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May 5, 2014

Chief of Police Carlos Rojas
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92702

Re: Officer Involved Shooting on October 22, 2012
Non-Fatal Incident involving Jaime Lopez Guillen
District Attorney Case # 12-026
Santa Ana Police Department DR # 12-31262
Orange County Crime Laboratory Case # 12-55780

Dear Chief Rojas,

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 Santa Ana Police Department (SAPD) Officer David Enriquez. Jaime Guillen, age 18 at the time of the incident, of Santa Ana, survived his injuries. The incident occurred in the City of Santa Ana on Oct. 22, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Oct. 22, 2012, non-fatal officer-involved shooting of Guillen. 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 SAPD officer involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Oct. 23, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed 53 witnesses and obtained and reviewed the following: SAPD reports, audio recordings and dispatch and radio traffic recordings; Orange County Fire Authority (OCFA) incident reports; Orange County Crime Laboratory (OCCL) reports including toxicology, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Guillen; criminal history records related to Guillen including prior criminal history records and prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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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 SAPD officers or personnel, specifically Officer Enriquez. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

Officer Enriquez did not provide a statement to the OCDA regarding this 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

On the evening of Oct. 22, 2012, Guillen was visiting his girlfriend at a residence on South Birch Street in Santa Ana. Guillen was drinking in the alley to the west of the house with his girlfriend, her brother, and a friend when he became belligerent. He pulled out a black pellet handgun concealed in his waistband and began to show it off. The friend left. Guillen's girlfriend and her brother tried to calm Guillen down, but he walked away from the group toward Santa Ana High School. The girlfriend and her brother followed Guillen at a distance and watched him walk onto the Santa Ana High campus on West Walnut Street.

Around 10:05 p.m., two men left the high school auditorium after a church function and noticed Guillen sitting on the sidewalk talking on his cell phone. Once they passed Guillen, they noticed he was following them. The two men stopped walking and turned around to face Guillen. Guillen walked up to one of the men and pointed a black handgun at his forehead. Guillen asked the man where he was from and demanded money. The man reached into his pocket and handed Guillen \$12.

As the robbery was occurring, the man's other companion ran away. Guillen took the \$12 from the first man and began chasing the companion. The companion ran back to the high school's auditorium to hide and told the people inside that Guillen had just robbed his friend at gunpoint.

Guillen ran across the campus toward Ross Street. His girlfriend and her brother watched Guillen stop and hide his gun in some bushes on the campus. The brother retrieved the gun. Meanwhile, several men from inside the auditorium began to chase Guillen. Several reported the incident to 911. Around 10:08 p.m., SAPD dispatch received several calls regarding a man with a gun near Santa Ana High School, who was last seen in the area of Ross and Pine Street.

At approximately 10:09 p.m., SAPD Officers Enriquez and Antonio Graham were dispatched to the area around Santa Ana High School. Officers Enriquez and Graham were assigned partners. Officer Enriquez drove their two-man, marked police car to the scene. Dispatch informed the officers that a Hispanic male was armed with a gun and had robbed someone on the school campus. Officer Graham removed his duty pistol from his holster and placed it in his lap as the officers arrived on the scene.

As the officers pulled up on Ross Street, they saw several men standing near an east/west alley that runs between Walnut and Pine. The men were waving their hands and pointed the officers down the alley toward a male subject, later identified as Guillen. Guillen was standing in a backyard of South Birch Street and was visible through a chain linked fence. The men told the officers that Guillen was the man with the gun.

Officer Enriquez drove the patrol car down the alley with the lights turned off. The officers could see Guillen pacing in the backyard. The officers parked the car approximately 50 feet from the chain link fence and exited the vehicle. Officer Enriquez walked to the north side of the fence while Officer Graham walked to the south side of the fence, both with their pistols pointed at Guillen. Officer Graham ordered Guillen to put his hands up, but Guillen continued to pace the yard. Officer Graham ordered Guillen to get all the way on the ground.

After several commands, Guillen lay down on his stomach with his head facing Officer Graham. Officer Graham ordered Guillen to look away from him and put his face all the way on the ground, but Guillen kept his head up and continued to look around. Officer Graham believed that Guillen was looking for a way to escape.

Officer Graham began to climb over the seven-foot chain link fence to take Guillen into custody. As he did so, Guillen stood up and ran east, between the south wall of the backyard and a pickup truck parked there. Officer Graham landed on the opposite side of the pickup truck and tried to cut off Guillen's escape route. As he ran, Guillen stumbled over trash cans that were along the south side of the truck. Officer Enriquez then fired four shots at Guillen. At the time, Officer Graham could not see Guillen's hands or lower torso. He heard gunshots come from the area of the alley where Officer Enriquez was positioned. He glanced over his shoulder to see Officer Enriquez standing in the alley with his pistol pointed toward Guillen.

Guillen continued to run eastbound. He ran to a car that was parked very close to the south wall of the backyard and struggled to pass it in order to head to Birch Street. Officer Graham caught up to Guillen and pulled his left shoulder. Guillen struggled to pull away. Officer Graham then punched Guillen in the face and forced him to the ground between the car and the wall.

Additional officers arrived and handcuffed Guillen. Officer Graham searched Guillen for weapons but did not find any. While searching, he found blood and realized that Guillen had been shot. SAPD then began administering first aid and called the paramedics. The paramedics arrived at approximately 10:22 p.m. and found a through-and-through gunshot wound on Guillen's left upper thigh and buttock. The paramedics described Guillen as stable but uncooperative and belligerent. The paramedics smelled alcohol on Guillen. Guillen told the paramedics that he had been walking with his girlfriend when someone had shot him. He did not know who had shot him.

Guillen was transported to Western Medical Center – Santa Ana (WMCSA) and admitted to the trauma unit. He was determined to have suffered an apparent gunshot wound to the left thigh.

Voluntary, Consensual Statement of Officer Graham

Officer Graham gave a voluntary, consensual statement to the OCDA on Nov. 29, 2012.

At the time of the incident, Officer Graham had been a police officer with the City of Santa Ana for approximately eight years. He previously worked as a police officer for the Tustin Police Department for three years. The incident occurred during his regular work hours. Officer Graham was equipped with a .40 caliber Glock 21 pistol, two magazines, an X-26 Taser, two single handcuff cases, a flashlight, and a baton.

Officer Graham recalled being dispatched the night of Oct. 22, 2012, in response to a 911 call regarding a possible robbery at gunpoint around Santa Ana High School. He believed the report to be legitimate because SAPD had received several phone calls regarding the incident. As he and Officer Enriquez approached the scene, Officer Graham removed his gun from his holster because he believed they were going to encounter a suspect with a gun. He stated that he feared that the suspect may come around the corner and "just start shooting," and he wanted to be prepared to respond quickly.

Officer Graham stated that the patrol car pulled up on Ross Street, where the officers saw at least three people in the middle of the street. When the officers pulled up to them, one man pointed in an easterly direction down a Pine Street alleyway and stated that there was a man with a gun. Officer Graham remembered looking down the alleyway and seeing a subject, later identified as Guillen, pacing back and forth in a backyard. Officer Graham described Guillen as "looking as if he was trying to escape" from the fence he was behind. Officer Graham identified the location as the backyard a residence on Birch Street.

The officers pulled up closer to the backyard with their lights out. When they parked and exited the vehicle, both officers had their guns drawn. Officer Graham stated that Guillen appeared to be under the influence of drugs or alcohol. As the officers approached Guillen behind the chain link fence, Officer Graham commanded Guillen to put his hands in the air several times. He then ordered Guillen to get down on the ground. Guillen started to get on his knees in what Officer Graham described as a "semi-uncooperative" manner. Guillen was continuously looking back and forth, and it appeared to Officer Graham as if Guillen was looking for ways to escape.

Officer Graham stated that he then got closer to the approximately 7-foot high fence. The backyard was dark, full of debris, and contained two vehicles. Officer Enriquez stayed on Officer Graham's left side. Officer Graham again ordered Guillen to stay on the ground, and Guillen screamed that he had not done anything wrong. Guillen then got on the ground with his head facing Officer Graham. Officer Graham stated that he thought Guillen needed to be taken into custody. He commanded Guillen to put his face down to the ground, which Guillen refused to do.

Officer Graham recalled that Guillen then stood up and proceeded to run away. Officer Graham then holstered his gun and began to scale the fence. Once Officer Graham got over the fence, he began to pursue Guillen. Officer Graham stated that he could not see Guillen's hands or lower torso. Officer Graham then heard four gunshots, but he did not know where the gunshots had come from. He glanced back at Officer Enriquez after the gunshots had been fired and realized the shots had probably come from Officer Enriquez.

Guillen continued to run, and Officer Graham heard noises that indicated Guillen had stumbled over something. Officer Graham stated that he then caught up to Guillen and took him into custody between the chain link fence and a car in the backyard. He grabbed Guillen by the shoulder and punched Guillen a few times in the face before getting Guillen to the ground. Officer Graham stated that he punched Guillen because he was afraid Guillen probably had a weapon and would reach into his waistband to retrieve it.

Officer Graham stated that after he took Guillen into custody, he began to search Guillen for weapons and injuries. He got blood on his hands and realized Guillen had been shot. Another officer then began rendering aid to Guillen.

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

Investigators conducted 49 neighbor canvass interviews following the incident on Oct. 22, 2012.

One resident said he saw a male subject in his backyard. He heard a male yell in Spanish, "There he is!" and saw police officers on the other side of the fence. He heard someone say, "Don't move your hands!" The witness saw the male start running and then saw a police officer fire his gun. The police officer was on the other side of the fence in the alleyway. The resident believed the subject was drunk because he was staggering.

Prior to hearing gunshots, numerous witnesses saw the police officers and heard them tell Guillen to stop or put his hands up. Several civilians stated that they had heard between three and six gunshots the night of the incident but did not witness the shooting.

Guillen's Consensual, Voluntary Statements of Events

Guillen gave a voluntary, consensual statement to the OCDA on Oct. 23, 2012. His interview lasted approximately one hour.

Guillen provided several inconsistent stories regarding the shooting. Initially, Guillen said he had been shot while exiting a McDonald's on First Street in Santa Ana. He stated that he did not see who had shot him.

Later, Guillen stated he had been walking through Santa Ana High School when an unknown Hispanic gang member ran by and shot his leg. Guillen believed the man to be a member of a specific criminal street gang. Guillen stated that he hid behind a car after he had been shot until an SAPD officer found him and commanded him down to the ground at gunpoint. He stated that the officer handcuffed him and called the paramedics.

Guillen did not associate the police with the shooting. During his interview, Guillen denied having consumed alcohol or used any drugs the night of the incident. He also denied having possessed a firearm that evening.

EVIDENCE COLLECTED AT THE SCENE

An OCCL forensic scientist collected the following evidence at the scene:

- Four .40 caliber cartridge casings
- Four bullet fragments
- One jacketed bullet
- One body of a "Master" lock and one hasp for a "Master" lock
- Guillen's clothing
- One brown sweatshirt

EVIDENCE ANALYSIS

Firearm and Projectile Examination

An OCCL forensic scientist tested Officer Enriquez's .40 caliber Glock Model 22 pistol. The pistol was test fired and operated without malfunction. One jacketed bullet found at the scene was determined to share class characteristics with Officer Enriquez's pistol. Other projectiles found at the scene could not be classified.

Cartridge Case Examination

The four fired cartridge cases collected at the scene were determined to have been fired by Officer Enriquez's pistol.

Toxicological Examination

An analysis of Guillen's pre-admitting blood showed a blood alcohol concentration of .22. The blood sample also tested positive for 11-nor-9-carboxy-delta-9-tetrahydrocannabinol (THCA), a metabolite for the THC chemical found in marijuana.

GUILLEN'S MEDICAL CONDITION

Guillen was determined by WMCSA staff to have suffered a lateral gunshot wound to his left thigh. Medical staff applied a dressing and Ace wrap to the wound as it was determined that no further medical intervention was necessary.

GUILLEN'S PRIOR CRIMINAL HISTORY

Guillen's prior criminal record was reviewed and considered.

GUILLEN'S POST-INCIDENT CONVICTION

On Oct. 24, 2012, the OCDA charged Guillen in Case # 12CF3085 with one count of violating California Penal Code sections 211/212/5(c), Second Degree Robbery, one count of violating California Penal Code section 186.22(a), Street Terrorism, one count of violating California Penal Code section 417.4, Brandishing an Imitation Firearm, and one criminal enhancement under California Penal Code section 186.22(b), Criminal Street Activity. Guillen plead guilty to Second Degree Robbery and admitted the enhancement on March 7, 2013. He was sentenced to three years in state prison.

Guillen's written plea, made and signed under penalty of perjury, is as follows:

"In Orange County, California, on 10/22/12, I willfully and unlawfully took property against the will and from the possession of another person by means of force and fear. I committed this offense for the benefit and in association with [Gang Name], a criminal street gang, with the specific intent to promote, further, and assist in criminal conduct by members of that gang."

LEGAL PRINCIPLES AND ANALYSIS

Possible criminal charges against an officer involved in a shooting include attempted murder (PC 664/187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict an officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications applied to the officer's actions. *People v. Banks* (1977) 67 Cal.App.3d 379, 383-84. Several 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 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.

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.

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 reasonable person, if confronted by the appearance of danger which arouses in his mind 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 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.

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*, apply to the circumstances surrounding the interactions between Officer Enriquez and Guillen.

LEGAL ANALYSIS

Officers Enriquez and Graham were dispatched to the scene of an armed robbery. The suspect was described as a Hispanic male. Officer Graham stated he believed they were going to encounter a suspect with a gun, and he was afraid the suspect might, "just start shooting." When the officers arrived, a witness pointed down the alley and stated that there was a man with a gun. Officer Graham saw Guillen pacing inside a fenced backyard.

When the officers got out of the car, Officer Graham noted that Guillen appeared to be under the influence. Officer Graham gave Guillen several commands to put his hands up and get to the ground. Guillen was uncooperative and slow to comply. Even then, Guillen kept his head off the ground, looking around, and it appeared as if Guillen was looking for a way to escape.

Despite being ordered to stay on the ground, Guillen stood and ran between the wall of the backyard and a pickup truck. Officer Graham could not see Guillen's hands or torso. Officer Enriquez fired shots and Guillen kept running. Officer Graham caught up to Guillen and was able to detain him. Officer Graham stated he was afraid Guillen was armed.

Based upon the information given about a firearm during the 911 call, Guillen matching the description of the robbery suspect, and a witness pointing Guillen out as the man with the gun, it was reasonable for the officers to believe that Guillen possessed a firearm. Because of Guillen's uncooperative behavior, his attempt to flee, and the officer's inability to see Guillen's hands or torso, it was reasonable for the officers to believe that Guillen was still armed and posed a significant threat to both the officers and the civilians in the neighborhood.

Where potential danger, emergency conditions, or other exigent circumstances exist, the Supreme Court's definition of "reasonableness" is generous to the police. A police officer's use of deadly force is reasonable if the officer has probable

cause to believe the suspect poses a significant threat of death or serious bodily injury to the officers or others. Accordingly, Officer Enriquez acted reasonably under the circumstances. While Officer Enriquez did not give a voluntary statement, Officer Graham's account given in his voluntary statement was considered in determining the reasonableness of Officer Enriquez's actions under the circumstances.

In order for Officer Enriquez to be justly and lawfully charged and convicted with a crime in this incident, it would be the prosecution's burden to prove beyond a reasonable doubt that he did not act in reasonable and justifiable self-defense or defense of others when he shot at Guillen. Based upon a review of all available evidence, the conduct of Officer Enriquez does not support a finding of criminal culpability.

CONCLUSION

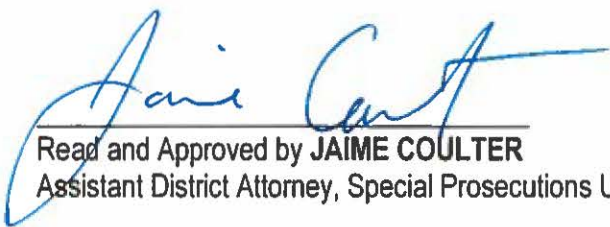
Based upon a review of all of the evidence provided to and obtained by the OCDA, and based upon the entirety of facts contained in all the available reports we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is insufficient evidence to prove beyond a reasonable doubt criminal culpability on behalf of Officer Enriquez on Oct. 22, 2012, when he shot Guillen.

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

Respectfully submitted,



ERIN ROWE
Deputy District Attorney
Special Prosecutions Unit



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