



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

June 29, 2017

Chief Raul Quezada
Anaheim Police Department
425 South Harbor Blvd.
Anaheim, CA 92805

Re: Officer-Involved Shooting on November 19, 2016
Fatal Incident involving Adalid Flores
District Attorney Investigations Case # S.A. 16-034
Anaheim Police Department Case # 16-18379
Orange County Crime Laboratory Case #16-58582

Dear Chief Quezada,

This letter details the Orange County District Attorney's (OCD A) Office's investigation and legal conclusion in connection with the above-listed incident involving an on-duty Anaheim Police Department (APD) Officer. Adalid Flores, age 29, died as a result of his injuries. The incident occurred in the City of Anaheim on Nov. 19, 2016.

OVERVIEW

This letter describes the OCD A's investigation of the Nov. 19, 2016, fatal, officer-involved shooting of Adalid Flores and the legal conclusions reached by the OCD A based upon that investigation. The letter includes an overview of the OCD A's investigative methodology and procedures, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles the OCD A applied in its analysis of the incident and its determination of whether there was criminal culpability on the part of the APD's officer involved in the shooting. The format of this document was developed by the OCD A, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Nov. 19, 2016, Investigators from the OCD A Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 12 interviews were conducted, and four additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; California Highway Patrol (CHP) reports, audio dispatch and radio traffic recordings; 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 Adalid Flores; criminal history records related to Adalid Flores including prior incident reports; the personnel records of Officer Lorenzo Uribe; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of APD officers or personnel, specifically Officer Lorenzo Uribe. 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as 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 Assistant District Attorney supervising the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. 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. Officer Lorenzo Uribe gave a voluntary statement to OCDA Investigators on Nov. 22, 2016.

FACTUAL SUMMARY

On Nov. 19, 2016, at approximately 8:47 p.m., the CHP received several 911 calls regarding two separate hit and run accidents which occurred on the eastbound 91 Freeway between Harbor Boulevard and East Street. At approximately 8:48 p.m., an off-duty Los Angeles Police Department (LAPD) officer was driving east on the 91 Freeway preparing to exit at East Street when he witnessed two males running from the scene of a traffic collision. The LAPD officer stated that Adalid Flores and another individual fled their vehicle, ran down the East Street off-ramp, and into a nearby restaurant. The LAPD officer lost sight of the second male suspect but continued monitoring Flores. The LAPD officer described Flores as "agitated" and possibly under the influence of drugs or alcohol.

At approximately 8:50 p.m., the CHP dispatcher called and requested assistance from APD. At 8:57 p.m., APD Officer John Yoo was dispatched to the area of East Street and the 91 Freeway to assist the off-duty LAPD officer who was still following Flores. The flight crew of APD's helicopter, pilot Officer Chad Meyer and observer Officer James Elliot, heard the radio broadcast and responded. APD Officers Lorenzo Uribe and Scott Eden also heard the radio broadcast and responded to the scene. The officers drove a black and white police vehicle with "Anaheim Police" clearly marked on each front door. Officers Uribe and Eden were dressed in the APD "Class B" uniform, consisting of an APD badge, a dark blue wool shirt with APD patches on both sleeves, and a duty belt holding police equipment. Each officer carried their duty issued firearm in a holster. Officer Uribe carried an additional firearm on his left ankle.

At approximately 8:59 p.m., Officers Yoo and the flight crew arrived in the area. Officer Yoo drove north on East Street to the 91 Freeway. As he approached the restaurant, Yoo observed a seemingly "agitated" Flores in a flannel shirt walking east in the street. Simultaneously, Officer Yoo saw the LAPD officer and made contact with him. While Officer Yoo and the LAPD officer spoke, the LAPD officer looked to the center median and witnessed Flores take a drink from a styrofoam cup, throw it to the ground and yell "F**** let's do this," or "F*** let's do this." Flores then ran across the street into a residential courtyard. The residence was encompassed by a white gate. Flores was positioned in the middle of the

driveway, pacing back and forth quickly. Flores was no longer wearing a shirt.

At approximately 9:01 p.m., Officers Uribe and Eden arrived at the residence. Officers Uribe and Eden took positions near the south gate of the residence while Officer Yoo moved toward the north gate. At this time, Flores kept his right hand behind his back and placed his left hand into his front pants pocket on more than one occasion. Flores paced back and forth, continuously yelling obscenities at the officers. Officer Uribe, Officer Eden and Officer Yoo all described Flores as being "agitated".

As Officer Uribe walked towards the residential courtyard to contact Flores, Officer Uribe drew his weapon and yelled "Let me see your hands" three times. Flores immediately responded "F*** you" and Officer Uribe asked to see his hands a fourth time. Officer Uribe announced that he was from the APD and asked Flores what was in his hand. Officer Eden told Officer Uribe that Flores was holding a cell phone and Officer Yoo said Flores was holding a wallet. Officer Uribe indicated that Officer Eden merely "thought" it was a cell phone, but on the audio all that can be heard is "cell phone." When Officer Eden said the suspect was carrying a cell phone for the second time, Officer Uribe responded, "Don't say that." Officer Yoo commanded Flores to get on the ground and Flores refused. Officer Uribe continued to command Flores to show his hands and Flores told the officers to shoot.

Officer Uribe could not tell what Flores was holding and indicated, "I can't see dude. I don't think it's a cell phone . . . I think it's a gun." Nearly simultaneously, Officer James Elliott of the APD flight crew, an officer for 17 years, who was monitoring the situation from a helicopter, broadcasted that he believed that Flores was holding an object with his right hand and indicated that it was possibly a weapon. Approximately one second after Officer Elliott communicated that Flores might be holding a weapon, Officer Uribe yelled "Let me see your hands, last time," and shot Flores three times. The actual time between Officer Uribe's command of "Let me see your hands, last time" and when he fired his gun was approximately four seconds. During these four seconds, Flores had his right hand concealed behind his back, took four steps back toward the house, placed his left hand behind his back, walked one step forward toward the officers, while he brought his left hand out from behind his back, and stepped forward one additional pace before he was shot.

After the shooting Flores was searched. Flores was not armed with a gun and only possessed a cell phone.

Anaheim Fire Department personnel arrived at the scene. Flores was transported to the University of California, Irvine Medical Center (UCI- MC), where he received treatment for multiple gunshot wounds. Upon arrival, Flores suffered from a full cardiac arrest and was given advanced cardiac life support for approximately 20 minutes. At approximately 9:46 p.m., Flores was pronounced deceased and all medical intervention was terminated.

On Nov. 20, 2016, at approximately 12:10 a.m., the OCCL responded to the scene for investigation and evidence collection. During the investigation, a potential bullet hole was observed on the west facing wall of the residence, above the house planter. One bullet casing was found underneath a vehicle in the driveway. Another bullet casing was found on the sidewalk, west of the fence planter. The third bullet casing was found in the west end of the fence planter.

VOLUNTARY STATEMENT OF OFFICER URIBE

Officer Uribe gave a voluntary statement to OCDA Investigators. Below is a summary of Officer Uribe's statement.

Officers Uribe and Eden were at the police station concluding a booking when they heard a CHP broadcast requesting assistance. After the initial broadcast, the officers received additional information that an off-duty LAPD officer was involved. Officer Uribe interpreted this to mean that a crime more serious than a "regular . . . accident or . . . fender bender" was occurring. At this point, Officer Uribe made a decision to assist. Officers Uribe and Eden arrived at the scene where they encountered APD Officer Yoo. Officer Yoo walked directly toward a residence where Flores was standing in the driveway. Flores was shirtless and carrying his shirt in his left hand. When Flores noticed that the officers had arrived, he dropped the shirt and began acting "crazy." Flores began cursing at the officers saying "f*** you" several times. Officer Uribe described Flores as being "verbally aggressive," "pissed off" and "confrontational."

Flores concealed his hands behind his back. At this point, Officer Uribe purposely left his cover and his concealment in order to help protect Officer Yoo, who was directly in front of Flores. Officer Uribe began yelling "let me see your hands", to which Flores began yelling "f*** you". Flores also began pacing back and forth, from left to right. Officer Uribe continued giving commands and Flores yelled "f*** you", "kill me", and "shoot me" at the officers. At this point, Flores reached to the back of his lower back and made a quick, jumping jack movement while simultaneously placing his left hand in his front pants pocket. Officer Uribe began focusing on Flores' left hand and recalls seeing "in [his] hand a gun." Flores quickly put his left hand back again, tucking it behind his back. Officer Uribe believed, based on his training and experience, that Flores was "recovering something." At this point, Officer Uribe asked what was in his hand to which Officer Eden responded, "I think it's a cell phone."

Officer Uribe did not defer to Officer Eden's belief that Flores was holding a cell phone because Officer Eden was not positive and merely "thought" it was a cell phone. In the audio, however, Officer Eden can only be heard saying "cell phone." Officer Eden in his interview, discussed below, was not positive Flores had a cell phone but believed the object was likely a cell phone. Officer Yoo can be heard stating that the object is a wallet. Furthermore, Officer Uribe's observations of Flores' demeanor and his statements to officers saying "f*** you", "shoot me," and "kill me," indicated that they were not dealing with the "average or normal criminal." Officer Uribe believed, based on his training and experience, that Flores was armed with a firearm and was prepared to shoot the officers. Additionally, Officer Uribe noted that Officer Eden was a new officer with only six months of experience.

Officer Uribe continued giving Flores commands and Flores moved several more times. At one point, Flores reached into his left pocket a second time, took out "something shiny" and dropped it on the ground. Officer Uribe interpreted this as being a tactical decision to divert the officers' attention from Flores' right hand. Nearly simultaneously, Officer Uribe stated, "No, I think it's a gun" and heard the APD flight crew state that they had seen a gun as well. Officer Uribe stated to Flores that it was his last chance because he was "100 percent sure that he had a gun." Officer Uribe said Flores continued to yell like a "coffee pot that's boiling." Officer Uribe specifically aimed his firearm toward Flores' chest because he did not want any bullets to enter the residence and shot Flores. Flores did not drop the gun, so Officer Uribe shot two more times. As soon as Officer Uribe shot a third time, he witnessed Flores slowly fall back and drop a cell phone.

Officer Uribe told the investigators that he believed Flores had a gun and was afraid that Flores would harm the officers and civilians either at the restaurant or in the residence.

VOLUNTARY STATEMENT OF OFFICER EDEN

Officer Eden gave a voluntary statement to OCDA Investigators. Below is a summary of Officer Eden's statement.

Officer Eden provides a statement of how he arrived at the scene with his partner Officer Uribe that is consistent with Officer Uribe's summary. When they arrived at the scene, Officer Eden focused on Flores' right hand and saw something black that looked "like a cell phone" and remembers indicating that he either said to Officer Uribe that the object was a cell phone or that he thought it was a cell phone. Officer Eden stated that Flores was extremely agitated and aggressive, pacing, swearing, and asking to be shot. When Flores moved his hand behind his back, Officer Eden became very concerned that Flores could be reaching for a gun in his waist area. Officer Eden recalls the APD flight crew indicating that Flores might have a gun at this time and Officer Eden was prepared to pull the trigger on his gun if Flores brought his hands out towards the officers. Before Officer Eden saw Flores move forward with his hands he heard Officer Uribe shoot Flores.

VOLUNTARY STATEMENT OF OFFICER YOO

Officer Yoo gave a voluntary statement to OCDA Investigators. Below is a summary of Officer Yoo's statement.

Officer Yoo went to a location on East Street in response to a dispatch. The LAPD officer made contact with Officer Yoo and informed Officer Yoo that Flores went into the yard where Flores was ultimately located. Officer Yoo communicated the address where Flores was located to other units and Officers Uribe and Eden responded in their patrol car. Officer Yoo saw Flores in the yard and described him as "very agitated." Officer Yoo saw a black object in Flores' hand and

pulled his gun because he could not tell if the item was a weapon or not. Officer Yoo said all three officers pulled their guns when Flores displayed some sort of black object in his hand. Officer Yoo felt Flores might have a gun. Officer Yoo was concerned for the officers' safety and the residents' safety. Officer Yoo felt that Officer Uribe was in a better position to observe Flores. Officer Yoo said Flores was flailing his left hand and not complying with commands from the officers. Officer Uribe asked if Flores had a gun, but Officer Yoo was unable to tell. Officer Yoo recalls Officer Uribe stating that he thought Flores had a gun. Officer Yoo remembers the APD flight crew indicating Flores might have a gun. Before Flores was shot, Officer Yoo commanded Flores to show his hands and Flores did not comply. Officer Yoo recalls Flores placing his right hand behind his back hiding the object he was holding and putting his left hand into his pocket. Officer Yoo recalls Flores was shot after he heard the APD flight crew indicate Flores might have a gun. After Flores was shot the officers searched Flores and found a cell phone and no weapons. Officer Yoo stated that he was prepared to shoot if Flores directed an object towards the officers but Flores was still hiding his hands so he did not shoot.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Three cartridge cases, head stamped Winchester 45 S&W
- One black belt
- One pair of jeans
- One black bandana
- One plaid checkered, long sleeve shirt
- One red and black screwdriver
- One white t-shirt
- One gray muscle shirt
- Cell phone

AUTOPSY

On Nov. 22, 2016, Forensic Pathologist Dr. Yong-Sun Kim of Orange County Coroner's Office conducted an autopsy on the body of Adalid Flores. The autopsy revealed that Flores was shot twice: once in the left shoulder and once in the left back. Doctor Kim concluded that the cause of death was due to loss of blood as a result of being shot.

EVIDENCE ANALYSIS

Firearms Examination

Officer Uribe's Springfield pistol was test fired four times at the OCCL and fired without malfunction.

Projectile Examinations:

The two fired cartridge cases taken from Flores' autopsy were determined to be fired from the Springfield pistol of Officer Uribe.

Toxicological Examination

A sample of Flores' postmortem blood was collected at the OCCL. 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	0.139 ± 0.009 mg/L
Methamphetamine	Postmortem Blood	1.11 ± 0.08 mg/L

FLORES' PRIOR CRIMINAL HISTORY

Adalid Flores' criminal history was reviewed and considered. Flores had a California Criminal History that dates back to 2010 indicating that Flores was previously arrested for Obstructing, Resisting or Delaying a Police Officer.

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 states that the use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.)

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 any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "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 reasonable force to effect the arrest or to prevent escape or to overcome resistance." The Court of Appeal in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (*Kortum v. Alkire, supra*, 69 Cal.App.3d at p. 333.)

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/she 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/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she 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 Anaheim Police Department Officer Uribe with Flores.

LEGAL ANALYSIS

In making its factual determination, the OCDA considered Officer Uribe's statements to the OCDA Investigators, other relevant material, and the statements of other witnesses present at the incident.

The OCDA analyzed whether Officer Uribe is criminally culpable for his involvement in the shooting of Flores on Nov. 19, 2016. As stated above, Officer Uribe cannot be charged unless the prosecution can prove beyond a reasonable doubt that there was no legal justification for his conduct. Therefore, in order to lawfully charge Officer Uribe with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the prosecution cannot prove beyond a reasonable doubt that Officer Uribe was not justified in shooting Flores, criminal charges are not warranted.

As the Court of Appeal held in 2009, it is well settled that "[u]nlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [police officer] is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

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

Based upon a review of the totality of the circumstances involved in this shooting, it appears that it cannot be proven beyond a reasonable doubt that Officer Uribe did not have a reasonable belief Flores posed a significant threat of death or serious physical injury to himself and others. Flores appeared agitated and constantly paced back and forth yelling obscenities at the police officers. Flores repeatedly told the officers to shoot. Throughout the entire encounter, Flores kept his right hand behind his back in a manner that suggested he might have a weapon and refused to show the officers what he was holding. Officers Uribe and Yoo commanded Flores to cooperate for approximately one minute and Flores consistently refused. Prior to shooting, Officer Uribe received information that Flores was holding a gun from the flight crew and gave Flores one last opportunity to cooperate. When Flores refused to comply and grew increasingly aggressive, Officer Uribe feared for his safety, the safety of his fellow officers, and the safety of the nearby public. The shooting occurred in the driveway of a residence, where a family was living, and across the street from an open restaurant. Based on a review of the investigation and the totality of the circumstances, it appears that one reasonable conclusion is that Officer Uribe reasonably believed that Flores was armed and dangerous. Officer Uribe's conclusion that Flores was likely armed was also the conclusion reached by Officer Elliott who was observing Flores from the helicopter and informed Officer Uribe that Flores might be armed with a gun. Officer Yoo also concluded that Flores could have had a weapon even though he originally stated Flores had a wallet.

Although one could reasonably conclude that Officer Uribe reasonably believed Flores was armed, there are some facts that undermine that position. Firstly, Officer Eden told Officer Uribe that Flores had a cell phone, which Flores did in fact have. Further, Officer Yoo similarly told Officer Uribe that Flores did not have a gun but was only holding a wallet. Further complicating the matter, Officer Uribe told Officer Eden to "not say" that Flores merely had a cell phone. Officer Uribe stated he did not defer to Officer Eden's conclusion because of Officer Eden's inexperience and because he merely "thought" it was a cell phone. However, on the audio for the incident, Officer Eden can only be heard saying "cell phone."

Despite the facts that potentially undermine the reasonableness of Officer Uribe's use of force against Flores, sufficient facts support a conclusion that Officer Uribe's use of force was reasonable. Officer Yoo, despite saying that the object Flores was holding was a wallet, told investigators that he thought Flores could have been armed with a gun. Further, Officer Eden felt Flores could have been reaching behind his back for a gun. Both Officers Eden and Yoo pulled their guns because of the possibility that Flores was armed with a gun despite their statements. Further, both Officers Eden and Yoo stated they would have shot Flores had he moved his arms towards them. In the video evidence, it is obvious that Flores was purposefully hiding the object he was holding behind his back in a manner that suggested it was a gun while acting aggressively and suggesting the officers shoot him. Further, the APD flight crew, which would presumably be in a better position to determine whether Flores had a gun behind his back than Officers Eden or Yoo, communicated to Officer Uribe that Flores possibly had a gun.

It should also be noted that, in order for Officer Uribe 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 Officer Uribe did not act in reasonable and justifiable self-defense or defense of another when he shot at Flores. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts could justly conclude that it was reasonable for Officer Uribe to believe that his life and the lives of others were in danger. The OCDA has a legal duty to only pursue cases it believes can be proven beyond a reasonable doubt. Despite the statements by Officers Eden and Yoo that Flores did not have a gun, it is our conclusion that we cannot prove beyond a reasonable doubt that Officer Uribe did not have a reasonable belief Flores was armed and posed an immediate danger to the officers or others.

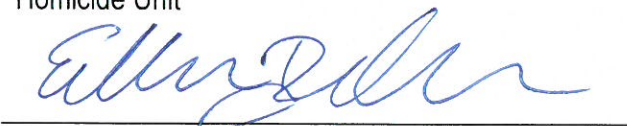
CONCLUSION

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 charge Officer Uribe with a crime, and there is substantial evidence that a jury would conclude that Officer Uribe's actions were reasonable and justified under the circumstances when he shot Flores on Nov. 19, 2016.

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



Seton Hunt
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Homicide Unit



Read and Approved by **Ebrahim Baytieh**
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