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May 15, 2013

Chief Dan Hughes
Fullerton Police Department
237 West Commonwealth Avenue
Fullerton, Ca 92832

Re: Officer Involved Shooting on May 10, 2012
Fatal Incident involving Aurello Paul Navarette
District Attorney Case # 12-013
Fullerton Police Department DR # 12-27013
Orange County Crime Laboratory Case # 12-47233

Dear 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 on-duty Fullerton Police Department (FPD) Officer Kevin Kirkreit, Sergeant Tom Oliveras, Corporal David Becerra, Officer Jonathan Miller and Officer Steve Rodriguez, in which Aurello Paul Navarette, 22, of Buena Park, died as a result of his injuries. The incident occurred in the City of Fullerton on May 10, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the May 10, 2012, fatal officer-involved shooting of Navarette. 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 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 May 10, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted 27 interviews, and obtained and reviewed the following: FPD reports, audio recordings and dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Navarette; criminal history records related to Navarette, including prior criminal history records and prior incident reports; the personnel records of all FPD officers involved; 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 FPD officers or personnel, specifically Corporal Becerra, Sergeant Oliveras, Officer Kirkreit, Officer Rodriguez and Officer Miller. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

All of the officers provided voluntary, consensual statements to the OCDA on May 15, 2012, and May 16, 2012, regarding the incident.

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

Background of Defendant and Events Leading up to the Shooting

Navarette was a 22-year-old male who had an extensive criminal history. At the time of the incident, Navarette was on active parole with the California Department of Corrections and Rehabilitation. Navarette was a self-admitted gang member of a local criminal street gang.

On May 10, 2012, at approximately 11:16 p.m., FPD Officer Kirkreit was conducting uniformed patrol in a marked police unit. Officer Kirkreit observed a pickup truck that appeared to have an inoperative brake light and was straddling the double yellow lines that separated the north and southbound lanes of Euclid Street. Officer Kirkreit attempted to affect a traffic stop by illuminating the police car's overhead red and blue lights. The truck failed to yield for Officer Kirkreit. In the ensuing pursuit, the truck ran through two stop signs and three red lights and reached speeds of approximately 90 mph before the driver lost control of the truck and crashed into a guardrail. The truck continued through the guardrail, and eventually came to rest overturned in a flood control channel approximately 15 to 20 feet below street level, near the intersection of Malvern Avenue and Gilbert Street.

Officer Kirkreit saw Navarette exit the overturned vehicle and run underneath an overpass to conceal himself. Officer Kirkreit heard sounds from beneath the overpass that led him to believe Navarette was discarding evidence from his person. Officer Kirkreit ran to the side of the overpass where he could see Navarette. When Navarette saw Officer Kirkreit, he immediately ran toward the mouth of a drainage pipe that was located on the wall of the flood control channel. Navarette entered the mouth of the drainage pipe and disappeared from Officer Kirkreit's view.

In response to Officer Kirkreit's call for officer assistance, FPD Sergeant Oliveras, Corporal Becerra, and Officers Miller, Rodriguez, Ray Flores, Joshua Earnest, Jose Paez and Brandon Haynes responded to the scene in the minutes following the crash. FPD responding officers took positions on both sides and above the flood control channel and the drainage pipe that Navarette was seen entering.

Sergeant Oliveras joined Officer Kirkreit on the east side of the overpass where they had an elevated vantage point of the flood control channel and the drainage pipe. Corporal Becerra, Officer Miller and Officer Haynes took positions on a narrow service road that lay behind a chain link fence and ran along the south perimeter of the flood control channel. Officers Earnest, Paez and Flores took positions on the overpass, nearby Sergeant Oliveras and Officer Kirkreit, but not immediately next to them.

As the FPD officers maintained their positions along the east side the overpass and the south side of the flood control channel, Navarette stepped out from inside the drainage pipe and began yelling at the officers in a challenging manner. He appeared to have an item in his left hand down by his side, which was not immediately recognizable by the officers. Corporal Becerra recognized the item and alerted the other officers that it was a handgun. Officer Miller heard Corporal Becerra's alert and relayed it to the officers standing on the overpass. All of the officers at the scene drew their firearms and trained them on Navarette.

Navarette emerged from the drainage pipe. Several of the officers ordered Navarette to get down on the ground. Navarette ignored the officers' commands and continued screaming at them. After standing outside of the drainage pipe for 10 to 20 seconds he turned around and walked back inside the pipe, disappearing from view.

Navarette reemerged from the drainage pipe a few seconds later, this time more quickly and still holding a handgun in his left hand. He raised his left arm and pointed the gun in the direction of the FPD officers, firing one or two rounds in their direction before officers shot and killed him. FPD officers Kirkreit, Miller, Rodriguez, Oliveras and Becerra each fired at least one round from their firearms at Navarette.

The North County Special Weapons and Tactics (SWAT) Team responded to the scene to assist in the arrest of Navarette because he was still considered to be armed and dangerous. Shortly after paramedics pronounced Navarette deceased, SWAT personnel located an additional subject inside the drainage pipe. SWAT personnel extracted the subject, who was later identified as Diego Figueroa, from the drainage pipe. Although Figueroa had injuries consistent with being involved in a traffic collision, he denied involvement in the incident. He was treated for his injuries and later transported to FPD for further questioning.

All of the officers involved in the incident or who witnessed the incident gave voluntary, consensual statements to OCDA Investigators.

Voluntary Statement of Officer Kirkreit Regarding the Incident

Officer Kirkreit gave a voluntary, consensual statement to the OCDA on May 15, 2012.

After observing Navarette enter the drainage pipe and disappear from view, Officer Kirkreit maintained his position with Sergeant Oliveras at the northeast corner of the overpass. Navarette reappeared from the pipe "five or six seconds" later, looking "very angry, and waving his arms around," appearing "very frantic," and yelling in an angry tone. Officer Kirkreit could see Navarette was holding an item in his left hand, but could not clearly identify that it was a firearm. Officers located on the south side of the flood control channel alerted him and confirmed that the item was a firearm.

Navarette looked toward the officers on the south side of the flood control channel, then turned to face in the direction of Officer Kirkreit and Sergeant Oliveras. As Navarette turned to face them, Navarette raised his left arm to point directly at Officer Kirkreit and fired a round from his firearm. Officer Kirkreit heard the shot and also saw the muzzle flash.

Officer Kirkreit heard Sergeant Oliveras say to duck and take cover, however the only cover immediately available to them was a chain link fence. Fearing for his life and the lives of his fellow officers, Officer Kirkreit fired one round from his firearm at Navarette. At that point, Officer Kirkreit could hear other rounds being fired; he did not fire any additional rounds because after one shot, he saw Navarette quickly fall forward onto the ground with his hands underneath him.

Voluntary Statement of Sergeant Oliveras Regarding the Incident

Sergeant Oliveras gave a voluntary, consensual statement to the OCDA on May 15, 2012.

Sergeant Oliveras arrived on scene and made contact with Officer Kirkreit on the overpass. At this time, Navarette was inside the drainage pipe and out of view. After about "four to six minutes," Sergeant Oliveras saw Navarette come forward and step out of the pipe "a couple of feet" with an object in his left hand, but he could not positively identify what it was. Officers ordered Navarette to get on the ground but received no response. Navarette was screaming at officers and moving his arms in a manner that was "very aggressive and agitated" before retreating back into the drainage pipe and out of view.

After remaining in the pipe for only a few seconds, Navarette reappeared and exited the pipe more quickly than before, this time in a "charging" and "threatening" manner. At this time, Sergeant Oliveras clearly saw a firearm in Navarette's left hand and told Officer Kirkreit to get down and that they were exposed with no cover. Navarette raised his left arm and began to point the firearm directly at Sergeant Oliveras and Officer Kirkreit. Out of fear for his life and the lives of fellow officers, Sergeant Oliveras simultaneously began firing his firearm when he saw muzzle flash emanate from Navarette's firearm. Sergeant Oliveras fired three shots in succession at Navarette, who fell to the ground "pretty quick" onto his stomach with his hands underneath him.

Voluntary Statement of Corporal Becerra Regarding the Incident

Corporal Becerra gave a voluntary, consensual statement to the OCDA on May 15, 2012.

Corporal Becerra arrived on scene in his patrol car. Officer Kirkreit informed Corporal Becerra over the radio that Navarette was down in the flood control channel under the overpass. Officer Kirkreit told Corporal Becerra that he should cover the east side escape route, so Corporal Becerra drove his patrol car to the south side of the flood control channel, where he exited it and jumped over a fence to get into the channel.

Corporal Becerra heard that Navarette had gone into a drainage pipe within the flood control channel. While he was examining the drainage pipe from the outside by shining his flashlight inside, Navarette emerged from the pipe. Corporal Becerra was able to clearly see that Navarette had a firearm in his left hand before Navarette went back into the pipe and disappeared from view.

Navarette reemerged from the pipe a few seconds later, "skipping out or hopping really quick right out," with both hands in the air moving them "like a rapper would." Corporal Becerra could not see a firearm when Navarette reemerged from the pipe. Corporal Becerra heard a single shot ring out, but could not see where it came from. The gunshot caused no change in Navarette's demeanor other than that he stopped "skipping."

After the first gunshot rang out Navarette began to turn in the direction of Corporal Becerra with his arms still raised. As Navarette was turning to face Corporal Becerra, Becerra fired five rounds from his firearm at Navarette. He continued to fire because he felt the rounds he was firing were having no effect. Corporal Becerra feared for his life at the moment he shot at Navarette. Having just heard a gunshot ring out seconds before he recalled, "*I thought he was going to kill me, I thought he would shoot me.*" Navarette then began to turn a little toward Officer Kirkreit and Sergeant Oliveras before falling forward onto the ground with his arms underneath his body.

Voluntary Statement of Officer Miller Regarding the Incident

Officer Miller gave a voluntary, consensual statement to the OCDA on May 15, 2012.

Officer Miller took position at the south end of the flood control channel next to Officer Becerra, who informed him that Navarette had a gun. Officer Miller saw a male come out of the tunnel holding a black revolver in his left hand. Navarette disappeared back into the tunnel, and then exited again a few seconds later "really fast" and appeared to be "crip walking" in the style associated with gang members, screaming and flailing his arms in a challenging manner. Officer Miller observed the firearm in Navarette's left hand. Navarette then pointed the firearm at Officers Becerra and Miller. Officer Miller feared for his life and the lives of his fellow officers, and it was at this moment he made the decision to shoot at Navarette. While Officer Miller was trying to find Navarette in his firearm sights, he heard a gunshot from down in the storm drain, followed by another shot right after. Officer Miller fired two rounds from his firearm at Navarette, who quickly fell to the ground.

Voluntary Statement of Officer Rodriguez Regarding the Incident

Officer Rodriguez gave a voluntary, consensual statement to the OCDA on May 16, 2012.

As Officer Rodriguez was making his way toward the service road that bordered the side of the flood control channel, Navarette stepped out of the drainage pipe. Officer Rodriguez did not see Navarette exit the drainage pipe the second time. As Officer Rodriguez reached where the overpass and the service road intersected, he heard two gunshots. He turned and saw Navarette pointing the firearm at the officers standing on the overpass. Officer Rodriguez fired one shot at Navarette, who immediately fell to the ground.

Voluntary Statement of Other FPD Officers Who Witnessed the Incident

Corporal Ray Flores, Officer Joshua Earnest, Officer Jose Paez and Reserve Officer Brandon Haynes each witnessed the incident, but did not discharge their firearms. They each gave voluntary, consensual statements to the OCDA.

Officer Earnest heard an unknown officer on the south side of the flood control channel say something to the effect of, "He's got a gun." Earnest heard approximately five rapid gunshots, which sounded as if they emanated from multiple locations. He looked down into the channel and observed Navarette drop down to his knees and then fall forward with his hands underneath his body.

Officer Paez was crouched down and had inserted the barrel of his rifle through the chain link fence that bordered the east side of Gilbert Street. He aimed the rifle at the opening of the drainage pipe. Officer Paez heard Corporal Becerra say Navarette had a firearm in his possession. Officer Paez was unable to adequately align the sights of his rifle with the opening of the drainage pipe. While attempting to reposition the barrel of the rifle in the fence, he saw Navarette exit the drainage pipe and yell the name of his gang and raised his left arm. As Navarette raised his left arm, Paez heard a "pop" sound, immediately followed by an eruption of gunfire from the south side of the flood control channel where several FPD officers were standing.

Officer Haynes was standing on the south side of the flood control channel. He heard officers ordering Navarette to show his hands and exit the storm drain numerous times. Officer Haynes observed Navarette exit the drainage pipe, "running and jumping, yelling something unintelligible, in a threatening manner." Navarette threw his hands up in the air and yelled something like the name of a local street gang. Officer Haynes observed a black firearm in Navarette's left hand. Officer Haynes saw Navarette fire one shot in the direction towards where he, Officer Miller, and Corporal Becerra were standing before FPD officers returned fire.

Corporal Flores stood next to Sergeant Oliveras on the overpass, who informed him that Navarette may be armed with a firearm. Corporal Flores stated that Navarette "marched" out of the drainage pipe, with his arms up in front of him, which appeared to him to be in a shooting stance. Corporal Flores heard gunshots, which caused him to drop to the ground for cover. He did not see where the shots were fired from.

Figueroa's Phone Call from FPD

While at FPD, Figueroa made telephone calls from the jail facility. The telephone calls were recorded. During a conversation with John Doe, a documented member of the same gang as Navarette, a discussion was captured by the recording equipment that appeared to be related to the officer-involved shooting incident. In the recorded conversation, Figueroa says to John Doe, "That's what he wanted," to which John Doe replies, "So he did that s*** on purpose?" Figueroa somberly replies, "Yeah."

Autopsy

On May 11, 2012, Orange County Coroner's Forensic Pathologist Dr. Aruna Singhania conducted a post-mortem examination of Navarette's body. She determined he had sustained gunshot wounds from three bullets, two of which caused superficial damage. The first bullet entered through the front of Navarette's ear and exited through the rear of the ear. The second bullet that caused superficial damage entered Navarette's left side towards his back, traveled under the skin, exiting Navarette's right side. The third bullet entered the left side of Navarette's chest, traveled through his ribcage and both lungs and embedded itself in the tissue beneath his right back area. Dr. Singhania concluded that the penetrating gunshot wound to the chest from this bullet was the cause of death.

Evidence Collected at the Scene

A total of 35 items of evidence were photographed and collected at the scene. This evidence consisted of bullet shell casings, lead bullet fragments, blood drops, and an RG Industries .22 caliber revolver found approximately 10 feet from Navarette's body. During the post-mortem examination of Navarette, Dr. Singhania recovered a bullet from the tissue of the right side of Navarette's lower back.

Evidence Analysis

Toxicology

A toxicology exam was conducted on Navarette's post-mortem blood for common substances, with the following results:

DRUG	MATRIX	RESULT
Amphetamine	Postmortem Blood	0.051 mg/L
Methamphetamine	Postmortem Blood	0.23 mg/L

Weapons and Projectile Examination

An Orange County Sheriff's Department Forensic Science Services Scientist III completed a firearms examination and comparison of the weapons used at the scene by Navarette, Officer Kirkreit, Sergeant Oliveras, Corporal Becerra, Officer Miller and Officer Rodriguez, as well as the 12 cartridge cases, numerous bullet fragments recovered from the scene and the bullet recovered from Navarette's body during the autopsy.

Examination of the cartridge cases determined that five cartridge cases were fired in Corporal Becerra's firearm, one cartridge case was fired in Officer Kirkreit's firearm, two cartridge cases were fired in Officer Miller's firearm, three cartridge casings were fired in Officer Oliveras' firearm, and one cartridge was fired in Officer Rodriguez's firearm. Navarette's revolver contained six fired .22 caliber Long or Long Rifle caliber cartridge cases in its six-shot cylinder.

The bullet recovered from Navarette's body during the autopsy was determined to have the same characteristics as Corporal Becerra's Sig Sauer pistol, but did not have sufficient detail as to make a definitive identification as to the exact weapon which fired them. The pistols of the other four officers involved in the shooting were excluded from having fired this projectile.

DNA Evidence

Navarette's handgun was examined for DNA. A major DNA profile was obtained from the swab of the grip of the revolver. The DNA profile obtained from the blood standard from Navarette was matched to the DNA profile on the grip of the revolver.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

In order to justly charge and convict an officer of any crime based on this incident, it would be necessary to prove beyond a reasonable doubt that no legal justifications apply for the officers' actions. People v. Banks (1977) 67 Cal.App.3d 379, 383-84. Several justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 196 states 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 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 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 Kortum court 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.

The above justifications must be interpreted in light of U.S. 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. The U.S. 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." Tennessee v. Garner (1985) 471 U.S. 1, 3.

However, any determination about the reasonableness of force used by an officer "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." Thus, "[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." Graham v. Connor (1989) 490 U.S. 386, 396.

LEGAL ANALYSIS

The issue is whether FPD officers involved in this incident may be charged with a crime. If their actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be sustained. Based upon the investigation in this case and the uncontroverted evidence supplied by all of the officers involved, it is the conclusion of the OCDA that the evidence does not support a finding of criminal culpability on the part of FPD Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller or Officer Rodriguez.

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.

In reviewing the voluntary interview statements of all of the officers involved in the shooting given to Investigators from the OCDA, each of them was in actual fear for his own life and the lives of his fellow officers at the moment they fired their weapons at Navarette. These law enforcement officers were both reasonable and justified in light of all the surrounding circumstances and in light of their extensive law enforcement and weapons knowledge, training and experience at the time of the shooting.

In their interviews, Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller, and Officer Rodriguez made statements consistently indicating the following:

- a) They either saw the gun in Navarette's hand or were informed by other officers closer to Navarette that he had a gun.
- b) Navarette failed to respond to or obey the commands of officers to get down on the ground and drop his weapon.
- c) Navarette emerged from the tunnel quickly toward officers, yelling with his arms raised in a confrontational manner.
- d) Navarette pointed and fired a firearm in the direction of officers.
- e) At the time of the shooting, each of the five officers who shot at Navarette was in fear of himself being shot and killed by Navarette, and/or in fear that Navarette was about to shoot and kill fellow officers.

In analyzing the conduct of Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller and Officer Rodriguez, one of the questions to be asked is similar to what the Court observed in *Brown, supra*: "[t]he question is whether a peace officer's actions were objectively reasonable based on the facts and circumstances confronting the peace officer. The test is 'highly deferential to the peace officer's need to protect himself and others.'" /d. At 527. "The '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....[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation....In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required." /d. at 527-528.

Navarette's death was the direct result of him pointing and firing a firearm in the direction of FPD officers and his failure to obey commands to get on the ground and surrender. As stated above, the circumstances leading up to and surrounding the entire encounter between Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller, Officer Rodriguez and Navarette, especially when viewed through the perception of the officer's combined extensive law enforcement experiences, reasonably indicated to the officers an intent by Navarette to attack the officers in a deadly way. In their perception, this required and justified the officers' response in shooting him to save each of their own lives and the lives of their fellow officers who had responded to the scene. Thus, the officers who fired at Navarette were justified in using deadly force to defend against the imminent, perceived danger of suffering bodily injury or possibly death.

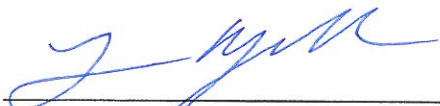
In order for Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller, and Officer Rodriguez to be justly and lawfully charged with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that officers did not act in a reasonable and justifiable self-defense or defense of others when they shot at Navarette. The above-described legal analysis and legal conclusion demonstrate that the prosecution would be unable to carry this burden in this case, as there is substantial evidence that Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller, and Officer Rodriguez each acted reasonably under the circumstances.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Sergeant Oliveras, Corporal Becerra, Officer Kirkreit, Officer Miller, and Officer Rodriguez, and there is substantial evidence that the officers acted reasonably when they shot at Navarette on May 10, 2012.

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

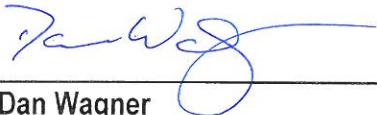
Respectfully,



Larry Yellin

Senior Deputy District Attorney
Homicide Unit

Read and approved by,



Dan Wagner

Assistant District Attorney
Head of Homicide Unit