



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

August 18, 2022

Interim Chief Frank E. Nunes
Buena Park Police Department
6640 Beach Blvd
Buena Park, CA 90622

Ré: Officer-Involved Shooting on September 03, 2021
Fatal Incident involving Cedric Baxter
District Attorney Investigations Case # 21-003557
Buena Park Police Department Case #21-30699
Anaheim Police Department Case #21-129389
Orange County Crime Laboratory Case # 21-51721
Orange County Coroner's Office Case # 21-05251-BG

Dear Interim Chief Nunes,

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 Buena Park Police Department (BPPD) Officers David Bernal and Jonathan Choi. Cedric Baxter, age 61, died as a result of his injuries. The incident occurred in the City of Buena Park on September 3, 2021.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the September 3, 2021, fatal officer-involved shooting of Baxter. 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 BPPD 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 3, 2021, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 11 interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: BPPD reports, audio dispatch and radio traffic recordings; Body Worn Camera (BWC) recordings, Anaheim Police Department (APD) Aerial recording, APD incident report. Buena Park School District Surveillance recordings, Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol

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examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Baxter; Orange County Fire Authority (OCFA) reports; criminal history records related to Baxter; 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 the Buena Park Police officers or personnel, specifically Officers David Bernal and/or Jonathan Choi. 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, 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 Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review 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. Officer David Bernal gave a voluntary statement to OCDA Investigators on November 3, 2021. Officer Jonathan Choi declined to provide a voluntary statement.

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 August 22, 2021, Baxter physically assaulted his wife, Jane Doe, and her son. During the incident, Baxter broke Doe's nose. As a result, a judge granted Doe an emergency restraining order against Baxter. Baxter's Parole Officer notified Baxter of the restraining order. A warrant was issued, and Baxter refused to turn himself in and was classified as a "parolee at large."

On September 3, 2021, shortly after 13:50, Doe, a school bus driver, was driving a Buena Park School District bus with one 6-year-old passenger on Orangethorpe Avenue. She soon noticed a Grey Chevrolet Tahoe pull up next to her and saw that her husband, Baxter, was driving the Tahoe.

Doe then saw that Baxter was holding a handgun, which he pointed directly at her. Doe was in disbelief and slowed the bus to a stop. She yelled, "Cedric [Baxter], what are you doing, oh my God," and drove away to escape Baxter.

Baxter continued to follow Doe. He used his vehicle to block her path and prevent her from getting away via other lanes. Doe continued to yell to Baxter, begging and pleading with him to stop.

Baxter then brought his car to a complete stop in front of Doe's school bus, blocking the roadway ahead of her. He then exited his vehicle, walked to the front of the school bus, and pointed his handgun directly at Doe. Doe began to scream in fear of her life and proceeded to drive the school bus in reverse, since it was her only available escape route. She honked the horn and flashed her lights in an attempt to get help.

At approximately 13:58, as Doe backed up, Baxter fired his weapon in the direction of the front of the school bus. As this occurred, Officer Efrain Rubalcava was in the vicinity. He heard the honking horn and it drew his attention. He had a direct visual of Baxter when Baxter exited his vehicle. Officer Rubalcava heard Baxter fire two shots and saw Baxter shoot at the school bus. Officer Rubalcava subsequently put out a police radio broadcast at approximately 13:59 that alerted his fellow BPPD officers, including Officers David Bernal and Jonathon Choi, that an armed individual had shot at a school bus.

Officer Rubalcava activated his marked police vehicle's emergency lights and sirens and moved toward Baxter. Baxter, still holding a handgun in his right hand, went back into his vehicle and drove away from Officer Rubalcava. Officer Rubalcava radioed that he was in pursuit of an armed suspect who shot at a school bus and provided updates to the BPPD Dispatch as he pursued Baxter.

Officer Rubalcava saw Baxter drive through a solid red light and make a southbound turn as the school bus also turned southbound. While making the turn, Baxter drove to the left of the school bus and rammed it. In the process of ramming the school bus, Baxter collided with another civilian vehicle that was in the left turn pocket. The school bus continued southbound in the number one lane of traffic and Baxter drove in the center median lanes. Baxter then swerved and side swiped the school bus.

Jane Doe saw the collision with the civilian car and realized Baxter could not make the westbound turn down Walnut street so she took the opportunity to turn west down Walnut street to escape. During this time Jane Doe was trying to call 911, but was not connecting. She then called her supervisor to tell him what was happening. BPPD Officer Morales was responding to the call in his patrol vehicle and located Jane Doe's school bus. Officer Morales came behind the school bus and Jane Doe waived him up next to her and they both pulled inside the Buena Park Middle

School and Jane Doe and her 6-year-old passenger were taken inside to safety. The surveillance from the bus reveals over 8 minutes of Jane Doe repetitively screaming "oh my God," "Cedric [Baxter] stop," "my husband's trying to kill me," "I'm a school bus driver, I need help," and she screams about having her child passenger on the bus.

Officer Rubalcava called for backup, and other marked BPPD vehicles and the APD helicopter, "Angel," joined the police pursuit with lights and sirens activated. Baxter continued to evade the police while committing multiple traffic violations including driving the wrong way on streets, running red traffic signals, and crossing over the center median to illegally change directions. Baxter drove into the Buena Park Unified School District Office parking lot and circled the lot before exiting. He almost collided with a police vehicle as he exited back out onto the street. Following Baxter's exit from the parking lot, a school employee went to the gate of the parking lot and shut it and locked it to prevent Baxter from coming back. Meanwhile, the BPPD Dispatch received word from Doe that she was Baxter's wife and that he had tried to kill her, which was relayed to the pursuing officers.

Officer Bernal was working a special assignment as a detective for the Department's Community Impact team, at the time of the call. He was on the far South side of the Buena Park City when he first heard the radio call. He was wearing a black T-shirt, blue jeans, a load bearing vest with a BPPD badge and a large cloth patch that said "Police" on the front. After hearing over his radio that shots had been fired by Baxter, he drove his marked police vehicle toward the scene to join his fellow officers in their pursuit of Baxter.

Once Officer Bernal got a visual of Baxter, he became the lead police vehicle pursuing Baxter. Officer Rubalcava had made an attempt to stop Baxter by trying to hit Baxter's vehicle, this resulted in damage to Officer Rubalcava's police vehicle. Therefore, when Officer Bernal arrived, he was in a better position in his police vehicle to take over as the lead vehicle in the pursuit. At the time Officer Bernal became the lead vehicle, Baxter had been pursued by multiple marked police vehicles with continuously activated lights and sirens for over 7 minutes.

At approximately 14:07, Baxter turned into the Buena Park Unified School District Office and drove through its closed gate into the parking lot, blowing the gate open and off its hinges. The APD helicopter advised the pursuing officers who followed Baxter into the parking lot, including Officer Bernal, that "[Baxter's] in the parking lot of the school, guys, we've got people back here in the school. You guys got to jam him up; we've got to stop this. We got citizens back here...he's trying to kill his ex-wife." With the various school buses present in the parking lot, Officer Bernal stated he believed that Baxter had driven into a middle school with children. He heard the broadcast that there were people in the area. The School District Office does back up to the Middle School and Officer Bernal said he was not familiar with the School District area; it was the first time he had been there.

Once in the parking lot, Baxter rammed his vehicle into a parked car and came to a complete stop. The force with which Baxter rammed that parked car moved that car back approximately 10 yards. Officer Bernal stated that "immediately upon opening my door, I could see that the driver was producing a firearm directly in front of his windshield." Officer Bernal feared for his safety, the safety of the civilians and potential students in the area, and fellow officers. Officer Bernal thought that Baxter was an active shooter who would not quit until he was "done with his deed." Officer Bernal believed that Baxter was about to start shooting or killing at random since Baxter had already shot at a school bus, refused to stop for police sirens while putting other drivers and civilians in danger, and had gone through the fence. He stated that there was no indication to him that Baxter was willing to surrender at this point based on Baxter's actions.

Baxter began to exit his vehicle while holding his handgun. Officer Bernal took cover and began to fire at Baxter. Almost immediately after Officer Bernal began firing, Officer Choi arrived on scene in his marked police vehicle, wearing his BPPD uniform with a metal police badge and BPPD patches on both shoulders. Upon arriving on scene, Officer Choi also shot at Baxter. Baxter continued to walk towards the police officers with his gun pointed at Officer Bernal and then Choi, for a few seconds, before ultimately falling to the ground as he still held on to his gun pointing it at them. Once Baxter fell to the ground no longer pointing the gun, officers stopped shooting at him. Buena Park Police officers fired shots for a total of no more than ten seconds. Officer Choi requested medics at 14:08.

Since Baxter was holding onto his gun, Buena Park Police officers formulated a tactical plan and gathered necessary equipment to safely approach, disarm, and handcuff Baxter, which they ultimately did and began rendering aid to him at 14:13. They provided Baxter with medical care and tended to his wounds. At 14:20, Orange County Fire Authority (OCFA) arrived on scene and administered advanced lifesaving protocols. Baxter remained unresponsive throughout treatment. At approximately 14:45, Baxter was pronounced dead on the scene and resuscitation efforts were stopped.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- EM#1 – Miscellaneous car parts, vehicle debris
- EM#2 – Apparent bullet fragment
- EM#3 – Empty black pistol magazine
- EM#4 – One (1) cartridge case
- EM#5 – One (3) cartridge case
- EM#6 – One (1) cartridge case
- EM#7 – Empty black pistol magazine
- EM#8 – Two (2) cartridge casings
- EM#9 – Three (3) cartridge casings
- EM#10 – Two (2) cartridge casings
- EM#11 – One (1) cartridge case
- EM#12 – Two (2) cartridge casings
- EM#13 – One (1) cartridge case
- EM#14 – One (1) cartridge case
- EM#15 – Three (3) cartridge casings
- EM#16 – One (1) cartridge case
- EM#17 – One (1) cartridge case
- EM#18 – Two (2) cartridge casings
- EM#19 – One (1) cartridge case
- EM#20 – One (1) cartridge case
- EM#21 – One (1) cartridge case
- EM#22 – Apparent bullet fragments
- EM#23 – Apparent bullet fragments
- EM#24 – Black pistol
- EM#25 – A blue baseball cap with a white star logo embroidered on the front
- EM#26 – Apparent bullet fragment
- EM#27 – Apparent bullet fragment
- EM#28 – Apparent bullet fragment

- EM#29 – Two (2) apparent bullet fragments
- EM#30 – Apparent bullet fragment
- EM#31 – White metal jewelry
- EM#32 – Black loaded pistol magazine and black walking cane
- EM#33 – Apparent bullet fragment
- EM#34 – Apparent bullet fragment
- EM#35 – Apparent bullet fragment
- EM#36 – Apparent bullet fragment
- EM#37 – Apparent bullet fragment
- EM#38 – One (1) cartridge case

AUTOPSY

On September 8, 2021, Forensic Pathologist Dr. Aruna Singhania of the Orange County Coroner's Office conducted an autopsy on the body of Cedric Baxter. Dr. Singhania determined that Baxter had sustained 12 gunshot wounds that were assigned arbitrary numbers for descriptive purposes.

Wounds #6 and #7 were determined to be fatal gunshot wounds causing perforation of the larynx and vocal chord and exiting the right side of the neck causing asphyxia. Wound #8 interacted with wounds #9 and #10 resulting in perforation of the right side of the lung, perforation of the heart, and perforation of the left lung causing intrathoracic hemorrhage and demise. Wound #11 was also determined to be fatal since it resulted in perforation of the right side of the liver.

Dr. Singhania determined that Baxter's cause of death was "intrathoracic hemorrhage due to perforation of heart, lungs, and liver as a result of multiple gunshot wounds" and the manner of death as, "Homicide."

EVIDENCE ANALYSIS

Firearms Examination

Officer David Bernal's Glock 22, Gen 4, .40 Smith & Wesson caliber pistol was test fired at the Orange County Crime Lab and fired without malfunction.

Officer David Bernal's Glock 22, Gen 4, .40 Smith & Wesson caliber pistol was determined to have fired 15 cartridge cases (EM #s 4, 5A, 5B, 5C, 6, 8A, 9A, 9B, 9C, 10A, 10B, 12A, 12B, 14, 38) from the scene.

Officer Jonathan Choi's Glock 22, Gen 4, .40 Smith & Wesson caliber pistol was test fired at the Orange County Crime Lab and fired without malfunction.

Officer Jonathan Choi's Glock 22, Gen 4, .40 Smith & Wesson caliber pistol was determined to have fired 13 cartridge cases (EM #s 8B, 11, 13, 15A, 15B, 15C, 16, 17, 18A, 18B, 19, 20, 21) from the scene.

Both officers' Glock 22, Gen 4, .40 Smith & Wesson caliber pistols share the same class characteristics as the bullet from the decedent's pants, two bullets from the driver's lounge room, bullets and jackets from the scene, bullets and jacket from autopsy (left hip, left lung, left thigh), bullets and jackets from the Tahoe, and the jacket fragment from the Durango.

Toxicological Examination

A sample of Baxter’s blood was collected. 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 |
|-----------------|------------------|---------------------------|
| Benzoylcegonine | Postmortem Blood | 0.0762 + 0.0076 mg/L |
| THC | Postmortem Blood | 0.0015 + 0.003 mg/L |

BAXTER’S PRIOR CRIMINAL HISTORY

Baxter had a California Criminal History record that revealed arrests for the following violations:

- 459 PC – Burglary
- 211 (a) PC - Robbery
- 594 PC - Vandalism
- 487.3 PC – Grand Theft Auto
- 10851 VC – Taking of a Vehicle Without Consent
- 496 PC – Receive Stolen Property
- 11377 HS - Posses Control Substance
- 192.1 PC – Voluntary Manslaughter W/Firearm
- 4573 PC – Posses Drugs/ Alcohol in Prison
- 11351 HS – Posses Narcotics for Sale
- 11350 HS – Posses Narcotics
- 11352 HS – Transport/Sell Narcotics
- 273.5 PC – Domestic Violence
- 261(a)(2) PC – Rape by Force/Fear
- 243(c) PC – Battery Against Emergency Personnel
- 288(b) PC – Forcible Lewd acts with a Child Under 14
- 3056 PC – Parole Violation
- 290.011(c)- Failure to Register Annual Update
- 666.5 -Auto Theft with Prior
- 600(a) -Willful Harm to Peace Officer Horse/ Dog
- 597(a) – Cruelty to Animals

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a 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 done in compliance with California Penal Code section 835a. California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows 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. California 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 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 or upon another person. In doing so, such person may immediately use all force and means which he 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 BPPD Officers David Bernal and Jonathan Choi with Cedric Baxter.

LEGAL ANALYSIS

The facts in this case are determined by considering all witness statements to OCDASAU, including Officer David Bernal's statements, and all available evidence that was collected.

The issue is whether the conduct of Officers David Bernal and/or Jonathan Choi on September 3, 2021 was criminally culpable and without justification. As stated above, in order to charge Officers David Bernal and/or Jonathan Choi with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, to lawfully charge Officer David Bernal and/or Officer Jonathan Choi 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 Officers David Bernal and/or Jonathan Choi were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

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

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Officer Bernal's statement to OCDSAU investigators provides information as to his observations and state of mind at the time of the shooting to determine if he was justified in using deadly force. His statements are viewed and compared in light of all other available evidence. Certainly, it would have been preferable if the OCDA had been able to obtain a voluntary statement from Officer Jonathon Choi regarding his observations and state of mind at the time of the shooting. However, his decision to decline to give the OCDA a voluntary statement may not legally and/or ethically be used to draw negative evidentiary inferences regarding his conduct or state of mind. Without his statement, the OCDA must look to other competent evidence to determine if he was justified in using deadly force. The OCDA looks to the totality of the circumstances when evaluating this evidence.

For Officers Bernal and/or Choi to be justly and lawfully charged and convicted with a crime, it is the OCDA's burden to prove beyond a reasonable doubt that the officers in question did not act in reasonable and justifiable self-defense or defense of another at the time of the shooting. Officers Bernal and Choi were lawfully discharging their duties when they joined the pursuit against Baxter, whom they knew to be evading police after shooting at his wife while she was driving a school bus. They were in marked patrol vehicles and were dressed in a manner to demonstrate that they were police officers. They wore police badges and patches. The evidence shows that Baxter evaded police attempts to detain him for over 7 minutes. The facts present strong evidence that Baxter knew he was about to be arrested for a variety of crimes he had just committed and he was not entitled to use a weapon to resist arrest.

Officers Bernal and Choi were justified in believing that Baxter posed a significant threat of death or serious physical injury to himself and others. This is based on the totality of the circumstances of the conduct of Baxter in the minutes leading up to the shooting.

Officer Bernal heard over his police radio, and reasonable inference supports that Officer Choi heard over his police radio, that Baxter had shot at a school bus that transports children to school not just once, but multiple times, with a handgun. The information broadcast over the police radio was that Baxter was trying to kill his wife. This information alone demonstrated Baxter's callous disregard for human life. By firing at a school bus at around two in the afternoon on a weekday, it is highly likely that innocent children would be present. Baxter was not only targeting his wife, but he was willing to place innocent victims at risk in the process.

Officer Bernal expressed that he feared for his life and others when he pursued Baxter since he believed Baxter's actions demonstrated that he would not surrender, and he would put other lives at risk if it meant evading police custody. It is a reasonable belief that Officer Choi held those same fears.

Baxter's move to break through the fence into a property that appeared to be a school, given that there were school buses, compounded by the APD warning from the helicopters that there were numerous civilians close by who were at risk from Baxter, further created the need for immediate action to stop Baxter. Once Baxter came to a stop, he rammed his car against another vehicle, again showing his disregard for creating potential harm to others. Officer Bernal saw that Baxter was about to exit his vehicle while holding the handgun he had already fired at the bus. This, combined with his actions up to that point, Baxter showed himself to be an imminent threat to those around him. Officer Bernal related that Baxter blowing through the gate, ramming a parked car, and being in an area where citizens were present and running away, all made him fearful for his safety, that of innocent bystanders, and other officers; it also made him believe that Baxter was not going to surrender to police. The aggressive actions of Baxter in the minutes, and even seconds, before he exited his vehicle with a gun in his hand, created a substantial risk of death or

great bodily injury to others and the officers had to take swift action to prevent harm to themselves or others.

It was at this point that Officers Bernal, and then, Choi began to fire at Baxter. They, along with the other Buena Park Police officers on the scene, made sure to take cover from Baxter, demonstrating how great of a threat Baxter was to their lives. Given all that Baxter had done to this point to willingly put countless lives at risk, and that there were bystanders in Baxter's close proximity, he needed to be stopped immediately. The fact that Baxter moved toward officers while pointing his gun at them showed that Officer Bernal's belief that Baxter was not "done with his deed," was in fact, correct. Thus, Officers Bernal and Choi were justified to use lethal force against Baxter to protect themselves and members of society from a man who proved that he was set on harming his wife and had a reckless disregard for the safety of others and would not stop unless deadly force was used against him.

Based on the above-described facts available at this time, and the foregoing analysis, the prosecution would be unable to carry its burden that the officers in question did not act in reasonable and justifiable self-defense or defense of another at the time of the shooting. Further, based on the applicable legal principles, a jury analyzing the facts available at this time would justly conclude that there is reasonable doubt of the guilt of either one of the officers.

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 beyond a reasonable doubt criminal culpability on the part of Officers David Bernal and Jonathan Choi. There is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Cedric Baxter on September 3, 2021.

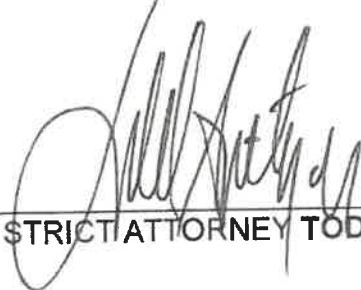
Accordingly, the OCDA is closing its inquiry into this incident.



Lexie Elliott
Senior Deputy District Attorney
Gang Unit



READ AND REVIEWED BY **BRETT BRIAN**
Assistant District Attorney
Special Prosecutions Unit



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