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January 7, 2014

Interim Chief of Police Carlos Rojas
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on June 23, 2013
Fatal Incident involving Jessica Gonzalez
District Attorney Case # S.A. 13-015
Santa Ana Police Department Case # 2013-17495
Orange County Crime Laboratory Case # 13-48764

Dear Interim 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) Officers Gary Ayala and Saul Esquivel. Jessica Gonzalez, age 35 at the time, of Santa Ana, died as a result of her injuries. The incident occurred in the City of Santa Ana on June 23, 2013, at approximately 8:07 a.m.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the June 23, 2013, fatal, officer-involved shooting of Gonzalez. 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 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 June 23, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted seven interviews, contacted 167 witnesses, and obtained and reviewed the following: SAPD reports, audio recordings, and dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Gonzalez; criminal history records related to Gonzalez, including prior criminal history records and prior incident reports; the personnel records of Officers Ayala and Esquivel; and other relevant reports and materials, including audio recordings of the conducted neighborhood canvasses.

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 Officers Ayala and Esquivel. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Prosecutors assigned to the Special Prosecutions Unit review non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officers Ayala and Esquivel provided separate, voluntary statements to the OCDA on Sept. 23, 2013.

FACTS

Introduction

The following synopsis of the incident is based upon our analysis of the evidence, the primary sources of which are:

- the statements of witnesses to the incident, primarily the statements of Officers Ayala and Esquivel;
- statements from civilians in the surrounding area;
- statements from medical personnel who attended to Gonzalez's injuries;
- the forensic crime scene evidence; and
- the medical evidence concerning Gonzalez's injuries.

The primary witnesses to the incident were Officers Ayala and Esquivel. Civilians in surrounding apartments were on the scene, but none witnessed the shooting. As often occurs in human affairs, none of the witnesses' perceptions of the incident are identical. Nevertheless, after reviewing their statements and considering the other evidence, we believe that the facts set forth in this synopsis are well established.

Synopsis

On June 20, 2013, at approximately 3:32 p.m., Orange Police Department (OPD) officers were dispatched to the 2000 block of East Palmyra in the City of Orange regarding an armed female suspect involved in a shooting. At the scene, they discovered a woman who had been shot three times in the back with a .38 caliber handgun. She was transported to the hospital, where she died of the gunshot wounds. OPD detectives identified the victim's ex-girlfriend, Gonzalez, as the suspect in the homicide and obtained a warrant for her arrest.

Three days later, on June 23, 2013, at around 8:00 a.m., SAPD officers Ayala and Esquivel were conducting a patrol check on the 800 block of South Townsend Street, Santa Ana, regarding a possible gang-related stabbing that had occurred several days prior. Earlier that day, they had received a "Wanted Bulletin" and a briefing from SAPD supervisors naming Gonzalez as wanted for the June 20, 2013, homicide.

While driving south down the east alley paralleling Townsend Street, Officer Ayala noticed four people, two males and two females, hanging out inside a garage on the 800 block of South Townsend Street, on the west side of the alley. Officer Ayala believed them to be possible gang members. As he drove by the garage, one of the males waved at Officer Ayala. Officer Ayala then met Officer Esquivel, who had been driving south on Townsend Street in another patrol car, at the end of the alley. The two officers decided to return to the garage and talk to the four subjects.

Officer Ayala drove back up the alley and parked his patrol car on the east side of the alley, slightly north of the garage. Officer Esquivel parked his patrol car directly behind Officer Ayala's car. The officers exited their vehicles and began to approach the garage, Officer Ayala walking southwest toward the garage's front door, and Officer Esquivel walking directly west toward the garage wall. Officer Ayala saw a female exit the garage and immediately recognized her as Gonzalez, the wanted person whose picture he had seen earlier in the day. Gonzalez was holding an apparent gray, semiautomatic pistol in her right hand and pointing it up toward the sky. She was standing five to 10 feet away from Officer Ayala, and there was no cover between them.

Officer Ayala knew that Gonzalez was wanted for a homicide, and he stated that he feared Gonzalez was going to shoot him. He tried to move to a position of cover along the east wall of the garage and yelled, "Gun." He withdrew his pistol from his holster with his right hand and began shooting at the garage wall, believing that shooting at the wall would provide cover for him while he ran across the alley toward Officer Esquivel's patrol car.

As he ran toward the patrol car, Officer Ayala saw Gonzalez run east from the garage toward the alley. He heard gunshots but did not know whether the gunshots were coming from Gonzalez's firearm. When he arrived at Officer Esquivel's car, he saw Gonzalez fall face down on the ground in the alley. Officer Ayala could no longer see the gray pistol, but he saw Gonzalez reach her left hand toward the front of her body, which was on the ground. He believed she was retrieving the pistol and yelled, "She's reaching for a gun." Officer Ayala fired two rounds at Gonzalez. During the entire incident, Officer Ayala fired a total of eight rounds.

Meanwhile, as he was walking along the garage wall, Officer Esquivel saw Officer Ayala run across the alley toward the police cars and heard him yell, "Gun, gun, gun, gun." Officer Esquivel saw Officer Ayala fire rounds toward the front of the garage. Officer Esquivel believed that Officer Ayala was encountering a life-threatening situation due to the high-pitched tone of his scream. He then saw Gonzalez run across the alley to within five feet of Officer Ayala. Officer Esquivel believed that Gonzalez would kill Officer Ayala if he did not prevent it. Officer Esquivel withdrew the handgun from his holster and fired 12 rounds at Gonzalez. Gonzalez fell to the ground. Officer Esquivel retreated to the rear of his patrol car, where he saw Officer Ayala standing next to him.

After the officers fired their handguns, the male subject, who had previously waved at Officer Ayala, peaked out from the garage, looked at the officers, and went back into the garage. Officers Ayala and Esquivel believed other subjects from the garage were going to shoot at them, so they retreated southbound and took cover next to garages southeast of the other subjects' garage. The officers notified dispatch that they had been involved in a shooting incident and requested paramedics.

Minutes later, additional SAPD officers arrived to assist. Officer Esquivel handcuffed Gonzalez and saw a grey replica handgun under her body. SAPD officers searched the area but were unable to locate the other persons who had been in the garage.

At approximately 8:14 a.m., the Orange County Fire Department arrived on the scene. The paramedic who treated Gonzalez saw her lying prone in the middle of the alley in a pool of blood with her hands cuffed. She was not breathing, had no pulse, and was unresponsive. The paramedic directed SAPD to remove Gonzalez's handcuffs. He removed Gonzalez's shirt and observed a gunshot exit wound on her back. When he turned Gonzalez onto her back, a bullet fell from her body to the ground. The paramedic also noted gunshot wounds on Gonzalez's left chest, right chest, right breast, right bicep, and right inner elbow. He also found a syringe in Gonzalez's bra that appeared to be filled with

blood.

The paramedics began cardiopulmonary resuscitation and placed Gonzalez on a heart monitor, which showed that she had electrical activity but no pulse. At approximately 8:20 a.m., the paramedics determined that Gonzalez had no electrical activity in her heart, excessive bleeding, no respirations, and no heart sounds. The paramedic treating Gonzalez was going to pronounce her deceased, but Western Medical Center – Santa Ana directed that the paramedics continue treatment and transport Gonzalez to the University of California, Irvine – Medical Center (UCIMC) in Orange.

Gonzalez arrived at UCIMC at approximately 8:50 a.m. where she was treated by the on-call trauma surgeon. The surgeon noticed five gunshot wounds around Gonzalez's mid back, left scapula, right scapula, right bicep, and left breast. He performed a thoracotomy to observe Gonzalez's heart because the responding paramedics had told him that Gonzalez had not had a pulse since 8:20 a.m. A chest tube was placed in Gonzalez's right side in case her lung had collapsed. Observing a wound to Gonzalez's left ventricle and no cardiac motion, the surgeon pronounced Gonzalez dead at 8:55 a.m.

Background of the Area

The incident occurred in the alley between South Townsend Street and South Raitt Street in Santa Ana. The alley runs north/south between residential apartments and garages lining either side. The shooting occurred in the alley in front of a garage on the 800 block of South Townsend Street in the morning hours when the weather was warm, overcast, and dry.

Voluntary, Consensual Statement of Officer Ayala

Officer Ayala gave a voluntary, consensual statement to the OCDA on Sept. 23, 2013. At the time of the incident, Officer Ayala had been a police officer with the City of Santa Ana for approximately six months. He had previously worked as a police officer for the San Fernando Police Department for three years. The incident occurred during his regular work hours while Officer Ayala was equipped with a .40 caliber Glock 21 pistol, three magazines, a backup Smith & Wesson Bodyguard 380 gun, a baton, pepper spray, handcuffs, a knife, and a radio.

Officer Ayala recalled meeting Officer Esquivel in the area of Mark and Townsend around 8:00 a.m. on June 23, 2013. He saw Officer Esquivel speaking to a male pedestrian, whom Officer Esquivel told him was the father of a murder victim who had been killed in the area a few days earlier. The father was looking for witnesses to the murder. Officer Esquivel suggested that he and Officer Ayala do a patrol check down Townsend.

Officer Ayala stated that he began to drive south down the east alley of the 800 block of Townsend while Officer Esquivel drove down Townsend. He saw an open garage to his right with two males and two females who looked like "parolee-type subjects." He continued driving and met Officer Esquivel at the southern end of the alley. He told Officer Esquivel about the garage with the four subjects, as well as about another half-open garage just north of them with two subjects inside. He also stated that the four subjects in the first garage appeared to be possibly associated with a local criminal street gang he knew to carry handguns and be involved in murders.

The officers started driving back up the alley, and Officer Esquivel stopped at the half-open garage. Officer Ayala remembered receiving a message from Officer Esquivel that the two subjects in the half-open garage were "uncooperative." He then told Officer Esquivel to follow him up the alley to the other open garage. Officer Ayala stated that he could not remember which garage it was, and he drove through the alley looking left until he saw the open garage. He then stopped and exited his vehicle.

Officer Ayala recalled taking a few steps out of his vehicle and being unable to see inside the garage. He was walking through the alley with only a partial view of the garage when a female holding a gray, semiautomatic weapon stepped out. Officer Ayala believed he met her about half way through the alley, when she was holding the gun in her right hand pointed up toward the sky. Officer Ayala recognized the female, Gonzalez, as the woman wanted for murdering her

girlfriend whom he had been briefed about earlier that morning.

Officer Ayala stated that he then yelled, "Gun," sidestepped southbound, and removed his weapon from his holster. Using his right hand, he started shooting at the wall hoping the rounds would penetrate the wall and give him enough time to run back and take cover near his vehicle. He believed he fired about five rounds. Officer Ayala stated that he was afraid because he was exposed in the alley, and all Gonzalez had to do was point her gun and shoot him in the face or chest in order to kill him. He also stated that, as he was shooting, he could hear additional gunfire, though he could not tell who was firing the additional shots. He stated that he believed he was the one being shot at.

Officer Ayala recalled running back southeast toward Officer Esquivel's car, which was parked behind his own, while continuing to shoot one-handed. He could not remember when he stopped shooting, but he believed the shooting incident lasted three to five seconds. As soon as he made it to Officer Esquivel's car, he saw Gonzalez fall face-down to the ground. He saw Gonzalez reach for something with her left hand, and he believed he yelled, "She's reaching for the gun." Officer Ayala then recalled shooting two additional rounds.

Officer Ayala then saw a male poke his head out from the garage. He also saw Officer Esquivel taking cover behind a dumpster on the west side of the alley. He told Officer Esquivel that there were multiple subjects in the garage as he ran backwards, taking cover behind another garage on the east side of the alley. The officers then notified dispatch over the radio that they had been involved in an officer-involved shooting.

Officer Ayala then recalled additional units arriving and telling them that there were more subjects who could possibly flank them from another side. He saw that Gonzalez was still moving and warned the additional officers that she still had a gun underneath her. He then searched the garage with another officer and found it to be unoccupied.

Voluntary, Consensual Statement of Officer Esquivel

Officer Esquivel gave a voluntary, consensual statement to the OCDA on Sept. 23, 2013. At the time of the incident, Officer Esquivel had been a police officer with the city of Santa Ana for approximately six months. He had previously worked as a police officer for the San Fernando Police Department for eight years. The incident occurred during his regular work hours while Officer Esquivel was equipped with a .45 caliber Glock 21 pistol, three magazines, an X26 Taser, a baton, pepper spray, handcuffs, and a radio.

Officer Esquivel recalled responding to a call for service in the area of Mark Street, an east/west street northwest of Townsend Street, on the morning of June 23, 2013. As he was patrolling, a man approached Officer Esquivel and began to tell the officer that his son had been murdered on Townsend when he was stabbed multiple times in a possible gang-related incident a few days earlier.

Officer Esquivel stated that, shortly after the man left him, Officer Ayala arrived. The officers decided to do a patrol check down Townsend with Officer Ayala driving down the alley and Officer Esquivel driving down Townsend. The officers drove their respective streets and met at the southern end of the alley. Officer Esquivel recalled Officer Ayala telling him that he had seen two open garages in the alley with multiple subjects in them. Officer Esquivel stated that he decided to contact the subjects regarding the boy who had been stabbed days earlier.

Officer Esquivel drove north up the alley to the first open garage and asked the people inside questions such as, "Who lives here?" After a short conversation, he drove "maybe 100 feet" to tell Officer Ayala that he had spoken with the subjects. Officer Ayala then suggested they go check out the second garage further north. Officer Ayala drove north up the street, parking just north of the second open garage, and Officer Esquivel parked behind him.

Officer Esquivel described the officers as exiting their vehicles simultaneously. He thought that Officer Ayala had "more of a direct approach into the mouth of the garage" than he did. He then recalled hearing Officer Ayala suddenly yell, "Gun, gun, gun" in a high-pitched voice about 15 feet away from where Officer Esquivel was standing. He saw Officer Ayala retreating back to his vehicle "as quickly as he can" while shooting with his right hand, looking as if he were

shooting over his left shoulder. Officer Esquivel recalled Officer Ayala firing seven or eight rounds. Officer Esquivel stated that he believed Officer Ayala was encountering a threat to his life because he had never before heard Officer Ayala scream the way he was screaming at that moment.

Officer Esquivel stated that he saw a female, later identified as Gonzalez, exit the garage and run across the alley, appearing like she was "going after" Officer Ayala. Officer Esquivel stated that, while he did not see any firearms on Gonzalez, he believed Gonzalez was going to engage Officer Ayala in a gunfight, so he withdrew his weapon and fired at her. He saw Gonzalez take maybe a step or two and collapse in the alley. Officer Esquivel recalled having no visual of Gonzalez's right arm when she collapsed, as it was underneath her. He recalled moving back down the alley toward his car, where he saw Officer Ayala standing next to him. He watched Officer Ayala reengage Gonzalez by firing approximately three more rounds at Gonzalez.

Officer Esquivel believed a few second went by before the officers then saw two heads poke out of the garage and look toward them. He thought the heads were possibly going to start shooting at the officers or try to get away. As other officers arrived, he remembered setting up a perimeter and handcuffing Gonzalez. When he pulled Gonzalez's right arm out from underneath her, Officer Esquivel noticed a lightweight, gray replica handgun that had no safety marking on it. At this point, he did not know where the two people who had peeked out from the garage had gone.

Neighborhood Canvass Interviews

There were no percipient witnesses to the officer-involved shooting besides Officers Ayala and Esquivel. Investigators conducted canvass interviews on the morning of June 23, 2013, as well as several additional mornings. Several residents of Townsend Street reported that they were inside their apartments at the time of the incident and had heard between seven and 10 gunshots. Many thought they had heard fireworks. One man reported hearing voices screaming after the gunshots had ended, but he could not tell what was being said. Others reported hearing voices yell, "Get on the ground" or "Don't move." Some residents stated that they had been sleeping and awoke to the sound of gunshots, while others slept through the entire incident and were unaware anything had happened.

EVIDENCE COLLECTED AT THE SCENE

A forensic scientist employed by the OCCL collected the following evidence at the scene:

- 20 cartridge cases
- six apparent bullet jacket fragments
- four bullet fragments
- one piece of metal
- one bullet jacket fragment
- one bullet
- one bullet with apparent blood
- one gray plastic toy gun with apparent blood
- one syringe loaded with apparent blood
- sunglasses

The cartridge cases, bullets, and bullet fragments were strewn throughout the alley from 810 S. Raitt Street and 809 S. Townsend Street to 729 S. Townsend Street. Holes and strike marks were in the east walls, garage door frame, garage door, and pillar of 809 and 805 S. Townsend Street and 729, 730, and 802 S. Raitt Street.

EVIDENCE ANALYSIS

Findings at Autopsy

On June 26, 2013, at 9:00 a.m., an autopsy was conducted by Dr. Etoi Davenport, a forensic pathologist for the Orange County Sheriff-Coroner. Dr. Davenport located nine wounds on Gonzalez's body, described as follows:

- One gunshot entry wound to the right forearm
- One gunshot entry wound to the top bicep
- One gunshot exit wound to the inner right bicep
- One gunshot entry wound to the right armpit
- One gunshot entry wound to the upper right back, through tattoo
- One gunshot exit wound to the left breast, below nipple
- One gunshot entry wound to the upper left back
- One gunshot exit wound to the lower right back
- One grazing wound to the lower left back

One projectile was removed from Gonzalez's spine. Projectile fragments were removed from Gonzalez's left chest cavity and spine. Dr. Davenport found no signs of altercation.

Dr. Davenport determined Gonzalez's cause of death to be multiple gunshot wounds.

Toxicological Examination

A toxicological examination of Gonzalez's post-mortem blood yielded the following results:

DRUG	MATRIX	RESULT
Morphine	Postmortem Blood	0.24 mg/L
Codeine	Postmortem Blood	0.025 mg/L
Methadone	Postmortem Blood	0.62 mg/L
7-Aminoclonazepam	Postmortem Blood	Detected
Methamphetamine	Postmortem Blood	0.26 mg/L
Methamphetamine	Postmortem Blood	Detected
Methadone Metabolite	Postmortem Blood	Detected

Firearms Examination

A forensic scientist employed by the Orange County Sheriff's Department examined the .45 caliber Glock Model 21 pistol used by Officer Esquivel and the .40 caliber Glock Model 22 pistol used by Officer Ayala in this incident. The pistols were test fired and operated without malfunction.

Cartridge Case Examination

Twelve cartridge cases from the scene were determined to have been fired from Officer Esquivel's firearm. Eight cartridge cases from the scene were determined to have been fired from Officer Ayala's firearm.

Projectile Examination

The projectiles removed from Gonzalez's body during the autopsy lacked marks sufficient to classify them. The bullet that fell from Gonzalez's body to the ground when the paramedics arrived and rolled her over in the alley was determined to share class characteristics with Officer Ayala's firearm.

GONZALEZ'S PRIOR CRIMINAL HISTORY

Gonzalez's prior criminal history dating back to 1998 - including arrests for grand theft, burglary, and hit-and-run - was examined.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officers involved in the shooting include murder (PC 187), 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 any officer of any of these charges, 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.

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 or she 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 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. The Supreme Court stated that 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.” *Graham v. Connor* (1989) 490 U.S. 386, 397. Thus, “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.” *Id.* at 396.

As the California Court of Appeal held in a recent case:

"Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the defendant police officer is in the exercise of the privilege of protecting the public peace and order [and] he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.... "The test is highly deferential to the police officer's need to protect himself and others. . . .

"The 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....

"We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure."

Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528.

LEGAL ANALYSIS

In order for Officer Ayala or Officer Esquivel to be justly and lawfully charged and convicted of a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense or defense of others when they shot at Gonzalez.

As applicable to the facts in this case, the justification of self-defense or defense of others has several legal elements:

1. Officer Ayala and Officer Esquivel actually believed themselves or others to be in imminent danger of being killed by Gonzalez;
2. Officer Ayala and Officer Esquivel reasonably believed that the immediate use of force was necessary to defend themselves or others against Gonzalez; and
3. Officer Ayala and Officer Esquivel used no more force than was reasonably necessary to defend themselves against the danger posed by Gonzalez.

We will analyze these elements in turn.

1) Actual Belief in Necessity of Self-Defense

The question here concerns the officers' state of mind – did Officer Ayala and Officer Esquivel actually believe that Gonzalez posed a danger to themselves or to others? In his statement to investigators, Officer Ayala said that he shot bullets toward the garage near Gonzalez because he saw that Gonzalez was holding what looked like a semiautomatic weapon, he recognized her as a wanted person for a recent homicide, and he was standing in an open alley in close range to Gonzalez and her weapon. He stated that, given his proximity to Gonzalez and her apparent weapon, he feared for his life.

Officer Esquivel told investigators that the combination of hearing Officer Ayala shout in a scared tone, seeing Officer Ayala fire his weapon, and seeing Gonzalez walk out into the street like she was "going after" Officer Ayala caused him to believe that Officer Ayala was in a life-threatening situation. These facts sufficiently indicate that Officer Ayala actually believed his life was in danger and that Officer Esquivel believed Officer Ayala's life to be in danger.

2) Reasonableness of Belief that Gonzalez Posed Imminent Danger

The second requirement for establishing the justification of self-defense or defense of others is proof that Officer Ayala's and Officer Esquivel's beliefs that Gonzalez posed an imminent danger were reasonable under the circumstances. The following evidence supports the reasonableness of the officers' beliefs:

- The officers had been briefed on the morning of June 23, 2013, that Gonzalez was wanted for the murder of her girlfriend, and Officer Ayala recognized Gonzalez as the wanted individual;
- Officer Ayala was familiar with the criminal street gang, a group known for violent tactics, and believed the subjects in the garage, including Gonzalez, to be associated with that gang;
- Gonzalez was holding what appeared to be a semiautomatic weapon;
- Officer Ayala was in close range to Gonzalez as she approached him in an open alley with no areas of cover;
- The tone in Officer Ayala's voice when he yelled "gun" was a scared one that Officer Esquivel had never before heard Officer Ayala use;
- Officer Esquivel saw Officer Ayala shooting at Gonzalez and reasonably believed that she would engage in gunfire with officer Ayala.

3) Reasonable Force

The third element required to establish the justification of self-defense or defense of others is that the force used is no greater than necessary to deal with the apparent danger.

Here, the danger reasonably apparent to Officer Ayala was that Gonzalez, a person he knew to be a wanted murder suspect, was holding an apparent semiautomatic weapon and moving toward him in the alley. Under these circumstances, it was not disproportional force for Officer Ayala to respond with deadly force in self-defense. Officer Ayala first attempted to shoot at the garage wall and run for cover behind a patrol car. When he saw Gonzalez reaching with her left hand, he reasonably believed she was reaching for her firearm and fired two additional rounds to prevent Gonzalez from shooting at the officers. Officer Ayala was faced with an apparent deadly threat, and he responded with proportional force. As the Court of Appeal held: "The test is highly deferential to the police officer's need to protect himself and others. . . 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." *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.

Officer Ayala had no way of knowing that Gonzalez's weapon was a replica, and it was thus reasonable for him to use deadly force. Likewise, the danger reasonably apparent to Officer Esquivel was that he heard his partner yell "gun" and saw him fire shots at Gonzalez, who was approaching him in the alley. Under these circumstances, it was not disproportional force for Officer Esquivel to respond with deadly force to defend Officer Ayala's life.

CONCLUSION

In order to justly charge and convict Officer Ayala or Officer Esquivel of a crime, it would be the prosecution's burden to prove beyond a reasonable doubt that the officers did not act in self-defense or defense of others when they shot at Gonzalez. In accordance with the foregoing discussion, the prosecution would be unable to carry its burden in this case. A jury analyzing these facts would likely and justly conclude that it was reasonable for Officer Ayala and Officer Esquivel to use the force that they did in this circumstance.

Therefore, 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 the evidence does not support a finding of criminal culpability on the part of Officer Ayala or Officer Esquivel, and that there is sufficient evidence that the officers' actions were reasonable and justified under the circumstances when they shot at Gonzalez on June 23, 2013.

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

Respectfully submitted,



Ebrahim Baytieh

Senior Deputy District Attorney

Assistant Head of Court - Homicide Unit



Read and Approved by **Dan Wagner**

Assistant District Attorney

Head of Homicide Unit