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June 20, 2018

Chief Charles Celano
Tustin Police Department
300 Centennial Way
Tustin, CA 92780

Re: Officer-Involved Shooting on May 16, 2017
Fatal Incident involving Edwin Moreno Fuentes
District Attorney Investigations Case # SA 17-013
Tustin Police Department Case # 2017-3143
Orange County Crime Laboratory Case # FR 17-48563 / 17-49026 / 17-02327-MM

Dear Chief Celano,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Tustin Police Department (TPD) Officer Michael Carter. Edwin Moreno Fuentes, age 25, died as a result of his injuries. The incident occurred in the City of Tustin on May 16, 2017.

OVERVIEW

This letter contains a description of the scope and legal conclusions of the OCDA resulting from its investigation of the May 16, 2017, officer-involved shooting fatality of Edwin Moreno Fuentes. 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 determining if criminal culpability exists on the part of the TPD officer involved. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On May 16, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 20 interviews were conducted, and 22 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: TPD reports, audio dispatch, bodycam video 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 Fuentes; criminal history related to Fuentes 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 TPD officers or personnel, specifically Officer Carter. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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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. Five 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. Officer Carter gave a voluntary statement to OCDA Investigators on May 16, 2017.

FACTUAL SUMMARY

On May 16, 2017, at approximately 2:00 p.m., Jane Doe 1 returned home from work and learned her husband, Edwin Fuentes (hereinafter "Fuentes"), received an email from the dean at CNI College informing him that he failed a test and was being terminated from the MRI program. Fuentes, a veteran, was very upset because he was receiving disability money as well as money for school through the GI Bill. Fuentes tried to call CNI College. His calls went unanswered. So, Fuentes told his wife that he was going to the school. He packed a black Nike gym bag with clothing and a Glock handgun. Jane Doe 1 left the house with her son and aunt to go to the mall. At 3:01 p.m., Fuentes sent a text message to Jane Doe 1 stating that if he did not return, "I love you, these people fu**** me."

At 3:35 p.m., Fuentes texted and called John Doe 1, a classmate from the MRI Program at CNI College. Fuentes revealed he was being dropped from the MRI program, was outside the college, and wanted to hurt everyone but could not. Fuentes said he planned to shoot himself in the leg and be sent to University of California, Irvine Medical Center (UCIMC). Fuentes sent his wife's contact information to John Doe 1, who was unaware of Fuentes' location at the time of these calls.

At 6:04 p.m., Fuentes sent a series of text messages stating that he was at school begging for help and another chance. At 6:11 p.m., he sent another text message to his wife to inform her he was coming home. Eventually, he returned home and appeared upset and angry. He dressed in his military uniform, causing his wife to inquire about his plans. Fuentes stated he was going to UCIMC and they would call her and let her know what happened. Fuentes left the home with a gym bag.

John Doe 1, concerned about Fuentes, called the Santa Ana Police Department (SAPD) and informed them that Fuentes had a gun and was going to injure himself. John Doe 1 gave SAPD the contact information for Fuentes and Fuentes' wife Jane Doe 1.

SAPD called Jane Doe 1. This occurred not long after Fuentes departed their home. Jane Doe 1 provided SAPD with her address – an apartment located in Tustin. She then walked outside to the east side of her apartment complex. There, she saw Fuentes' vehicle was parked with hazard lights flashing. Fuentes sat in the driver's seat and appeared to be talking on his cellphone. Jane Doe 1 gave SAPD a description of Fuentes' vehicle and his clothing. She also alerted them

that Fuentes put a gun into his bag as he left the apartment, was suicidal, and suffered from post-traumatic stress syndrome.

Shortly after 7:08 p.m., Fuentes drove out of the parking lot and headed west on Main Street in the direction of Santa Ana. At approximately 7:10 p.m., Fuentes sent another text message to Jane Doe 1 saying, "Don't report me or my plates to the police I will shoot at this point if they stop me." He went on, "They will take me seriously." Jane Doe 1 sent another text to him, informing him that the police spoke to her and were heading to her residence. At 7:13 p.m., Fuentes sent another text to Jane Doe 1 stating, "Don't set me up [] with the police I know you don't want me in your life but if the cops show up it will not end will [sic] I lost everything. I'm coming back but loaded don't set me up."

At 7:14 p.m., TPD Officers Timothy Carson and Michelle Jankowski were dispatched to check the area for Fuentes. When they arrived, Fuentes' vehicle was stopped, facing southbound, just inside the gate of the parking area. As Officer Carson pulled into the alley, Fuentes began to slowly drive his vehicle back and forth through the alley.

Officer Carson turned on the emergency lighting equipment on his police vehicle and parked on the east side of the alley. Officer Jankowski stopped her police vehicle on the west side of the alley next to Officer Carson's vehicle. She used the public address system to tell Fuentes to put his vehicle in park and put his hands up. Fuentes momentarily complied. Then, he put his vehicle in reverse and started backing away from Officer Carson and Jankowski. He came to a stop and again raised his hands.

To better see Fuentes and the interior of his vehicle, Officers Carson and Jankowski walked along the west side of the alley. Together they stood behind a parked black four door Scion resting approximately 10 feet away from Fuentes' vehicle. Officers Carson and Jankowski noticed Fuentes' driver's side window was down.

Officers Carson and Jankowski, both wearing body cameras, tried engaging Fuentes in conversation. Fuentes made several statements about wanting to die in his military uniform. Fuentes had a handgun in his right hand and was pointing the handgun to his head and under his chin. At approximately 7:20 p.m., TPD Officer Knostman joined Officers Carson and Jankowski. He began speaking with Fuentes about his military background in the Marines. Fuentes made statements to the officers asking them to put one in his head, kill him and make it easier on them, and that he was not going to hurt them, and he was only going to hurt himself.

At approximately 7:21 p.m., an OCFA Engine was dispatched to the scene. At approximately 7:22 p.m., Fuentes called his father-in-law and told him he was going to shoot himself. Over the course of multiple phone calls, Fuentes' father-in-law told Fuentes to surrender his gun to the police.

At approximately 7:33 p.m., TPD Officer Houle and a trainee positioned their police vehicle in a location that foreclosed Fuentes from backing his vehicle southbound out the alley. Officer Houle met with Jane Doe 1 and her father in a nearby carport. Jane Doe 1 provided Officer Houle with background information about Fuentes. During this time, Fuentes tried calling Jane Doe 1 several times. Office Houle took possession of Jane Doe 1's cell phone to lower the temptation of her answering the phone as officers negotiated with Fuentes. Jane Doe 1 and her father were asked to go to a command post located at the Santa Ana Zoo, which was located across the street from the apartment complex.

Corporal Mauricio Estrada and Officers Arroyo and Correal, all of the SAPD, responded as crisis negotiators. Officer Correal interviewed Jane Doe 1, and the interview was recorded on the body worn cameras of Officer Houle and his trainee.

At approximately 7:47 p.m., SAPD Officer Jorge Arroyo, who served in the Army, arrived to assist in the negotiation. Officer Arroyo positioned himself behind the right front fender of the black Scion, with TPD Officers Carson, Knostman and Jankowski. Officer Arroyo, wearing only body armor, was exposed from the waist up. He indicated that his life, and those of the other officers on scene, were in danger throughout his negotiation with Fuentes. During this time, Officer Arroyo observed Fuentes' Glock handgun.

Officer Knostman introduced Officer Arroyo to Fuentes; Officer Arroyo introduced himself as Jorge. Officer Arroyo took several steps to develop a rapport with Fuentes: he spoke on a personal level about family and children, he left his gun holstered on his belt, and he urged Fuentes to consider that he had much for which to live. Fuentes responded erratically, crying and yelling, putting the gun to his head, inside his mouth, and pressing the gun against his neck. Fuentes ignored Officer Arroyo's requests to put down his gun.

Fuentes transitioned from calm to angry as the conversation with Officer Arroyo continued. Fuentes told Officer Arroyo he was on a mission. When Officer Arroyo asked Fuentes to clarify, Fuentes replied his mission was to "end it." Based on the preliminary conversation with Fuentes, Officer Arroyo believed that Fuentes had made up his mind that he was not going to surrender, but instead he intended to commit suicide or provoke the officers into shooting him. Throughout his negotiation with Officer Arroyo, Fuentes started his vehicle and backed up several feet, continued talking, would readjust his car again, and come to a stop to continue talking.

As the sun went down and it started getting dark, the officers on the scene first relied on ambient light from the area to see what Fuentes was doing inside his vehicle. As the sky darkened, efforts were made to artificially illuminate Fuentes with light from a police vehicle; this lighting was eased as a result of Fuentes responding with agitation. During this timeframe, Fuentes again repositioned his vehicle by backing up and pulling forward.

Fuentes drove his vehicle forward and stopped 10 to 15 feet away from Officer Arroyo. Fuentes asked to see his wife. Officer Arroyo told Fuentes that they first needed to make it safe for everyone. Fuentes reacted as follows: he discharged his handgun inside of the vehicle and backed the vehicle away from Officer Arroyo. Officer Arroyo again told Fuentes that he needed to put the gun down and get out of the car before he could talk to his wife and see his son.

Due to Fuentes' insistence on seeing his wife, a decision was made to obtain a recorded message from Jane Doe 1 to be played for Fuentes so he would know she was still at the scene. As Officer Arroyo's conversation continued with Fuentes, Fuentes stated that he was not going to hurt the officers and just wanted to hurt himself. Officer Arroyo asked Fuentes if he needed medical attention due to the first gunshot; Fuentes did not respond. Soon thereafter, approximately four minutes after firing his first shot, Fuentes discharged his handgun a second time. Officer Arroyo tried reassuring Fuentes that he wanted to help him and that Fuentes safety was a top priority. Fuentes drove forward causing the wheels on his vehicle to lose traction. He pulled to within 10 to 15 feet of the officers before stopping. He threatened to shoot himself if his wife was not immediately brought to see him one last time. Officer Arroyo urged Fuentes that he needed to be there for his wife and child. Fuentes asked the officers to shoot him. Officer Arroyo told him that they needed to make it safe and nobody was going to hurt him. Fuentes asked the officers if they would shoot him if he pointed his handgun at them and made another comment about killing himself.

Approximately two minutes after firing his second shot, Fuentes fired his handgun for a third time inside the vehicle. Due to Fuentes' agitated state and anger toward his wife, Officer Arroyo concluded that producing Fuentes' wife would not resolve the crisis and instead would give Fuentes stronger motive to shoot himself in front of his wife.

During these latter stages of the negotiation, TPD Officer Michael Carter was positioned atop a carport north of Fuentes' vehicle. From there, Officer Carter, armed with a semi-automatic rifle, gave cover to negotiators who were situated behind the black Scion. Officer Carter turned on the flashlight mounted on his weapon and shined the light into Fuentes' vehicle. In response, Fuentes backed the vehicle up several feet and stopped for several seconds. TPD Sergeant Arzate requested the negotiators standing behind the black Scion fall back. These officers then retreated to a planter area south of the walkway by a wooden fence. For cover, they used a tree and a ballistic shield was brought to their position. Further request was made to have additional ballistic shields brought to the walkway.

Officer Arroyo continued to talk to Fuentes. Fuentes pulled forward again toward the officers. He stopped approximately 15 to 20 feet away. An Orange County Sheriff Department (OCSA) helicopter arrived at the scene and began orbiting the area. Fuentes, hearing the helicopter, backed his vehicle up, just south of the officers' position. Officer Arroyo pled with Fuentes to come back to him and give him the opportunity to help. In response, Fuentes drove his vehicle back north and

stopped. Officer Carter used the weapon mounted flashlight once again to shine into the interior of Fuentes' vehicle. After stopping his vehicle briefly, Fuentes backed up several feet and stopped.

Officer Arroyo told Fuentes they had a message from his wife. At the request of those negotiating with Fuentes, the OCSD helicopter illuminated Fuentes' vehicle. Fuentes then opened his driver's door and placed his foot on the ground outside the vehicle. Fuentes leaned out of his vehicle and appeared to look back in a southern direction. Fuentes re-entered his vehicle and backed up several feet before stopping again. The helicopter was requested to fly higher and turn off the illumination that was agitating Fuentes. The helicopter did so.

Officer Correal used a megaphone to play a recorded message from Jane Doe 1, Fuentes' wife. Officer Arroyo told Fuentes they will get him help and that he needed to come out of the car with his hands up. Officer Arroyo had been negotiating with Fuentes for approximately an hour and was beginning to lose rapport. Corporal Estrada, who had been assisting and monitoring the negotiations, changed out Officer Arroyo with TPD Officer Robert Nelson. Officer Arroyo introduced Officer Nelson to Fuentes and Officer Nelson took over negotiations. Corporal Estrada took Officer Arroyo from the area and returned to assist Officer Nelson.

TPD SWAT Sergeant Jeff Taylor arrived to the area of the negotiation and was briefed by Sergeant Welde, Arzate, and Officer Jankowski behind the carport area. Sergeant Arzate moved up to Officer Nelson's position with a ballistic shield and relieved Officer Correal. Officer Nelson asked Fuentes several times to talk to him, to put down his gun, and to exit the vehicle so he could get help. Officer Nelson saw Fuentes with his telephone and thought he was making a video or using FaceTime. Officer Nelson saw Fuentes place the handgun to his head with his right hand. Fuentes responded to Officer Nelson a few times, but became quiet and told the officers to make sure the news did not make him out to be a bad guy. Fuentes held the gun to his head for roughly a minute before returning it to his waist area while driving forward. This occurred roughly 20 minutes after Fuentes fired the last of the three shots mentioned earlier.

As Fuentes pulled his vehicle up, Officers Nelson, Knostman, Sergeant Arzate and Corporal Estrada feared for each other's lives. All the officers concluded that Fuentes was now attempting to position his vehicle in a location where he could cleanly shoot at them. When Fuentes stopped his vehicle, Corporal Estrada could see Fuentes' left hand on the steering wheel and Fuentes' right bicep. It appeared Fuentes had his right arm extended toward them but, from Corporal Estrada's vantage point, a view of Fuentes' hand was blocked by the doorframe. Corporal Estrada, unsure what Fuentes was doing, remained in his position.

From Officer Carter's vantage point atop the carport, he could see the handgun in Fuentes' right hand at a 45 degree angle. Fuentes began to raise the gun. When the handgun eclipsed the driver's side door panel and was pointing towards the officers, Officer Carter fired two to three shots in rapid succession. Officer Carter did not see Fuentes move and thought he missed. Fuentes' vehicle was still moving forward slowly. Officer Carter thought Fuentes was still a threat, still attempting to shoot officers, and still holding his gun. Officer Carter adjusted his sight, fired three to four more shots, and saw Fuentes' body language change. Officer Carter no longer saw the handgun and took a standing position. Officer Carter continued to watch Fuentes inside the vehicle until a team of other officers moved in to extract Fuentes.

Orange County Fire Authority Captain Hawkins heard five to seven gunshots at the front of the apartment complex from the location where OCFA personnel were staging. At approximately 8:58 p.m., OCFA personnel were notified by police personnel they were clear to enter the scene. Captain Hawkins walked them into the alley, directing the ambulance toward a line of police cars facing Fuentes' vehicle. Several police officers were administering first aid and checking Fuentes for a pulse. Fuentes was lying on his back outside of the vehicle wearing camouflage military fatigues. The police officers told the OCFA personnel that Fuentes had suffered a traumatic injury to his head. Fuentes did not have a pulse and was not breathing. OCFA personnel began CPR and discovered Fuentes was also bleeding from his left shoulder. Fuentes was taken by ambulance to the Orange County Global Medical Center (OCGMC), arriving at 9:16 p.m. Fuentes was transferred to the trauma surgeon and medical staff at the hospital. At approximately 9:30 p.m. the attending physician pronounced Fuentes deceased and halted medical intervention.

Voluntary Statement of Officer Carter

On May 16, 2017, Officer Carter was dressed in his TPD police uniform clearly marked "POLICE," with his badge, name tags, and TPD patches on both shoulders. It is standard procedure that each TPD vehicle must be equipped with an AR rifle and non-lethal shot gun at the beginning of each shift. Officer Carter was at the corner of Newport Avenue and Irvine Boulevard when he responded to a dispatch put out by Officer Jankowski. Officer Carter arrived on scene and parked behind two other police vehicles north of Fuentes' vehicle.

When Officer Carter arrived, the two officers on scene were Officers Carson and Jankowski. Officer Carter moved several times, behind several vehicles and at one point, under the carport with a direct line of sight to Fuentes. Officer Carter handled radio traffic and he directed and coordinated with fellow officers to block Fuentes' vehicle. Officer Carter overheard police negotiations with Fuentes and at one point saw Fuentes with what looked like a handgun pointed at his own head. During the initial 15 minutes after his arrival, Officer Carter witnessed Fuentes move the car forward and back about 15 feet, two or three times. While inside his police vehicle, Officer Carter heard that SAPD were sending a negotiation team and maintained radio communication with other officers while waiting for more officers to arrive.

Officer Carter overheard Fuentes become more aggressive and agitated while speaking with Officers Carson and Jankowski. As daylight faded, Officer Carter sought a better vantage point. To that end, he climbed atop the carport to obtain a clearer visual on Fuentes. While on top of the carport, Officer Carter laid in a neutral position as to not agitate Fuentes while Fuentes' vehicle was stationary.

From his vantage point, Officer Carter could see Fuentes' right arm and shoulder area moving around but could not make out the weapon at that time. Officers controlling vehicles to the south turned on their lighting equipment to give officers a better view of Fuentes. As the light came on, Fuentes started his vehicle and became visibly and verbally agitated and began yelling again. Throughout this process, negotiations continued and it was put over the police radio that Fuentes might have been wanting to shoot officers. Officer Carter was alerted via radio that a SWAT team was going to be sent out. Officer Carter took a picture in order to give SWAT an idea of the situation.

Officer Carter then heard a gunshot but did not see a muzzle flash outside the vehicle. Negotiating officers took cover behind a black Scion. After the first shot, Fuentes began yelling and became agitated again. Fuentes fired off a second round but Officer Carter was not able to see a muzzle flash from his position. Unsure of whether Fuentes was shooting at officers, Officer Carter radioed and yelled for officers to back up, in case Fuentes was directing shots at officers. After officers played for Fuentes Jane Doe 1's voice over the megaphone stating, "I love you," there was a third shot fired. Fuentes then began moving the vehicle back and forth again, never going past the alley way or walkway where officers were positioned. Officer Carter requested that another officer climb atop a trailer in a mobile home park to the east of Fuentes's vehicle.

After a police helicopter showed up, it shined a light toward Fuentes' vehicle until moving to higher altitude. Officer Carter then turned on his weapon flashlight to see better into Fuentes' vehicle. Fuentes moved the vehicle back south out of the light's gaze. Officer Carter saw Fuentes point the gun with his right hand at his chest and then outside the driver's side window while waving it in a southerly direction. After that, Officer Carter saw Fuentes wave the gun towards the backseat of Fuentes' vehicle.

Officers continued negotiating with Fuentes while Officer Carter continued to shine his weapon's light on Fuentes' vehicle. After approximately 30 seconds, Officer Carter saw Fuentes again alternate pointing the gun to his (Fuentes') head and chest. Fuentes then put the gun in his lap and moved his vehicle forward – to a location in the alley beyond his previous movements. Now, Fuentes' vehicle was positioned perpendicular to a walkway where officers were taking cover. Officer Carter took a position on one knee, ready to engage. Then, Officer Carter saw Fuentes take the gun with his right hand at a 45-degree angle, barrel pointing out the driver's side window. Officer Carter didn't fire immediately, unsure of whether Fuentes was going to point the gun back at his own head. Officer Carter saw the gun muzzle go past the driver's window panel and point toward the officers. This caused Officer Carter to fire his rifle approximately six or seven times. Following the shots, Officer Carter saw Fuentes' body language change and push back into the driver's seat. Officer Carter lost

sight of Fuentes' handgun and took a standing position. Officer Carter saw Fuentes' vehicle stop at a speed bump. Officer Carter put his weapon on safe, and kept his weapon flashlight fixed on Fuentes. Sergeant Taylor then directed a team, equipped with ballistic shields, to move in on the vehicle and administer aid. Officers extracted Fuentes' loaded handgun, placing it on the roof of the car. Concurrently, officers extracted Fuentes and began rendering first aid.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One 9mm Glock Semi-Automatic Pistol, one magazine containing ten bullets
- Clothing, person effects
- Seven .233 cartridge casings
- Black underwear
- Camouflage pants
- Beige military boots
- White/grey socks
- Black pocket knife
- Cigarettes
- One 9mm cartridge from the driver's seat
- One 9 mm cartridge case from driver floorboard
- One 9 mm cartridge case from under the driver's seat
- One 9 mm cartridge case from the driver's side window control mechanism
- Several bullet fragments
- Black sweater with apparent bullet holes
- Aluminum foil with burnt black residue
- Plastic cap from hypodermic needle
- One mead notebook taken from Kilo bag
- One three ring binder containing documents taken from Kilo bag
- One envelope containing miscellaneous documents taken from Kilo bag
- One bottle Promethazine DM syrup
- One file folder containing military discharge papers
- Two file folders containing miscellaneous documents
- Two plastic container containing a green leafy substance
- One clear plastic baggy containing a green leafy substance
- One Galco right handed paddle firearm holster
- One full medication bottle (Venlafaxine) prescribed to Edwin Fuentes
- One empty medication bottle, (illegible label) prescribed to Edwin Fuentes
- One empty medication bottle (Alprazolam) prescribed to Edwin Fuentes
- One empty medication bottle (Oxycodone) prescribed to Edwin Fuentes
- A glass jar containing cocaine, lidocaine and heroin

AUTOPSY

On May 17, 2017, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner's Office conducted an autopsy on the body of Edwin Moreno Fuentes. Dr. Davenport concluded the bullet wound on Fuentes' left arm traveled from left to right, causing the bullet jacket to fragment and strike both lungs and the heart. The bullet wound on Fuentes' lower back caused spine and spinal cord injury which in itself would have caused paralysis. The wound on the right side of Fuentes's head was consistent with a graze wound from a bullet and there was no indication it caused damage to the brain or skull. Dr. Davenport concluded that Fuentes died as a result of the gunshot wounds.

EVIDENCE ANALYSIS

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Alprazolam	Postmortem Blood	0.0109 + 0.0008 mg/L
Acetaminophen (Free)	Postmortem Blood	1.97 + 0.23 mg/L
Acetaminophen (Free)	Peripheral Blood	< 2.1 mg/L
Acetaminophen (Free)	Liver	13.1 + 1.5 mg/L
Acetaminophen (Free)	Stomach Contents	< 12 mg/L
Gabapentin	Postmortem Blood	2.15 + 0.26 mg/L
Gabapentin	Peripheral Blood	2.57 + 0.31 mg/L
Gabapentin	Liver	< 3.0 mg/L
Gabapentin	Stomach Contents	< 12 mg/L
Methorphan	Postmortem Blood	> 0.64 mg/L
Methorphan	Peripheral Blood	0.607 + 0.069 mg/L
Methorphan	Liver	> 3.8 mg/L
Methorphan	Stomach Contents	11.8 + 1.4 mg/L
Morphine (Free)	Postmortem Blood	0.0297 + 0.0036 mg/L
Morphine (Free)	Peripheral Blood	< 0.04 mg/L
Morphine (Free)	Liver	0.107 + 0.013 mg/L
THC	Postmortem Blood	0.0082 + 0.0010 mg/L
Promethazine	Postmortem Blood	0.54 + 0.11 mg/L

FUENTES'S PRIOR CRIMINAL HISTORY

Fuentes' criminal history is limited to a 2008 arrest for vandalism. Though reviewed as part of the comprehensive consideration of the facts and background related to the May 16, 2017, shooting, the existence of this prior arrest was a non-factor in the conclusions contained below.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

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

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 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 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 h/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 TPD Officer Carter with Fuentes.

LEGAL ANALYSIS

The facts relied upon in this case stem from a combination of materials, including but not limited to video filmed on body worn cameras, statements of witnesses present during the incident (including Officer Carter), and forensic evidence processed on scene.

The sole legal issue in this case is whether the conduct of Officer Carter on May 16, 2017, was criminal. To charge Officer Carter with a crime, the prosecution must prove beyond a reasonable doubt that no legal justification existed for his conduct. In context, this means the prosecution must prove beyond a reasonable doubt that Officer Carter did not act in self-defense or defense of others. If Officer Carter's actions were justifiable as lawful self-defense or defense of others, then no crime was committed by Officer Carter.

As the Court of Appeal held in a fairly 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 exigent circumstances exist, the California Court of Appeal 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." (*Ransweiler, supra*, 171 Cal.App.4th at 528.)

Here, Officer Carter was clearly justified in believing Fuentes 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 Fuentes in the moments leading up to the shooting.

Extensive efforts to carefully negotiate with Fuentes and de-escalate his behavior transpired for more than an hour. In that time, Fuentes demonstrated erratic and suicidal actions that endangered the lives of multiple peace officers. Fuentes at times stated he only intended to kill himself. However, during negotiations he made other statements and engaged in several actions that justifiably led officers to believe he was prepared to shoot a peace officer to trigger a lethal response. These include, but are by no means limited to, Fuentes asking officers if they would shoot him in the event he pointed his gun at them, as well as by stating he was on a "mission" to end it.

Fuentes responded with volatility to what were, in context, logical negotiation tactics employed to separate him from his firearm. Negotiators emphasized to Fuentes the value of his life/family and repeatedly expressed a goal of getting Fuentes help. A negotiator revealed his own military background to generate rapport. While the OCDA, as previously stated, expresses no legal opinions on training and tactics, its analysis of whether criminal culpability exists necessarily involves consideration of the negotiation methods used to de-escalate the crisis and, more importantly, what impression Fuentes' response would have on officers managing the crisis in the line of fire. This includes Officer Carter.

Over time, Fuentes' agitation rose, particularly when a negotiator refused to place Fuentes' wife in a position of extreme danger. The onset of darkness made visibility a significant concern. The use of lights meant merely to maintain a visual of Fuentes only seemed to increase his unpredictability. Fuentes on three occasions discharged his firearm, thereby confirming a number of facts that were up to that point apparent: Fuentes' gun was indeed loaded, Fuentes was indeed capable of pulling the trigger, and – as only three shots were fired – there were near certainly more bullets still left in Fuentes' gun. This latter suspicion was later confirmed correct; Fuentes' gun was loaded with additional live ammunition.

Throughout the course of this incident, Officer Carter maintained patience as negotiators tried to resolve the crisis. He sought an observation point that, under the circumstances, provided him with a clear vantage point to perform his duty of covering the primary negotiators. Officer Carter fired only after two events occurred which further increased danger to negotiators. First, Fuentes advanced his car to a position where officers were gravely exposed. Second, as he did so, Fuentes pointed his handgun in the direction of these officers.

To ethically charge and lawfully convict Officer Carter, it would be the OCDA's burden to prove beyond a reasonable doubt that he did not act in reasonable and justifiable self-defense or defense of another. As should be apparent from the circumstances of this case, no prosecution would ever meet this burden. A jury analyzing these facts would justly conclude that it was reasonable for Officer Carter to believe innocent life was in danger when he shot Fuentes. Simply stated, Officer Carter committed no 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 there is no evidence of criminal culpability on the part of Officer Carter. There is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Fuentes on May 16, 2017.

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



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Read and approved by **EBRAHIM BAYTIEH**
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