



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

June 7, 2023

Chief Jorge Cisneros
Anaheim Police Department
425 S Harbor Blvd
Anaheim, CA 92805

Re: Officer-Involved Shooting on March 3, 2022
Fatal Incident involving Osman Brown
District Attorney Investigations Case # SA 22-000588
Anaheim Police Department Case # 2022-33272
Orange County Crime Laboratory Case # 22-42683
Orange County Coroner's Office Case # 22-01553KS
Anaheim Fire Department Incident Number A2207485

Dear Chief Cisneros,

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 Anaheim Police Department (APD) Officers Casey Morrison, Kenneth Weber, Steve Salicos, and Arthur Guo. Osman Brown, age 41, died as a result of his injuries. The incident occurred in the City of Anaheim on March 3, 2022.

OVERVIEW

This letter contains a description of the scope and the legal conclusion resulting from the OCDA's investigation of the March 3, 2022, fatal, officer-involved shooting of Brown. 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 Anaheim Police Department 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 March 3, 2022, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, 17 interviews were conducted and 29 additional witnesses were contacted during supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, body-worn camera video recordings, and audio dispatch and radio traffic recordings; Ring video recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports, crime scene

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investigation photographs, medical records and photographs related to the injuries sustained by Brown; and criminal history records related to Brown, including prior incident reports, and laboratory and identification reports.

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 by APD officers or personnel, specifically Officers Morrison, Weber, Salicos, and Guo, was consistent with the law. The OCDA will not be addressing any possible issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as investigators from other OCDA units.

Six investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the office trained to assist when needed. On average, eight investigators respond to an incident within an hour of being called. The investigators assigned to respond to an incident perform a variety of functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

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. Thus, when the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. If necessary, the reviewing prosecutor will send the case back for further investigation.

Throughout the review process, the assigned prosecutor will consult with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting correspondence. It is also common for the case to be reviewed by several other experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews all officer involved shootings and custodial death letters.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. APD Officers Morrison, Salicos, and Guo provided voluntary statements concerning this incident to OCDA Investigators on March 9, 2022, and APD Officer Weber provided one on March 11, 2022.

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 at: <http://orangecountyda.org/reports/videoandaudio/default.asp>

FACTUAL SUMMARY

On the morning of Wednesday, March 2, 2022, at approximately 8:31 a.m., APD received a call for service from a local resident reporting that Brown had been walking down the street in the 700 block of South Resh Street holding an axe, cursing, and threatening residents' dogs because they were barking. The reporting party also stated that Brown had gone into a nearby house. Based on the caller's information, officers responded to the area and ultimately attempted to contact Brown at 615 South Resh Street, a single family residence. When no one answered, and being unable to locate Brown or determine if a crime had occurred, the officers left the area.

At approximately 9:44 p.m., Brown's ex-girlfriend called APD. She reported that while inside the residence they shared at 615 South Resh Street, Brown had threatened to kill her and her neighbors. She specifically requested officers respond to assist her because she felt her life was in danger.

Several officers were dispatched in response. Brown's ex-girlfriend met with APD Sergeant Aaron Lahmon near the South Resh Street residence. She stated that she and Brown used to date, and although they had broken up, they continued to live together at the location.

She reported that at approximately 9:30 p.m. that evening, Brown had pointed a handgun at her in the living room of their residence and had threatened to kill her and their neighbors. She also stated that Brown had exited the house at one point, aimed the gun upwards into the air, and fired a shot. Immediately thereafter, she stated she walked out of the residence and called the police.

She further told APD Sergeant Lahmon that the handgun Brown had held and fired was one of two firearms he possessed. She stated that Brown was currently alone inside the residence and had not been taking his medication which had been prescribed for unknown mental health issues. She indicated that she believed Brown would shoot officers if they approached him.

Based on this information, APD officers established a perimeter around the 615 South Rest Street residence and made numerous attempts to communicate with Brown, none of which were successful.

On Thursday, March 3, 2022, at approximately 12:22 a.m., the APD Tactical Response Group (TRG) was notified and initiated their response. TRG consisted of the Special Weapons and Tactics (SWAT) Team and the Tactical Negotiations Unit (TNU). A Crisis Assessment Team was also notified and responded to the APD Command Post.

At approximately 12:34 a.m., and prior to the arrival of TRG officers, two APD Officers stationed outside of the residence, Brett Klevos and Eric Song, reported hearing a male yell in the rear yard of the residence followed by a single gunshot. This gunshot was also heard by other APD officers who were maintaining the perimeter on the residence.

When SWAT and TNU officers arrived at the Command Post, they were briefed by APD Lieutenant Willie Triplett. Information concerning Brown's background was provided, including information that Brown had been previously found to be mentally incompetent per Penal Code section 1370. APD determined that the situation was going to be a "Negotiator Driven Incident," which meant that the TRG was going to negotiate with Brown and take all potential measures to avoid forcing an outcome.

At approximately 2:05 a.m., SWAT officers assumed responsibility for maintaining a perimeter on the residence.

At approximately 3:08 a.m., APD began making announcements via a public address (PA) system. APD Officer Ernesto Sena was the primary negotiator and using the PA began encouraging Brown to exit the residence.

At approximately 3:14 a.m., and again at 3:22 a.m., 3:36 a.m., and 3:38 a.m., Brown walked out onto the front porch, yelled unintelligibly at officers, and then returned inside.

At approximately 3:41 a.m., Brown walked out onto the front porch and simulated a handgun with his fingers, pointed it at a police vehicle, and then returned inside.

At approximately 3:47 a.m., APD Officer Sena played a recorded surrender request from Brown's ex-girlfriend over the PA system. A minute later, Brown walked out onto the front porch, yelled unintelligibly once again, and then returned inside.

At approximately 3:49 a.m. and 3:50 a.m., APD Officer Sena again played a recorded surrender request from Brown's ex-girlfriend over the PA system. Brown walked onto the front porch of the home holding what appeared to be a short-barreled AR-15 style firearm with a double drum magazine inserted. He did not point the weapon at any officers, and shortly thereafter, returned inside.

At approximately 3:51 a.m., APD Officer Sena once more played a recorded surrender request from Brown's ex-girlfriend over the PA system. A minute later, Brown walked out onto the front porch with a revolver in his hand. Brown pointed the handgun up in the air and then in a northeast direction toward a marked APD police K9 patrol vehicle parked in front of the residence.

At this time, the K9 vehicle was occupied by APD Officer Sena who was seated in the front passenger seat. In addition, APD Officers Weber, Guo, Reuben Hasani, and Brian Leist were standing behind the vehicle, using it for cover and concealment.

Directly adjacent to the K9 patrol vehicle and also in front of the residence was an armored APD vehicle. APD Officers Morrison and Salicos were inside the armored vehicle, utilizing gun ports on the driver's side of the cargo area.

Once Brown pointed the handgun towards the APD K9 vehicle and in the direction of several officers, Officers Weber, Guo, Salicos, and Morrison fired upon Brown using their APD-issued rifles.

Immediately thereafter, Brown fell to a seated position facing north on the front porch of the residence with the revolver still held in his right hand. He did not respond to commands to drop the gun. An arrest team was formed and moved to the gate in front of the incident location.

At approximately 3:56 a.m., APD Officer Hasani deployed a 40 mm "Less Lethal" round at Brown, who was still holding the handgun in his right hand. Brown moved but did not drop the handgun. Officer Hasani deployed another 40 mm "Less Lethal" round at Brown, but once again, Brown did not drop the handgun.

APD Officer Brandon Mullins deployed a K9 which caused Brown to drop the handgun. The K9 pulled Brown east from the porch onto the sidewalk in front of the residence.

At approximately 4:00 a.m., and while several officers searched the residence for additional potential suspects and threats, other officers, including TRG Tactical Paramedics, administered first aid and initiated cardiopulmonary resuscitation on Brown. Anaheim Fire Department paramedics who had been staged nearby were summoned at approximately 4:04 a.m. to examine Brown.

After initiating treatment and applying a cardiac monitor to Brown, Anaheim Fire Department paramedics observed Brown's heart rhythm to be asystole. Based on this rhythm, Brown's obvious injuries, and the observed absence of heart tones, breathing, and reaction to stimuli, Brown was pronounced deceased by paramedics at approximately 4:11 a.m.

APD Officer Weber was later interviewed regarding his decision to fire. In his recorded interview, he stated:

"[a]pproximately one minute later, he comes out, and the door opens. I clearly see a blue steel revolver in his right hand. He's holding it down to his side. I put out, you know, I tell my partners hey, he's got a gun in his right hand. Um, the gun immediately comes up to, uh, like a 90-degree angle to where he's pointing it straight up at the ceiling. And then as he goes straight up to where it's pointing up towards the sky, immediately comes down straight in my direction, um, to where now it's coming down, the barrel ends up directly at me, and I begin to fire several rounds, uh, towards Brown and at Brown in order to, to, uh, stop the threat. Um, I believe Brown had a loaded firearm in his hand and he pointed

it directly in my direction in, in order to kill me, um, and my partners that were around me. Right, I mean it was definitely right at, right at my direction. Um, I fired several rounds, uh, at Brown until the threat was eliminated."

APD Officer Weber stated that he thought he fired six rounds at Brown. After he viewed his BWC video, he stated that he realized he had fired eight rounds.

When interviewed, APD Officer Guo stated to investigators:

"Um, just a very short time after that, uh, the suspect appeared or came out from the door, from the front door again and this time, uh, in his right hand he was holding a revolver. Uh, I looked through the, the magnification of the scope and I could clearly see the revolver in profile, uh, the black metal of the, the barrel and the chamber and like the dark wood of the grip, uh, peeking out from behind his hand. Uh, he held it in profile for, for a moment and then suddenly, uh, the gun was in, uh, I could see the cross-section of the gun like it was pointed directly at me, and I could see it through the magnification of the scope. Uh, I thought he was trying to shoot me, and in that moment I, I started to fire. I remember focus, being focused on the upper part of his chest and firing about four times."

In his interview, APD Officer Salicos stated:

"Within a couple minutes of that uh, he comes back out again, and this time I could see he's holding a dark gray metal handgun uh, looked like a revolver in his right hand. I thought to myself okay, this is the gun that we briefed about. This is the gun that he used in the altercation with the victim earlier. This is the gun that we heard discharged by the officers on the scene. We know that this is a real gun and um, he's standing there, focusing his attention again on the officers at the marked unit. Um, in within a couple of seconds, I see him raising his right arm to point the gun in the directions of those officers in that unit. He had already demonstrated the ability to fire the weapon. He had created the opportunity to fire at the officers. And now it appeared to me that he was demonstrating the intent to fire at those officers and I feared that if I didn't fire, then they were gonna get shot, and so I shot him twice in the center mass of his body."

During his interview with investigators, APD Officer Morrison stated:

"Uh, then when he re-exited this last time, it was called out over radio he had, uh, silver revolver in his right hand. I saw the revolver. Uh, he raised it to eye level and pointed at the direction of where I, where the uh, Patrol vehicle was parked. So, the last time when, when the suspect exited he raised the gun to eye level, like he was acquiring sights, pointed at where I knew that vehicle was. Um, that's when I believed to he was pretty immediate threat to shoot. I actually did think he shot. Um, and that's when I fired my rifle at him. I, I thought I shot twice. I later learned I fired four times. Um, he fell down to the ground right in his door way."

EVIDENCE COLLECTED

The following evidence was collected from the crime scene:

1. Evidence Marker (EM) #1 was one (1) cartridge case head stamped "WMA 15."
2. EM #2 was one (1) cartridge case head stamped "WMA 15."
3. EM #3 was one (1) cartridge case head stamped "WMA 15."
4. EM #4 was one (1) cartridge case head stamped "WMA 15."
5. EM #5 was three (3) cartridge cases; one (1) head stamped "WMA 15" and two (2) head stamped "LC 20."
6. EM #6 was three (3) cartridge cases; one (1) head stamped "WMA 15" and two (2) head stamped "LC 20."
7. EM #7 was one (1) cartridge case head stamped "WMA 15."
8. EM #8 was one (1) cartridge case head stamped "WMA 15."
9. EM #9 was a 40mm Less Lethal sponge projectile on the south side of the walkway west of Brown's body.
10. EM #10 was a 40mm Less Lethal sponge projectile on the grass north of the walkway and east of the front porch.
11. EM #11 was a 40mm Less Lethal sponge projectile on the south side of the walkway adjacent to the front porch.
12. EM #12, was a Smith & Wesson .38 caliber revolver, serial number 87790, located on the porch adjacent to the door mat with the barrel pointed southwest on its left side. The cylinder was loaded with six (6) cartridges; three (3) expended cartridge cases, two (2) head stamped "WINCHESTER 38 SPL" and one (1) head stamped "R.P 38 SPL." There were three (3) unexpended cartridges; two (2) head stamped "WINCHESTER 38 SPL" and one (1) head stamped "R.P 38 SPL."
13. Inside the residence, an AR-15 style, .223 Wylde caliber rifle was located on the sofa in the living room. The rifle had no markings or serial numbers. The rifle was loaded with a double drum magazine which contained ninety-nine (99) .223 caliber fully jacketed cartridges. The safety selector was in the fire position. The bolt was found in the forward position with a cartridge loaded in the chamber and the dust cover open.
14. A bullet fragment located on the dining room floor of the 615 South Rest Street residence was also collected.

AUTOPSY

On March 4, 2022, at approximately 9:09 a.m., Orange County Coroner (OCCO) Forensic Pathologist Etoi Davenport conducted a post-mortem examination of Brown at the Orange County Sheriff-Coroner Forensic Science Center in Santa Ana. The autopsy was documented under OCCO case number 22-01553KS.

Dr. Davenport concluded Brown had sustained the following twelve (12) gunshot wounds:

- Penetrating gunshot wound of head
- Perforating gunshot wound of right chest
- Perforating gunshot wound of left chest
- Penetrating gunshot wound of upper abdomen
- Perforating gunshot wound of right forearm

- Penetrating gunshot wound of left arm
- Perforating gunshot wound of lateral right hip
- Penetrating gunshot wound of anterior right hip
- Perforating gunshot wound of anterolateral right thigh
- Perforating gunshot wound of anterior right thigh
- Penetrating gunshot wound of anterior left hip
- Perforating gunshot wound of distal left thigh

Dr. Davenport also found that Brown had sustained canine bite type marks over the right arm and lacerated bite type marks over the right forearm. Dr. Davenport noted a semicircular shaped band of red abrasion over Brown's lateral right torso, believed to be from one of the Less Lethal rounds.

The internal injuries associated with the gunshot wounds included injuries to the left cerebrum and cerebellum, heart, diaphragm, liver, transverse colon, the lower lobe of the left lung, stomach, and small intestines. There was a fracture of the left humerus and a bullet embedded in the lateral right lumbosacral spine.

Dr. Davenport determined the cause of death to be multiple gunshot wounds. The manner of death was homicide.

FIREARMS EXAMINATION

The four (4) LWRC International Model M6 and M6IC 5.56mm rifles possessed by the officers involved were test fired and operated without malfunction in semi and full automatic modes.

The LWRC rifle, serial number 03-83658 - OCCL Item #2, possessed by Officer Weber, was determined to have fired the 6 cartridge cases recovered and identified by EM #1, EM #2, EM #3, EM #4, EM #7, EM #8, 1 of the cartridge cases recovered and identified by EM #5, and 1 of the cartridge cases recovered and identified by EM #6.

The LWRC rifle, serial number 24-33942 - OCCL Item #3, possessed by Officer Salicos, was determined to have fired 1 of the cartridge cases recovered from the interior of "the [APD armored vehicle] after moving items 3 - North of the cabinet" and 1 of the cartridge cases recovered from the interior of "the [APD armored vehicle] (before moving)." It was also determined to have fired the bullet recovered from Brown's left psoas at autopsy.

The LWRC rifle, serial number 24-33943 - OCCL Item #4, possessed by Officer Guo, was determined to have fired 2 of the cartridge cases recovered and identified by EM #5 and 2 of the cartridge cases recovered and identified by EM #6.

The LWRC rifle, serial number 24-33944 - OCCL Item #5, possessed by Officer Morrison, was determined to have fired 4 of the cartridge cases recovered from "the [APD armored vehicle] (before moving)."

The Smith and Wesson Model 10-8, .38 caliber revolver, serial number 4D29114 - OCCL Item #12, possessed by Brown at the time of the shooting, was test fired and operated without malfunction in both single and double action.

TOXICOLOGICAL EXAMINATION

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

DRUG	RESULTS & INTERPRETATIONS
Acetaldehyde	Detected
Ethanol	0.011 ± 0.004% (w/v)

MR. BROWN'S PRIOR CRIMINAL HISTORY

Brown's criminal history was reviewed and considered. Brown had a California, Florida, Georgia, and Federal Criminal History dating back to 1998. He was previously arrested for the following charges:

- Carjacking with a Firearm
- Robbery with a Firearm
- Robbery Unarmed
- Discharging a Firearm from a Vehicle
- Discharging a Firearm in Public
- Aggravated Assault with a Weapon
- Battery
- Domestic Battery
- Unlawful Transportation of a Firearm
- Resisting an Officer Without Violence
- Obstruction of an Executive Officer
- False Identification to an Officer
- Forgery
- Vehicle Theft
- Petit Theft
- Vandalism
- Possession of a Firearm by a Felon
- Purchase, Possession, Manufacture, Distribution, or Sale of Marijuana
- Trespassing
- Contempt of Court
- Violation of Injunction for Protection
- Probation Violation
- Failure to Appear

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 pp. 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of APD Officers Morrison, Weber, Salicos, and Guo with Brown.

LEGAL ANALYSIS

The facts in this case are determined by the relevant evidence collected, witnesses present at the incident, and recordings of the incident as outlined above.

The issue is whether the conduct of APD Officers Morrison, Weber, Salicos, and Guo on March 3, 2022, was criminally culpable and without legal justification. As stated above, in order to criminally charge the officer, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for their conduct. Therefore, in order to lawfully charge APD Officers Morrison, Weber, Salicos, and Guo with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of another. If the prosecution cannot prove that the officers' conduct was not lawful self-defense or defense of another, then criminal charges will not be warranted.

As the Court of Appeal held, it is well settled that

“[u]nlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.’ Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.”

(*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court’s definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect,

“the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer’s use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”

(*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

APD Officers Morrison, Weber, Salicos, and Guo were justified in believing that Brown posed a significant threat of death or serious physical injury to APD Officers Sena, Guo, Hasani, Leist, and Weber. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Brown in the moments leading up to the shooting. Brown had already brandished an AR-15 to the officers, threatened to kill his ex-girlfriend, and previously fired at least one shot. The officers knew that Brown possessed a working firearm and had demonstrated a willingness to use it. When he pointed a handgun in their direction, the officers reasonably believed Brown’s intent was to kill.

Based on their experience and the circumstances, the evidence supports the conclusion that APD Officers Morrison, Weber, Salicos, and Guo exercised reasonable judgment when they decided it was necessary to use deadly force against Brown. When Brown brandished the handgun and aimed it directly at officers, they reasonably believed that deadly force was necessary to defend themselves and other officers. Brown had been exhibiting erratic behavior, was not complying with any of the officers who were trying to get him to exit the house unarmed, and was armed with a weapon. As a result, officers simultaneously fired at Brown in order to protect the lives of one another.

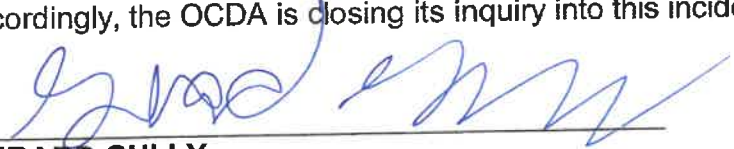
This conduct is reasonable, even without applying the standards specific to police officers. Anyone observing Brown's behavior, particularly his pointing a gun in their direction, would reasonably believe that lethal force was necessary to defend themselves and others. The law does not require anyone to sit idly under such circumstances.

Therefore, the evidence supports the conclusion that the officers reasonably believed that Brown posed an imminent threat of death or serious bodily harm to themselves and their colleagues. A jury analyzing these facts would justly conclude that it was reasonable for the officers to believe that their lives and the lives of others were in danger. The officers had probable cause to believe that Brown posed an immediate threat of great bodily injury or death to one or more officers present at the scene. Therefore, APD Officers Morrison, Weber, Salicos, and Guo were not committing a crime when they shot Brown.

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 insufficient evidence to prove criminal culpability on the part of APD Officers Morrison, Weber, Salicos, and Guo, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Brown on March 3, 2022.

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



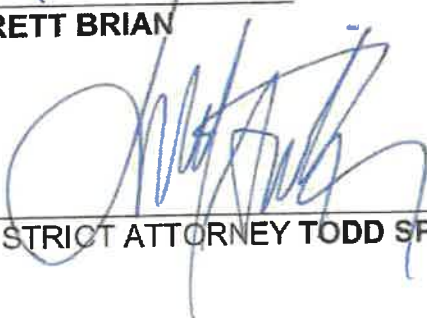
GERARD GULLY

Deputy District Attorney
TARGET/Gangs Unit



READ AND REVIEWED BY BRETT BRIAN

Assistant District Attorney
Special Prosecutions Unit



READ AND APPROVED BY DISTRICT ATTORNEY TODD SPITZER