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ORANGE COUNTY, CALIFORNIA

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May 19, 2017

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

Re: Officer-Involved Shooting on Feb. 20, 2016
Fatal Incident involving Danny Rendon
District Attorney Investigations Case # 16-011
Anaheim Police Department Case # 16-028371
Orange County Crime Laboratory Case # 16-42906

Dear Chief Quezada,

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 Anaheim Police Department (APD) Officers Collin Brennan, Kenneth Florendo and Jason Carney. Danny Rendon, age 30, died as a result of his injuries. The incident occurred in the City of Anaheim on Feb. 20, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 20, 2016, fatal officer-involved shooting of Danny Rendon. 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 APD 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 Feb. 20, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 18 interviews were conducted, and 34 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, civilian video recording of the shooting, 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; autopsy records and photographs related to the injuries sustained by Rendon; criminal history records related to Rendon including prior incident reports; the personnel records of Officers Brennan, Florendo and Carney, 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 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 the APD officers or personnel, specifically Officers Brennan, Florendo and Carney. 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 or dies 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 statements from the involved officers. Officer Collin Brennan gave a voluntary statement to OCDA Investigators on March 4, 2016. Officer Kenneth Florendo gave a voluntary statement to OCDA Investigators on March 10, 2016. Officer Jason Carney gave a voluntary statement to OCDA Investigators on March 4, 2016. During this investigation, Officers Brennan, Florendo and Carney acted professionally in their dealings with the OCDA. In addition, the APD was very cooperative with the OCDA's investigation and accommodated our investigation during every step of the way.

FACTUAL SUMMARY

Danny Rendon was a thirty 30-year-old male who had an extensive criminal history, which included convictions for domestic violence, possession of controlled substances, and resisting arrest. Rendon was married to Jane Doe 1 for five years. Rendon and Jane Doe 1 had three children together. Rendon also had another child from a previous relationship.

Approximately two weeks prior to this shooting, Jane Doe 1 separated from Rendon. Jane Doe 1 and the children moved in with her parents in the 2000 block of West Cris Avenue. Jane Doe 1's brother, John Doe 1, and his wife Jane Doe 2 also lived at the residence. Rendon continued to live at 955 South Roberts Street, Apartment #7 in the city of Anaheim.

Witness 1, a neighbor of Rendon's, recalled that on Feb. 11, 2016, at approximately 3:00 p.m., Rendon was smoking methamphetamine to the rear of the local laundry mat. Rendon told Witness 1 that he was upset with his girlfriend who he suspected was cheating on him. Rendon told Witness 1 he was going to take some time off work in an attempt to catch her cheating. Rendon said he planned to use a gun to kill her and any new boyfriend she might have. Rendon showed Witness 1 the semi-automatic handgun he had in his possession. Witness 1 recalled on at least two other occasions seeing Rendon in possession of a handgun. One of those occasions occurred approximately three weeks prior to the Feb. 11, 2016, incident.

On Feb. 20, 2016, at approximately 4:30 p.m., Rendon was the driver and sole occupant of a two-door 1985 brown Cadillac, and he was traveling in the area of Loara Street and Juno Avenue, in the city of Anaheim, when he began

tailgating a vehicle driven by John Doe 2 and Jane Doe 3. At the time, John Doe 2 and Jane Doe 3 had their two-year-old son in the vehicle with them. John Doe 2 and Jane Doe 3 observed Rendon holding a "black semi-automatic handgun" outside the driver's window. Rendon fired the gun once into the air and a second time directly at them but did not hit John Doe 2, Jane Doe 3, or their car. Rendon then stopped in front of 955 South Roberts Street. John Doe 2 and Jane Doe 3 fled the area and called 911.

At approximately 4:30 p.m., Witness 1 was standing outside 933 South Roberts Street in the city of Anaheim when he heard two people arguing in the area of Juno Avenue and Arden Place. Witness 1 saw Rendon's vehicle stopped in the middle of Juno Street directly behind a white, older model Honda, and an unidentified male, approximately 32 years old, 5'6" tall with a slim build, wearing a baby blue t-shirt and blue jeans was standing next to Rendon's driver's door. The unidentified male walked away from Rendon's vehicle and toward the Honda, when Witness 1 heard a single gunshot come from Rendon's vehicle. The unidentified male entered the Honda and sped away. Rendon then chased after the Honda. Witness 1 saw Rendon place a gun outside the driver's window and fire at the Honda. Rendon and the Honda left westbound on Ball Road. After both vehicles left Witness 1's sight, he heard two more gunshots. Witness 1 recognized Rendon as the same person who, on Feb. 11, 2016, told him he wanted to kill his girlfriend.

At approximately 4:35 p.m., Witness 2 heard tires "squealing" near her residence at 944 South Roberts Street. Witness 2 went to investigate the noise and observed an older white Mercedes Benz being chased by an older brown Cadillac. The vehicles were traveling west on Juno Avenue. The Cadillac was pulling along the left side of the Mercedes when Witness 2 heard one to two gunshots. The white Mercedes fled the area. The Cadillac stopped at the northwest corner of Roberts Street and Ball Road. Witness 2 saw Rendon exit the driver's seat of the Cadillac holding a dark colored gun in his left hand. Rendon ran upstairs into an apartment at 955 South Roberts Street. Approximately 10 seconds later, Rendon exited the apartment with what appeared to be a gun sticking out of his left front pant pocket. Rendon entered the brown Cadillac and drove away west on Ball Road.

At approximately 4:39 p.m., APD began receiving multiple 911 calls from witnesses reporting shots fired in the area of Ball Road and Roberts Street and at Rendon's apartment, 955 South Roberts Street, Apartment #7. Several APD police officers and APD police helicopter "Angel" were dispatched to the location. Upon arrival, officers surrounded Rendon's apartment. Officers located evidence of a shooting to include; three expended 9 mm shell casings, two bullet holes through the broken front window of Apartment #7, and blood in the immediate area. At the time, it was unknown if Rendon or any other occupants were inside the apartment. Officers maintained a perimeter on Rendon's apartment while simultaneously locating and interviewing witnesses in the area.

At approximately 4:40 p.m., Witness 3 and Witness 4 were driving eastbound on Ball Road, when they observed an older model brown vehicle preparing to make a left turn onto an unidentified north/south street. As both vehicles neared each other, Witness 3 and Witness 4 saw Rendon pointing a black handgun out the driver's window at them. Witness 3 and Witness 4 ducked as they passed by Rendon. Witness 3 and Witness 4 immediately located a police officer in the area and reported the incident.

Rendon then drove to his in-laws' residence on West Cris Avenue. Witness 5, a neighbor on West Cris Avenue, was inside her residence when she heard the "screeching" of tires. Witness 5 looked out her window toward Cris Avenue and saw a brown vehicle pull into the driveway of 2012 West Cris Avenue. Witness 5 observed Rendon exit his vehicle and go into the house.

John Doe 1 was home alone on West Cris Avenue, watching television when he heard a "really loud bang" outside. When John Doe 1 went to check the noise, he walked from his bedroom into the main house and observed his brother-in-law Rendon attempting to kick open a north-facing door. Rendon was "waving" a handgun around as he kicked at the door. John Doe 1 exited the south side of the residence and ran to the north side; Rendon ran after him and caught up with him near his sister's car, which was parked along the south curb line of Cris Avenue in front of the residence.

Rendon confronted John Doe 1 at the car and began demanding to know the whereabouts of his sister Jane Doe 1. According to John Doe 1, Rendon said "Where's your ***** sister, I know she's ***** cheating on me." John Doe 1 told Rendon he didn't know where she was but, if given the chance, he would help him locate her. Rendon said, "you're a ***** liar." Rendon appeared to be under the influence of methamphetamine because, according to John Doe 1, Rendon was "spinning around" and "going ***** crazy." John Doe 1 attempted unsuccessfully to calm Rendon. Without warning, Rendon shot John Doe 1 in the left leg. John Doe 1 immediately fell to the ground. Rendon told John Doe 1, "Now you feel what I'm feeling, right?" Rendon told John Doe 1 that he wanted to kill his sister Jane Doe 1 and that if he could not kill her that he was going to kill him.

Witness 5 heard a gunshot, looked out the window, and saw John Doe 1 on the ground holding his leg. Witness 5 saw Rendon next to John Doe 1 holding a gun in one hand and jumping around "like crazy" in the middle of the street while John Doe 1 was pleading with Rendon to "stop."

At approximately 4:44 p.m., APD received a 911 call from Witness 6, another neighbor. Witness 6 reported two subjects fighting in the street and the one subject with a gun had just shot the other subject. At approximately 4:46 p.m., APD officers were dispatched to West Cris Avenue regarding the shots fired.

After Rendon shot John Doe 1 in the leg, he stood over him, took out a glass pipe, and began smoking methamphetamine. Rendon told John Doe 1, "I'm going to smoke some dope while I watch you suffer." Rendon was constantly screaming at John Doe 1, spinning around, and walking around his sister's car. John Doe 1 described Rendon as "going crazy."

At approximately 4:46 p.m., John Doe 1's wife, Jane Doe 2, returned home. Jane Doe 2 drove west on Cris Avenue toward the residence when she observed her husband John Doe 1 lying in the street next to Jane Doe 1's vehicle. From approximately 100 feet away, Jane Doe 2 observed Rendon standing approximately three feet from John Doe 1 with a gun in his hand. When Rendon noticed Jane Doe 2, Rendon began walking towards her with the handgun pointed at her. Jane Doe 2 put her car in reverse and backed away. As Jane Doe 2 tried to locate her cellular telephone to call 911, Rendon began running after her. Jane Doe 2, afraid Rendon was going to shoot her, left the neighborhood and called 911.

Four officers arrived on scene to try to arrest Rendon and render aid to John Doe 1. Officers Brennan and Carney were stationed on the north side of the street armed with rifles. Officer Florendo was stationed on the south side of the street armed with a Rifle while his partner Officer Karg was positioned next to him with a Less-Lethal Bean Bag shotgun. As the officers advanced toward Rendon, they continued to yell commands at him to surrender and drop to the ground. Rendon however continued acting very erratic and was not complying with the Officers' commands. Rendon, having placed the gun on the ground, was still within reaching distance of the gun and John Doe 1. The officers decided that they needed to act quickly in order to save John Doe 1's life so they continued to advance toward Rendon and John Doe 1. As the officers were approaching, Rendon made a sudden jerky movement in the direction of the gun. Officer Karg was the first to fire his Less-Lethal shotgun but the round bounced off Rendon's chest and did not seem to have any effect. The officers continued approaching because they feared Rendon was going to kill someone if he got hold of the weapon.

Witnesses described Rendon's movements as a "charge" or "lunge," toward John Doe 1 and the gun, and they indicated that they believed his intent was to grab the gun or hurt John Doe 1. As Rendon moved toward the gun, he gave no indication that he intended to surrender or obey the officers' orders. Based on their statements, Officers Brennan, Florendo and Carney believed that the life of John Doe 1, as well as their own lives and the safety of the public, were in danger because Rendon still had access to his gun. At approximately 4:50 p.m., Officers Brennan, Florendo and Carney fired their rifles at Rendon from a distance of approximately 15 to 20 feet. Officer Brennan fired two times, Officer Florendo fired six times, and Officer Carney fired five times. The officers stopped firing when Rendon fell to the ground and stopped moving.

Voluntary, Consensual Statement of Officer Brennan

Officer Brennan provided a voluntary, consensual statement to the OCDA on March 4, 2016. The following is a summary of his statement.

In the afternoon of Feb. 20, 2016, Officer Brennan was on patrol in the City of Anaheim in his assigned patrol car. Officer Brennan heard a call through dispatch about a possible shooting on Roberts Street in the City of Anaheim. While moving towards the Roberts Street scene, another call came in regarding a second shooting on Cris Street in the City of Anaheim. As Officer Brennan was moving towards Cris Street, he was getting updates from the Anaheim Air Unit, which was now flying over Cris Street. The Air Unit advised that there was an apparent gunshot victim lying in the street and that there also was a male suspect standing over the victim with a black handgun in his right hand. At one point, the Air Unit advised that the suspect appeared to have shot at the Air Unit.

As Officer Brennan arrived on scene, he fanned out with Officers Carney, Florendo, and Karg into tactical positions. Officer Brennan could see Rendon standing in the middle of the street armed with a handgun, and he appeared to be threatening another person who was lying on the ground next to a parked vehicle. Officers Florendo and Karg were positioned on the left side of the street and Officers Brennan and Carney were taking cover on the right side of the street. Officer Brennan had his rifle pointed at Rendon, and Officer Karg had grabbed a Less-Lethal Bean Bag shotgun from his patrol car.

The officers continually yelled at Rendon to drop his weapon and get down on his knees. Rendon was not complying with the Officers' commands. Officer Brennan thought Rendon was acting very "bizarre" and thought maybe Rendon was under the influence of drugs. Rendon was moving around and "yelling" back at the officers. Officer Brennan thought that the officers needed to formulate a plan because there was a potential victim who could be "dying." At some point Rendon dropped his weapon but it only landed a few feet from Rendon and the victim lying on the ground. Officer Brennan indicated that the officers were communicating a plan to subdue Rendon while continuing to give Rendon commands to drop to the ground and give himself up. Officer Brennan said that once Officer Karg had his Less-Lethal shotgun ready, the officers were ready to make their approach to try to take Rendon into custody and render first aid to John Doe 1.

As the officers moved forward towards Rendon, he got into a "crouching position" but was still not giving any indication that he was ready to give himself up. Officer Brennan "felt very vulnerable," and he was concerned for his safety and the safety of his partners. Officer Brennan also indicated that he was also very concerned for the John Doe 1 who was still bleeding on the ground. Officer Brennan then indicated that Rendon made a sudden movement, "like he was running towards" the gun and John Doe 1. Officer Brennan said that his thought process was that Rendon was either going to hurt John Doe 1 or the officers if he was able to get to the weapon, so he (Officer Brennan) fired his rifle in order to stop Rendon. Officer Brennan was not sure if he fired the weapon once or twice but as soon as he saw Rendon stop moving, the officers made further approach to render first aid to John Doe 1 and Rendon.

Voluntary, Consensual Statement of Officer Kenneth Florendo

Officer Kenneth Florendo provided a voluntary, consensual statement to the OCDA on March 10, 2016. The following is a summary of his statement.

In the afternoon of Feb. 20, 2016, Officer Florendo was on patrol in Anaheim with his partner Officer Karg. Officer Florendo heard a call through dispatch about a possible shooting on Roberts Street in Anaheim. While moving towards the Roberts Street scene, another call came in regarding a second shooting on Cris Street in Anaheim. Officers Florendo and Karg decided to head to the Cris Street scene to render aid. As Officers Florendo and Karg were moving towards Cris Street, they were getting updates from the Anaheim Air Unit, which was now flying over Cris Street. The Air Unit advised that "there's a man with a gun and he's standing over a body and that he appears to be shot." The Air Unit also advised that at some point the man with the gun shot at them. Officer Florendo began thinking that they might have an active shooter and advised Officer Karg to be ready. As Officer Florendo arrived on scene, he had his rifle charged and ready.

Officer Florendo stated that he could immediately see from a distance that there was a male subject holding a gun standing over another male subject that was down on the ground. Officer Florendo took cover behind another automobile on the south side of the street as Officer Karg went to the trunk of the patrol car to retrieve his Less-Lethal Bean Bag shotgun. Officer Karg then joined Officer Florendo on the south side of the street. Shortly thereafter, Officer Florendo stated that he noticed that Officers Brennan and Carney are positioned on the north side of the street armed with their rifles. Officer Florendo stated that after arriving on scene he could hear John Doe 1 say, "hey I've been shot, I need help." Officer Florendo knew they had to act quickly in order to save John Doe 1 from bleeding out. The officers began yelling commands at Rendon to drop his weapon and get down on the ground. Rendon was "dancing up and down" and was not complying with the commands. Officer Florendo stated that the officers tried to order Rendon to get down on the ground but he never complied. Instead, Rendon taunted the officers and yelled obscenities towards them. At one point, Rendon did drop his weapon but it remained on the ground within reaching distance of Rendon and John Doe 1.

The officers continued to give verbal commands directing Rendon to get down on the ground as they moved closer. Officer Florendo thought Rendon was still a threat because he still could reach the gun and shoot John Doe 1 again or the other officers. The officers coordinated to advance on Rendon to take him into custody and render aid to John Doe 1, who was still bleeding. Officer Florendo stated that as the officers started moving forward towards Rendon they continued to give Rendon commands to surrender and drop to the ground. Rendon "lunged up" suddenly and moved towards the gun and John Doe 1. At that point, Officer Karg yelled "Less-Lethal" and shot Rendon with the Less-Lethal shotgun. Officer Florendo saw the less-lethal round bounce off Rendon's chest without any effect. Officer Florendo indicated that he felt that he had a small window of opportunity because according to Officer Florendo, if Rendon retrieved the gun someone was going to die. Therefore, after the Less-Lethal shotgun failed and Rendon moved towards the gun, Officer Florendo fired his weapon to stop Rendon.

Voluntary, Consensual Statement of Officer Carney

Officer Carney provided a voluntary, consensual statement to the OCDA on March 4, 2016. The following is a summary of his statement.

After receiving similar information from dispatch as the information listed above, Officer Carney arrived on the scene and saw that Officers Brennan, Florendo, and Karg were already on scene. Officer Carney immediately noticed two individuals in the middle of the street. Rendon was standing directly next to another male subject that was lying face down on the ground. It appeared to Officer Carney that either Rendon was holding this individual hostage and/or had shot him because John Doe 1 was lying face down and was not moving. Officer Carney noted that Rendon appeared to have a handgun in his right hand. Officer Carney took cover behind a vehicle on the right side of the street in close proximity to where Officer Brennan was positioned. Officer Carney chose his rifle because it gave him a better advantage from his distance in an active shooter situation. When Officer Carney first arrived, his commands to Rendon were to drop the gun. Rendon was not complying with any of the officers' commands and was acting "very erratic". According to Officer Carney, at some point Rendon did drop his weapon, but it was still in close proximity to Rendon and John Doe 1. Officer Carney began giving commands for Rendon to walk towards him and then to get on the ground. Officer Carney's goal was to get Rendon away from John Doe 1 and away from the gun. However, Rendon was "extremely non-compliant" and was pacing back and forth rapidly and continued to reach into his waistband area.

Officer Carney began coordinating with Officer Brennan saying that they needed to get to the victim before he bleeds out and dies. Officer Carney noticed that Officers Karg and Florendo were on the south side of the street and noticed that Officer Karg had grabbed his Less-Lethal Bean Bag shotgun. The officers began to coordinate to advance so that they could render medical aid to the victim and to take the suspect into custody. As Officers began to advance on Rendon, he abruptly turned towards the victim and the gun. Rendon got into what seemed like a "runner's stance," and began jolting southbound towards not only the gun, but also John Doe 1. When Rendon lunged towards the gun, Officer Carney believed that Rendon was going to kill John Doe 1 or one of the officers, so Officer Carney fired at Rendon. After firing several times, Rendon fell to the ground. Once the threat was gone, Officer Carney immediately ceased fire. The officers then coordinated about rendering aid to John Doe 1 and Rendon.

AUTOPSY

On Feb. 25, 2016, Forensic Pathologist Dr. Yong-Song Kim of the Orange County Coroner Division (OCCD) conducted an autopsy on Rendon. Dr. Kim determined that 11 bullets struck Rendon, as follows: a gunshot wound of the left posterior head, a gunshot wound of the right upper back, a gunshot wound of the left posterior shoulder, a gunshot wound of the left upper back, a second gunshot wound of the left upper back, a gunshot wound of the left middle back, a gunshot wound of the left lateral back, a gunshot wound of the left clavicle, a gunshot wound of the left inner lower arm, a gunshot wound of the right anterior hip, and a gunshot wound of the right calf. Following the autopsy, Dr. Kim opined that Rendon's death was the result of multiple gunshot wounds with the most lethal being a gunshot wound to the left upper back that struck the heart.

EVIDENCE COLLECTED

The following items of evidence were collected and examined from the scene and autopsy:

From the Roberts Street scene:

- Three 9 mm cartridge casings

From the Cris Street scene:

- Colt M16A1 select fire rifle
- LWRC International M61C rifle
- Remington 870 Police Magnum 12 gauge shotgun (Less-Lethal)
- Bushmaster XM15-EtS rifle
- Projectile from the scene
- Cartridge cases, fired shot shells and projectiles from the scene
- Projectiles from autopsy
- Smith & Wesson Model 459 pistol, 9 mm Luger caliber (Rendon's pistol)
- Nine individually packaged cartridge cases

The following items of evidence were collected from Officer Brennan:

- Colt AR-15, M16A1, semi-automatic rifle.
- One 5.56 mm caliber cartridge head stamped "WCC 13" in the chamber of the rifle.
- 36 cartridges head stamped "WCC 13" from the "PMAG" magazine in the rifle (40 round capacities).

The following items of evidence were collected from Officer Florendo:

- LWRC AR-15, M61C-SPR, semi-automatic rifle.
- One 5.56 mm caliber cartridge head stamped "WCC 14" in the chamber of the rifle.
- 23 5.56 mm caliber cartridges head stamped "WCC 14" from the "PMAG" magazine in the gun (30 round capacities).

The following items of evidence were collected from Officer Carney:

- Bushmaster AR-15, XM15-E2S, semi-automatic rifle.
- 25 5.56 mm caliber cartridges head stamped "WCC 13" from the magazine in the rifle (30 round capacity)

EVIDENCE ANALYSIS

Firearms and Cartridge Casings Examination

Officer Brennan's Colt rifle, Officer Florendo's LWRC International rifle, and Officer Carney's rifle were test fired and operated without malfunction. Officer Karg's Remington (Less-Lethal Bean Bag) shotgun was test fired and operated without malfunction. Rendon's Smith & Wesson pistol was test fired and operated without malfunction in both single and double actions.

The three 9 mm cartridge cases from the Roberts Street scene were determined to have been fired by Rendon's Smith & Wesson pistol. Four (4) cartridge cases from the Cris Avenue scene were determined to have been fired by Rendon's Smith & Wesson pistol.

Two cartridge cases from the scene were determined to have been fired by Officer Brennan's Colt rifle.

Six cartridge cases from the scene were determined to have been fired from Officer Florendo's LWRC International rifle.

Five cartridges from the scene were determined to have been fired by Officer Carney's Bushmaster rifle.

Two shot-shells (Less-Lethal Bean Bags) from the scene were determined to have been fired by Officer Karg's less than lethal Remington shotgun.

Toxicological Examination

A sample of Rendon's blood was collected by the OCCD. An Orange County Sheriff's Department forensic scientist examined Rendon's blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.145 + 0.005% (w/v)
Acetaldehyde	Postmortem Blood	Detected
Methamphetamine	Postmortem Blood	1.32 + 0.09 mg/L
Amphetamine	Postmortem Blood	0.128 + 0.008 mg/L

RENDON'S PRIOR CRIMINAL HISTORY

Rendon's criminal history was reviewed and considered. Rendon had a California Criminal History that dates back to 2005, and he has previously been arrested for the following charges:

- Resisting Arrest by a Police Officer
- Domestic Violence/Inflict Corporal Injury on Spouse
- Felony Vandalism
- Failure to Appear in Court/Warrants
- Driving a Vehicle Without a License
- Driving on a Suspended Driver's License
- Probation Violation
- Possession of Narcotic Paraphernalia
- Possession of Controlled Substance
- Possession of Lead Cane/Billy Club

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 required for the prosecution 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 police 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 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 that 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’s 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 APD Officers Brennan, Florendo and Carney with Rendon.

LEGAL ANALYSIS

The facts in this case are determined by considering the statements provided by Officers Brennan, Florendo and Carney to OCDA investigators, which were supplemented by other relevant material and witnesses present at the scene of the shooting.

The issue in this case is whether the conduct of Officers Brennan, Florendo and Carney on February 20, 2016 was criminally culpable and without justification. As stated above, in order to charge any of the three officers 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 the officers with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or lawful defense of another. If the actions of the officers on the day in question were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a somewhat recent case, 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 Court 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.) This is exactly what took place in connection with the APD officers' encounter with Rendon.

In this case, it is abundantly clear that Officers Brennan, Florendo and Carney were justified in believing that Rendon posed a significant threat of death or serious physical injury to John Doe 1, themselves and others. An armed individual, acting erratically, who has already shot an innocent victim and continued to ignore the officers' lawful commands to surrender and drop the ground, is an individual who clearly represents imminent harm of death or serious injury to the victim, the involved officers and others. This conclusion is based on the totality of all the circumstances, but mainly based on the conduct of Rendon in the moments leading up to the shooting.

When the officers first approached the scene, Rendon still had the gun in his hand and was threatening victim John Doe 1. Shortly thereafter, Rendon dropped the gun but it was still within reaching distance of both Rendon and John Doe 1. Officers Brennan, Florendo and Carney continually yelled at Rendon to distance himself from the weapon and get down on the ground. Rendon was acting erratic and was not complying with the officers' demands to give himself up. If this was not enough, the officers watched as Rendon continued to pace back and forth while occasionally reaching towards his waistband. Rendon appeared angry and agitated, and he continued to refuse to comply with the officers' commands. Victim John Doe 1 was bleeding on the ground from an apparent gunshot wound and was reasonably frightened. Officer Carney was justifiably concerned that John Doe 1 could bleed out and die if they did not get him help. Officer Carney felt immediate action was required in order to save the victim's life. Officer Carney communicated this thought to Officer Brennan.

Officers Brennan, Florendo and Carney stated that Rendon was acting extremely erratic and that the officers were in fear for their safety, the safety of the victim John Doe 1, and the safety of surrounding residents on Cris Street. It was as a result of this justifiable concern that the officers decided to move in closer to try to subdue Rendon and render aid to John

Doe 1. As the officers moved in on Rendon, he got into a "crouch" like position and then made a sudden lunge towards the victim John Doe 1 and the gun. Witnesses described Rendon's movements as a "charge" or "lunge," toward the victim and the gun, and they believed his intent was to grab the gun or hurt the victim. As Rendon moved toward the gun, he gave no indication that he intended to surrender or obey the officers' orders. Based on the totality of all the available evidence, it is very clear that the officers believed that the life of the civilian bleeding victim, as well as their own lives and the lives of residents in the neighborhood, were in danger because Rendon still had access to his gun.

Officer Brennan indicated that he felt in fear for his safety and for the safety of his partners, "like if this guy picks it up he could fire a round at us and, or he could fire a round like so close to the victim and actually kill the victim. His behavior was so unpredictable and erratic that ... my thought process was either he's going to ... take one of us out and get a lucky shot or he's going to take the victim out. So that's what my thought process was when I fired my weapon."

Officer Kenneth Florendo stated that as he moved towards Rendon he was thinking "I have a small window of opportunity because if he grabs that gun, the victim is going to be dead...and it was a...Saturday afternoon, there's a lot of people out there it was a residential neighborhood. That was one of biggest concerns."

Officer Jason Carney said when Rendon lunged towards that gun, "I believed that he was going to kill somebody. Whether he was going to kill the victim, whether he was going to kill me or kill my partners. I don't know, but I thought he was going to kill somebody. At that point that's when I fired at him."

The totality of all the evidence indicates that the state of mind of each of the involved officers, as detailed above, was justifiable and reasonable. It should also be noted that in order for Officers Brennan, Florendo and Carney 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 at Rendon. As should be apparent from the above-described facts and 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 Officers Brennan, Florendo and Carney to believe that their lives and the lives of others at the scene were in danger. Therefore, the officers were justified when they shot at Rendon. Simply stated, Officers Brennan, Florendo and Carney did not commit a crime, to the contrary, they carried out their duties as a peace officer in a reasonable and justifiable manner.

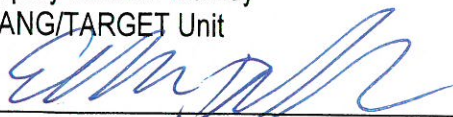
CONCLUSION

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 Officers Brennan, Florendo and Carney, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Rendon on Feb. 20, 2016.

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



Robert Goodkin
Deputy District Attorney
GANG/TARGET Unit



Read and Approved by **Ebrahim Baytieh**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit