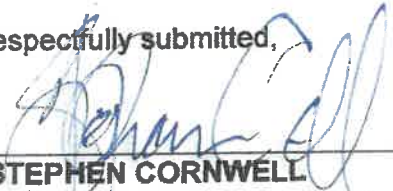
In order for Sergeant Rose to be charged and convicted with a crime in this incident, it would be the OCDA's burden to prove beyond a reasonable doubt that Sergeant Rose did not act in self-defense or defense of another when he shot Herrera. Based on all available evidence as outlined in the analysis above, the prosecution would be unable to carry this burden. In fact, a jury analyzing these facts would foreseeably conclude that Sergeant Rose acted on a reasonable belief that his life and/or the lives of others were in danger. Simply stated, Sergeant Rose appears to have carried out his duties as a peace officer in a reasonable and justifiable manner. As such, the evidence in this case cannot support criminal charges for the conduct of Sergeant Rose and the shooting of Eduardo Herrera, Jr.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, including the entirety of the facts contained in all available reports and interviews, there is substantial evidence that Sergeant Rose acted in a reasonable and legally-justified manner when he shot Eduardo Herrera, Jr. on June 2, 2021. Therefore, pursuant to the applicable legal principles, it is our opinion that there is insufficient evidence to prove criminal culpability on the part of Sergeant James Rose beyond a reasonable doubt.

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

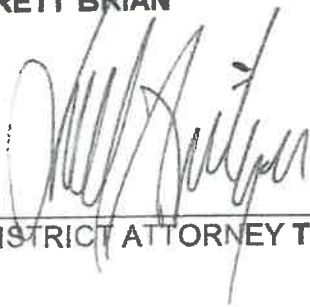
Respectfully submitted,



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READ AND REVIEWED BY BRETT BRIAN
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READ AND APPROVED BY DISTRICT ATTORNEY TODD SPITZER