



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

February 21, 2024

Chief of Police Darin Lenyi
Westminster Police Department
8200 Westminster Boulevard
Westminster, CA 92683

Re: Officer-Involved Shooting on December 24, 2022
Non-Fatal Incident involving Khang Chi To
District Attorney Investigations Case # SA 22-003949
Westminster Police Department Case # 22-10243
Orange County Crime Laboratory Case FR # 22-53098

Dear Chief Lenyi,

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 Westminster Police Department (WPD) Officer Christopher Doan. Khang Chi To, age 30, survived his injuries. The incident occurred in the City of Westminster on December 24, 2022.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the December 24, 2022, non-fatal, officer-involved shooting of To. It 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 Officer Doan. 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 December 24, 2022, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, five witness interviews and one canvass interview were conducted. OCDASAU Investigators also obtained and reviewed the following: WPD 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 To; criminal history records related to To, including prior incident reports; and other relevant reports and materials. In addition, Officer Doan, as well as Officers Raymond Dam and William Bouffard, who were also present at the time of the incident, were wearing Body Worn Cameras (BWC). The cameras were activated and their recordings, which captured the events of December 24, 2022, 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 Officer Doan 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. Although Officer Doan declined to give an interview, Officers Dam and Bouffard both gave voluntary statements to OCDA Investigators on December 24, 2022.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING / USE OF FORCE / OR CUSTODIAL DEATH VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shootings, use of force, 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 shootings, use of force, and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

On December 23, 2022, at approximately 10:59 p.m., WPD received a call regarding a commercial burglary of a business located at 9253 Bolsa Avenue in the City of Westminster. The reporting party told WPD that a male subject wearing a gray shirt and armed with a metal pipe had smashed the front door and taken a drink from inside the business.

At approximately 11:33:08 p.m., WPD received a call for service regarding an incident of vandalism at Imperial - Health & Beauty, a business located at 9196 Bolsa Avenue in the City of Westminster. The reporting party told WPD that the vandalism had occurred at approximately 10:50 p.m.

Due to other priority calls for service, an officer was not immediately available for dispatch to either of the locations.

On December 24, 2022, at approximately 12:28 a.m., Officer Dam was dispatched to the reported burglary.

At approximately 12:44:20 a.m., Officer Doan became available and assigned himself to the pending vandalism call. He arrived at Imperial - Health & Beauty at approximately 12:51:13 a.m.

Officer Doan was wearing a WPD long-sleeved utility uniform with WPD identification patches on both shoulders. He wore a black tactical vest with a cloth WPD badge and cloth "POLICE" nametag on the upper left chest area. The right chest area of the tactical vest had a cloth nameplate that read "C. DOAN," and the back of the vest had a large patch that read "POLICE." Officer Doan had a BWC that was mounted on the front of his tactical vest.

When he arrived at the scene, Officer Doan met with the reporting party, John Doe 1, who told him that a male subject with a metal stick or pole had used the object to repeatedly strike the front of the business as well as an external surveillance camera.

John Doe 1 retrieved surveillance camera video of the incident on his cell phone and showed it to Officer Doan. This recording captured the subject, a male wearing a gray jacket and blue jeans and carrying a white pole, striking the surveillance camera multiple times with the pole.

John Doe 1 advised Officer Doan that the male subject was likely still in the area, as he had just seen him a few minutes earlier.

At approximately 12:54:00 a.m., Officer Doan began conducting an area check to locate the subject. At approximately 12:56:35 a.m., Officer Doan observed To approximately a block away in the south alley of 9262 Bolsa Avenue, behind a retail and commercial business complex. Wearing a gray jacket and blue jeans and carrying a long pole in his right hand, To matched the subject observed in the surveillance video obtained by John Doe 1.

Officer Doan exited his marked police vehicle and initially contacted To in the alley. To immediately began walking westbound and away from Officer Doan. Officer Doan followed on foot and repeatedly commanded To to stop, drop the pole, and sit down. To was argumentative and continued walking away from Officer Doan.

At approximately 12:56:57 a.m., Officer Doan radioed that he was with the vandalism suspect, who was uncooperative. Officer Doan requested additional units to respond for assistance.

Officer Dam heard the request for assistance and responded.

At approximately 12:57:19 a.m., Officer Doan drew his TASER Electronic Control Weapon as he followed To.

When To reached the west edge of the retail/commercial complex, he began walking northbound toward Bolsa Avenue. As Officer Doan followed, he continued making repeated commands for To to stop, drop the pole, and sit down. To remained argumentative and continued walking away from Officer Doan.

At approximately 12:57:47 a.m., Officer Doan transitioned from his TASER to his handgun.

At approximately 12:58:06 a.m., Officer Dam arrived at the location, exited his marked vehicle, and joined Officer Doan. Both officers followed To westbound on the south sidewalk of Bolsa Avenue at Saigon.

Officer Dam was wearing a WPD class "A" style uniform with WPD identification patches on both shoulders. He had a metal WPD badge on the upper left chest area and a Motorola HT mic on the upper left portion of his uniform shirt. He had a Body Worn Camera (BWC) mounted on the center of his chest.

At approximately 12:58:15 a.m., Officer Doan told Officer Dam to draw his TASER as a less-lethal force option. As To continued ignoring Officer Doan's commands to stop, to drop the pole, and to sit down, Officer Dam drew his TASER. Officer Doan continued holding his handgun.

At approximately 12:58:25 a.m., To struck the traffic signal pole at the southwest corner of Bolsa Avenue at Saigon with the metal pole, making a loud noise. In his statement to OCDA investigators, Officer Dam indicated that it was at that time that he realized To's pole was made out of metal and that it was a weapon capable of inflicting great bodily injury.

While following To westbound on the south sidewalk of Bolsa Avenue, and to ensure that To understood the officers' commands, Officer Doan spoke to To in English, while Officer Dam spoke to To in Vietnamese. Based on To's responses in both languages, it was clear to the officers that To was able to communicate in both English and Vietnamese and understood their commands.

At approximately 12:58:58 a.m., while continuing to walk on the south sidewalk of Bolsa Avenue and ignoring the officers' commands, To struck a fire hydrant on the south sidewalk of 9200 Bolsa with the metal pole. The resulting loud noise reinforced Officer Dam's prior assessment of the potential danger the metal pole posed to him and Officer Doan.

At approximately 12:59:02 a.m., Officer Doan requested via his police radio for the next arriving police unit to bring another less-lethal weapon.

At approximately 12:59:12 a.m., To began walking northbound across all traffic lanes of Bolsa Avenue.

At approximately 12:59:41 a.m., To reached the north sidewalk of Bolsa Avenue and continued walking westbound.

At approximately 1:00:14 a.m., Officer Bouffard arrived at the location. Officer Bouffard was wearing a WPD short-sleeved utility uniform with WPD identification patches on both shoulders. He wore a black tactical vest with a metal WPD badge on the upper left chest area. The right chest of the tactical vest had a cloth nameplate that read "W. BOUFFARD." The rear of the black tactical vest had a large patch that read "POLICE." He had a Body Worn Camera (BWC) mounted on the center of his chest.

Officer Bouffard immediately exited his marked patrol vehicle and joined Officer Doan and Officer Dam as they followed To on foot. To continued to refuse to follow their commands to stop and put down the pole.

At approximately 1:00:34 a.m., To reached the shopping center parking lot at 9081-9113 Bolsa Avenue. Once in this parking lot, To appeared to become more aggressive by partially turning toward the officers while continuing to walk, shouting at them, and loosely swinging the pole around his waist in their direction.

At this time, Officer Dam was directly east of To, exhibiting his TASER. Officer Bouffard, who was holding no weapons, was positioned south of Officer Dam. Officer Doan was positioned directly south of To and southwest of Officer Dam and Officer Bouffard.

At approximately 1:00:42 a.m., Officer Doan told Officer Dam if he had a TASER shot, to "get it."

At approximately 1:00:46 a.m., Officer Dam told Officer Doan that he had a shot.

At approximately 1:00:48 a.m., Officer Doan told Officer Dam to "take" the shot.

At approximately 1:00:49 a.m., To stopped, fully turned toward the officers, grabbed the pole with both hands and raised it to shoulder level and behind his head similar to a baseball batter. Officer Doan immediately shouted for To to stop as To began to quickly advance toward Officer Dam and Officer Bouffard.

At approximately 1:00:52 a.m., To ignored Officer Doan's repeated commands to stop, and continued moving toward Officers Dam and Bouffard. As To closed to within a few feet of the officers and appeared to be preparing to swing the pole by "cocking" it back, Officer Doan fired his handgun five times. Simultaneously, Officer Dam deployed his TASER. To immediately dropped the weapon and fell to the ground. As a result of the shooting, To sustained gunshot wounds to the face, chest, abdomen and right arm.

Both Officer Dam and Officer Bouffard, in their statements to OCDA investigators, stated that they felt To had advanced to within five feet of them and clearly within striking distance with the pole. Officer Dam stated he believed that if he had been hit with the metal pole, he would be critically injured. Officer Bouffard described To as taking a "batter's swing" at him and felt To was trying to "take his head off" with the pole. Officer Bouffard said he knew if he had been hit with the pole, it would have killed him.

At approximately 1:01:25 a.m., To, who remained conscious and alert, was handcuffed. Officers then immediately began rendering medical aid.

At approximately 1:01:43 a.m., WPD officers requested a 9-1-1 response from the Orange County Fire Authority (OCFA).

At approximately 1:07 a.m., OCFA Paramedics arrived and assumed patient care. Upon arrival, paramedics observed WPD officers applying a chest seal to To who was awake and speaking incomprehensible words. They did not see any uncontrolled bleeding. OCFA Paramedics contacted the Paramedic Trauma Receiving Center at the University of California, Irvine - Medical Center (UCIMC), and at approximately 1:16:23 a.m., transported him by Care Ambulance Service to UCIMC.

At approximately 1:24:50 a.m., To arrived at UCIMC and his care was transferred to a surgical trauma team. To underwent successful surgery and survived his wounds.

On December 29, 2022, at approximately 10:00 a.m., WPD Detective Marcela Lopez and OCDA Investigator Thomas Toth went to the UCI Surgical Intensive Care Unit to interview To.

To said on the night he was shot, a WPD officer was after him because he was holding a metal pole. When asked why he had a metal pole in his possession on that date, To said he was doing it for fun. When presented with two photos captured by a surveillance system in the area where the OIS occurred, To identified one of the photos as being a picture of him. To identified the second photo as being a picture of him holding the metal pole he had in his possession during the altercation with WPD officers. As the conversation continued, however, To became drowsy and repeatedly told Detective Lopez he was unable to remember specific details. The interview was terminated when To indicated he was too tired to continue.

On January 5, 2023, at approximately 2:30 p.m., Detective Lopez again went to UCIMC, where To had been medically cleared for release by UCIMC. To was arrested and transported to the WPD jail.

At approximately 4:00 p.m., Detective Lopez and Investigator Toth advised To of his Miranda Rights. After consenting to speak with them, To indicated that when WPD officers told him to stop he walked away because he was not doing anything wrong. To said that when officers followed him he felt he had no choice but to throw the metal pole. He stated he planned to run away after throwing the pole. To stated he was "so stupid. If I lay down, then it's ok." He said, "The reason why I got shot was because I threw the stick."

KHANG TO'S POST-INCIDENT CONVICTION

On January 9, 2023, the OCDA filed the following criminal charges against To in Orange County Superior Court criminal case number 23WF0072:

- Two felony counts of violating California Penal Code (CPC) Section 245 (c) (Assault with a deadly weapon upon a police officer)
- One felony count of violating CPC Section 69 (Felony resisting an executive officer)
- One felony count of violating CPC Section 459(b) (Burglary in the second degree)

- One misdemeanor count of violating CPC Section 148(a)(1) (Resisting and obstructing a police officer)
- Two misdemeanor counts of violating CPC Section 594(a)(b)(2)(A) (Vandalism)

As part of a plea agreement with the Superior Court, To pled guilty on August 23, 2023, to all of the charges and was sentenced to six years in state prison.

EVIDENCE COLLECTED

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

- EM#1 - One (1) Cartridge casing with headstamp "WIN 9MM LUGER."
- EM#2 - One (1) Cartridge casing with headstamp "WIN 9MM LUGER"
- EM#3 - One (1) Cartridge casing with headstamp "WIN 9MM LUGER"
- EM#4 - One (1) Cartridge casing with headstamp "WIN 9MM LUGER"
- EM#5 - One (1) Cartridge casing with headstamp "WIN 9MM LUGER"
- EM#6 - 13 TASER cartridge AFID confetti pieces
- EM#7 - One (1) TASER cartridge blast door, One (1) TASER cartridge with attached wires and One (1) probe, One (1) gray jacket, One (1) light gray hooded sweatshirt, One (1) blue/tan button-up shirt, One (1) white t-shirt, One (1) A4 extra-large white t-shirt with One (1) bullet stuck in the lower right back area (All clothing items were cut/torn)
- EM#8 - One (1) TASER blast door
- EM#9 - One (1) black sock, One (1) pair of black shoes
- EM#10 - One (1) Metal ground spike flagpole holder
- EM#11 - One (1) Damaged bullet
- EM#12 - One (1) Damaged bullet core
- EM#13 - One (1) Bullet jacket
- EM#14 - One (1) Apparent bullet core fragment
- OCCL Item #1 - STACATTO C2, Model 2011, 9mm semi-automatic handgun, Serial Number C22112571, was collected from DOAN during officer processing
- OCCL Item #2 - Axon Enterprise, TASER Model X26P, Serial Number X120096H2, was collected from DAM during officer processing
- OCCL Item #3 - Ground Spike for Flagpole - Gray metal solid pole with one tapered end and hollow metal opposite end, apparent rust in some areas, approximately 29 ½ inches in length

OCCL Forensic Specialists took 198 color digital photographs of the scene.

FIREARMS EXAMINATION

The Staccato C2, Model 2011, 9mm semi-automatic handgun, Serial Number C22112571, was examined by the OCCL and found to operate without malfunction.

TASER EXAMINATION

The TASER Model X26P, Serial Number X120096H2, was examined by the OCCL and found to operate without malfunction. The data stored in the device was downloaded using the manufacturer's software, which yielded the following: One activation was recorded on the TASER on December 24, 2022, at 1:04:45 a.m. The duration of the activation was one second. The

sequence number of the activation was 1255, and the device's battery power indicator had a reading of 19 percent. The TASER clock was three minutes, 56 seconds ahead of the laboratory computer clock.

TOXICOLOGICAL EXAMINATION

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

Drug	
Ethanol	None Detected
Methadone	None Detected
Oxycodone	None Detected

TO'S PRIOR CRIMINAL HISTORY

To had a State of California criminal history dating back to 2017 that revealed arrests for the following:

- Possession of a controlled substance;
- Possession of drug paraphernalia;
- Burglary;
- Trespassing;
- Receiving/possessing known stolen property;
- Vehicle Theft;
- Vandalism;
- Obstructing a public officer;
- Disobeying a court order;
- Violating terms and conditions of probation; and
- Carrying a concealed dirk or dagger

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 Officer Doan with To.

LEGAL ANALYSIS

The issue is whether the conduct of Officer Doan on December 24, 2022, was criminally culpable and without justification. As stated above, in order to charge Officer Doan with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. If the actions that day of the officer 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.4th 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.4th 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.4th 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.

Officer Doan was justified in believing that To 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 primarily To's conduct in the moments leading up to the shooting.

Shortly after speaking with the reporting party for the vandalism and watching the surveillance video, Officer Doan located To nearby, wearing clothes similar to the suspect in the video. He was also carrying a large pole similar to the one used by the suspect to vandalize the business. Upon initial contact, To was belligerent and non-compliant with requests to stop and to drop the pole. For over four minutes, To ignored officers' repeated commands, instead walking for several blocks.

Upon reaching the shopping center parking lot at 9081-9113 Bolsa Avenue, To's demeanor changed from non-compliant to aggressive. As Officer Doan instructed Officer Dam to deploy his Taser, To turned toward them, grabbed the pole with both hands and held it in a baseball batter's stance as if he was going to swing it at them. While ignoring further commands to stop, To quickly moved towards Officers Dam and Bouffard and appeared to be preparing to swing the pole at them. Fearing that they would be struck and seriously injured, Officer Doan discharged his weapon.

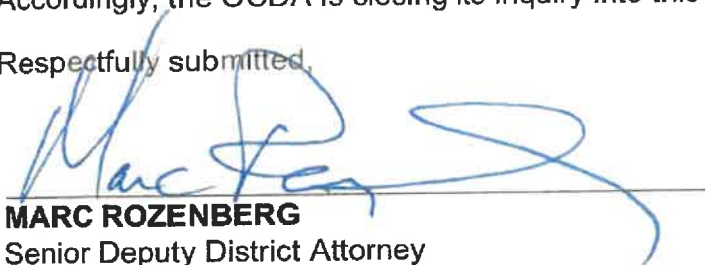
For Officer Doan to be justly and lawfully charged and convicted of a crime in this incident, it would be the OCDA's burden to prove beyond a reasonable doubt, *inter alia*, that he did not act in reasonable and justifiable self-defense or defense of another. The prosecution would be unable to carry the burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Officer Doan to believe the lives of his fellow officers were in danger, and that he exercised reasonable judgment in using deadly force against To.

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 Officer Doan. There is substantial evidence that his actions towards To on December 24, 2022, were reasonable and justified under the circumstances.

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

Respectfully submitted,



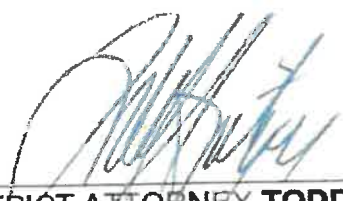
MARC ROZENBERG

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