



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

April 1, 2020

Chief Stu Greenberg
Tustin Police Department
300 Centennial Way
Tustin, CA 92780

Re: Officer-Involved Shooting on July 9, 2019
Non-Fatal Incident involving Freddie Martinez Jr.
District Attorney Investigations Case # SA 19-012
Tustin Police Department Case # 19-4722
Orange County Crime Laboratory Case # FR 19-48939

Dear Chief Greenberg,

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 Tustin Police Department Officers Charles Mitchell and Michelle Jankowski. Freddie Martinez Jr., age 45, survived his injuries. The incident occurred in the City of Tustin on July 9, 2019.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 9, 2019, non-fatal, officer-involved shooting of Freddie Martinez Jr. 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 Tustin Police Department's 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 July 9, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, OCDASAU conducted ten interviews including the involved parties, witnesses, and medical treatment personnel. OCDASAU Investigators also obtained and reviewed the following: Tustin Police Department reports, Body Worn Camera recordings, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including latent fingerprints, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Freddie Martinez Jr.; criminal history records related to Freddie Martinez Jr. including prior incident reports; and other relevant reports and materials including audio recordings of the officers, and other parties involved.

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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 Tustin Police Department officers or personnel, specifically Officers Jankowski and Mitchell. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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 not to release the final report regarding the officer involved shooting incident until 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 or her case is still pending.

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 an experienced 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 Operations IV Division of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. 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 includes gathering any existing Body Worn Camera footage and attempting to obtain a statement from the involved officers. To this end, Body Worn Camera footage was obtained during the course of the investigation, and Officers Jankowski and Mitchell each gave a voluntary statement to OCDA Investigators on July 12, 2019.

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

On July 9, 2019 at 6:12 a.m. Tustin PD received a call reporting a trespasser at the former Tustin MCAS located at 15991 Armstrong Ave. in Tustin, CA. At 7:03 a.m. Tustin PD dispatch assigned the call to Officers Jankowski and Mitchell. Officers Jankowski and Mitchell arrived on scene shortly thereafter, and made contact with a female, Jane Doe, who eventually indicated that other people were staying in building #226. At 7:42 a.m., TPD Officers Clay, Kirwan, Jankowski, and Mitchell began searching building #226.

Upon entry, the officers searched the first floor of the building. At 8:14 a.m., the officers split into two groups in order to begin searching the second story. Officers Clay and Kirwan positioned themselves near a set of stairs on the east side of the building, while Officers Jankowski and Mitchell proceeded up stairs located on the west side of the building. Officer Mitchell announced himself twice as he came to the top of the stairs. This included "Tustin Police ... anyone inside make yourself known." Based on the location of Officer Mitchell in relation to Martinez Jr. and the female companion, as well as the volume level of Officer Mitchell's command, captured by Body Worn Camera, the circumstances are such that Martinez Jr. and his female companion would be expected to have heard the command. In a recorded interview with OCDASAU subsequent to the shooting, Martinez Jr. confirmed that he was in fact aware of police presence during this timeframe. During a recorded interview, the female companion of Martinez Jr. confirmed the same.

In his recorded interview with OCDASAU, Martinez Jr. stated that, upon learning of the police presence, he then picked up a metal pipe and walked toward police. Based on the events captured by Body Worn Camera, Martinez Jr. first walked to a landing above the first-floor in the vicinity of Officers Clay and Kirwan. The pipe, as explained by Martinez Jr. and his female companion in subsequent interviews with OCDASAU, was used to secure the door that separates a small second floor room from a stairway landing atop the cavernous room adjacent thereto. Martinez Jr. carried this metal pipe throughout his encounter with Officers Clay and Kirwan and throughout his encounter with Officer Jankowski and Mitchell. During his subsequent interview with OCDASAU, Martinez Jr. tentatively confirmed he was holding the pipe.

As depicted on Body Worn Camera, Officers Clay and Kirwan were the first officers to encounter Martinez Jr. This occurred when Martinez Jr. emerged at the top of a narrow, steep set of stairs perched above them. As discussed above, this stairway leads out from the small second story room (where the shooting later ensued) down into the large cavernous room occupied (at that time) by Officers Clay and Kirwan. Officers Clay and Kirwan stood on the ground floor, guns drawn, and spoke with Martinez Jr. Martinez Jr. walked part way down the stairs as he repeatedly demanded to know whether officers had a warrant. As he did so, Martinez Jr. held the metal bar and repeatedly ignored Officer Kirwan's orders to "drop the pipe". These commands were captured on Body Worn Camera. Due to the location of this room in the building, its cavernous size, and series of windows, this room (spanning multiple stories) enjoyed high natural visibility. Martinez Jr.'s encounter with Officers Clay and Kirwan lasted approximately thirty (30) seconds, ending with Martinez Jr. walking back up the steps, holding the pipe, heading in the direction of the second floor room from where he originally emerged. In the meantime, Officers Jankowski and Mitchell had contacted Martinez's female companion in that room.

The second floor comprised of a series of interior hallways, rooms, and narrow corridors, several of which were dark. Officers Jankowski and Mitchell had visibility primarily through the use of flashlights. The room at issue, by contrast to the area in which Martinez Jr. contacted Officers Clay and Kirwan, was small and almost pitch black. As depicted on Body Worn Camera, the near only visibility in this room came by way of the open door through which Martinez Jr. emerged and small cracks in makeshift blackout curtains. When Martinez Jr. would later close the door, the room presented practically no visibility save for the flashlights of Officer Jankowski and Mitchell.

When Martinez Jr. neared and then entered the doorway, the door remained open because his female companion stood temporarily in a position that kept the door propped. As depicted in Body Worn Camera, Martinez Jr. stepped into the room holding the pipe akin to a port-arms stance. When Martinez Jr. did so, Officers Jankowski and Mitchell shouted repeated commands for Martinez Jr. to disarm. These commands included “put it down” and “put the pipe down”.

Martinez Jr.’s female companion walked away from Martinez Jr. As a result, Martinez Jr. stood alone in a position to keep the door propped. He did so momentarily. Both officers continued to order Martinez Jr. to put the pipe down. He continued to clench the pipe. After several more seconds and several more commands to disarm, Martinez Jr. maintained his port-arms stance, continued to face the officers, and closed the door by removing his foot from its propped position. As a consequence, the door shut. This further darkened the room by eliminating nearly all remnant of natural light. Officers Jankowski and Mitchell continued to order Martinez Jr. to “put the pipe down” for approximately three (3) more seconds. Within the same second that Martinez Jr. released his right hand from the pipe (maintaining hold of it with his left hand), the first shot was fired. Martinez Jr. was struck with four (4) shots, all fired in a span of one (1) second. Martinez Jr. fell to the ground. Shortly thereafter, the officers began to administer first aid to Martinez Jr.

Prior to the first shot, Officers Jankowski and Mitchell collectively ordered Martinez Jr. to “put it down” or “put the pipe down” at least nine (9) times over a span of approximately ten (10) seconds. The first shot was fired approximately three (3) seconds after the door closed. Based on Body Worn Camera footage, Martinez Jr. stood approximately eight (8) to twelve (12) feet from Officers Jankowski and Mitchell, with modest fluctuation during the encounter.

As documented in the Orange County Fire Authority report, Martinez Jr. suffered four (4) gunshot wounds – “left hand middle finger”, “left lateral thigh”, “right lateral thigh”, and “right flank proximal to right hip.” He received medical treatment thereafter at the Orange County Global Medical Center – Santa Ana Emergency Department.

The metal pipe was recovered from the scene. In his interview with OCDASAU, Martinez Jr. described it as “a heavy bar”.

Both Officers Jankowski and Mitchell submitted to a (separate) interview with OCDASAU. Both perceived Martinez Jr. to be a threat of death or great bodily injury. Both were alarmed by the lack of visibility, the close proximity of Martinez Jr. and narrow space presented by the room, Martinez Jr.’s repeated failure to follow commands to disarm, the manner in which he held the metal pipe, and the increased danger stemming from the closed door. Both stated that lethal force was, based on their perception of the circumstances, the only option safely available.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Glock Model 21 pistol, .45 Auto caliber (Officer Mitchell)

- Glock Model 17Gen4 pistol, 9mm Luger caliber (Officer Jankowski)
- Test fires, Glock Model 21 pistol, .45 Auto caliber (Officer Mitchell)
- Test fires, Glock Model 17Gen4 pistol, 9mm Luger caliber (Officer Jankowski)
- Magazine of #BACE318
- Four fired cartridge casings
- Bullet from right leg
- Two bullets from buttocks collected
- Metal Pipe

EVIDENCE ANALYSIS

Firearms Examination

Officer Jankowski's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. One cartridge case was determined to have been fired from this pistol.

Officer Mitchell's Glock pistol was test fired at the Orange County Crime Lab and fired without malfunction. Three cartridge cases were determined to have been fired from this pistol.

Toxicological Examination

A sample of Martinez Jr.'s blood was unable to be collected at Western Medical Center Santa Ana, due to the extent of Martinez Jr.'s injuries and emergency surgery. A toxicological analysis was not possible. The female companion of Martinez Jr. described Martinez Jr. as a methamphetamine user "pretty much every day" and "he's ... I think ... he's diagnosed bipolar and um ... I ... I find that um ... when he's on methamphetamine he's um ... he's ... he's on a roller-coaster ride." She stated that Martinez Jr. had last used methamphetamine the day before the shooting.

MARTINEZ'S PRIOR CRIMINAL HISTORY

Freddie Martinez Jr.'s criminal history was reviewed and considered. Martinez had a California Criminal History that dates back to 2001. He has previously been arrested for the following charges:

- 243(E)(1) PC- Battery on domestic partner
- 273.5(A) PC- Inflict corporal injury to spouse or cohabitant
- 14601.1(A) VC- Driving with a suspended license
- 11364 HS- Possession of drug paraphernalia
- 148(A)(1) PC- Obstruct peace officer
- 12021(A)(1) PC- Felon in possession of a firearm
- 496(A) PC- Receiving stolen property
- 484(A) PC- Petty theft of personal property
- 212.5 PC- Robbery
- 245(A)(1) PC- Assault with a deadly weapon
- 459 PC- Burglary
- 4573 PC- Bring controlled substance into prison
- 11377(A) HS- Possession of controlled substance
- 243.4 PC- Sexual battery
- 273.6(A)- Violation of domestic violence court order
- 22900 PC- Sell tear gas or tear gas weapon
- 148.9(A) PC- False identification to peace officer
- 415(3) PC- Offensive word in public place
- 240 - 242 PC – Assault and Battery

MARTINEZ’S POST-INCIDENT CONVICTION

On July 11, 2019, OCDA filed criminal charges against Freddie Martinez Jr. in Orange County Superior Court case 19CF1910. The OCDA amended the complaint on August 2, 2019, consisting of two felony counts of aggravated assault on a peace officer, a violation of California Penal Code section 245(C); two counts of felony exhibiting a deadly weapon to resist arrest, in violation of California Penal Code section 417.8; one count of misdemeanor resist and obstruct an officer, in violation of California Penal Code section 148(A)(1). After a jury trial, on December 16, 2019 the jury found Martinez Jr. guilty on all five counts.

STANDARD 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.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is “charged with a felony” and where the officer has “reasonable cause” to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.)

California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” The Court of Appeal in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony “is of the violent variety, *i.e.*, a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.” (*Kortum v. Alkire, supra*, 69 Cal.App.3d at p. 333.)

Recent amendments to Penal Code Sections 196 and 835a allow an officer to use deadly force only when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury. This also applies to apprehension of a fleeing person whom the officer reasonably believes will cause death or serious bodily injury to another unless immediately apprehended. Penal Code Section 835a requires that, prior to the use of deadly force, the officer shall make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining

whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently, and use other available resources and techniques if reasonably safe and feasible to do so. When officers may be forced to make quick judgments about using force, the decision is evaluated based upon the perspective of a reasonable officer in that same situation, taking into account all circumstances known to the officer at the time.

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 Tustin Police Department Officers Jankowski and Mitchell with Freddie Martinez Jr.

LEGAL ANALYSIS

The facts in this case are determined by considering Body Worn Camera, physical evidence, and all witness statements to OCDASAU investigators, including those of the involved parties (Officers Jankowski and Mitchell, Martinez Jr. and his female companion) supplemented by other relevant material and witnesses present at the incident.

The issue is whether the conduct of Officers Jankowski and Mitchell on July 9, 2019 was criminally culpable and without justification. As stated above, in order to charge Officers Jankowski and Mitchell with a criminal violation, it is required the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the officers' conduct. Therefore, in order to lawfully charge Officers Jankowski and Mitchell with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of another. If the actions that day of Officers Jankowski and Mitchell were justifiable as lawful self-defense or defense of another, then criminal charges are unwarranted.

As the Court of Appeal held in a somewhat recent case, it is well settled that “[u]nlike 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 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.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Based on the totality of all the available evidence, it is clear that Officers Jankowski and Mitchell were justified in believing that Martinez Jr. posed a significant threat of death or serious physical injury to themselves and each other. This conclusion is based on the totality of the circumstances, but primarily is based on the setting and the conduct of Martinez Jr. in the moments leading up to the shooting.

Officers Jankowski and Mitchell traveled to the location in lawful performance of their duties. They had just received information that criminal trespassing was in progress at building #226. During the course of their on-scene investigation, as captured by Body Worn Camera, Officers Jankowski and Mitchell encountered on the second floor a series of rooms, corridors, and hallways, several of which were poorly lit. The room at issue, in particular, had nearly no visibility without the assistance of flashlights.

There, Officers Jankowski and Mitchell first encountered Martinez Jr.'s female companion and then Martinez Jr. himself. From the outset of that interaction, Martinez Jr. was armed with a metal pipe which, based on its size and consistency, undoubtedly qualifies as a deadly weapon. Throughout all but the final second of the interaction, Martinez held the pipe in a port-arms stance. Prior to the shooting, at no point did Martinez Jr. relinquish possession of the weapon. In the course of the approximately ten (10) second encounter with Officers Jankowski and Mitchell, Martinez Jr. ignored several commands to "put it down" and "put the pipe down". The closure of the door only exacerbated the danger of these conditions and compromised the ability of Officers Jankowski and Mitchell to neutralize the threat posed by Martinez Jr. in less lethal manner.

Officer Mitchell stated he perceived the pipe to be a lethal threat. Based on his training, Officer Mitchell recognized Martinez Jr. was too close for his own or his partner's safety. Given the circumstances – in particular, the close proximity of Martinez Jr., his stance while armed with a deadly weapon, and the close / dark quarters presented (all confirmed through Body Worn Camera) – Officer Mitchell believed his gun was the only safe way to deal with the threat. Officer Jankowski also believed the pipe would be lethal. She perceived the way which Martinez Jr. stepped into the room (and closed the door behind him) as a threat demonstrating an intention to fight. Officer Jankowski also believed that lethal force was the only method she could safely use, considering the setting and circumstances.

Martinez Jr. also revealed to investigators from OCDASAU that, upon learning that police officers had entered the ground floor of the building, he chose to take a metal pipe and head towards the officers. Thus, a trial would involve evidence that, on this occasion, Martinez Jr. deliberately armed himself with "a heavy bar" to confront arresting officers. Moreover, just seconds before his encounter with Officers Mitchell and Jankowski, Martinez Jr. repeatedly ignored gunpoint commands to "drop the pipe" from Officers Clay and Kirwan. Collectively, this constitutes behavior squarely proscribed by Penal Code section 834a.

It should also be noted that, in order for Officer Jankowski or Officer Mitchell to be lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officers Jankowski and Mitchell did not act in reasonable and justifiable self-defense or defense of another when they shot Martinez Jr. 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 and reasonably conclude it was reasonable for Officers Jankowski and Mitchell to believe that their life and each other's life was in danger. Thus, Officers Jankowski and Mitchell were lawfully justified when they shot at Martinez Jr. and they cannot be said to have committed a crime in doing so.

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, interviews, photographs, and Body Worn Camera reviewed, and pursuant to the applicable legal principles, it is our legal opinion that Officers Jankowski and Mitchell are not criminally culpable for shooting Martinez Jr. on July 9, 2019.

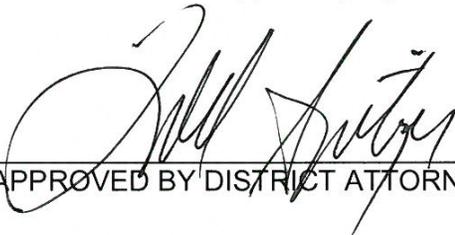
Accordingly, the OCDA is closing its inquiry into this incident.



CHRIS ALEX
SENIOR DEPUTY DISTRICT ATTORNEY
HOMICIDE UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
Senior Assistant District Attorney, Felony Operations IV

 3-30-2020

READ AND APPROVED BY DISTRICT ATTORNEY **TODD SPITZER**