



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

May 7, 2021

Chief Robert Dunn
Fullerton Police Department
237 West Commonwealth Avenue
Fullerton, CA 92832

Re: Officer-Involved Shooting on May 3, 2020
Fatal Incident involving Jesus Estrada
District Attorney Investigations Case # SA 20-010
Fullerton Police Department Case # 20-24839
Orange County Crime Laboratory Case # FR 20-44573

Dear Chief Dunn,

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 Fullerton Police Department Corporal Matthew Green and Officer Rene Valdes. Jesus Estrada, age 26, died as a result of his injuries. The incident occurred in the City of Fullerton on May 3, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 3, 2020, fatal, officer-involved shooting of Jesus Estrada. 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 Fullerton Police Department officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On May 3, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted, and 37 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Fullerton Police Department (FPD) reports, including audio dispatch and radio traffic recordings, and body-worn camera video (BWC) and reports; 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 Estrada; criminal history records related to Estrada including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass, citizen surveillance video, and press release videos.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred, and if the use of force was consistent with the law, on the part of Fullerton Police Department officers or personnel, specifically Corporal Green and Officer Valdes. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of 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, Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Corporal Green and Officer Valdes gave voluntary statements to OCDA Investigators on May 6, 2020.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage:

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

FACTUAL SUMMARY

On April 20, 2020, Estrada moved into John Doe's residence in Fullerton. John Doe was Estrada's cousin. Estrada had recently been released from prison in Las Vegas, Nevada. When Estrada was released from prison, his uncle contacted John Doe to seek permission for Estrada to stay with John Doe. John Doe did not have a relationship with Estrada and had never spent significant time with

him. However, because his Uncle asked, John Doe agreed to let Estrada stay with him and his wife, Jane Doe, for a week while Estrada was looking for work. Days after moving in, Estrada exhibited strange and erratic behavior and continuously made vulgar remarks. John Doe confronted Estrada and attempted to resolve the problem. However, Estrada's inappropriate behavior escalated.

Over the next few days, Estrada began to display violent tendencies as well as hallucinogenic and paranoid behavior. He often attempted to provoke John Doe into fights. Jane Doe recalled that Estrada would randomly and without provocation, point out people and state that he wanted to kill them. Estrada told Jane Doe that he wanted to kill Black people, police officers, and men who abused young girls. He often made hand motions simulating shooting a gun, talked to himself, and punched his fist into his hand. Estrada rambled about "Satan" and "the Holy Death" to John Doe and when John Doe offered him opportunities to get help, he refused. Estrada's behavior caused John and Jane Doe to become scared and uncomfortable with Estrada living in their apartment.

At approximately 10:00 a.m., on May 3, 2020, Estrada appeared to be hallucinating and having paranoid delusions. John Doe tried to calm Estrada by taking him to sit outside in the garage. When John Doe attempted to talk to Estrada, he stared, opened his mouth, and made a face which scared John Doe. That night, at approximately 8:00 p.m., John Doe, Jane Doe, and Estrada left their apartment to pick up food and alcohol. John Doe and Estrada had both consumed beers beforehand. Estrada consumed three 24-ounce cans of beer. During the drive, Estrada continued to make strange, aggressive remarks that worried John and Jane Doe. Jane Doe told Estrada that he was no longer welcome to stay with them because he was always talking about killing people. Jane Doe told Estrada that she was going to call his father the next day to see if he would pick Estrada up.

When they returned to the residence at approximately 9:00 p.m., John Doe stopped the truck to allow Jane Doe to gather her items and exit the truck near the apartment. When Estrada and Jane Doe exited the truck, John Doe asked Estrada if he would help Jane Doe carry the items while he looked for a place to park. Estrada did not help Jane Doe and instead, glared at John Doe. While John Doe drove down the street looking for parking, Estrada continued to glare at him. John Doe asked Estrada why he was staring. Estrada responded that nothing was wrong but continued to stare and act strange. As the tension heightened, John Doe feared Estrada might attack him so he looked for parking closest to the street corner on Commonwealth Avenue where there was heavy traffic and people were present. As John Doe approached the busy street, Estrada gestured to John Doe and told him to continue driving toward his uncle's house. When asked why, Estrada said he forgot to tell John Doe that his uncle had called that evening and asked for him to visit. John Doe was immediately distrustful and suspicious of Estrada's true intentions.

At that time, Estrada reached his hand toward his side and grabbed hold of something. John Doe asked him what was in his hand, and he flashed a metal object. Estrada continued glaring at John Doe while gripping the object. John Doe feared Estrada was going to hit him with the object or use it to threaten him to do something. Estrada ordered John Doe to call his uncle and handed him his phone without lifting his eyes from John Doe. Sensing that Estrada was about to attack, John Doe pulled to the curb, parked, opened the door and turned sideways to exit the truck. While he was exiting the driver's seat, Estrada immediately slid into the seat while holding a large knife. When John Doe asked Estrada why he had the knife, Estrada responded "Give me the f***ing keys now." John Doe believed that if he had stayed in the car, Estrada would have stabbed him.

John Doe, fearing for his safety, retrieved a wooden stick from the bed of his truck and demanded that Estrada give him the knife. John Doe moved in view of the busy street (Commonwealth Avenue) and warned Estrada that the police were going to come and arrest him. When Estrada refused and

continued demanding the keys, a brief struggle for the knife ensued. Estrada repeatedly demanded the keys. While John Doe was outside of the truck, Estrada tried to stab him with the knife.

A witness inside a nearby apartment observed Estrada sitting in the driver's seat and John Doe standing outside the truck holding a stick. The witness heard Estrada yelling at John Doe to give him the keys and recorded the incident on his cell phone.

At approximately 9:27 p.m., FPD Officer Marcus Futch was driving east on Commonwealth Avenue in a marked Fullerton Police unit in route to another call. Officer Futch saw John Doe standing in the roadway with a stick raised toward Estrada who was seated in the driver's seat of the truck. Fearing an altercation was about to ensue, Officer Futch pulled over and shined his unit spotlight on them. The light allowed Officer Futch to see that Estrada had a large knife. Officer Futch broadcasted to FPD Dispatch that he had two individuals at gunpoint.

When Officer Futch first appeared on scene, John Doe still had his stick. Officer Futch ordered John Doe and Estrada to drop their weapons. John Doe dropped his stick and backed away from the truck, but Estrada did not.

Still armed with the knife, Estrada slid into the driver's seat and closed the door. Estrada leaned out of the open driver door window and yelled at John Doe in Spanish while swinging the approximately 8-inch long "large butcher knife" wildly. At times, Estrada placed the knife against his own throat which led officers to believe that he was threatening to harm himself. Based on his experience, the officers believed the gesture indicated that Estrada was trying to commit "suicide by cop." Officer Futch repeatedly ordered Estrada, in English and Spanish, to "Drop the knife," "Drop the weapon," and "Hands up."

At approximately 9:29 p.m., FPD Officers Nicholas Ashman and Michael Orr arrived. Officers continued to order Estrada to drop the knife and Estrada continued to refuse. John Doe was ordered to move into the street and get on his knees. At approximately 9:31 p.m., FPD Officer Brian Franco, Officer Valdes, Corporal Macshane, and Corporal Green and his K9 arrived in marked vehicles. All officers wore either black or dark blue FPD uniforms with FPD patches. Corporal Green also wore an exterior ballistic vest. Corporal Green removed his K9 from the car. Officer Franco armed himself with a less than lethal shotgun and began issuing Estrada commands in Spanish.

Two witnesses, who had stopped on Commonwealth due to the police activity, saw Estrada standing near the truck with a large knife in his hand. They heard officers ordering Estrada to drop the knife and saw Estrada refuse. Many of the officers on scene, including Corporal Green who is a Drug Recognition Expert (DRE), having observed Estrada's physical appearance and erratic behavior, believed he was under the influence of an unknown drug, possibly methamphetamine. Corporal Green noted that Estrada's eyes were huge and he was looking around in a paranoid manner. Based on their training and experience, the officers knew that drugs can increase a subject's pain tolerance and render less lethal force ineffective.

Officer Valdes parked his marked unit on the south side of Commonwealth, across the street from Estrada. Upon arrival, Officer Valdes heard Officer Futch announce "have 'em at gunpoint." John Doe was in the middle of the street on his knees. Officers ordered Estrada to get on the ground. He refused and instead, exited his vehicle and charged in the direction of John Doe. Shortly after Estrada exited the vehicle, Corporal Green noticed a civilian man standing outside the door of his residence slightly north of the truck. Corporal Green yelled at the civilian to go inside, fearing that he could be "in the backdrop of an officer-involved shooting."

John Doe, still on his knees per the officers' commands, saw Estrada coming toward him. In fear for his life, John Doe stood and ran away from Estrada and toward Officer Valdes across the street. Officer Valdes, unaware of John Doe's involvement at the time grabbed John Doe and placed him on the ground. Corporal Macshane moved to Officer Valdes' location to assist with securing John Doe. While Corporal Macshane was trying to handcuff John Doe, Estrada exited the vehicle while still holding a knife. Estrada was swinging the knife in the air.

The other officers saw Estrada moving toward John Doe at a quick pace with a "wild, agitated look, determined look in his face." They commanded Estrada to stop and drop the knife, but he failed to comply and continued toward John Doe, who was on the ground next to Officer Valdes and Corporal Macshane. Officer Valdes raised his handgun and pointed it at Estrada. He yelled at Estrada, in Spanish, "Put the knife down." A witness from a nearby apartment witnessed the police interact with Estrada. The witness heard a police officer yell "Get on the sidewalk" multiple times. The witness also heard Officers yell "Drop the knife" approximately 10 times. He heard these commands being given in Spanish and English. Other witnesses also heard police yelling "drop the weapon" at Estrada.

Estrada did not comply and continued to advance toward them with the knife in his right hand. Both Officer Valdes and Corporal Macshane believed that if Estrada had made it to their location, he would have attempted to kill John Doe and them. John Doe, fearing for his life, pleaded with Officer Valdes, in English, "I didn't do nothing" and "Don't let him do nothing."

At approximately 9:32 p.m., Sergeant O'Neil, fearing Estrada would harm John Doe or the officers, ordered Officer Franco to deploy one round from the less lethal shotgun. Estrada was approximately 20 feet away from Officer Valdes, Corporal Macshane, and John Doe, when the "bean bag" was deployed. Officer Franco immediately yelled "bean bag" to alert officers that he fired a less lethal round as opposed to a lethal round. Although the bean bag struck Estrada in the chest, he was unaffected and continued moving toward Officer Valdes, Corporal Macshane, and John Doe. Officer Valdes and Officer Franco recalled that Estrada appeared to be more agitated and "more dead set" on continuing, and that it only strengthened Estrada's resolve. Corporal Green moved toward Officer Valdes to cover him.

Estrada "turned completely towards Officer Valdes" and his pace quickened as he continued advancing toward John Doe, Officer Valdes, and Corporal Macshane in a "threatening manner." Corporal Green and Officer Valdes described Estrada as having the "1,000-yard stare," which in their view, indicated his determination to attack the officers and/or John Doe. The officers' body-worn camera (BWC) video shows Estrada moving across the four-lane residential street in a half-running, half-skipping motion, until he was less than two-lanes apart from Officer Valdes and Corporal Macshane.

The BWC video also shows Estrada was also less than 20 feet from Corporal Green, Sergeant O'Neil, and Officer Franco who stood in the street perpendicular to Officer Valdes' position. As Estrada continued south toward John Doe and Officer Valdes, Officer Franco fired an additional less lethal round which struck Estrada as he reached the middle of the second lane, but again, it had no effect. Estrada continued to advance towards Officer Valdes, Corporal Macshane and John Doe. Officer Valdes was in a vulnerable position as he was in between John Doe (who had not been searched or detained) and Estrada, who continued to advance on him with a knife.

Corporal Green recalled his academy FTO program training where officers are taught the “21-Foot Rule,” that a subject armed with a knife within 21 feet of officers can quickly close the gap before officers can react. Corporal Green indicated that he did not deploy his Taser because he knew that, being less than 21 feet away, Estrada could cover that ground faster than he could react by setting up and firing his Taser. Other officers also indicated that it would have been ineffective to use Tasers at that point in time, based on the circumstances. Corporal Green also explained that the situation was not suitable to deploy his K9 because Estrada would have killed the dog. Based on his training and experience, Corporal Green believed that Estrada, who he measured as being within “16 to 20 feet” of Officer Valdes, could close the distance within seconds and assault the officers. Corporal Green also noted that he determined that an additional firing of a bean bag would have been ineffective, because the previous bean bags had little to no effect on Estrada.

When he saw Estrada advancing in his direction wielding the knife, Officer Valdes believed his life and the lives of Corporal Macshane and John Doe were in serious jeopardy. Officer Valdes stated that he believed Estrada’s “goal” and “determination” was to kill him. Officer Valdes noted that Estrada continued to take steps in his direction, even after being shot by the beanbag. Estrada was advancing on Officer Valdes while still holding the knife. To mitigate the threat to himself, the other officers, and John Doe, Officer Valdes fired four (4) rounds at Estrada. Corporal Green, fearing for the lives of John Doe, Officer Valdes, and Corporal Macshane, said he “had to stop the threat before he [Estrada] got to them.” Corporal Green simultaneously fired one (1) round at Estrada.

However, Estrada continued advancing, with knife in hand, toward Officer Valdes, Corporal Macshane, and John Doe. Corporal Green and Officer Valdes believed that Estrada was unaffected by the initial rounds. Officer Valdes fired three (3) additional rounds and Corporal Green fired one (1) additional round before Estrada stopped. Corporal Green stated that Estrada was still moving forward when the second round was fired. Corporal Valdes stated he stopped firing when Estrada stopped advancing towards him. Estrada slowly fell to the ground with the knife still in hand. The officers ceased fire to assess the situation.

With Estrada lying flat on the ground and still gripping the knife, officers continued issuing commands to drop the weapon. Officer Franco announced “bean bag” and prepared to fire another less lethal round at Estrada, but before he could fire, Estrada sat up and held the knife against his throat. Officer Franco ordered Estrada in Spanish to drop the knife and get on his stomach. Estrada then fell onto his back and dropped the knife.

Witnesses on scene observed Officers fire bean bags at Estrada, but indicated that even after the bean bags were deployed, Estrada continued to advance on Officers with a knife in his hands. Witnesses then observed Officers shoot approximately five shots at Estrada and order him to put the knife down. At this time, officers approached Estrada, assessed his condition, and initiated life-saving efforts by applying dressings to his wounds and placing a tourniquet on his right leg. Corporal Green had made an earlier request to have paramedics stage in the area based on Estrada’s agitated demeanor and holding the knife to his neck.

At approximately 9:39 p.m., Fullerton Fire Department (FFD) arrived and paramedics began administering treatment to Estrada. Paramedics noticed that Estrada had sustained gunshot wounds to the chest, abdomen, and right upper thigh. Estrada was unresponsive, pulseless, apneic and in pulseless electrical activity (PEA). Cardiopulmonary resuscitation was initiated and the hospital was contacted. Estrada appeared to be breathing and was provided epinephrine and prepared for transport.

At approximately 9:48 p.m., Estrada was transported to UCI Medical Center (UCIMC). While in transport, he remained in PEA and was given four (4) additional rounds of epinephrine. At 10:00 p.m., Estrada arrived at UCIMC and his care was relinquished to UCIMC medical staff. Within minutes of arriving, Estrada was found to have no cardiac activity or other signs of life. A UCIMC physician pronounced Estrada deceased at 10:04 p.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Nine (9) Cartridge cases, headstamped "Winchester 45 Auto"
- Two (2) Cartridge cases, headstamped "Win 9mm Luger"
- One, (1) Cartridge Case, headstamped "WMA 17 mm 5.56"
- One (1), ten (10) round capacity Wilson Combat magazine with two (2) cartridges headstamped "Winchester 45 Auto"
- Cartridge case, headstamped "WMA 55.6 MM17"
- Two (2), five-dollar bills and one (1) set of keys, located in the street adjacent to the passenger side of Officer Valdes' vehicle
- 12 Gauge Shotgun Cartridge
- Three (3) Bean Bag projectiles
- One (1) Knife
- One (1) Bullet with apparent blood
- Three (3) less lethal shotgun shell cases, headstamped "12"
- Two (2) less lethal shotgun upper circular wads
- One (1) less lethal shot shell, headstamped "12"
- Four (4) less lethal shotgun upper circular wads
- One (1) cell phone, located in the street
- One (1) wooden stick
- One (1) less lethal shotgun bean bag round
- One (1), eight (8) inch knife with black handle
- One (1) black jacket, one (1) black T-shirt, one (1) black jersey, one (1) pair of grey pants
- One (1) bullet
- One (1) bullet fragment
- One (1) Glock Model 17, Gen 5, 9mm caliber, semi-automatic handgun, serial #BHBX072, with Surefire X300 Ultra-light attached to handgun frame (Corporal Green's duty weapon)
- One (1) 9mm caliber cartridge, headstamped "Win 9mm Luger," located in the chamber of the handgun
- Fifteen (15), 9mm caliber cartridges, headstamped "Win 9mm Luger," from handgun (17 round capacity)
- Two (2) magazines, each containing seventeen (17), 9mm caliber cartridges (17 round capacity each), from Corporal Green's ballistic vest carrier
- One (1) Springfield Armory, Model 1911, Long Beach Operator, .45 caliber, semi-automatic handgun, serial #537592, with Surefire X300 flashlight attached to handgun frame (Officer Valdes' duty weapon)
- One (1), .45 caliber cartridge, headstamped "Winchester 45 Auto" from chamber of handgun
- Seven (7), .45 caliber cartridges headstamped "Winchester 45 Auto" from handgun (8 round capacity)
- Three (3) magazines from Officer Valdes' duty belt, each containing eight (8), .45 caliber cartridges (8 round capacity each)
- One (1) bullet from autopsy
- Debris pieces and fragment pieces from autopsy

- Bloodstain standard from Estrada
- Muscle standard from Estrada

AUTOPSY

On May 5, 2020, Forensic Pathologist Dr. Yong-Son Kim of the Orange County Sheriff-Coroner's Office conducted an autopsy on the body of Estrada. Dr. Kim determined that Estrada had sustained six (6) gunshot wounds to his body, one of which entered the upper chest area and perforated the abdominal fascia and liver and fractured a rib. Dr. Kim also indicated that Estrada had sharp force injuries in the form of a stab wound and incisions on the anterior neck, in addition to superficial cuts on his right ribcage and on his right hand. Dr. Kim noted that Estrada had abrasive marks with contusions of the right upper arm, left lower abdomen and left anterior shoulder.

Dr. Kim concluded that the cause of death was multiple gunshot wounds of the torso and upper and lower extremities.

EVIDENCE ANALYSIS

Firearms & Projectiles Examination

Corporal Green's Glock Model 17 Gen 5, 9mm semi-automatic pistol and Officer Valdes' Springfield Armory, .45 caliber, semi-automatic pistol were each test fired at the Orange County Crime Lab and fired without malfunction.

Corporal Green's Glock 17 Gen 5 pistol was determined to have fired two (2) cartridge cases from the scene.

Officer Valdes' Springfield Armory pistol was determined to have fired eight (8) cartridge cases from the scene, one (1) bullet from the scene, and one (1) expanded Winchester brand T-series .45 caliber hollow point bullet located during the course of the autopsy.

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.152 + 0.012 mg/L
Methamphetamine	Postmortem Blood	0.778 + 0.055 mg/L
Carboxy-THC	Postmortem Blood	Detected

ESTRADA'S PRIOR CRIMINAL HISTORY

Estrada's criminal history was reviewed and considered. Estrada had a California Criminal History that dates back to 2012. He has previously been arrested for the following charges:

- Robbery, Burglary
- Aggravated Battery
- Reckless Driving, Disorderly Conduct
- Driving without a License
- Vehicle Theft, Theft of Personal Property
- Possession of Controlled Substance Paraphernalia
- Possession of a Stolen Vehicle, Vandalism

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal 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 applicable to the circumstances surrounding the interactions of Fullerton Police Department Corporal Green and Officer Valdes with Estrada.

LEGAL ANALYSIS

The facts in this case are determined by considering the statements of both Corporal Green and Officer Valdes to the OCDA investigators, which was supplemented by other relevant material and witnesses present at the incident, as well as the BWC recordings.

The issue is whether the conduct of Corporal Green and/or Officer Valdes on May 3, 2020, was criminally culpable and without justification. As stated above, in order to charge Corporal Green and/or Officer Valdes 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 Green and/or Officer Valdes with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions of Corporal Green and Officer Valdes were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held, 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 effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Based on the totality of the available evidence and the circumstances, it is our conclusion that Corporal Green and Officer Valdes were justified in believing that Estrada posed a significant threat of death or serious physical injury to himself and others. When Corporal Green and Officer Valdes arrived on scene, other FPD officers had Estrada at gunpoint due to his large butcher knife and his erratic, aggressive, and at times, suicidal behavior. Numerous de-escalation efforts were unsuccessful. Corporal Green and Officer Valdes observed Estrada disobey English and Spanish commands, and wield the knife to communicate defiance, threaten John Doe, and provoke the officers. Estrada often held the knife against his own throat while staring down the officers and John Doe, which the officers reasonably interpreted as intentional provocation to use deadly force. Drug Recognition Expert Corporal Green, Officer Valdes, and the other on-scene officers recognized that Estrada was likely under the influence of drugs, possibly methamphetamine, which could render the less lethal alternatives less effective.

Ignoring the officers' commands to drop his weapon, Estrada exited the truck and charged at John Doe, who was in the street. Fearing for his life, John Doe ran across the street toward Officer Valdes and Corporal Macshane and pleaded for protection from Estrada. The officers believed that Estrada, who they described as having a "thousand-yard stare," was determined to attack or kill John Doe, Officer Valdes, and Corporal Macshane. Corporal Green was positioned in the middle lane, perpendicular to Officer Valdes. Once Estrada was approximately 20 feet from Officer Valdes, Corporal Macshane, and John Doe, several nonlethal rounds were fired, but Estrada, unperturbed, quickened his pace toward them, while still armed with a knife. Officer Valdes believed that the "bean bag" rounds had an opposite of its intended effect; Estrada's rage and aggression toward the officers escalated.

With little time to react, the officers were forced to exercise quick judgment when deciding whether to use lethal force against Estrada. In doing so, the officers relied on their training and experience to assess the risks of using less lethal alternatives under the specific circumstances. Corporal Green and Officer Valdes both recalled a widely known academy rule, the "21 Foot Rule," which cautions officers that subjects within 21 feet of an officer can close the distance before the officer has time to react. Estrada was between 16-20 feet of Officer Valdes, Corporal Macshane and John Doe, so he had a tactical advantage over them. Corporal Green knew he had to react immediately to avert the imminent threat of death or serious injury to Officer Valdes, Corporal Macshane, and John Doe. Officer Valdes reasonably believed that Estrada, who was charging directly at him with a large knife, intended to kill him, Corporal Macshane, or John Doe.

Due to the fact that Estrada was armed with a knife, the situation was not proper for Corporal Green to use his K9, as the K9 would likely be killed by Estrada. Corporal Green and Officer Valdes elected

not to use their less lethal alternative (Taser) because they reasonably believed they did not have enough time to react to Estrada, and that the Taser therefore will be ineffective in stopping Estrada. With Estrada in such close proximity to the officers, a missed Taser shot could have cost an officer's life or John Doe's life. Officers also considered the use of additional non-lethal rounds, but concluded that the non-lethal rounds would have little to no effect on Estrada based on Estrada's reaction to the previous non-lethal rounds. Therefore, the evidence supports the conclusion that the officers exercised reasonable judgment when they weighed the significant risk of less lethal alternatives against the use of deadly force under the extreme circumstances.

Throughout the incident, Estrada also posed a serious risk of harm to the civilians residing within the scene and traveling around the scene. Moments before the shooting, a resident of the home behind Estrada's parked truck observed the incident from his doorstep until Corporal Green noticed and ordered him inside. Additionally, civilian surveillance video footage indicates that several pedestrians were observing the incident from the sidewalk just beyond the scene. Corporal Green stated that he considered the safety of the neighborhood residents when deciding whether to use deadly force.

Based on their experience and the circumstances, the evidence supports the conclusion that Corporal Green and Officer Valdes exercised reasonable judgment when they decided it was necessary to use deadly force against Estrada. When Estrada advanced toward the officers with the large knife, Corporal Green and Officer Valdes reasonably believed that deadly force was necessary to defend themselves and the lives of Corporal Macshane, John Doe, and civilian onlookers. Estrada had made an earlier attempt to attack John Doe and his escalating dangerous behavior indicated, to the officers, his resolve to attack Officer Valdes and Corporal Macshane, who were shielding John Doe. It was also reasonable for the officers to believe that less lethal alternatives were either not feasible or would be ineffective due to Estrada's close proximity, the probable influence of drugs, and the "21 Foot Rule."

Corporal Green and Officer Valdes simultaneously fired at Estrada in order "to stop the threat before he got to them." However, Estrada continued moving toward Officer Valdes, Corporal Macshane, and John Doe. Since Estrada continued advancing toward the officers with the knife, it was reasonable for the officers to believe that their initial shots had either missed or had little effect on Estrada. Therefore, the evidence supports the conclusion that the officers reasonably believed that Estrada still posed an imminent threat of death or serious bodily harm to the officers, John Doe, and the civilians. When Estrada was less than two lanes from the officers, Corporal Green and Officer Valdes fired additional rounds until Estrada stopped moving and they no longer perceived an imminent danger to themselves or others.

In order for Corporal Green and Officer Valdes 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 Estrada. As indicated in the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts under a standard of beyond a reasonable doubt would justly conclude that it was reasonable for Corporal Green and Officer Valdes to believe that their lives and the lives of others were in danger. Therefore, the prosecution will not be able to prove beyond a reasonable doubt that Corporal Green and Officer Valdes were not justified when they shot at Estrada.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is insufficient evidence to prove criminal culpability beyond a reasonable doubt on the part of Corporal Green and Officer Valdes, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Estrada on May 3, 2020.

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



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