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June 24, 2013

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

Re: Officer Involved Shooting on March 10, 2012
Non-Fatal Incident involving Dennis Mitchell Mueller
District Attorney Case # 12HM01458
District Attorney Investigations Case # 12-008
Orange County Sheriff Department DR # 12-041420
Orange County Crime Laboratory Case # 12-43807

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 on-duty Orange County Sheriff's Department (OCSD) Deputy Manuel Cruz. Dennis Mueller, 20, survived his injuries. The incident occurred in the City of Rancho Santa Margarita on March 10, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the March 10, 2012, non-fatal officer-involved shooting of Mueller. 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 deputy 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 March 10, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 30 witnesses and obtained and reviewed the following: OCDA 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 Mueller, criminal history records related to Mueller including prior criminal history records and prior incident reports; the personnel records of Deputy Cruz; 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 officers or personnel, specifically Deputy Cruz. 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. Eight 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.

An important aspect of investigating these types of cases is attempting to interview the officer involved in the shooting. Deputy Cruz provided a voluntary statement to OCDA Investigators on March 11, 2012.

FACTS

On March 10, 2012, at approximately 12:00 p.m., Deputy Cruz initiated a traffic stop on Mueller on Santa Margarita Parkway in Rancho Santa Margarita. Mueller fled on his motorcycle traveling at speeds of 100 miles per hour. Once a stop was made by Mueller, Deputy Cruz took cover behind his motorcycle and drew his weapon. Mueller failed to comply with Deputy Cruz's commands and began walking away. Mueller then turned toward Deputy Cruz and reached his right hand into his jacket pocket. Mueller began taking steps toward Deputy Cruz. Deputy Cruz yelled, "Don't do it, stop, don't do it," and shot two times at Mueller. Mueller continued to approach Deputy Cruz. Deputy Cruz continued to yell, "Don't do it, stop," and fired three more shots at Mueller. Mueller was hit by gunfire and fell to the ground. Mueller survived.

Voluntary, Consensual Statement of Deputy Cruz

Officer Manuel Cruz gave a voluntary, consensual statement to the OCDA on March 11, 2012.

According to Deputy Cruz, on the day of the shooting, at approximately 12:00 p.m., he heard Mueller riding a motorcycle in the area of Buena Suerte and Santa Margarita Parkway. Several weeks prior, Deputy Cruz had received complaints from Mueller's neighbors due to the loud sound of his motorcycle. Deputy Cruz was able to gain a visual of Mueller when Mueller passed him on Santa Margarita Parkway. Deputy Cruz initiated a stop by activating his emergency lights. Deputy Cruz was driving an OCSD motorcycle. Mueller put on his right blinker and began to pull over to the right curb. Before coming to a complete stop, Mueller crouched down on his motorcycle and accelerated away. Mueller reached speeds of at least 100 miles per hour and drove through two red lights with oncoming traffic.

Deputy Cruz put out a broadcast for assistance due to Mueller's failure to yield. He continued to pursue Mueller until he reached the intersection of El Portal and Alma Aldea. Mueller ran through a stale red light, causing Deputy Cruz to stop. Deputy Cruz lost sight of Mueller.

Deputy Cruz contacted dispatch advising them he had lost sight of Mueller. He then informed dispatch he was aware of a subject owning a motorcycle that looked similar to the one he was chasing that was located on Meadowpark Lane and Trabuco Canyon. Deputy Cruz went to that location and parked his motorcycle at the intersection of Raintree Lane and Robinson Ranch Road, waiting for Mueller to arrive. All other deputies were cancelled at the request of Deputy Cruz. Four to five minutes later, Deputy Cruz heard the loud sound of Mueller's motorcycle approaching his location. Once Mueller passed his location, Deputy Cruz called dispatch for a "follow."

Deputy Cruz had the following weapon on his person; a Glock Model 22 .40 caliber semi-automatic handgun in his holster, an expandable baton, pepper spray, a knife inside his right boot, and an X26 Taser. On his motorcycle was a Remington 12 gauge shotgun.

Mueller dismounted his motorcycle and Deputy Cruz pulled his weapon from his holster ordering Mueller to "Stay there" and "Don't move." Deputy Cruz dismounted his motorcycle with his gun drawn and positioned himself behind his motorcycle for protection. Mueller looked directly at Deputy Cruz and began to walk away heading toward the nearby residences. Mueller was wearing a large black coat and his left shoulder was facing the deputy. Mueller began walking faster. Deputy Cruz informed dispatch, "He is running away." Mueller grabbed the bottom of his jacket with his left hand and put his right hand into his pocket. Deputy Cruz said, "Dude, don't do it, stop, don't do it." Mueller took two steps toward Deputy Cruz and Deputy Cruz fired two shots. Mueller paused for a second and then came directly toward Deputy Cruz. Deputy Cruz again said, "Dude, don't do it." When Mueller was 15 feet away, Deputy Cruz fired three more shots. Mueller fell to the ground. Deputy Cruz then called dispatch and said, "Shots fired, subject is down."

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

While there were no eyewitnesses to the initial encounter between Mueller and Deputy Cruz, nor to the resultant shooting itself, several individuals were located who saw portions of the events just prior to and just after these occurrences.

Witness #1 is a resident on Meadowpark Lane in Rancho Santa Margarita. At about 12:30 p.m. he was outside his home and observed a police motorcycle officer drive into the cul-de-sac and then drive out. The deputy was Deputy Cruz, who then parked at the southwest corner of Sky Country Circle and Raintree Lane. Witness #1 heard another motorcycle approaching, who was later identified as Mueller. Witness #1 then heard a second motorcycle enter the cul-de-sac, which was being ridden by Deputy Cruz. Witness #1 heard, "Stay where you are, don't leave. Stay where you are, don't leave." Witness #1 was able to see Deputy Cruz draw and point his handgun at Mueller. Mueller ignored Deputy Cruz's commands and walked southbound away from Cruz. Witness #1's view was obstructed by a parked van when he heard Deputy Cruz say, "Don't do it, don't do it," followed by a single gunshot. He heard two more gun shots 10 seconds later. He saw Mueller, who was now again in his field of vision, fall to his knees. Witness #1 heard Deputy Cruz give Mueller additional commands. Mueller then stood up and Witness #1 heard two more gun shots. Mueller went down to the ground and began to yell, cry, and crawl on the ground. Witness #1 did not observe Mueller move toward Deputy Cruz, however, based on the location where he had last observed Muller walking and where Mueller went down, it appeared to Witness #1 that Mueller had moved toward Deputy Cruz.

Witness #2 is a resident on Meadowpark Lane in Rancho Santa Margarita. He observed a police motorcycle officer park at the corner of Sky Country Circle and Raintree Lane. A motorcycle driven by Mueller entered the cul-de-sac of Meadowpark Lane 10 minutes later. The police motorcycle followed Mueller into the cul-de-sac. Mueller got off his motorcycle, took off his helmet, and walked toward a residence on Meadowpark Lane. Deputy Cruz got off his motorcycle and told Muller to "Get down". Mueller ran southbound. Deputy Cruz drew his weapon and fired two rounds toward Mueller. Witness #2's view was obstructed by trees and he was not able to see Mueller at the time of the shooting. Witness #2 also heard Deputy Cruz say, "Don't do it." Witness #2 was told by Witness #1 to go inside his home. Witness #2 walked inside of his home and heard three more gunshots. He looked outside the window and saw Deputy Cruz holding his handgun and he heard a male crying in pain. Witness #2 then observed other police cars and paramedics arrive on scene.

Witness #3 was painting a fence on the south side of a residence located on Sky Country Circle in Rancho Santa Margarita when he noticed a Sheriff's deputy park his motorcycle near the fence. Witness #3 walked into the home to tell another occupant what he had seen. Witness #3 then heard the sound of another motorcycle approaching. He saw the deputy drive his motorcycle to the cul-de-sac of Meadowpark Lane, get off his bike, and hide behind his motorcycle. The deputy yelled, "Show me your hand! I came here to help you! Show me your hand!" The deputy kept repeating his commands, and then Witness #3 heard a gunshot. The deputy yelled again, "Show me your hand! Bring your hand in front!" There was a pause and then Witness #3 heard four more gunshots. The deputy again yelled, "Show me your hand! Pull your hand out!? Show me your hand!" Witness #3 heard a female scream. Witness #3 heard a final gunshot and saw the deputy run over to Mueller.

Witness #4 is a resident on Sky Country Circle in Rancho Santa Margarita and was sitting on the couch in her family room when Witness #3 walked in talking about an OCSD deputy parking a motorcycle on the south side of the residence. After a few minutes, Witness #4 heard a loud motorcycle engine coming at a high rate of speed. Witness #4 heard a loud noise and believed it was the backfire from the motorcycle. She then observed, through her rear window, the deputy with his hands and arms extended and realized the noise was gunfire. Witness #4 heard the deputy say, "Take your hand out!" She heard the deputy give the command four to five times. Witness #4 also heard the deputy say "he was there to help him." Witness #4 saw the deputy through the window fire the gun five times.

Witness #5 was inside of her home on Meadowpark Lane in Rancho Santa Margarita when she heard what she believed to be Mueller yell, "No, don't do it. Stop." She then heard two booms. She looked out her window and saw two to three police officer's with their guns drawn toward Mueller, who was lying in the street yelling, "I love you Chris." She heard the police tell Mueller that if he kept moving they were going to shoot. She then observed the police officers approach Mueller on the ground, turn him over, and handcuff him. Later, Witness #5 stated that she "assumed" the person yelling "No, don't do it," came from Mueller, when in fact it could have come from a police officer. Witness #5 is aware that the police had been after Mueller because of his loud motorcycle.

Witness #6 is a relative of Witness #5. Witness #6 was playing video games inside the house at the time of the shooting. He only heard five to six shots, which he thought were firecrackers. He did not see the shooting.

Dennis Mueller's Consensual, Voluntary, Pre-Miranda Statements of Events

Dennis Mueller did not make any statements to police.

EVIDENCE COLLECTED AT THE SCENE

Evidence collected at the scene consisted of four .40 caliber casings that were in the gutter at the north curb line of Meadowpark Lane, east of Mueller's motorcycle. A fifth .40 caliber casing was on the street east of Mueller's motorcycle. South of Mueller's motorcycle, toward the center of the cul-de-sac, was one copper-jacketed bullet core, a black men's wallet, and a pile of clothing, which had been cut from Mueller's person, a yellow raincoat which, responding OCSD Deputy Thomas Maxwell provided for Mueller as a pillow, and various gauze and medical paraphernalia. One copper jacketed bullet core was within the gauze. A full faced motorcycle helmet, worn by Mueller, was on the street west of Deputy Cruz's motorcycle. Read smears of blood were observed on the right side of the helmet.

An apparent bullet hole was in the passenger side of a Honda Odyssey van parked in a driveway on Meadowpark Lane. Two apparent bullet holes were observed on the exterior garage door of that residence. On the inside of the garage door, two apparent bullet holes, which appeared to correspond with the exterior bullet holes, were observed. An impact-damaged, copper-jacketed bullet core was located atop a workbench inside the garage. A bullet core was located on the garage floor by the resident on Meadowpark Lane and had been moved to the workbench. An apparent bullet hole was observed on the face of a cabinet door beneath a workbench. An impact-damaged, copper-jacketed bullet core was located within a drawer inside of that cabinet.

EVIDENCE COLLECTED AT HOSPITAL

Evidence collected at the hospital consisted of photographs of Mueller's injuries and items of his clothing. Items consisted of one pair of black Converse tennis shoes, one pair of black socks, one pair of blue underpants, one black

t-shirt with apparent blood stains, and a portion of a black and white checkered button down shirt with apparent blood stains.

EVIDENCE ANALYSIS

Toxicology

A toxicology examination of Mueller's blood drawn from Mission Hospital found no traces of drugs or alcohol. However, a urine screen showed a positive indicator for Opiates.

Firearm Examination

Deputy Cruz's Glock Model 22 semiautomatic pistol, .40 caliber handgun was received unloaded with the magazine removed. The gun was test-fired using ammunition from the laboratory reference collection. The Glock pistol fired and operated without malfunction.

The five cartridge cases found at the scene were Federal brand, .40 caliber Smith and Wesson. Each was microscopically compared to the test fired cartridge cases from the Glock pistol and determined to be a match.

Mueller's Motorcycle Helmet

Mueller's black motorcycle helmet was collected at the scene. Apparent blood was found on the interior and spatter stains were found on the face shield indicated that blood was deposited while the face shield was up. The blood was tested using the Leucomalachite Green and tested positive for blood.

Bullet Fragment

Bullet fragments were removed from Mueller's left arm. The fragments from the left arm consisted of three small lead fragments having a combined weight of approximately four grains.

MUELLER'S MEDICAL CONDITION

Mueller was admitted to Mission Hospital in Mission Viejo with three gunshot wounds to his abdomen and two gunshot wounds to his left arm. His condition was described as critical and he was emergently taken to the operating room for stabilization and repair to his abdominal injuries. He had significant abdominal trauma and during surgery he underwent a splenectomy (removal of the spleen) and diaphragm repair. Mueller's left arm sustained fractures, which necessitated attention by an orthopedic surgeon. After surgery, Mueller was transferred to the surgical intensive care unit and his condition was described as "guarded."

DISPOSITION OF CRIMINAL CASE AGAINST MUELLER

On April 10, 2012, the OCDA charged Mueller with one felony criminal offense and one misdemeanor offense in Orange County Case #12HF0979. Mueller was charged with one felony count of Vehicle Code (VC) section 2800.2, Evading a Police Officer, and a misdemeanor count of Penal Code (PC) section 148, Delaying/Resisting a Police Officer. He pleaded guilty to the felony charge of Vehicle Code Section 2800.2 on October 26, 2012, and was sentenced to three years formal probation and 180 days county jail.

Mueller signed under penalty of perjury the following factual basis for his plea:

"In Orange County, California, on 3/10/12, I did willfully and unlawfully while operating a motor vehicle did drive in willful and wanton disregard for the safety of persons and property and with the intent to flee and otherwise attempt to evade a pursuing police officer's motor vehicle while the peace officer's distinctive marked motor vehicle exhibited a lighted red lamp visible from the front which the defendant saw and the officer was sounding a siren as reasonably necessary and the peace officer wore a distinctive uniform."

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include 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 Deputy Cruz with Mueller.

LEGAL ANALYSIS

In order for Deputy Cruz 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 Deputy Cruz did not act in reasonable and justifiable self-defense or defense of others when he shot at Mueller. The prosecution would be unable to carry that burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Deputy Cruz to use the force that he did in this circumstance. There is significant evidence that Deputy Cruz acted reasonably under the circumstances.

In his statement to OCDA, Deputy Cruz said he shot Mueller because, “When he (Mueller) reached into his pockets and came toward me, um, I believed that he had something in his jacket that was gonna kill me.....and when he started coming at me, I believed that I was gonna die. And so I shot him.” With this statement, Deputy Cruz indicated that he shot Mueller in self-defense. In all of Deputy Cruz’s statements, he made no statement inconsistent with his claim of self-defense. We find that Deputy Cruz’s statement that he acted out of fear for his own safety credible. His claim of self-defense has not been contradicted by other evidence, and it is corroborated by physical evidence and eyewitness accounts just before and after the shooting. Having established that there is proof that Deputy Cruz acted in the belief that he needed to shoot Mueller in order to defend himself, what remains to be analyzed is whether his belief was reasonable, whether the danger was imminent, and whether the force used was proportional to the threat. These issues will now be discussed in turn.

In order for Deputy Cruz’s actions to be justifiable self-defense, his fear must be reasonable and must be of imminent harm; any future harm would not suffice. *Harden*, 85 Cal.App.4th at 629. In *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187, the court defined the term “imminent” to mean that “the peril must have existed or appeared to the defendant to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future.”

After a high speed chase reaching speeds in excess of 100 miles per hour and dangerously running several stop lights into oncoming traffic, Mueller was finally located by Deputy Cruz toward the end of a cul-de-sac. Mueller’s actions had already demonstrated an extreme lack of regard for human safety. Deputy Cruz, upon initiating commands to Mueller, positioned himself behind his OCSD motorcycle with his gun drawn. Mueller was wearing a large black jacket capable of concealing a deadly weapon, including a gun. When Mueller exited his motorcycle, he looked directly at Deputy Cruz and placed his left hand on the outside of the jacket while placing his right hand inside of the jacket pocket. Mueller was approximately 20 to 25 feet from Deputy Cruz, who reasonably could believe Mueller was reaching for a weapon inside of the jacket pocket.

Deputy Cruz stated in his interview, “The first thing I thought about was that he’s pulling a gun.” Mueller continued to stare at Deputy Cruz and disregard his instructions. When Mueller took two to three steps toward Deputy Cruz, Deputy Cruz called out, “Dude, don’t do it, stop, don’t do it.” These statements were corroborated by interviewed witnesses. Deputy Cruz was in a very vulnerable position, with the only safe cover behind his motorcycle. When Mueller continued to advance toward Deputy Cruz, Deputy Cruz fired two rounds. When Mueller continued to advance even after the two initial shots, and was now within 15 feet of Deputy Cruz, the imminent threat of harm was more intensified due to Mueller’s closing advancement. We conclude that Deputy Cruz reasonably believed that he was in imminent danger of being killed or suffering great bodily injury.

With respect to the issues of the need to use deadly force in response to the threat, and using no more force than is necessary, the key facts to consider are the apparent imminence of Mueller’s deadly attack, Deputy Cruz’s vulnerability, and the shortage of options available to Deputy Cruz. Deputy Cruz stated, “He wouldn’t have been able to run and he wouldn’t have been able to turn his back to Mueller in fear of being shot.” Additionally, Deputy Cruz

dropped to one knee behind his motorcycle to gain as much cover from any potential threat by Mueller. Calling for help at this point was not an effective option. Mueller was not complying with Deputy Cruz's commands and Mueller continued to advance toward him. It was too late for Deputy Cruz to run and turn his back on Mueller. Therefore, under the circumstances of the apparent imminent deadly attack by Mueller, it was reasonable for Deputy Cruz to shoot Mueller.

Further, viewing the scene as a reasonable officer on the scene would, instead of through the calm of 20/20 hindsight – as the Supreme Court counsels we must – we find that it was not excessive for Deputy Cruz to fire five rounds at Mueller. If he hit Mueller only once, it could take several minutes for the injuries to stop Mueller, giving Mueller more time to attack Deputy Cruz. Deputy Cruz also did not have much time to react due to the advancement of Mueller. After the first two shots were fired and Mueller continued to advance toward Deputy Cruz, it was not unreasonable to fire three more rounds in succession to ward off the imminent danger.

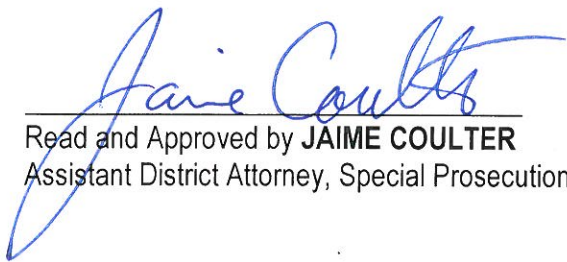
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews 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 Deputy Cruz, and there is substantial evidence that the officer's actions were reasonable and justified under the circumstances when he shot Mueller on March 10, 2012.

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



JOHN F. CHRISTL
Senior Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **JAIME COULTER**
Assistant District Attorney, Special Prosecutions Unit