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May 17, 2013

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Officer Involved Shooting on December 13, 2011
Non-Fatal Incident involving Alejandro Cervantes Oregel
District Attorney Case # 11F15608
District Attorney Investigations Case # 11-027
Orange County Sheriff Department DR # 11-222961
Orange County Crime Laboratory Case # 11-56524

Dear Sheriff Hutchens,

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 Orange County Sheriff's Department (OCSD) Detective Marcus Perez. Alejandro Oregel, 28, Santa Ana, survived his injuries. The incident occurred in the City of Lake Forest on Dec. 13, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Dec. 13, 2011, non-fatal officer-involved shooting of Oregel. 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 OCSD deputies 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 Dec. 13, 2011, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed 46 witnesses, completed 40 canvass interviews and obtained and reviewed the following: OCSD reports, audio recordings and dispatch and radio traffic recordings; Orange County Fire Authority 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 Oregel; criminal history records related to Oregel including prior criminal history records and prior incident reports; the personnel records of Detective Perez; 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 impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel, specifically Detective Perez. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

Detective Perez provided a voluntary, consensual statement regarding the incident on Dec. 13, 2011.

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. Prosecutors 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.

FACTS

On Dec.13, 2011, in the early morning hours, Oregel drove his father's 2011 Nissan Altima from the City of Santa Ana to the City of Lake Forest. Oregel had brought with him an unloaded .40 caliber Taurus semi-automatic pistol in anticipation of committing a robbery. Oregel proceeded to park the vehicle at the front of 24569 Belgreen Place and removed a bicycle from the back of the car. Oregel then rode the bicycle to the 28000 block of El Toro Road and observed an AT&T retail store that was about to open for business.

At approximately 9:00 a.m., the AT&T store opened for business and Oregel proceeded to enter the store with the .40 caliber pistol pointed at the floor in his right hand. Witness #1 (W1), who was a retired police officer, was working at the AT&T store that day as an armed security officer. W1 was in the break room at the back of the store when he heard Oregel say, "Give me the f***** money," and "Get on the f***** ground." W1 observed Oregel ordering six employees and one customer into the back of the store. W1 also witnessed Oregel point a handgun toward and against the store manager's back as he forced the victims into the back of the store.

W1 decided he did not want to engage Oregel in that particular area of the store, so W1 proceeded to exit an employee door located just south of the main store entrance. W1 then positioned himself near an ATM that was located between the employee entrance and the customer entrance of the AT&T store. W1 was able to look through the windows of the store and see the showroom.

While W1 was outside of the store, he spoke with Witness #2 (W2), who was seated in his vehicle outside of the AT&T store. W2 informed W1 that he observed Oregel enter the store with a handgun and had called 911.

At approximately the same time W1 exited the AT&T store, Oregel reached the back of the store with the employees. Oregel ordered the employees to open the safe and give him the money bags. Once Oregel took the bags filled with cash, he fled the AT&T store. Oregel then proceeded to walk northbound toward the bicycle he had left outside the store.

Upon seeing Oregel, W1 shouted at him to stop. Oregel began to run northbound through the parking lot toward Rockfield Boulevard. W1 and W2 then proceeded to chase Oregel on foot. As W1 and W2 chased Oregel, W2 maintained telephonic communication with OCSD dispatch and informed them of the incident as it unfolded.

At approximately the same time W1 and W2 began to chase Oregel, OCSD Detective Perez was driving his unmarked police vehicle southbound on El Toro Road past the AT&T store. Perez's passenger, OCSD Investigative Assistant (IA) Sandra Spalding, observed W1 and W2 chasing Oregel. IA Spalding brought this to Detective Perez's attention. Detective Perez instructed IA Spalding to turn on the police radio and monitor the radio traffic. Detective Perez then made a U-turn and responded northbound on El Toro Road to the area of the AT&T store.

As Detective Perez entered the parking lot north of the AT&T store, he heard information broadcast over the police radio related to the AT&T robbery. The information provided by the OCSD dispatch included the direction Oregel was traveling, that he was armed with a handgun, and he was being pursued by witnesses. Detective Perez believed the individuals he saw running through the parking lot were related to the robbery.

While Detective Perez was in the AT&T parking lot, W1 and W2 continued to pursue Oregel on foot. W2 ran past W1 and continued after Oregel. As W1 ran across the parking lot in a northeastern direction, a red Suzuki Grand Vitara stopped in front of him. W1 identified himself as a security officer to the driver and requested the use of the vehicle. The driver of the Suzuki relinquished control of the vehicle to W1, who then continued to chase after Oregel in the commandeered Suzuki.

As W1 drove past W2, who was still pursuing Oregel on foot, he saw Oregel run across Rockfield Boulevard and continue north onto Silverbay Drive. Oregel had now entered into a residential neighborhood. Oregel proceeded to run eastbound on the southern sidewalk of Belgreen Place while W1 was following him in the Suzuki.

At some point, Oregel slowed down and W1 yelled out of the passenger side window, "Stop! You are under arrest! Stop!" Oregel did not acknowledge W1 and continued walking east. As Oregel continued to walk, W1 kept yelling commands at Oregel.

Eventually, Oregel stopped walking and started pulling the money bags from his waist and dropped them on the sidewalk. W1 noticed that Oregel had a gun in his right hand. W1 heard a sound coming from Oregel that he recognized to be a gun slide being racked. W1 heard this sound three times.

Oregel then proceeded to jog east on the sidewalk and turned toward W1 and said, "I will kill you, mother f*****. I will kill you." Oregel then pointed the firearm in W1's direction and pulled the trigger two or three times. W1 heard a sound similar to a malfunction or a dry fire, but knew that the gun did not discharge a round.

At the same time Oregel crossed Rockfield Boulevard to Silverbay Drive, Witness #3 (W3) was driving his silver Ford F-250 pickup truck northbound on Rockfield Boulevard from Silverbay Drive. W3 observed W2 chasing Oregel. W3 then made a U-turn on Rockfield Boulevard and followed Oregel as he ran north on Silverbay and east on Belgreen Place. As Oregel continued to run, W3 saw that he was carrying a semi-automatic handgun in his right hand.

While W3 was following Oregel, Detective Perez heard a broadcast on the police radio providing Oregel's location. Detective Perez drove north on Silverbay Drive and east onto Belgreen Place. As Detective Perez pulled onto Belgreen Place, he observed W2 running eastbound carrying bank money bags. Coincidentally, Detective Perez recognized W2 as

a personal friend because their children played sports together. Detective Perez stopped his vehicle against the south curb of Belgreen Place and contacted W2. W2 told Detective Perez that Oregel was in possession of a handgun. At this point, Detective Perez exited his vehicle and ran after Oregel.

Once Oregel was in Detective Perez's sight, he noticed that Oregel was wearing a full ski mask that covered his entire head and face and was carrying a handgun in his right hand. Detective Perez continued to pursue Oregel eastbound on Belgreen Place along the south sidewalk.

As Detective Perez was pursuing Oregel on foot, W3 accelerated his vehicle eastbound on Belgreen Place and drove toward Oregel, who was now standing in the street. W3 then drove his vehicle into Oregel, knocking him on the ground. At the same time W3 hit Oregel, W1's vehicle collided with the driver's side of W3's vehicle. Detective Perez then ran to W3's front passenger side door and began to approach the front portion of W3's vehicle, where he last saw Oregel. As Detective Perez reached the front bumper of W3's vehicle, he observed Oregel getting up from the ground in front of the vehicle. Oregel's back was to Detective Perez. At this time, Detective Perez could see Oregel had the handgun in his right hand.

Detective Perez proceeded to give commands to Oregel to "Drop the gun, drop the gun." Oregel ignored Detective Perez's orders, turned to face Detective Perez, and pointed the handgun at him with his right arm. Detective Perez immediately fired two rounds from his handgun. Oregel fell to the ground and Detective Perez retreated to a position of cover at the front passenger's door of W3's vehicle.

Detective Perez approached the front of W3's vehicle to reassess the situation, maintaining cover from the passenger's side of the vehicle. Detective Perez observed Oregel lying on the ground in front of the vehicle. Oregel's handgun was out of his possession, but it was still in close proximity to his body.

After the shots were fired, Oregel looked in the direction of W1 and fell to the ground. From W1's position, he did not see a gun in Oregel's hand. W1 then proceeded to move to the front of the Suzuki with his gun in his right hand. When W1 looked toward the south sidewalk, he saw Detective Perez, who identified himself as an OCSD Investigator. W1 told Detective Perez to cover him while he approached Oregel and placed handcuffs on him. Once W1 handcuffed Oregel, he secured Oregel's handgun by placing it on the hood of the vehicle W1 had been driving.

Voluntary, Consensual Statement of Detective Perez

Detective Perez gave a voluntary, consensual statement to the OCDA on Dec. 13, 2011.

On Dec. 13, 2011, Detective Perez was on duty assigned to the City of Lake Forest. Detective Perez was working with IA Spalding and driving an OCSD patrol unit.

At approximately 9:00 am, IA Spalding observed two individuals running through a shopping center parking lot and away from an AT&T store. IA Spalding brought the incident to Detective Perez's attention. After observing the incident, Detective Perez requested that IA Spalding turn on the police radio, channel "Yellow 3," and monitor radio traffic. Detective Perez overheard dispatch relaying the armed robbery that had just occurred at an AT&T store in that same parking lot. Detective Perez immediately initiated a U-turn and responded northbound on El Toro Road to the area of the AT&T store.

As Detective Perez entered the parking lot north of the AT&T store where Perez had last seen the three subjects running, he heard information being broadcast over the police radio related to the AT&T robbery. The information provided by OCSD dispatch included the direction of travel of Oregel, that Oregel was armed with a handgun, and that he was being pursued by witnesses. Detective Perez immediately concluded that the subjects he had seen running through the parking lot were related to the robbery.

Detective Perez then heard a broadcast on the police radio that identified Oregel as running across Rockfield Boulevard and making a left (north) onto Silverbay Drive, then a right (east) onto Belgreen Place. Detective Perez drove his vehicle to that location. Detective Perez drove north on Silverbay Drive and east onto Belgreen Place. As Detective Perez pulled onto Belgreen Place, he observed W2 running eastbound on Belgreen Place. Detective Perez recognized W2 as a personal friend. Detective Perez could see that W2 was carrying bank money bags. Detective Perez stopped his vehicle against the south curb of Belgreen Place and contacted W2.

W2 told Detective Perez that Oregel was in possession of a handgun. Detective Perez then exited his vehicle and ran after Oregel. As Detective Perez began to pursue Oregel on foot, it was immediately evident to Detective Perez that Oregel was wearing a full ski mask covering his entire head and face and he was carrying a handgun in his right hand. Detective Perez continued to pursue Oregel eastbound on Belgreen Place, along the south sidewalk.

At approximately the same time Detective Perez began to pursue Oregel on foot, W3 accelerated his vehicle eastbound on Belgreen Place and drove toward Oregel, who had stepped off the sidewalk into the street. W3's vehicle collided with Oregel, knocking him to the ground. At that same time, Detective Perez arrived at W3's front passenger side door. Detective Perez approached the area to the front of W3's vehicle, where he had last seen Oregel. As Detective Perez reached the front bumper of W3's vehicle, he observed Oregel getting up from the ground in front of the vehicle. Oregel had his back toward Detective Perez. Detective Perez could see Oregel had the handgun in his right hand. Detective Perez gave commands to Oregel, "Drop the gun, drop the gun." Oregel ignored Detective Perez's commands and turned to face Detective Perez. As Oregel turned to face Detective Perez, he raised his right arm and pointed the handgun at Detective Perez. Fearing for his safety and the safety of the people around him, Detective Perez immediately fired two rounds from his handgun. Oregel fell to the ground. Detective Perez retreated to a position of cover at the front passenger's door of W3's vehicle.

Detective Perez approached the front of W3's vehicle to reassess the situation, maintaining cover from the passenger's side of the vehicle. Detective Perez observed Oregel lying on the ground in front of the vehicle. Oregel's handgun was now out of Oregel's possession, but in close proximity to Oregel's body.

Post-Shooting, Voluntary Interviews with Civilian Witnesses

W1 is a retired Downey police officer with 15 years of law enforcement service. W1 is currently employed as an armed security officer. He has maintained this employment for the past two years and was assigned to guard the AT&T store located in Lake Forest for three days prior to the incident.

On Dec. 13, 2011, at approximately 8:00 a.m., W1 arrived at the AT&T store. An hour later, W1 went into the break room located at the rear of the store to complete some paperwork. He then heard a male voice say, "Give me the f***** money," and, "Get on the f***** ground." W1 peered around the wall separating the break room from the showroom floor and saw Oregel. Oregel had some type of netting covering his face and was carrying a black semiautomatic gun that was pressed against the AT&T store manager's back.

W1 decided not to confront Oregel while he was in the store, so W1 exited an employee door located just south of the store's main entrance and positioned himself near an ATM next to the customer entrance of the AT&T store. From this location, W1 was able to see the store's showroom through a window. W1 then heard a male voice say, "Officer, officer, I am on the phone with 911 right now, I am calling the police." The male voice was later identified as W2, who was seated in a vehicle that was parked just outside and in front of the AT&T store entrance. W1 was able to see Oregel through the showroom windows after he repositioned himself just west of his personal vehicle.

As Oregel exited the store, W1 pointed his gun at him and yelled, "Stop right there, get on the ground, get on the ground." Oregel did not respond to the commands and kept walking north toward a bicycle. W1 yelled at Oregel a second time saying, "Store security, store security, get on the ground, you are under arrest." Oregel turned his head toward W1 and then began running in a northeast direction through the parking lot towards Rockfield Boulevard.

W1 started to run after Oregel on foot when W2 caught up with W1 and said, "Let's get this guy." W2 ran past W1 after Oregel. While W1 was running across the parking lot, a Suzuki Grand Vitara stopped in front of him. W1 instructed the driver that he needed the car to chase a suspect involved in a robbery. W1 then got into the Suzuki and continued chasing after Oregel. W1 drove past W2, who was still pursuing Oregel on foot, and followed Oregel into a residential neighborhood.

As Oregel began to slow down, W1 yelled out the passenger side window, "Stop! You are under arrest. Stop!" However, Oregel did not acknowledge W1 and continued walking east on Belgreen Place. Oregel then stopped walking and started to pull the money bags from his waist and drop them on the sidewalk. W1 noticed that Oregel had a gun in his right hand and then he heard a sound he recognized as a gun slide being racked three times. Oregel then started to jog down the sidewalk, stopped, turned toward W1, and yelled, "I will kill you mother f*****. I will kill you."

Oregel proceeded to point the gun in W1's direction and pulled the trigger two or three times, however, the gun did not discharge any rounds. As Oregel tried to fire the gun at W1, W1 heard a sound similar to a malfunction or dry fire. W1 then pulled the Suzuki behind a parked car and exited the vehicle. He estimated he was about 15 feet behind Oregel at this point. At approximately the same time, a Ford F-250 collided with the passenger side of the Suzuki, from which W1 just removed himself. The Suzuki was pushed forward a significant distance as a result of the collision. W1 was still dazed from the impact when he saw Oregel in front of the Suzuki and heard someone yelling commands.

Moments later, W1 heard one or two gunshots and saw Oregel fall to the ground. From W1's position, he was unable to see a gun in Oregel's hand. W1 proceeded to move toward the front of the Suzuki and placed Oregel in handcuffs. W1 noticed that a handgun was only a few inches away from Oregel's right hand. W1 also observed that OCSD Investigator Perez was standing on the south sidewalk, but W1 did not recall seeing Detective Perez with a gun. After Oregel was placed in handcuffs, W1 moved Oregel's gun out of his reach.

W2 was parked directly in front of and facing the AT&T store when he observed Oregel enter the location carrying a silver and black semi-automatic handgun. Oregel was wearing a dark blue hooded sweatshirt, with the hood pulled over his head, a black full face ski mask, and jeans. W2 saw Oregel grab a female employee by either her shoulder or neck and push her toward the center of the store while simultaneously pointing his handgun at the other employees and customers. Oregel then moved the individuals into the back room of the store.

W2 proceeded to call 911 and report the incident when he saw W1 approach the front of the store. W1 advised W2 to call 911. When Oregel exited the location and passed W2's vehicle, he was carrying several blue bags and was still armed with a handgun. As Oregel ran past W2, W2 proceeded to open the driver's side door and yell at Oregel. W1 also yelled at Oregel to "freeze or stop," however, Oregel continued to run across the parking lot. W2 and W1 then began to pursue Oregel on foot while W2 was on the phone with the 911 dispatcher.

As W2 continued to chase Oregel through the parking lot, Oregel turned around and pointed his handgun in the direction of W2. Oregel then dropped one of the blue money bags on the street and it was picked up by another individual not involved in the chase. W2 instructed that person to call 911 and continued after Oregel. As Oregel entered the residential neighborhood, he dropped four more blue money bags that were picked up by W2.

At this point, W2 noticed there were a couple of cars who were honking their horns and following both him and Oregel. W2 also observed OCSD Detective Perez arrive on scene in a silver vehicle with OCSD IA Spalding. At the time, W2 was friends with Detective Perez because their children played sports together. W2 told Detective Perez, "This guy's got a gun. This guy's got a gun." Detective Perez then instructed W2 to "stay back." Detective Perez exited his vehicle and ran after Oregel as W2 followed.

At this time, a silver truck accelerated and collided with a red sport utility vehicle (SUV) that had been commandeered by AT&T security guard W1. W2 had a partial view of Oregel and could see that his legs were on the ground in front of both vehicles. W2 stayed one house west of the accident scene and observed Detective Perez standing south of the silver truck, pointing his handgun in the direction of Oregel. W2 heard Detective Perez yell something similar to, "Freeze! Stop! Police! Put down the gun!" W2 heard Detective Perez yell these commands several times and seconds later, he heard two gunshots in rapid succession.

W2 was unable to see Oregel during the shooting due to the silver truck blocking his view. W2 then approached the scene and observed Oregel lying face down with a bleeding right forearm. The same handgun W2 saw Oregel holding during the robbery was now on the street approximately one to two feet from Oregel's right hand. W1 had one of his knees on Oregel's back and was preparing to handcuff him as Investigator Perez was pointing his weapon at Oregel. W2 did not hear Oregel say anything during or after the shooting. Shortly after the incident, W2 gave W1 the bags he had picked up during the foot chase.

W3 was on his way to work in his silver Ford F-250 pick-up truck when he saw Oregel being chased across Rockfield Boulevard by a man in a grey sweat suit. Oregel was wearing a dark colored hooded sweatshirt and black ski mask. After seeing Oregel, W3 proceeded to make a U-turn and follow Oregel. W3 stopped at the Firestone Tire store and asked one of their employees in front of the store what was happening. The Firestone employee told W3 that Oregel had dropped a bag with money in it. W3 then continued to follow Oregel as he ran north on Silverbay and east on Belgreen Place.

At this time, W3 noticed that Oregel had a semi-automatic handgun in his right hand. W3 began to accelerate his vehicle and drive toward Oregel, knocking him to the ground. At the same time, a red SUV collided with W3's truck and Oregel. W3 was unable to see Oregel over the hood of his truck immediately after he hit him. Shortly after the collision, W3 was able to see Oregel's head over the front of his truck as he was trying to get up. At this same time, W3 noticed OCSO Investigator Perez arrive at his front passenger side door. Detective Perez then yelled, "Police! Put down your weapon and get on the ground. Get on the ground now." W3 then heard two to three gunshots and saw W1 exit the red Suzuki to approach the area where Oregel went down. W3 waited to leave his vehicle until he was able to get Detective Perez's attention and upon exiting through the passenger door, he saw Oregel lying on the ground in handcuffs.

Oregel's Consensual, Voluntary, Post-Miranda Statements of Events

On the day of the shooting, Oregel explained he that remembered the entire incident and he intended to rob the AT&T store because he was in need of money. Oregel said he had a gun at the time of the incident, but it was empty and had no bullets in it. Oregel had the gun "just to put fear in people."

The morning the robbery took place, Oregel took a bus near Commerce Center and rode a stolen bicycle to the area of the AT&T store in Lake Forest. Before he entered the AT&T store, Oregel rode by other places of business in the area looking for where he could "get money." Oregel proceeded to enter the AT&T store at approximately 9:00 a.m., brandishing his gun, and told the occupants to get to the back of the store. Oregel's gun was pointed down at the ground and was visible to all of the people in the store. Everyone complied with Oregel's orders and headed toward the back of the store. One of the employees opened the store's safe while Oregel pressed his gun to the employee's lower back. Once the safe was opened, the employee handed Oregel blue money bags. Oregel then ran from the store, leaving the stolen bicycle.

As Oregel fled the AT&T store, he noticed someone was chasing him. Oregel said he was unable hear or pay attention to what that individual was yelling at him as he ran from the store. While Oregel was running, he noticed that the same individual was now following him in a vehicle. He also noticed that a police officer was now in pursuit.

As Oregel continued to run, he placed his gun in his right pocket. A few moments later, Oregel heard a collision

between two cars and was hit by one of the vehicles involved in the crash. As a result of the collision, Oregel's gun fell out of his pocket. Oregel proceeded to pick up his gun and was attempting to get off the ground when he heard two shots fired quickly in succession and fell. Initially, Oregel did not notice he had been shot in his right arm. It wasn't until he saw his own blood that he realized what had happened. Oregel stated he was unsure which person shot him, but he believed it was the officer who "chased him down."

Oregel admitted to the interviewing officer that he understood why the police officer who shot him thought he was a threat. Oregel said he believed the officer was "fearing for his life" because Oregel could have shot him at any moment. Even though Oregel's gun wasn't loaded, he acknowledged that the officer didn't know this at the time of the shooting.

In a second interview, Oregel was asked to clarify why his father's Nissan Altima was located at the scene of crime. Oregel admitted he drove the car to the area where the incident took place and did not take a bus. He also stated that in the trunk of the Altima, there was a Louis Vuitton bag that was holding the case for his gun and three bullets.

EVIDENCE COLLECTED AT THE SCENE

Photographs were taken of both the scene and the evidence collected by OCCL. Just west of the area of the shooting, on the sidewalk in front of a residence on the 24000 block of Belgreen Place, a copper jacketed bullet was located. Additional pieces of evidence were found south of the Ford F-250. These items were two cartridge cases each containing the headstamp "FEDERAL 40 S&W." East of the Ford F-250, near the curb, was a pair of Adidas shoes. On the ground north of the Adidas shoes and east of the Suzuki was a black ski mask and a pair of black gloves. A firearm was then located on the passenger's side hood of the Suzuki. The firearm was a Taurus Model PT24/7 Pro pistol, .40 Smith & Wesson caliber, #SZH76438. All of these items were collected and submitted to the OCCL Evidence Control Unit.

Three money bags were located on the driver's seat of the Suzuki. They were collected by OCSD Investigator Myrna Caballero. Detective Perez's .40 caliber Glock pistol and ammunition were collected for processing by the OCCL. Oregel's blood was collected at Mission Hospital under vial number 907498. Oregel's clothing was also collected.

EVIDENCE ANALYSIS

FIREARMS EXAMINATION - DETECTIVE PEREZ'S HANDGUN

(Glock Model 22 pistol, .40 Smith & Wesson Caliber, # LKD730)

Detective Perez's Glock pistol was received unloaded with the magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber, two empty Glock fifteen cartridge capacity magazines, and 28 cartridges. The Glock pistol was test fired and operated without malfunction.

FIREARMS EXAMINATION-OREGEL'S HANDGUN

(Taurus Model PT24/7 Pro Pistol, .40 Smith & Wesson Caliber, #SZH76438)

Oregel's pistol was received unloaded, with the empty 15 cartridge capacity magazine removed. The Taurus pistol was test fired and operated without malfunction.

TOXICOLOGY

Oregel's pre-transfusion blood samples were analyzed for common drugs of abuse. The toxicological examination detected the presence of Tetrahydrocannabinol (THC), Tetrahydrocannabinol Carboxy-Acid (THCA).

OREGEL'S MEDICAL CONDITION

On Dec. 13, 2011, at approximately 9:25 a.m., Oregel was transported to Mission Hospital by ambulance. Oregel was conscious and had a bullet entry wound on his right forearm, but there was no evidence of an exit wound. The wound was not life-threatening. Doctors ordered x-rays and a medical evaluation to determine if the gunshots caused any bone damage. The x-rays revealed no bone damage, but the bullet remained lodged in the right upper arm area. The doctors

were concerned that Oregel sustained possible nerve damage to the 4th and 5th fingers of his right hand because he had difficulty moving them. Oregel received a consultation from an orthopedic surgeon, who decided against surgery to remove the bullet at that time. The surgeon recommended Oregel be reevaluated in a couple of months to determine the status of the lodged bullet. Doctors ordered a blood screening and basic labs pursuant to the standard trauma protocol. After a complete medical evaluation, Oregel was discharged from the hospital.

OREGEL'S POST-INCIDENT CONVICTION

A criminal filing for Penal Code sections 211/212.5 (Robbery) with an enhancement for 12022.53(b) (Personal Use of a Firearm), 459-460(b) (Commercial Burglary), 417(a)(2)(A) (Brandishing) and Health and Safety Code section 11351 (Possession for Sale of a Controlled Substance) was submitted by OCSD under case number 11F15608. Defendant Oregel pleaded guilty to the charges and enhancement on Jan. 27, 2012, and received a 14 year prison sentence.

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 Perez with Oregel.

LEGAL ANALYSIS

According to Detective Perez, he was informed through OCSD dispatch that a robbery was occurring at a local AT&T store. Shortly before this information was received, Detective Perez observed two civilians chasing a third subject in the parking lot near an AT&T store. Detective Perez was then informed that the suspect was armed with a handgun and being chased by two witnesses. Detective Perez soon proceeded to the area of the foot pursuit.

When he arrived at the location, he was contacted by a witness. That witness alerted Detective Perez that Oregel was armed with a handgun. Detective Perez then chased after Oregel and noticed that Oregel was wearing a ski mask and carrying a handgun in his right hand. When Detective Perez finally contacted Oregel, he ordered him to drop the gun that he was holding. Not only did Oregel ignore Detective Perez's orders to drop the gun, but he turned toward Detective Perez and pointed the gun at him.

One reasonable interpretation of these facts is that Detective Perez reasonably believed that Oregel was going to shoot him with the handgun when he turned and pointed the gun at him. In that case, Detective Perez's shooting would be justified self-defense. *Kortum v. Alkire, supra*, 69 Cal.App.3d at 33, *People v. Jackson, supra*, 233 Cal.App.2d 639, 641-642.

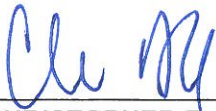
In order for criminal charges to be justly brought against Detective Perez, it would need to be shown that he did not act in reasonable and justifiable self-defense or defense of others when he shot Oregel. An analysis of the facts as presented in this case does not disprove the proposition that Detective Perez shot in lawful self-defense. In fact, Oregel even told OCDA Investigators that he believed that Detective Perez was "fearing for his life" when he shot him. Oregel conceded that Detective Perez could not have known that his gun was unloaded and reasonably believed that he could have been shot by Oregel at any moment. A reasonable interpretation of the evidence is that Detective Perez used the force that appeared to be objectively reasonable at the time considering all of the facts and circumstances. See, e.g., *Graham v. Conner* (1989) 490 U.S. 386.

In order for Detective Perez to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that Detective Perez did not act in reasonable and justifiable self-defense or defense of others when he shot Oregel. As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Detective Perez to use the force that he did in this circumstance. There is significant evidence that Detective Perez acted reasonably under the circumstances.

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 we 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 Detective Perez, and there is substantial evidence that the officer's actions were reasonable and justified under the circumstances when he shot Oregel on Dec. 13, 2011.

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



CHRISTOPHER R. DUFF

Senior Deputy District Attorney
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Read and Approved by **JAMIE COULTER**

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