



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

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TODD SPITZER

January 21, 2021

Sheriff-Coroner Don Barnes  
Orange County Sheriff's Department  
550 N. Flower Street  
Santa Ana, CA 92703

Re: Officer-Involved Shooting on May 11, 2020  
Fatal Incident involving Stephan Curtis McCulloch  
District Attorney Investigations Case # S.A. 20-011  
Orange County Sheriff's Department Case # 20-015073  
Orange County Crime Laboratory Case # 20-44779

Dear Sheriff Barnes,

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 Orange County Sheriff Department Deputies Craig Sanders and Mark Dent. Stephan Curtis McCulloch, age 32, died as a result of his injuries. The incident occurred in the City of Laguna Niguel on May 11, 2020.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 11, 2020, fatal, officer-involved shooting of Stephan McCulloch. 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 Orange County Sheriff's Department deputies involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On May 11, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, eighteen (18) interviews were conducted, including several neighbors found in a neighborhood canvas. OCDASAU Investigators also obtained and reviewed the following: Orange County Sheriff's Department (OCSD) reports; Patrol Video System (PVS) audio recordings; audio dispatch and radio traffic recordings; 911 calls; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing, firearms examination reports; crime scene investigation photographs; OCDA crime scene drone photographs; Orange County Sheriff-Coroner's Office reports; Orange County Fire Authority (OCFA) pre-hospital care reports; medical

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records and photographs related to the injuries sustained by McCulloch; criminal history records related to McCulloch including prior incident reports; social media postings related to McCulloch; civilian witness' cell phone video recordings and doorbell camera video recordings; 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 Orange County Sheriff's Department deputies or personnel, specifically Deputy Craig Sanders and Deputy Mark Dent. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

### **INVESTIGATIVE METHODOLOGY**

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to 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. Deputy Sanders and Deputy Dent gave voluntary statements to OCDA Investigators on May 14, 2020. Deputy Wesley Fox, who was present at the scene but was not involved in the shooting, gave a voluntary statement to OCDA Investigators on May 13, 2020.

### **FACTUAL SUMMARY**

On Monday, May 11, 2020, at approximately 12:27 p.m., Deputy Craig Sanders was dispatched to a Laguna Niguel apartment to investigate a reported disturbance. The resident reported that a male and female were throwing objects and people screaming in the apartment next door. She also reported that the male had a baseball bat and was hitting things inside the residence.

While Deputy Sanders was on his way to the scene, dispatch received a call from another neighboring resident, who also reported items being broken and doors being smashed inside the apartment located at 50 Coral Sea, and that the suspect had a baseball bat. At approximately

12:30 p.m., Deputies Mark Dent, Joseph Bucaro, and Michael Marroquin were dispatched to the scene and advised to activate their emergency lights and sirens. All deputies were advised that the dispatch was upgraded to "Priority One" because the suspect was possibly armed with a weapon.

A few minutes later, Deputy Sanders arrived at the multi-unit apartment building where 50 Coral Sea was located. He exited his vehicle, removed his AR-15 rifle, chambered a round, and approached the courtyard entrance of the building. Deputy Sanders said he felt the rifle "would place myself as well as my partners and any innocent civilians around in a safer situation because . . . the rifle is far more accurate and I can keep a distance away from somebody who is potentially armed with a bat...[making it] overall safer for everybody involved, including the suspect."

Deputy Dent, who arrived shortly after, exited his vehicle, removed his less-than-lethal shotgun, chambered a super-sock 12-gauge round, and joined Deputy Sanders. From their positions at the stairwell below the two upstairs apartments, Deputies Sanders and Dent could hear muffled sounds of a struggle emanating from inside the location. At this time, Deputies Sanders and Dent were joined by Deputy Fox. Deputy Marroquin drove his vehicle to a position behind the building. Each deputy wore an OCSO issued green uniform, adorned with OCSO patches on both shoulders; a cap with an OCSO badge on the front; and a vest adorned with a cloth sheriff badge on the front left breast and a "SHERIFF" patch on the back.

At approximately 12:37 p.m., deputies went upstairs to 50 Coral Sea in order to contact the two residents, McCulloch and Jane Doe. The stairway leading to the apartment had two small landings, and a larger shared landing at the top for the two apartments. Deputy Sanders was positioned on the top, shared landing between the two apartments, to the left of the door for apartment 50. Deputies Dent and Fox were positioned on the stairs, to the right of the door, below the shared landing where Deputy Sanders stood.

Before knocking, Deputy Sanders noticed what he recognized as signs of forced entry on the front door handle and lock. He also heard sounds of muffled screaming and objects being thrown inside the apartment. Deputy Sanders recalls feeling uncertain about the situation and thinking through various possibilities: "a domestic call, a home invasion robbery, a drug deal gone bad." However, he was certain of one thing: ". . . that somebody was in danger and it didn't matter what type of call it was . . . that somebody needed help and that I had to do something." Deputy Sanders said this is why he pounded on the door and yelled as loudly as he could, "Sheriff's Department, open the door!"

Jane Doe recalled hearing a knock and someone yell, "Open the door." Although she did not hear the person identify themselves as the sheriff, she "knew it was them." Two neighboring residents heard deputies identify themselves and give commands to open the door, which was also captured on the audio of a neighbor's Ring camera.

After Deputy Sanders pounded on the door and announced his presence, he heard a male voice, McCulloch, yell out "Alright mother\*\*\*\*\*, I'm coming" or "Alright, mother\*\*\*\*\*, I'm coming for you." Immediately after, Deputy Sanders heard several loud and forceful impacts to the walls and door. The impacts were so strong that Deputy Sanders felt the vibration and saw the door flex outward. One neighbor saw McCulloch walk to the front door and strike the door repeatedly with a hammer. Deputy Sanders immediately thought, "Somebody's gonna come through this door and try to kill me or seriously, seriously hurt me or my partners."

Deputy Sanders feared that if he stayed on the top landing and the door was breached from inside, he would have been trapped, separated from his partners, and left with no escape other than to

jump off the two-story landing, which would not only injure himself, but also leave his partners without assistance. With this in mind, Deputy Sanders retreated to the second landing and called to his partners to “back up.” Deputy Dent retreated to just beneath the second landing and Deputy Fox, to the bottom of the stairs.

According to the deputies, the front door then “violently swung open.” McCulloch stood in the doorway, yelling and screaming at the deputies, “Come on!” Deputies described McCulloch as a male, approximately 30-35 years of age, 6’0” to 6’1”, 190-220 pounds, with a muscular build. Deputies further described his demeanor as “very tense” and “very, very irrational and extremely upset,” as if he was “at least an 11” on a 1 to 10 scale of anger.

Deputies commanded McCulloch multiple times to show his hands. McCulloch refused to comply and yelled “Come on, come on, shoot, shoot!” and “Shoot me, I have a hammer, shoot me!” Deputies noticed McCulloch was holding a hammer, approximately twelve (12) inches in length with a six (6) inch, flat metal head on one end and a claw on the other end. Deputy Sanders described it as a “heavy construction-type hammer.” Deputy Sanders saw McCulloch with a hammer in his hand that he was clutching in a “white-knuckle grip...very tightly.” Deputy Dent said McCulloch was holding the hammer up in “a striking motion” as opposed to “at his side in a leisurely manner.” Deputy Fox radio broadcasted to notify all deputies that the subject had a hammer. Deputies ordered McCulloch to “drop the hammer” several times. McCulloch refused to comply.

When Deputy Dent saw his partners positioned below him on the stairs and McCulloch standing at the top of the stairs, he immediately recalled a training video he had watched a day before. The training video depicted similar positioning of the suspect and officers and demonstrated how the suspect could close ground quickly on the officers, putting them at a disadvantage. Applying his training here, Deputy Dent indicated that he believed that McCulloch’s position put the deputies at a tactical disadvantage and feared for their safety. Jane Doe, in her interview, indicated that when McCulloch opened the door that he “looked down, so I think [the police] were probably on the stairs,” though she could not see the Deputies outside her apartment.

When McCulloch took a step forward, Deputy Dent tried to deescalate the situation by telling him “you’re not in trouble right now,” but McCulloch took a step forward and brought the hammer up “in a more aggressive manner.” Considering McCulloch’s “amount of agitation and tactical advantage,” Deputy Dent fired one (1) less-than lethal super-sock 12-gauge round to subdue McCulloch so they could attend to the distressed Jane Doe inside. He had been trained that firing from that distance of 10-15 feet would subdue a person who is not on drugs or alcohol. Accordingly, he had hoped the impact of the projectile would cause McCulloch to drop the hammer and comply with their commands so the incident could be resolved without any serious injuries. The projectile struck McCulloch in the abdomen and caused him to briefly buckle at the waist. Based on McCulloch’s minor reaction to the impact, Deputy Dent indicated that he believed that McCulloch was under the influence of drugs, which would numb the pain. McCulloch then fled into the apartment with the hammer still in his hand and closed the door behind him, but it did not latch.

Once McCulloch went back inside the apartment, the deputies could hear Jane Doe “screaming bloody murder.” Deputy Sanders, hearing the “blood curdling screams,” believed that Jane Doe was in danger and decided to enter the apartment. Deputy Dent followed. Once inside, Deputy Sanders saw McCulloch with the hammer in his left hand, running toward Jane Doe, who was standing near the dining room. Jane Doe recalled, in her interview, that McCulloch ran towards her and grabbed hold of her as deputies entered her apartment, then later said he did not grab

her, but that she was sitting in a chair and he “ran past” her and used her to “whip around” and “to go faster of something.” Deputy Sanders saw McCulloch wrap his right arm around Jane Doe’s upper torso and neck, hold the hammer in his left hand, and turn to face the deputies at the front door. McCulloch was holding the hammer in a ready striking position at approximately mid-torso height. All the while, Jane Doe was repeatedly screaming “help me” and frantically trying to escape McCulloch’s hold. The Ring camera audio captures screams of “help me” as Deputies enter the apartment and after the shout of “HRT HRT.” Jane Doe recalls yelling “no, no, no” repeatedly. Deputy Dent said Jane Doe looked “absolutely terrified” of McCulloch harming her. Deputy Sanders also noticed that the apartment “was a disaster” as he viewed broken windows and broken furniture. Deputy Dent agreed it was “trashed” appearing as though “someone intentionally had just destroyed everything they could.”

Deputy Sanders immediately recognized the hostage situation and called out, “hostage, HRT, HRT.” Both Deputy Sanders and Deputy Dent applied their hostage rescue training strategies and positioned themselves in a “tactical V” surrounding McCulloch. Deputies Sanders and Dent believed that McCulloch was going to strike Jane Doe with the hammer, which was sufficient to cause great bodily injury or death, and so believed her life was in danger. Deputy Sanders employed a hostage rescue strategy to distract McCulloch and in doing so, obtained an unobstructed view of McCulloch’s upper torso. At that moment, Deputy Sanders, armed with an AR-15 rifle, and Deputy Dent, armed with a less-than-lethal shotgun, fired at McCulloch simultaneously from approximately six (6) to eight (8) feet away. Deputy Sanders fired three (3) rounds into the center of McCulloch’s chest. Deputy Dent fired one (1) round at McCulloch’s head, but could not tell whether the gun discharged because Deputy Sanders had fired at the same time. McCulloch fell to the ground, still holding Jane Doe and the hammer.

Deputy Dent said he knew his less-lethal shotgun could be used for deadly force when fired at close range. He intended to use deadly force because he believed McCulloch “was going to use a weapon against [Jane Doe] and was holding her as a hostage against her will.” He believed that he would use the hammer to “cause serious bodily injury,” or “could have killed her.” Deputy Sanders said that in that moment, “I knew if I didn’t do something he was going to kill that woman or he was going to try to hit me with the hammer.”

At approximately 12:38 p.m., Deputy Sanders broadcasted that shots were fired and requested paramedics. Deputy Dent escorted Jane Doe out of the apartment. Deputy Sanders covered McCulloch while Deputy Fox placed him in handcuffs, approaching to step on the hammer to pull it out of McCulloch’s hand, since it was still being held by him. Deputy Fox and Marroquin and several other deputies rendered aid to McCulloch’s gunshot wounds until the paramedics arrived. Deputy Sanders followed the path of his bullets to determine if anyone else had been hit. When OCFA paramedics arrived and began assessing McCulloch, paramedics heard a loud explosion from the kitchen; the glass oven door had shattered. For safety reasons, McCulloch was moved outside onto the landing. A paramedic examined McCulloch and noted three (3) gunshot wounds: one in the chest and two in the back. McCulloch was unresponsive, pulseless, and apneic. The heart monitor confirmed McCulloch was asystole. At approximately 12:50 p.m., the paramedic pronounced McCulloch deceased.

OCDA Investigators interviewed Jane Doe at approximately 2:29 p.m. on the date of the incident and she indicated the following. McCulloch and Jane Doe had been dating for nearly two (2) years and had lived together at 50 Coral Sea for approximately four (4) months. She described their relationship as good, until recently. According to Jane Doe, McCulloch had been arrested for two felonies since January and had been “hallucinating” and “getting mental.” She attributed his change in behavior to his methamphetamine use.

Jane Doe told investigators that McCulloch was gone when she woke up and when he returned to the apartment, he was behaving violently and irrationally. McCulloch grabbed a hammer and for no apparent reason, started smashing objects, ripping objects off the walls, and repeatedly asking, "Where is he?" Jane Doe believed he was hallucinating, possibly that she was cheating, and begged him to calm down and stop breaking things. McCulloch continued on his rampage. He overturned furniture, placed items (possibly a bottle of explosives) into the oven, broke framed pictures, and used a hammer to destroy the flatscreen television mounted on the wall and knock holes in the walls. Jane Doe recalls screaming a lot out of concerns for her safety and was certain people outside her apartment could hear her and would call the police.

Jane Doe, who has suffered abuse before, felt like she was in danger because McCulloch "really loses his self." She was worried he was trying to blow up the apartment because she suspected he placed a bottle of explosives into the oven. When deputies arrived, Jane Doe was screaming and crying and begging McCulloch to stop because she did not want him to get arrested again and "go to prison forever." She explained she was crying because she had been in this situation with him before and was scared he was going to hit her and also because she didn't know what was going to happen.

OCDAs Investigators interviewed the residents of the apartment next to McCulloch's apartment. From inside their apartment, they heard fighting and heard Jane Doe yell "stop it" and "don't hit me." The witness saw McCulloch standing on the shared landing holding a baseball bat. The witness asked McCulloch if he was okay, to which he sarcastically replied, "Do I look okay?" The witness was scared and asked her daughter to call the police. When the deputies arrived, the witness saw them identify themselves and order McCulloch to open the door. He refused to open the door and repeatedly struck the door. She also saw McCulloch yell "shoot" and "shoot me" when the deputies asked him to put his hands up. The witness did not see the deputies shoot.

Other residents also heard the fighting and saw McCulloch holding a baseball bat and destroying property on the balcony and inside the apartment. One resident witness went outside when he heard the noise and McCulloch gave him a crazed look and yelled, "Come at me." The witness went back inside and saw McCulloch breaking the glass balcony door by punching it with his fists and "tearing up" the apartment. The witness heard Jane Doe cry, "please, no, stop" and suspected a domestic violence situation was occurring. When police knocked on the door, the witness saw McCulloch start banging on the door with the hammer. Another neighbor reported hearing yelling and glass breaking, and then a woman yell, "Stop! Please stop!" before dialing 911. After that 911 call, another neighbor reported hearing, "This is the police!" and then heard, "Drop it! Drop it!" immediately after that. Then a male yelled, "Shoot me! Just shoot me!" and then she heard three gunshots, and then police continually yelling, "Drop the hammer!"

Several neighbors reported hearing frequent arguments and sounds of domestic disputes between McCulloch and Jane Doe in the past and at least one reported calling the police before, but had not seen prior acts of violence.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- One (1) Barrett AR-15 rifle with ammunition and accessories
- One (1) Remington 870 12 gauge Less Than Lethal shotgun with ammunition and accessories
- Two (2) bean bag projectiles
- One (1) white, torn T-shirt covered in blood

- One (1) blue hammer with black handle
- Three (3) cartridge cases, head stamped “SPEER 12 REM 223”
- One (1) less-lethal shotgun casing, head stamped “CTS 12”
- One (1) bullet recovered during the autopsy of McCulloch
- One (1) pair of black shoes from McCulloch
- Blue pants, black belt, and grey boxer briefs from McCulloch
- Eight (8) DNA swabs from hands/nails of McCulloch
- Blood standard from McCulloch recovered during the autopsy of McCulloch
- 474 photographs taken by CSI personnel
- 55 photographs taken during the autopsy of McCulloch
- 30 post-embalming photographs of McCulloch
- 2 cell phone videos of a person believed to be McCulloch on separate dates other than the date of the shooting
- 3 Ring Camera videos: one from May 9, 2020, and two from May 11, 2020

### **AUTOPSY**

On Thursday, May 14, 2020, independent Forensic Pathologist Dr. Scott Luzi conducted an autopsy on the body of McCulloch. Dr. Luzi concluded that McCulloch had been shot two (2) times, resulting in three (3) gunshot wounds. One bullet entered McCulloch’s left chest and exited his upper back. The other bullet entered McCulloch’s left-side lower back and struck a rib. This bullet was recovered from the upper torso. The bullet and a blood standard were collected and examined by the Orange County Crime Lab. Dr. Luzi identified the cause of death as “multiple gunshot wounds” and the manner as “homicide.”

### **EVIDENCE ANALYSIS**

#### **Firearms & Projectile Examinations**

Deputy Sanders’ Barrett rifle and Deputy Dent’s Remington shotgun were test fired at the Orange County Crime Lab and operated without malfunction. The three (3) .223 cartridge cases with headstamp “223 SPEER 12 REM” were fired from Deputy Sanders’ Barrett rifle. The one (1) bullet recovered from the autopsy shared class characteristics with the Barrett rifle.

#### **Toxicological Examination**

A sample of McCulloch’s postmortem blood was collected for testing at the Orange County Coroner Division Facility. 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:

<b>DRUG</b>	<b>MATRIX</b>	<b>RESULTS &amp; INTERPRETATIONS</b>
Amphetamine	Postmortem Blood	0.259 + 0.020 mg/L
Methamphetamine	Postmortem Blood	1.47 + 0.11 mg/L
Ethanol/Volatiles	Postmortem Blood	Not detected
Barbiturates	Postmortem Blood	Negative
Cannabinoids	Postmortem Blood	Negative

### **MCCULLOCH’S PRIOR CRIMINAL HISTORY**

McCulloch’s criminal history was reviewed and considered. McCulloch had a California Criminal History that dates back to January 2020. He had previously been arrested for the following charges:

- Robbery
- Obstructing, Resisting or Delaying a Police Officer
- Evading a Peace Officer in a Vehicle; Disregarding Safety
- Possession of Unlawful Drug Paraphernalia
- Petty Theft

### **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 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/her 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/her 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/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 Orange County Sheriff's Department Deputy Sanders and Deputy Dent with McCulloch.

## **LEGAL ANALYSIS**

The facts in this case are determined by considering the statements of Deputy Sanders, Deputy Dent, Deputy Fox and Jane Doe to the OCDA investigators, along with other relevant material, including video/audio material, and witnesses present at the incident.

The issue is whether the conduct of Deputy Sanders and Deputy Dent on May 11, 2020, was criminally culpable, was not necessary, and without justification. As stated above, in order to charge Deputy Sanders and/or Deputy Dent 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 deputies' conduct. Therefore, in order to lawfully charge Deputy Sanders and/or Deputy Dent with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions that day of Deputy Sanders and Deputy Dent were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries

with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [ ] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted 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 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 evidence and facts, it is our conclusion that Deputy Sanders and Deputy Dent were justified in believing that McCulloch posed a significant threat of death or serious physical injury to himself and others, especially to Jane Doe. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of McCulloch in the moments leading up to the shooting. When Deputy Sanders and Deputy Dent arrived at the scene, they were aware that McCulloch was armed with a baseball bat and had been destroying the apartment and terrorizing the female resident. From the first floor, Deputy Sanders and Deputy Dent heard objects being smashed and sounds of a struggle coming from the upstairs apartment. Deputy Sanders immediately knew ". . . that somebody was in danger and it didn't matter what type of call it was . . . that somebody needed help and that I had to do something." Deputy Sanders noticed the door had signs of forced entry, and so combined with his belief that the defendant was armed and the sounds of distress he was hearing, reasonably believed the woman inside was in danger of serious injury or death.

When Deputy Sanders knocked, announced, and gave commands to open the door, McCulloch swung the hammer at the door with such force that the door protruded outward and the deputies felt the vibrations. Deputy Sanders feared that McCulloch would breach the door and that he would be trapped in close proximity to McCulloch, with no escape but to jump from the second story. At this time, Deputy Sanders feared, reasonably, for his and his partners' safety and believed, reasonably and justifiably, that McCulloch was "gonna come through this door and try to kill me or seriously, seriously hurt me or my partners."

In the moments leading up to the encounter, Deputies Sanders and Dent collaborated to implement a common plan and their commands and actions demonstrated careful assessment of the options reasonably available to them. The deputies' choices during the encounter and leading up to the shooting illustrated application of their training and experience, especially with regard to strategic positioning, de-escalation, and hostage rescue. Deputy Sanders commanded the other deputies to reposition to the lower landings not only to avoid being trapped by the door, but also to create distance and thus, time to talk McCulloch down. However, when McCulloch exited the apartment, he was belligerent, refused to comply with the deputies' commands, and raised his

hammer in a ready striking position. Deputy Sanders and Dent attempted to communicate with McCulloch, attempting to deescalate by reminding him that he was not in “trouble.” Only when McCulloch advanced toward the deputies did Deputy Dent employ less-than-lethal force. He stated that he used less-than-lethal force in hopes of causing McCulloch to drop his hammer and comply, and to prevent serious injury to his partners, McCulloch, and Jane Doe. The less-than-lethal force failed to debilitate the meth-fueled McCulloch and he fled into the apartment with the hammer as Jane Doe yelled for help.

Despite fearing for their safety and despite McCulloch’s provocation and aggressive responses, the deputies showed restraint and an attempt at a de-escalation plan until it was no longer feasible. The deputies heard Jane Doe’s “bloodcurdling screams,” and believing she was in serious danger, entered the apartment. However, McCulloch grew increasingly violent and drastically escalated the situation when he seized Jane Doe by the upper torso and neck while raising the hammer in a striking position. The situation rapidly evolved into a hostage rescue situation, which forced Deputy Sanders and Deputy Dent to make split-second judgments about the amount of force to use. Both Deputy Sanders and Deputy Dent referred to their hostage rescue training as they assessed the situation. McCulloch had already demonstrated his intent to use the hammer as a weapon to harm the deputies during their earlier confrontation by using the hammer to hit the door with extreme force, raising the hammer in a “striking motion” and advancing toward the deputies, and yelling provocations and refusing to drop the hammer. They also saw the destroyed property and walls throughout the apartment, further confirming McCulloch’s use of the hammer. Based on his experience, Deputy Dent suspected McCulloch was under the influence of drugs which was causing him to act erratically and irrationally. This suspicion proved to be accurate and justified. The deputies saw Jane Doe frantically struggling and screaming and crying for help. The deputies knew the hammer could cause serious bodily injury or death, especially if force was used in close proximity, as was probable here. The deputies believed that McCulloch was seconds away from either striking Jane Doe or charging at one of them.

Deputy Sanders and Deputy Dent both decided to use deadly force and simultaneously fired at McCulloch from close proximity. Deputy Dent said he believed McCulloch was “going to use a weapon against [Jane Doe] and was holding her as a hostage against her will.” Deputy Sanders said he knew that if he did not shoot, McCulloch was “going to kill that woman or he was going to try to hit me with the hammer.” Based on the totality of the circumstances known at the time, Deputy Sanders and Deputy Dent responded reasonably and justifiably when they used deadly force to prevent the significant threat of serious physical injury or death to Jane Doe and themselves. Also, the totality of the evidence leads to the conclusion that it was necessary for them to shoot under the circumstances.

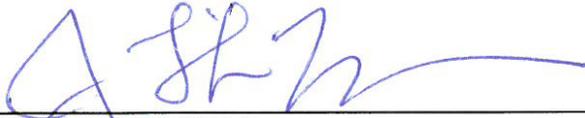
It should also be noted that, in order for Deputy Sanders and Deputy Dent to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA’s burden to prove beyond a reasonable doubt that Deputy Sanders and Deputy Dent did not act in reasonable and justifiable self-defense or defense of another when they shot at McCulloch. 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 Deputy Sanders and Deputy Dent to believe that their lives and the life of Jane Doe was in danger.

Therefore, the evidence supports the conclusion that Deputy Sanders and Deputy Dent were justified when they shot at McCulloch. Simply stated, Deputy Sanders and Deputy Dent did not commit a crime. To the contrary, they carried out their duties as peace officers 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 opinion that there is no evidence of criminal culpability on the part of Deputy Sanders and Deputy Dent, and there is substantial evidence that their actions were reasonable, necessary, and justified under the circumstances when they shot McCulloch on May 11, 2020.

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



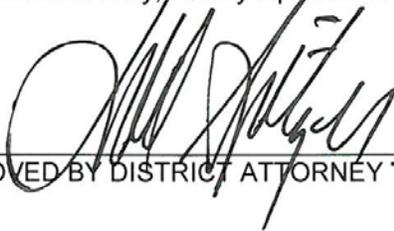
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HOMICIDE UNIT



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



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