



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

December 18, 2017

Acting Chief David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on July 21, 2017
Fatal Incident involving Yahir Lucero Brito
District Attorney Investigations Case # SA 17-021
Santa Ana Police Department Case DR # 17-19775
Orange County Crime Laboratory Case FR # 17-53200
Orange County Coroner Office Case # 17-03311-YA

Dear Chief Valentin,

Please accept this letter detailing the Orange County District Attorney Office's (OCD A) investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officer Tyler Liggett. Yahir Lucero Brito, 24, died as a result of his injuries. The incident occurred in the City of Santa Ana on July, 21, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCD A's investigation of the July 21, 2017, fatal officer-involved shooting of Brito. 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 SAPD officer involved in the shooting. The format of this document was developed by the OCD A, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On July 21, 2017, Investigators from the OCD A Special Assignment Unit (OCDASAU) responded to the scene of this incident. During the course of this investigation, there were nine interviews conducted and 24 additional witnesses contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD 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 Brito; criminal history records related to Brito; and other relevant reports and materials including audio recordings of the neighborhood canvass conducted by investigators and video recordings of the incident.

The OCD A 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 SAPD officers or personnel, specifically Officer Liggett. The OCD A will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone is injured because 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/Gangs, and Special Prosecutions Units review fatal, as well as non-fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising 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. Officer Liggett declined to provide a voluntary statement to OCDA investigators in this case.

FACTUAL SUMMARY

Brito was a 24-year-old male. Brito lived with his parents and several other family members at the Santa Ana residence where the OIS incident occurred. Brito's girlfriend, Jane Doe, also lived at the residence for the past eighteen months. Jane Doe and Brito are not married and have two small children together, ages 2 years and 1 month old respectively.

Doe stated that Brito has severe mood swings when he drinks alcohol. According to Jane Doe, on Thursday, July 20, 2017, at approximately 5:00 p.m., Brito started drinking beer with his brothers. Brito then came into the bedroom where Doe was with their two children. Brito began to argue with her about the price of some clothing she was trying to sell online. Brito told Doe, "Shut up before I smack you." Brito continued to argue with Doe into the night. At one point, Brito became physically aggressive towards Doe. Brito climbed on top of Doe as she curled up in the fetal position to protect herself. Doe said Brito punched her with his closed fist on the right side of her head "four to five times." He also punched her in her arms and chest as she tried to protect herself while their children were present in the room. Her 2-year-old son was trying to hug Doe as Brito punched her. Doe screamed for Brito's mother to come and help her. However, the bedroom door was locked and no one could get inside. Brito's brother came into the bedroom through a window and took Brito outside.

At approximately 11:00 p.m., Doe was in the bedroom sleeping when Brito returned to the room. Brito laid down on the bed next to her and attempted to argue again. Doe ignored him and tried to go to sleep. At approximately 2:30 a.m. on Friday, July 21, 2017, Doe realized Brito was still up and drinking tequila in the bathroom. Doe went to the bathroom where she found a half empty "750 ml" bottle of "Buchanas Tequila." Doe believed Brito had consumed about one quarter of the bottle. Brito and Doe returned to the bedroom and began arguing again. During her argument with Brito, Doe sustained visible injuries which included several scratches on her upper right chest area, bruising on her right wrist, as well as pain and bumps to the right side of her head. It should be noted that medical attention was later offered to Doe and she declined.

Brito's father entered the bedroom to talk to Brito and try to calm him down. However, Brito got mad at him for interfering and thought his father wanted to fight him. Brito and his father went outside and argued on the patio. While on the patio, Brito punched his father on the left side of his face. His father fought back and punched Brito twice in the face.

Brito's sister, who was sleeping at the time, woke up when she heard her mother screaming for someone to restrain Brito. Brito's sister then observed one of her other brothers restraining Brito near the kitchen. Their mother poured water on Brito and his brother in an attempt to break up the fight. Brito's sister described Brito as being "out of control." She said that usually pouring water on Brito when he was fighting would get him to calm down, but this time it did not work. Brito's sister said the fight continued outside in front of the residence. During the fight, she observed Brito fall down and hit his head on the water spigot. Brito then went back inside the residence and into his bedroom. At approximately 3:38 a.m., one of Brito's sisters called SAPD, via "9-1-1" and reported that Brito was drunk and fighting with family members inside the residence. SAPD patrol Officers Tyler Liggett and Ivan Vera were dispatched to the Brito residence. At approximately 3:41 a.m., Brito's brother also called SAPD via "9-1-1" and reported that Brito was armed with a "stick" inside the residence and was hitting his father with it. Brito's brother reported he had sustained an injury to his nose while fighting with Brito. He also reported that his father was able to get the stick away from Brito and was hitting Brito with it. The SAPD dispatcher broadcasted this information to the responding officers and instructed Brito's brother to meet them in front of the residence. Brito's brother later told investigators that Brito was extremely intoxicated and under the influence of "crystal meth" (methamphetamine) while fighting with his family members.

As instructed by the SAPD dispatcher, Brito's brother and father exited the residence and waited for the responding officers in the front yard. Initially, Brito followed his brother and father outside where he approached his father in an aggressive manner. His father picked up a stick that was approximately 18 x 2 inches in size and struck Brito with it on his back. Brito then returned inside the residence while his father and brother remained outside. At approximately 3:43 a.m., Officers Liggett and Vera arrived at the residence in separate marked black and white SAPD police vehicles. Both officers were wearing long-sleeved department issued Class B uniforms, gun belts, and black boots. The uniform shirts had "Santa Ana Police Department" patches on each sleeve. Their badges and name plates were pinned to the front of their shirts. Brito's brother contacted the officers in the front yard. Brito's father remained nearby, but Officers Vera and Liggett had no contact with him. Officers Vera and Liggett stood next to each other at the sidewalk just outside the driveway while speaking with Brito's brother. Brito's brother said Brito had been physically assaulting his girlfriend inside the residence. Brito's brother further stated that when he tried to intervene, he became involved in a physical altercation with Brito and received an injury to his nose. Officer Vera observed Brito's brother was bleeding from his nose. Brito's brother said his father then intervened and also became involved in a physical altercation with Brito.

Brito was still inside the residence when the officers began speaking with his brother outside. At some point, Brito's mother heard Brito say to his father from inside the residence, "I am going to kill you, you son of a b***h. I don't care if I do it while you're sleeping." Brito's mother then observed Brito retrieve a "kitchen knife" from the top of the dresser in his bedroom. Brito's sister, who was standing by the front door of the residence, also saw Brito go into his bedroom and get the "kitchen knife." Brito then went outside the residence with the knife. His sister followed and observed her father and the officers in the front yard, and saw Brito walking towards them. Suddenly, Officer Vera heard Brito's mother yell out, "He's got a knife! He's gonna kill dad!" Simultaneously, Officer Vera observed Brito appear from the south side of the residence, approximately 30 feet away. Brito began walking northwest across the front yard directly towards his father, his brother, and the officers. Officer Vera turned and looked directly at Brito. He observed Brito holding a knife in his right hand with his arm extended down to his side and with the blade of the knife pointed forward towards Officer Vera and Officer Liggett. Officer Vera believed it was a "kitchen knife" with a "black handle and a silver or steel blade" that was approximately six inches in length.

According to Officer Vera, he and Officer Liggett were standing next to each other as Brito approached. Officer Vera observed Officer Liggett remove his firearm from his holster and point it at Brito. Officer Vera then heard Officer Liggett order Brito to "drop the knife." At about the same time, Officer Vera side-stepped away from Officer Liggett to create a tactical distance between them and Brito. Officer Vera then removed his Taser from his holster and pointed it at Brito. Officer Vera also gave Brito commands to "put down the knife." Brito refused and continued walking towards the officers with the knife in his hand. According to Officer Vera, "He [Brito] never stopped, never said anything... continued to walk towards us... staring straight at us."

As Brito moved within approximately 18 feet of the officers, it became clear to Officer Vera that Brito was not going to stop despite the officers' commands. As Officer Vera observed, "He [Bruto] had like a blank stare in his face and he just kept walking straight to us." Officer Vera then fired his Taser at Brito. At the same time, however, Brito's brother inadvertently stepped between Officer Vera and Brito. As a result, one of the Taser darts impacted Brito's brother in the right side of his back, while the other dart impacted Brito on the top of his right shoulder. This caused the Taser deployment to be ineffective. Officer Vera estimated that at the time he first shot his Taser, Brito was within 10-12 feet of his brother, and his brother was approximately 5-6 feet away from Officer Vera.

After the Taser deployment, Brito's brother moved back out of the way at which time Officer Liggett fired three shots from his firearm, striking Brito. Officer Vera observed Brito fall down to the ground and drop the knife. Officer Vera estimated Brito was 16 feet away from the officers and still moving towards them at the time Officer Liggett fired the shots. Evidence located at the scene suggests that Brito was within 12 feet of the officers at the time of the OIS. Officer Vera used his police radio to broadcast "998" (officer-involved shooting) at which time additional SAPD officers and Orange County Fire Authority (OCFA) Paramedics were dispatched to the scene. According to Officer Vera, a short time after the shooting, other SAPD officers arrived at the scene and Officer Vera assisted in handcuffing Brito.

At approximately 3:48 a.m., OCFA Engine #76 personnel, were dispatched to Brito's residence regarding a domestic violence assault. At approximately 3:55 a.m., Engine #76 arrived on scene and learned there had been an officer-involved shooting. A paramedic observed Brito lying on his left side while an SAPD officer was placing hyphen chest seals over two gunshot wounds to Brito's upper torso. Brito sustained gunshot wounds to his left upper quadrant and left shoulder. Brito was unresponsive, had no pulse, and had no respirations. At approximately 4:08 a.m., Brito was placed on a gurney, chest compressions were initiated, and he was transported "Code 3" (lights and sirens) by Care Ambulance to Orange County Global Medical Center (OCGMC). While in transport, paramedics attached an electrocardiogram (EKG) to Brito. The EKG showed Brito had pulseless electrical activity. They continued chest compressions, inserted an endotracheal tube, and provided oxygen via an airway-bag valve mask. They placed an intraosseous sight in Brito's right tibia and inserted an intravenous line in his left antecubital. Brito was given two units of epinephrine, but remained pulseless and apneic (not breathing).

At approximately 4:17 a.m., paramedics arrived at OCGMC and relinquished Brito's care to the on duty medical personnel. According to the attending registered nurse, once Brito arrived in the trauma center, members of the trauma team, led by the attending physician, continued Advance Care Life Support and accessed Brito's condition. Brito's heart rate, blood pressure, and respiratory rate were all zero. His pupils were fixed and dilated. Brito had the following visible injuries: a 1 cm laceration below the left eye; a superficial laceration above his right brow; scratch marks on his right anterolateral neck; a 1 cm circular wound consistent with a gunshot wound to the posterior left shoulder; one Taser dart protruding from the posterior right shoulder; and two circular wounds consistent with gunshot wounds in the abdomen, both with omental evisceration. One gunshot wound was to the center of the abdomen while the other was to the lower left abdomen. An anesthesiologist evaluated the endotracheal tube and replaced it. Brito received two additional units of epinephrine but remained systolic the entire time at OCGMC. At approximately 4:30 a.m., Brito was pronounced deceased.

Voluntary Statements of Brito's Girlfriend and Family Members

Bruto's girlfriend and several of his family members made voluntary statements to OCDA investigators. Below is a summary of their statements pertaining to the OIS incident:

According to Brito's girlfriend, Jane Doe, she had gone into the living room and looked out the west facing window. She observed Brito in the front yard on the grass just east of the sidewalk. She knew it was Brito because she could see his green shirt being illuminated by the police officers with flashlights. Doe heard the officers yell, "Stop right there." Doe believed the officers were outside the gate by the sidewalk. Doe estimated the officers were approximately 10 feet away from Brito. Doe could only see the officers' flashlights and not the officers themselves because it was dark. She never heard Brito say anything and did not observe Brito in possession of a knife or any other type of weapon.

Brito's sister stated she heard the officers yelling at Brito to "drop the knife." She observed one of the officers shoot at Brito "three times" with his Taser. Brito's sister said Brito had the knife in his right hand while walking towards the officers. She said Brito's brother stepped in between the officers to try and help calm Brito down, but was unsuccessful. Brito was approximately "seven" feet away from the officers with the knife, when she heard the gunshots. Brito's sister did not see the shooting.

According to Brito's brother, within three minutes of the officers' arrival, Brito appeared from the south side of the residence and walked directly towards him and the officers in the front yard. Brito was holding a knife in his right hand with the blade directed towards them. Brito's brother heard both of the officers yelling at Brito to "Stay back" and "Drop the knife." Brito's brother said he also yelled at Brito, "Drop the knife." Brito did not comply. Brito's brother then stepped in between the officers and Brito with his face towards Brito. Brito's brother was trying to get Brito to calm down, but Brito did not respond to him or to the officers. His brother estimated that Brito had traveled 30 feet from the residence and had moved within two feet of him while holding the knife. Brito's brother estimated that Brito was within 5-7 feet of both officers at the time the officers fired their weapons. Brito's brother heard "two loud bangs" and was then struck in the back by a Taser dart. Brito's brother pulled the Taser dart out of his skin and dropped it to the ground. At about the same time, he observed Brito fall to the ground and drop the knife.

According to Brito's father, Brito appeared from the south side of the residence holding a knife in his right hand. The blade of the knife was approximately "four to five inches" in length. At the time, Brito's right arm was down to his side. Brito began walking towards his father and brother. Brito's father heard the police officers give Brito verbal commands in English. Although Brito's father does not speak English, he understood some of the officers' words. Brito's father heard the officers tell Brito, "Calm down." However, Brito continued walking towards them while gripping the knife with his right hand. Brito's father also heard the officers telling Brito, "Drop the knife." Brito again ignored the officer's commands and continued walking towards their location. Brito's father stated that once Brito got within "12 to 15 feet" of his father and brother, he heard one of the officer's fire his weapon approximately "four to five" times and observed Brito fall to the ground. Brito's father believed Brito was going to try and stab him. However, he felt that he and Brito's brother could have possibly disarmed Brito before it happened. Brito's father said approximately 5-10 minutes after the shooting, officers approached Brito and "kicked" the knife away from his body.

Brito's mother stated she saw Brito exit the residence via a south facing door with a knife. She was concerned Brito was heading to the front of the residence where his brother and father were located. She went to the front door of the residence to alert Brito's brother and father. When Brito's mother exited the front door, she observed two police officers standing at the end of the driveway, outside of the gates. Brito's mother then observed Brito emerge from the south side of the residence and walk towards his brother and the officers. She described Brito's knife as having a "4-6 inch blade." At one point, she yelled out, "He has a knife and is going to kill Dad!" Brito continued walking towards his father, his brother, and the officers. Brito's mother observed one of the officers shoot Brito "two to three times." She also observed the other officer deploy a Taser at which time one of the darts struck Brito's brother. Brito's mother observed Brito drop the knife and fall to the ground. Just prior to the shooting, she was yelling at both Brito and his brother, but could not recall if she heard the officers giving Brito any commands. Brito's mother stated she did not believe Brito's brother would have been able to see Brito's knife in the dark. She also believed if the police had not been present to intervene, Brito would have stabbed his father. She said approximately one minute lapsed from the time she first observed the officers on scene to the time the shooting occurred. Brito's mother was upset about the outcome but felt the officers' actions were proper.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Glock Model 22 pistol, .40 Smith & Wesson caliber, serial #BBXE271
- 40 mm cartridge cases Headstamp WIN 40 S&W
- One, "IKEA" single edged metal knife with black handle
- Broken stick
- Wooden stick

- Taser International Inc., TASER Model X26, #X00-657985
- Swab from Taser probe
- Taser evidence (doors, wire, probe, AFIDS)
- Taser cartridge
- Black shirt

AUTOPSY

On July 24, 2017, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner's Office conducted an autopsy on the body of Brito. Dr. Davenport conducted an extensive examination of the body and found three gunshot entrance wounds and no exit wounds, one Taser dart/probe attached to Brito's upper right shoulder, scratches to the neck and right eyebrow, and abrasions to the left arm. Dr. Davenport concluded the cause of death was multiple gunshot wounds and their related internal injuries.

EVIDENCE ANALYSIS

Firearms Examination

The Glock, model 22, .40 caliber semi-automatic pistol, serial # BBXE271 was issued to Officer Liggett. The pistol was received unloaded and with the magazine removed. Received with the pistol was a single cartridge labeled as being from the chamber, an empty magazine packaged with 12 cartridges and two empty magazines, each with 15 cartridges labeled as being from the belt. The three magazines each hold fifteen cartridges. The 43 cartridges are Winchester brand, .40 Smith and Wesson caliber, each with a T-Series jacketed hollow point bullet. The pistol was test fired and it operated without malfunction.

The bullet recovered during the autopsy from the lower back and the jacket from the left chest wall were determined to have been fired from Officer Liggett's Glock pistol. The bullet recovered during the autopsy from the rectum, shares class characteristics with Officer Liggett's Glock pistol.

Taser Model X26, serial #X00-657985, was received without a cartridge in its firing bay or secondary cartridge clip. The illuminator laser dot sight and automatic five-second pulse operated properly. The lever safety (power on/off) operated properly and would terminate the automatic five-second pulse when moved to the safe position.

Toxicological Examination

A sample of Brito's postmortem blood was collected for testing. The blood was examined for the presence of drugs and alcohol. The following results and interpretations were documented:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.176 ± 0.005% (W/V)
Acetaldehyde	Postmortem Blood	Detected
Methamphetamines	Postmortem Blood	0.0949 ± 0.0062 mg/L

BRITO'S PRIOR CRIMINAL HISTORY

Brito had no State of California identification or criminal history record.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in an on-duty 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 is necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) 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 the 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 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/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 and teachings in *Graham* are applicable to the circumstances surrounding the interaction between SAPD Officer Liggett and Brito.

LEGAL ANALYSIS

The facts in this case are determined by considering all the statements made by the SAPD officers, which were supplemented by other relevant material and witnesses present at the incident.

The issue in this case is whether the conduct of Officer Liggett on July 21, 2017, was criminally culpable and without justification. As stated above, in order to conclude that Officer Liggett committed a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, in order to lawfully charge Officer Liggett with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the actions by Officer Liggett on the date of the incident were justifiable as lawful self-defense or defense of others, criminal charges would not be warranted.

As the 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 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 potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous toward 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.)

It is clear based on the totality of all the available evidence in this case that Officer Liggett was justified in believing Brito posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on all of the circumstances, particularly the conduct of Brito leading up to the shooting. SAPD Dispatch informed Officers Vera and Liggett that Brito was drunk and had been physically attacking his family members, including his use of a stick to hit his father. When the officers arrived, Brito's brother informed them Brito had been physically assaulting his girlfriend inside the residence. Brito's brother further informed them that when he or his father tried to intervene, they became involved in physical altercations with Brito. Brito's brother was visibly bleeding from the nose and stated he sustained the injury while fighting Brito. Around the same time the officers arrived, Brito's mother was inside the residence and heard Brito say the following in reference to his father: "I am going to kill you, you son of a b***h! I don't care if I do it while you're sleeping." Brito then obtained a kitchen knife from his bedroom and walked outside. Suddenly, Officer Vera heard Brito's mother yell out, "He's got a knife! He's gonna kill Dad!" Brito then began walking directly towards where his father, his brother, and the officers were standing. Brito was holding the knife in his right hand with his arm extended down to his side and with the blade of the knife pointed forward towards Officer Vera and Officer Liggett. In addition to Brito's brother and father, several of Brito's other family members were in the front yard area and could have been harmed by Brito, had he followed through on his threats to stab his father. The officers therefore had to act with even greater caution as well as urgency to ensure the safety of not only themselves and Brito, but also of Brito's bystander family members.

Officer Liggett drew his gun and told Brito, "Drop the knife." Brito refused and continued walking towards them. Officer Vera also gave Brito commands to "put down the knife." Again, Brito refused and continued walking towards them. According to Officer Vera, Brito had a "blank stare in his face" and never stopped walking or said anything. Officer Vera first attempted to stop Brito by deploying his Taser, and did not do so until it was clear Brito was not going to stop despite the officers' commands. However, the Taser deployment was ineffective because Brito's brother walked between Officer Vera and Brito. At this point Brito, stilling holding the knife, was within 10-12 feet of his brother and continued walking in

the officers' direction. In fact, in light of evidence at the scene, Brito may have been even closer to his brother. Only then did Officer Liggett fire three shots from his firearm striking Brito. Officer Liggett's actions were reasonable in the situation due to Brito's close proximity to his brother and his refusal to stop moving and drop the knife.

It should be noted Brito began consuming alcohol at approximately 5:00 p.m. on July 20, 2017, and continued to drink into the early hours of July 21, 2017, shortly before the officers arrived. According to his girlfriend, Brito has severe mood swings when he consumes alcohol. That evening he became increasingly aggressive towards his family members, including his girlfriend, who he punched with his closed fist in the right side of her head "four to five times." According to Brito's sister, Brito was "out of control" that night. Given Brito's subsequent behavior when the officers arrived, Officer Liggett was justified in his actions.

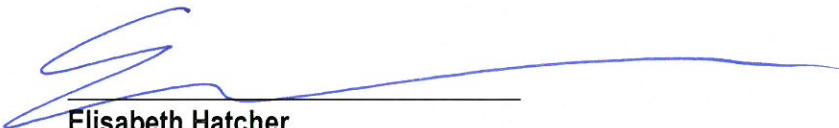
Certainly, it would have been preferable if the OCDA was able to obtain a voluntary statement from Officer Liggett regarding his state of mind at the time of the shooting. However, Officer Liggett's decision to decline to give the OCDA a voluntary statement may not legally and ethically be used to draw negative evidentiary inferences regarding his conduct and state of mind.

In order for Officer Liggett to be justly and lawfully charged and convicted of any crime based on this incident, it is the OCDA's burden to prove beyond a reasonable doubt Officer Liggett did not act in reasonable and justifiable self-defense or defense of another when he shot Brito. As is apparent from the above-described analysis, the prosecution would be unable to carry such a burden in this case. A jury analyzing these facts would justly conclude it was reasonable for Officer Liggett to believe his life and the lives of others, especially Brito's father and brother, were in imminent danger. Therefore, Officer Liggett was justified when he shot Brito. Simply stated, Officer Liggett did not commit a crime, to the contrary, he carried out his duties as a peace officer in a reasonable and justifiable manner.

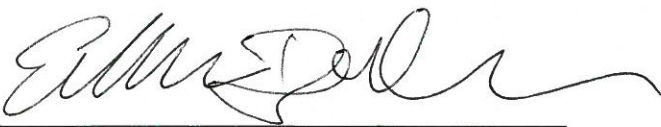
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of all the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion there is no evidence of criminal culpability on the part of Officer Liggett, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot and killed Brito on July 21, 2017.

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



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Read and approved by **EBRAHIM BAYTIEH**
Assistant District Attorney
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