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December 10, 2013

Police Chief Jack Conklin
Brea Police Department
1 Civic Center Circle
Brea, California 92821

Police Chief Dan Hughes
Fullerton Police Department
237 W. Commonwealth Avenue
Fullerton, California 92832

Re: Officer Involved Shooting on August 20, 2012
Fatal Incident Involving Joseph Oregero
District Attorney Case # S.A. 12-020
Brea Police Department Case # 12-4642
Fullerton Police Department Case # 12-48942
Orange County Crime Laboratory Case FR # 12-52499

Dear Chief Conklin and Chief Hughes,

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 North Orange County (NOC) Special Weapons and Tactics (SWAT) Team comprised of officers from the Fullerton Police Department (FPD), La Habra Police Department (LHPD), Brea Police Department (BPD), Placentia Police Department (PPD), La Palma Police Department (LPPD) and California State University, Fullerton Police Department (CSUFDP). Joseph Oregero, 57, Placentia, died as a result on injuries sustained during an altercation with police. The incident occurred in the City of Placentia on Aug. 20, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Aug. 20, 2012, officer-involved shooting of Oregero. 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 NOC SWAT officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Aug. 20, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to the shooting scene located in the driveway of the property located on the northwest corner of Orchid Drive and North Bradford

Avenue. Investigators conducted more than 68 interviews and reviewed the following: FPD, LHPD, BPD, PPD, LPPD, and CSUFPD reports; audio recordings and dispatch and radio traffic recordings; other agency incident reports; 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 Oregero, prior criminal history records related to Oregero including prior incident reports; and other relevant reports and materials including audio recordings of the neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all evidence in light of the applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of NOC SWAT officers or personnel. The OCDA will not be addressing herein issues of 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide or Gang Units review fatal, 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 his or her supervisor, and this Assistant District Attorney 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. Both of the officers who fired their weapons in this case, BPPD Officer William Montalvo and FPD Detective Michael Hines, voluntarily spoke to OCDA Investigators soon after the incident.

FACTUAL SUMMARY

On Monday, Aug. 20, 2012, PPD Detective Randy McWilliams and Orange County Sheriff Investigator Richard Koenig were working together in their capacity as investigators assigned to the Orange County Auto Theft Taskforce (OCATT). OCATT is a regional taskforce, comprised of investigators from several Orange County law enforcement agencies, tasked with investigating auto theft.

At approximately 2:42 p.m., Detective McWilliams and Investigator Koenig were driving an unmarked vehicle in the City of Placentia when they observed a white Ford van parked along the north curblane of Orchid Drive west of North Bradford Avenue.

Detective McWilliams parked adjacent to the van and Investigator Koenig used a department-issued laptop computer to perform a want and warrant check on the vehicle and its registered owner. Detective McWilliams and Investigator Koenig learned the van was registered to Oregero, who had a no-bail arrest warrant for Health & Safety Code 11378, possession of a controlled substance for sale.

Detective McWilliams and Investigator Koenig observed a Caucasian male subject, later identified as Oregero, exit the front door of on the home on Orchid Drive and enter the van. Through his open passenger side window, Investigator Koenig asked Oregero if his name was "Joe." Oregero replied saying his name was "Paul" and then drove away.

Detective McWilliams followed the van westbound on Orchid Drive as Investigator Koenig obtained a California Department of Motor Vehicles driver's license photograph on his laptop computer and positively identified the van's driver as Oregero, the subject with the outstanding warrant.

Detective McWilliams followed Oregero as he turned northbound onto North Melrose Street to eastbound Primrose Avenue to southbound North Bradford Avenue. Oregero then pulled into the common driveway at Orchid Drive and North Bradford Avenue.

Investigator Koenig exited his vehicle, displayed his Orange County Sheriff's Department badge, which he was wearing on a neck chain, and yelled, "Sheriff's Department, stop!" Oregero ran to the white motorhome, which was parked in the driveway behind the van, and entered it via a side door.

Investigator Koenig looked into the motorhome through the open side door and observed Oregero pick up a shotgun from the rear of the motorhome. Investigator Koenig heard Oregero "rack" the shotgun, which indicated to him Oregero may have chambered a cartridge into the barrel, thereby readying the shotgun to fire. Investigator Koenig relayed his observations to Detective McWilliams, and the two retreated to a position of cover.

At approximately 2:51 p.m., Detective McWilliams radioed PPD dispatch and requested assistance. Within minutes, additional PPD officers were on scene, and Detective McWilliams broadcast over the radio Oregero's physical description and the fact that he had armed himself with a shotgun.

As additional resources arrived on scene, a command post was established in the north parking lot of the Backs Community Center, located at 201 North Bradford Avenue, which was approximately one block south of the driveway on North Bradford Avenue. The incident went to a full SWAT call-out and several members from the NOC SWAT Team arrived at varying times during the course of the incident.

PPD Sergeant Brian Perry was at the command post when PPD Cadet Kirby Morales advised him she had contact with John Doe, a friend of Oregero. Sergeant Perry spoke to John Doe, who said he had been driving northbound on North Bradford Avenue when he came across a large police presence which appeared to be in the area of Oregero's residence. John Doe telephoned Oregero, who said he (Oregero) had an outstanding warrant for his arrest and the police were in the area for him.

After his initial conversation with John Doe, Sergeant Perry observed John Doe speaking on his cellular telephone. John Doe handed Sergeant Perry the phone, and Sergeant Perry spoke with Jane Doe, a friend of both John Doe and Oregero. Jane Doe told Sergeant Perry she had just spoken to Oregero on the telephone and Oregero told her he was armed with a shotgun and did not intend on coming out of his motorhome. Jane Doe told Sergeant Perry she believed Oregero may take his own life, though Oregero never actually told Jane Doe he intended to do so.

At approximately 3:28 p.m., PPD Sergeant Scott Millsap broadcast over the police radio that Oregero was on the telephone with the command post, was inside of the motorhome, and did not want to come outside due to his outstanding warrant.

As the incident continued to unfold, additional SWAT officers and uniformed police officers arrived on scene and eventually deployed.

PPD Detective Jason Reger and FPD Corporal Dan Heying deployed on the roof of Valencia High School, located on the east side of North Bradford Avenue, across the street from the home on North Bradford Avenue. They were later joined by a two-man sniper team which consisted of BPD Officer Montalvo and PPD Officer Chris Anderson. From their rooftop vantage point, the sniper team observed the motorhome in the driveway; however, only the front and passenger side of the motorhome were visible to them.

A SWAT Bearcat vehicle, driven by PPD Detective Tom McKenzie, arrived and parked diagonally, in a northwest manner, facing the driveway on North Bradford Avenue, approximately 40 feet from Oregero's motorhome, which was backed into the driveway.

Detective McKenzie remained in the driver's seat, and FPD Detective Hines deployed in the Bearcat's turret. The turret provided protection for most of its circumference; however, the front area of the turret, which faced the motorhome, was open. Detective Hines' upper torso and head were exposed, and although he wore a helmet and vest, his upper chest, neck and face were not protected and therefore vulnerable to gunfire.

SWAT operators FPD Sergeant Mike Chocek, BPD Sergeant Jose Quirarte, and FPD Officer Alan Valdiserri deployed outside of the Bearcat vehicle, while SWAT Paramedics Mark Huckabey and John Miller remained inside the rear of the Bearcat. Paramedics Huckabey and Miller are both full-time Fullerton Fire Department Firefighter/Paramedics who are members of the NOC SWAT Team.

BPD Sergeant Kelly Carpenter, FPD Officer Eric Song, PPD Sergeant Ken Alexander, and FPD Corporal Brandon Clyde, deployed on the east side of the home on North Bradford Avenue, south of the driveway.

Additional personnel not specifically mentioned above were deployed in various positions south, west, north and east of the driveway.

Between 3:59 p.m. and 5:04 p.m., law enforcement made 19 calls to Oregero's cell phone. On nine of those occasions, voice contact was established with Oregero by CSUFPD Tactical Dispatcher Brian Barnes. Oregero repeatedly refused to exit the motorhome and, during one call, told Dispatcher Barnes the situation had already escalated too far. During this call, announcements being made over the Bearcat's public address (PA) system were heard in the background and Oregero was heard yelling "F*** off." During that call, Oregero told Dispatcher Barnes there was not a thing that could be done to peacefully resolve the situation and it would be over in 10 minutes.

During the same approximate time period which Dispatcher Barnes and Oregero were in contact with one another, Detective McKenzie used the Bearcat's PA system and made announcements similar to "Joseph, this is the North Orange County SWAT Team. We are here to help you. Put down your rifle and come out with your hands up." Detective McKenzie monitored the clock on the Bearcat dashboard and gave the announcement every minute, on the minute, for approximately 20 minutes.

From his position on the roof of Valencia High School, which he estimated was 80 to 90 yards behind the Bearcat, Officer Montalvo could clearly hear the announcements made from the Bearcat's PA system. Other police officers on scene, as well as nearby residents who were later interviewed, also clearly heard the announcements.

During the period of time during which the announcements were made, Detective McKenzie, from his position in the driver's seat of the Bearcat, observed the barrel of a shotgun extend out of the motorhome's passenger side door on at least 10 separate occasions. On some of those occasions, Detective McKenzie observed the shotgun pointed toward the Bearcat.

During separate and individually conducted interviews, Detective Reger, Corporal Heying, Officer Anderson, Officer Valdiserri, Sergeant Chocek, Sergeant Quirarte, and paramedic Huckabey also said they had observed what they

believed to be the barrel of a rifle or shotgun extend out of the motorhome's door on multiple occasions throughout the incident.

While on the roof of Valencia High School, Officer Montalvo climbed on an air conditioning unit and looked through the scope of his Remington rifle. Officer Montalvo observed the passenger door leading into the living area on the passenger side of the motorhome open and close on several occasions. At times, Officer Montalvo believed the door may have been blowing in the wind, while at other times he clearly observed a person's arm reach from the inside of the motorhome and push the door open.

As Officer Montalvo continued to look through his scope, he observed a double-barreled shotgun extend out from the doorway and point in various directions, including up, down, and toward the Bearcat. Officer Montalvo was aware that a SWAT operator was in the Bearcat's turret and vulnerable to gunfire from the shotgun, as were operators outside of the Bearcat. Officer Montalvo yelled out loud to those operators that Oregero was pointing a shotgun at them.

On several occasions Officer Montalvo observed Oregero point the shotgun outside of the motorhome, pull it back in and out of view, and repeat the sequence. When Oregero ducked back inside of the motorhome, Officer Montalvo was able to observe him through his scope; however, due to his position in regard to the motorhome, he had a very slight viewing angle through the motorhome's side door. Therefore, Officer Montalvo believed he was the only officer able to observe Oregero when he secreted himself back inside of the motorhome. At one point, Officer Montalvo asked Officer Anderson if he was able to see movement inside of the motorhome. Officer Anderson replied saying he could not see inside of the motorhome.

Officer Montalvo observed Oregero inside of the motorhome propping his elbows up on a table top while pointing the shotgun right at him, as well as at the Bearcat's turret, which was in line between him and Oregero. Based upon those observations, Officer Montalvo believed Oregero was preparing to shoot. Officer Montalvo yelled aloud for other officers to hear that Oregero was about to shoot and directed one of the SWAT operators on the rooftop with him to broadcast that information over the police radio. When he observed the shotgun pointed at him, Officer Montalvo ducked down to get out of Oregero's view.

Officer Montalvo came back up on his rifle and looked through his scope where he observed Oregero still in an apparent shooting position. Oregero held the shotgun still, had settled, and appeared as if he were prepared to shoot. Officer Montalvo described his observations as Oregero getting ready to shoot and said, "There's no other way to interpret that, he's pointing it right at us." Officer Montalvo fired his rifle based upon his belief Oregero was about to fire his shotgun at officers.

Officer Montalvo observed Oregero either jump to his left or fall to his left; he was unsure which. Officer Montalvo chambered another cartridge in his rifle and got back on his scope. He observed Oregero get back into a similar position on the table top. Officer Montalvo observed Oregero once again get into an apparent shooting position and point his shotgun at officers.

Officer Montalvo again feared Oregero was going to shoot at him and other officers so he fired another shot at Oregero. Officer Montalvo observed Oregero again either jump, or fall to his left. Officer Montalvo chambered another cartridge in his rifle and got back on his scope. Officer Montalvo estimated that within seconds, Oregero quickly exited the motorhome and faced the SWAT operators in and around the Bearcat; he could not see whether or not Oregero was still holding the shotgun. Officer Montalvo heard gunfire and then lost view of Oregero.

From his position in the Bearcat's turret, Detective Hines made many of the observations which the other SWAT operators made, including Oregero sticking the shotgun out through the open door and pointing it in various directions on multiple occasions. Detective Hines estimated approximately six SWAT operators were close enough to be injured or killed by shotgun fire if Oregero were to have fired the shotgun.

Detective Hines heard commands being given to Oregero over the Bearcat's PA system. Oregero continued to point the shotgun out of the motorhome, bring it back in, and point it out again on multiple occasions. Detective Hines was unable to see inside the motorhome from his vantage point; he could only observe darkness and possibly a silhouette on occasion.

Detective Hines recalled hearing other SWAT operators say they had observed Oregero inside of the motorhome pointing the shotgun at the Bearcat. Detective Hines estimated that after approximately 10 minutes of repeated commands for Oregero to come out of the motorhome, during which time Oregero continued to point the shotgun outside, he heard a gunshot. Detective Hines was not aware of the origin of the gunshot and further explained that due to his position within the turret, sounds can sometimes echo.

Detective Hines heard an unknown SWAT operator say that Oregero was shooting from within the motorhome. Following the gunshot, Detective Hines observed Oregero continue to stick the shotgun's barrel outside of the motorhome and pull it back inside on multiple occasions. Detective Hines estimated approximately five minutes elapsed before he heard a second gunshot, the origin of which he was not aware.

Approximately one minute following the second gunshot, Detective Hines observed Oregero quickly exit the motorhome while holding a shotgun. Oregero stepped onto the driveway as he exited and turned toward the east facing the Bearcat. Oregero took approximately two steps toward Detective Hines and squared his shoulders while facing him. Oregero held the shotgun at waist level and pointed it at Detective Hines.

Detective Hines believed Oregero was going to shoot him, so he aimed his Ruger rifle at Oregero's chest and fired one round. Detective Hines observed Oregero apparently react to that shot, appearing as if he had been punched in the chest. However, Oregero stayed upright and began to turn to the south, toward North Bradford Avenue, while still pointing the shotgun toward Detective Hines.

Based upon those observations, Detective Hines believed his first shot had not been effective and Oregero was either moving toward the house to engage other persons, or seeking cover to re-engage him. Detective Hines fired a second shot and observed Oregero fall, or jump, toward the ground. When Oregero was on the ground, he was partially behind some type of plant, and only his legs were visible to Detective Hines.

Detective Hines was unable to determine whether or not Oregero was still armed or a threat at that point. He kept his rifle trained on Oregero and observed Oregero's legs moving. After approximately 30 seconds, the movement stopped, and Detective Hines observed fellow SWAT operators form an arrest team approach Oregero. Detective Hines heard an unknown operator request paramedics.

Detective Chocek, Detective Quirarte, Officer Song, Sergeant Carpenter, and Sergeant Alexander approached Oregero and observed him to be bleeding, but breathing; a shotgun was next to his right arm. They moved the shotgun away. They did not handcuff Oregero; instead, they summoned SWAT paramedics Huckabey and Miller from the rear of the Bearcat, who immediately responded and began to provide medical aide.

Orange County Fire Authority paramedics were summoned to the scene as well. Oregero was subsequently transported to University of California, Irvine Medical Center (UCIMC) where he was treated by trauma staff. A UCIMC registered nurse (RN) observed paramedic personnel performing cardiopulmonary resuscitation (CPR) on Oregero upon arrival. UCIMC trauma room personnel continued CPR; there were no spontaneous respirations and no palpable pulse.

According to the RN, Oregero's chest was "cracked" and the aorta was clamped by a UCIMC Senior Trauma Surgeon, and cardiac massage was initiated. Advanced Cardiac Life Support medications, epinephrine and sodium bicarbonate, were administered as well as intravenous fluids and two rounds of red blood cells; however, Oregero had no spontaneous response to any of the resuscitative measures.

At 5:23 p.m., a UCIMC trauma fellow doctor pronounced Oregero deceased.

EVIDENCE ANALYSIS

Weapons Examination

An OCCL forensic scientist completed the firearms and projectiles examination in reference to this case. The Stevens Model 5100 shotgun, the Winchester Model 12 shotgun, the Remington Model 700 rifle and the Ruger Model SR-556 rifle were test fired and operated without malfunction. The Winchester Model 12 shotgun had an apparent bullet strike on the underside of the compensator which was attached to the end of the barrel.

Evidence Collected From Officer Montalvo

Remington Model 700 bolt action rifle, .308 Winchester caliber, serial # G6544601.

Evidence Collected From Detective Hines

Ruger Model SR- 556 semiautomatic rifle, .223 Remington or 5.56x45mm NATO caliber, serial #590-14662.

Evidence Collected From Oregero

Stevens Model 5100, double barrel 12 gauge shotgun, no serial number found.

Winchester Model 12 pump action 12 gauge shotgun, serial # 940346.

Autopsy

On Aug. 22, 2012, at approximately 0915 hours, Dr. Aruna Singhania, a Forensic Pathologist with the Orange County Sheriff-Coroner, conducted the post-mortem examination on Oregero at the Orange County Sheriff-Coroner Forensic Science Center. Oregero's cause of death was determined to have been the result of multiple gunshot wounds to the torso.

Toxicology

An examination of Oregero's postmortem blood was performed which showed the following results.

DRUG	MATRIX	RESULTS
Amphetamine	Postmortem Blood	0.20 mg/L
Methamphetamine	Postmortem Blood	4.6 mg/L
Amphetamine, Methamphetamine	Postmortem Blood	Detected
Diphenhydramine	Postmortem Blood	0.48 mg/L
Hydrocodone	Postmortem Blood	0.056mg/L
Tetrahydrocannabinol Carboxy-Acid	Postmortem Blood	Detected

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. 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. *People v. Kilvington* (1894) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 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.” As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect’s felony involves violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333. The court 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 333.

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

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself 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 mind, as a reasonable person, an honest fear and conviction that he 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 bodily injury to the officer or others.”

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [i.e., his 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 evolving.” *Id.* at 397. Thus, the Court cautioned that “[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396.

The United States Supreme Court's analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Detective Hines and Officer Montalvo with Oregero.

LEGAL ANALYSIS

The facts in this case are determined largely by considering the two shooting officers' statements to the OCDA Investigators, which were supplemented by other relevant material and personnel from various departments present at the incident.

Both Detective Hines and Officer Montalvo indicated that the police made numerous requests for Oregero to drop the gun; however, Oregero never complied. On multiple occasions both officers observed Oregero brandish his weapon, a double barrel shotgun, and point it at officers. Both indicated that they believed multiple SWAT officers, including themselves, were close enough to be injured or killed by the shotgun.

Officer Montalvo, after observing Oregero point the shotgun directly at him, believed Oregero was preparing to shoot. When Officer Montalvo observed the shotgun pointed at him, he ducked to get out of Oregero's view. Officer Montalvo came back up and described Oregero as once again preparing to shoot. Officer Montalvo fired his rifle based on his belief that Oregero was about to fire the shotgun at officers. Officer Montalvo observed Oregero jump or fall to his left and then get into position once again to shoot at officers. Again fearing Oregero may fire at him or other officers, Officer Montalvo fired another shot at Oregero. After Officer Montalvo fired the second shot, Oregero exited the motorhome and faced SWAT officers. Officer Montalvo then lost sight of Oregero.

Detective Hines heard both shots fired by Officer Montalvo, but he was not aware where they had come from at the time. After the second shot was fired, Detective Hines observed Oregero come out of the motor home. Detective Hines observed Oregero turn toward the turret that Detective Hines was in, square his shoulders and point the shotgun directly at Detective Hines. Detective Hines, believing Oregero was going to shoot him, fired one shot at Oregero's chest. Detective Hines observed Oregero react as if he had been punched in the chest but saw Oregero remain upright and begin to turn while still pointing the shotgun at Detective Hines. Detective Hines, believed his first shot to be ineffective and believed that Oregero was moving to engage other officers.

Where potential dangerous, emergency conditions or other exigent circumstances exist, the Supreme Court's definition of reasonableness is comparatively generous to the police. 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* (2009) 171 Cal. App. 4th 516, 528.)

It should also be noted that, in order for the shooting officers to be justly and lawfully charged and convicted with a crime in this incident – be it murder, voluntary manslaughter or involuntary manslaughter - it is the OCDA's burden to prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Oregero. 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 Montalvo and Detective Hines to believe that their lives were in danger and that they were thus justified when they shot and killed Oregero.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officer Montalvo, Detective Hines, or any other officer at the scene, and there is substantial evidence that the officers' actions were reasonable and justified under the circumstances in the shooting death of Oregero on Aug. 20, 2012.

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



Ebrahim Baytieh

Senior Deputy District Attorney

Assistant Head of Court - Homicide Unit



Read and Approved by **Dan Wagner**

Assistant District Attorney

Head of Court - Homicide Unit