



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

March 25, 2024

Chief Robert Rodriguez
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Related Death on September 15, 2022
Fatal Incident involving Miguel Chavez
District Attorney Investigations Case# SA 22-002905
Santa Ana Police Department Case# SAPD 22-20491
Orange County Crime Laboratory Case FR # 22-49953
Orange County Coroner's Office Case# 22-05448-AA

Dear Chief Rodriguez,

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 the September 13, 2022, arrest and subsequent September 15, 2022, custodial death of 73-year-old Miguel Chavez.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Chavez. 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 any Santa Ana Police Department (SAPD) personnel or any other person under the supervision of the SAPD in connection with this incident.

On September 15, 2022, OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of this investigation, three interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, SAPD body-worn camera (BWC) video, Orange County Fire Authority (OCFA) reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, and officer processing reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Chavez; and other relevant reports and materials.

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, if the use of force was consistent with the law on the part of SAPD personnel, and if a legal duty of care was breached as it relates to Chavez. 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 custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as investigators from other OCDA units. Six investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the office trained to assist when needed. On average, eight investigators respond to an incident within an hour of being called. The investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. 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 memos. The case may often be reviewed by several experienced prosecutors and their supervisors. Ultimately, the District Attorney reviews and approves all officer involved shootings and custodial death letters.

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.as.p>

FACTUAL SUMMARY

On September 13, 2022, at approximately 1:45 p.m., SAPD Dispatch received a call from a citizen and the OCFA, advising of a traffic collision at the intersection of Broadway Avenue and 19th Street. Parties reported a white van was involved in the collision and was leaving the scene south on Broadway Avenue. SAPD units were dispatched to the intersection and told a white van was leaving the scene.

SAPD K-9 Officer Mark Shifflett heard the call for service as he was traveling south on Broadway Avenue near 17th Street. Officer Shifflett saw a white van traveling south on Broadway with front-end collision damage. The driver of the van was later identified as Miguel Chavez. Officer Shifflett observed Chavez turn west from Broadway Avenue onto Civic Center Drive.

Officer Shifflett was driving a black and white marked SAPD patrol unit with overhead emergency lights. Officer Shifflett was dressed in a standard blue SAPD uniform with a body worn camera (BWC) attached at chest level. The BWC was activated at the time of the incident.

At approximately 1:49 p.m., Officer Shifflett attempted to conduct a traffic stop on Chavez by activating his emergency lights. Chavez, however, failed to stop. Officer Shifflett was joined by SAPD Officer Alex Gomez as he continued to follow Chavez west on Civic Center Drive. Chavez turned north on Flower Street and pulled to the curb at 1317 North Flower Street.

At approximately 1:51 p.m., Officer Shifflett stopped behind Chavez and gave verbal commands for him to place his vehicle in park and throw the keys out the window. Additional SAPD officers arrived on the scene, and Officer Gomez repeated the commands to Chavez in Spanish. Chavez looked back at the officers, then drove off north on Flower Street.

SAPD officers pursued Chavez throughout the city for more than ten minutes. Chavez briefly stopped several times before continuing to flee. Each time, SAPD officers ordered Chavez in English and Spanish to exit the van. Chavez did not comply.

At approximately 1:58 p.m., SAPD Dispatch received a call from a citizen stating he saw Chavez possibly armed with a "weapon" or "dark object with a barrel" in his right hand. SAPD Dispatch broadcast to units that Chavez was possibly armed.

At approximately 2:04 p.m., Chavez pulled in and parked in a marked parking stall at the CVS convenience store, located at 102 North Main Street, Santa Ana.

SAPD Officers blocked Chavez' vehicle and began giving Chavez commands to exit and surrender. SAPD Officer Jose Rosales repeated the commands to Chavez in Spanish. Chavez moved to the passenger side of the van, opened the door, and communicated with officers through the open door. Chavez refused to comply with the officer's instructions to exit the van.

SAPD Sergeant Michael Gonzalez was on the scene and developed a tactical plan to approach and apprehend Chavez. Sgt. Gonzalez assembled an arrest team and positioned less lethal options, which included a police K-9 and two 40mm less-lethal launchers. SAPD officers continued to negotiate with Chavez, but he refused to exit the van.

At approximately 2:11 p.m., Sgt. Gonzalez ordered SAPD Officer Jonathan Chavez to fire one round from his 40mm less lethal launcher at Chavez. Officer Chavez aimed for Chavez' lower abdomen and then fired one round. The round hit Chavez in the abdomen, however, he remained in the van and shut the passenger door.

Officer Rosales negotiated with Chavez for an additional ten minutes. Chavez briefly opened the passenger door to communicate with Officer Rosales. Officer Rosales continued giving Chavez orders to surrender, but Chavez refused to comply.

Sgt. Gonzalez instructed Officer Shifflett to prepare to deploy K-9 "Kuno" in an attempt to remove Chavez from the van.¹

At approximately 2:21 p.m., and upon instruction from Sgt. Gonzalez, SAPD Officer Sean Anthis and Officer Chavez each deployed one round from their 40mm less lethal launchers at Chavez, as K-9 Officer Kuno was sent to apprehend him. Chavez was struck by both less lethal rounds immediately prior to Kuno entering the van through the open passenger door. During these events, SAPD officers continued to order Chavez to surrender.

At approximately, 2:23 p.m., SAPD officers made physical contact with Chavez, and Officer Shifflett called Kuno off the bite. Chavez was then removed from the van and handcuffed. SAPD officers immediately began treating Chavez for dog bite injuries to both his right arm and lower right leg. A request was broadcast to have Orange County Fire Authority (OCFA) paramedics respond to the scene.

At approximately 2:29 p.m., OCFA Engine 75 arrived on the scene. An OCFA paramedic saw Chavez being treated by SAPD officers as he was seated handcuffed near a vehicle. The paramedic was informed Chavez was struck by multiple less lethal munitions and had multiple dog bites from the police K-9.

OCFA assumed care of Chavez and found him awake and alert. Upon assessment, his vital signs were found to be stable. Tourniquets and bandaging were applied to Chavez' right arm and right leg. The paramedic also noticed Chavez had bruising to his right upper torso and right thigh. Chavez appeared confused and reported having diabetes and high blood pressure. The paramedic stabilized Chavez and rode with him to Orange County Global Medical Center (OCGMC). Chavez remained in stable condition while in transport.

At approximately 3:00 p.m., Chavez arrived at the hospital and his care was relinquished to OCGMC medical staff.

At approximately 3:04 p.m., Chavez was admitted to OCGMC for a dog bite to his right lower arm and a dog bite to his right lower leg. Chavez was oriented, coherent, and had normal temperature and skin color. In addition to the dog bites, Chavez was found to have sustained a round two-inch wound to his abdomen, and a hematoma to both his right leg and inner right thigh. Chavez reported a history of stroke, diabetes, and hypertension. Chavez also had bruising to his right rear flank, which he claimed occurred four days prior when he fell off a ladder or stool.

Chavez was taken to an operating room where an OCGMC surgeon treated his dog bite wounds by removing dead tissue and suturing the wounds.

¹ SAPD canine policy calls for an on-scene supervisor to approve the deployment of a canine. The supervisor is to consider all pertinent information, including, but not limited to, whether weapons are anticipated, the degree of resistance the suspect has shown, and the potential for injury to the officers if the canine is not utilized.

In addition to treating the dog bite wounds, medical staff conducted multiple additional evaluations on Chavez. This included an ultrasound exam of his chest, a manual and visual examination of his abdomen, chest, and spine, and a computed axial tomography (CAT) scan of his brain. Apart from numerous calcified gallstones, no abnormalities or further injuries were identified. As a result, Chavez was moved to the 4th floor of OCGMC, room #418, to recover.

On September 14, 2022, the OCGMC surgeon contacted Chavez to check on his condition. Chavez complained of decreased motion to his right foot, right knee, right hand, and right arm. The Doctor indicated Chavez' complaints were expected based on the injuries he sustained.

Chavez was to remain hospitalized and a right arm skin graft surgery was scheduled for September 16, 2022. Additionally, Chavez was prescribed medication to control blood sugar, ulcers, diabetes, anxiety, bacterial infections, constipation, low potassium, and pain.

Chavez' medical records indicate that after being treated, he was eating well and urinating normally. Chavez also slept, appeared comfortable, and showed no signs of distress. He spoke lucidly with medical staff and recalled details of the incident involving the police. Chavez indicated to medical staff that he was confused at the time he was contacted by police and expressed regrets for not obeying their commands.

At approximately 8:00 p.m., an OCGMC Registered Nurse (RN) contacted Chavez at the beginning of her shift. The RN noted that Chavez was alert, orientated, and communicated clearly. Since Chavez sustained what were believed to be non-life-threatening injuries, he was not connected to an electrocardiogram monitor.

At approximately 10:22 p.m., Chavez was administered 3.375 grams of Zosyn via intravenous line. Zosyn is used to treat bacterial infections.

In an interview with OCDA investigators, the RN stated she contacted Chavez numerous times throughout her shift that evening. Chavez once mentioned having weakness in his right arm and reported having a previous stroke. He did not report any other distress.

On September 15, 2022, at approximately 12:30 a.m., the RN contacted Chavez to reposition him in his bed. She did not notice Chavez to be in distress.

At approximately 2:16 a.m., the RN returned to Chavez' room to further examine a wound on Chavez' left foot. When she entered the room, she noted that Chavez appeared to be asleep. She attempted to wake him, but found him unresponsive and pale. Upon further evaluation, she determined he was pulseless and not breathing. The RN immediately called for assistance and started cardiopulmonary resuscitation.

At approximately 2:18 a.m., OCGMC Code Team medical staff began arriving at Chavez' room. An OCGMC medical doctor assumed control over Chavez' airway and intubated him. Despite employing multiple advanced cardiac life support measures, Chavez failed to respond.

At approximately 2:34 a.m., he was pronounced deceased.

AUTOPSY

On Friday, September 16, 2022, at approximately 8:00 a.m., Forensic Pathologist Doctor Nicole Ellis conducted the postmortem examination of Chavez at the Orange County Sheriff-Coroner Forensic Science Center.

An OCCL Forensic Specialist took 73 color digital photographs and an OCCL Forensic Scientist collected a blood/muscle standard.

Dr. Ellis noted that Chavez suffered from diabetes and noticed blockage to the major arteries of his heart. Dr. Ellis indicated that the injuries Chavez sustained did not appear life-threatening, but could have caused a great deal of blood loss. Dr. Ellis deferred opining on the cause and manner of death until toxicological and microscopic tests were completed.

On June 8, 2023, Dr. Ellis issued a final report. Dr. Ellis identified Chavez' cause of death as "severe ischemic cardiovascular disease complicated by canine injuries" and the manner of death as "homicide."²

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Chavez' antemortem and postmortem blood was collected. An OCSD forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

Drug	Postmortem Blood	Antemortem Blood	Antemortem Serum
Acetaminophen	1.77 + 0.17 mg/L		
Caffeine	Detected		Detected
Duloxetine	Detected		Detected
Ephedrine	0.108 + 0.007 mg/L		
Gabapentin		1.12 + 0.10 mg/L	Detected
Hydrocodone	0.0143 + 0.0014 mg/L		
Ondansetron	Detected		

² The National Association of Medical Examiners, the professional society of forensic pathologists and medicolegal death investigators, publishes the Guide for Manner of Death Classification. The Guide is used by the OCCO as reference when deciding Manner of Death. The Guide states that when there are dual causes of death, and one is considered natural while the other is non-natural, the non-natural is prioritized in determining the manner of death. Non-natural causes of death are homicide, suicide and accident. Homicide occurs when death results from a volitional act committed by another person to cause harm or death. In this instance, the injuries sustained by Chavez from the K-9, although not deemed life-threatening by the hospital medical staff, exacerbated his severe ischemic cardiovascular disease, ultimately leading to his death. Therefore, since there are two cause of death, the non-natural cause, homicide was given priority.

CHAVEZ' PRIOR CRIMINAL HISTORY

Chavez had no prior criminal history record.

STANDARD LEGAL PRINCIPLES

OFFICER USE OF FORCE CASES

Possible criminal charges against an officer involved in a use of force case 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 the 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 between the SAPD officers and Chavez.

FAILURE TO PROVIDE LEGAL DUTY CASES

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that a person is guilty of murder, it must be proven:

- a. The person committed an act that caused the death of another human being;
- b. When the person acted he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally

committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (i.e., without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life;
- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

- a. The person had a legal duty to the decedent;
- b. The person failed to perform that legal duty;
- c. The person's failure was criminally negligent; and
- d. The person's failure caused the death of the decedent.

In *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th231,251, the court held that there is a "special relationship" between custodian and inmate:

"The most important consideration in establishing duty is foreseeability. It is manifestly foreseeable that an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

California Government Code 845.6 provides that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

"... A public employee and the public entity where the employee is acting within the scope of his employment is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

OFFICER USE OF FORCE

The facts in this case are determined by considering SAPD officers' reports and BWC video, which were supplemented by additional percipient witness statements and relevant physical evidence related to this incident.

The issue is whether the conduct of any SAPD officers on September 13, 2022, was criminally culpable and without justification. As stated above, to charge any SAPD officer with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for their conduct. Therefore, in this case, the prosecution must prove beyond a reasonable doubt that they did not act in a lawful manner while effectuating Chavez' arrest. If any SAPD officers' actions on September 13, 2022, were justifiable as lawful self-defense or defense of others, or reasonably necessary to effect the arrest of Chavez, 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).)

In this case, SAPD officers were justified in using force to arrest Chavez. This conclusion is based on the totality of the circumstances presented.

Chavez had fled from the scene of an accident. He failed to stop and exit his vehicle once officers located him. He continuously, for approximately ten minutes, engaged in an on-and-off pursuit through the streets of Santa Ana. Even when he stopped during the pursuit, he refused to exit the van. Ultimately, when he finally stopped at the CVS, he still refused to exit the vehicle.

SAPD officers had no way of knowing whether Chavez was armed. There was certainly information presented to them by dispatch to lead them to believe he was armed. Once cornered, SAPD officers used less lethal force to arrest him. Under the totality of the circumstances, this force was not excessive.

Based on Chavez' behavior, his refusal to comply with lawful commands to stop, his refusal to exit his vehicle, and the information from dispatch of a possible weapon, it was objectively reasonable for SAPD officers to believe the use of non-lethal force was necessary. As a result, SAPD officers' response and the use of force was justified and the force used was appropriate for the circumstances.

As described above, for any SAPD officer to be justly and lawfully charged and convicted of a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that they did use excessive force on Chavez. The prosecution would be unable to carry this burden in this case. Simply stated, SAPD officers carried out their duties as peace officers in a reasonable and justifiable manner.

FAILURE TO PERFORM A LEGAL DUTY

In the present case, there is no evidence of express or implied malice on the part of any SAPD officer. Thus, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty.

The SAPD owed Chavez a legal duty of care once he was taken into custody, but the evidence does not support a finding that this duty was breached - either intentionally (as required for murder), or through criminal negligence (as required for involuntary manslaughter). California Government Code 854.6 provides that a public employee and the public entity are liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and fails to take reasonable actions to summon such care.

Officers from the SAPD took reasonable action to summon care for Chavez once he was restrained. This request came at the same time that Chavez was taken into custody. OCFA paramedics arrived and made initial contact with Chavez six minutes after being called. The evidence establishes that officers from SAPD promptly requested medical care for Chavez.

Furthermore, after Chavez had been restrained and handcuffed, officers immediately began attending to his wounds and requested emergency medical assistance. Within six minutes, OCFA arrived and began treatment and ultimately transported him to OCGMC.

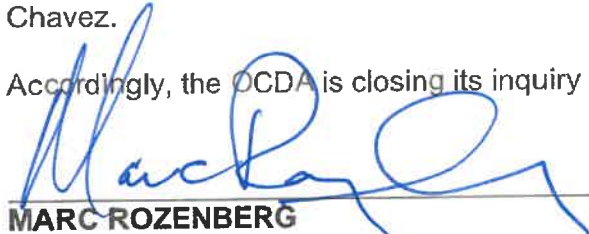
In short, there is no evidence that SAPD personnel or anyone under their control failed to provide all reasonable and necessary care to Chavez after being restrained.

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 all applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of any SAPD officer.

Chavez' cause of death was determined to be the result of severe preexisting cardiovascular disease which was complicated by the canine bites. While the manner of death was listed as a homicide, it is non-criminal because there is substantial evidence that the SAPD's officers' use of force on Chavez was reasonable and justified under the circumstances. Furthermore, at no time after being restrained did any officer from the SAPD fail to uphold their legal duty of care to Chavez.

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



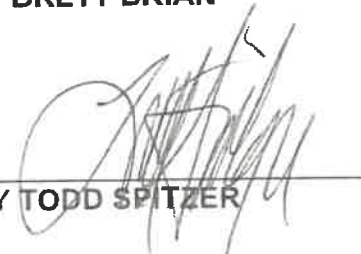
MARC ROZENBERG

Senior Deputy District Attorney
Special Prosecutions Unit



READ AND REVIEWED BY BRETT BRIAN

Assistant District Attorney
Special Prosecutions Unit



READ AND APPROVED BY TODD SPITZER
District Attorney