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November 27, 2018

Chief Jorge Cisneros
Anaheim Police Department
425 S. Harbor Blvd.
Anaheim, CA 92805

Re: Officer-Involved Shooting on April 13, 2018
Fatal Incident involving Petrica Muntean
District Attorney Investigations Case # S.A. 18-014
Anaheim Police Department Case # 18-55854
Orange County Crime Laboratory Case # 18-45257

Dear Chief Cisneros,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officers Bartman Horn and Brendan Thomas. Petrica Muntean, 24, died as a result of his injuries. The incident occurred in the City of Anaheim on April 13, 2018.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the April 13, 2018, fatal officer-involved shooting of Muntean. 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 Anaheim officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On April 13, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 25 witnesses were interviewed and the following was obtained and reviewed: APD reports, audio dispatch and radio traffic recordings, videos from Body Worn Cameras; 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 Muntean; criminal history records related to Muntean including prior incident reports and an officer-involved shooting report; 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 or personnel, specifically Officers Horn and Thomas. 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/Gangs, and Special Prosecutions Units review fatal and 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 Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, 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 Thomas gave a voluntary statement to OCDA Investigators on April 19, 2018. Officer Horn gave a voluntary statement to OCDA Investigators on April 23, 2018.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

Muntean's Prior Officer-Involved Shooting Incident with the Santa Ana Police Department (SAPD)

On Tuesday, May 14, 2013, Muntean was the driver of a vehicle that had been reported stolen during a carjacking. The stolen vehicle was located, using Lo-Jack, in the city of Santa Ana. A traffic stop was attempted but Muntean failed to yield and a pursuit ensued. Muntean eventually lost control of the stolen vehicle while attempting to make a turn and collided into another vehicle and a tree. After the collision, Muntean opened the driver's door and was uncooperative and disobeyed the police officers' commands by stepping in and out of the driver's seat all while making "furtive movements." This behavior resulted in two SAPD Officers discharging their weapons with one bullet striking Muntean on his right arm causing a through and through gunshot wound. Criminal charges were filed against Muntean in connection with this incident in Orange County Superior Court case number 13NF1601. On Dec. 11, 2013, Muntean pleaded guilty to fleeing from the SAPD officers, and attempting to elude a pursuing peace officer while driving with willful disregard for the safety of persons or property, a felony offense in violation of Vehicle Code section 2800.2. Muntean was sentenced to 16 months in state prison.

Muntean's Incident on the Night Prior to APD's Officer-Involved Shooting, April 12, 2018

On April 12, 2018, at approximately 10:30 p.m., Jane Doe called the APD to report Muntean was hallucinating and causing a disturbance in the street. During Jane Doe's phone call to 9-1-1, Muntean can be heard yelling and arguing with Jane Doe because he believed there were people inside his car. Jane Doe advised dispatch Muntean appeared to be under the influence of a narcotic and had an unknown mental condition. Jane Doe was concerned and requested APD respond to the scene.

APD Officers Vincent Nguyen and Alan Valdiserri arrived on scene and contacted Jane Doe. Muntean was over 25 yards away from Officers Nguyen and Valdiserri. Officer Nguyen observed Muntean holding what Officer Nguyen described as a black semi-automatic handgun near his chin. Officer Nguyen ordered Muntean to drop the weapon but Muntean ignored Officer Nguyen's commands and continued to walk away from the APD Officers.

Muntean continued to gain distance away from the APD officers and was able to evade them on foot. Additional APD officers and APD Air Support (Angel) arrived on scene and set up a containment zone in the surrounding area. Angel assisted by searching the surrounding areas. Muntean was not located and the perimeter was broken down. At 10:49 p.m., Officer Valdiserri sent an email to the APD "Police Patrol" email list detailing the incident as well as a description and booking photo of Muntean, and the fact he was armed with a black semi-automatic handgun.

Date of Present Incident

On April 13, 2018, at 6:24 a.m., APD dispatch received a call of a disturbance at the Carl's Jr. Restaurant located at 275 South Harbor Boulevard. Officers Johnson and Gonzalez and APD Sergeant Darren Lee were dispatched to the call. At 6:50 a.m., after speaking with a Carl's Jr. employee, the officers on scene learned the transient causing the disturbance left prior to their arrival. The Carl's Jr. surveillance video recording later revealed Muntean was the subject causing the disturbance. Muntean was wearing a black t-shirt and black pants. Sergeant Peter Wann arrived on scene and met with Sergeant Lee. At 7:09 a.m., Officers Johnson and Gonzalez encountered Muntean sitting on a curb outside of the Carls Jr. Muntean was wearing a black shirt, black pants, and a blue towel over his shoulders like a shawl. Muntean's right hand was concealed underneath the towel. Officer Johnson told Muntean to sit down on the curb and to remove his hand from underneath the towel. Muntean replied, "I didn't do nothing." Muntean initially appeared to be complying with Officer Johnson's commands, however, prior to sitting fully on the curb, Muntean stood up and began walking away from the officers. Muntean continued to say, "I didn't do nothing." Officer Johnson transmitted over his police radio, "24, give us a 10-3. We may have Peter Muntean here in the parking lot of Harbor and Broadway. He has his hands tucked in his shirt. We're trying to get him to sit down."

Officer Johnson repeatedly told Muntean, "It's okay buddy, just sit down. It's going to be okay buddy, we just want to talk to you." Officer Gonzalez told Muntean, "We don't want to hurt you, we want to help you." Officer Johnson advised Sergeants Lee and Wann to keep their distance because they believed the subject to be Muntean and he may be armed.

Muntean walked into the alley that ran parallel between South Seneca Circle and West Broadway. APD Officers Michael Fleet and Thomas arrived at the alley and joined the other officers on scene. Muntean walked westbound through the alley. Officer Fleet decided to follow in his patrol car and act as cover for the pursuing officers. Muntean continued to walk away from officers and ignored officer commands. Officer Johnson transmitted over his police radio that Muntean appeared to have something in his hands and that he was putting it up to his chin and the object was believed to be a gun. As Muntean got closer to South Citron Street, he began to run. At that time Sergeant Lee yelled out that there were kids in the area and to not let Muntean flee. Officer Thomas was familiar with the area and knew that Anaheim High School was also nearby. Officer Thomas stated that he feared that if Muntean did have a gun and he got out to the street, he would come across a lot of children.

APD Officers Heather Scaglione and Horn arrived on-scene in the area of South Citron Street and the alleyway, which was slightly ahead of Muntean's path and the pursuing officers. Officer Scaglione armed herself with a less lethal shotgun. Officer Scaglione saw Muntean holding something towards his chin but was unable to identify what it was. As officers

were pursuing Muntean on foot, Officer Scaglione yelled out, "let go, let go, less lethal, less lethal" and shot two rounds of less lethal ammunition at Muntean, however the rounds were ineffective because Muntean continued to evade the officers. Officer Scaglione continued to chase Muntean as he entered the housing complex at 150 South Seneca Circle. Officer Scaglione fired two more less-lethal rounds at Muntean and believed she hit him because Muntean reacted by yelping, however he continued running down the alleyway in the center of the apartment complex.

Officer Horn ran past fellow officers attempting to catch Muntean as he continued running down the alleyway. Officer Horn recalled seeing Muntean running while holding a "black semi-automatic handgun." Officer Horn stated that as he rounded the alleyway he reached a dead-end, and he found there was a large block wall and a parked car head-on near the wall. Officer Horn could see that Muntean had taken cover behind the parked car. Officer Thomas took cover by a different car right before the alleyway turned into the dead-end. Officer Thomas alerted officers on scene by yelling out, "gun, he's got a gun."

Officer Horn could see Muntean was behind the parked car. Officer Horn believed Muntean was bobbing back and forth as if he was attempting to find the right "defensive position." Officer Horn could see Muntean was carrying a black handgun and could see that the barrel of the gun was pointing in his direction. Officer Horn had no available cover and believed he was in a "lethal force encounter." Officer Horn feared for his life and the lives of other officers he could see through his peripheral vision approaching from behind. Officer Horn stated he decided to engage Muntean before Muntean engaged him or other officers. Officer Horn placed the less lethal shotgun to the side and drew his handgun as he alerted other officers by yelling out, "gun." Officer Horn fired 9 consecutive rounds at Muntean as he came around the driver side of the vehicle, which concealed Muntean. Jane Doe 2 could see Muntean from her upstairs window and believed that Muntean had been firing shots at the officers. It was later confirmed that Muntean did not fire any rounds.

Additionally, Officer Thomas relayed Muntean was in fact behind the car and extending his arm straight out towards the officers' direction. Officer Thomas stated he was in fear for his own life. Officer Thomas shot seven gunshots at Muntean and once he saw him fall on his side, Officer Thomas stopped shooting.

Once the firing stopped, Sergeant Lee coordinated with Officer Thomas to situate Muntean in a position that would allow for easier access to medical attention. Officers Scaglione, Johnson, and Fleet performed Cardio Pulmonary Resuscitation (CPR) until Anaheim Fire Department (AFD) arrived on scene. At 7:20 a.m., AFD Engine 1 arrived on scene and paramedics assessed Muntean and found he was not breathing and did not have a heart rate nor blood pressure. Paramedics provided Muntean ventilation using a bag valve mask (BVM) and chest compressions. Additionally, paramedics used a Phillips Monitor to check for a heart rhythm and found Muntean was asystole. CPR was continued. At 7:28 a.m., AFD placed Muntean in the rear of a CARE Ambulance and transported him to the hospital (UCIMC). The gun that Muntean had in his possession was recovered and it was later determined to be a Crossman, black, metal CO2 powered semi-automatic BB handgun with a 20 round drop-out magazine.

At 7:46 a.m., they arrived at UCIMC where medical care was relinquished to the trauma team. Muntean did not regain consciousness. Muntean sustained two gunshot wounds and a CT scan revealed two projectiles in Muntean's neck and his brain stem. Muntean was a permanent quadriplegic. Over the following days, Muntean's condition appeared to be improving with the help of medical intervention and a breathing tube. A registered nurse in charge of Muntean's care told a DA Investigator Muntean had been alert and was able to communicate with his eyes. Muntean was a quadriplegic, could not move and had no feeling from his neck down. Muntean wanted to be comfortable and requested no surgeries, tracheotomy or feeding tube. Muntean requested his breathing tube be removed and did not want to be resuscitated. The medical staff evaluated Muntean's request to discontinue medical intervention and found him to be competent. As a result his breathing tubes were removed on April 27, 2018, at 3:52 p.m. and immediately thereafter he stopped breathing. Muntean was declared deceased at 4:15 pm by the UCIMC attending physician.

OFFICER HORN'S STATEMENT

Officer Horn began his shift at 6:00 a.m. on April 13, 2018. During the beginning of his shift the email from April 12, 2018, in regards to Muntean's incident was discussed and debriefed. Officer Horn was aware when officers attempted to contact

Muntean on April 12, 2018, Muntean produced what officers believed was a firearm and pointed it at himself and then ran from officers at the scene. Additionally, Officer Horn was made aware Muntean had a history of obstruction and was on supervised release.

Officer Horn stated he was in the area of the pursuit due to a high volume of calls the night prior. He was in the area to assist with the remainder of the calls when he heard Officer Johnson on the radio. Officer Horn believed he heard Officer Johnson radio in that he encountered the individual discussed in the morning's briefing. When he arrived on scene, Officer Horn stated he heard Officer Scaglione fire the beanbag shotgun so he began running north towards where Muntean and other officers were located. Officer Horn stated he heard Muntean yelling or screaming and assumed he had been hit with a beanbag round. Officer Horn stated he ran quickly to catch up to everyone and had caught up to the front of the officers as they ran down an alleyway between homes. Officer Horn was chasing Muntean and following the driveway between the townhomes when he rounded a corner expecting the chase to continue, however the driveway ended in a dead end instead and Officer Horn realized he was without cover. Officer Horn also stated that prior to turning the corner he had his less lethal shotgun indexed but drew his handgun when he saw that he was in a lethal situation without cover.

Officer Horn stated Muntean was behind the hood of a car facing him with what Officer Horn saw was "clearly a gun," which he believed was a black semi-automatic handgun. Officer Horn stated when he first saw Muntean he was bobbing back and forth, as if trying to find the right defensive position to be in, and he was moving as if he was evaluating who was coming around the corner. Officer Horn stated Muntean's gun was angled out towards the officers and where Officer Horn was standing. Officer Horn believed that based on his knowledge of Muntean and Muntean's criminal history, this was a situation where Muntean was trapped and would change his tactics to engage with Officer Horn before complying with officers. It appeared to Officer Horn Muntean was attempting to get away the whole time and now was in a defensive position. Officer Horn believed his life was in danger and those officers who were following behind him and were about to come around the corner will be without cover as well. Officer Horn decided to engage Muntean before Muntean could engage him or other officers. Officer Horn fired 9 rounds from his department issued pistol.

OFFICER THOMAS' STATEMENT

On April 13, 2018, at 6:00 a.m., Officer Thomas was working in patrol for the day shift. During the start of his shift, he was briefed on the April 12, 2018, incident with Muntean. Officer Thomas was made aware Muntean was approached by officers and that Muntean pulled out a semi-automatic handgun and pointed it at his chin. Officer Thomas was made aware that Muntean had evaded officers and was at large the morning of April 13, 2018.

During Officer Thomas' shift, Officer Thomas heard Officer Johnson relay over the radio that he was with Muntean, the subject from the April 12, 2018, incident, and Officer Thomas was right around the corner from Officer Johnson's location. After arriving on scene, Officer Thomas could see there were two officers, Officer Johnson and his trainee, Officer Gonzalez, and Muntean. Officer Thomas indicated he recognized Muntean from the photo attached to the email that was discussed in the morning briefing. When Officer Thomas arrived, Officer Johnson had his Taser out and Muntean had his hands hidden underneath a blue object he was carrying. Officer Thomas assisted Officer Johnson by providing lethal coverage. Officer Thomas felt that based on the briefing from the night before and the way Muntean was holding his arms and hands under the blue object, that Muntean was concealing a firearm.

Officer Thomas stated Officer Johnson gave commands for Muntean to show his hands but saw Muntean was not compliant. Instead, Muntean continued to walk away from officers and continued to hide his hands. Officer Thomas stated Muntean began to run westbound through the alleyway away from officers. The entire time Muntean was evading the officers, Officer Thomas said he was watching Muntean's back very closely because Officer Thomas was afraid Muntean was carrying a firearm and could very easily turn to them in a shooting position.

Officer Thomas stated as Muntean continued walking down the alleyway he was concerned because he knows it opens to Citron Street in close proximity to Anaheim High School, and at that time of the morning he knew there were "a lot of kids walking up and down that street going to school, to hang out in the taco shop before school..." Officer Thomas stated

Sergeant Lee yelled out not to let Muntean get away because of the nearby children, and Officer Thomas feared the children in the area would be hurt if Muntean were to open fire. At the same time Sergeant Lee yelled out, Muntean began to sprint northbound into an apartment complex driveway with apartments on both sides.

Officer Thomas saw Officer Scaglione retrieve a less lethal shotgun from her vehicle and had shot a couple rounds at Muntean, but Muntean continued to run. Officer Thomas became more concerned for the people in the area because Muntean was not affected by the beanbag rounds and it was about 7:00 a.m. when people were leaving to work and school. As Officer Thomas was chasing Muntean through the apartment complex, Officer Thomas stated he had a clear view of what he believed to be a black semi-automatic handgun in Muntean's right hand. Once Officer Thomas saw the gun, another officer yelled out "gun" as Muntean continued to run from the officers.

As Muntean rounded the corner, Officer Thomas lost sight of Muntean, but could see Officer Horn run out in front of him. Officer Thomas took cover behind a white Honda by the rear. Officer Thomas could see Muntean was behind a parked car at the end of the driveway with the gun switching from being pointed at Muntean's chin and then back to the officers' locations. Officer Thomas described how Muntean took the gun out from under his chin and pointed the barrel directly at Officer Thomas. Officer Thomas feared for his own life because he could see the barrel was aimed directly at him. Officer Thomas fired seven shots in Muntean's direction and ceased fire when he saw that Muntean had fallen to the ground.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Three expended 12 gauge less than lethal shot gun shells.
- One unfired 12 gauge less than lethal shot gun shell.
- Two yellow bean bag stocks.
- One Remington less than lethal Shotgun containing six unfired less than lethal shot gun shells.
- Seven cartridge cases head stamp "WIN 45 AUTO."
- Nine 9 mm cartridge cases with head stamp "WIN 9 mm LUGER".
- One .45 cal. Cartridge case head stamp "WIN 45 AUTO."
- One Remington less than lethal Shotgun containing four unfired less than lethal shot gun shells.
- Three fragmented bullets.
- One Remington less than lethal Shotgun containing two unfired less than lethal shot gun shells.
- One Crossman, black, metal CO2 powered semi auto BB handgun w/20 round drop-out magazine. This is the gun that was in Muntean's possession at the time of the shooting incident.
- One Blue bath towel.

AUTOPSY

On April 30, 2018, Forensic Pathologist Dr. Nicole Ellis of the Orange County Sheriff-Coroner conducted an autopsy on the body of Muntean. Dr. Ellis concluded Muntean sustained two bullet wounds. One was on the right side of the head just below the temple and was recovered from the left side of the neck. The other round entered the right side of the neck and lodged behind the spinal cord. The Forensic pathologist concluded Muntean died as a result of gunshot wounds.

EVIDENCE ANALYSIS

Firearms & Projectiles Examination

All three Remington shotguns and both Glock handguns were test fired at the OCCL and fired without malfunction. Officer Thomas' Glock 21 pistol was determined to have fired seven cartridge cases recovered from the scene. Officer Horn's Glock 17 pistol was determined to have fired nine cartridge cases recovered from the scene.

Toxicological Examination

A postmortem sample of Muntean's blood was collected. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. An antemortem blood sample was collected from Muntean upon admission to UCIMC. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Midazolam	Postmortem Blood	0.288 ± 0.033 mg/L
Acetaminophen (Free)	Postmortem Blood	3.89 ± 0.42 mg/L
Fentanyl	Postmortem Blood	0.0139 ± 0.0015 mg/L
Carboxy-THC	Antemortem Blood	0.0416 ± 0.0050 mg/L

MUNTEAN'S PRIOR CRIMINAL HISTORY

Muntean's criminal history was reviewed and considered. Muntean had a California Criminal History dating back to 2008. Muntean has previously been arrested for the following charges:

- Vandalism
- Vehicle Theft
- Carry Concealed Dirk or Dagger
- Evade Peace Officer
- Grand Theft Auto
- False ID to Peace Officer
- Inflict Corporal Injury
- Criminal Threats
- False Imprisonment
- Court Order Violation
- Violate Protective Order
- Obstruct/Resist Executive Officer
- Under the Influence of a Controlled Substance
- Possess Control Substance Paraphernalia
- Possession of Stolen Property
- Burglary and Petty Theft
- Resist, Delay or Obstruct Peace Officer

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 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.

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.)

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.

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/she is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. 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 and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Anaheim Officers Horn and Thomas with Muntean.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officers Thomas and Horn’s statements to the OCDA investigators, which were supplemented by other relevant material, video evidence, and witnesses present at the incident.

The issue in this case is whether the conduct of Officers Horn and Thomas on April 13, 2018, was criminally culpable and without justification. As stated above, in order to charge Officers Horn and Thomas with a criminal violation, it is required the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers’ conduct. Therefore, in order to lawfully charge Officers Horn and Thomas with a crime, the prosecution must prove beyond a reasonable doubt they did not act in lawful self-defense. If the actions that day of Officers Horn and Thomas were justifiable as lawful self-defense or defense of others, then criminal charges will 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 potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal has noted 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.)

Officers Horn and Thomas were justified in believing Muntean posed a significant threat of death or serious physical injury to themselves and others. This conclusion is based on the totality of the circumstances but mainly based on the conduct of Muntean in the moments leading up to the shooting. While it was later determined that what was believed to be a semi-automatic handgun, was in fact a BB gun, all officers who came into contact with Muntean on April 12 and April 13, 2018, believed it to be a semi-automatic handgun capable of firing live ammunition. The reasonable belief the gun was real coupled with Muntean's actions of pointing the gun in the direction of the pursuing officers caused Officers Horn and Thomas to believe Muntean posed a deadly threat to not only themselves, but to those who lived inside of the apartment complex and the surrounding neighborhood.

Both Officers Horn and Thomas believed the lives of everyone around Muntean were in danger because Muntean was acting erratically from the beginning of the contact. Muntean continuously ignored the officers' commands to show his hands. Muntean hid his hands underneath the blue towel despite repeated commands to show his hands which made Officer Thomas fear for the safety of himself, fellow officers, and children in the area on their way to school. During the pursuit, Muntean continued to be non-compliant. Officer Thomas knew the area and knew that if Muntean did have a weapon, children could very easily be injured because of the close proximity to the high school and due to the time of day, 7:00 a.m., when children are walking to school.

After Muntean ran into the driveway and was cornered, Officers Horn and Thomas were afraid Muntean would feel trapped and attempt to fight his way out. Muntean not only had a criminal history of running from officers to evade arrest, but on April 13, 2018, Muntean had what resembled a semi-automatic firearm so closely that no officer on scene could tell the difference. Muntean waived the gun around in the apartment complex, pointing it at his own chin and in the direction of officers and nearby apartment homes. Officers Horn and Thomas believed the weapon was a loaded firearm in an area with children and adults on their way to work and school. Officers Horn and Thomas did what they believed they had to do in order to keep the situation as safe as possible for all involved. The actions of the officers were reasonable under the circumstances.

It should also be noted that, in order for Officers Horn and Thomas to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt Officers Horn and Thomas did not act in reasonable and justifiable self-defense or defense of another when the officers shot at Muntean. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude it was reasonable for Officers Horn and Thomas to believe their lives and the lives of others in the area were in danger. Therefore, Officers Horn and Thomas were justified when they shot at Muntean. Simply stated, Officers Horn and Thomas did not commit a crime, to the contrary, they carried out their duties as peace officers 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 the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officers Horn and Thomas, and there is substantial evidence their actions were reasonable and justified under the circumstances when they fatally shot Muntean on April 13, 2018.

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



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