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May 15, 2018,

Chief Jerry Price
La Habra Police Department
150 Euclid Street
La Habra, CA 90631

Re: Officer-Involved Shooting on July 4, 2017
Non-Fatal Incident involving Dan James Schuneman
District Attorney Investigations Case # SA 17-019
La Habra Police Department Case # 17-3514
Orange County Crime Laboratory Case # FR 17-51868

Dear Chief Price,

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 La Habra Police Department Corporal John Jaime. Dan James Schuneman, age 48, survived his injuries. The incident occurred in the City of La Habra on July 4, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 4, 2017, non-fatal, officer-involved shooting of Schuneman. 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 LHPD officer 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 July 4, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 10 interviews were conducted, and six additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: LHPD 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 Schuneman; criminal history records related to Schuneman including prior incident reports and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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 on the part of LHPD officers or personnel, specifically Corporal Jaime. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy not to release the final report regarding the officer involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his/her case is still pending.

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 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 Felony Operations II Division of the OCDA, 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. Corporal Jaime gave a voluntary statement to OCDA Investigators on July 7, 2017.

FACTUAL SUMMARY

On Tuesday, July 4, 2017, at approximately 8:29 a.m., Schuneman called 911 and was connected with the LHPD dispatch center. Schuneman identified himself to the dispatcher and asked, "What's the f***** problem, you can't f***** hear me?" The dispatcher asked Schuneman what his address was and what the emergency was. Schuneman responded by saying, that he had dirty cops threatening to kill and put a bullet in him; that they had stolen all of his money, sabotaged all his equipment, and thrashed his motorhome. Schuneman became irate, and alleged the police harass him, threaten his life, and he tried to make several police reports with the Placentia, Brea and Anaheim Police Departments and they refused to accept them. Schuneman again stated the police were going to shoot him or put him in a cage with planted evidence. The dispatcher asked Schuneman his location so she could send help and Schuneman claimed he was tortured, drugged, and had millions of dollars stolen from him. Schuneman said his reputation was destroyed and his children were taken from him. He further claimed he had been denied medical treatment and medication he has been taking for 30 years and he also stated he was denied access to the courts and due process.

Schuneman said the dispatcher could not help him and somehow the police broke into his motorhome every day, have broken 20 cell phones, and the phone he was currently talking on was stolen from him yesterday and then returned and put back. The dispatcher asked Schuneman where his children were because he made a reference to his children being used as shields. He responded his children were with their mother in hiding, and he instructed their mother to stay away from him because he was going to take a bullet and he was glad it was over. During this conversation, a phone trace was conducted and it indicated Schuneman was in the area of Beach Boulevard and Imperial Highway, in the city of La Habra. At the end of the 15 minute phone call, Schuneman refused to answer the dispatcher when she asked for him by name several times.

At approximately 9:11 a.m., Officer Justin Bender was dispatched as the primary officer to the 2100 block of West Imperial Highway, in the city of La Habra, to check the area for Schuneman who was living in a motorhome. Officer Craig Hentcy and Corporal Jamie were dispatched as cover officers. The officers were advised that Schuneman called 911 and made suspicious statements to dispatch saying it was over and he hated the police. The officers arrived in the area at approximately 9:19 a.m. and advised dispatch at 9:21 a.m. that they had not located the motorhome or Schuneman. Officer Bender recalled seeing a motorhome earlier in the day parked in front of the TJ Maxx located at 1220 West Imperial Highway in the city of La Habra. Officer Bender sent Corporal Jaime a mobile data computer (MDC) message asking Corporal Jaime to assist him with trying to contact the subject, Schuneman. Schuneman's recreational vehicle (RV) was a 2008 Country Coach Founder Edition, maroon and gray in color. A 2010 Ford F-150 four-door pickup truck was secured on a car transport trailer. The trailer was securely attached to the RV.

Officer Bender arrived and parked his marked LHPD police vehicle facing east, southwest of Schuneman's truck. Officer Bender advised LHPD dispatch of the license plate numbers and was advised the license plates were registered to Schuneman. Officer Bender then noticed the driver side slide out was extended and the motorhome was sitting on its hydraulic jacks. Corporal Jaime arrived in his assigned marked LHPD vehicle and parked south of the planter box facing in a northeast direction towards the RV. Corporal Jaime spoke to Officer Bender and confirmed the records check of the license plates returned to Schuneman. Corporal Jaime looked around the perimeter of the RV and noticed video cameras mounted on the roof of the motorhome. The cameras were later determined to be non-operational. The passenger side rear slide out window was partially open and Corporal Jaime was under the impression Schuneman was listening and could hear the police were outside.

Corporal Jaime spoke with the dispatchers to get more information about what Schuneman said. Corporal Jaime and Officer Bender were told Schuneman was making general threats toward law enforcement and Corporal Jaime requested dispatchers to make a call to Schuneman. While waiting for dispatch to make the call, Corporal Jaime could hear something being thrown and could hear loud crashing sounds coming from inside, toward the rear of the motorhome. At approximately 9:31 a.m. and 9:32 a.m., the dispatchers called Schuneman's cell phone several times. None of the calls were answered, and they all went to voicemail. At that time, Corporal Jaime requested additional officers respond to the location so they could attempt to speak with Schuneman. While waiting for additional officers to arrive, Officer Bender removed the ballistic shield from his police vehicle so the officers could be protected because there were no areas of protection if they had to knock on the motorhome door. The following officers arrived on the scene: Officer Josiah Telles, Officer Jesus Castanon, Officer Justin Cassidy, Officer Craig Hentcy, and Officer Jason Coleman.

Officers Telles and Castanon arrived and met with Corporal Jaime and Officer Bender in the northeast part of the parking lot, just to the west of AutoZone, near Officer Bender's police vehicle. Telles parked his police vehicle north of Bender's police vehicle and Castanon parked his south of the planter box and north of Corporal Jaime's vehicle. Telles and Castanon met with Corporal Jaime and Officer Bender to discuss how they were going to try and contact Schuneman. Officer Coleman arrived and parked his commercial enforcement truck west of the planter behind Officer Bender's vehicle. Corporal Jaime assigned Officer Bender to use the ballistic shield to protect the officers and make verbal contact with Schuneman. Officer Telles was assigned to the .40 mm less lethal sponge gun. Officer Castanon was assigned to use his Taser as a less lethal force option. Officer Castanon was also assigned to be part of the arrest team if needed. Officer Coleman was assigned as a lethal force option and part of the arrest team if needed. After discussing how to try and contact Schuneman, Officer Telles put on his exterior ballistic plate carrier and removed the .40 millimeter less lethal sponge gun from the trunk of his vehicle.

At approximately 9:37 a.m., Corporal Jaime requested dispatch make another phone call to Schuneman. Dispatch advised the phone call was not answered and went to voicemail once again. He then advised dispatch the officers were going to try and make contact with Schuneman.

Officers Hentcy and Cassidy arrived and entered the parking lot from Idaho Street. Officer Cassidy parked his police vehicle south of the RV in the parking lot so he could see the front door. Officer Hentcy drove to the west side of the RV and parked south of Corporal Jaime's police vehicle. Officer Hentcy walked to Corporal Jaime's location and had a brief

conversation with him about trying to contact Schuneman. During the conversation, Jaime said if they did not have success in contacting Schuneman, they would leave. Officer Bender then began knocking on the rear passenger side of the RV saying, "La Habra Police Department, Dan we would like to talk to you if you could come to the front door." After hearing nothing, Officer Bender knocked again and announced, "La Habra Police Department, Dan can you please come to the front door." After hearing nothing again, Officer Bender, for a third time knocked on the motorhome and yelled, "Dan this is the La Habra Police Department, you are not in trouble, we are doing a welfare check; we want to make sure you're okay. Please come to the front door." Officer Bender heard some movement in the back bedroom area of the RV and told the officers what he heard.

After a few seconds passed, Officer Cassidy saw Schuneman coming to the front door and advised the officers over the police radio. Officer Bender heard some movement in the front portion of the RV and waited several seconds, and when the front door did not open, Officer Bender knocked again saying, "La Habra Police Department. Dan, open the front door of the motorhome. Again, you are not in trouble, we're here to make sure, you're okay, open the front door." Schuneman opened the front door of the RV and stepped out facing Officer Cassidy.

Corporal Jaime heard Officer Bender say they were making contact with Schuneman and left his location by the trailer and went to the officers, taking a position to the right of Officer Telles. Officer Hentcy took a position behind Officer Coleman. Schuneman faced the officers who were approximately 35 feet away at the rear of the RV. Officer Bender heard Schuneman mumble something to the effect of, "I didn't do anything; you have no legal reason to be here." The officers at the rear of the RV told Schuneman to come and talk to them. Schuneman took approximately three steps toward the officers, before turning back to the open door of the RV. Schuneman leaned inside the RV and the officers could not see his upper body as he leaned inside the open door for several seconds. When Schuneman stood up and emerged from behind the doorway he was holding an approximately three foot long axe with both hands.

Schuneman raised the axe and held it over his right shoulder above his head. Officer Bender had his Ballistic shield in front of him with his handgun unholstered and pointed at Schuneman. Officer Cassidy moved to the front of his police vehicle until Schuneman began walking towards the officers. The officers yelled commands at Schuneman to drop the axe and Schuneman yelled profanities back at the officers as he became irate. Officer Cassidy moved to the west to avoid being in the line of fire if Schuneman ran in his direction. Officer Cassidy continued to move to the west to get closer to the other officers who were yelling commands at Schuneman.

The officers staggered themselves to the south and yelled commands at Schuneman to stop and drop the axe. Officer Bender was positioned next to the motorhome, followed by Officer Coleman, Officer Telles, Corporal Jaime and Officer Castanon. Officer Hentcy was positioned behind Officer Telles and Corporal Jaime and had reholstered his handgun because he was not in a position to see what Schuneman was doing with the axe. Schuneman stopped approximately 15 to 20 feet away from the officers, and the officers continued to yell commands at Schuneman to drop the axe. Schuneman yelled at the officers and in less than a minute, Schuneman took a step towards the officers with the axe still raised above his head. As Schuneman continued to advance with the axe raised above his head, Officer Hentcy saw something needed to be done because Schuneman was not following the commands to drop the axe. Officer Hentcy tapped Officer Telles on the shoulder to deploy the .40 millimeter less lethal launcher. Officer Telles yelled and announced he was going to fire the .40 millimeter less lethal launcher at Schuneman. Officer Cassidy was within 15 to 20 feet of Schuneman, holstered his handgun, and drew his Taser. Officer Cassidy told the officers he would use less lethal, and within a second of each, Officer Cassidy fired his Taser, Officer Telles fired the .40 millimeter less lethal launcher, and Corporal Jaime fired his handgun at Schuneman. One of the Taser probes struck Schuneman in the left thigh area, and Cassidy thought the second Taser probe missed. The .40 millimeter sponge round struck Schuneman in the abdomen. The bullet fired by Corporal Jaime struck Schuneman in the left hip causing Schuneman to immediately fall to the ground and drop the axe. Officer Telles reloaded the .40 millimeter less lethal launcher as the officers reassessed Schuneman's reaction to being shot. The officers began approaching and Officer Coleman kicked away the axe from Schuneman. Officer Hentcy then pushed the axe further to the west away from Schuneman. The officers told Schuneman to place his hands behind his back. Officer Bender then noticed an eight inch fixed blade knife in the ride side of Schuneman's rear waistband. Schuneman was held down against the ground and Officer Coleman removed the kitchen knife and threw it

to the north were it landed just underneath the RV. The officers then took control of Schuneman's left arm and gave Schuneman multiple commands to put his right hand behind his back because it was underneath his body. Schuneman was uncooperative, moaning and saying something underneath his breath that Officer Bender could not understand. It took two officers to control Schuneman because Schuneman was being uncooperative, but eventually Schuneman put his right hand behind his back.

At approximately 9:41 a.m., Corporal Jaime advised over the police radio that an officer-involved shooting occurred and requested the paramedics respond. Officer Coleman searched Schuneman and found what he thought was a digital thermometer in the right front pocket and a flashlight in the left front pocket. Schuneman also had several other items in his pockets that were removed. While Schuneman was being searched, Officers Hentcy, Castanon, and Bender searched the motorhome and did not locate anyone inside.

At approximately 9:43 a.m., Los Angeles County Fire Department (LACFD) paramedics were dispatched to a report of a gunshot wound at the TJ Maxx parking lot. Officer Cassidy retrieved the first aid kit from his vehicle and Officer Telles administered first aid to Schuneman by applying pressure to the gunshot wound while they waited for the paramedics to arrive. When the paramedics arrived, they attempted to obtain Schuneman's vital signs but Schuneman was not cooperating and moving around too much. Schuneman told the paramedics he called 911 and did not deserve to be shot. At approximately 9:58 a.m., Schuneman was transported by ambulance to the University of California, Irvine- Medical Center (UCIMC).

Voluntary Statement by Corporal Jaime

Corporal Jaime gave a voluntary statement to OCDA Investigators. Below is a summary of Corporal Jaime's statement.

Corporal Jaime is currently a Corporal assigned to patrol as field supervisor. On Tuesday, July 4, 2017, Corporal Jaime was wearing a class B navy blue La Habra Police Department uniform with patches and corporal stripes on both shoulders.

Corporal Jaime received a call for service, a welfare check at 2101 West Imperial Highway, located in a Vons parking lot at approximately 8:29 a.m. The welfare check on a subject possibly living in a RV who was agitated with the police dispatcher and making bizarre statements to the dispatch. Dispatch requested that officers contact him and check on his welfare and Corporal Jaime responded.

Corporal Jaime arrived first and then Officer Hentcy and Officer Bender arrived next. The responding officers checked the entire parking lot and were unable to locate the vehicle. Officer Bender sent a MDC message on the mobile data computer, to Corporal Jaime stating there was a possible vehicle matching that description, an RV with a trailer attached at the TJ Maxx parking lot. Corporal Jaime met with Officer Bender at that location.

When Corporal Jaime arrived, he confirmed with Officer Bender that the license plates belonged to Schuneman. Officer Bender was facing eastbound, north of another La Habra unit parked south of it. The officers then looked at the perimeter of the RV and saw several cameras attached to the RV itself. The rear right passenger window was partially open so the occupant could hear. Corporal Jaime requested dispatch make another call to Schuneman and while waiting for the call, Corporal Jaime heard objects being thrown around and a crashing noise come from inside the RV. There were three unsuccessful attempts to contact Schuneman on his cell phone. Then Corporal Jaime requested additional units to attempt to make contact with Schuneman. The officers who arrived were: Officers Castanon, Coleman, Hentcy, and Telles. Once all the officers arrived, they devised a plan to contact Schuneman, and Corporal Jaime designated each officer with an assignment. Officer Bender was asked to make verbal contact while behind a ballistic shield. Officer Telles was behind Officer Bender with a .40 millimeter less lethal sponge gun, Officer Castanon was behind them with a Taser, and Officer Coleman was at the rear with a firearm and handcuffs if needed. Officer Hentcy arrived subsequently and took a position behind the truck attached to the motorhome and watched the driver's side.

After Officer Bender yelled more than a few times, he immediately ran back over to the stack of officers in order to see if Schuneman would exit the motor home. While Officer Bender was yelling for Schuneman to exit the vehicle, Corporal

Jaime could still hear objects being thrown around, suggesting Schuneman was becoming agitated. When Schuneman begins to exit, Corporal Jaime took his place along the stack of officers. Corporal Jaime recalls Schuneman stumbled out of the trailer, took a few steps forward, and then reached back into the trailer emerging with a long handled axe. Corporal Jaime described it as a standard axe about two to three feet in length. Schuneman immediately started advancing and yelling obscenities such as "Get the fuck out of here, I did nothing wrong." Officers told him to drop the axe but he ignored them and kept moving forward and advancing on the officers. Schuneman had both hands up and his right hand was holding the axe as he continued to advance while yelling belligerently. Corporal Jaime observed the axe was up and Schuneman was swinging it and waving it around.

Corporal Jaime recalled Schuneman being approximately 35 feet away as several officers were telling him to drop the axe, drop the weapon and stop right there. Schuneman stopped for less than a minute approximately 15 feet away from the officers and the officers continued to yell for Schuneman to drop his weapon. Then, within a few seconds of each other, Officer Telles, Officer Cassidy, and Corporal Jaime fire their assigned weapons. Corporal Jaime remembers shooting one round into Schuneman's torso area; the sponge gun shot after that, followed by the Taser being shot. Schuneman immediately fell to the ground and the axe fell toward the officers. The officers handcuffed Schuneman and Officer Coleman immediately retrieved his medical kit and began applying pressure to the wound. After Corporal Jaime shot, he immediately reported the officer-involved shooting and requested medics.

Schuneman's Statement

While at the hospital, LHPD Detective Jason Forgash took Mr. Schuneman's statement. Schuneman indicated he called 911 initially because he thought he was being threatened by police officers and no one was doing anything. He stated the Brea and Anaheim Police Department's declined to file reports, further stating Buena Park Police Department and Norwalk Sheriff's Department provided no help either. Specifically, Schuneman stated that the police told him "the board" does not exist, but he did not further clarify what he meant by "the board."

Detective Forgash asked Schuneman about the events and stated the police (who he mistook as Fullerton Police officers) gently knocked on his window and said, "Hey Dan, are you in there?" Schuneman stated he responded, "Yeah", to which the officer replied, "Come outside and talk to me." Schuneman stated he responded, "Yeah, alright guys I'll be right out." Schuneman said the officer stated, "You're not in trouble, everything's fine." Schuneman said he then walked the 50 foot stretch from his RV and then opened the door. Schuneman said he had tools all over his body. Schuneman stated, "I had a big sledgehammer... people have been threatening me... I called you guys." He stated officers told him to drop the "axe or sledgehammer" and then Schuneman heard two loud "booms" and fell to the ground where the officers began "beating the shit out of me." Schuneman eventually clarified he was holding an axe and officers did ask him to "drop the axe." Schuneman initially stated he took one step before being shot, then later said it was four steps, then added, "As I was dropping, it they shot me already."

Schuneman told Detective Forgash the officers would not go away but seemed like nice guys. When Detective Forgash asked why he called the police to assist him if he was afraid of the police and Schuneman replied he called the police because he has been upset lately about other people controlling his life. Specifically he said, the controlling people were "the massive network of ex-cops" and the "Fraternal Order of Police." Schuneman eventually told Detective Forgash he was using Alprazolam for anxiety (2mg twice a day) and Buprenorphine (8mg) which can be utilized to address pain, Amphetamine Salt Combo (20mg) commonly used for attention deficit/hyperactivity disorder, Phenelzine Sulfate (15mg) commonly used as an anti-depressant, and Abilify (5mg) an anti-psychotic medication utilized to treat several disorders including schizophrenia and bi-polar disorder.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One cartridge case head stamped FEDERAL 45 AUTO +P
- Two Silver Taser darts
- One axe with yellow handle

- One .40 mm less than lethal cartridge case
- One .40 mm less lethal blue projectile
- One Taser cartridge with wire and probe
- One orange vest, two black binder clips, and apparent blood
- Flashlight
- Brass Combination lock
- Light
- White piece of plastic
- Infrared thermometer
- Sony recorder
- Locking lug nut
- Card "best daddy ever"
- Homemade card, "love Hannah"

EVIDENCE ANALYSIS

Firearms and Projectile Examination

Corporal Jaime's Heckler & Koch, model USP, .45 caliber semi-automatic pistol was test fired at the OCCL and fired without malfunction in single and double actions. The projectile from the left hip of Schuneman was forensically determined to have been fired from Corporal Jaime's Pistol.

Toxicological Examination

A sample of Schuneman's blood was collected at UCIMC. An Orange County Sheriff's Department forensic scientist examined the blood sample and the following drugs were detected:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Blood Draw	0.00 ± 0.004 w/v

SCHUNEMAN'S PRIOR CRIMINAL HISTORY

Schuneman's criminal history was reviewed and considered. Schuneman had a California Criminal History that dates back to 1986. He has previously been arrested for the following charges:

- Assault with a deadly weapon
- Terrorist threats
- Challenge to fight in a public place
- Inflict corporal injury on a spouse or co-habitant
- Driving under the influence of alcohol
- Driving under the influence of alcohol with priors
- Driving under the influence of alcohol or drugs
- Disorderly conduct drug or alcohol intoxication

SCHUNEMAN'S POST-INCIDENT CONVICTION

On July 6, 2017, OCDA filed criminal charges against Dan James Schuneman in Orange County Superior Court case #17NF1808. On Feb. 13, 2018, the complaint was amended, consisting of four counts of Assault with a Weapon on a Peace Officer, a felony, in a violation of California Penal Code section 245(c); three counts of Resisting an Executive Officer, a felony, in violation of California Penal Code section 69. The complaint further alleged Schuneman was previously convicted of serious and violent felonies, pursuant to California Penal code Section 677(a)(1), 245(a)(2), and a serious felony pursuant to Penal Code section 1192.7. On Feb. 22, 2018, Schuneman was convicted by a jury on all the counts.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; 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 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 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 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 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 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 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 LHPD Corporal John Jaime with Schuneman.

LEGAL ANALYSIS

The facts in this case are determined by considering both Corporal Jaime's statements to the OCDA investigators, as well as Schuneman's and witnesses' accounts of the incident, which were supplemented by other relevant material and witnesses present at the incident.

The issue is whether the conduct of Corporal Jaime on July 4, 2017, was criminally culpable and without justification. As stated above, in order to charge Corporal Jaime with a criminal violation, it is required 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 Jaime with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions that day of Corporal Jaime 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 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.)

In the present case, overwhelming evidence supports the conclusion that Corporal Jaime was justified in believing Schuneman posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Schuneman in the moments leading up to the shooting. Officers yelled at Schuneman more than three times to drop his axe but he kept advancing toward the officers with the axe raised above his head. Schuneman then began yelling obscenities back to the officers and became irate.

When Schuneman got within 15 to 20 feet of the officers, they decided action needed to be taken because Schuneman was ignoring their commands to drop his weapon, the axe. As Schuneman continued to advance, Officer Hentcy felt that action needed to be taken because he believed that Schuneman wanted to cause serious bodily injury to the officers. Officer Hentcy tapped Officer Telles on the shoulder to deploy the .40 millimeter less lethal launcher. Officer Telles yelled and announced he was going to fire the .40 millimeter less lethal launcher at Schuneman. Officer Cassidy was within fifteen to twenty feet of Schuneman and holstered his handgun and drew his Taser. Officer Cassidy told the officers he would use less lethal, and believing Schuneman intended to cause serious bodily injury, within a second of each, Officer

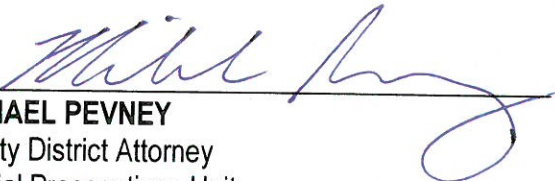
Cassidy fired his Taser, Officer Telles fired the .40 millimeter less lethal launcher, and Corporal Jaime fired his handgun at Schuneman.

It should also be noted in order for Corporal Jaime 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 Corporal Jaime did not act in reasonable and justifiable self-defense or defense of another when he shot at Schuneman. 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 would justly conclude that it was reasonable for Corporal Jaime to believe that his life and the lives of his fellow officers were in danger. In fact, a jury examining similar facts and legal principles found Schuneman guilty of being a danger to Corporal Jaime. Therefore, Corporal Jaime was justified when he shot at Schuneman. Simply stated, Corporal Jaime did not commit a crime, to the contrary, he carried out his duties as a peace officer in a reasonable and justifiable manner.

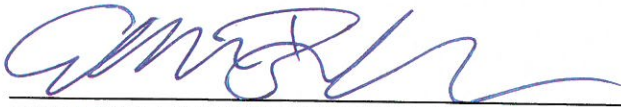
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Corporal Jaime, and there is substantial and overwhelming evidence that his actions were reasonable and justified under the circumstances when he shot Schuneman on July 4, 2017.

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



MICHAEL PEVNEY
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READ AND APPROVED BY **EBRAHIM BAYTIEH**
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