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June 18, 2012

Chief Kevin Raney
Garden Grove Police Department
11301 Acacia
Garden Grove, CA 92804

Re: Officer Involved Shooting on January 16, 2011
Shooting Death of Wilfredo Ayala
District Attorney Investigations Case # S.A. 11-004
Garden Grove Police Department DR #11-00749
Orange County Crime Laboratory Case FR # 10-47726

Dear Chief Raney,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed shooting incident involving on-duty Garden Grove Police Department (GGPD) Officer Steven Tran, in which Wilfredo Ayala, 19, Garden Grove, was killed. The incident occurred in the City of Garden Grove on Jan. 16, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Jan. 16, 2011, fatal officer-involved shooting of Ayala. 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 GGPD 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 Jan. 16, 2011, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed more than 17 witnesses and obtained and reviewed the following: GGPD reports, audio recordings and dispatch and radio traffic recordings; other agency incident reports; Orange County Sheriff Crime Lab (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ayala; criminal history records related to Ayala including prior criminal history records and prior incident reports; the personnel records of Officer Tran; 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 GGPD, specifically Officer Tran. The OCDA will not be addressing herein issues of policy, training, tactics or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured or died 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.

On Jan. 27, 2011, Officer Tran gave a voluntary statement to an OCDA Investigator concerning the shooting of Ayala.

FACTS

According to victim Jane Doe and her friend Zachary B., Jane Doe was robbed of approximately \$70 and her cell phone and was sexually assaulted by Ayala and a second unknown Hispanic male on the evening of Jan. 15, 2011, in Garden Grove. Ayala was a stranger to Joe Doe and Zachary B.

While Jane Doe exited from the Circle K on Jan. 15, 2011, Ayala forced her into his vehicle at gun point. The gun was described as a "full size," silver, semi-automatic handgun that was carried in a holster on the center right beltline on Ayala's pants. The other man with Ayala displayed a black, "full size," semi-automatic handgun that was only seen in his left hand.

Jane Doe was driven to a nearby industrial park. Once at the location, Ayala looked through Jane Doe's purse but did not find any money. Ayala then ordered Jane Doe to bend across the front seat and raped her. After Ayala raped the victim, the unknown male had Jane Doe masturbate his penis. Neither man ejaculated.

After the robbery and sexual assault, Jane Doe was released from the suspects' vehicle and made contact with witness Zachary B. The full details of the robbery and sexual assault were not provided to law enforcement until Jan.17, 2011 (GGPD DR #2011-00749).¹

¹ Upon hearing the details of the robbery and sexual assault and locating a criminal history for Zachary B., which included a prior arrest for pimping, investigators suspected that Jane Doe was a prostitute and Zachary B. was her pimp. However, Jane Doe and Zachary B. denied this.

On Jan. 16, 2011, at approximately 11:00 a.m., Jane Doe called her stolen cell phone in an attempt to retrieve it. A male answered the phone and Jane Doe recognized the man's voice as Ayala. Between 11:00 a.m. and 5:00 p.m., Jane Doe and Zachary B. had numerous telephone contacts with Ayala in reference to the cost of "buying back" Jane Doe's cell phone and a meeting place for the exchange. According to Jane Doe, the agreement was to meet behind the Conroy's flower shop located on the southeast corner of Westminster Avenue and Harbor Boulevard.

At approximately 5:00 p.m., Jane Doe saw a white Honda Civic driving northbound onto Harbor Blvd from Westminster Avenue. Jane Doe immediately recognized Ayala as the man who had robbed and raped her in the passenger seat of the same vehicle.

GGPD received a 911 call at 5:04 p.m., but then the line was disconnected. The dispatcher called the number back twice and Zachary B. answered and informed GGPD dispatch that he was "in front of a guy who had a gun and had threatened his lady." He described the suspect vehicle as a white Honda and provided the license plate number. GGPD Officers Lea Deguire and Brian Dalton were dispatched to the area. Sunset that night occurred at 5:08 p.m.

At 5:19 p.m., Zachary B. again called 911 and indicated that Ayala had agreed to meet them in a McDonald's parking lot off Westminster Avenue. GGPD officers were dispatched to this location. Zachary B. stated that, while in the parking lot, he exited his car and retrieved Jane Doe's cell phone from Ayala. He described Ayala removing a silver, semi-automatic handgun from his waistband and threatening to kill Zachary B., just as police officers were arriving.

At 5:22 p.m., Officer John Casaccia arrived on scene and advised other officers that the parties were in the northeast corner of the McDonald's parking lot. When Officer Casaccia exited his patrol vehicle, Ayala started running from the parking lot in a southeast direction toward Harbor Boulevard. While he was running, Officer Casaccia noted that Ayala was holding the front waistband of his pants with his right hand. At the same time, Zachary B. ran toward Officer Casaccia yelling, "He's got a gun." Officer Casaccia advised other police officers over the radio that Ayala had a gun.

While crossing the southbound lanes of Harbor Boulevard, Ayala ran into the rear quarter panel of a silver Toyota Land Cruiser. Ayala fell to the ground but immediately stood up and continued running.

Voluntary Statement of Officer Steven Tran

On Jan. 27, 2011, Officer Tran gave a voluntary statement to an OCDA Investigator and reported the following:

Officer Tran had been a police officer for two years. On Jan. 16, 2011, at approximately 5:22 p.m., he was on-duty driving a marked black and white patrol vehicle when he heard Officer Casaccia provide information over the police radio regarding the location of Ayala. As Officer Tran reached the intersection of Harbor Boulevard and Westminster Avenue, he saw Ayala running onto the Union 76 gas station property. Officer Tran activated his overhead lights and entered the gas station property. Ayala continued running toward the Rainbow Auto Spa.

Officer Tran exited his vehicle and started a foot pursuit of Ayala. While running after Ayala, Officer Tran yelled at him multiple times, "Get down on the ground." Ayala failed to comply and continued running towards a 6-foot-tall cement wall. Ayala jumped and lifted himself over the wall.

Officer Tran indicated that he had never been to this location before and was unsure what was on the other side of the wall. He expected that Ayala would continue running once he went over the wall. Officer Tran ran to the wall and lifted himself onto the top of the wall. As he began to swing his leg over the wall, he saw Ayala approximately 4-feet away on top of an approximately 4-foot-high shrub just north and parallel to the wall.

While on top of the wall, Officer Tran noticed what appeared to be the tip of a black gun sticking out from under Ayala's t-

shirt. The majority of the gun was covered by Ayala's t-shirt, but Officer Tran believed the texture, curvature, and shape of the object he saw was the end of a barrel of a gun resembling a Glock semi-automatic handgun.

Officer Tran drew his handgun from his holster, pointed it at Ayala, and yelled numerous times, "Don't move, don't move." Ayala made eye contact with Officer Tran and yelled that he did not have a gun. Officer Tran continued to tell Ayala, "Don't move," and, "Keep your hands where they are."

Officer Tran said Ayala kept looking at him and then down at his waistband, prompting Officer Tran to continue his commands about not moving and keeping his hands where Officer Tran could see them. Ayala looked at Officer Tran and then down at his waistband. He then quickly and aggressively moved both hands from his head to his waist, grabbed his t-shirt with his right hand, and reached for his waist with his left hand. Officer Tran feared that Ayala was reaching for the gun in his waistband and was going to shoot and kill him.

Officer Tran, having been told over the police radio that Ayala had a gun, having seen Ayala continually reaching for the center of his waistband while running, and seeing Ayala move his hands toward what Officer Tran believed to be a gun in the center of Ayala's waistband, fired two rounds, striking Ayala in the chest area.

There were no witnesses to the shooting. The closest officer to the shooting scene was Garden Grove Officer Stephen Estlow. Officer Estlow voluntarily provided a statement to an OCDA Investigator on Jan. 16, 2011. In this statement, he confirmed that he heard and saw Officer Tran on top of the cement wall telling Ayala several times, "Don't move, don't move." Officer Estlow ran to Ayala after the shooting and saw that Ayala had both hands in front of his waistband. During administration of first aid, Officer Estlow saw a square, black, plastic holster attached to Ayala's pants, directly in front of his waist area.

AUTOPSY

On Jan. 18, 2011, Dr. Aruna Singhania, a forensic pathologist, conducted a post-mortem examination on Ayala at the Orange County Sheriff-Coroner Forensic Science Center. Following an extensive external and internal examination, Dr. Singhania concluded that each of the two gunshot wounds to Ayala was considered "fatal" and that the cause of death was perforation of both lungs and the heart.

EVIDENCE COLLECTED AT THE SCENE

A gun was located approximately 50 yards from where the shooting took place. Upon examination, the gun was determined to be a Tanfoglio Model GT32, .32 caliber semiautomatic pistol. Packaged with the pistol were a cartridge labeled as being from the chamber and four cartridges labeled as being from the magazine. The five cartridges were .32 automatic caliber Remington brand, each with a full metal jacketed bullet. DNA testing of the Tanfoglio .32 caliber firearm revealed that Ayala's DNA was on the slide and trigger.

BALLISTICS TESTING

Two holes were observed in the left chest of Ayala's t-shirt, three holes were observed in the left sleeve, and one hole was observed in the middle back of the t-shirt. Possible loosely adhering gun powder particles were observed below the two holes in the left chest of the white t-shirt. No soot patterns were observed around the holes in the left chest and left sleeve.

Using one of the submitted magazines and six of the submitted cartridges, gunpowder patterns were generated by test-firing Officer Tran's Glock pistol from distances of 6", 12", 24", 60" and 72". Soot was observed on the 6" and 12" targets. No gunpowder was observed on the 72" target and one loosely adhering gunpowder particle was observed on the 60" target. This test-firing evidence suggests Officer Tran shot Ayala from a distance of 6 to 7 feet.

BACKGROUND INFORMATION:

Ayala's criminal history, involving drug trafficking and firearms convictions dating back to 1984, was taken into consideration.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer 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.

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

However, any determination about the reasonableness of force used by an officer "must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving." Thus, "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham v. Connor (1989) 490 U.S. 386, 396.

LEGAL ANALYSIS

Based upon the investigation into this case and the uncontroverted evidence supplied by Officer Tran, it is the conclusion of the OCDA that the evidence does not support a finding of criminal culpability on the part of Officer Tran. The evidence shows that the shooting was legally justified because Officer Tran acted in self-defense.

This conclusion is based upon the following information: Officer Tran had received information that Ayala had recently been responsible for multiple violent felonies, including robbery, and was presently armed with a gun. Officer Tran made repeated commands to Ayala to "stop" and "get down," but Ayala ignored the commands. After Ayala climbed over a cement wall, Officer Tran followed out of concern for the safety of his fellow officers and his belief that Ayala was a dangerous fleeing felon.

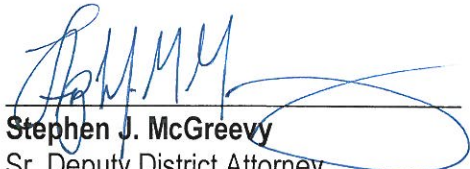
When Officer Tran got on top of the wall, he was "surprised" to find that he was in close proximity to Ayala. After drawing his weapon, Officer Tran made clear and specific commands for Ayala not to move his hands. After Ayala failed to follow these commands and made a movement for his waistband, where Officer Tran thought he saw the barrel of a gun (it was later determined that Ayala had a black plastic gun holster in his waistband), Officer Tran feared for his own safety and shot Ayala two times. Ayala's death was the direct result of his sudden movements toward what Officer Tran reasonably believed to be a deadly weapon.

Officer Tran's statement as to the events that transpired on Jan. 16, 2011, is reasonable, not contradicted by other evidence, and is corroborated by evidence at the scene, specifically the gun holster in Ayala's waistband. In short, the facts as known to Officer Tran justified his fear and thus justified the shooting of Ayala.

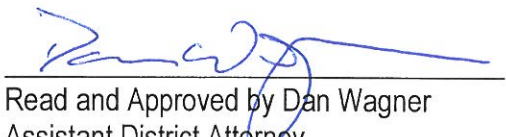
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Officer Tran, and there is significant evidence that the officer's actions were reasonable and justified under the circumstances when he shot Ayala on Jan. 16, 2011.

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



Stephen J. McGreevy
Sr. Deputy District Attorney
Homicide Unit



Read and Approved by Dan Wagner
Assistant District Attorney,
Head of Homicide Unit