



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

November 9, 2015

Chief Raul Quezada
Anaheim Police Department
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Officer-Involved Shooting on April 4, 2015
Fatal Incident involving Paul Anthony Anderson
District Attorney Investigations Case # S.A. 15-006
Anaheim Police Department Case # FR 15-50949
Orange County Crime Laboratory Case # 15-45212

Dear Chief Quezada,

Please accept this letter which details the Orange County District Attorney's (OCD A) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officers, specifically Officer Erin Moore, Officer Chris Petropulos, and Sergeant Ben Starke. Paul Anthony Anderson, 32, died as a result of his injuries. The incident occurred in the City of Orange on April 4, 2015.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCD A's investigation of the April 4, 2015, fatal, officer-involved shooting of Paul Anthony Anderson. The letter includes an overview of the OCD A'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 APD officers involved in the incident. The format of this document was developed by the OCD A with the goal of fostering greater accountability and transparency in law enforcement.

On April 4, 2015, Investigators from the OCD A Special Assignment Unit (OCDASAU) responded to the incident. During the course of this investigation, 13 interviews were conducted, and 20 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Paul Anthony Anderson; criminal history records related to Anderson including prior incident reports; the personnel records of Officer Moore, Officer Petropulos, and Sergeant Starke; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of APD officers, specifically Officer Moore, Officer Petropulos and Sergeant Starke. The OCDA will not be addressing any possible issues relating to 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, TARGET, or Gangs Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy district attorneys 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 the Supervising Assistant District Attorney in the Special Prosecutions Unit, who 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 Moore, Petropulos, and Sergeant Starke each gave a voluntary statement to OCDA Investigators.

FACTUAL SUMMARY

Anderson would occasionally stay with his girlfriend, Jane Doe 1, at her residence in the City of Anaheim. Jane Doe 1 provided Anderson a key to the apartment, giving him access to the residence when she was not there.

On April 3, 2015, at approximately 8:15 a.m., personnel from the California Highway Patrol (CHP) went to the Jane Doe 1's residence in an attempt to locate and serve an active arrest warrant for her. While CHP was attempting to serve the warrant, an APD officer saw Anderson jumping over a wall separating Jane Doe 1's residence and an alleyway in the 2800 block of East Lincoln Avenue. When Anderson saw the APD officer, he immediately started running in the opposite direction. The APD officer saw Anderson run into a parking lot and attempt to conceal himself amongst the parked vehicles. Shortly thereafter, Anderson entered the driver's side of a black Toyota truck. At this point, the APD officer attempted to initiate a traffic stop by pulling behind the truck and activating his patrol vehicle's emergency lights and siren. Anderson failed to pull over and fled the scene. This resulted in a vehicle pursuit, at the end of which Anderson was eventually arrested in the City of Placentia.

The APD officers who arrested Anderson determined that he had a connection with Jane Doe 1's residence and returned there. When they arrived at Jane Doe 1's residence, they discovered the CHP officers attempting to serve the warrant on her. The CHP officers could not locate Jane Doe 1 and believed Anderson had fled out the back of the apartment when they knocked on the door. Upon searching Jane Doe 1's apartment to try to locate her, the CHP officers discovered 72 glass jars of what appeared to be marijuana behind a couch in the apartment. APD officers thereafter obtained a search warrant for Jane Doe 1's residence and subsequently seized approximately 15.89 pounds of marijuana.

On April 4, 2015, at approximately 6:00 a.m., Anderson called Jane Doe 1, after posting bail and being released from custody. Approximately 20 minutes later, Anderson arrived at Jane Doe 1's apartment. Anderson's vehicle and keys had been impounded the previous day at the termination of the vehicle pursuit. Anderson apologized to Jane Doe 1 for lying to her and told her that he was on the run from the police. Anderson also told her that he wanted to be with his mother, who is deceased. Anderson asked Jane Doe 1 to give him a ride, but she had left her car at a Walmart parking lot the previous evening. As a result, Jane Doe 1 called Uber, a transportation network company, to take them to her car. At approximately 7:50 a.m., Jane Doe 2, an Uber driver, picked up Jane Doe 1 and Anderson at Jane Doe 1's residence. Jane Doe 2 was driving a Toyota Prius.

At approximately 7:58 a.m. on April 4, 2015, APD Officers Moore, Petropulos, Lucelia Sandoval, Michael Nguyen, and Sergeant Starke were dispatched to Jane Doe 1's residence in an attempt to serve the arrest warrant and arrest Jane Doe 1. Prior to proceeding to Jane Doe 1's residence, the APD officers met behind a closed Ralph's grocery store to confirm that the warrant for Jane Doe 1 was active and to formulate a game plan prior to handling the attempting to serve the warrant. After confirming the warrant was still active, Officer Moore drove with Officer Sandoval to Jane Doe 1's residence to monitor the area until the other APD officers arrived. Upon their arrival at Jane Doe 1's residence, Officer Moore and Officer Sandoval observed a silver Toyota Prius driven by a female, later identified as Uber driver Jane Doe 2, parked along the southwest corner of the cul-de-sac at the entrance. Officer Moore and Officer Sandoval saw Anderson, who was carrying a black backpack, and Jane Doe 1 enter the vehicle. Anderson was seated in the right, rear passenger seat, while Jane Doe 1 was in the left, rear passenger seat of the vehicle. Jane Doe 2 then drove out of the cul-de-sac toward Officer Moore and Officer Sandoval. As the vehicle passed by, Officer Moore positively identified Jane Doe 1 as the female passenger in the vehicle. Officer Moore and Officer Sandoval followed the Uber vehicle and broadcasted their position to the other APD officers.

Sergeant Starke, Officer Petropulos, and Officer Nguyen caught up to the Uber vehicle when it was stopped at a red light. Once the light turned green, Officer Sandoval activated her patrol vehicle's overhead emergency lights and initiated a traffic stop of the Toyota Prius. Jane Doe 2 saw the police behind her and asked, "Oh my God, what did I do wrong?" Anderson responded, "No ma'am, you didn't do anything. It's me." At approximately 8:31 a.m., Jane Doe 2 pulled her vehicle to the side of the road. Before the vehicle came to a complete stop, Anderson removed a submachine gun and magazine from his backpack. Anderson then inserted the magazine into the submachine gun and told Jane Doe 1, "I'm sorry [Jane Doe 1]. I love you." Officer Moore stopped her vehicle behind and slightly north of Jane Doe 2's vehicle. Officer Petropulos advised APD communications the vehicle was yielding and stopped his vehicle south and slightly west of Officer Moore and Officer Sandoval's patrol vehicle. Sergeant Starke stopped his vehicle behind and slightly north of Officer Petropulos. Officer Nguyen stopped his vehicle behind Officer Petropulos' vehicle.

Immediately after the Toyota Prius came to a stop, Anderson exited the right rear passenger door and took several quick steps away from the vehicle, along the south sidewalk of the street, before quickly stopping. Jane Doe 1 heard the APD officers ordering Anderson to stop, freeze, and to drop his weapon. Anderson, armed with the submachine gun in his right hand, began twisting his torso in a northerly direction, in a sweeping motion, back toward the officers. Anderson was also maneuvering the black backpack over his left shoulder. The submachine gun was in an elevated position and as Anderson turned toward the officers, he began lowering the firearm. As the gun reached a position, close to parallel to the right side of his head, officers heard gun shots discharged from the weapon. Officers believed Anderson began shooting at them.

Officer Sandoval observed what she thought to be blood coming out of the right side of Anderson's head, caused by what appeared to be a gunshot wound to the head. Officer Sandoval then lost sight of Anderson, who fell onto the sidewalk on the south side of the Toyota Prius.

Officer Moore observed Anderson, from a distance of approximately 15 feet, exiting the rear passenger door of the vehicle. Officer Moore immediately saw that Anderson was holding a black submachine gun that looked like an Uzi as he exited the vehicle. Officer Moore also saw a black backpack hanging over Anderson's shoulder. Officer Moore

indicated that Anderson appeared to be fumbling with the backpack. Anderson took several steps eastbound with the submachine gun still in his hand. Anderson looked back, over his left shoulder and started lifting the gun. Officer Moore saw Anderson fire several shots directly in front of and toward the direction of the officers, then fall to the ground. Officer Moore was unsure if Anderson was attempting to gain cover or reposition himself to be in a better position to shoot at the officers. Officer Moore was sure she saw some rounds come off Anderson's submachine gun. Officer Moore felt the APD officers were at a disadvantage because of the capacity of Anderson's firearm and the fact that he was presenting as a very dangerous threat. Based on these facts, Officer Moore fired her handgun twice at Anderson.

Officer Petropulos took position behind Officer Moore and Officer Sandoval. Officer Petropulos saw the right rear door of the Toyota Prius open as soon as the Uber vehicle had stopped. Officer Petropulos saw Anderson holding a black backpack over his left shoulder, and a black submachine gun in his right hand. Officer Petropulos yelled out, "gun," as Anderson was looking over his left shoulder and turning his body back towards him. Officer Petropulos was fearful because he was in a position without cover, so he fired a single shot at Anderson, who fell to the sidewalk. Officer Petropulos moved to the front of his vehicle to obtain a better view of Anderson. He could not see the submachine gun and felt Anderson was going to possibly start shooting at them again, so he fired an additional three times at Anderson. Officer Petropulos did not see Anderson move after his volley of shots, so he retrieved his AR-15 rifle from his vehicle and took a flanking position in the parking lot of the car dealership south of the sidewalk where Anderson was lying. Officer Petropulos remained in that location until Jane Doe 1 and Jane Doe 2 were removed from the Toyota Prius and Anderson was secured. Officer Petropulos did not discharge the AR-15 rifle at any time during this incident.

Sergeant Starke was positioned behind Officer Moore, Officer Sandoval and Officer Petropulos. As soon as Sergeant Starke stopped his patrol vehicle he saw Anderson get out of the Toyota Prius and point a submachine gun toward all of the police officers in a sweeping motion. Sergeant Starke heard a loud "pop, pop, pop," and was not sure if Anderson had fired his weapon or if other APD officers were firing at Anderson. Sergeant Starke was concerned that Anderson was possibly wearing body armor due to the big jacket he was wearing and the bulky backpack he was attempting to sling over his shoulder. Sergeant Starke felt he needed to address the threat otherwise he, or someone else, would be shot by Anderson; therefore, Sergeant Starke fired his weapon at Anderson four times.

Anderson fell on the sidewalk, south of the Toyota Prius, with the submachine gun he was holding underneath his body and not visible. Once Anderson showed no sign of movement, Jane Doe 1 and Jane Doe 2 were ordered by the APD officers, one at a time, out of the vehicle and removed from the scene.

After Jane Doe 1 and Jane Doe 2 were removed from the Toyota Prius, officers approached the vehicle, confirmed there were no further subjects in the vehicle, and proceeded to secure Anderson and his weapon. APD Officer Derek Trusk took custody of Anderson's submachine gun, which was found with the bolt locked to the rear with no cartridge in the chamber. Officer Trusk could see there were cartridge cases in the magazine, which was still inserted in the magazine well. Officer Trusk took the submachine gun and placed it in the front seat of an APD vehicle, where it remained until it was collected by OCCL.

At approximately 8:32 a.m., the Orange Fire Department (OFD) and the Anaheim Fire Department (AFD) responded to the scene. When OFD and AFD personnel arrived, they were directed to "stage away" until it was safe to enter the scene. Once Anderson and the scene were secured, OFD and AFD were cleared to enter and treat Anderson. Paramedics started a primary and secondary assessment. The primary assessment consisted of airway, breathing, and circulation. Anderson was not breathing, his heart was not beating and it was unknown if his airway was open. A secondary assessment was conducted which consisted of checking his body. Based on these observations and assessments, the paramedics determined Anderson was deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined as a result of this incident:

- EM#1 – Winchester 45 Auto cartridge case;
- EM#2 – Winchester 45 Auto cartridge case;
- EM#3 – Four (4) cartridge casings (1-Winchester 45 Auto, 3-Winchester 9MM Luger);
- EM#4 – Winchester 9mm Luger cartridge case;
- EM#5 – Bullet;
- EM#6 – Three (3) cartridge casings (1-Winchester 45 Auto, 2-Winchester 9MM Luger);
- EM#7 – Apparent bullet strike on sidewalk (photographed only);
- EM#8 – Bullet;
- EM#9 – Apparent blood swab;
- EM#10 – Black backpack;
- EM#11 – Two (2) 9MM Luger cartridge casings (1-“R-P”, 1-“Blazer”);
- EM#12 – One (1) Winchester 9MM Luger cartridge;
- EM#13 – Bullet;
- EM#14 – Cobray submachine gun, model number M-11-NINE MM, serial number 86-0011456, with loaded magazine [the submachine gun used by Anderson];
- Anderson's clothing and shoes;
- Bullet located in Anderson's right sock.

The following items were photographed by OCCL personnel:

- EM#A – Apparent bullet hole inside right rear passenger door of a vehicle;
- EM#A1 – Apparent bullet hole outside right rear passenger door of vehicle;
- EM#B – Apparent bullet hole in fence;
- EM#C – Apparent bullet hole in fence;
- EM#D – Damaged fence picket;
- EM#E – Apparent bullet hole fence post;
- EM#F – Apparent bullet hole fence post;
- EM#G – Apparent bullet hole fence post;
- EM#G1 – Apparent bullet hole fence picket;
- EM#G2 – Apparent bullet hole fence picket;

AUTOPSY:

On April 6, 2015, at approximately 9:15 a.m., a postmortem examination of Anderson was conducted by Nicole Ellis, a forensic pathologist from the Orange County Sheriff-Coroner's Office. Forensic Pathologist Dr. Ellis determined that 10 bullets struck Anderson's body as follows:

- (3) Apparent entrance wounds to the right side of head with apparent gun powder burn marks around the wounds and three apparent exit wounds to the head;
- (1) Left thigh;
- (1) Right foot- inner left side of foot near heel;
- (1) Right foot between toes;
- (1) Right heel bottom;
- (1) Left foot-below big toe;

- (1) Left side flank;
- (1) Upper left scapula.

Following the autopsy, Dr. Ellis concluded that the path of the seven apparent bullets to the body, excluding the three to the head, did not cause damage to any internal, vital organs. Dr. Ellis furthered concluded that these seven wounds were not fatal and that the cause of death was the three gunshot wounds to the head.

EVIDENCE ANALYSIS

Firearms Examination

Officer Moore's, Officer Petropulos', Sergeant Starke's department issued weapons and Anderson's submachine gun were collected and test fired by a forensic scientist at the OCCL. The weapons were identified as follows:

- Glock Model 17, 9MM Luger pistol, serial number GCS413 (Issued to Officer Moore);
- Glock Model 17, 9MM Luger pistol, serial number FBX418US (Issued to Officer Petropulos);
- Glock Model 21, .45 auto pistol, serial number CWY048US (Issued to Sergeant Starke);
- 9MM Luger submachine gun, serial number 86-0011456 (Anderson).

All weapons fired without malfunction. An Orange County Sheriff's Department (OCSD) forensic scientist completed a firearms examination and comparison of the above listed weapons. The examination and comparison revealed the following results:

- The submachine gun fired and operated without malfunction in both semiautomatic and full automatic modes. The firearm is capable of firing more than one shot with each pull of the trigger when operated in full automatic mode;
- Three cartridge cases, two at EM11 and one at EM12, were determined to have been fired by the submachine gun. The muzzle to surface distance in connection with the three fatal gunshot wounds to Anderson's head was estimated to be less than one inch for all three shots. These results clearly prove that the three fatal wounds on the right side of Anderson's head were produced by the submachine gun and as a result of self-inflicted wounds;
- Four cartridge cases, EM1, EM2, EM3, and EM6, were determined to have been fired by Sergeant Stark's weapon;
- Four cartridge cases, EM6 and EM3, were determined to have been fired by Officer Petropulos' weapon;
- Two fired cartridge cases, EM4 and EM6, were determined to have been fired by Officer Moore's weapon;
- The bullets from the right sock, left foot, and left hip of Anderson, EM8 and EM13, all share class characteristics with the weapons used by Officers Moore and Petropulos;
- The bullets from EM5 and EM-C share class characteristics with the weapon used by Sergeant Starke.

In summary, the firearms examination and comparison determined that three bullets were fired from the submachine gun held by Anderson, four bullets were fired from Officer Petropulos' department issued weapon, four bullets were fired from Sergeant Starke's department issued weapon, and two bullets were fired from Officer Moore's department issued weapon.

Toxicological Examination

A sample of Anderson's blood was collected. An OCSD forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. No alcohol, prescription drugs or common drugs of abuse were detected.

ANDERSON'S PRIOR CRIMINAL HISTORY

Anderson's criminal history was reviewed and considered. Anderson has a California Criminal History and was previously arrested for possession of a controlled substance for sale/narcotics, transportation of a controlled substance for sale/narcotics, possession of marijuana for sale, evading a peace officer with wanton disregard for safety, and a federal probation violation.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; 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 justification existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several legal 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 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." The Court of Appeal 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 p. 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/herself from attack if, as a reasonable person, he/she has grounds for believing and does believe that bodily injury is about to be inflicted upon him/her, or upon another human being. In doing so, such person may immediately use all force and means which he/she 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/her mind, as a reasonable person, an honest fear and conviction that he/she 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 physical injury to the officer or others.”

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his/her 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 rapidly evolving—about the amount of force that is necessary in a particular situation” (*Id.* at 396-397.)

The United States Supreme Court's analysis in *Graham* is very much applicable to the circumstances surrounding the facts of this case.

LEGAL ANALYSIS

The facts in this case were determined by a review of the officers' statements to the OCDA investigators, interviews of witnesses present at the incident and all relevant materials collected. Simply stated, the officers and the sergeant involved in this incident were confronted by an armed individual who didn't want to be arrested, and who was determined to use his submachine gun in a manner that left the officers and the sergeant with **no** other choice but to use their weapons.

The issue is whether Officer Moore, Officer Petropulos, and Sergeant Starke are criminally culpable for their actions on April 4, 2015. To sustain criminal charges against the officers, the prosecution is required to prove beyond a reasonable doubt that no legal justification existed for their actions. In other words, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the evidence shows that Officer Moore, Officer Petropulos, and Sergeant Starke were justified in their actions, thus acting in lawful self-defense or defense of others, then criminal charges are not warranted. Without any reasonable doubt based on the totality of the evidence, Officer Moore, Officer Petropulos, and Sergeant Starke were justified in their actions and acted reasonably when they fired their weapons at Anderson.

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 effectuate 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 [] 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.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that 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.” (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.)

In the present case, the officers were justified in believing that Anderson posed a significant threat of death or serious physical injury to himself and others. This conclusion is supported by a review of the totality of the circumstances surrounding the incident. Anderson's conduct in the moments leading up to the shooting is one of the most important

factors considered. Once Anderson knew the Toyota Prius was being stopped by the police, he made the conscious choice to remove a submachine gun and magazine from his backpack and inserted the magazine into submachine gun. Instead of remaining in the vehicle and complying with the APD officers' commands, Anderson exited the Toyota Prius armed with a submachine gun and continued to disregard the officers' commands. Each of the officers confirmed seeing Anderson with a submachine gun in his hand. After exiting the vehicle, Anderson began twisting his torso back toward the officers and began lowering the firearm. The officers reasonably interpreted Anderson's actions as those of a suspect about to engage in a gunfight. The officers' interpretations were further supported by the fact that as Anderson brought the submachine gun to a parallel position to the right side of his head, Anderson discharged three rounds from the submachine gun. Anderson's actions caused the officers to respond accordingly by firing their weapons to protect themselves.

While the officers fired 10 shots, with seven hitting Anderson, none of those shots caused Anderson's death. The Orange County Sheriff-Coroner conducted an autopsy on Anderson's body. The examination revealed three apparent entrance wounds to the right side of Anderson's head with apparent gun powder burn marks around the wounds and three apparent exit wounds to the head. The three shots were confirmed to have been fired by the submachine in Anderson's possession. There were also seven gunshot wounds in several areas of Anderson's body. Following the autopsy, the forensic pathologist concluded that the paths of the apparent bullets to the body, excluding the head, did not cause damage to any internal, vital organs. The forensic pathologist concluded that these wounds by the officers were not fatal and that the cause of death was the three gunshot wounds to the head, determined to have been self-inflicted by the submachine gun in Anderson's possession. The autopsy findings support the conclusion that Anderson fatally shot himself when he turned back towards the APD officers. This conclusion is further supported by the fact that Officer Sandoval observed blood coming out from the right side of Anderson's head, immediately after she heard gunshots fired, as well as by the statement Anderson made to Jane Doe 1 about wanting to be with his deceased mother.

It should be noted that even if any of the APD Officer's weapons caused Anderson's death, to warrant any criminal charge against the officers, the prosecution must prove beyond a reasonable doubt that the officers did not act in reasonable and justifiable self-defense or defense of another. The prosecution would be unable to carry such a burden in this case. The officers' actions in response to Anderson's dangerous and criminal conduct were justified. The incident occurred on a Friday morning, on a high-traffic avenue in the City of Orange, and aside from the potential danger to the public, Officer Moore stated that she felt that she and the other officers were at a disadvantage because of the capacity of Anderson's firearm and the fact that he was presenting as a very dangerous threat. This was a reasonable assessment by Officer Moore. Additionally, Officer Petropulos indicated that he was fearful because he was in a position without cover and believed Anderson would shoot at him and his fellow APD officers again. Again, this was a reasonable assessment by Officer Petropulos. Sergeant Starke stated that he thought Anderson was a threat and felt he needed to address the threat or else he or someone else in the area would be shot. Similarly, this was a reasonable assessment by Sergeant Starke. A jury analyzing these facts would likely conclude that it was reasonable for the officers to believe that their lives and the lives of others in the area were in danger. This same legal analysis and justifications apply to any possible criminal filing against the officers and not just a homicide related filing.

Therefore, Officer Moore, Officer Petropulos, and Sergeant Starke were justified when they shot Anderson. Simply stated, the officers did not commit a crime, to the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner, protecting themselves and the public.

CONCLUSION

Based upon a review of all the evidence provided and obtained by the OCDA Investigators, and based on the entirety of the facts contained in all the available reports and interviews, 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 Moore, Officer Petropulos and Sergeant Starke. Furthermore, there is substantial evidence that the actions of the officers and the sergeant were reasonable and justified during their encounter and subsequent shooting of Anderson on April 4, 2015.

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



FRANK ACOSTA
DEPUTY DISTRICT ATTORNEY
TARGET UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
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