



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER, DISTRICT ATTORNEY

February 28, 2019

Interim Chief Robert Dunn
Fullerton Police Department
237 West Commonwealth Avenue
Fullerton, CA 92832

Re: Officer-Involved Shooting on May 31, 2018
Fatal Incident involving Katherine Ann Brazeau
District Attorney Investigations Case # SA 18-018
Fullerton Police Department Case # 18-33277
Orange County Crime Laboratory Case # 18-47709

Dear Interim Chief Dunn,

Please accept this letter detailing the Orange County District Attorney Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Fullerton Police Department (FPD) Sergeant Perry Thayer and Corporal Steven Bailor. Katherine Ann Brazeau, 46, died as a result of her injuries. The incident occurred in the City of Fullerton on May 31, 2018.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 31, 2018, fatal officer-involved shooting of Katherine Ann Brazeau. 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 FPD 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 May 31, 2018, investigators from the Orange County District Attorney Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, six witnesses were interviewed. OCDASAU Investigators also obtained and reviewed the following: FPD reports, audio dispatch and radio recordings, Body Worn Camera (BWC) recordings, Orange County Crime Laboratory (OCCL) reports, including toxicology reports and forensic alcohol examination reports, officer processing and firearms examination reports, crime scene investigation photographs, coroner reports, medical records and photographs related to the injuries sustained by Brazeau, surveillance video of the business, criminal history records related to Brazeau, including prior incident reports, and other relevant reports and materials including audio recordings of witness interviews.

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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 FPD officers or personnel, specifically Sergeant Thayer and Corporal Bailor. 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, T.A.R.G.E.T./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, 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. Sergeant Thayer and Corporal Bailor each gave a voluntary statement to OCDA investigators. Corporal Bailor was interviewed on June 06, 2018, and Sergeant Thayer was interviewed on June 07, 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

Therapist Jane Doe (Therapist Doe) is a licensed mental health therapist in the City of Fullerton. From 2015-2018, Therapist Doe had been treating Brazeau for various illnesses including traumatic brain injury, borderline personality disorder, post-traumatic stress disorder, and bipolar disorder. However, in February 2018, Therapist Doe determined she could no longer provide treatment to Brazeau citing "self-destructive decisions" that Brazeau engaged in and Brazeau not utilizing the tools Therapist Doe was providing her. Therapist Doe provided Brazeau with a 30-day notice which informed Brazeau that Therapist Doe would no longer provide treatment to Brazeau. Brazeau did not take the notice well. Brazeau made comments about knowing where Therapist Doe lived and threatened to harm herself if Therapist Doe discontinued treating her.

On March 27, 2018, Therapist Doe sought and obtained a temporary restraining order against Brazeau. The order prohibited Brazeau from having any contact with Therapist Doe. Brazeau was served with a copy of the restraining order by Orange County Sheriff's Department (OCSD) Civil Division personnel on March 28, 2018. Over the next few weeks,

Brazeau repeatedly violated the restraining order by sending Therapist Doe emails and text messages. Brazeau also filed a fabricated claim with the California state licensing board that alleged that Therapist Doe had engaged in an inappropriate relationship with Brazeau. On April 13, 2018, Therapist Doe was granted a permanent restraining order against Brazeau by the Orange County Superior Court. When Therapist Doe entered the courthouse that day, Brazeau walked past her and threatened to cause Therapist Doe to lose her license. Therapist Doe was afraid and immediately left the courthouse and reported the violation of the restraining order to the FPD.

FPD Detective Virginia Johnson was assigned this case. On May 30, 2018, Detective Johnson contacted Therapist Doe who provided Detective Johnson with the aforementioned facts. After obtaining Therapist Doe's statement, Detective Johnson contacted Brazeau over the phone. Brazeau stated that she was probably extremely intoxicated and violated the protective order. Brazeau admitted that she went to Therapist Doe's office without an appointment, interrupted a private session Therapist Doe had with another patient, and yelled profanities at Therapist Doe. Detective Johnson explained the terms of the protective order and Brazeau's prohibitions regarding contacting Therapist Doe, Brazeau became upset and hung up on Detective Johnson.

The following morning, at approximately 7:30 a.m., Therapist Doe arrived at her office to prepare for a meeting with a patient. Brazeau arrived at Therapist Doe's office building a few minutes later. Brazeau walked into the office building, past the reception area of the office, and into Therapist Doe's office doorway carrying a large knife in her right hand. Therapist Doe looked up and saw Brazeau standing in the doorway of her office holding the knife. Therapist Doe then grabbed her cell phone and told Brazeau to leave the premises. Therapist Doe told Brazeau that Brazeau violated the restraining order by walking into the office, and again, told her to leave. Brazeau stepped inside Therapist Doe's office, and proceeded to close and lock the door behind her. Brazeau yelled at Therapist Doe. Brazeau lunged at Therapist Doe with the knife and attempted to knock Therapist Doe's phone from her hand. Brazeau attacked Therapist Doe with the knife, stabbing her in the back, near her spine.

During the attack, the patient (Jane Doe 1) that Therapist Doe was expecting had arrived and entered the reception area of the office. Doe 1 heard yelling from behind Therapist Doe's closed office door. Doe 1 heard Brazeau yelling at Therapist Doe and Therapist Doe yelling that she had been stabbed. Brazeau opened Therapist Doe's office door, lunged at Doe 1 with the knife, and told her to leave. Doe 1 ran out of the building, called 911, and reported that Brazeau had stabbed Therapist Doe. Meanwhile, Brazeau began destroying Therapist Doe's office. She moved furniture in front of the office door, barricading Therapist Doe inside. Therapist Doe called 911 and dispatchers heard Therapist Doe yell her address, informed them that she had been stabbed, and that the office door had been barricaded. 911 dispatchers overheard Therapist Doe repeatedly plead with Brazeau to put the knife down.

The 911 dispatcher relayed to officers that there was an open 911 call in progress coming from a therapist's office and a patient had stabbed a therapist. Dispatchers relayed they could hear an altercation in progress and had overheard someone yelling "Put the knife down!" Several officers from the FPD responded to Therapist Doe's office building. Sergeant Thayer and Corporal Bailor were the first officers on scene. The BWC shows Sergeant Thayer and Corporal Bailor parked their vehicles and ran towards Therapist Doe's office. Sergeant Thayer contacted Doe 1 outside the office building, and she appeared visibly terrified. Doe 1 pointed the officers towards Therapist Doe's office, inside the building. They approached the office building, drew their weapons, and opened the door to the reception area of the office. The BWC captured some of the yelling heard by Sergeant Thayer and Corporal Bailor as they stood just outside the reception area. The BWC shows Sergeant Thayer identified himself as FPD and ordered everyone who was inside of the office to make themselves known. Either in response to the officers, or towards Therapist Doe, Brazeau yelled "F*** you!" Sergeant Thayer and Corporal Bailor continued to hear yelling from Therapist Doe's office and observed that the office door was closed.

Sergeant Thayer and Corporal Bailor entered the reception area and moved towards Therapist Doe's office door. Sergeant Thayer and Corporal Bailor identified themselves again and gave another loud command for everyone to come out with their hands up. There was no response to their commands, however, they could still hear an altercation behind the office door. Sergeant Thayer checked the office door handle, and determined the door was locked. Sergeant Thayer and Corporal Bailor believed that an assault with a deadly weapon had taken place, the altercation was ongoing, the

suspect was still armed with a deadly weapon, and someone had already been stabbed. They determined immediate entry into the office was necessary to stop the suspect from hurting anyone further and to help any victims who had already been injured. As seen on the BWC, Sergeant Thayer told Corporal Bailor that he was going to attempt to kick the office door open. Corporal Bailor positioned himself where he would be able to see into the office if the door opened.

Sergeant Thayer delivered a kick into the office door. The door did not open. Sergeant Thayer felt that the door was being blocked by some object, heightening his fear for the safety of the victim. Sergeant Thayer delivered three more kicks to the door until the top half of the door broke. The BWC shows Corporal Bailor and Sergeant Thayer pushed open the door as much as possible. The door did not fully open because there was furniture preventing the door from fully opening. However, Sergeant Thayer and Corporal Bailor were able to push the top half of the door open, allowing them both to see into the room. The BWC shows Brazeau standing over Therapist Doe to the right from the vantage point of the officers. Brazeau held a large, silver hunting knife with a five to six inch blade and a black handle in her right hand. The knife was pointed down towards Therapist Doe. Brazeau's left hand was against Therapist Doe's torso. Brazeau was facing Therapist Doe and they were inches apart. The BWC shows Therapist Doe was on her back against a piece of furniture in a defensive position. Therapist Doe was screaming in terror as the officers tried to enter the room, and her left hand was open trying to prevent Brazeau from stabbing her. Therapist Doe was kicking her legs at Brazeau attempting to get Brazeau away from her. Sergeant Thayer and Corporal Bailor pointed their service weapons at Brazeau. They both repeatedly commanded Brazeau to "put the knife down." Brazeau did not comply with their commands. Brazeau then moved the knife closer to Therapist Doe, looked at Corporal Bailor and Sergeant Thayer, and yelled "F***** shoot me, shoot me!" Corporal Bailor and Sergeant Thayer did not shoot, but continued to command Brazeau to put the knife down. Brazeau still refused to comply.

The BWC shows Brazeau turned her head towards Therapist Doe. She raised the knife above her head and plunged it in a downward, stabbing motion toward Therapist Doe's torso. Corporal Bailor and Sergeant Thayer believed Brazeau was going to stab and kill Therapist Doe, and that Therapist Doe's life was in imminent danger. As Brazeau swung the knife at Therapist Doe, Sergeant Thayer and Corporal Bailor simultaneously discharged their service weapons. Corporal Bailor and Sergeant Thayer each stopped firing after they observed Brazeau fall back. Neither Sergeant Thayer nor Corporal Bailor can recall who fired first because they had fired almost simultaneously. Immediately after Brazeau fell to the ground, Sergeant Thayer and Corporal Bailor entered the office by forcing the door open. They ran over to Therapist Doe and asked if she was okay. She said she was and they told her to get out of the office. She stood up and ran out of the office.

FPD Officer Valle also responded to the dispatch call. The BWC shows Valle arrived to the scene moments after Sergeant Thayer and Corporal Bailor. Officer Valle stood behind Sergeant Thayer and Corporal Bailor in the reception area as they attempted to enter Therapist Doe's office. He stood behind them as they gave commands to Brazeau and ultimately discharged their service weapons. Officer Valle immediately contacted dispatch to report that shots were fired. Officer Valle took custody of Therapist Doe. He quickly escorted her to safety and evaluated her injuries. The BWC shows Therapist Doe sustained a large stab wound in her lower back, and her shirt had a significant amount of blood on it. Officer Valle escorted Therapist Doe over to paramedics who treated her wound.

Meanwhile, Sergeant Thayer approached Brazeau. He observed the knife was on the ground in front of her. He asked Corporal Bailor to move the knife away from Brazeau. Corporal Bailor placed the knife on a nearby couch. Sergeant Thayer placed gloves on his hands and moved Brazeau into the center of the office to administer first aid. Corporal Bailor rolled Brazeau onto her back and checked for a pulse, but could not find one. Other FPD personnel responded to the scene including Sergeant Bridges. Sergeant Bridges entered the office and performed CPR. Shortly thereafter, paramedics arrived and administered first aid to Brazeau. After approximately 10 minutes, paramedics ceased lifesaving measures because Brazeau still did not have a pulse. Brazeau was pronounced dead at the scene. Therapist Doe was transported to a nearby hospital and treated for the stab wound to her back.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Eleven Winchester .45 cartridge casings
- One large fixed blade knife with a black handle with finger grooves
- One jacketed bullet core
- Two projectiles
- One roll of duct tape
- One PM-P projectile
- Three swabs of blood from the floor, the wall, and an armchair

AUTOPSY REPORT

On June 1, 2018, Forensic Pathologist Therapist Nicole Ellis of the Orange County Coroner's Office conducted an autopsy on the body of Brazeau. Therapist Ellis concluded that Brazeau sustained seven gunshot wounds. Two of the bullets entered through Brazeau's left cheek and exited through Brazeau's ear and neck. One bullet entered Brazeau's left chest and exited near the top of her left shoulder. Three bullets entered Brazeau's right anterior shoulder and exited her right posterior shoulder. One bullet entered Brazeau's left back area and exited through the middle of Brazeau's middle left back area. Therapist Ellis concluded that Brazeau died as a result of the multiple gunshot wounds.

EVIDENCE ANALYSIS

Firearms Examination

Corporal Bailor's department issued Glock semi-automatic handgun was test fired at the Orange County Crime Lab and fired without malfunction in single and double actions. Corporal Bailor's pistol was determined to have fired five cartridge cases.

Sergeant Thayer's department issued Glock semi-automatic handgun was test fired at the Orange County Crime Lab and fired without malfunction in single and double actions. Sergeant Thayer's pistol was determined to have fired six cartridge cases.

Toxicological Examination

A sample of Brazeau's postmortem blood was collected for testing. An OCSF forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Benzoylcegonine	Postmortem Blood	0.970 ± 0.097 mg/L
Clonazepam	Postmortem Blood	0.0237 ± 0.0051 mg/L
7-Aminoclonazepam	Postmortem Blood	Detected
Quetiapine	Postmortem Blood	1.24 ± 0.23 mg/L
Norquetiapine	Postmortem Blood	Detected
THC	Postmortem Blood	0.0168 ± 0.0022 mg/L
Hydroxy-THC	Postmortem Blood	0.0028 ± 0.0004 mg/L
Carboxy-THC	Postmortem Blood	0.175 ± 0.022 mg/L

BRAZEAU'S PRIOR CRIMINAL HISTORY

Brazeau's criminal history was reviewed and considered. Brazeau had a California Criminal History dated back to 1991. She has previously been arrested for the following charges:

- Battery
- Trespassing
- Hit and Run

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 to justify the use of deadly force by the police officer. (*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 the 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 FPD Sergeant Thayer and Corporal Bailor with Brazeau.

LEGAL ANALYSIS

The facts in this case are determined by considering Sergeant Thayer’s and Corporal Bailor’s statements, audio/video/photographic evidence, forensic evidence, and witness statements.

The issue in this case is whether the conduct of Sergeant Thayer and Corporal Bailor on May 31, 2018, was criminally culpable, and without justification. As stated above, in order to charge Sergeant Thayer and Corporal Bailor with 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 officers’ conduct. Therefore, in order to lawfully charge Sergeant Thayer and Corporal Bailor with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense and/or defense of others. If the actions that day of Sergeant Thayer and Corporal Bailor were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

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 Court of Appeal have noted that the United States Supreme Court’s definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer’s use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.” (*Brown v. Ransweiler, supra*, 171 Cal. App. 4th at p. 528.)

Here, based on the totality of the evidence, it is clear that Sergeant Thayer and Corporal Bailor were justified in believing that Brazeau posed a significant threat of death or serious bodily injury to both officers and Therapist Doe. This conclusion is based on the totality of the circumstances, but primarily based on the nature and substance of the open 911 call, and the conduct of Brazeau in the moments leading up to the shooting.

Both Sergeant Thayer and Corporal Bailor reasonably believed that Therapist Doe’s life was in imminent danger for several reasons. First, the nature of the dispatch call reasonably caused both officers to believe that Brazeau posed a significant threat of death to Therapist Doe. Dispatch alerted police officers of a stabbing in progress. Both officers knew that stabbings are crimes involving serious bodily injury and death. Both officers knew in order to get the victim the medical attention she needed, they needed to act quickly. Additionally, they were not sure how many victims there were. They believed there was only one based on the dispatch call, but it was possible there were multiple victims. Moreover, the fact that this altercation was ongoing heightened the need for swift interaction by the police in order to protect the specific victim and society. The suspect was unaccounted for which led the officers to reasonably fear that the suspect could harm other victims. Finally, dispatch alerted police they were taking an “open call” from the victim. Both officers knew that an “open call” can mean that the victim is unable to provide information to 911 dispatchers because they are actively engaged in the altercation. This additional fact was significant to the officers because it indicated to them that the suspect was still a grave threat to the alleged victim and society at large.

Second, Jane Doe 1's demeanor and conduct reasonably indicated to the police that Brazeau posed a serious threat of death to Therapist Doe. Upon arrival, Sergeant Thayer observed Jane Doe 1's demeanor. He described her as terrified. She was the only witness that the officers observed upon arrival. She was standing just outside the office building, near the crime scene. Corporal Bailor asked Jane Doe 1 how many people were inside of the office. Corporal Bailor had to ask her four times as she was unable to answer him. This behavior reasonably suggested that Jane Doe 1 was scared by what she observed inside of the office building, and indicated to the police that this situation was life threatening.

Third, the observations made by the officers upon arrival to the office building indicated that Brazeau posed a significant threat of serious bodily injury and/or death to the officers as well as Therapist Doe. Sergeant Thayer and Corporal Bailor approached the office building, opened the door, stood in the reception area, and ordered all occupants to make themselves known. There was no response. Both officers knew there were people somewhere inside of the office based on the dispatch and Jane Doe 1's statement that there were two people inside. The lack of response from anyone indicated to the officers that occupants either could not respond or did not want to respond. Additionally, both officers heard yelling coming from behind Therapist Doe's office door. Both officers heard the confrontation. The BWC captured a portion of the shouting and the phrase, "F*** you!" can be heard. As officers approached Therapist Doe's door, the yelling intensified. Sergeant Thayer attempted to open the door, and the door was locked. More commands were given with no response. The lack of response from the occupants, the yelling and shouting from inside of Therapist Doe's office, as well as the door being locked, gave the officers reasonable fear for the safety of those inside the office as well as themselves.

Fourth, Sergeant Thayer and Corporal Bailor reasonably believed that Therapist Doe's life was in imminent danger based on their initial observations inside Therapist Doe's office. After discovering the door was locked, Sergeant Thayer kicked the door until the officers were able to open a portion of it to see inside the room. As seen on the BWC, both officers immediately observed Brazeau standing over Therapist Doe. In her right hand, Brazeau held a large silver hunting knife. The knife was easily visible to both officers. The knife was held with the five to six inch blade towards Therapist Doe. Therapist Doe was seen lying on her back, underneath Brazeau. She was lying in a defensive position. Her left hand was open as she tried to stop Brazeau from stabbing her. Her knees were bent and she was trying to kick Brazeau in an attempt to get Brazeau away from Therapist Doe. Brazeau was inches from Therapist Doe and could easily stab Therapist Doe with the knife in her hand. The office appeared ransacked. There was furniture which appeared out of place. There were items all over the floor. As suspected, there was furniture against the door preventing the officers from completely opening the door and making entry. The totality of these observations, in addition to the facts known to them before entering the office, reasonably indicated to the officers that Brazeau posed a serious danger to Therapist Doe and the officers.

Finally, Brazeau's conduct once the officers were able to get the door partially open, justified both officers discharging their service weapons. As soon as the officers were able to get the door partially open and make their observations, they pointed their duty weapons at Brazeau. They both gave Brazeau direct, succinct commands. Both officers ordered Brazeau to drop the knife. They gave these commands in a loud, clear tone. Brazeau did not comply with the commands. She did not drop the knife. She did not put her hands up. She did not do anything to indicate to either officer that she was going to comply with their commands. She did not do anything to indicate to either officer that she was going to discontinue posing a threat to Therapist Doe. In fact, Brazeau yelled back at the officers, "F***** shoot me, shoot me!" This statement indicated to both officers that Brazeau was not going to comply with the commands. It indicated that she was going to kill Therapist Doe and would not stop by mere commands and police presence. Moreover, after yelling at police, Brazeau looked down at Therapist Doe, raised the hunting knife above her head, and drove the knife towards Therapist Doe's torso. Both Sergeant Thayer and Corporal Bailor believed, justifiably, that Brazeau was about to kill Therapist Doe. Both officers discharged their service weapon simultaneously. Based on the totality of the circumstances, two veteran law enforcement officers made an independent determination that discharging their weapon was the only way to save Therapist Doe's life. They were correct. The actions of Sergeant Thayer and Corporal Bailor were completely and objectively reasonable under the circumstances.

It should also be noted that, in order for Sergeant Thayer or Corporal Bailor 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 that Sergeant Thayer or Corporal Bailor did not act in reasonable and justifiable self-defense or defense of another when they discharged their service weapon. As should be vividly 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 and correctly conclude that it was reasonable for Sergeant Thayer and Corporal Bailor to believe that Therapist Doe's life was in imminent danger. Based on the totality of the evidence, Sergeant Thayer and Corporal Bailor did not commit any crime. To the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner. Simply put, Sergeant Thayer and Corporal Bailor saved Therapist Doe's life.

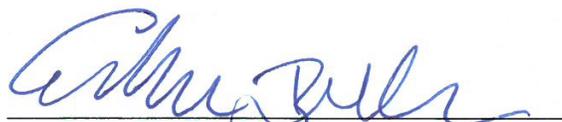
CONCLUSION

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 whatsoever of criminal culpability on the part of Sergeant Thayer and Corporal Bailor, and there is substantial overwhelming evidence that their actions were completely reasonable and justified under the circumstances when they saved the life of Therapist Doe by discharging their service weapons, resulting in the death of Katherine Ann Brazeau, on May 31, 2018.

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



NICHOLAS THOMO
Deputy District Attorney
TARGET/Gangs Unit



Read and approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations - II