



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

November 10, 2020

Chief Jerry Price  
La Habra Police Department  
150 North Euclid Street  
La Habra, CA 90631

Re: Officer-Involved Shooting on September 26, 2019  
Fatal Incident involving Randolph Valendino Aguirre  
District Attorney Investigations Case # SA 19-021  
La Habra Police Department Case # 19-026663  
Orange County Crime Laboratory Case # FR 19-52833

Dear Chief Price,

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 La Habra Police Department Officers Jason Coleman and Cassandra Robles, and Sergeant Edward Torres. Randolph Valendino Aguirre, age 29, died as a result of his injuries. The incident occurred in the City of La Habra on September 26, 2019.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the September 26, 2019, fatal, officer-involved shooting of Randolph Valendino Aguirre ("Aguirre"). 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 La Habra Police Department 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 September 26, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted, and 16 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: La Habra Police Department reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, officer processing, vehicle processing, and firearms examination reports; Orange County Sheriff-Coroner's Office reports; Los Angeles County Fire Department pre-hospital care reports; vehicle airbag control module (crash data retrieval) reports; body-worn camera

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video; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Aguirre; criminal history records related to Aguirre, including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred, and if the use of force was consistent with the law, on the part of La Habra Police Department officers or personnel, specifically Sergeant Torres, and Officers Coleman and Robles. The OCDA will not be addressing any possible issues of 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 an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, 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 is attempting to obtain a statement from the involved officers. Sergeant Torres and Officer Robles declined to give a voluntary statement to OCDA Investigators on October 3, 2019. Officer Coleman gave a voluntary statement to OCDA Investigators on February 19, 2020.

### **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 Thursday, September 26, 2019, at approximately 2:37 a.m., an anonymous caller contacted the La Habra Police Department (LHPD) dispatch to report multiple subjects taking apart a vehicle in the area of 200 South Alpine Street in La Habra. At approximately 2:41 a.m., Officers Coleman, Robles, K9 Officer Travis Nelson, and Officer Trainee Christopher Antonio indicated they would respond.

Officer Coleman was driving a black and white police vehicle with "La Habra Police" clearly marked on each front door. Officer Coleman wore a traditional navy blue uniform, adorned with LHPD patches on each sleeve and a metal police badge above the left breast pocket. All LHPD officers at the scene wore the same LHPD uniforms. All had body-worn cameras, which were activated during the incident. K9 Officer Travis Nelson and Officer Trainee Christopher Antonio were driving a black and white K9 police vehicle with "LA HABRA POLICE," "K9," and "CAUTION: POLICE DOG" clearly marked across each side panel and the back panel.

As Officer Coleman traveled eastbound on Alpine Street, he noticed a chain-link gate on the north side of the street that appeared to have been forced open. The gate was located in the rear of Metro Auto Sales and Express Auto Recon, an auto dealership and auto body garage located on 1250 East La Habra Boulevard. Officer Coleman observed a black Cadillac Escalade parked in the driveway, past the open gate. The Escalade's lights were on and it was playing audible music. At approximately 2:46 a.m., Officer Coleman exited his patrol car and approached the passenger side of the Escalade and saw Randolph Valendino Aguirre, the sole occupant with visible tattoos, in the driver's seat. Officer Coleman gave Aguirre commands to exit the vehicle and Aguirre failed to comply. According to Officer Coleman, Aguirre made "all kinds of weird statements" indicating that he was not going to cooperate with the officers. This initial contact was not captured on Officer Coleman's body-worn camera.

Shortly after, K9 Officer Nelson and Officer Trainee Antonio parked their vehicle in the apron of the driveway, a short distance behind the Escalade. The officers exited the vehicle and removed the K9 from the vehicle. Both officers took positions southeast of the Escalade. Officer Coleman backed away from the Escalade and assumed a position to the right of Officer Nelson. Once positioned, Officer Coleman, Officer Nelson, and Officer Trainee Antonio activated their body-worn cameras. At approximately 2:47 a.m., Officer Robles arrived and activated her body-worn camera. At this time, Officer Coleman moved the K9 vehicle so that it was almost in contact with the rear bumper of the Escalade, in order to prevent the vehicle from reversing and escaping. Shortly after, Sergeant Torres arrived at the scene.

At approximately 2:48 a.m., the officers observed the Escalade's engine turn on and the reverse lights illuminate. Aguirre lowered the front passenger window and briefly held one hand up in the window before closing it again. Aguirre was wearing his seatbelt, which caused officers to be on higher alert, as it indicated he may drive away. Officer Nelson stood behind the passenger side door of his K9 vehicle and issued a series of commands and K9 announcements through the public address ("PA") speaker to Aguirre. He instructed Aguirre to exit the Escalade from the passenger side and warned Aguirre that if he did not comply, the police dog would be utilized. While issuing commands, Officer Nelson restrained the K9 with one hand and held the PA in his other hand. Noticing that Officer Nelson was in a vulnerable position, Officer Coleman retrieved his departmental AR-15A4 patrol rifle from his vehicle to protect Officer Nelson during his attempts to communicate with Aguirre. Officer Coleman, who was covering himself and Officer Nelson, believed the rifle would provide more effective protection than his pistol. Officer Antonio was positioned along the west edge of the gate, adjacent to the K9 vehicle while Officer Robles was on the east edge of the gate.

Officer Nelson continued to issue several commands and K9 announcements to Aguirre through the PA speaker. The body shop is located in a residential area and a row of single-family homes is directly across from the service bays. Several neighborhood residents stated they heard the officers tell Aguirre, "Get out of the car," "Put your hands outside the vehicle," "I will release the dog if you don't come out," and "Come out with your hands up." Sergeant Hurst arrived at the scene and began instructing and coordinating the positions of the responding units. Officer Coleman continued to give commands to Aguirre to exit the vehicle. Aguirre refused to comply and responded by repeatedly revving the engine, turning up the radio volume, honking the horn, yelling "F\*\*\* you," and flashing gang signs out of the driver side window and sunroof. Due to the noise and their positioning, Officers Coleman and Nelson found it difficult to understand Aguirre at times. Officer Coleman stated another officer heard Aguirre say he had a gun, which "brought our level up a little bit as far as . . . the potential danger to all of us."

At approximately 2:57 a.m., the rear hatch of the Escalade opened. Sergeant Hurst heard Aguirre say the word "shoot," but was not sure if Aguirre said, "I'm going to shoot" or "Shoot me." Multiple officers observed Aguirre point at them numerous times and make the gesture of a firearm. Officer Nelson reacted to these gestures by re-positioning himself behind his vehicle's door. Officers decided to deploy a 40mm oleoresin capsicum ("OC") (a.k.a. "pepper ball") into the Escalade in an attempt to force Aguirre out of the vehicle and convince him to surrender. At approximately 3:01 a.m., Sergeant Hurst deployed one 40mm OC round into the vehicle, and observed and smelled the OC inside the vehicle. Aguirre did not comply and instead, continued to rev the engine, yell profanities at the officers, yell inaudibly in English and Spanish, and stick his hand out of the window to flash gang signs and to make fast hand gestures simulating a gun. At approximately 3:03 a.m., Officer Nelson announced to the officers, "He's saying to shoot him." Shortly after, Officer Robles announced that Aguirre said he's, "f\*\*\*ed in the head." Officer Hurst deployed a second 40mm OC round into the Escalade and again, Aguirre was unaffected and continued yelling profanities and gesturing as if he had a gun.

Less than a minute later, Aguirre put the Escalade into reverse and began backing up toward the K9 vehicle and the closely positioned officers. Several of the officers were forced to suddenly move out of the way for fear the Escalade would push the K9 vehicle back and strike them. Sergeant Hurst and Officer Nelson discussed using a foam projectile to shatter a back window to create an entry point to deploy the K9. Officers deployed a 40mm foam round into the rear passenger window, but it failed to create a large enough opening to gain visibility into the vehicle and safely deploy the dog.

Seconds later, Aguirre reversed the Escalade and collided with the K9 vehicle. He then drove forward and collided with three additional vehicles parked inside the auto body shop gates. After crashing into one car, he maneuvered the Escalade and collided with two vans. He maneuvered between the vans and rammed the northernmost metal rollup garage door until the door gave way. He then drove the Escalade into the interior garage bay of the body shop. At that time, officers believed Aguirre was contained within the business. Sergeant Torres, Officer Coleman and Officer Robles moved to the northwest corner of Alpine Street and South Bedford Street to guard the east side of the body shop, should Aguirre exit the garage bay through the closed metal rollup garage door. Although Aguirre was not visible from outside the building, officers continued to hear the sound of screeching tires and multiple collisions. An officer can be heard asking about the plan if Aguirre went mobile. Unbeknownst to the officers, the shop owner had fallen asleep at his desk and was inside the building. The shop owner was awakened by the loud crashing noises and saw Aguirre, driving the Escalade, accelerating rapidly backwards, west toward the back lot. He then saw Aguirre accelerate eastbound through the garage toward South Bedford Street.

At approximately 3:07 a.m., Aguirre used the Escalade to push a white Mercedes out of the garage bay and through the metal rollup garage door. The Mercedes struck another vehicle parked in front of the rollup door. Officers observed Aguirre reverse back into the garage bay, then heard tires screeching. The Escalade accelerated forward and came into view, ramming into the Mercedes a second time with such force that the rollup door fell on the Mercedes, the hood of the Mercedes was completely buckled upward, and the rear of the Mercedes reached the driver's side of a vehicle parked along the curb across the street. Officers described the Escalade as coming at them "full steam ahead," "at a high rate of speed," and "very violent." The Escalade momentarily came to rest on the apron of the driveway, facing South Bedford Street. At that time, Sergeant Torres positioned himself in the southbound lane of South Bedford Street, approximately twenty feet south of the Escalade. Officer Coleman stood on the west sidewalk approximately eighteen feet south of the Escalade. Officer Robles stood on the sidewalk a few feet south of Officer Coleman.

Sergeant Torres and Officer Robles had their duty weapons pointed in the direction of the Escalade. Officer Coleman had his patrol rifle with a mounted flashlight pointed toward the Escalade, illuminating the interior of the Escalade. With the aid of the flashlight, Officer Coleman could see into the passenger compartment of the vehicle and described Aguirre's face as having a look of "evil." As the three officers slowly advanced toward the Escalade, it accelerated forward. Officers still ordered Aguirre to get out of the car.

Several neighborhood residents, who were awakened by the noises, saw Aguirre ram the Escalade through the garage door, into cars obstructing his path and into the street, and described his actions as an attempt to escape. Another witness described hearing the police "plead" with Aguirre several times before Aguirre drove the vehicle in reverse and then forward, and how he appeared to "have almost struck an officer." That same witness said police "opened fire" as the vehicle was "trying to get away."

From his position at the "B pillar" (slightly behind the passenger seat), Officer Coleman could not see Aguirre's hand, but he saw Aguirre raise his right arm toward the passenger front window. When Officer Coleman saw this, he believed Aguirre had "clearly come up in a shooting position as if he were going to-, going to shoot . . . out the window at my partner." Officer Coleman stated that he had been told Aguirre had a gun, based on what another officer heard Aguirre say during the twenty-minute standoff. From Officer Coleman's vantage point, he believed Aguirre entered into a shooting position while he was accelerating from the driveway and into the street. Sergeant Torres was positioned in the street, in Aguirre's "clear line of sight" to shoot. When Officer Coleman saw this, he "didn't want my sergeant to be killed" and so fired at Aguirre "to prevent him from killing my sergeant."

Officer Coleman fired seven rounds from his Colt AR-15A4 rifle within approximately 1.77 seconds as he walked toward the Escalade. He began firing from a distance of approximately eighteen feet and his final shot was from a distance of approximately ten feet. While Officer Coleman fired, Sergeant Torres fired ten rounds from his Glock 21C, in approximately 3.2 seconds, as he moved toward the Escalade. The rounds struck the front passenger door and window. Officer Coleman and Sergeant Torres stopped firing when the Escalade stopped moving. Officer Robles attempted to fire her gun, but the weapon did not discharge. She performed a "tap and rack" procedure to clear the cartridge and pointed her weapon at the Escalade but did not fire. This malfunction is evidenced by a live .40 caliber cartridge with a light primer strike that was located on the west sidewalk where Officer Robles was standing. The time from the Escalade's final acceleration through the garage and onto the street, to the time of the shots, was approximately 5 seconds.

After the Escalade stopped moving, the engine was still running and in drive, directly behind the

Mercedes. Another police vehicle was parked behind the Escalade to prevent further movement. Officers saw Aguirre with his head down, but approached with a shield for officer safety because they did not know his status. Once the vehicle was secured, officers requested the assistance of the Los Angeles County Fire Department, who was staging nearby. Aguirre was pronounced deceased at the scene.

Evidence recovered from the Escalade's event data recorder provided data from the three most recent front impact events. In the first, the vehicle's speed increased from ten to thirteen miles per hour in 2.5 seconds, and the throttle was at 99 percent. In the second, the vehicle's speed increased from two to seventeen miles per hour in 2.5 seconds, and the throttle was at 99 percent. In the third, the vehicle's speed increased from twelve, to nine, then to twenty miles per hour in 2.5 seconds, and the throttle ended at 99 percent.

Investigators later discovered that the fence had been closed and locked prior to the incident. The Escalade was inside the fenced area, unlocked and with the keys in the ignition, and was present on the lot for repairs. The owner of the Escalade did not give Aguirre permission to access or drive the vehicle.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- One 2012 Black Cadillac Escalade
- One Colt AR-15A4 Lightweight rifle (Officer Coleman)
- One Glock 21C pistol (Sergeant Torres)
- One Glock 22 pistol (Officer Robles' gun)
- Seven fired cartridge cases head stamped .223 Remington caliber
- Ten fired cartridge cases head stamped .45 Auto caliber
- One unfired cartridge case with a primer strike, head stamped .40 S&W caliber
- One bullet collected at the scene
- Four bullets extracted from the autopsy
- Five bullets extracted from the vehicle
- Two bullet fragments from the autopsy
- Seven bullet fragments from the vehicle
- Two orange 40mm OC projectile collected from the vehicle
- One blue 40mm foam projectile collected from the vehicle

### **AUTOPSY**

On September 27, 2019, Forensic Pathologist Dr. Aruna Singhania of the Orange County Sheriff's Department Coroner Division conducted an autopsy on the body of Randolph Valentino Aguirre. Dr. Singhania concluded that Aguirre sustained 13 gunshot wounds.

Dr. Singhania determined the cause of death was any one of three instantly fatal wounds to the skull, back, and abdomen. The remainder of the gunshot wounds were non-fatal wounds.

### **EVIDENCE ANALYSIS**

#### **Firearms Examination**

Sergeant Torres' Glock 21C pistol, Officer Coleman's Colt AR-15A4 rifle, and Officer Robles' Glock 22 pistol were test fired at the Orange County Crime Lab and all fired without malfunction.

Sergeant Torres' Glock 21C pistol was determined to have fired ten of the cartridge cases recovered from the scene. One bullet recovered at the autopsy and three bullets recovered from the Escalade were determined to have been fired from the Glock 21C pistol. One bullet recovered at the autopsy and one bullet recovered from the Escalade shared the same class characteristics and some individual characteristics as Officer Torres' Glock 21C pistol, but it could not be determined if the projectiles were fired from the pistol. An additional bullet from the scene shared the same class characteristics as the Glock 21C, but was unsuitable for comparison due to damage.

Officer Coleman's Colt AR-15A4 rifle was determined to have fired seven cartridge cases recovered from the scene. Two bullets recovered at the autopsy and two fragments recovered from the Escalade shared the same class characteristics as the Colt rifle, but it could not be determined if the projectiles were fired from the Colt rifle.

Officer Robles was unable to successfully fire her weapon, and a live .40 caliber cartridge with a light primer strike was located in the vicinity of her attempt at the scene.

**Toxicological Examination**

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.0581 + 0.0043 mg/L
Methamphetamine	Postmortem Blood	0.505 + 0.036 mg/L
THC	Postmortem Blood	0.0012 + 0.0002 mg/L
Carboxy-THC	Postmortem Blood	0.0139 + 0.0014 mg/L

**AGUIRRE'S PRIOR CRIMINAL HISTORY**

Aguirre's criminal history was reviewed and considered. Aguirre had a California Criminal History dating back to 1990. He had been arrested for the following charges:

- Robbery
- Participation in a Criminal Street Gang
- Threatening Crime with Intent to Terrorize
- Parole Violation
- Manufacture/Possession of Dangerous Weapon
- Possession of a Concealed Dirk or Dagger
- Obstructing/Resisting a Police Officer
- Disorderly Conduct (Under the Influence of Drugs)
- Trespass (Occupy/Drive on Private Property Without Consent)
- Disturbing the Peace
- Providing False Identification to a Police Officer
- Driving Without a License
- Vandalism
- Possession of Unlawful Paraphernalia and a Controlled Substance
- Probation Violation

## **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 done in compliance with California Penal Code section 835a. 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 a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, 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 objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officer 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.

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 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 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 applicable to the circumstances surrounding the interactions of La Habra Police Department Sergeant Torres, Officer Coleman, and Officer Robles with Aguirre.

### **LEGAL ANALYSIS**

The facts in this case are determined by considering all evidence available to the OCDA, including statements by law enforcement officers, video, witness statements, forensic evidence, and all other relevant material.

The issue is whether the conduct of Sergeant Torres and Officer Coleman on September 26, 2019, was criminally culpable and without justification. The same legal analysis applies to Officer Robles' conduct even though her weapon failed to discharge. In order to charge Sergeant Torres and Officer Coleman with a criminal violation, it is required that the prosecution have a good faith belief that no legal justification existed for the police officers' conduct, and that the facts will show, beyond a reasonable doubt, that they did not act in lawful self-defense or defense of others. If the actions of Sergeant Torres and Officer Coleman were justifiable, necessary, and reasonable as lawful self-defense or defense of others, then criminal charges will not be warranted. As the Court of Appeal held in a recent case, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [ ] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal 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 our conclusion that Sergeant Torres and Officer Coleman were justified in believing that Aguirre posed a significant threat of death or serious physical injury to himself and others. Dispatch indicated that multiple subjects were dismantling a vehicle, which created greater risk to officer safety, particularly given the time of the call. Upon arrival at the body shop, they observed damage to the gate, as if something had crashed through it. In addition, they saw Aguirre wearing a seatbelt in the driver's seat of the Escalade, with the engine running. Aguirre refused Officer Coleman's request to step outside the vehicle, and displayed defiant and irrational behavior. Aguirre turned up music in the Escalade, repeatedly honked the horn, yelled profanity, flashed gang signs, and revved the engine. Of particular concern was Aguirre's repeatedly pointing at the officers, simulating a handgun.

Officer Coleman heard from a fellow officer that Aguirre said he had a gun, which "brought our level up a bit as far as the, the potential danger to all of us." Sergeant Hurst heard Aguirre used the word, "shoot," Officer Nelson told the officers, "He's saying to shoot him," and Officer Robles heard Aguirre say he's "f\*\*\*ed in the head." During the twenty-minute standoff, Officers Coleman and Nelson repeatedly ordered Aguirre out of the vehicle. Officer Nelson warned that the K9 would be used. Officers used two rounds of OC in the vehicle to get Aguirre out of the vehicle, but were unsuccessful. Officers considered deploying the K9, but were unable to do so when the foam projectile did not create a large enough opening to send the K9 into the vehicle safely. Aguirre continued to respond with belligerence and profanity.

Throughout the encounter, Aguirre used the Escalade to communicate defiance and wielded it as a very dangerous weapon. Officers heard Aguirre say to shoot him, so they could have interpreted Aguirre's escalating dangerous behavior as intentional provocation to use deadly force. Before accelerating into the interior of the auto shop, Aguirre reversed and crashed into the K9 vehicle, forcing officers to retreat to avoid being struck. While officers surrounded the vehicle and deployed non-lethal force, Aguirre erratically accelerated forward and reverse in the Escalade. He crashed into multiple vehicles and drove through a metal rollup door to get inside the building. He crashed into objects inside the garage, then rammed a parked vehicle through a second metal rollup door, and through a second vehicle to exit onto the street.

Aguirre suddenly accelerated forward into the street, near where Officer Torres was standing. Civilian witnesses observed Aguirre nearly strike officers in his path with the Escalade, and interpreted these actions as a clear attempt to escape. Officer Coleman used his rifle-mounted flashlight to illuminate Aguirre in the vehicle and recalled that he had a look of "evil" on his face. Officer Coleman saw Aguirre raise his right arm in a shooting position toward the front passenger window as the Escalade moved forward. Officer Coleman described Sergeant Torres, who was

standing in the street approximately 20 feet from the Escalade, as being in Aguirre's "clear line of sight" at the time. Residential homes were also behind Sergeant Torres. Officer Coleman stated that he and Sergeant Torres fired at the subject at "about the same time." The officers ceased fire when the vehicle stopped moving, and they no longer perceived an imminent danger to themselves or others.

Based on his statement to OCDA investigators, Officer Coleman saw Aguirre, inside the vehicle, take aim at Sergeant Torres "as if he were going to-, going to shoot . . . out the window at my partner." Officer Coleman explained to investigators that he fired at Aguirre "to prevent him from killing my sergeant." Although Officer Coleman could not see Aguirre's hands, Officer Coleman's training and experience allowed him to clearly recognize that Aguirre's right arm was raised in a shooting position and was aimed at Sergeant Torres. Officer Coleman believed that immediate action was required in order to protect himself, Sergeant Torres, and the neighborhood residents.

It was also reasonable for the officers to believe Aguirre was attempting to flee or provoke officers' use of deadly force. Aguirre's volatile and irrational behavior, statement to "shoot him," failure to comply, and use of the Escalade to cause damage with disregard to property or safety of police personnel created a significant danger to the officers and the public. It is reasonable to believe that Aguirre's escape would have resulted in a police pursuit and created an extremely dangerous situation for law enforcement and the public. Based on the totality of the circumstances, Sergeant Torres and Officer Coleman each reasonably believed that Aguirre was aiming to shoot Sergeant Torres and use the Escalade to escape, placing their lives, and the lives of others in danger. Numerous de-escalation efforts were unsuccessful. Therefore, the officers' use force to apprehend Aguirre was justifiable, and it was reasonable for Sergeant Torres and Officer Coleman to believe Aguirre posed an imminent threat of death or serious bodily harm to the officers, neighborhood residents, and other motorists.

Certainly, it would have been preferable for the OCDA to obtain voluntary statements from Sergeant Torres and Officer Robles regarding their observations and state of mind at the time of the shooting. However, the decision by Sergeant Torres and Officer Robles, although unfortunate and regrettable, not to give the OCDA a voluntary statement may not legally and ethically be used to draw any negative evidentiary inferences regarding their conduct or state of mind.

In order for Sergeant Torres, Officers Coleman and Robles 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 Torres and Officers Coleman and Robles did not act in reasonable, necessary, and justifiable self-defense, or defense of another, when they shot Aguirre. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case.

**CONCLUSION**

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is insufficient evidence to prove criminal culpability beyond a reasonable doubt on the part of any of the involved law enforcement officers when they shot (or attempted to shoot) Aguirre on September 26, 2019.

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



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**ERIN ROWE**  
SENIOR DEPUTY DISTRICT ATTORNEY  
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READ AND APPROVED BY **EBRAHIM BAYTIEH**  
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