



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

MICHAEL LUBINSKI
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

MARY ANNE MCCAULEY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

JEFF MCLAUGHLIN
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

June 28, 2013

Acting Police Chief Jerry Price
La Habra Police Department
150 N. Euclid Street
La Habra, CA 90633-0337

Re: Officer Involved Shooting on August 25, 2011
Non-Fatal Incident involving Manuel Galvan and La Habra Police Department Officer Jason Sanchez
District Attorney Case # 11N06368
District Attorney Investigations Case # S.A. 11-017
La Habra Police Department DR # 11-4986
Orange County Crime Laboratory Case # 11-51714

Dear Acting Chief Price,

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 La Habra Police Department (LHPD) Officer Jason Sanchez. Manuel Galvan, 47, La Habra, survived his injuries. The incident occurred in the City of La Habra on Aug. 25, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Aug. 25, 2011, non-fatal officer-involved shooting of Galvan. 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 LHPD 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 Aug. 26, 2011, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 29 witnesses and obtained and reviewed the following: LHPD reports, audio recordings and dispatch and radio traffic recordings; Los Angeles County Fire Department (LACFD) incident reports; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Galvan; criminal history records related to Galvan including prior criminal history records and prior incident reports; the personnel records of Officer Sanchez; 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 LHPD officers or personnel, specifically Officer Sanchez. 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 most officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

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

FACTS

Background of Defendant and Events Leading Up to the Confrontation

Jane Doe and Galvan had been married approximately 16 years, but had separated a few weeks before the shooting incident on Aug. 25, 2011. On Aug. 8, 2011, Jane Doe obtained a restraining order against Galvan. On August 25, 2011, sometime shortly after 10:10 p.m. Galvan drove his Honda Accord to Jane Doe's mobile home residence in La Habra and angrily confronted Jane Doe outside the home because she had changed her iTunes password earlier that afternoon. Galvan refused to leave and Jane Doe called 911 at 10:34 p.m. LHPD Officer Sanchez was dispatched to the residence at 10:36 p.m. At 10:38 p.m. Officer Sanchez sent out a code 998 over the police radio, meaning he had been involved in a shooting.

Voluntary, Consensual Statement of Officer Sanchez

Officer Sanchez gave a voluntary, consensual statement to the OCDA on Aug. 26, 2011.

Prior to the incident of Aug. 25, 2011, Officer Sanchez had been advised during LHPD roll call training that he should do patrol checks at the Galvan residence because Jane Doe's ex-husband had been trying to stalk her. Officer Sanchez recalled that he had been to the residence once or twice prior to the incident that evening, the last time being about one month prior. From his in-person discussions with Jane Doe, he knew that Galvan had been harassing, stalking, and threatening Jane Doe and that the two were currently going through a divorce. Jane Doe had further told Officer Sanchez that she had been having a lot of problems with Galvan, that he was mentally unstable, that he had accused her of infidelities, and that she was afraid for the safety of herself and her children. Jane Doe also told Officer Sanchez that she had made some prior police reports concerning Galvan's treatment of her.

On the evening of Aug. 25, 2011, Officer Sanchez was in full police uniform driving a marked LHPD patrol car when he was dispatched to the Galvan residence, which he knew from prior contacts. The dispatch was for an in-progress violation by Galvan of a court order and a 911 disconnect call with a Penal Code section 415 (disturbing the peace) audible argument in the background.

As Officer Sanchez approached the Galvan residence he heard commotion coming from the area and a scream from a woman he believed to be Jane Doe. Officer Sanchez activated his patrol car spotlight and quickly pulled behind a silver Honda Accord with its headlights and brake lights on and the driver's door open. Officer Sanchez then saw Galvan several feet away from the open driver's door of the Honda Accord. Officer Sanchez put his patrol car in park, exited the car, and ordered Galvan, who was walking toward the open Honda driver's door, to step away from the car. While looking at Officer Sanchez, Galvan continued walking toward the open driver's door. Officer Sanchez unholstered his service weapon, a Glock 21, 45 semi-automatic pistol that carries 13 rounds in the magazine and one in the chamber. Officer Sanchez was concerned because Galvan did not comply with his commands and feared Galvan might be retrieving a weapon from the Honda Accord. Officer Sanchez drew his duty weapon and assumed a low ready position.

Officer Sanchez then saw Galvan reach into the Honda and, with his right hand, remove an unknown object from the vehicle. When Galvan came out of the Honda with the object in his right hand, he turned toward Officer Sanchez. Officer Sanchez ordered Galvan to drop the item in his hand; a black object that Officer Sanchez believed was a handgun. Officer Sanchez described the object as a small back-up style semi-automatic, five or six inch, "stinger" type handgun. Galvan was holding the black object in a clenched fist as if he were holding the pistol grip part of a gun, exposing the slide of the gun between his thumb and pointing finger. Officer Sanchez believed it was the slide of the gun due to the way Galvan had the black object canted.

Officer Sanchez commanded him to "drop it!" Galvan replied, "What are you gonna do, shoot me?" and immediately took an aggressive stance toward Officer Sanchez. Fearing for the safety of Jane Doe, who was standing near the front of the Honda, Officer Sanchez told her to get back and out of the way. Officer Sanchez again commanded Galvan, "Drop what you have in your hand. Drop it!" Galvan replied, "What are you gonna do?" Officer Sanchez then heard Jane Doe say something to Galvan and saw Galvan turn to his left and motion toward Jane Doe as if he were going to take position to fire at her. Fearing that Galvan was going to shoot a gun at Jane Doe, Officer Sanchez fired one round at Galvan. Galvan turned with the object still in his hand back toward Officer Sanchez and Officer Sanchez fired two more times. Galvan then went down to the ground and Officer Sanchez broadcast over the police radio that he was involved in a shooting. Not until after the shooting did Officer Sanchez hear someone say that Galvan had told him during the confrontation the object he held in his right hand was a cell phone.

Voluntary, Consensual Statement of Officer Cory Barrow

LHPD Officer Cory Barrow gave a voluntary, consensual statement to the OCDA on Aug. 28, 2011.

Officer Barrow, who was responding to the same radio dispatch as Officer Sanchez, was entering the mobile home complex at the same time he heard from dispatch that Officer Sanchez had been involved in a shooting. Officer Barrow parked his patrol car behind Officer Sanchez's patrol car and then exited and assisted Officer Sanchez. Officer Barrow observed Galvan lying on the ground next to the open driver's door of the silver Honda Accord with Officer Sanchez' driver's side spotlight directed toward Galvan. Officer Sanchez advised Officer Barrow that he had shot Galvan and that Galvan had a small black gun. No black gun was located on or around Galvan nor in his Honda Accord.

Voluntary, Consensual Statement of LACFD Paramedic

An LACFD Paramedic who rode in the ambulance inquired of Galvan what he did to have been shot. Galvan answered that he was shot for being stupid and that, "I wouldn't listen to an officer who told me to show my hands. I had a phone in my hand and when I threw my phone on the car, I got shot."

Post-Shooting, Voluntary Interviews with Civilian Witnesses

Jane Doe

On Aug. 26, 2011, Jane Doe gave a voluntary interview to investigators. On Aug. 25, 2011, while at her La Habra mobile residence, Jane Doe changed an iTunes account password. Her estranged husband, Galvan, arrived at her residence in his Honda Accord shortly thereafter and asked her why she had changed her password. Jane Doe talked to Galvan briefly through a security screen door and then returned inside her home. However, 15 to 20 minutes later, Jane Doe could still hear Galvan's car engine running outside. She walked outside with her cordless phone to ask Galvan, seated in his car, to leave. Jane Doe told Galvan she would call the police if he did not leave but Galvan replied that he would leave when he was ready. Jane Doe called 911 but quickly disconnected the call in order to call the police department's regular business line. Before Jane Doe could call the police department, the 911 operator returned Jane Doe's call and Jane Doe explained that she had a restraining order against Galvan and that he was currently at her residence. Jane Doe requested that an officer be dispatched to her residence.

Prior to police arriving on scene, Jane Doe attempted to return to her residence. She walked toward her front door, but Galvan exited his vehicle, walked toward her and positioned himself between Jane Doe and her front door. Galvan then bumped into Jane Doe, took the cordless phone from her hand, and said something to the effect of, "That's right, I am here," to the 911 operator before throwing Jane Doe's phone.

Galvan then got into a swearing altercation with Jane Doe's son (Galvan's step-son), John Doe, who had come outside to assist his mother. Jane Doe directed John Doe to go back inside and lock the front door. When Jane Doe attempted to walk past Galvan to access her carport, Galvan bumped her again with his shoulder. Fearing the situation might turn violent, Jane Doe went and knocked on a neighbor's door, but there was no answer. As she walked down the short staircase from her neighbor's mobile home unit, she saw Officer Sanchez's marked patrol car, with spotlight illuminated, driving westbound and stop right behind Galvan's Honda Accord.

Officer Sanchez immediately exited his patrol car, stood behind his open driver's door, drew his handgun and began issuing commands to Galvan, who was standing in the area of the driver's side of the Honda Accord. Officer Sanchez also yelled at Jane Doe to move to the side, toward the wall. Jane Doe moved to a position at the right front fender area of the Honda Accord. Galvan bent at the waist, reached into the Honda Accord, and came out with his cell phone in his right hand. As he emerged from the vehicle, Galvan turned toward Officer Sanchez. Officer Sanchez issued the command, "Put your hands up!" and Galvan put his hands up. Galvan's arms were out to the side with his palms up. The cell phone was in his right hand. Jane Doe stated, "You could see the black case sitting in his hand." Officer Sanchez then said, "Drop it!" Galvan replied, "It's my cell phone," and Officer Sanchez again said, "Drop it!" Galvan responded, "It's my cell."

Jane Doe recalls then hearing three apparent gunshots. After the first gunshot she observed Galvan's body turn toward one side. With the second shot she observed Galvan's upper body bend over forward. Jane Doe observed Galvan fall to the ground with the third gunshot. Jane Doe noted that Galvan's behavior had been very erratic and that, on that evening, "His behavior was quite erratic and he had a very strange look in his eyes that made me feel a bit uneasy."

Galvan's Consensual, Voluntary, Pre-Miranda Statements of Events

OCDCA and LHPD Investigators interviewed Galvan in a non-custodial interview Sept. 1, 2011, at the University of California, Irvine (UCI) Medical Center in his hospital room.

Galvan knew there was a restraining order in place when he drove to Jane Doe's home on Aug. 25, 2011. He knew that, per the terms of the order, he was not to have any contact with Jane Doe or her children including in person, via phone, e-mail, or any type of contact at all. Galvan said that he went to see Jane Doe on Aug. 25, 2011, because he had mail at the residence, knew there were bills that would become past due, and didn't want them to be delinquent. He was invited to the home to get his mail and things escalated into a verbal altercation with Jane Doe.

Jane Doe did ask Galvan to leave, but he stayed at the residence in his car looking at something on the Internet. Jane Doe went outside and told Galvan she was going to call police, and he told her to go ahead. She had a cordless phone that he grabbed from her hand while she was talking with police. He then threw the phone because he was angry. Galvan had an argument with John Doe, who was trying to defend his mother.

There was no physical altercation, but Galvan admits he bumped Jane Doe with his shoulder. Jane Doe told Galvan that the police were on the way. He saw the officer pull up and Galvan then exited his Honda Accord. As he was stepping out of the Honda Accord, the officer told Galvan to drop what he had in his hand, and Galvan told him it was a cell phone. The officer told him again to drop it, and that is when he went to throw it on the car.

Galvan said his hands were up and he was shot twice. He denies ever leaning or going into his vehicle after the officer arrived. He thinks the officer told him to drop the item in his hand two or three times. He admitted that, just prior to being shot, the first time he was facing the officer, the cell phone was in his right hand and he turned to the left with his right arm out at about a 90 degree angle, arm fully extended, and he threw the cell phone on top of the Honda Accord. He then turned back toward Officer Sanchez with his hands up and was shot the first time and again a second time. He felt the first round hit him in the upper left thigh area. He felt the second round hit him in the same area, a little closer to the groin. With the second shot he fell to the ground. Galvan stated that the officer shot him because he was being foolish and did not follow the officer's commands to drop the item he had in his hand. He stated that prior to being shot he interacted with the officer for about a minute, during which time he did not follow the officer's commands or instructions. The officer had his gun pointed at him the entire time from the moment he exited the patrol car.

EVIDENCE COLLECTED AT THE SCENE

A search for evidence was conducted in the area by OCDA and LHPD Investigators. OCCL personnel documented, photographed, and collected evidence at the shooting scene. There were two cartridge cases, head stamped "Federal 45 Auto + P" [EM1-2] located on the street north of the right front tire of LHPD Unit 2176. A third cartridge case, head stamped "Federal 45 Auto + P" [EM3], was located on the street northwest of LHPD 2176 and northeast of the Honda Accord. A Motorola cell phone with a purple case [EM 6] was on the roof of the Honda Accord.

OTHER EVIDENCE COLLECTED

A .45 caliber round was collected by a UCI doctor during surgery on Galvan. The doctor handed the round in a plastic specimen cup to LHPD Officer Jennifer Southern, who booked it into LHPD evidence.

EVIDENCE ANALYSIS

Toxicological

A toxicological exam was conducted on both Officer Sanchez's and Galvan's blood samples. The blood samples were analyzed by OCCL for alcohol, prescription drugs, and common drugs of abuse. None were detected in either sample.

Weapons/Firearm / Cartridges Examination

The firearms examination was conducted by OCCL personnel who examined the following items of evidence:

1. Officer Sanchez' Glock Model 21 semiautomatic pistol, .45 Auto caliber, #BAF008US.
2. Three cartridge cases from the scene [EM1, EM2, EM3].
3. Bullet removed from Galvan, a fully expanded Federal brand .45 caliber HST jacketed hollow point bullet.

The results and interpretation of the analysis were:

1. The semiautomatic Glock pistol was test fired and operated without malfunction.
2. The three cartridge cases were all determined to have been fired in the Glock pistol, #BAF008US.
3. The bullet from Galvan was determined to have been fired from the Glock pistol, #BAF008US.

GALVAN'S MEDICAL CONDITION

Galvan was brought into the UCI Medical Center Emergency Department as a critical trauma patient. According to a UCI resident medical doctor, Galvan suffered gunshot wounds to his abdomen and left leg and was quickly taken to the operating room for treatment. At the onset of surgery, Galvan fell into cardiac arrest for approximately 10 minutes but was resuscitated and stabilized. Surgery revealed that the abdominal wound was a superficial through-and-through gunshot wound. Galvan's left femur was fractured.

GALVAN'S PRIOR CRIMINAL HISTORY

Galvan's prior criminal history was reviewed and considered.

DISPOSITION OF CRIMINAL CASE AGAINST GALVAN

On Aug. 29, 2011, the OCDA charged Galvan with five misdemeanor Penal Code offenses in Orange County Case # 11NM15870:

1. 136.1(b)(1) – Dissuading a witness from reporting a crime
2. 591.5 – Damaging a wireless device to prevent usage for assistance or to notify law enforcement
3. 273.6(a) – Disobeying a domestic relations court order
4. 243(e)(1) – Battery against a cohabitant
5. 148(a)(1) – Resisting peace officer

On Jan. 14, 2013, Galvan pleaded no contest to these charges. Galvan signed under penalty of perjury the following factual basis for his plea:

“On 8/25/11 in Orange County I in violation of a valid domestic violence no contact order went to the home of my wife. I pushed her & dissuaded her from reporting my crime by taking the phone from her, while she was speaking to the 911 operator and threw it on the ground & broke it. I delayed & obstructed Officer Sanchez who was attempting to discharge his duties as a police officer by failing to follow his command.”

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. *People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84. Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is “charged with a felony” and where the officer has “reasonable cause” to believe that the person has committed a felony. *People v. Kilvington* (1894) 104 Cal. 86, 89. The felony must involve violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect’s felony involves violence or the threat of violence. *Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333. The court in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony “is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are **other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.**” *Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the **appearance of danger** which arouses in his mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person’s right of self-defense is the same **whether the danger is real or merely apparent.** *People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. *People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124. Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others.”

This limitation was, however, subsequently clarified by the United States Supreme Court in the seminal case of *Graham v. Conner* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [i.e., his weapon] is to be analyzed under the Fourth Amendment’s “objective reasonableness” standard. The Supreme Court further stated that the determination of the reasonableness of an officer’s use of force “must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and evolving.” *Id.* at 397. Thus, the Court cautioned that “[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396.

The United States Supreme Court’s analysis and teachings in *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officer Sanchez with Galvan.

LEGAL ANALYSIS

In reviewing Officer Sanchez's interview with investigators from LHPD and OCDA, he gave a voluntary statement indicating that he actually feared for the safety of both Jane Doe and himself, which caused him to shoot Galvan. In our legal opinion, Officer Sanchez's fear was reasonable in light of all the surrounding circumstances, Officer Sanchez's training and experience at the time, and his personal knowledge about Galvan. In his interview, Officer Sanchez made statements indicating the following:

- a) Having previously met with Jane Doe, Officer Sanchez believed Galvan had been harassing, stalking, and threatening Jane Doe and that the two were currently going through a divorce.
- b) That Jane Doe had been having problems with Galvan and considered him mentally unstable.
- c) Jane Doe was afraid for the safety of herself and her children.
- d) Jane Doe had made prior police reports concerning Galvan's treatment of her.
- e) During LHPD roll call training, Officer Sanchez also learned that Galvan has been stalking Jane Doe.
- f) The evening of the dispatch, Officer Sanchez knew that he was going to Jane Doe's residence because Galvan had gone there in violation of a restraining order.
- g) The dispatcher indicated there was also an audible argument taking place at the scene.
- h) Officer Sanchez heard a scream from Jane Doe.
- i) Despite Officer Sanchez's repeated commands for Galvan to put his hands up and move away from the Honda Accord, Galvan, while looking at Officer Sanchez, ignored the commands, continued walking toward the vehicle, and ultimately bent over and reached into the open Honda Accord.
- j) Galvan came out of the Honda Accord with a dark object in his right hand that Officer Sanchez believed was a small black handgun.
- k) Officer Sanchez ordered Galvan several times to drop the item in his hand, but Galvan would not.
- l) Galvan then motioned toward Jane Doe with his right hand as if he were going to shoot her.
- m) To protect the life of Jane Doe, Officer Sanchez fired one round at Galvan.
- n) Officer Sanchez fired twice more at Galvan because he did not go down with the first shot and then turned toward Officer Sanchez as if he would fire at him.

As the California Court of Appeal held in a recent case, it is well-settled that "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....'" *Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 527 (quoting *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077).

In analyzing the conduct of Officer Sanchez, one of the considerations relates to what the *Brown* court observed. Addressing the issue whether the officers' actions were reasonable, the *Brown* court stated "The test is ' "highly deferential to the peace officer's need to protect himself and others." ' " *Ibid.* (quoting *Munoz*, 120 Cal.App.4th at 1102). Furthermore, the court held 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....[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation". *Ibid.* (quoting *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 343). The *Brown* court also observed that "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." *Id.* at 528 (citing *Edson v. City of Anaheim* (1998) 63 Cal. App. 4th. 1269, 1273).

In the present case, it is well-settled that in evaluating Officer Sanchez's conduct, "[w]e 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." *Ibid* (quoting *Edson*, 63 Cal. App. 4th. at 1273-4).

The reality that Officer Sanchez faced that evening was the need to make a split-second decision when confronted with a man who Jane Doe had told him was mentally unstable, who he knew had been stalking, harassing, and threatening Jane Doe, who ignored multiple, clear police commands from a police officer in full police uniform, and who was now pointing at Jane Doe a dark object that Officer Sanchez could reasonably believe was a small black handgun. When Galvan did not go down and then turned toward Office Sanchez as if to fire, Officer Sanchez fired two more times until Galvan went down to the ground.

Where potential danger, emergency conditions, or other exigent circumstances exist, the Supreme Court's definition of reasonableness is comparatively generous to the police. "In effect, 'the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases....' A police officer's use of deadly force is reasonable if ' "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." '... 'Thus, "an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." ' " *Ibid*. (quoting *Munoz*, 120 Cal. App. 4th at 1103).

As stated above, the circumstances leading up to and surrounding the entire encounter between Officer Sanchez and Galvan – especially when viewed through the pre-existing knowledge of Officer Sanchez about Galvan – reasonably indicated to Officer Sanchez an intent by Galvan to shoot both Jane Doe and himself, actions that required and justified Officer Sanchez's response in shooting at Galvan, first in defense of others (Jane Doe), and second in self-defense.

Officer Sanchez's concerns and conclusions were objectively and subjectively reasonable given his pre-existing knowledge of Galvan's mental stability and stalking behavior toward Jane Doe, Galvan's multiple failures to obey multiple commands to move away from the car, to drop what he had in his hand, to put his hands in the air, Galvan's reaching into the car and retrieving what appeared to be a weapon, and Galvan pointing that object first at Jane Doe, then at Officer Sanchez. Officer Sanchez's perception that Galvan was about to shoot both Jane Doe and himself was reasonable in light of all the circumstances. Under these circumstances, it was reasonable for Officer Sanchez to conclude that Galvan posed an imminent danger that could result in death or injury to Jane Doe or himself. He thus acted reasonably in using deadly force to defend against the imminent, perceived danger of suffering bodily injury or possibly death.

In order for Officer Sanchez 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 Officer Sanchez did not act in reasonable and justifiable self-defense when he shot at Galvan. As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would likely conclude that it was reasonable for Officer Sanchez to use the force that he did in this circumstance. There is, therefore, insufficient evidence to support a criminal finding of culpability on the part of Officer Sanchez. On the contrary, significant evidence exists that Officer Sanchez acted reasonably under the circumstances.

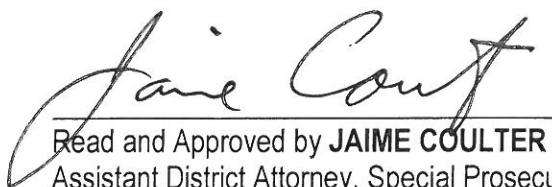
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officer Sanchez, and there is substantial evidence that the officer's actions were reasonable and justified under the circumstances when he shot Galvan on Aug. 25, 2011. Accordingly, the OCDA is closing its inquiry into this incident.



Andrew Katz

Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **JAIME COULTER**

Assistant District Attorney, Special Prosecutions Unit