



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

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November 29, 2023

Chief of Police Michael Henderson  
Seal Beach Police Department  
911 Seal Beach Boulevard  
Seal Beach, CA 90740

Re: Officer-Involved Shooting on January 16, 2023  
Fatal Incident involving Michael Bernard Emch, Jr.  
District Attorney Investigations Case # SA 23-000134  
Seal Beach Police Department Case # 23-00130  
Orange County Crime Laboratory Case FR # 23-40466  
Orange County Coroner's Office Case # 23-00373-CO

Dear Chief Henderson,

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 Seal Beach Police Department (SBPD) Corporal Bruno Balderrama and Officer Arion Knight. Michael Bernard Emch, Jr., age 47, died as a result of his injuries. The incident occurred in the City of Seal Beach on January 16, 2023.

### **OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the January 16, 2023, fatal, officer-involved shooting of Emch. 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 SBPD 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 January 16, 2023, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, 7 witness and 18 canvass interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: SBPD reports, audio dispatch and radio traffic recordings; audio recordings of neighborhood canvass interviews; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Emch; criminal history records related to Emch, including prior incident reports; and other relevant reports and materials. In addition, Corporal Balderrama and Officer Knight were wearing Body Worn Cameras (BWC) at the time of the incident. The cameras were activated and their recordings, which captured the events of January 16, 2023, were collected and reviewed.

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 SBPD personnel, specifically Corporal Balderrama and Officer Knight, 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 or killed as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as investigators from other OCDA units.

Six investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the office trained to assist when needed. On average, eight investigators respond to an incident within an hour of being called. The investigators assigned to respond to an incident perform a variety of 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 and approves 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. Corporal Balderrama and Officer Knight both gave voluntary statements to OCDA Investigators on January 18, 2023.

### **DISCLOSURE OF OFFICER-INVOLVED SHOOTING AND CUSTODIAL DEATH INCIDENTS 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 to release such evidence where it is legally appropriate to do so, the OCDA is making video/audio evidence publicly available in connection with this case. It is available on the OCDA webpage at: <http://orangecountyda.org/reports/videoandaudio/default.asp>.

### **FACTUAL SUMMARY**

On Monday, January 16, 2023, at approximately 9:36 p.m., SBPD dispatch received a 9-1-1 call from Jane Doe 1. Jane Doe 1 told dispatchers she was at home with her two young children, and

an unknown male was kicking her front door and demanding entry. Jane Doe 1 described the male as wearing a jacket, mask, beanie, and dark brown work boots. Jane Doe 1 provided her home address in Seal Beach.

At approximately 9:36 p.m., SBPD Officer Knight and Corporal Balderrama were dispatched to Jane Doe 1's residence location regarding a suspicious person attempting to kick down the caller's door.

The SBPD officers were wearing standard SBPD blue uniforms with BWCs clipped to their uniforms at chest height. They drove black and white patrol units equipped with emergency lighting equipment, spotlights, and patrol video systems (PVS). All the officers activated their BWC and PVS upon arriving at the location. Officer Knight's and Corporal Balderrama's BWCs captured the entirety of the incident.

At approximately 9:40:47 p.m., Officer Knight arrived at Jane Doe 1's residence.

The residence is a two-story condominium located within the Old Ranch Condominium development. It has two entry doors, both located on its east side. The rear courtyard area of the residence has an approximately eight-foot-high brick perimeter wall with an entry gate that faces south towards the 3600 block of Aster Street. There are concrete steps and a concrete walkway that leads from the courtyard entry gate to the north curb of Aster Street.

At approximately 9:41:22 p.m., Officer Knight observed a male subject, later identified as Emch, matching the description provided by dispatch, peering over the brick wall of the enclosed patio area of Jane Doe 1's residence. Only Emch's head was visible at that time as he peered over the wall.

Officer Knight stood in the walkway approximately 40 feet east of Emch. Officer Knight, using his flashlight to light up Emch, asked him who he was and commanded that he needed to come out of the enclosed area. Emch replied he was there to see the reporting party. Officer Knight again ordered him out and told him the reporting party had called SBPD because she did not want him there.

Officer Knight told Emch he needed to see his hands. Emch refused to show Officer Knight his hands and told Officer Knight to stop shining the flashlight on his face.

At approximately 9:42:01 p.m., Corporal Balderrama arrived in his police vehicle and parked approximately 200 to 300 feet south of the condominium. He exited his vehicle and began walking towards Officer Knight's location.

At approximately 9:42:02 p.m., Emch disappeared from view behind the patio wall. Officer Knight stated to OCDA Investigators that he did not know if Emch was armed, so he put away his flashlight and drew his duty weapon, using the light attached to his handgun for illumination.

At approximately 9:42:11 p.m., Emch exited the enclosed patio area. Emch wore a baggy black jacket, blue jeans, a black hat, and clear glasses. He had a beverage can in his right hand.

Officer Knight told Emch, "Put your hands up, I can't see your hands." Emch ignored commands and continued walking towards Officer Knight. Officer Knight told Emch to have a seat. Emch told

him “no” and that he would leave. Emch then moved the beverage can to his left hand while asking Officer Knight to call his staff sergeant. Officer Knight understood this as a common military term and believed Emch may have military training. The act of moving his beverage to his left hand heightened his suspicion of Emch’s intentions. Officer Knight believed Emch was possibly freeing up his right hand to reach for a weapon.

At approximately 9:42:27 p.m., Emch placed his right hand in his right front jacket pocket as he simultaneously turned around and walked back towards the enclosed patio area of Jane Doe 1’s residence. Emch refused multiple commands to stop and remove his hand from his pocket.

Corporal Balderrama, in his interview with OCDA Investigators, stated that he heard Officer Knight’s commands to stop and show his hands, which Emch ignored. Emch repeated, “I will not sit down; I will not sit down.” Corporal Balderrama saw Officer Knight with lethal cover and drew his Taser for a less lethal option.

Corporal Balderrama then moved closer to Emch as he began to re-enter the enclosed patio and told him, “Dude, I’m going to Tase you.” Emch ignored commands to stop and continued concealing his right hand in his front jacket pocket.

At approximately 9:42:34, Emch proceeded to walk back into the enclosed patio area with his back to the officers. Corporal Balderrama stated he was concerned for the reporting party and her two young children and decided to deploy his Taser.

At approximately 9:42:35 p.m., Corporal Balderrama deployed his Taser toward Emch, striking him in the back. Emch fell into the enclosed area onto his left side and then flat on his back.

Officer Knight lost sight of Emch when he entered the patio but heard the Taser deploy and Emch screaming.

At approximately 9:42:39, Officer Knight approached the threshold of the patio with his handgun drawn toward Emch. He could see Emch lying on his back on the patio floor. At the time, Corporal Balderrama was about three feet behind and to the left of Officer Knight.

At approximately 9:42:40 p.m., Emch reached for what appeared to be a black, Glock handgun from his right-side waistband. Officer Knight saw Emch point the gun directly in Corporal Balderrama’s direction. Believing his partner was about to be shot in the head, he pointed his gun at Emch and fired. Officer Knight told investigators that he continued firing his duty weapon until Emch released the pistol from his right hand. In total, Officer Knight fired 21 rounds.<sup>1</sup>

Corporal Balderrama told OCDA Investigators that after he deployed the Taser and Emch fell to the ground, he saw Emch draw a black pistol from his waistband. Corporal Balderrama stated that he feared Emch was going to shoot and kill him. In response, Corporal Balderrama stated that pulled the Taser trigger a second time. From Corporal Balderrama’s BWC, this occurred at approximately 9:42:42.

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<sup>1</sup> Officer Knight did not reload during the course of this shooting. Twenty-one rounds constituted the number of rounds in the magazine of his duty weapon plus one round in the chamber of the firearm.

Corporal Balderrama then dropped his Taser, drew his duty handgun, and fired nine rounds at Emch beginning at approximately 9:42:44. Corporal Balderrama explained that he continued to fire until Emch no longer had the gun in his hand. Once Emch dropped the gun, Officer Balderrama described that it remained within Emch's close reach after the shooting. This is confirmed by BWC footage showing the gun to be within approximately one inch of Emch's right hand.

At approximately 9:42:54 p.m., Corporal Balderrama broadcasted, "Shots fired." Officer Knight requested that paramedics and an SBPD supervisor respond to the scene.

At approximately 9:43:06 p.m., as Emch laid on his back he stated, "Finish me off." Officer Knight and Corporal Balderrama continued to give Emch commands and held him at gunpoint until additional units arrived. The officers decided to wait for additional units to render aid and take him into custody because Emch's pistol was still within close reach, and Emch was not complying with commands.

At approximately 9:43:55 p.m., the back of Emch's right hand touched the gun and moved it slightly. Emch's fingers remained bent over and he did not appear to open his hand as if he were trying to grab it. Corporal Balderrama and Officer Knight gave him commands to stop moving his hand, or he would be shot again.

At approximately 9:44:08 p.m., Emch raised his left hand off the ground and reached right towards the gun. Emch's left shoulder lifted off the ground as he attempted to reach for the gun. Corporal Balderrama and Officer Knight yelled, "Don't do it!" Emch gave up and put his left hand down to his side again.

At approximately 9:44:52 p.m., Officer Knight requested that dispatch call the reporting party and inquire if the occupants inside the residence were unharmed. Dispatch advised that the reporting party and her children were unharmed.

At approximately 9:48:46 p.m., SBPD Officer Michael Pistilli arrived on the scene. Officer Pistilli assisted by approaching Emch while Officer Knight and Corporal Balderrama held Emch at gunpoint. Officer Pistilli removed the gun from Emch's immediate reach and handcuffed Emch. Corporal Balderrama then placed a tourniquet on Emch's left upper thigh area.

The gun, which Officer Pistilli removed from Emch's reach, was a Glock 22, 40-caliber handgun loaded with one cartridge in the chamber and five cartridges in the seated magazine. The gun was taken into evidence by the OCCL and was found to be registered to Emch's father.

Additionally, four 40-caliber casings were located on the ground in the patio area within two feet of where Emch had been laying. One casing was next to the Glock pistol. One casing was found to the left of where Emch was laying, and two were above the location of his head.<sup>2</sup>

At approximately 9:52 p.m., Orange County Fire Authority (OCFA), Engine 84, arrived on the scene.

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<sup>2</sup> It is unclear when these four rounds were fired. Jane Doe 1 does not report hearing gunshots prior to the officers' arrival. Both Officers Balderrama and Knight did not report seeing or hearing Emch firing his weapon, and the shots were not observed on any BWC recordings.

At approximately 9:53:33 p.m., an OCFA Paramedic contacted Emch. Emch was unresponsive and had multiple gunshot wounds to his lower extremities and hands. His airway was open, breathing was shallow, and circulation and skin signs were normal. He was immediately loaded onto a gurney and prepared for transport to the University of California, Irvine Medical Center (UCIMC). Advanced life support measures were initiated. Emch was provided with airway bag ventilation to assist with breathing.

At approximately 10:02 p.m., Emch was loaded into the Care Ambulance. OCFA paramedics established an intravenous line and administered normal saline. While en route to UCIMC, Emch went into respiratory arrest.

At approximately 10:13 p.m., an oropharyngeal was used to establish and secure his airway. Emch's heart rate dropped, and base hospital contact requested the paramedics administer 1 mg of atropine. Atropine, however, was not identified in the OCFA report as having been given, possibly due to Emch's arrival at the hospital before it could be administered.

At approximately 10:19 p.m., Emch arrived at UCIMC.

At approximately 10:20 p.m., OCFA relinquished care of Emch to UCI medical personnel. Emch did not have a pulse when he arrived at UCI and cardiopulmonary resuscitation (CPR) and intubation were initiated at approximately 10:21 p.m. A UCI emergency room physician performed a thoracotomy on the left side of Emch and trauma surgeons found that Emch had lost a significant amount of blood. CPR on Emch was continued for approximately 11 minutes. After Emch failed to respond to these lifesaving measures, two UCI physicians determined that further efforts were futile. Emch was pronounced deceased at 10:32 p.m.

At the time of the incident, Emch had an active domestic violence restraining order against him, prohibiting him from contacting Jane Doe 1 or coming within 100 yards of her residence. The restraining order had been issued on July 28, 2022, and subsequently served on Emch.

On January 16, 2023, Jane Doe 1 spoke with SBPD Investigators. Jane Doe 1 told the officers that she had known Emch since grade school. They had remained in contact through "Messenger" over the years and began a dating relationship in March 2022. She stated that Emch had a history of addiction issues, but was not using drugs when he came back into her life. She described Emch as a "cool guy" when he was sober, but a "fucking demon" when he used methamphetamine. She explained that the restraining order was issued following an incident in July 2022 when Emch had beaten her.

On the night of the OIS, Jane Doe 1 said she had just put her son and daughter to bed when she heard someone kicking and pounding on her gate and front doors. She went downstairs and called 9-1-1. She did not see the person's face or know that it was Emch, as she had not seen or heard from him since November 2022.

Once she heard officers arrive and confront the suspect, she realized it was Emch at her door. She then heard an officer yell for him to take his hands out of his pockets. Shortly thereafter, she heard multiple shots fired.

## **EVIDENCE COLLECTED**

OCCL Forensic Scientist Jamie Miller collected the following evidence under the following Evidence Marker (EM) numbers and letters:

OCCL personnel collected the following items of evidence under the listed evidence markers:

- EM #1 - Two (2) cartridge cases, head stamped "WIN 9MM LUGER"
- EM #2 - Two (2) cartridge cases, head stamped "WIN 9MM LUGER"
- EM #3 - Three (3) cartridge cases head stamped "WIN 9MM LUGER"
- EM #4 - One (1) cartridge case head stamped "WIN 9MM LUGER"
- EM #5 - One (1) cartridge case head stamped "WIN 9MM LUGER"
- EM #6 - Six (6) cartridge cases, head stamped "WIN 9MM LUGER"
- EM #7 - One (1) CASIO wristwatch – black
- EM #8 - Two (2) cartridge cases, head stamped "WIN 9MM LUGER"
- EM #9 - One (1) cartridge case, head stamped "WIN 9MM LUGER"
- EM #10 - Five (5) cartridge cases, head stamped "WIN 9MM LUGER"
- EM #11 - One (1) cartridge case, head stamped "WIN 9MM LUGER"
- EM #12 – Two (2) cartridge cases, head stamped "WIN 9MM LUGER" / One (1) folding knife-black
- EM #13 - One (1) cartridge case, head stamped "FC 9MM LUGER"
- EM #14 – Two (2) bullet fragments
- EM #15 – One (1) Pointed metal object / One (1) Utility Pouch – Black
- EM #18 – One (1) GLOCK 22, 40 caliber handgun, Serial #RMW011, which was loaded with one (1) cartridge in the chamber head stamped "FEDERAL 40 S&W" and five (5) cartridges in the seated magazine head stamped "FEDERAL 40 S&W." The weapon had apparent blood stains on its upper receiver and slide / Two (2) bullet fragments
- EM #19 – Two (2) folding knives – black / One (1) utility pouch – black
- EM #20 – One (1) cartridge case, head stamped "WIN 9MM LUGER" / One (1) pair of torn/cut pants with apparent blood stains / One (1) torn/cut portion of a brown leather belt with apparent blood stains.
- EM #21 – Two (2) bullets
- EM #22 – One (1) bullet / One (1) soda can with an apparent bullet hole
- EM #23 – One (1) cartridge case, head stamped "FEDERAL 40 S&W"
- EM #24 – One (1) cartridge case head stamped "FEDERAL 40 S&W" / One (1) torn/cut black shirt / One (1) bullet fragment / One (1) pair of glasses
- EM #25 – One (1) baseball cap with apparent blood stains
- EM #26 – One (1) cartridge case, head stamped "FEDERAL 40 S&W" / One (1) bullet fragment
- EM #27 – One (1) bullet
- EM #28 – One (1) bullet fragment
- EM #29 – Three (3) bullet fragments
- EM #30 – One (1) cartridge case, head stamped "FEDERAL 40 S&W"
- EM #31 – Two (2) bullet fragments
- EM #32 – One (1) bullet / One (1) bullet fragment
- EM #33 – One (1) cartridge case, head stamped "WIN 9MM LUGER"
- EM #34 – One (1) bullet fragment
- EM #35 – One (1) bullet fragment

- PEM-A – One (1) bullet

Sergeant JEFF GIBSON collected the following evidence:

- EM #16 – One (1) POLE.CRAFT black magazine pouch / One (1) brown wallet containing identification and credit cards in the name of MICHAEL BERNARD Emch JR
- EM #17 – One (1) credit card in the name of MICHAEL Emch

OCCL Lead Forensic Specialist Raymond Frausto took 307 digital photographs of the scene.

### **AUTOPSY**

On Thursday, January 19, 2023, at approximately 9:04 a.m., OCCO Forensic Pathologist Doctor Etol Davenport conducted the post-mortem examination of Emch at the Orange County Sheriff-Coroner Forensic Science Center. The autopsy was documented under OCCO case number 23-00373-CO.

OCCL Forensic Specialist Steven Flores took 197 digital color photographs. OCCL Forensic Scientist Kelly Brown collected and retained the following evidence:

- Muscle Standard
- Bullet from left chest
- Bullet from the right torso
- Bullet from posterior liver
- Bullet from right hip
- Bullet from mesentery
- Bullet from the left thigh
- Bullet from the back of the left knee
- Bullet from the right pelvis
- Bullet from the right mid-flank
- Fragments from the right mid-flank
- Fragments from left knee
- Fragments from left thigh near the knee

Dr. Davenport concluded that Emch had sustained 24 gunshot wounds. Dr. Davenport determined the cause of death to be multiple gunshot wounds. The manner of death was homicide.

### **FIREARMS EXAMINATION**

OCCL personnel examined the following firearms:

- Staccato, Model P, 9mm caliber, semi-automatic handgun, serial #P2118359 (Officer Balderrama's duty weapon)
- Sig Sauer, P320, 9mm caliber, semi-automatic handgun, serial #58J119107 (Officer Knight's duty weapon)
- Glock, 22, 40 caliber, semi-automatic handgun, serial #RMW011 (Registered to Michael Bernard Emch, Sr.)

### **RESULTS and INTERPRETATIONS:**

From the cartridge cases recovered at the scene, the Staccato, Model P, was determined to have fired seven WIN 9mm Luger rounds. Projectiles recovered from Emch's right torso, left chest,

and posterior liver during his autopsy were all consistent with the WIN 9mm Luger ammunition fired from Officer Balderrama's weapon.

From the cartridge cases recovered at the scene, the Sig Sauer, P320, was determined to have fired twenty-one WIN 9mm Luger rounds. Projectiles recovered from Emch's right mid flank, left thigh near knee, back left thigh, right pelvis, right hip, and left thigh during his autopsy were all consistent with the WIN 9mm Luger ammunition fired from Officer Knight's weapon.

The Glock, 22, 40 caliber, semi-automatic handgun, serial #RMW011, was collected at the scene of the incident. The handgun was located with 1 cartridge in the chamber head stamped FEDERAL 40 S&W and 5 cartridges in the seated magazine head stamped FEDERAL 40 S&W. The handgun was examined by the OCCL and found to malfunction. Four FEDERAL 40 S&W cartridges located at the scene were determined to have been fired from the Glock, 22, 40-caliber handgun recovered from Emch.

### **TASER EXAMINATION**

On January 16, 2023, Officer Balderrama's Taser recorded two activations. The time noted in the report differs from BWC footage and dispatch records. Based on BWC footage and dispatch records, it was determined that the Taser was fired at 9:42:35 p.m. and again at 9:42:42 p.m.

| Serial #  | Local Date | Local Time | Duration Time |
|-----------|------------|------------|---------------|
| X482178RY | 01/16/2023 | 21:53:21   | 4.98s         |
| X482178RY | 01/16/2023 | 21:53:28   | 5.25s         |

### **TOXICOLOGICAL EXAMINATION**

Samples of Emch's post-mortem blood were collected and examined for the presence of drugs and alcohol. The following results were obtained:

| Drug                 | Postmortem Blood      |
|----------------------|-----------------------|
| Ethanol              | 0.014 ± 0.004 % (w/v) |
| Acetaldehyde         | Detected              |
| Amphetamine          | 0.102 ± 0.008 mg/L    |
| Methamphetamine      | 0.330 ± 0.024 mg/L    |
| Acetaminophen (Free) | 3.64 ± 0.34 mg/L      |
| Hydrocodone          | 0.0391 ± 0.0037 mg/L  |

### **EMCH'S PRIOR CRIMINAL HISTORY**

Emch had a State of California criminal history that revealed arrests for the following:

- Being under the influence of a controlled substance
- Resisting an executive officer in the performance of his duty
- Vandalism
- Possessing/selling a switchblade knife
- Driving without a license
- Driving with a suspended driver's license

### **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 Corporal Balderrama and Officer Knight with Emch.

## **LEGAL ANALYSIS**

The issue is whether the conduct of Corporal Balderrama and Officer Knight on January 16, 2023, was criminally culpable and without justification. As stated above, in order to charge Corporal Balderrama or Officer Knight with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge Corporal Balderrama or Officer Knight with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions that day of the officers were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in 1998, it is well settled that

"unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect 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.”

(*Edson v. City of Anaheim* (1998) 63 Cal.App.4<sup>th</sup> 1269, 1273 (quoting *Graham v. Connor, supra*, 490 U.S. at 396 and *Wirsing v. Krzeminski* (1973) 61 Wis.2d 513, 522.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Court of Appeal has noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. (*Brown v. Ransweiler* (2009) 171 Cal.App.4<sup>th</sup> 516, 528.) Quoting various United States Supreme Court and California appellate court precedent, the court in *Brown* noted that effectively,

“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.4<sup>th</sup> at 528 (internal citations and quotations omitted).)

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.

Corporal Balderrama and Officer Knight were justified in believing that Emch posed a significant threat of death or serious physical injury to themselves and others. This conclusion is based on the totality of the circumstances, but mainly based on Emch's conduct in the moments leading up to the shooting.

Before the shooting, Emch was the subject of a 9-1-1 call where the reporting party said he was violently trying to enter her home. When contacted by Officer Knight, he was belligerent and non-compliant with requests to show his hands and sit down. Emch placed his hand inside his jacket pocket after again being told to show his hands. He then turned away from the officers and went back into the enclosed patio ignoring orders to stop. It was then that Corporal Balderrama reasonably used non-lethal force and Tasered Emch.

While the Taser caused Emch to fall to the ground, it did not incapacitate him. It was then that Emch pulled out a semi-automatic pistol, and pointed it at the officers. Both officers reasonably believed that Emch would fire the gun at Corporal Balderrama.

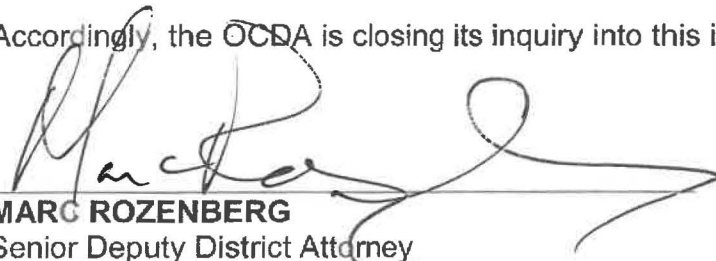
Based on their experience and the circumstances surrounding this incident, the evidence supports the conclusion that Corporal Balderrama and Officer Knight exercised reasonable judgment when they decided it was necessary to use deadly force against Emch. In accordance with their training, both officers continued to fire until Emch dropped the gun and the threat to their lives had been neutralized. In addition, they refrained from firing additional shots even though Emch subsequently appeared to be reaching for his gun

In order for Corporal Balderrama or Officer Knight 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 the officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Emch. The prosecution would be unable to carry the burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for each officer to believe that his life and the life of his fellow officer were in danger. Therefore, Corporal Balderrama and Officer Knight were justified when they shot at Emch and carried out their duties as peace officers in a reasonable and justifiable manner.

### **CONCLUSION**

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence to prove criminal culpability on the part of Corporal Balderrama and Officer Knight, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Emch on January 16, 2023.

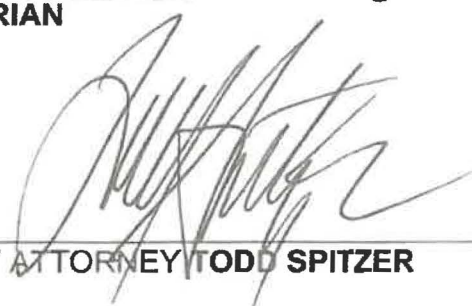
Accordingly, the OCDA is closing its inquiry into this incident.



**MARC ROZENBERG**  
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**