



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

July 21, 2021

Chief Robert Dunn
Fullerton Police Department
237 W. Commonwealth
Fullerton, CA 92832

Re: Officer-Involved Shooting on May 27, 2020
Fatal Incident involving Hector Hernandez
District Attorney Investigations Case # S.A. 20-014
Fullerton Police Department Case # 20-28991
Orange County Crime Laboratory Case # 20-45200
Orange County Coroner's Office Case # 20-02656-MM

Dear Chief Dunn,

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 Fullerton Police Department (FPD) Corporal Jonathan Ferrell. Hector Hernandez, age 34, died as a result of his injuries. The incident occurred in the City of Fullerton on May 27, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 27, 2020, fatal, officer-involved shooting of Hector Hernandez (hereinafter Hernandez). 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 FPD 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 May 27, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 25 interviews were conducted, and 41 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: FPD reports, audio dispatch and radio traffic recordings;

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

☒ MAIN OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

☐ NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

☐ WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 898-7261

☐ HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

☐ JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

☐ CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

Video and Body Worn Camera (BWC) 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 Hernandez; criminal history records related to Hernandez 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 and if the use of force was consistent with the law on the part of FPD officers or personnel, specifically Corporal Jonathan Ferrell. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, 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 Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Corporal Ferrell gave a voluntary statement to OCDA Investigators on June 3, 2020.

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 is releasing

to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage as follows:

<http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

On May 27, 2020, at approximately 10:00 p.m., Fullerton Police Department (FPD) received a 911 call from John Doe 1. The 911 call depicts John Doe 1 telling dispatch, "My stepdad hit my brother and they're fighting right now!" John Doe 1 further exclaimed, "He has a knife, hurry up!" Dispatch related these details to FPD officers who immediately responded to the call. As the call continued, dispatch could hear yelling and screaming in the background. Towards the end of the call, apparent gunfire is heard in the background and John Doe 1 yelled, "He tried shooting at me!" John Doe 1 told dispatch that Hernandez was "drunk" and there were small children possibly still inside the residence. As dispatch gathered information throughout the call, officers were updated through their system as to the evolving circumstances surrounding the incident.

Moments later, dispatch received another call from a neighbor. The 911 call depicts a terrified woman desperately asking for police officers to respond to her house. She is clearly distraught and can be heard telling the dispatcher she heard "4 or 5" gunshots. Dispatch assures her that officers are already on the way and instructs her not to leave her home. Dispatch relays this information to responding officers.

The first officer to arrive on scene was FPD Corporal Jonathan Ferrell who responded to 3620 West Avenue in Fullerton CA, Hernandez' residence, at approximately 10:04 p.m. Corporal Ferrell arrived with his K9, Rotar, and parked his vehicle near Hernandez' residence. Corporal Ferrell exited his vehicle with Rotar and observed several individuals walking westbound down the street, away from the Hernandez residence. These individuals were later identified as Hernandez' girlfriend (hereinafter Jane Doe 1), and her children, ages 17, 19, 15, and 13, (hereinafter John Doe 1, John Doe 2, John Doe 3, John Doe 4). Corporal Ferrell instructed them to stay away from the Hernandez residence. Even though many of the children were able to escape, Corporal Ferrell was not able to account for the remaining children and believed they were still inside of the residence with the armed and extremely intoxicated Hernandez.

As Corporal Ferrell and Rotar made their way towards Hernandez' residence, Corporal Ferrell observed an unknown male (hereinafter John Doe 5) standing on the sidewalk, near Hernandez' residence. Corporal Ferrell observed that John Doe 5's clothing matched the description of Hernandez' clothing based on the information provided by dispatch. Unsure of John Doe 5's identity or involvement, Corporal Ferrell detained John Doe 5 on the sidewalk at gunpoint. As Corporal Ferrell detained John Doe 5, Corporal Ferrell observed another male, later identified as Hernandez, walking towards Corporal Ferrell and John Doe 5, near the front of Hernandez' residence. Corporal Ferrell ordered Hernandez to place his hands in the air. Hernandez ignored the command. Corporal Ferrell ordered Hernandez to get on the ground. Hernandez ignored this command, turned, and entered his residence. Corporal Ferrell continued to detain John Doe 5 on the sidewalk as he waited for other responding officers to arrive on scene. While he had John Doe 5 detained, Corporal Ferrell asked John Doe 5 who had the firearm. John Doe 5 stated Hernandez had the firearm. John Doe 5 also confirmed that there was a young boy still trapped inside of the home with Hernandez. Corporal Ferrell informed other officers via radio that Hernandez was back inside of the residence.

Soon thereafter, other officers began to arrive on scene. The officers determined that they would have John Doe 5 stand up, keep his hands raised, and walk backward toward them. Once they were

able to get him to a place of safety, they could begin to focus on Hernandez and the young boy who was believed to still be inside of the home. The officers ordered John Doe 5 to stand up, keep his hands high above his head, and walk back towards them slowly. Cell phone video taken by a neighbor shows John Doe 5 standing up off of the curb, hands raised, and walking backwards towards officers. John Doe 5 continued towards the officers until officers were able to detain him out of harm's way. After John Doe 5 had been moved to a place of safety, officers began to plan how to deescalate the situation in order to rescue the children inside the home and prevent Hernandez from harming them. While the officers were discussing a tactical approach, Hernandez emerged from the residence. The officers could not see the children and believed they were still inside.

Upon seeing Hernandez outside and away from the children, Corporal Ferrell believed that the deployment of Rotar would be an appropriate and effective use of non-lethal force to detain Hernandez. He began to walk towards the front of the residence while other officers followed him and provided cover. Hernandez walked towards the sidewalk directly in front of his residence. Officers began to immediately order him to raise his hands. Hernandez complied. There did not appear to be anything in Hernandez' hands at this time. Officers then ordered him to the ground. Instead of complying with this command, Hernandez turned and walked back towards the residence, hands still raised. In order to prevent Hernandez from retreating back inside of the house where the children were believed to be, Corporal Ferrell deployed Rotar.

Body worn camera (BWC) footage taken from both Corporal Ferrell as well as Officer Luis Ramirez depict the following: Corporal Ferrell was approximately twenty (20) feet from Hernandez and released Rotar. Corporal Ferrell approached the front of Hernandez' home with his service weapon drawn. He was the lead officer to approach Hernandez. Other officers followed Corporal Ferrell with their service weapons drawn. They used parked cars on the street as cover as Corporal Ferrell approached Hernandez. Hernandez was standing on his front lawn and had his arms raised, but he turned to walk towards the front door of his home. The BWC clearly shows Hernandez did not have anything in his hands at this time. Hernandez was not obeying commands to stop. Corporal Ferrell approached with Rotar with his service weapon pointed at Hernandez. Corporal Ferrell was directing Rotar towards Hernandez. The BWC shows Corporal Ferrell was approximately ten (10) feet from Hernandez, while Hernandez was standing on the front lawn of the residence, approximately two to three (2-3) feet from the front door. Rotar ran down the sidewalk away from Hernandez. Corporal Ferrell continued to yell commands towards Rotar to redirect Rotar's attention towards Hernandez. Corporal Ferrell was able to direct Rotar back towards Hernandez. As Rotar ran towards Hernandez, Hernandez lowered his right hand and placed his hand by his waist and apparently took possession of his knife.

As Hernandez had his hand by his waist, Rotar bit Hernandez and took him to the ground. Corporal Ferrell, standing approximately three to four (3-4) feet from Hernandez and Rotar, continued to point his service weapon at Hernandez. Once Hernandez was on the ground, Corporal Ferrell quickly advanced upon Hernandez and Rotar on the front lawn. Corporal Ferrell was within inches of Hernandez, standing directly over him, and ordered Hernandez to show Corporal Ferrell his hands. Hernandez did not comply. BWC footage depicts an open folding knife in Hernandez' right hand. While holding the open knife, Hernandez made a stabbing motion with his right hand towards Corporal Ferrell. Hernandez did not strike Corporal Ferrell, who was inches away from Hernandez, but stabbed Rotar in the back/shoulder area. Rotar made a distinct "yelp." Corporal Ferrell discharged his service weapon one time, immediately yelled, "He's got a knife!" and discharged the firearm again. The BWC depicts Corporal Ferrell within one foot of Hernandez and within arm's length of Hernandez when both shots were fired. Both shots were fired within three (3) seconds of Hernandez stabbing Rotar. After he discharged his service weapon for the second time, Corporal

Ferrell took his left hand off of his firearm and used his left hand to pull Rotar off of Hernandez. His right hand was holding his firearm and continued to point it at Hernandez. Corporal Ferrell backed up with Rotar away from Hernandez as other officers approached Hernandez with their guns drawn. The BWC footage shows the entire time between Corporal Ferrell releasing Rotar until Corporal Ferrell had discharged his service weapon twice, grabbed ahold of Rotar, and started walking back to the patrol car was approximately twenty (20) seconds.

Corporal Ferrell guided Rotar back to Corporal Ferrell's K9 vehicle. Corporal Ferrell passed by Officer Brandon Pinder and stated, "I don't know if [Rotar's] been stabbed, [Hernandez] was going after me." The BWC shows that this statement was made forty-eight (48) seconds after Corporal Ferrell had gotten Rotar off of Hernandez. Corporal Ferrell inspected Rotar and observed a large wound consistent with a stab wound to Rotar's left shoulder. Corporal Ferrell transported Rotar to VCA Yorba Regional Animal Hospital where Rotar received several stitches to close the 2" wound.

Officers handcuffed Hernandez while he was on the ground. Officers requested paramedics and began to perform first aid. Paramedics arrived and continued to perform first aid. Hernandez was transported to University of California-Irvine Medical Center where Hernandez succumbed to the two gunshot wounds.

Officers searched Hernandez and confirmed that he was not in possession of any other weapons. A search of the ground immediately surrounding Hernandez yielded an open, locked Kershaw knife, with a 3" blade.

Investigators conducted a search of the residence. Investigators discovered John Doe 6, Hernandez' nine-year-old son inside the residence. Investigators found a fabricated Glock style Polymer 80 PF940C firearm in Hernandez' bedroom closet. This firearm was found on top of clothing on a shelf. Under Hernandez' mattress, investigators found two .40 caliber magazines, with visible cartridges. In a cabinet in the master bedroom, investigators found a bag of suspected methamphetamine. Inside of the master bedroom closet, investigators found a fabricated AR-15 style rifle, with no serial number as well as AR-15 magazines with cartridges inside.

Jane Doe 1 provided officers a statement about what took place prior to the officers' arrival. According to Jane Doe 1, Hernandez, Jane Doe 1, and John Doe 6, were at a party earlier in the evening. Hernandez drank several alcoholic beverages and became heavily intoxicated. Hernandez became angry and began to argue with Jane Doe 1. Hernandez drove Jane Doe 1 and John Doe 6 home. Upon arrival, Hernandez and Jane Doe 1 continued to argue. During their argument, Hernandez called in John Doe 2. John Doe 2 entered the bedroom and observed Hernandez place his hands around Jane Doe 1's neck. Hernandez told John Doe 2 "don't try and stop me if you see me doing this to your mom". John Doe 2 told Hernandez that he would not let Hernandez hurt his mom and told Hernandez to sleep it off.

Hernandez left the bedroom and began to argue with John Doe 3 in the living room. Hernandez hit John Doe 3 during the argument causing Jane Doe 1 to yell for help. John Doe 1, John Doe 2, and John Doe 3, all began to physically fight with Hernandez. Hernandez removed a knife from his pocket. Jane Doe 1 screamed for the boys to run out of the house. As Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, and John Doe 4 were trying to get out of the house, Jane Doe 1 observed Hernandez retrieve a firearm. She yelled for the boys to run out of the house and get away from Hernandez. As they ran out of the house, Hernandez was shooting the firearm at Jane Doe 1 and her children. They all ran down the street, called 911, and were contacted by police.

John Doe 1, John Doe 2, John Doe 3, and John Doe 4, were all interviewed and provided a similar sequence of events as Jane Doe 1.

Investigators conducted a canvass of the neighborhood. Several of neighbors confirmed hearing gunshots prior to the police arriving. One of the neighbors told investigators he observed Jane Doe 1's children running down the street and Hernandez and Jane Doe 1 in the driveway. He heard several gunshots during the altercation. He reviewed his video surveillance system and observed that his surveillance system captured part of the incident. He turned it over to investigators. This video captured several individuals, later identified as Jane Doe 1's children, running out of the Hernandez residence, down the street. Hernandez is seen exiting the residence walking on the sidewalk in the same direction. This video depicts Hernandez clearly holding a pistol in his right hand. At one point during the video, while the pistol is pointed at the ground by his side, a bright explosion consistent with a "muzzle flash" is seen at the of the barrel, indicating that Hernandez had fired the pistol. Seconds later, an unidentified male walked down the sidewalk with a bicycle in his hands. The video depicts the male walked directly past Hernandez. The video shows the man looked back at Hernandez several times as he walked past him. This male was never identified during or since the investigation has concluded.

Corporal Ferrell provided a voluntary statement about his observations and conduct on May 27, 2020. The information listed below is a summary of Corporal Ferrell's statement to the investigators.

Corporal Ferrell stated that he was on patrol that evening when he heard dispatch request that officers respond to 3620 West Avenue in Fullerton. The details of the call were that there was a disturbance between a stepfather and the reporting party. Dispatch stated that the stepfather was armed with a knife. Corporal Ferrell dispatched himself to the call and began to respond to the scene. As he was responding, he heard dispatch update the officers about the call and report that the stepfather was armed with a firearm and shots had possibly been fired. He heard dispatch state that there was screaming in the background of the call and other people were calling 911 and reporting gunshots in the area. Finally, he was told by dispatch that officers had responded to this residence several times in the past for domestic violence incidents.

With all of this in mind, Corporal Ferrell arrived approximately three minutes after the initial dispatch. He was the first on scene. He took his K9, Rotar, out of the patrol vehicle and approached the residence. He heard a verbal argument and observed several individuals yelling towards the suspect's residence. Corporal Ferrell directed them out of the area and immediately observed an unknown male (later identified as John Doe 5) and detained him at gunpoint. While detaining John Doe 5, Corporal Ferrell observed Hernandez exit the residence. Corporal Ferrell gave him commands to get on the ground. Hernandez ignored the commands and went back into the residence. Corporal Ferrell asked John Doe 5 about a firearm. John Doe 5 told Corporal Ferrell he did not have a firearm but heard gunshots. John Doe 5 also told Corporal Ferrell that there was a young child still in the residence. As other responding officers arrived, they moved John Doe 5 to a place of safety away from the residence.

As officers began to strategize how to communicate with Hernandez, Hernandez exited the residence. Corporal Ferrell and the other officers began to approach Hernandez in order to prevent Hernandez from going back inside the home. Corporal Ferrell explained that Hernandez was standing outside of the home, with his hands up, yet still not complying with orders from the officers. While Corporal Ferrell believed Hernandez was possibly armed, he could not see any weapons in Hernandez' hands. Corporal Ferrell then observed Hernandez moving back towards the front door to the residence. Corporal Ferrell explained that his main concern was preventing Hernandez from

retreating back inside the home with the child and turning into an “armed barricaded suspect with a hostage.” Corporal Ferrell explained that at this moment, he decided to approach the possibly armed suspect because “the safety of that child [inside the home] is, is paramount to [him].” Corporal Ferrell deployed Rotar who took Hernandez to the ground. Corporal Ferrell quickly approached to regain control of Rotar and get Rotar off of Hernandez. Corporal Ferrell never observed Hernandez lower his right hand to his waist and remove the knife. Corporal Ferrell first observed Hernandez holding a knife in his right hand when Corporal Ferrell was grabbing ahold of Rotar and was standing over Hernandez. He then immediately observed Hernandez making stabbing motions towards Corporal Ferrell. Corporal Ferrell feared for his life due to the close proximity he was to Hernandez and Hernandez’ unrestrained arms. Corporal Ferrell maintained that he was in fear of being imminently stabbed by Hernandez. Corporal Ferrell fired two rounds, grabbed ahold of Rotar, got Rotar off of Hernandez, and backed away from Hernandez.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- From Corporal Ferrell:
 - 1 Glock, Model 17, semiautomatic pistol, with a Streamlight flashlight mounted to the frame.
 - 2 Glock, Model 17, cartridge capacity magazines each containing 17 cartridges head stamped WIN 9mm Luger.
 - 1 cartridge case head stamped WIN 9mm Luger found in the chamber of Corporal Ferrell's Glock, Model 17 semiautomatic pistol.
- From Hernandez’ residence:
 - 1 Glock, Model 17, cartridge capacity magazine from the magazine well of the pistol, with 15 cartridges.
 - 1 Fabricated Glock style Polymer 80 PF940C, semiautomatic pistol.
 - 1 Fabricated AR-15 style rifle, no serial number.
- From the front yard of Hernandez’ residence:
 - 1 cartridge case head stamped WIN 9mm Luger.
 - 1 cartridge case head stamped WIN 9mm Luger.
 - 1 Kershaw single edged knife.
 - 2 Blood samples from John Doe 3 and John Doe 4.
 - 2 Buccal Samples from John Doe 3 and John Doe 4.
 - 2 Bloodstain Samples.
- From the gutter adjacent to West Avenue
 - 1 cartridge case head stamped Winchester 40 S&W.
- From Hernandez:
 - 1 Pair of Black and Gray Boxers.
 - 1 Pair of Gray Socks.
 - 1 Pair of Gray Shorts.
 - 1 White T-Shirt.

AUTOPSY

On May 29, 2020, Forensic Pathologist Dr. Nicole Ellis of Orange County Coroner's Office conducted an autopsy on the body of Hernandez. The autopsy revealed one gunshot wound on the right arm and one gunshot wound on the right chest, abrasions, and lacerations. The first gunshot wound was located on the upper arm with an entry and exit. The first gunshot re-entered through the chest and caused an abrasion. The first gunshot struck the sternum, heart, and diaphragm. The second gunshot wound entered through the right chest and did not exit Hernandez' body. The second gunshot perforated the heart, lung, and diaphragm and was lodged in the upper back. A small abrasion on the right side of the forehead above the eyebrow was located, and the right periorbital area showed faint bruising. A small laceration was located on the nasal bridge between the eyebrows. The abdominal area showed abrasions over a small area. The right calf also showed similar abrasions. Dr. Ellis determined that the cause of death was multiple gunshot wounds and the manner of death a homicide.

EVIDENCE ANALYSIS

Firearms & Projectile Examination

Corporal Ferrell's Glock, Model 17, semi-automatic pistol was test fired at the Orange County Crime Lab and operated without malfunction. It was determined that two cartridge cases and two bullets that were collected at the autopsy were fired from Corporal Ferrell's pistol.

Hernandez' fabricated Glock style Polymer pistol was test fired and operated without malfunction. It was determined that one of the cartridge cases located at the scene was fired from this fabricated Glock Polymer pistol.

The fabricated AR-15 style rifle found in Hernandez' residence possesses the physical characteristics of an assault weapon as defined in Penal Code section 30515. The fabricated AR-15 style rifle failed to feed one cartridge, but fired all of the test fires using a laboratory collection magazine. It did not operate as a fully automatic firearm.

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.350 ± 0.013 % (w/v)
Acetaldehyde	Postmortem Blood	Detected
Caffeine	Postmortem Blood	Detected
Sertraline	Postmortem Blood	0.247 ± 0.0035 mg/L
THC	Postmortem Blood	0.0018 ± 0.0003 mg/L

The toxicological examination revealed Hernandez was extremely intoxicated at the time of the incident. His blood alcohol level was a 0.35%. This level of alcohol is widely considered a life-

threatening level¹.

HERNANDEZ' PRIOR CRIMINAL HISTORY

Hernandez' criminal history was reviewed and considered. Hernandez had a California Criminal History that dates back to 2004. He has previously been arrested for the following charges:

- Speed Contest and Driving Under the Influence of Alcohol/Drugs
- Child Abuse
- Domestic Violence

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 done in compliance with California Penal Code section 835a. 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 a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, 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 objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

¹ [Understanding the Dangers of Alcohol Overdose | National Institute on Alcohol Abuse and Alcoholism \(NIAAA\) \(nih.gov\)](#); [Blood Alcohol Level | BAC Chart Content Meanings](#); [What Is BAC? | Office of Alcohol Policy and Education \(stanford.edu\)](#)

Penal Code Section 835a also requires that, prior to the use of deadly force, the officers make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently, and use other available resources and techniques if reasonably safe and feasible to do so.

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 from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he 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 applicable to the circumstances surrounding the interactions of FPD Corporal Ferrell with Hector Hernandez.

LEGAL ANALYSIS

The facts in this case are determined by considering statements made by witnesses present at the incident, including Corporal Ferrell's statements to the OCDA investigators, reviewing the videos captured by body worn cameras, and reviewing all evidence collected during the investigation.

The issue is whether the conduct of Corporal Ferrell on May 27, 2020, was criminally culpable and without justification. As stated above, in order to charge Corporal Ferrell 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 Corporal Ferrell with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions that day of Corporal Ferrell 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 recent case, it is well settled that "[u]nlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where 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.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Finally, deadly force is not an appropriate intentional use of force, in order to protect property. "The intentional use of deadly force merely to protect property is never reasonable." (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1360; *People v. Hecker* [*9] (1895) 109 Cal.451, 464-465. Civil Code section 50 provides that "necessary force" may be used to protect from wrongful injury to property but must "be read in the light of the common law At common law in general deadly force could not be used solely for the protection of property. [Citations.] ' "The preservation of human life and limb from grievous harm is of more importance to society than the protection of property." ' [Citation.]" (*People v. Ceballos* (1974) 12 Cal.3d 470, 483, 116 Cal. Rptr. 233. According to the law, dogs are personal property and are not human beings. (See Penal Code section 491). As such, generally speaking, the laws of self-defense and defense of others do not apply to dogs. Thus, Corporal Ferrell's use of deadly force would not have been justified if he had acted in order to protect Rotar. Nothing in this legal analysis suggests or concludes that Corporal Ferrell's use of lethal force was justified in order to protect Rotar from suffering great bodily injury and/or death.

The totality of all the available evidence shows that the prosecution will not be able to prove beyond a reasonable doubt that Corporal Ferrell was not justified in believing that Hernandez posed a significant threat of death or serious physical injury to Corporal Ferrell at the time Corporal Ferrell discharged his firearm. First, the BWC footage and dispatch communications support the conclusion that Corporal Ferrell reasonably believed Hernandez posed a threat of great bodily injury and/or

death to himself and others based on the information he learned as he was responding to the call. FPD received the 911 call from John Doe 1 who stated Hernandez was armed with a knife, engaged in a physical altercation with John Doe 1's brother, and was discharging a firearm at the family. Once received, dispatch immediately related the details of the call to officers, including Corporal Ferrell. The Computer Aided Dispatch (hereinafter CAD) is the system in which dispatchers provide short hand information to officers so that the officers know what kind of situation they are responding to. Here, the CAD shows dispatch sent the following to officers: "415 btwn RP and stepdad//Dad is Hector Hernandez//Armed with a knife." "415" refers to Penal Code section 415 and is commonly used between police personnel to reference a potentially violent altercation. This information indicated to Corporal Ferrell that there has been violence reported and the subject "Hector Hernandez" is armed with a deadly weapon.

Dispatch continued to provide information to the officers as the call continued. The CAD shows dispatch relating the following to the officers: "Hector wrng wht t-shirt//screaming hearing background"; "RP adv that subj armed w/ gun and poss shot"; "male to the frt screaming still has gun and [drunk]"; "RP is outside"; "Hector and son in res poss another subj also". All of these details indicated to Corporal Ferrell that Hernandez was engaged in violence, intoxicated, utilizing a firearm and/or knife, and there was a potential threat to Hernandez' son. These details are important because they reasonably raised Corporal Ferrell's concern for his safety and the safety of others. Finally, dispatch stated "2nd RP stating that she heard 4-5 gun shots"; "Hector still inside res//his son also in res 8yo as well as 13 yo." These updates reasonably raised Corporal Ferrell's concern about public safety. First, there was corroboration about the firearm being discharged multiple times. Second, Corporal Ferrell believe there were two young boys who were in danger of being harmed by Hernandez because they were inside of the residence with Hernandez, and Hernandez had already engaged in violence and was allegedly armed with weapons. Corporal Ferrell articulated this fear during his interview when he stated he was concerned that Hernandez was going to turn into an "armed barricaded suspect with a hostage". In sum, the physical evidence, including the 911 calls and the dispatch communications, supports the conclusion that Corporal Ferrell had a reasonable apprehension that Hernandez posed a threat of great bodily injury and/or death to himself and others based on the information Corporal Ferrell was provided as he responded to the call.

Furthermore, the BWC footage supports the conclusion that Corporal Ferrell reasonably believed that Hernandez posed a threat of great bodily injury and/or death to himself and others after arriving to Hernandez' residence. BWC footage shows Corporal Ferrell was the first officer to arrive on scene. Upon arrival, the BWC footages shows that Corporal Ferrell removed Rotar from his vehicle. Corporal Ferrell was controlling Rotar with his left hand. Corporal Ferrell walked towards Hernandez' residence. He immediately saw several individuals, later identified as Jane Doe 1, John Doe 1, John Doe 2, John Doe 3, and John Doe 4 in the street. BWC footage shows that the group was facing the Hernandez residence, walking towards the residence, and engaged in a verbal altercation with an unknown person (later identified as Hernandez). With his right-hand, Corporal Ferrell removed his service weapon which was equipped with a flashlight. He utilized the flashlight to illuminate the area in front of the Hernandez residence. Corporal Ferrell immediately observed John Doe 5. John Doe 5 was walking towards Corporal Ferrell's direction. BWC footage depicts Corporal Ferrell ask Hernandez' family, "Is he the one who shot the gun?" referring to John Doe 5. One of the boys responded, "No, it's the other guy inside." Corporal Ferrell immediately ordered John Doe 5 to sit on the curb.

BWC shows John Doe 5 complied and sat down on the curb. Corporal Ferrell took cover behind a nearby parked vehicle and said, "We got two." Corporal Ferrell then pointed his service weapon and illuminated Hernandez who was walking towards John Doe 5. Corporal Ferrell then ordered

Hernandez to show Corporal Ferrell his hands. BWC footage shows Hernandez ignore Corporal Ferrell's commands and walk back towards the residence. Corporal Ferrell then asked John Doe 5 "Who had the gun?" John Doe 5 stated, "He must have had the gun." John Doe 5 motioned towards Hernandez' location while saying this. Corporal Ferrell continued to inquire of John Doe 5 about who else was in the home with Hernandez. John Doe 5 stated that a young boy was still inside of the residence. BWC footage shows John Doe 5 was taken into custody by FPD.

Moments later, the BWC shows Hernandez exited the residence. Upon exiting the residence, officers approach Hernandez in an attempt to take him into custody. In sum, the BWC footage supports the conclusion that Corporal Ferrell made observations at the scene which reasonably heightened his concern that Hernandez posed a threat of great bodily injury and/or death to himself and others. Further, the BWC footage shows that Corporal Ferrell observed Hernandez disregard orders and commands from law enforcement, reasonably indicating to Corporal Ferrell that Hernandez was not going to be compliant and may be violent during this investigation.

In addition, the evidence and the totality of all the circumstances support the conclusion that Corporal Ferrell reasonably believed he was in imminent danger of suffering great bodily injury and/or death at the time he discharged his service weapon. BWC footage shows Corporal Ferrell first approach Hernandez. While the BWC shows Hernandez did not have any weapons in his hands, Hernandez continued to ignore officers' commands. BWC footage captures multiple officers giving Hernandez clear commands to "Back up into the street!" as they approached his position in the front of the house. Instead of complying with their commands, Hernandez walked back towards the front door of the residence. Rather than using lethal force, Corporal Ferrell utilized a nonlethal option of detaining Hernandez by deploying Rotar. Observing Hernandez continue to ignore commands of officers who had their service weapons pointed at Hernandez, in addition to all of the other information Corporal Ferrell had regarding Hernandez, gave Corporal Ferrell a reasonable belief that Hernandez continued to pose a threat of great bodily injury and/or death to himself and others. In spite of this obvious concern, Corporal Ferrell was more fearful of the child inside of the home being harmed by Hernandez. Therefore, Corporal Ferrell made the decision to deploy his K9 in an attempt to apprehend the dangerous suspect in order to protect the child inside the home.

Moreover, the distance between Hernandez and Corporal Ferrell is a significant factor in determining whether or not Corporal Ferrell had a reasonable belief he was in imminent danger of suffering great bodily injury and/or death at the time he discharged his service weapon. The BWC captures the exact proximity between Corporal Ferrell and Hernandez during the entire incident. As Corporal Ferrell was standing on the street with Rotar, Corporal Ferrell was approximately twenty (20) feet away from Hernandez. While standing on the street, Corporal Ferrell released Rotar and approached Hernandez on Hernandez' front lawn. Corporal Ferrell moved within ten (10) feet of Hernandez before Rotar bit Hernandez. Once Rotar bit and pulled down Hernandez, Corporal Ferrell approached them and was standing within three to four (3-4) feet of them. After a couple of seconds, the BWC shows that Corporal Ferrell approached again and was standing directly over Hernandez. Corporal Ferrell reached down to get Rotar off of Hernandez and was within inches of Hernandez. As Corporal Ferrell reached with his left hand towards Rotar to get Rotar off the bite, Corporal Ferrell physically reacted to seeing the knife. The BWC shows Corporal Ferrell jerked his body away from Rotar and Hernandez. This is when the first shot was fired by Corporal Ferrell. At the time of the shot, Corporal Ferrell was less than one foot away from Hernandez and within arms' reach of Hernandez. The BWC footage shows that Corporal Ferrell was close enough to be stabbed by Hernandez when the first shot was fired. The BWC shows Corporal Ferrell yelled, "He's got a knife!" Corporal Ferrell was still within one foot of Hernandez and within arm's reach of Hernandez when he fired the second shot. In sum, Corporal Ferrell was physically close enough to Hernandez to be

stabbed by Hernandez when the both shots were fired. The BWC shows Corporal Ferrell immediately pulled Rotar off the bite and moved away from Hernandez after the second shot.

In addition, the timing of the incident is another significant factor in determining whether or not Corporal Ferrell had a reasonable belief he was in imminent danger of suffering great bodily injury and/or death at the time he discharged his service weapon. The BWC shows the time between Hernandez' violent stabbing motion and the shots were very close in time. Hernandez stabs towards Corporal Ferrell, striking Rotar. Corporal Ferrell fires both shots within three (3) seconds of the stabbing motion. The close proximity of time between Hernandez' stabbing motion and Corporal Ferrell discharging his service weapon are consistent with Corporal Ferrell firing his weapon in self-defense.

Corporal Ferrell's approach of Hernandez and his lack of retreat do not remove him from asserting lawful self-defense. Law enforcement officials have a duty and an obligation to protect the community by pursuing, detaining, and arresting those who have committed crimes and pose a threat of death and/or serious bodily injury to the community. As Corporal Ferrell explained in his interview, "with a child being inside that residence, the safety of that child is, is paramount to me." Corporal Ferrell's primary concern was to protect the child inside of the home. Corporal Ferrell explained that he attempted to apprehend Hernandez because he did not want to allow Hernandez to retreat back inside of the home and turn the situation into an "armed barricaded suspect with a hostage." Corporal Ferrell believed that Hernandez was possibly armed, but made the decision to deploy Rotar and approach Hernandez to try and take Hernandez into custody before Hernandez could hurt the child. When Corporal Ferrell made this decision, he could see Hernandez' hands and did not see any weapons in his hands. Corporal Ferrell determined that he had an opportunity to apprehend the dangerous suspect even if it meant placing himself in close proximity to the possibly armed suspect. Upon seeing this opportunity, Corporal Ferrell deployed Rotar and approached Hernandez. As Rotar pulled Hernandez to the ground, Corporal Ferrell attempted to regain control of Rotar and get Rotar off of Hernandez in compliance with FPD policy. According to FPD Policies and Procedures Manual, Policy 308, the policy requires any handler to secure the canine as soon as reasonably practicable. Once Rotar had taken Hernandez to the ground, Corporal Ferrell had an affirmative duty to get Rotar off of Hernandez and take Hernandez into custody. When Corporal Ferrell was in this vulnerable position, Hernandez engaged in violent conduct with an inherently deadly weapon towards Corporal Ferrell. Thus, we do not have sufficient evidence to prove beyond a reasonable doubt that the use of force was not legally justified for the purposes of a criminal prosecution.

Finally, the BWC clearly shows Hernandez armed with a deadly weapon and using the deadly weapon in a dangerous manner that would cause a reasonable person, who knew all of the attendant circumstances Corporal Ferrell knew at the time, to reasonably fear that he would immediately suffer great bodily injury or death. The knife Hernandez used was in the locked position, had a three-inch, sharp blade, and was pointed towards Corporal Ferrell during the incident. The BWC shows Hernandez use that weapon in a deadly manner in close proximity to Corporal Ferrell. In sum, Hernandez' conduct captured on BWC would prevent the prosecution from proving beyond a reasonable doubt that Corporal Ferrell was not justified in believing he was in imminent fear of suffering great bodily injury and/or death at the time he discharged his service weapon.

The physical evidence collected, including the surveillance videos, BWC footage, 911 calls, and dispatch communications suggest that Corporal Ferrell had a reasonable belief he was in imminent danger of suffering great bodily injury and/or death before discharging his service weapon. In addition to the physical evidence, Corporal Ferrell asserted that he was in imminent fear of suffering great bodily injury and/or death before he discharged his service weapon.

Corporal Ferrell made two statements in this investigation. The first statement is captured on the BWC footage. The BWC captures Corporal Ferrell walking Rotar back to the patrol vehicle after both shots have been fired. Approximately forty-eight seconds after taking Rotar off of the bite, Corporal Ferrell can be heard telling Officer Pinder, “I don’t know if [Rotar’s] been stabbed, [Hernandez] was going after me.” This spontaneous statement is consistent with Corporal Ferrell’s stated belief that he was in imminent danger of suffering great bodily injury and/or death before discharging his service weapon. It is very significant that this statement took place seconds after the incident without time for serious deliberation.

Second, Corporal Ferrell provided a statement to investigators explicitly stating that he was in imminent fear of suffering great bodily injury and/or death before he discharged his service weapon. When describing why he approached Hernandez, Corporal Ferrell stated, “...I began to approach, uh Hector, to grab control of my dog and take Rotar off the bite.” Taking Rotar “off the bite” in order to minimize unnecessary harm to Hernandez required Corporal Ferrell to physically approach Hernandez and Rotar, and place himself in close proximity to Hernandez. Prior to approaching Hernandez, Corporal Ferrell never observed a weapon in Hernandez’ hands. As Corporal Ferrell approached Hernandez, he did not see Hernandez lower his right hand towards his waist and remove the knife. Once Corporal Ferrell was standing over Hernandez, within one foot of Hernandez, Corporal Ferrell first observed the knife, with a 3-inch blade, open in Hernandez’ right hand. This was the first time Corporal Ferrell observed Hernandez with the knife. During his interview, Corporal Ferrell stated he did not see Hernandez remove the knife from his clothing or have it in his hand, until he was standing over Hernandez. While standing over Hernandez, Corporal Ferrell indicated that he observed Hernandez swing the open blade in a violent motion in the direction of Corporal Ferrell. During his interview, Corporal Ferrell described Hernandez’ motion as “stabbing motions.” Corporal Ferrell described that he felt that he was in fear of imminent bodily harm and/or death due to the close proximity to Hernandez, the knife in his hand, the “stabbing motions” Hernandez made, and the fact that Hernandez’ arms were unrestrained. In short, he stated that he fired his weapon in self-defense. The BWC footage supports the assertion that there was nothing preventing Hernandez from stabbing Corporal Ferrell. It was only at this point that Corporal Ferrell believed he was in imminent danger of suffering great bodily harm and/or death. Corporal Ferrell then discharged his service weapon two times. According to his statement, Corporal Ferrell did so in order to prevent himself from suffering serious bodily injury and/or death. The physical evidence collected during the investigation corroborates his statement to investigators. There is a lack of sufficient evidence to prove beyond a reasonable doubt that Corporal Ferrell’s state of mind was not reasonable based on the totality of all the circumstances and the available evidence.

Based on the totality of all the circumstances, the prosecution will not be able to refute beyond a reasonable doubt that Corporal Ferrell reasonably believed he was in imminent danger of suffering great bodily injury and/or death. First, the 911 call and dispatch communications confirm that Corporal Ferrell had a heightened sense of fear based on the nature of the call. He was responding to a domestic violence call in which the suspect was extremely intoxicated, physically engaging in violence with his family, armed with a knife, armed with a gun, and discharging the firearm at members of his family. Second, upon arrival, Corporal Ferrell’s sense of fear was heightened. The BWC captured the verbal altercation that Corporal Ferrell observed between Hernandez’ family and Hernandez. The BWC also confirmed Corporal Ferrell was told by multiple witnesses that Hernandez was in possession of a firearm and there were children trapped inside the residence. Third, the BWC captured Corporal Ferrell observing Hernandez ignore multiple commands by police including refusing to stay out of his residence, refusing to keep his hands up, and refusing to walk back toward the street and towards the police. Fourth, the toxicological examination confirmed that Hernandez

was extremely intoxicated and had a blood alcohol concentration of 0.35% at the time of the incident. Fifth, the close proximity between Corporal Ferrell and Hernandez as seen on the BWC, at the time shooting, was consistent with Corporal Ferrell's assertion that he fired his service weapon in self-defense. The close proximity between the stabbing motion and the two gunshots are also consistent with Corporal Ferrell's assertion that he fired his weapon in self-defense. Sixth, the BWC shows Corporal Ferrell observed Hernandez possess and utilize an inherently deadly weapon, in a violent manner, towards Corporal Ferrell, while Corporal Ferrell was in close proximity of Hernandez. Finally, Corporal Ferrell's statement to Officer Pinder as well as his statement to investigators are consistent with all available evidence collected during this investigation. The totality of the evidence supports the conclusion that the prosecution does not have sufficient evidence to prove beyond a reasonable doubt criminal conduct on the part of Corporal Ferrell.

It should also be noted that, in order for Corporal Ferrell to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Corporal Ferrell did not act in reasonable and justifiable self-defense or defense of another when he shot Hernandez. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case as it relates to criminal culpability by Corporal Ferrell.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is insufficient evidence to prove beyond a reasonable doubt any criminal culpability on the part of Corporal Ferrell when he shot and killed Hernandez on May 27, 2020.

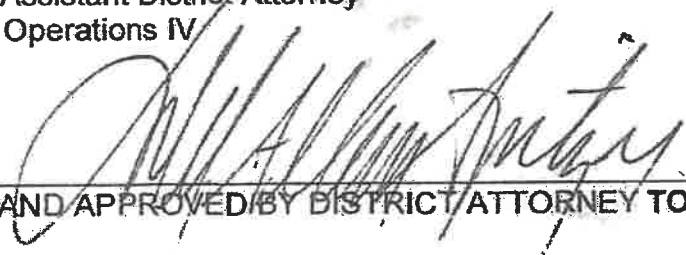
Accordingly, the OCDA is closing its inquiry into this incident.



NICHOLAS THOMO
DEPUTY DISTRICT ATTORNEY
GANGS UNIT



READ AND APPROVED BY EBRAHIM BAYTIEH
Senior Assistant District Attorney
Felony Operations IV



READ AND APPROVED BY DISTRICT ATTORNEY TODD SPITZER