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November 28, 2018

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

Re: Officer-Involved Shooting by Matthew Bradley
Non-Fatal Incident involving Gerardo Ramos
District Attorney Investigations Case # 17-033
Anaheim Police Department Case # 17-180989
Orange County Crime Laboratory Case # 17-59792

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) Officer Matthew Bradley. Gerardo Ramos, 24, survived his injuries. The incident occurred in the City of Anaheim on Nov. 25, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Nov. 25, 2017, non-fatal, officer-involved shooting of Gerardo Ramos ("Ramos"). 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 APD officer involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Nov. 25, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; body worn cameras; Orange County Crime Laboratory (OCCL) reports, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ramos; criminal history records related to Ramos including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has 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 Officer Bradley. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy to release the final report regarding the officer involved shooting incident after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his/her case is still pending.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes 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 the video/audio evidence in connection with this case to the public. The relevant video/audio evidence is available on the OCDA webpage at <http://orangecountyda.org/reports/videoandaudio/default.asp>.

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 Bradley gave a voluntary statement to OCDA Investigators on Nov. 30, 2017.

FACTUAL SUMMARY

Domestic Violence Background - Cause For Lawful Arrest

On Nov. 17, 2017, at approximately 12:40 a.m., APD officers were dispatched to a report of domestic violence at an apartment on Citron Street. Upon arrival, officers observed a crying and distraught Jane Doe who had a small puncture wound on her arm and spray paint on the back of her clothing. Jane Doe informed the officers that she and Ramos have a young child in common; she had just attempted to break up with Ramos; Ramos became angry; Ramos produced a knife and began to poke her in the arm with the knife. Jane Doe also indicated Ramos covered her nose and mouth with his hands, blocking her airway. Out of fear of Ramos, she then told Ramos that she would not break up with him. She also indicated that as she began to leave, Ramos followed her, spray painting "Malias" (Ramos's gang moniker) on the street, and he then spray-painted her back. Per Jane Doe, Ramos had left the scene prior the arrival of APD officers.

On Nov. 24, 2017, at approximately 2:00 p.m., APD officers were dispatched to a report of domestic violence at an apartment on Citron Street. Upon arrival they contacted Jane Doe and noticed she had injuries and torn clothing. Jane Doe reported that Ramos again physically assaulted her, and then locked her in a detached garage. Also present at the

scene were Ramos's mother and Ramos's young child who witnessed the domestic violence incident. Per Jane Doe and Ramos's mother, who also observed portions of the domestic violence incident, Ramos had fled the scene prior to the arrival of APD officers.

The Officer-Involved Shooting:

On Nov. 25, 2017, at approximately 1:15 p.m., Jane Doe contacted APD to inform them that Ramos was sleeping in a bedroom of his mother's Citron street apartment (the same apartment where the prior domestic violence incidents took place). A relative of Jane Doe contacted Ramos's mother and told her the police were coming to her apartment. APD Officers Matthew Bradley, Brian Moultrie and Matthew Chavarin responded to the location to effectuate the arrest of Ramos.

At approximately 1:57 p.m., Officers Bradley and Moultrie arrived. Officer Chavarin arrived approximately two minutes later. Officer Bradley was dressed in a full APD police uniform. His pistol was holstered on the right side of his uniform belt and his Taser was in a holster on the left side of his belt. Officer Bradley activated his body worn camera (BWC) in front and north of the apartment complex as he approached the front of the apartment complex located at the 900 block of South Citron Street. Officer Bradley had previously accessed his police computer and learned that Ramos was a domestic violence suspect who had used a knife during a previous incident. He also learned Ramos was an admitted criminal street gang member. Officer Bradley believed there was probable cause to arrest Ramos for several felonies, including domestic violence, assault with a deadly weapon, false imprisonment and arson.

Officer Bradley had a short conversation with Officer Moultrie about Ramos's crimes prior to approaching the apartment, but did not discuss tactics or develop a plan with Officer Moultrie. Officers Bradley and Moultrie did not wait for Officer Chavarin to arrive prior to approaching the apartment.

Officer Bradley's BWC:

Officer Bradley's BWC recorded as follows:

As Officer Bradley reaches the door of the apartment, Ramos's mother is visible through the security screen door which appears to be ajar as if she were waiting for the officers. As Officer Bradley entered the apartment, Ramos's mother is in the living room area. She appears to be smiling and points toward the open bedroom door. The living room and the kitchen are well lit and the kitchen ceiling light is on. The bedroom is dark.

As Officer Bradley approaches the bedroom, he reaches into the room with his left hand and appears to be trying to turn on the light using the wall switch. Though it is difficult to see, it appears Ramos is lying on his back on a bed in the northwest corner of the room. His head is near the west wall and his hands are not visible. There had been no conversation recorded up to this point.

As Officer Bradley walks further into the bedroom, his BWC turns south toward an open bathroom door, not toward Ramos. The sound of Officer Bradley's handgun being drawn from the holster is heard as Officer Bradley then calmly says, "Put your hands up." Immediately thereafter (one second or less) a single gunshot sounds. Ramos yells in pain and Officer Bradley excitedly says, "Oh, shit" and "Hold on. Hold on" several times. Officer Bradley immediately approaches Ramos and appeared to render aid.

The light in the bedroom was turned on (by Ramos's mother as shown on Officer Moultrie's BWC). Officer Moultrie's voice is then heard radioing for paramedics and for a sergeant. Officer Bradley asks Ramos, "Where are you hit?" Ramos replies, "In the chest." Officer Bradley lifts Ramos's shirt to inspect the wound; blood is visible on Ramos's upper left torso.

Officer Bradley tells Officer Moultrie to get his "med kit." As Officer Moultrie leaves the bedroom, Officer Bradley remains with Ramos repeatedly encouraging him to "hold on," "stay with me," "look at me," and "talk to me." Ramos says, "I don't want to go to jail." Officer Bradley replies, "You're not going to jail. Hold on. You're going to the hospital." Ramos says,

"That's why you came." Officer Bradley replies, "It is why we came. Yeah. Hold on." Ramos then says, "It hurts. It hurts a lot. I've never gotten shot before." Officer Bradley responds, "I know it hurts a lot; hang in there, hang in there."

Officer Moultrie returns with the medical kit and takes over administering first aid to Ramos. The following conversation occurs:

Officer Bradley: "I thought he was f***** reaching for something, Dude."

Ramos: "Me?"

Officer Bradley: "Yeah."

Ramos: "Why?"

Officer Bradley: "I don't know."

Ramos: "I didn't do nothing."

Officer Moultrie: "Just relax."

Ramos: "I was laying down and you just, you just shot me."

Officer Bradley: "Yeah. Okay. Stay with me. Stay with me. Did you get paramedics on the way?"

Officer Moultrie: "Yeah. They're enroute."

Officer Moultrie continues first aid by applying gauze and pressure to Ramos's chest. Officer Bradley then leaves Ramos under the care of Officer Moultrie, enters the living room, and radios "Have paramedics come right in." He then walks to the front door where Officer Chavarin is standing and asks Chavarin to help Moultrie. Ramos's mother, using an interpreter, asks Officer Bradley why he shot Ramos. Officer Bradley responds, "tell her we will explain it to her." Officer Bradley then yells out to another APD officer outside the apartment complex to get paramedics in as fast as he can upon arrival. Officer Bradley then radios to Dispatch to request that responding units keep the street open for paramedics.

Officer Moultrie's BWC:

Officer Moultrie's BWC was activated in front and north of the apartment complex and recorded as follows:

Officer Moultrie follows Officer Bradley as they walk to the entrance of the apartment security gate which is ajar. Officer Bradley appears to be unhurried, and his handgun remains holstered. Ramos's mother had the security door to the apartment ajar and is standing in the doorway as the officers approach. Officer Bradley enters the apartment first and walks to the open bedroom door. Officer Bradley's handgun is holstered.

As Officer Bradley reaches the bedroom doorway, he attempts to turn on the east wall mounted light switch with his left hand. His handgun is still holstered. Officer Bradley removes his left hand from the wall and places his right hand on the grip of his holstered handgun as he enters the darkened bedroom. Officer Bradley takes approximately three steps into the bedroom and un-holsters his handgun with his right hand. He points the handgun toward Ramos and says, "Put your hands up." Immediately thereafter, a single gunshot is heard. Prior to the gunshot, Officer Moultrie was still outside the bedroom and Ramos was not visible on Moultrie's BWC. Ramos's mother steps in front of Officer Moultrie's BWC as the gunshot is heard. The same statements are recorded as described in Officer Bradley's BWC summary above.

Ramos's mother moves into the living room and Officer Moultrie enters the bedroom. Officer Moultrie radios for a sergeant and paramedics, and Ramos's mother enters the bedroom and turns on the overhead light at the ceiling fan. The same conversations are recorded as described in Officer Bradley's BWC summary above.

After Officer Bradley tells Officer Moultrie to get his med kit, Officer Moultrie runs out of the apartment as Officer Chavarin approached the apartment door. Officer Moultrie runs past Officer Chavarin and says, "He **accidentally** shot the guy, Bro." After Officer Moultrie retrieves his medical kit, he runs back toward the apartment and calls out to Officer Chavarin, "Hey, right here, Bro. Right here. Right here. Right here. Right here. Huh? F***** , uh, what's his name, Bradley **accidentally** shot the guy, Bro."

Officer Moultrie re-enters the apartment and takes over for Officer Bradley the rendering of first aid care to Ramos. The same conversations are recorded as described in Officer Bradley's BWC summary above. Officer Moultrie's BWC shows

Ramos laying on his back with his shirt pulled up. He has blood from an apparent gunshot wound visible on his torso. His head is toward the northeast. He was not handcuffed. There were blankets, clothing and pillows on the bed visible near Ramos's head. Officer Moultrie asks Ramos if he had any "knives or anything on you or anything like that." Ramos responds no. Ramos says he "wasn't doing nothing. I was just laying down." Later, while paramedics are rendering aid to Ramos, Moultrie tells Ramos he is going to place Ramos's "lock pick / glass punch" on a shelf.

There are additional conversations between Officers Moultrie, Bradley and an unidentified APD officer during which it is unclear who is speaking and what is said. After paramedics and firefighters take over medical treatment of Ramos, Moultrie deactivates the audio of his BWC at 2:12 p.m.

Ramos was loaded into an ambulance. During the transportation of Ramos to the University of California, Irvine-Medical Center, paramedics cut Ramos's shirt off and the bullet fell out of Ramos's right shoulder. An APD Officer who accompanied Ramos in the ambulance recovered the bullet.

According to medical personnel and records, Ramos sustained a single gunshot wound to his abdomen. The bullet traveled internally within his body and exited the area of his upper left chest and shoulder. Following his surgical procedure, Ramos was in stable condition. Ramos was discharged from the hospital four days later on November 29, 2017.

Voluntary Statement of Officer Moultrie

On November 25, 2017, Officer Moultrie provided a voluntary statement. Officer Moultrie stated, in summary, that he was outside the bedroom doorway and was not in a position to see Ramos's hands at the time of the shooting. Officer Moultrie opined that Officer Bradley **accidentally** fired his weapon while trying to activate the flashlight mounted on his handgun. He described Officer Bradley's reaction as "he literally turned pale when he seen that gun went off," and "he was in kinda like disbelief of the gun going off."

Voluntary Statement of Ramos

On Nov. 25, 2017, Ramos voluntarily gave a statement to an OCDA Investigator while in the hospital. Ramos stated he was out late on the evening of November 24, 2017 but eventually returned to his mother's apartment on Nov. 25, 2017. He said when he got home, he ate some food and went to the bedroom and fell asleep. Then the next thing he knew the "cop" came in. Ramos said he was half-asleep when the "cop" came into the bedroom and he was lying on the bed. Ramos stated that when the "cop" came into the bedroom Ramos did not have "anything on him" (meaning Ramos did not have any weapons). Ramos stated ...

*"He came in, he came in, right? It was just the one that you guys carry. He came in, he didn't have it in his hand and like he seen me, so he pretty much reached for it. He's like don't f***** move. And then he f***** he shot me. And like I'm like oh, I seen the flash, you know? I'm like oh shit, you know, I'm over here tripping. And he's like oh, he's like oh f***, you know? So he puts it away and he's like over here helping me, you know? Like, like it was, he didn't mean to do it and it was an accident, it was on purpose. I seen it from his face, like his reaction, he didn't have, he walked in, he seen me, and then like f***** he drew his gun and he's like don't f***** move and he f***** shot me right away. No hesitation, he just shot me. I'm like what the f***, I'm over here tripping. Like, it's at my mom's house. I'm on my bed, and I'm like f***, you know?"*

Voluntary Statement of Ramos's Mother

On Nov. 25, 2017, Ramos's mother provided a voluntary statement to investigators. She stated, in summary, that she let the officers in because she thought they were going to handcuff and arrest Ramos. Since the room was dark, she started to enter to turn on the light for the officers. Initially she stated she did not see the shot, but heard it only. Later, she said she may have seen fire come out of the officer's gun. She expressed she did not understand why her son was shot when he was merely laying down on the bed. She indicated the shooting officer looked "scared" after the shooting.

Voluntary Statement of Officer Bradley

On Nov. 30, 2017, five days after the shooting, Officer Bradley provided a voluntary statement to an OCDA Investigator. Officer Bradley indicated he received a call to respond to the 900 block of South Citron Street. Prior to approaching the apartment complex, he learned of Ramos's violent felony conduct the day and week prior for which Officer Bradley was to effectuate Ramos's arrest. Moreover, he also learned of Ramos's prior criminal history and gang affiliation. Officer Bradley and Officer Moultrie arrived at the same time and approached the apartment complex together. Officer Bradley approached the apartment door and immediately saw Ramos's mother waiting. After waving them in, both officers entered the apartment. Officer Bradley describes the events to the OCDA Investigators as follows:

"She's pointing towards the bedroom. The bedroom is dark. She's got this look on her face that's kind of like a little bit fearful, like worried. ... I could see a ceiling fan with a light, two cords are hanging down, I could see the window open, it's letting some artificial light in through the blinds, not a lot, but a little bit. ... over a little to the, the left side of the doorway I can see feet. I can see all the way up to about here. I don't see any hands. Okay. He's not covered with blankets. He's fully clothed. His shoes are on. He's laying diagonal on the bed. Um, kinda look a little bit more, and now I'm up to about here, mid-chest, um, around his nipple line. Again, I don't see any hands. ...

You know, that's weird. By now I'm feeling a lot of apprehension, um, about the situation. But we arrest people, it's what we do. So okay. So in my head I, um, I'm like, you know what, he's asleep, I'll get over to that ceiling fan, I'll pull the cord light, the light'll come on. ...

I start walking across. I take two steps in the door. I'm looking at him, kinda blading my body a little bit, so my right side, which is my gun side, which is closer to him. We're-, kinda as I'm walking, and I'm reaching out with my left hand towards the light. I'm not really loo-, I'm not looking at it. I can-, I can't even really see it in my peripheral vision. I just kinda put myself on a course to go towards those lights, to get to that cord. I get about two steps in the room, and...I see his hands are up above, um, his head, they're not like clasped under a pillow, but they're out, they're about maybe a couple inches off the side of his head. ...

He wasn't asleep, he was wide awake. He rolls his head towards me, and we make instant eye contact. Now, now we're looking at eyes, and he's not saying anything. He's not doing anything e-, except in that moment he looks at me, we look at each other, and I remember saying, "it's the police." I wanted him to know it was the police. Now I'm listening to my body-worn camera, it's not on there. I don't know if I mouthed it, I know I deliberately wanted to say it quiet. I did not want to startle him. Um, and that goes back to some things I'd-, a training that we did when I was young cop. Startled responses aren't generally good responses. Um, so I keep moving, he's-, his eyes like he's tracking me across the room. He's not moving his head, he's just moving his eyes. He's just watching me. I thinking in my head shit, you kinda stepped into it, 'cause his hands were the only thing covered, the only thing. They were up under some covers, it was all dark, there were like blankets, and different things. Th-, the only thing that was covered. I can't see the whites of his hands. And I'm thinking that's really weird. Now you're watching me, and now you're kind of tracking me. So, I remember going shit, you kinda stepped into it. Um, I figure keep going towards the light but you, you gotta get your gun out. I pull my gun out. I ha-, it's o-, I've only got on it 'cause I'm still reaching for it, and I activate my light, um, hold it on there for a second, and as I'm doing that, um, his hands now are starting to move. Um, I see his left hand move more than his right hand. Um, it's subtle, it's not a lot but it's almost like he's kind of fiddling, reaching for something, as far, just trying to find it under the covers. Um...and then, uh...he-, it-, that-, I've got my light on him. He's still, uh...kinda fiddling, and then my light goes off. Um, I take one more step, and I see a shift. And I see his arm start to now extend towards where I believed MOULTRIE was ... And his hand starts to extend. Um, I can see that, uh, I can see that from his elbow. It's moving under the covers. It's moving in a direction that I feel like...or I perceive that he was gonna come up with a gun, and shoot MOULTRIE, and engage me, and in that moment I was-, that's what I was afraid of. I didn't want him to get the jump on us. And in that moment I fired. I fired one round... So I started to bring

my oth-, my left hand back towards the gun, um, and then in that moment I can see his hands. Um, and I'm like oh, y-, there is nothing in 'em.

So in that moment of movement and reassessment, there's no reason to shoot him again. I re-holster, I go up. I thought I shot him in the left shoulder ... And I started talking to him just keep him going, and, um, he kept saying, you know, you shot me, you shot me. And I, I remember telling him, yeah, I shot you 'cause I thought you reaching for something. And like I said it-, I believe that he was going to come up with a gun from that cover and shoot MOULTRIE and or me. That's what I was afraid of."

Toward the end of the interview, the OCDA Investigator confronted Officer Bradley with having viewed the BWC and the consensus of many that this was an accidental shooting, but Officer Bradley insists otherwise:

Investigator: And leading up to this, um, you know, we reviewed body worn camera stuff, um, and the-, a lot of people came to the conclusion, um, that this was, uh, an accidental shooting. That you accidentally hit the trigger. Is that not the case?

Ofc Bradley: That's absolutely not the case.

Investigator: Okay. So you...

Ofc Bradley: I deliberately pulled the trigger.

Investigator: Okay.

Ofc Bradley: Because I feared that he was going to shoot Moultrie.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One 9 mm cartridge case, head stamp WIN 9mm Luger
- One pair of jeans
- One pair of shoes
- One pair of socks

EVIDENCE ANALYSIS

Firearms Examination

Officer Bradley's Glock pistol was test fired at the OCCL and fired without malfunction. The cartridge case from the bedroom floor was determined to have been fired in Officer Bradley's Glock pistol. The pistol was equipped with a functional disconnect and trigger safety. The striker of the pistol released with approximately five and one-half pounds of trigger pull.

When Officer Bradley's gun was examined, it was equipped with a light mounted on the pistol which had been set up to be activated with the shooting hand by activating a pressure switch located in front of the grip, just below the trigger guard. There was also a functional toggle switch located to the front of the trigger guard (rear of the light housing) which also activated the light.

RAMOS'S PRIOR CRIMINAL HISTORY

Ramos's criminal history was reviewed and considered. Ramos had a California Criminal History that dates back to 2013. He has previously been arrested for the following charges:

- Auto Theft
- Possession of a Stolen Vehicle and Burglary
- Assault with a Deadly Weapon
- Possession of Burglary Tools
- Possession of a Controlled Substance
- Possession of Unlawful Paraphernalia
- Inflicting Corporal Injury to a Spouse or Cohabitant
- Vandalism

- Probation Violation
- Driving without a License

RAMOS'S POST-INCIDENT CONVICTION

On Nov. 28, 2017, OCDA filed criminal charges against Ramos in Orange County Superior Court case 17NF3254, consisting of a felony charge of Corporal Injury on a Spouse / Cohabitant, a violation of Penal Code section 273.5 (a); a misdemeanor charge of Child Abuse or Endangerment in violation of Penal Code section 273a(b); a felony charge of vandalism in violation of Penal code section 594(a)/(b(3) for Ramos's criminal conduct arising from the Nov. 24, 2017 domestic violence incident, the same criminal conduct for which the arrest in this case effectuated.

On Dec. 1, 2017, the original charging document was amended to include Ramos's criminal conduct for the domestic violence incident on Nov. 16, 2017. The amendment added charges consisting of a felony charge of Corporal Injury on a Spouse / Cohabitant in violation of Penal Code section 273.5 (a); a felony charge of Assault with a Deadly Weapon in violation of Penal Code Section 245(a)(1), and alleging that Ramos personally used a knife in violation of Penal Code Section 12022(b)(1); a felony charge of False Imprisonment in violation of Penal Code Section 236/237(a); a felony charge of Grand Theft in violation of Penal Code Section 487(a); a misdemeanor charge of Domestic Violence Battery in violation of Penal Code Section 243(e)(1). In that same amendment Ramos was charged for additional criminal conduct arising from Oct. 10, 2017, namely, a felony charge of Assault with a Deadly Weapon in violation of Penal Code Section 245(a)(1) and a misdemeanor charge of Domestic Violence Battery in violation of Penal Code Section 243(e)(1).

On June 5, 2018, witnesses, including Jane Doe, testified at a preliminary examination regarding the above charges. Thereafter the magistrate found probable cause that Ramos committed the charged offenses and bound Ramos over for trial. On June 27, 2018, Ramos pled guilty to seven of the 10 charged crimes.

GENERAL LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. 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.)

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.

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.)

LEGAL ANALYSIS

There are two versions of this incident: (1) Officer Bradley Intentionally Shot Ramos in Reasonable Apprehension of Danger; and (2) Officer Bradley Accidentally Shot Ramos. An analysis for each version follows.

1. Officer Bradley Intentionally Shot Ramos in Reasonable Apprehension of Danger:

This version of events is provided exclusively by Officer Bradley and it is highly suspect and questionable. Officer Bradley asserts he intentionally fired his weapon, but did so in reasonable apprehension of danger. He also asserted the same to Officer Moultrie briefly at the scene, and to OCDA Investigators five days later. As stated above, in order to charge Officer Bradley with a crime, 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 successfully prosecute Officer Bradley with a crime under this version of events, the prosecution must prove beyond a reasonable doubt that Officer Bradley did not act in lawful self-defense or defense of others.

As the Court of Appeal has held, 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 have 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.)

Officer Bradley certainly should have been concerned that Ramos may have posed a significant threat of danger to himself and others. Officer Bradley walked into a darkened room containing a suspect he knew had previously engaged in violence with a deadly weapon against another person, and Officer Bradley also knew the suspect to be a self-admitted gang member. According to Officer Bradley, his main concern was Ramos would attempt to injure him or Officer Moultrie. Officer Bradley asserted that when he walked into the bedroom, he saw Ramos's hands were under his pillow and not visible. Officer Bradley said he saw Ramos fidgeting or grabbing for something and believed it to be a gun. It should be noted neither Officer Bradley's nor Officer Moultrie's body worn cameras provide a clear image of Ramos before he was shot.

If what Officer Bradley asserts is true, and if he was under the honest and reasonable belief he or Officer Moultrie were in imminent threat of being shot by Ramos, and if, in that moment and for that reason, Officer Bradley intentionally discharged his weapon, then the shooting would be justified under criminal law. Therefore, under Officer Bradley's claimed version of events, he could not be successfully prosecuted for shooting Ramos.

2. Officer Bradley Accidentally Shot Ramos

Despite Officer Bradley's statements to the contrary, it is the OCDA's conclusion based on the totality of all the available evidence that this is clearly an incident involving the accidental shooting by Officer Bradley. The only reasonable conclusion under the totality of the circumstances is Officer Bradley mistakenly pulled the trigger to his firearm while simultaneously attempting to illuminate a darkened room with his firearm's mounted light wherein the pressure switch is directly below the trigger.

The contrast in Officer Bradley's demeanor before and after the shooting is consistent with an accidental shooting. When Officer Bradley reached the doorway of the darkened bedroom, the first thing he attempted to do was to turn on the light via the wall switch. Officer Bradley then simultaneously placed his hand on his holstered gun and moved deeper into the darkened room (toward the ceiling fan light). He then pointed his weapon toward the bed and fairly calmly told Ramos to put his hands up. Less than one second later, Officer Bradley's firearm discharged. Immediately thereafter Ramos yelled in pain while Officer Bradley excitedly yelled, "Oh shit!" and "Hold on" and asked "Where are you hit?" Officer Bradley also immediately attempted to assist Ramos. Officer Bradley did not handcuff Ramos nor search around him for weapons. There was a single discharge immediately followed by Officer Bradley's excited expressions and concern. These reactions are far more consistent with one who unexpectedly erred, rather than one who intentionally sought to neutralize a dangerous suspect.

In addition to the body worn cameras documenting Officer Bradley's surprised reaction, those who were present and witnessed Officer Bradley's reaction after his gun discharged, described him as "turning pale," appearing in "disbelief," "scared" and "shocked".

Though Officer Bradley asserts to the OCDA Investigator he activated his gun light, neither of the body worn cameras depict Officer Bradley's gun light illuminating the room. There was very little light until Ramos's mother turned on the light after the shooting. It is clear Officer Bradley intended to illuminate the darkened room in order to see Ramos, and he had three primary options: the wall switch which failed; the ceiling light which he abandoned; and his gun light with its pressure

switch on the grip directly below the trigger guard. Even Officer Moultrie immediately recognized what had occurred was an accidental discharge, and immediately thereafter described it as such to Officer Chavarin while running to get his medical kit, saying, "He accidentally shot the guy, Bro."

Lastly, when Officer Bradley told Officer Moultrie he thought Ramos had been reaching for something, a wounded Ramos himself questioned Officer Bradley's statement. Officer Bradley's response is unconvincing:

*Officer Bradley: [to Moultrie] "I thought he was f***** reaching for something, Dude."*

Ramos: "Me?"

Officer Bradley: "Yeah."

Ramos: "Why?"

Officer Bradley: "I don't know."

In this same exchange, when Ramos objected that he did nothing to warrant being shot, Officer Bradley does not correct Ramos:

Ramos: "I didn't do nothing."

Officer Moultrie: "Just relax."

Ramos: "I was laying down and you just, you just shot me."

Officer Bradley: "Yeah. Okay. Stay with me. Stay with me. [to Moultrie] Did you get paramedics on the way?"

The reasonable conclusion under the totality of the circumstances, and the only common sense conclusion to be drawn from all the available evidence, is Officer Bradley mistakenly pulled the trigger of his firearm while attempting to simultaneously illuminate a darkened room with his firearm mounted light wherein the pressure switch is directly below the trigger.

Legal Analysis for this Accidental Shooting:

Though Ramos recovered from the shooting and was discharged from the hospital four days after being shot, Penal Code Section 195 is instructive nonetheless and asserts that Homicide is *excusable* ... *When committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.* Furthermore, Assault with a Deadly Weapon requires that the accused acted *willfully* when he did the act resulting in force. *"Someone acts willfully when he or she does it willingly or on purpose ..."* (CALCRIM 875, Assault with a Deadly Weapon) Additionally, CALCRIM 3404 instructs a trier-of-fact that a person is *"not guilty"* of a crime where a person *"acted without the required intent for that crime, but acted instead accidentally."*

This shooting by Officer Bradley of Ramos appears to be legally *excusable* under the criminal statutes. Officer Bradley was acting lawfully when, as a police officer present to effectuate a lawful felony arrest, he drew his weapon to facilitate the arrest of Ramos, whom Officer Bradley knew had a history of violence with weapons, and whom he knew to be a self-admitted gang member. Yet, the available evidence leads to the conclusion that Officer Bradley did not *purposely* shoot Ramos. Moreover, Officer Bradley's reaction and conduct immediately after the accidental shooting tend to show he acted "without any unlawful intent."

Lastly, jury instruction CALJIC 4.45 instructs a trier-of-fact that *"When a person commits an act or makes an omission through misfortune or by accident under circumstances that show neither criminal intent nor purpose, nor criminal negligence he does not thereby commit a crime."* In addition, *"Criminal Negligence involves more than ordinary carelessness, inattention, or mistake in judgement. A person acts with criminal negligence when:*

- 1. He or she acts in a way that creates a high risk of death or great bodily injury; and*
- 2. A reasonable person would have known that acting in that way would create such a risk.*

In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to

the consequences of that act. ... The facts must be such that the consequences of the negligent act could have been foreseen and it must appear that the danger to human life was not the result of inattention or mistaken judgement or misadventure ..." (CALJIC 3.36 Criminal or Gross Negligence Defined)

Officer Bradley's immediate reaction and conduct in rendering aid to Ramos following the shooting tends to show that this was an accidental discharge in which Officer Bradley did not demonstrate "disregard for human life or indifference to the consequences of that act."

Therefore, it is the conclusion of the OCDA that based on the foregoing evidence, law and analysis, there is insufficient evidence of criminal culpability on the part of Officer Bradley for the accidental shooting of Ramos.

Officer Bradley's False Statements to the OCDA Investigator:

As previously stated, under the totality of the circumstances this appears to be an unintentional and accidental shooting rather than an intentional and legally justified shooting. Therefore, some of the statements of Officer Bradley to the OCDA Investigator are false statements. Officer Bradley's assertions that he thought Ramos was reaching for something and his detailed descriptions thereof are not believable. Officer Bradley even claimed to the OCDA Investigator, that he told Ramos why he shot – "And I, I remember telling him, yeah, I shot you 'cause I thought you reaching for something." However, the facts clearly show that Officer Bradley said no such thing to Ramos since no such statement is captured on Officer Bradley's BWC. Instead Officer Bradley's BWC captures Officer Bradley's inability to articulate to Ramos why he believed Ramos was reaching for something, and Officer Bradley's apparent concession to Ramos that Ramos did not do anything to justify being shot.

While Officer Bradley had no motive to intentionally shoot an unarmed Ramos, he certainly had a motive to lie about accidentally shooting Ramos, namely, a desire to avoid responsibility or departmental discipline, or perhaps even to avoid criminal prosecution for conduct while on duty. Officer Bradley's asserted version is contradicted by his own body worn camera, Ramos, Officer Moultrie, and by common sense and a reasonable review of all the available evidence. Therefore, we will now evaluate whether Officer Bradley conduct in providing false statements to the OCDA Investigator during the investigation of this Officer Involved Shooting incident constitutes a crime.

Unlike the Vehicle Code, which prohibits a person from knowingly providing false information to a peace officer while in the performance of his/her peace officer duties pursuant to the Vehicle Code (see Vehicle Code Section 31), the Penal Code has no parallel, all-encompassing statute. In other words, there is no Penal Code section which sweepingly prohibits knowingly providing false statements to law enforcement officers in the performance of their duties. While providing false statements to peace officers can certainly result in a crime, providing a false statement does not, *in and of itself*, automatically constitute a crime outside of the Vehicle Code. Therefore, the most *potentially* applicable criminal statutes implicated by Officer Bradley's false statements are Penal Code Section 148.5, Falsely Reporting a Crime; and Penal Code Section 148(a), Resisting, Delaying or Obstructing an Officer.

Penal Code Section 148.5, Falsely Reporting a Crime:

Penal Code section 148.5 prohibits a person from falsely reporting a crime knowing that the report is false. Here, Officer Bradley asserted that he shot Ramos because he *feared* that Ramos possessed a weapon with which he was going to shoot Officer Moultrie. In fact, Officer Bradley conceded that immediately after he shot Ramos, he saw Ramos's hands were empty and he realized that Ramos was not armed; he therefore holstered his gun. Officer Bradley did not report that Ramos committed a crime, but rather that he *anticipated* that Ramos was about to commit a violent crime and that his (erroneous) belief justified his shooting of Ramos. Officer Bradley falsely reported his own mental state, not an actual crime committed by Ramos. Therefore, we have a lack of evidence to prove beyond a reasonable doubt that Officer Bradley violated Penal Code Section 148.5.

Penal Code Section 148(a), Resisting, Obstructing or Delaying an Officer:

Penal Code section 148(a) prohibits a person from willfully resisting, delaying or obstructing any peace officer in the lawful performance of his or her duties. Here, Officer Bradley gave his voluntary statement five days after the other percipient

witnesses were interviewed and after the BWCs of the involved officers were viewed. The conclusion that this was an accidental shooting was already clearly supported by the evidence. In fact, toward the end of Officer Bradley's voluntary statement, the OCDA Investigator confronted Officer Bradley with the common consensus that this was an accidental shooting.

As in all criminal investigations, investigators attempt to obtain as much information as is reasonably possible. The statement of the target of the investigation is always desirable. Yet, it is not unusual for the target of a criminal investigation to provide false statements. Whether those false statements obstruct or delay the investigator is not automatic, but fact specific. The issue becomes whether any additional investigative avenues were pursued because of the target's false statements to investigators – avenues that would not have been pursued but for the false statements. Here the OCDA Investigator has indicated no additional investigative avenues were required in light of Officer Bradley's statement. Officer Bradley's statement clearly conflicted with the evidence already possessed; the statement was not believable. The incident was already captured on the BWCs. Percipient witnesses had already been interviewed; they were not re-interviewed in light of Officer Bradley's statement, nor was there a need to do so.

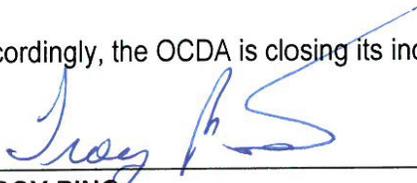
Since Officer Bradley's false statements did not create additional avenues of investigation or efforts, and since he did not obstruct or delay the OCDA Investigator in his duties in any meaningful way, the prosecution of Officer Bradley for his false statements to the OCDA Investigator would fail under this section since the required legal elements could not be established beyond a reasonable doubt. Therefore the prosecution would be unable to prove beyond a reasonable doubt that Officer Bradley violated Penal Code Section 148(a).

It is clearly unacceptable that a sworn peace officer would lie to investigators in an attempt to justify an accidental shooting while on duty. The OCDA does not, in any way, shape, or form condone the conduct of Officer Bradley in providing false statements to the OCDA Investigator. While providing false statements to investigators can result in the filing of criminal charges, the OCDA cannot ethically or legally justify prosecuting any person for a crime without a good faith belief that the evidence is sufficient to prove the crime beyond a reasonable doubt in a court of law. Such a good faith belief is absent in the present case based on the applicable legal principles and the totality of all the available evidence.

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 insufficient evidence to prove beyond a reasonable doubt criminal culpability on the part of Officer Bradley when he accidentally shot Ramos on November 25, 2017. Nor is there sufficient evidence to prove beyond a reasonable doubt that Officer Bradley falsely reported a crime, or obstructed or delayed OCDA Investigators when he gave false statements to the OCDA Investigator in this case.

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



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