



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 22, 2020

Chief Robert Dunn
Fullerton Police Department
237 W. Commonwealth
Fullerton, CA 92832

Re: Officer-Involved Shooting on Friday, July 5, 2019
Fatal Incident involving Minor Jane Doe
District Attorney Investigations Case # SA 19-011
Fullerton Police Department Case # 19-40536
Anaheim Police Department: # 19-97196
Orange County Crime Laboratory Case # 19-48804
Orange County Coroner's Office: 19-03005-LB

Dear Chief Dunn,

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 Fullerton Police Department (FPD) Officer Scott Flynn. Minor Jane Doe, 17, tragically died as a result of her injuries. The incident occurred in the City of Anaheim on July 5, 2019.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 5, 2019, officer-involved fatal shooting of Minor Doe. 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 Fullerton Police Department 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 July 5, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eleven (11) interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: Fullerton Police Department (FPD) reports, Anaheim Police Department (APD) reports, dispatch audio and radio traffic recordings; Body Worn Camera (BWC) video recordings; Orange County Crime Laboratory

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(OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Minor Doe; criminal history records related to Minor Doe 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 impartially reviewed all evidence and legal standards. Although the incident was unfortunate, resulting in the death of a minor with mental illness, the scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of Fullerton Police Department officers or personnel, specifically Officer Scott Flynn. 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 OCDA that are trained to assist when needed. On average, eight Investigators respond to an officer-involved shooting 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 Investigators have 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 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 is attempting to obtain a statement from the involved officers. Officer Flynn gave a voluntary statement to OCDA Investigators on July 11, 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>.

MINOR DOE BACKGROUND INFORMATION

Per a police records check, and corroborated by statements made by Minor Doe's father and stepmother, Minor Doe had several police-related contacts including three (3) missing juvenile reports and two (2) Welfare and Institutions Code Section 5150 ("WIC 5150") mental health commitments prior to this incident.

On August 20, 2018, police were called in response to Minor Doe brandishing a large, 8-inch blade hunting knife on a city street after running away from her home. Upon police contacting her, Minor Doe admitted that she ran away and had a plan "to kill someone".

The first WIC 5150 incident, on August 28, 2018, involved Minor Doe making criminal threats to torture and then kill her mother and step-brother.

The second WIC 5150 incident, which occurred on April 29, 2019 (approximately two months before the shooting), involved Minor Doe physically resisting a police officer after she ran away from a mental health treatment facility. During the physical struggle, Minor Doe grabbed the officer's duty pistol and was able to pull it out of the officer's gun belt. The officer, with the assistance of a civilian, was able to wrestle the gun out of Minor Doe's hand and no shots were fired.

FACTUAL SUMMARY

On Friday July 5, 2019, at 7:00 p.m., FPD Officer Scott Flynn, while on duty and transporting his injured K-9 from the City of Fullerton to a veterinary clinic in the City of Yorba Linda, observed a Grey Dodge SUV pass him in the carpool lane traveling what he determined to be in excess of 100 miles per hour. He was operating a fully marked black and white "Fullerton Police" unit and had just entered the eastbound SR-91 freeway.

Officer Flynn monitored the SUV's taillights as it passed and noticed no signs of braking or slowing down. Officer Flynn also said there was heavy traffic on the freeway and the SUV was traveling at a much greater speed than the flow of traffic. Officer Flynn determined the SUV's speed was unsafe, putting others at risk, so he entered the carpool lane to further observe and monitor the SUV. In order to reach the vehicle, Officer Flynn accelerated to approximately 120 mph as he attempted to read the license plate. When he reached the vehicle, he noticed the vehicle drifted into the fast lane and then back into the carpool lane, across a three-foot-wide painted divider. Based upon his observations, Officer Flynn believed the driver might be under the influence or otherwise unsafe to drive.

Once Officer Flynn obtained the license plate number of the SUV, he conducted a records check using his mobile digital computer. The SUV returned as a rented vehicle. It was at this time Officer Flynn believed that the driver might be fleeing from the commission of a crime because, in his 11 years of police experience, suspects involved in criminal activity often use rented vehicles during the commission of their crimes. Due to the SUV acting so erratically, he felt this could possibly be one of those vehicles so he maintained some distance between himself and the SUV.

As Officer Flynn continued to follow the vehicle, he noticed the SUV began to slow. The SUV slowed so abruptly that Officer Flynn had to brake and change lanes to avoid colliding with it. As Officer Flynn's vehicle drew even with the back bumper of the SUV, the SUV made an abrupt right turn from the carpool lane and collided with the front end of his police unit. Surveillance video from a nearby business captured this erratic driving and the collision. Officer Flynn, under the circumstances, concluded he was being intentionally attacked by the driver of the vehicle. At 7:02 p.m., Officer Flynn advised FPD Dispatch, "A car just TC'D into me, on purpose" (referencing a traffic collision). Officer Flynn then activated his police unit's emergency overhead lights.

The impact of the collision caused Officer Flynn's vehicle to turn to the right and come to a stop facing horizontally across the eastbound lanes of the 91 freeway. Officer Flynn briefly saw the driver of the SUV as both vehicles were rotating but was unable to determine the driver's approximate age or if the SUV had any other occupants. The driver was later identified as Minor Doe. Officer Flynn saw the SUV come to rest a short distance from the front of his unit, facing west, opposite the flow of traffic. Officer Flynn requested emergency assistance from police dispatch. Officer Flynn indicated that he was in fear for his safety due to the vehicle collision and drew his service weapon as he exited his unit. As he stood in the doorway of his unit, he began issuing commands toward the driver of the SUV. Officer Flynn could only see into the passenger window of the SUV and could no longer see the driver. Further, Officer Flynn received no verbal responses from anyone in the subject vehicle. Officer Flynn then advanced on foot towards the rear bumper of the SUV in an effort to determine where Minor Doe had gone.

As Officer Flynn turned the corner by the rear bumper, he immediately came upon Minor Doe who was walking toward him with her arms raised, holding what appeared to be a black semiautomatic firearm, in a shooting position with the barrel raised and pointed directly at Officer Flynn. Continuing to yell commands at Minor Doe, Officer Flynn indicated that he saw anger on her face and was in fear for his life. Officer Flynn thought he was being ambushed and realized Minor Doe already had him in her sights at a close distance of approximately 6-7 feet. At 7:03 p.m., Officer Flynn fired three shots, two of which made contact with Minor Doe and one that made contact with a parked, unoccupied U-Haul truck. After the third shot, Officer Flynn's pistol failed to eject the spent cartridge casing and the casing became stuck in the ejection port in a malfunction known as a "stove-pipe". Officer Flynn can be seen on the Body Worn Camera video taking steps to "clear" the malfunction by hitting the bottom of the pistol's magazine and then racking the slide rearwards to eject the spent casing. No further shots were fired during the remainder of the incident. Officer Flynn then retreated back toward his unit and continued to yell commands at Minor Doe who was on the ground. Officer Flynn immediately advised FPD dispatch "shots fired" followed by "suspect down on the freeway, I need medics please".

John Doe 1, a retired police officer who witnessed the event, approached Officer Flynn to help render aid. John Doe 1, accompanied by Jane Doe 1, saw Minor Doe exit the SUV and begin walking toward where their vehicle had stopped on the freeway. Both individuals recounted that Minor Doe then abruptly turned back toward the SUV and pulled a firearm from underneath her clothing. Both John Doe 1 and Jane Doe 1 also saw Minor Doe raise the firearm in a "shooting stance" and point it toward Officer Flynn along the driver's side of the SUV. John Doe 1 described the weapon as a "large, blue steel" firearm that looked similar to a gun he carried on duty for many years. Further, in reference to the firearm that Minor Doe was holding, John Doe 1 stated "that thing looked real from where I was standing".

Jane Doe 2, a witness who was traveling west on Frontera Street, a road that parallels the eastbound 91 freeway, saw Minor Doe's SUV and Officer Flynn's police unit stopped on the freeway. Jane Doe 2, from her unobstructed view of the SUV, saw Minor Doe advancing towards Officer Flynn, with her arms extended, holding what she described as a "9mm" firearm. Jane Doe 2 stated "she was going to shoot him...she was going to shoot the cop." Jane Doe 2 went on to say about Minor Doe: "she was very threatening...she wanted to kill him, it was obvious." Jane Doe 2 saw that Officer Flynn had his weapon drawn and was yelling commands for Minor Doe to "get on the ground" and "drop the weapon." She also recalled that Minor Doe looked angry as she continued advancing toward Officer Flynn.

There were five additional witnesses stopped on the 91 freeway that saw Minor Doe point a firearm at Officer Flynn prior to hearing two gunshots and seeing her fall to the ground. One of these witnesses, Jane Doe 3, captured cell phone video of the shooting which shows Minor Doe holding onto the gun until she is on the pavement. It should also be noted that many of the actions taken by both Officer Flynn and Minor Doe, as described above, are captured on Officer Flynn's BWC videos, including Minor Doe raising a firearm and pointing it directly at Officer Flynn. Additionally, another of the civilian witnesses, Jane Doe 4, tells an FPD officer "your guy...he was staring down the barrel of a gun. He did what he needed to do".

As Officer Flynn continued to yell commands at Minor Doe to turn over onto her stomach, both Officer Flynn and John Doe 1 saw a firearm lying on the roadway adjacent to and within arm's reach of Minor Doe. John Doe 1 recovered the firearm as Officer Flynn handcuffed Minor Doe. Officer Flynn then asked John Doe 1 to retrieve an emergency medical kit from inside his police unit as Officer Flynn began to immediately evaluate Minor Doe's injuries. Officer Flynn later returned to his police unit and secured the firearm on the passenger front floor board.

At 7:05 p.m., FPD Officer Luis Ramirez arrived on scene and immediately assisted Officer Flynn with providing medical aid to Minor Doe in hopes of saving her life. Officer Ramirez applied chest seals to Minor Doe's wounds and spoke with her in an attempt to keep her awake and calm. Minor Doe was able to provide FPD officers with her name, her parents' names, and their phone numbers.

Continuous efforts were made to provide medical care until Anaheim Fire Department (AFD) Engine 8 arrived on scene and AFD Paramedics took over. Minor Doe was then transported to Orange County Global Medical Center (OCGMC). While in transport, paramedics continued to monitor her condition. Minor Doe was alert and at times combative. During transport, medics located and recovered a bullet fragment from the rear of Minor Doe's left leg. At around 7:31 p.m., Minor Doe arrived at OCGMC and her medical care was relinquished to the OCGMC trauma team.

Approximately six minutes later, around 7:37 p.m., Minor Doe went into cardiac arrest and CPR was immediately initiated. Within a minute, her pulse returned and she was taken in for emergency surgery. During the course of surgery, a Trauma Surgeon found she had sustained gunshot wounds to her liver and vena cava (veins that return deoxygenated blood from the body into the heart). Unfortunately, at approximately 8:10 p.m., Minor Doe succumbed to her injuries and the surgeon pronounced her deceased.

At 8:27 p.m., approximately 90 minutes after the incident, APD dispatch received a call from Minor Doe's father reporting her as a missing juvenile and in possession of a rented Dodge Durango. He was concerned for Minor Doe's well-being, telling the dispatcher that she had attempted suicide in the past and was currently on depression medication. At approximately 11:43 p.m., APD

Officer Jacob Addington and Officer Patrick Genovese responded to Minor Doe's residence in reference to the missing juvenile report. Officer Addington spoke to both Minor Doe's father and his wife, Minor Doe's stepmother.

Minor Doe's stepmother reported that Minor Doe left the residence at around 6:30 p.m. in a rented Dodge Durango and did not have a driver's license. Minor Doe left a note at the residence stating she did not feel welcome in the home and that her dad was giving her strange looks. Minor Doe's stepmother told Officer Addington that Minor Doe had attempted to run away on several prior occasions, and each time she ran away, Minor Doe "had tried to hurt herself". She also told Officer Addington that Minor Doe was currently under the care of a psychiatrist and was taking antidepressant medications.

SUMMARY OF OFFICER SCOTT FLYNN'S STATEMENTS

Officer Flynn voluntarily submitted to an interview by an OCDA investigator and an Anaheim Detective on July 11, 2019. The following is a summary of his statements relevant to the shooting itself:

Officer Flynn, at the time of the incident, had been a police officer for approximately eleven years, the last five years being with the Fullerton Police Department. During his time as a police officer, Officer Flynn had received hundreds of hours of firearm training, including tactical and simulated scenarios training, as well as mandatory monthly firearm qualifications. Officer Flynn did not know Minor Doe or have any contact with her prior to this incident.

On July 5, 2019, after observing Minor Doe's vehicle traveling in excess of 100 mph and drifting between lanes, Officer Flynn positioned his police SUV alongside Minor Doe with his front bumper about even with Minor Doe's rear bumper. At this point, Officer Flynn described a "sudden jerking-turning movement" by Minor Doe that caused her vehicle to crash into the front of his police SUV. Officer Flynn further explained that in his opinion Minor Doe's movement was "100 percent intentional", that she "was trying to take out my vehicle", and believed the driver was trying to hurt both Officer Flynn and his police K9.

After his vehicle came to rest from the collision, Officer Flynn radioed to request an emergency response from additional units and exited his police SUV. Officer Flynn explained that he drew his gun and began to make a series of verbal commands from beside his driver's door but received no answer. Officer Flynn described the back windows of Minor Doe's vehicle as being tinted so he couldn't see inside, nor could he see any occupants though the front passenger window and had no idea where the driver was. In addition to being concerned about the driver's intentions, Officer Flynn was also worried about he and the driver being stopped in the middle of the 91 Freeway and potentially being hit by other motorists.

In order to try to locate the driver, Officer Flynn made the decision to approach Minor Doe's vehicle from the back side, and as soon as he "broke the corner" of the driver's side rear bumper, he immediately saw a female walking towards him 6-7 feet away, hands extended out, holding what appeared to him to be a black semiautomatic firearm. Officer Flynn said he distinctly remembers seeing "the anger on her face and in her eyes". Officer Flynn described that he thought he was being ambushed and that he was going to get shot immediately because Minor Doe had the "advantage" on him. At this point, Officer Flynn explained that he was in fear for his life, raised his firearm, and fired several rounds. Officer Flynn then observed Minor Doe stumble back towards the front of her vehicle and he repositioned himself behind Minor Doe's SUV to obtain cover. After

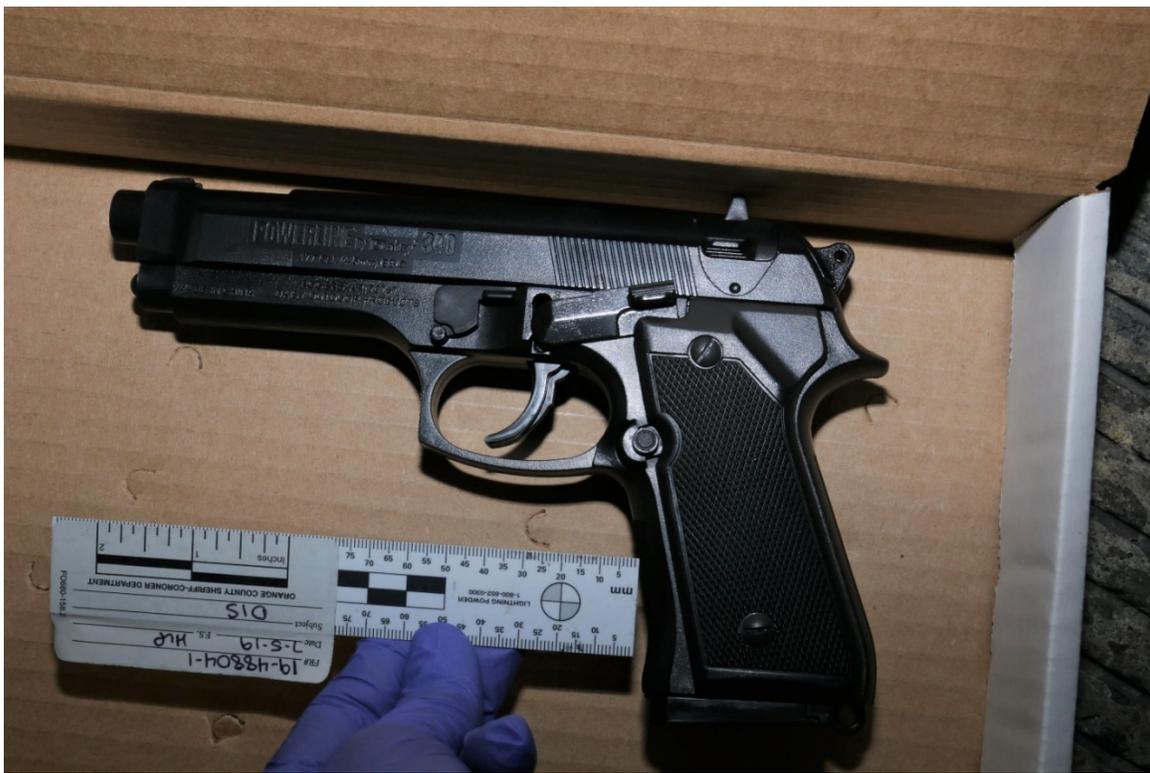
retreating to his police SUV, Officer Flynn saw Minor Doe lying on her back on the street with the firearm on the ground within 1-2 feet of her left hand.

Officer Flynn immediately put out over his police radio that shots had been fired and requested medics for Minor Doe. Officer Flynn then had the off-duty LAPD Officer (John Doe 1) retrieve his medical kit from his police SUV so he could begin administering medical aid to Minor Doe while awaiting paramedics to arrive.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One cartridge case head stamped “WIN 40 S&W”
- One cartridge case head stamped “WIN 40 S&W”
- One cartridge case head stamped “WIN 40 S&W”
- One cartridge head stamped “WIN 40 S&W”
- One pink bra, one gray / black hoodie, one Casio watch
- Daisy Powerline Model 340: .177 caliber black BB pistol (serial # 1619219907023009C).



AUTOPSY

On Tuesday, July 9, 2019, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner’s Office conducted an autopsy on the body of Minor Doe at the Orange County Sheriff – Coroner Forensic Science Center. Dr. Davenport concluded the cause of death was exsanguination due to a gunshot wound, which appeared to enter and exit the right breast and then enter the front of the torso.

EVIDENCE ANALYSIS

Firearms Examination

Officer Flynn's Glock 22 pistol was test fired at the Orange County Crime Lab and fired without malfunction. The Glock 22 handgun was determined to have fired the three (3) cartridge casings recovered from the scene along with one ejected, unfired cartridge.

Vehicle Examination

The Dodge Durango, driven by Minor Doe, had minor collision damage to the right rear corner panel and right rear wheel well. This damage was consistent with the damage observed to the front left push bar and left front fender of Officer Flynn's police SUV.

Toxicological Examination

A postmortem sample of Minor Doe's blood was collected during the autopsy. The blood was submitted to the OCCL and examined for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Aripiprazole	Postmortem Blood	Detected
Caffeine	Postmortem Blood	Detected
Etomidate	Postmortem Blood	Detected
Fluoxetine	Postmortem Blood	0.91 + 0.13 mg/L
Fluoxetine	Peripheral Blood	0.559 + 0.078 mg/L
Naproxen	Postmortem Blood	Detected
Norfluoxetine	Postmortem Blood	1.01 + 0.12 mg/L
Norfluoxetine	Peripheral Blood	0.704 + 0.080 mg/L

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.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when the use for force is in compliance with Penal Code Section 835a, described in detail below. 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, amended as of January 1, 2020, allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use objectively 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. A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

This use of force 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 that 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 directly applicable to the circumstances surrounding the interactions of Fullerton Police Department Officer Flynn with Minor Doe.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officer Flynn's statements to the OCDASAU investigators and other relevant material and witnesses present at the incident, including the video footage of the incident.

The issue in this case is whether the conduct of Officer Flynn on July 5, 2019 was criminally culpable and without justification. As stated above, in order to charge Officer Flynn 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 officer's conduct. Therefore, in order to lawfully charge Officer Flynn with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions that day of Officer Flynn were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a recent case, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

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

It is evident that Officer Flynn was justified in believing that Minor Doe posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Minor Doe in the moments leading up to the shooting.

As described above, after witnessing Minor Doe’s SUV traveling in excess of 100 mph on a busy roadway, Officer Flynn monitored the SUV’s taillights as it passed and noticed no signs of braking or slowing down. Determining the SUV’s speed was unsafe, Officer Flynn entered the carpool lane, the lane in which Minor Doe was driving, and continued monitoring the vehicle. As Officer Flynn accelerated to 120 mph, he noticed the SUV swerving from lane to lane and believed the driver might be intoxicated.

When Officer Flynn obtained the license plate number of the SUV and conducted a records check using his mobile digital computer, the SUV returned as a rented vehicle. Based on his training and experience, Officer Flynn knew that suspects involved in criminal activity often use rented vehicles during the commission of their crimes or in the flight thereafter. Because this vehicle was driving erratically, he believed this might be one of those situations. This conclusion by Officer Flynn is reasonable based on all the evidence.

As Officer Flynn neared the vehicle, Minor Doe made an abrupt right turn from the carpool lane and collided with the front end of Officer Flynn’s police unit. The impact of the collision caused Officer Flynn’s vehicle to turn to the right and come to a stop facing horizontally across the eastbound lanes of the freeway. He then saw the SUV come to a rest a short distance from the front of his unit, facing west, opposite the flow of traffic. Officer Flynn immediately requested emergency assistance from police dispatch believing that he had just been intentionally collided with and having no information about who the driver was or any potential passengers. Officer Flynn was reasonably in fear for his safety due to the vehicle collision and was justified in drawing his service weapon as he exited his unit. As he stood in the doorway of his unit, he began issuing commands toward the SUV but received no responses. Officer Flynn could only see into the passenger window of the SUV and could no longer see the driver, Minor Doe, or ascertain how many other occupants may be present in the SUV.

In the several seconds before the shooting, Officer Flynn advanced towards the rear bumper of the SUV in an effort to determine where Minor Doe had gone. Officer Flynn was to the rear of the driver’s side of the SUV and began to slowly maneuver around the corner of the vehicle towards the driver’s door. Officer Flynn turned the corner of the vehicle and was surprised by Minor Doe walking toward him with her arms raised, holding what nearly identically resembled a black semiautomatic firearm, in a shooting position with the barrel pointed directly at him. Officer Flynn saw anger on Minor Doe’s face and was in fear for his life. This fear was clearly justified and reasonable based on the totality of all the circumstances known to Officer Flynn. Officer Flynn reasonably and justifiably thought he was being ambushed and realized Minor Doe already had

him in her sights from a close distance of 6-7 feet. Officer Flynn then fired several shots, two of which made contact with Minor Doe, prior to Officer Flynn's pistol having a stove-pipe malfunction. When Officer Flynn fired his weapon, he justly and reasonably believed Minor Doe was going to kill him. Based on the totality of all the circumstances, it was necessary for Officer Flynn to react by firing his weapon in self-defense and defense of others.

It should also be noted that, in order for Officer Flynn 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 Officer Flynn did not act in reasonable and justifiable self-defense or defense of another when he shot at Minor Doe. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Officer Flynn to believe that his life and the lives of others were in danger. Therefore, it is our opinion that Officer Flynn was justified when he shot at Minor Doe. Although the incident is deeply saddening, resulting in the death of a minor with mental illness, Officer Flynn did not commit a crime. To the contrary, he carried out his duties as a peace officer in a reasonable and justifiable manner.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal conclusion that there is no evidence of criminal culpability on the part of Officer Flynn. It is also our legal conclusion that there is substantial evidence showing that Officer Flynn's actions were objectively necessary, reasonable, and justified under the circumstances when he shot Minor Doe on July 5, 2019.

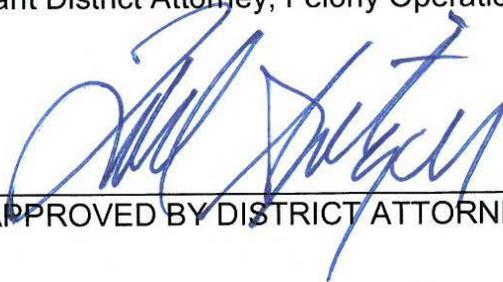
Accordingly, the OCDA is closing its inquiry into this incident.



AVERY T. HARRISON
DEPUTY DISTRICT ATTORNEY
HOMICIDE UNIT



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



6-22-2020

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