



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

January 13, 2016

Chief Carlos Rojas
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on Feb. 27, 2015
Fatal Incident involving Ernesto Canepa
District Attorney Investigations Case # S.A. 15-003
Santa Ana Police Department Case # 15-05318
Orange County Crime Laboratory Case # 15-43085

Dear Chief Rojas,

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 Santa Ana Police Department (SAPD) Officer Christopher Shynn. Ernesto Canepa, 27, died as a result of his injuries. The incident occurred in the City of Santa Ana on Feb. 27, 2015.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 27, 2015, fatal officer-involved shooting of Canepa. 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 SAPD 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 Feb. 27, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eight interviews were conducted, and eight additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, audio dispatch and radio traffic recordings, coroner's reports, laboratory and identification reports, communications radio traffic, incident scene photographs, surveillance video, and other relevant reports and materials.

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 SAPD officers or personnel, specifically Officer Shynn. 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. 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, or Gangs Units review officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy district attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with the supervising Assistant District Attorney in the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. SAPD Officer Shynn provided a voluntary statement to OCDA Investigators on March 2, 2015. In addition, each of the other SAPD officers who were present during the incident gave statements to OCDA Investigators.

FACTUAL SUMMARY

On Feb. 13, 2015, at approximately 12:00 p.m., a suspect stole a gold and diamond necklace, valued at approximately \$2,000, by physical force off the neck of an elderly female. The robbery occurred after the victim placed her two grandchildren, ages four and seven, into her vehicle parked outside their home. She noticed the suspect drove by her residence, made a U-Turn down the street, drove back toward the victim, and exited his car. The suspect approached the victim while she was seated in her driver's seat and after the victim answered the suspect's questions about directions, he distracted her by handing her a CD. He then reached into her car and forcibly ripped the necklace from the victim's neck causing redness and scratches to the surrounding area. The suspect fled the location with the stolen necklace in an unknown white four-door sedan. His vehicle was described as similar to a Lincoln Town Car or Crown Victoria. The SAPD was notified of the crime.

The suspect was described by the victim as a 30-year-old male Hispanic, 6'0" tall, 180-200 lbs., with short black hair combed to the side, and clean shaven with a medium complexion. The victim believed she could positively identify the suspect and his vehicle if seen again. The crime was also witnessed by the victim's 7-year-old grandson, who was sitting in the backseat of the victim's vehicle with his 4-year-old brother. The victim's older grandson saw the suspect approach the victim, engage her in a brief conversation, and subsequently rip the necklace off his grandmother's neck.

After responding to the scene, SAPD Officers searched for the suspect, but they could not locate him.

On Feb. 16, 2015, a neighbor of the victim notified SAPD that he located surveillance footage from other neighbors' homes in the area where the robbery occurred on Feb. 13, 2015. SAPD reviewed the home video surveillance footage of the suspect's car which assisted the officers in identifying the suspect's vehicle as a white Dodge Charger, with three chrome rims, low profile tires, a large dent in the right rear quarter panel, a different right rear rim, and a partial license plate number.

On Feb. 25, 2015, SAPD Directed Patrol Officers Shynn and Beaumarchais were assigned to the robbery for follow-up investigation. With the partial license plate number, Officer Shynn was able to connect the vehicle to a car dealership in

the City of Santa Ana, which led to Canepa as the person who had purchased the car. The Charger had recently been repossessed by the dealership and released back to Canepa with a Global Positioning System (GPS) tracking device installed on the vehicle by the finance company Moss Financial.

Officers Shynn and Beaumarchais searched police records and found that Canepa had an extensive criminal history, including a 2014 arrest and conviction for resisting/obstructing an SAPD officer. Once Officer Shynn reviewed the police report for the 2014 resisting/obstructing arrest of Canepa, he remembered Canepa from that arrest, in which he responded and assisted the arresting officer. Officer Shynn recalled how uncooperative and combative Canepa was with police when they took him into custody. In that 2014 arrest, SAPD officers were required to use physical force and a Taser against Canepa to overcome his resistance and secure his arrest. Officer Shynn initially recognized Canepa's photograph when he viewed it, but he could not recall where he had seen him until he reviewed the arrest report from the 2014 resisting/obstructing arrest.

Officers Shynn and Beaumarchais created a photo line-up, which contained six photographs of different individuals including Canepa. The victim positively identified Canepa as the suspect who forcefully grabbed the necklace off her neck on Feb. 13, 2015. The victim explained she was afraid for her life and her grandchildren's lives, and she was still terrified. As a result of their investigation, Officers Shynn and Beaumarchais developed enough probable cause to arrest Canepa for felony robbery.

On Feb. 26, 2015, Officers Shynn and Beaumarchais attempted to locate and arrest Canepa at his last known address in the City of Tustin. Canepa's mother was at the residence and told Officers Shynn and Beaumarchais that Canepa had not lived there for some time, and she did not know where he was living. Officers Shynn and Beaumarchais spoke to Tustin Police Department (TPD) Gang Police and Probation officers who were familiar with Canepa. The TPD officers told Officers Shynn and Beaumarchais that they have had many contacts with Canepa in the past, and that Canepa likes to run and fight with police officers. They also stated that Canepa had been previously connected to criminal street gang members.

On Feb. 27, 2015, SAPD Officers Shynn, Beaumarchais, and Corporal Jose Mendoza continued their efforts to locate and arrest Canepa for felony robbery. Officers Shynn, Beaumarchais, and Corporal Mendoza obtained information from the financial company that Canepa's vehicle was parked at 1098 West 3rd Street, in the City of Santa Ana.

Based on the information learned from Moss Financial, Officers Shynn, Beaumarchais, and Corporal Mendoza drove to that location in Corporal Mendoza's undercover police vehicle and observed the Dodge Charger parked on West 3rd Street, in a red zone, facing westbound, approximately 30 feet east of Shelton Street. As Officers Shynn, Beaumarchais, and Corporal Mendoza drove by the vehicle, Officer Shynn observed that the vehicle's emergency lights were activated but the car was unoccupied. Officer Shynn believed there was a high probability that Canepa would be returning to his vehicle soon.

At this point, Officers Shynn and Beaumarchais obtained a marked, black and white SAPD police car before returning to the area of the Dodge Charger. Corporal Mendoza was wearing civilian clothes, and he immediately returned to the area in his undercover vehicle and began surveillance on the Dodge Charger. The vehicle was still parked in the red zone with its emergency lights on when he returned to the location.

Officer Beaumarchais drove the marked black and white police unit, while Officer Shynn sat in the front passenger seat. Officers Shynn and Beaumarchais were each wearing SAPD Directed Enforcement Team uniforms. These uniforms were dark blue Polo style, short sleeve shirts, with white SAPD police patches printed on each sleeve, a white SAPD police badge printed on the left, front breast pocket and "Santa Ana Police" printed in white, with the word "Police" in large white letters printed on the back of the shirts. They were also wearing blue jeans, black boots and a full police belt displaying their metal SAPD police badges on the front of their police belts.

At approximately 10:15 a.m., Corporal Mendoza parked his vehicle on 3rd Street, west of Shelton Street and east of Baker Street, along the south curb, facing eastbound toward the suspect's vehicle. Corporal Mendoza estimated his location to be approximately one block away from the vehicle. Other than minor residential traffic on the street and in the area, Corporal Mendoza had a clear and unobstructed view of Canepa's vehicle. At approximately 10:23 a.m., Officers Shynn and Beaumarchais parked their police unit on Shelton Street, facing southbound, north of Santa Ana Boulevard. While at this location, Officer Shynn sent Corporal Mendoza a photograph of Canepa, via a cellular telephone. Officer Shynn also conducted additional follow-up investigation of the addresses at 1073 and 1077 West 3rd Street. Based on where the Dodge Charger was parked, Officer Shynn felt those two addresses were possibly associated to Canepa and his vehicle. A police records check revealed several past arrests at both locations, however, none involving Canepa. Corporal Mendoza and Officer Shynn had prior knowledge that this area was part of a criminal street gang territory and that its members have been known to commit crimes, such as assaults, robberies and narcotics violations. Officer Shynn and Corporal Mendoza both were aware of prior SAPD search warrants executed at 1073 West 3rd Street and other residences in the immediate area. Officers Shynn and Beaumarchais discussed this information with each other.

Officer Shynn notified SAPD dispatch of their surveillance activity at the location. After that notification, Officers Shynn, Beaumarchais, and Corporal Mendoza switched their police radios from SAPD's main "Green 1" channel to an alternate "Talk Around" (TA) channel. This allowed them to talk directly to each other without the interference of the other routine police radio traffic. At approximately 10:47 a.m., Corporal Mendoza observed a male subject matching Canepa's description exit the front door of the residence, located at 1073 West 3rd Street, and run "at a full sprint" toward the Dodge Charger and enter the driver's seat. Corporal Mendoza advised Officers Shynn and Beaumarchais of his observations via the police TA channel.

Officers Shynn and Beaumarchais began driving towards the location of the Dodge Charger. After his broadcast, Corporal Mendoza's view of the subject and vehicle became temporarily obstructed by traffic occurring in the area, which also delayed Corporal Mendoza's response to the scene by approximately 30 seconds. Officers Beaumarchais and Shynn drove southbound Shelton Street to eastbound 3rd Street and activated the police light bar on top of their unit. Officer Beaumarchais stopped and parked his police unit directly in front of the Charger, along the north curb of West 3rd Street. The police unit was facing eastbound and Canepa's vehicle was facing westbound a couple of feet away from Beaumarchais' unit.

Officers Beaumarchais and Shynn exited their vehicle to contact and arrest Canepa, who was sitting as the sole occupant in the driver's seat of the Charger. Officers Beaumarchais and Shynn walked to the south side of the driver's door of the Charger. According to Officer Shynn, Canepa appeared to be extremely surprised by their presence. The vehicle's windows were rolled up and the engine was on. The windows of the vehicle were tinted, but Officer Shynn was able to see inside the vehicle. Officer Shynn drew and pointed his firearm at Canepa and instructed him to turn the car off several times. Canepa refused by looking Officer Shynn in the eyes and shaking his head indicating "no" in response. Officer Shynn positioned himself slightly east and to the rear of the driver's door of the Charger. Officer Beaumarchais took a position to the west of Officer Shynn and slightly in front of the driver's door. Both officers were facing north toward Canepa. Officer Shynn continued giving Canepa commands to shut off his car and place his hands on the steering wheel. Canepa did not follow the commands.

When Corporal Mendoza arrived at the scene, he discovered the Charger was in a different location than he had last seen it. Corporal Mendoza did not recall seeing the Charger traveling in reverse, but it had moved backwards several feet, eastbound from its original location. According to Corporal Mendoza, the Charger had reversed out of the red zone and was now stopped directly in front of the residence at 1073 West 3rd Street. There was another vehicle parked behind Canepa's car. Corporal Mendoza parked his vehicle in the center of West 3rd Street, facing eastbound, south and parallel to Officers Beaumarchais and Shynn's unit. Corporal Mendoza angled the front of his car slightly towards the driver's side of the Dodge Charger. Corporal Mendoza exited his vehicle and observed Officers Shynn and Beaumarchais standing side by side and facing the driver's door of the Charger. Corporal Mendoza heard Officer Shynn commanding Canepa to turn off the car, put his hands on the steering wheel, and stop moving. Corporal

Mendoza also heard Officer Beaumarchais yelling commands at Canepa in Spanish. Officer Beaumarchais later stated he was yelling, "Apagalo," meaning "turn it off" at Canepa. Canepa refused to comply with the repeated commands and never turned off the car. At approximately 10:48 a.m., Officer Beaumarchais initiated a radio broadcast to SAPD personnel indicating a suspect being held at gunpoint was being uncooperative.

Witness John Doe 1 saw the police officers and heard them ordering Canepa to "turn off the vehicle." He said the commands to Canepa were given over and over. Canepa refused to comply with the officers' orders. Witness John Doe 2 also heard Officer Shynn giving Canepa several commands to "unlock the door" and "turn off the car." Witness John Doe 3 heard the officer give commands to Canepa for several minutes, but Canepa never complied with the orders.

Corporal Mendoza realized there was approximately four feet of distance still between the front of Officer Beaumarchais' police unit and the front of the Dodge Charger. At this time, Corporal Mendoza moved Officer Beaumarchais' unit forward, closing the distance between the two vehicles to a distance of approximately one foot. Corporal Mendoza could see that Canepa was not complying with any of Officer Shynn's commands and was demonstrating "pre-assaultive" behaviors by not listening to officers, moving around the inside of the vehicle, reaching underneath the seat and into the center console. Corporal Mendoza exited the police unit and went around the open driver's door to a position in front of the patrol car's door and next to the left front fender of the unit. Corporal Mendoza was now closer to the Dodge Charger. From this position, Corporal Mendoza observed the Charger travel backwards a couple of feet. Corporal Mendoza had not realized there was still three to four feet of distance between the rear of the Charger and the front of the black Honda parked directly behind the Charger, which allowed Canepa to backup. Officer Beaumarchais also observed the Charger travel backwards approximately two feet. According to Officer Beaumarchais and Corporal Mendoza, when the Charger moved backwards, the distance between the front of the Charger and the front of Officer Beaumarchais' police unit increased to approximately five feet.

After refusing to comply with his verbal commands, Officer Shynn attempted to open the driver's door of the Charger, but the door was locked. Officer Shynn continued giving Canepa commands to shut off the vehicle and unlock the doors, but Canepa continued to refuse to comply by looking directly at Officer Shynn, shaking his head indicating a defiant "no" in response. According to Officer Shynn, Canepa was making furtive movements within the vehicle. Canepa was reaching underneath the front seat and into other areas within the vehicle, while twisting his body from side to side and looking around. Officer Shynn described Canepa as appearing to look for a way to escape the situation. At one point, Canepa turned his whole body to his right, facing completely away from Officer Shynn, and he reached into the back seat of the car. Officer Shynn told OCDA Investigators that based on his training and experience, he recognized Canepa's defiant behavior and furtive movements to be consistent with a person trying to arm himself with a weapon or a person trying to find some way out the car. Canepa continued to be uncooperative and refused to comply with any of Officer Shynn's commands. Officer Shynn repeatedly attempted to open the driver's door of the Charger; however, each time he was met with negative results. Based on Canepa's behavior and previous history with police officers, Officer Shynn believed Canepa was going to try and do anything he could to get out of the situation.

While at the driver's door of the Charger, Officer Shynn observed Corporal Mendoza standing on the other side of the vehicle, near the right front quarter panel of the Charger, with his firearm drawn. Officer Shynn was not sure if Corporal Mendoza was standing on the north curb or in the street. Officer Shynn continued to yell commands at Canepa and Canepa continued to fail to comply with his orders. Canepa continued to shake his head "no" and mouthed unknown words at Officer Shynn, all while continuing to be uncooperative with the officers' commands. At some point, Officer Beaumarchais holstered his firearm, pulled out his baton and yelled at Canepa that he was going to break the window. Officer Shynn continued pointing his gun at Canepa and giving him commands to turn off the car.

Officer Beaumarchais began to raise his arm in a motion that indicated he was going to hit the window. At that moment, Officer Shynn's perception was that Canepa had realized they were going to force entry into the car, at which time Officer Shynn concluded that Canepa decided he better do something to get away. Due to the positioning of the police cars in front of Canepa and the parked car to the rear of him, Officer Shynn believed there were only two possible options for Canepa to escape in his car. Officer Shynn believed Canepa would either drive the Charger northbound onto

the north curb and sidewalk area toward Corporal Mendoza or Canepa would drive the Charger southbound toward him and Officer Beaumarchais. Shortly thereafter and before Officer Beaumarchais could even attempt to hit the window with his baton, Officer Shynn observed Canepa place his hand on the center gear shift and moved the gear shift from "park" to "drive." At that specific point in time, Officers Shynn and Beaumarchais were very close to the driver's door, estimated to be within one to two feet south of Canepa's vehicle.

Officer Beaumarchais was standing south of the vehicle, facing north, in the area of the left, front quarter panel of the Charger. Officer Shynn, who was also standing south of the vehicle, facing north, indicated to OCDA Investigators that he felt the Charger begin to move forward. At that moment, Officer Shynn said he felt like Canepa was going to try and run over Corporal Mendoza, Officer Beaumarchais, or himself in his effort to escape. Officer Shynn indicated that he believed Canepa was trying to kill him and/or his fellow police officers. In response, Officer Shynn fired his firearm three to four times. There was a brief pause where Officer Shynn indicated that he still felt Canepa was a threat to his life and the lives of his fellow officers, as Canepa continued to move around in the car and Officer Shynn felt Canepa's vehicle continue to move. Officer Shynn fired two to three more shots at Canepa.

Officer Beaumarchais told OCDA Investigators that just prior to the shots fired by Officer Shynn, he observed the Charger lunge forward, and he then saw Canepa lean over to his side, causing Officer Beaumarchais to lose sight of Canepa's hands. Officer Beaumarchais believed Canepa was possibly reaching for a gun or some other type of weapon. Once the Charger moved forward, Officer Beaumarchais also lost sight of Corporal Mendoza, who was on the other side of the vehicle. Officer Beaumarchais said that's when Officer Shynn began firing his gun at Canepa.

According to Corporal Mendoza, he heard the Charger's engine "rev" and then the vehicle accelerated forward at which time he thought Canepa was going to run him over and kill him. In response, Corporal Mendoza took an evasive action by quickly moving in a northwest direction away from the vehicle, to avoid being run over by Canepa. Corporal Mendoza explained that when Canepa accelerated forward in the Charger, he pinned the front of his car against the patrol car. John Doe 2 told OCDA Investigators that he observed seeing Corporal Mendoza move back and away from the Charger in a "defensive manner". When John Doe 2 saw the "defensive move" away from the car by Corporal Mendoza, John Doe 2 then heard Officer Shynn fire five to six shots into the driver's door window of the Charger.

John Doe 1 also told OCDA Investigators that he observed Canepa's interaction with the police officers and indicated that he saw Canepa's vehicle move forward, as if he was "teasing" the officers. As the officers continued giving Canepa commands to shut off his car and lower his window, Canepa's vehicle suddenly "lunged" forward toward Officer Beaumarchais' position. Witness John Doe 1 described the vehicle's movement as "real quick." At that moment, John Doe 1 felt that Officer Beaumarchais was going to be pinned between Canepa's vehicle and the other vehicle. John Doe 1 told OCDA Investigators, "That guy was going to run him over." It is clear that witness John Doe 1 believed Canepa was going to run over Officer Beaumarchais. John Doe 1 stated that based on Canepa's actions, he thought Canepa must have been suicidal.

John Doe 3 saw the officers and heard them giving commands to Canepa. He then saw Officer Shynn remove his handgun and point it at Canepa. After the commands continued, the Dodge Charger reversed away from the marked police car and then drove forward colliding with the front of the marked police car. It was at that time that Officer Shynn fired four to five shots from his handgun. John Doe 3 indicated that Corporal Mendoza was standing on the sidewalk next to the left front tire of the marked police car when Canepa collided with the front of the police car.

An examination of all the available evidence shows that Officer Shynn fired his service pistol eight times through the closed driver's window of Canepa's vehicle, striking Canepa six times in the head and neck area. Two of the bullets missed Canepa, one terminating inside the vehicle and the other striking the exterior siding of the house located at 1073 West 3rd Street. Officer Shynn explained his conduct by stating that he feared for his partners' and his own safety, and thus made the decision to fire his gun. Canepa's vehicle came to rest against the front bumper of the police unit causing minor damage to the front license plate of the Charger. No damage occurred to the police car.

After the shots were fired by Officer Shynn, Officer Beaumarchais initiated a "998" (shots fired, officers involved) radio broadcast over the SAPD "Green 1" channel on his police radio and requested paramedics to their location. As a result of the broadcast, additional officers were dispatched and responded to the scene to assist. Officer Beaumarchais used his baton to break out the remaining glass of the driver's door to the Charger, allowing Officer Shynn to reach in and unlock the door. Officer Shynn then opened the driver's door and he and Officer Beaumarchais pulled Canepa out of the vehicle. Officer Beaumarchais then searched and handcuffed Canepa.

Shortly after being called to the scene, Orange County Fire Authority Personnel (OCFA) observed that Canepa was lying in a prone position next to a vehicle and his arms were handcuffed behind him. OCFA personnel observed a large amount of blood and trauma to Canepa's head, visually concluding Canepa had died. OCFA further assessed Canepa's condition by taking his pulse and checking for respirations. Canepa had no pulse or respirations, confirming OCFA's visual assessment of Canepa's death. At approximately 11:02 a.m., OCFA determined that Canepa was deceased and was not a viable patient. Forensic scientists assisted in collecting evidence at the scene. When they initially opened the front driver's side of the Charger, they found the gear shift was in the "drive" position. The gear shift was then placed in the "neutral" position by a forensic scientist, so they could examine the vehicle and scene. Among other items, a Colt Defender replica handgun was recovered from the lower driver's side front door panel of the Charger.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- EM #1 to EM #8: Eight separate .40 cartridge cases, head stamp WINCHESTER 40 S&W
- EM #9 SAPD handheld police radio and holder
- EM #10 Bullet jacket with apparent blood
- EM #11 Red and white approximate 4-inch folding knife "Fire Fighter" on the side of it
- EM #12 Bullet jacket with apparent blood
- EM #13 Bullet hole and apparent bullet core
- Colt Defender replica handgun, caliber .177 (4.5mm) serial number 13A05857, collected from the Dodge Charger's lower driver's side front door panel storage compartment
- Bullet fragment from head wound
- Bullet fragment from ground below head
- Canepa's clothing
- Canepa's Dodge Charger
- Small, black pouch / bag containing white bindle containing white crystal substance, collected from Canepa's pocket
- White envelope containing a green, leafy substance, collected from Canepa's person
- A small black Stanley screwdriver (approximately 4 1/2 inches in length) with bent tip, collected from Canepa's pocket

EVIDENCE ANALYSIS

Firearms Examination

A forensic scientist from the Orange County Crime Lab examined the following items of evidence:

- Glock Model 22 pistol, .40 Smith & Wesson caliber, serial# LPB069 [Officer Shynn's weapon]
- Cartridge cases and projectiles from the scene
- Projectiles from the autopsy
- Projectile from right scalp wound
- Projectiles from Dodge Charger

A firearms examination was conducted showing that the projectiles and cartridge cases that had sufficient markings for comparison purposes were consistent with being fired from Officer Shynn's weapon.

Toxicological Examination

A sample of Canepa's blood was collected. A forensic scientist from OCCL examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.657 +/- 0.041 mg/L
Amphetamine	Brain	0.967 +/- 0.060 mg/kg
Methamphetamine	Postmortem Blood	7.54 +/- 0.50 mg/L
Methamphetamine	Brain	10.1 +/- 0.7 mg/kg
Phenethylamines	Postmortem Blood	Presumptive Positive
Opiates	Postmortem Blood	Negative
Cocaine and/or Metabolite	Postmortem Blood	Negative
Ethanol/Volatiles	Postmortem Blood	Not Detected
Benzodiazepines	Postmortem Blood	Negative
Oxycodone and/or Oxymorphone	Postmortem Blood	Negative
Cannabinoids	Postmortem Blood	Negative
Zolpidem	Postmortem Blood	Negative

Controlled Substance Examination

The white crystal substance recovered from Canepa's person was collected. A forensic scientist from OCCL examined the evidence. The following results were obtained:

EVIDENCE	RESULTS & INTERPRETATIONS
White crystalline substance (located in Canepa's possession)	1.71 +/- 0.01 grams, contains Methamphetamine

AUTOPSY

On March 3, 2015, a postmortem examination of Canepa was conducted by Dr. Etoi Davenport, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Davenport determined that six bullets struck Canepa, as follows: perforating gunshot wound of left occipital/parietal scalp, perforating gunshot wound of lateral left temple, perforating gunshot wound of lateral left jaw, tangential perforating gunshot wound of the left chin, gunshot wound of proximal dorsal medial left arm, and a gunshot wound of the mid-dorsal left arm. Following the autopsy, Dr. Davenport opined that Canepa's death was the result of multiple gunshot wounds.

CANEPA'S PRIOR CRIMINAL HISTORY

Canepa's criminal history was reviewed and considered. Canepa had a California Criminal History that dates back to 2008. At the time of the shooting, Canepa's driver license was suspended and a criminal protective restraining order against Canepa was in place. In addition, Canepa's criminal history revealed 13 aliases, multiple arrests, convictions, and probation for the following violations:

- United States deportation proceedings, Aug. 15, 2012
- Spousal battery
- Battery
- Possession of controlled substances
- Altering an imitation firearm

- Possession of burglary tools
- Probation violation
- Burglary
- Resisting or obstructing a police officer
- False identification to a police officer
- Driving on a suspended driver's license
- Driving while under the influence of drugs
- Under the influence of a controlled substance
- Unlicensed driver
- Destroy or conceal evidence
- Possession of drug paraphernalia
- Possession of stolen property/disturbing public peace

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

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

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." The Court of Appeal in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony "is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (*Kortum v. Alkire, supra*, 69 Cal.App.3d at p. 333.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he/she is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of SAPD Officer Shynn with Canepa.

LEGAL ANALYSIS

The facts in this case are determined by considering Officers Shynn, Beaumarchais, and Corporal Mendoza's statements to the OCDA Investigators, which were supplemented by other relevant material, and witnesses present at the incident.

The issue in this case is whether the conduct of Officer Shynn on Feb. 27, 2015, was criminally culpable and without legal justification. Therefore, in order to lawfully charge Officer Shynn with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or lawful defense of others. If Officer Shynn's actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted or justified.

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

Based on the totality of all the available evidence, the prosecution will not be able to prove beyond a reasonable doubt that Officer Shynn was not justified in believing that Canepa 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 Canepa in the moments leading up to the shooting. Canepa was completely uncooperative with the police officers and deliberately defied the officers' directives to exit his vehicle and turn the engine off on several occasions during the encounter. While inside the vehicle, Canepa was making furtive movements and was demonstrating pre-assaultive behavior. Canepa was moving around the inside of the vehicle, reaching underneath the seat and into other areas within the vehicle, including the center console, while twisting his body from side to side and looking around. To Officer Shynn, as well as the other two officers at the scene, Canepa appeared to be looking for a weapon and/or a way to escape the situation. At one point, Canepa turned his whole body to his right, facing completely away from Officer Shynn, and reached into the back seat of the car. Based on Officer Shynn's training and experience, he recognized Canepa's defiant behavior and furtive movements to be consistent with a person trying to arm himself with a weapon. Instead of complying with the officers' directives, Canepa made the conscious decision to "rev" the engine, put the vehicle into "drive," and accelerate the car forward in a lunging motion toward the officers. In addition to the three officers present at the scene, three separate civilian witnesses confirmed Canepa's failure to comply with the officers' directives and the lunging forward movement of the vehicle.

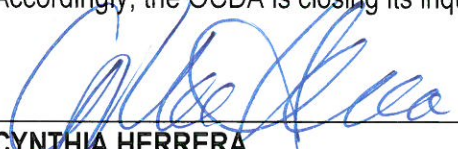
In addition to his behavior during this incident, Canepa's history of being uncooperative and combative with police officers and being contacted with other gang members in the past, was known to Officers Shynn, Beaumarchais, and Corporal Mendoza, prior to their interaction with Canepa on Feb. 27, 2015. In fact, Officer Shynn had personal knowledge of the SAPD 2014 arrest where physical force and a Taser gun were needed to overcome Canepa's resistance and secure his arrest. Canepa's behavior while inside the vehicle, coupled with the information Officers Shynn and Beaumarchais received about Canepa's propensity to be uncooperative and combative with police, led the officers to fear for their lives throughout this incident. This was not an unreasonable fear on the part of Officers Shynn and Beaumarchais. Officer Shynn believed Canepa was going to try to run over and kill Corporal Mendoza, Officer Beaumarchais, or himself with his vehicle in his effort to escape. Civilian witnesses to the incident confirmed they believed Canepa was going to run over the officers with his vehicle.

It should also be noted and emphasized that in order for Officer Shynn 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 he did not act in reasonable and justifiable self-defense or defense of another when he shot at Canepa causing his death. 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 Officer Shynn to believe that his life and the lives of his fellow police officers were in danger.

CONCLUSION

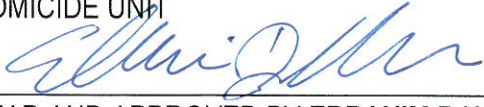
Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is a lack of sufficient evidence to prove beyond a reasonable doubt criminal culpability on the part of Officer Shynn when he shot and killed Canepa on Feb. 27, 2015.

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



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READ AND APPROVED BY **EBRAHIM BAYTIEH**

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