



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

May 8, 2019

Chief Jorge Cisneros
Anaheim Police Department
425 South Harbor
Anaheim, CA 92805

Re: Officer-Involved Shooting on July 21, 2018
Fatal Incident involving Eliuth Penalzoza Nava
District Attorney Investigation Case # SA 18-023
Anaheim Police Department Case # GO 2018-112699
Orange County Crime Laboratory Case # FR 18-50240

Dear Chief Cisneros,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation in connection with the above-listed incident involving on-duty Anaheim Police Department (APD) Officers Sean Staymates and Kevin Pedersen. Eliuth Penalzoza Nava, 50, died as a result of his injuries. This incident occurred in the City of Anaheim on July 21, 2018.

As listed in more detail in this letter, the OCDA understands and will adhere to its standard of review for potential criminal conduct by police officers as required by the United States Supreme Court seminal case of *Graham v. Connor* (1989) 490 U.S. 386. However, the District Attorney of Orange County is alarmed by the conduct of the two involved APD officers. While the District Attorney does not address tactics, training, or administrative procedures, the District Attorney of Orange County, and the public, expect the APD to make sure that the conduct of the two involved officers is reviewed administratively for proper, fair, and complete accountability. The fact that the two involved officers discharged their weapons 76 times, from a moving patrol car at Nava's moving car, at approximately 9:30 a.m. on a Saturday morning, in a residential neighborhood where residents, including children, were home and on the streets, was alarming and irresponsible based on the totality of all the circumstances in this specific case. The District Attorney's conclusion that all the available evidence is insufficient to warrant the filing of criminal charges against the two officers, should not in any way diminish the fact that the District Attorney is alarmed by this conduct, and along with the public, is relying on APD to fairly take any and all appropriate administrative actions and remedies.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 21, 2018, fatal, officer-involved shooting of Nava. 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 APD 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.

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On July 21, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted, and 25 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: APD reports, body worn camera footage, audio dispatch and radio traffic recordings, video surveillance, Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports, crime scene investigation photographs, medical records and photographs related to the injuries sustained by Nava, criminal history records related to Nava 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 on the part of APD officers or personnel, specifically Officers Staymates and Pedersen. The OCDA will not be addressing any possible issues related 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 who are 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as 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 overseeing Operations IV of the OCDA, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, and the District Attorney. 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. Officers Staymates and Pedersen both gave voluntary statements to OCDA investigators on July 25, 2018.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

On July 21, 2018, Nava lived on the 500 block of South West Street, Anaheim with his mother (Mother), father (Father), and one of his brothers (Brother 1). Nava lived in a detached portion of the house while the other family members lived in the main house. Several days prior, Mother noticed Nava had been acting strange. Nava had a history of drug abuse and both Mother and Father feared that Nava was using drugs again. On July 21, 2018, at approximately 9:00 a.m., Mother's other son, Brother 2, stopped by to visit. While they visited, Nava entered the room and was wearing sunglasses

and pacing back and forth. Mother believed Nava was under the influence of drugs. Nava started arguing with Brother 2. Brother 2 and Nava generally did not get along with each other and Nava had previously been violent with Brother 2. Brother 2 decided to leave the residence to avoid a confrontation. Father noticed Nava had parked his truck very close to Brother 2's vehicle and feared Nava's truck was blocking Brother 2's vehicle. Father went outside to speak with Nava. He hoped he could keep the peace and distract Nava until Brother 2 had an opportunity to leave. Father stood near Nava's truck while he spoke with him. He looked inside the truck and saw what appeared to be a handgun on the driver side floorboard. When Father asked if he could see the gun, Nava pushed it with his foot under the seat and out of sight. Father and Nava spoke until Brother 2 drove away from the area.

Once Brother 2 was gone, Mother, Father, and Brother 1 each called Brother 2 and warned him about the gun Nava had in his truck. Each feared Nava may go to Brother 2's house and harm him. After speaking with his family, Brother 2 called the police. At approximately 9:36 a.m., APD received a call from Brother 2 who reported that Nava was under influence of an unknown drug and "hallucinating." He told them Nava was parked in front of his parents' house in a white Chevrolet S-10 truck and there was a "knife and gun" in the truck. At approximately 9:39 a.m., Officers Staymates and Pedersen, working a two man unit, were dispatched to the 500 block of South West Street. The officers were dressed in their standard issued police uniforms and drove in a marked black and white APD police unit. Officer Pedersen was the driver and Officer Staymates was the front passenger. Prior to their arrival, both officers activated their body worn cameras (BWC) which were affixed to the front of their uniforms in the center of their chests.

Officers Staymates and Pedersen arrived at the house in the 500 block of South West Street at approximately 9:44 a.m. Officer Staymates obtained a digital photo of Nava from the unit mobile digital computer and both officers reviewed the photo prior to their arrival. Officer Pedersen parked a short distance away from the residence due to the nature of the call and the possibility Nava was armed with a gun. The residence was in a heavily populated neighborhood comprised of one and two-story homes. It was Saturday morning and there were several civilians out in their yards and walking on the streets. Officer Staymates saw a white Chevrolet S-10 truck, parked facing north along the east curb-line of West Street with Nava in the driver's seat of the truck. Officer Staymates saw Nava sit up, lean forward, and begin to start up the Truck. Since Nava was reportedly armed with a gun and acting erratically, Officer Pedersen decided it was best to attempt to block Nava's Truck, so he would be unable to flee or have any room to do anything dangerous. As Officer Pedersen began driving towards Nava, he could see that Nava spotted the police officers. Nava drove north toward the police car and then began to make a U-turn. As Nava attempted to make the U-turn in the street, he ran out of room and came to a stop perpendicular to the officers. This put the officers in a vulnerable position because if Nava were to begin shooting at them, they would have little cover. BWC footage confirms that both officers exited the police unit, drew their weapons, pointed them at Nava, and ordered Nava to "Stop the Truck!" multiple times. The officers saw that Nava was the only occupant in the Truck. Nava did not comply and instead completed the U-turn fleeing south on West Street. Pedersen activated the police car's lights and siren and drove after Nava.

Almost immediately into the pursuit, Officer Pedersen saw Nava reach down toward the floorboard. Officer Pedersen is heard on his BWC telling Officer Staymates, "Get ready dude, he just rolled down the window. He's reaching!" Officer Pedersen then saw Nava holding what appeared to be a black semi-automatic handgun, resembling a Glock. Officer Pedersen saw Nava pointing the handgun at the roof of the Truck. At 9:45 a.m., Officer Pedersen's BWC captures him saying, "He's got a – I think he's got a gun." As Nava turned the Truck down Water Street, Nava then pointed the gun out the window and aimed it directly at the officers as if he were going to fire at them. Officers Pedersen and Staymates both feared Nava was going to shoot and kill them. Officer Pedersen wanted to stop Nava from hurting anyone and felt lethal force was necessary. The BWC from Officers Pedersen and Staymates provides a very limited view of these events. Because both Officers Pedersen and Staymates are seated in the car throughout the pursuit, their BWC are blocked by the dashboard of the patrol car. As a result, their BWC do not capture the movements of Nava while the officers are in the car. The BWC does, however, show the officers' responses to Nava's actions as they unfold.

As they turned north into the east alley of 500 West South Street, Officer Pedersen's BWC records him saying, "I'm going to ram him." A few seconds later Officer Pedersen fires approximately seven rounds through the front windshield of the patrol unit at Nava's Truck. Officer Staymates broadcasted "998" (Officer Involved Shooting) and advised they were in pursuit. Officers Pedersen and Staymates saw Nava continue to point the handgun in their direction as they traveled north in the alley. At approximately 9:45 a.m., Officer Pedersen fired six additional rounds. Officer Pedersen noticed each time he fired at Nava, Nava would stop pointing the weapon in their direction. Officer Pedersen continued to fire in fear that Nava may start to randomly shoot civilians in the area. Officer Pedersen believed he was always aware of his surroundings, and fired only after considering the safety of the nearby citizens. While northbound through the alley, Nava continued to point the gun at the officers and at himself. Nava also waved the gun up in the air and from side to side. As Officer Pedersen reloaded his handgun, he called for Officer Staymates to "start firing." Officer Staymates, fearful of being killed, had his pistol in hand, but decided to transition to his patrol rifle as Officer Pedersen asked him to engage Nava. Officer Staymates chambered a round in the rifle and made the weapon ready to fire.

At approximately 9:45 a.m., as the pursuit exited the alley and turned west on Santa Ana Street, Officer Pedersen fired six more rounds. Nava then turned south onto South West Street, failing to stop for the posted stop sign. As Nava turned onto South West Street, Officer Pedersen saw pedestrians in the area and a vehicle stopped at the intersection. Nava continued to wave his weapon around. Video surveillance obtained from a house nearby shows the two pedestrians are crossing the street when they see the pursuit coming their way. The pedestrians then run towards the sidewalk as Nava's Truck quickly approaches them and almost hits them as he fails to stop for the stop sign.

Officer Pedersen fired two more rounds through the windshield at Nava who was traveling south on South West Street. Officer Staymates fearing Nava could possibly shoot an innocent bystander or injure or kill a pedestrian with his Truck, fired two rounds from his rifle at Nava. Officer Staymates broadcasted they were eastbound on West Water Street circling the neighborhood and Nava was continuing to point his weapon in their direction. The pursuit continued eastbound on West Water Street to the intersection of South Citron Street. At approximately 9:46 a.m., as Nava made a northbound turn onto South Citron Street from West Water Street, Officer Pedersen fired three rounds out the driver side window at Nava. Officer Pedersen swerved the vehicle from side to side as Nava pointed the handgun in their direction. A few moments later, Officer Pedersen's BWC records him telling Officer Staymates, "Don't take a shot, don't take a shot, there's people in front of us."

As Nava turned onto West Santa Ana Street from South Citron Street, Officer Pedersen fired another round through the windshield at Nava. As Nava made the turn, Officer Staymates noticed Nava was injured and there was blood on the Truck's driver side door. Officer Staymates broadcasted Nava was injured. Nava continued to drive however and did not show any signs of stopping. As the pursuit continued west on West Santa Ana Street, Nava continued to point his weapon toward the officers. Nava continued the pursuit and failed to stop again at the intersection of South West Street and West Santa Ana Street. Officer Pedersen recalled seeing an occupied vehicle stopped at the intersection. The driver of the vehicle, a female, had a terrified look on her face. Video surveillance obtained from a house nearby shows Nava's Truck again failing to stop at the intersection and almost crashing into the occupied vehicle. At approximately 9:47 a.m., Nava stopped the truck in front of his residence where the pursuit had started. Nava did not put his hands up in the air, or give any indication that he was surrendering. Both officers feared that as the driver door opened, Nava would pop out and fire at the officers and/or any individuals in the surrounding area. This fear was based on Nava's actions of pointing a gun at them several times, leading them in a pursuit, and displaying a total disregard for public safety.

Pedersen came to a stop in the roadway as Officer Staymates leaned out the passenger side window and fired one round at Nava. While still in the police car, Officer Staymates fired an additional eight rounds into the back of Nava's Truck. Officer Staymates indicated that he fired in an attempt to stop Nava from exiting the Truck and firing at them. As Officer Pedersen moved away from the patrol car, Nava's lower left leg and foot came out of the driver side door. While moving, Officer Pedersen fired approximately four rounds and bent over to reload in front of a parked vehicle, just north of Nava's Truck, which was parked along the east curb. Officer Staymates could see through the Truck's rear window that Nava's head was moving. Officer Staymates indicated that he was still unable to see Nava's hands and feared Nava would go

back into the family residence and shoot or kill one of his family members. Officer Staymates fired approximately four additional rounds toward Nava.

At approximately 09:47:19 hours, Officer Pedersen, indicating that he was still fearing Nava would exit the Truck and engage them in a gun battle, fired approximately eight additional rounds toward Nava. Officer Pedersen advanced toward Nava and fired an additional ten rounds at Nava. Officer Pedersen indicated that he believed Nava had shown no signs of surrender, was still armed, and was still a threat to both him and Officer Staymates. As Officer Pedersen fired, his view of Nava was partially blocked by a large shrub. Officer Pedersen reloaded his weapon and stepped away from the shrub. He saw Nava's left arm was up near the steering wheel, but he was unable to see Nava's right hand. Officer Pedersen could see Nava's left arm moving, but could not see Nava's right hand. Believing Nava was still armed and a threat, Officer Pedersen fired nine more rounds at Nava. Officer Pedersen advanced closer to Nava's Truck and Officer Pedersen believed he saw Nava's left arm move. Officer Pedersen was unable to see Nava's right hand, believed Nava was armed and still alive, so Officer Pedersen fired three final rounds.

Officer Staymates joined Officer Pedersen on the driver side of the Truck. Officer Pedersen grabbed Nava's left arm and removed him from the truck. The gun Nava had was now on the ground. Officer Pedersen kicked the gun away with his foot, which can be heard on his BWC at 09:47:52 hours. A silver knife that Nava had in his possession was also found on the ground next to Nava's body. The knife appeared to still be in Nava's right hand and Officer Pedersen's BWC captures him recovering the knife at 9:48 a.m.

Additional APD officers arrived on scene and began performing life saving measures on Nava. A few minutes later paramedics arrived on scene. Nava had sustained several entry/exit gunshot wounds to the upper torso. Paramedics placed an Electrocardiogram (EKG) on Nava and found minimal heart activity. Nava was transported in an ambulance to UC Irvine Medical Center where Nava was pronounced deceased at 10:12 a.m.

Nava's handgun was later determined to be a CO2-powered air pistol. It was black in color and extremely similar in appearance to an authentic 9mm Luger pistol. There was no orange tip on the gun, and no other markings to readily distinguish this air pistol from a real firearm. Numerous witnesses were contacted during a canvass of the area. All heard police sirens and shots being fired in the neighborhood. Several saw an Anaheim Police unit in pursuit of a white truck.

Nava's brother, Brother 1, told investigators he saw portions of the pursuit. Brother 1 said at one point he saw Nava driving the truck and pointing the gun back towards the police car.

Civilian Witness 1 was working at a residence located on South Citron Street. He was at his vehicle, which was parked on the street, when he saw a police car pursuing a white truck. He saw the driver in the white truck, looking back at the police. He saw the driver of the truck holding a black handgun in his left hand out the driver side window.

Civilian Witness 2 was to the front of his residence, located near South Ohio Street and West Santa Ana Street, when he heard sirens approaching. He saw a police pursuit pass him traveling west on West Santa Ana Street. Civilian Witness 2 saw a lone male driver in a white truck holding a black handgun in his hand. Civilian Witness 2 saw the driver of the white truck point the handgun toward the ceiling of the truck while he looked back toward the pursuing officers.

Civilian Witness 3 was sitting on his front porch near Water Street when he saw a truck being pursued by a police car with its lights and siren activated. The two cars were traveling southbound on West Street and turning eastbound on Water Street. Civilian Witness 3 described seeing the male driver of the truck holding a semi-automatic handgun in his left hand. Civilian Witness 3 described the gun as resembling a .45 caliber gun. Civilian Witness 3 saw the driver of the truck pointing the barrel of the gun at the direction of the police car. He also saw the police car swerving left to right in what appeared to be attempts to avoid being hit by gunfire.

Civilian Witness 4 was sitting next to Civilian Witness 3 and also saw the driver of the truck holding a handgun in his left hand and pointing the barrel of the gun at the officers in the car behind him. Civilian Witness 4 believed the driver of the truck fired at least 3 rounds at the officers as they passed by.

Civilian Witness 5 was on South West Street when he saw a white truck traveling southbound on South West Street and turning towards Water Street, refusing to stop for a police car that had its lights and siren activated. Civilian Witness 5 said the male driver of the truck had a black handgun in his left hand and that his arm was out of the window. Civilian Witness 5 said the cars circled the block and when they returned, he saw the driver of the white truck shoot at the police car approximately three times.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Knife
- Sunglasses with apparent blood
- Apparent glass fragments
- CO2 BB Gun with apparent blood
- Gas canister
- Plastic grips
- Bullet from Nava's Truck bed
- Two Empty 9mm Glock Magazines from scene
- Empty 9mm Glock Magazine from APD Patrol Unit
- Two Magazines with cartridges from rifle in APD Patrol Unit
- Rifle from APD Patrol Unit
- 27 Cartridge cases & Four Bullet jacket fragments from APD Patrol Unit
- 44 Cartridge cases, Three Bullets, Five Bullet jackets, Five Apparent BBs, Nine Bullet jacket fragments & Five Apparent bullet cores from scene
- Shirt with apparent blood
- 2003 Chevy S10 white Pick Up Truck

AUTOPSY

On July 23, 2018, Forensic Pathologist Dr. Etoi Davenport of the Orange County Coroner's Office conducted an autopsy on the body of Nava. Dr. Davenport concluded that Nava sustained multiple bullet wounds to the head, neck, and upper extremities. Dr. Davenport concluded that Nava sustained at least nine gunshot wounds, but that his body had additional markings that were difficult to categorize specifically as gunshot wounds because such markings could have been attributed to window glass striking Nava's body. It was the opinion of Dr. Davenport that Nava died as a result of multiple gunshot wounds.

EVIDENCE ANALYSIS

Firearms and Projectile Examination

Officer Pedersen's Glock 9 mm semi-automatic handgun was test fired at the OCCL and fired without malfunction. Officer Pedersen's pistol was determined to have fired 64 shots, of which 61 cartridge cases were ultimately found.

Officer Staymates' rifle was test fired at the OCCL and fired without malfunction. Officer Staymates' rifle was determined to have fired a total of 12 shots, of which 10 cartridge cases were found.

Toxicological Examination

A sample of Nava's blood was collected during the autopsy. The blood was submitted to the OCCL and examined for the presence of drugs and alcohol. The following results were obtained:

| DRUG | MATRIX | RESULTS & INTERPRETATIONS |
|------------------|------------------|---------------------------|
| Amphetamines | Postmortem Blood | 0.116 ± 0.009 mg/L |
| Methamphetamines | Postmortem Blood | 0.676 ± 0.048 mg/L |

NAVA'S PRIOR CRIMINAL HISTORY

Nava's criminal history was reviewed and considered. Nava had a California Criminal History that dates back to 1997. He has previously been arrested for the following charges:

- Inflict Corporal Injury Spouse/Cohabitant
- Assault with a Deadly Weapon not Firearm
- Disobey Court Order
- Resist, delay or obstruct peace officer
- Bring Controlled Substance into Jail
- Possess controlled substance
- Possess control substance paraphernalia
- Under the Influence Controlled Substance
- Evade Peace Officer
- Evading/Wrong way Driver, and Driving Under the Influence of Drugs

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 officers' 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 necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.)

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

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 informative in analyzing the circumstances surrounding the interactions of APD Officers Staymates and Pedersen with Nava.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officers Staymates and Pedersen's statements to the OCDA investigators, audio/video/photographic evidence, forensic evidence, witness statements and other relevant material collected in the course of this investigation.

The issue in this case is whether the conduct of Officers Staymates and Pedersen on July 21, 2018 was criminally culpable and without justification. As stated above, in order to charge Officers Staymates and Pedersen 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, in order to lawfully charge Officers Staymates and Pedersen 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 Staymates and Pedersen 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 Court of Appeal has 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.)

Here, both Officer Pedersen and Officer Staymates were justified in believing that Nava posed a significant threat of death or serious physical injury to both officers and to others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Nava in the moments leading up to and during the shooting. Officers received a call informing them that Nava was armed with a gun and knife, and under the influence of some unknown drug. While it was later determined that what the officers believed to be a handgun, was in actuality a CO2 air pistol BB gun, both Officer Staymates and Officer Pedersen reasonably believed the gun to be a firearm capable of firing live ammunition. Their belief that the BB gun was a firearm was reasonable considering the appearance of the gun, as well as the way in which Nava was using it. The gun was black in color, had no orange tip or any other markings to distinguish it from a real firearm, and the gun looked extremely similar to a semi-automatic handgun. Additionally, Nava's actions throughout the pursuit such as pointing the gun in the air and at the officers further bolstered the officers' reasonable belief the gun was a real firearm.

The reasonable belief of both officers that the gun was real along with Nava's erratic behavior pointing and waiving the gun out of the vehicle in different directions, reasonably lead the officers to justifiably believe that Nava not only posed a significant threat to himself, but also to the lives of the two officers and to the public. Both Officers Staymates and Pedersen were therefore justified in their belief that Nava posed a real danger. Nava ignored all the commands of the officers to stop the vehicle, and instead proceeded to lead the officers on a vehicle pursuit. He ignored the activated lights and sirens of the patrol vehicle signaling him to stop, and instead continued to accelerate away from the officers. During the pursuit, Nava pointed the gun outside of the window and towards the officers, waiving it around in different directions in a populated area. Nava recklessly pointed the gun out of his Truck in a residential area on a Saturday morning, where many civilians were out on the sidewalks, in their front yards, and driving in cars alongside Nava. Throughout the course of the pursuit Nava refused to stop the vehicle, blew through multiple intersections nearly crashing into pedestrians and other cars, all while waiving the gun out of the window and pointing it at those on the street as well as at Officers Pedersen and Staymates. When Nava eventually stopped the vehicle, he did not give the officers any indication of surrender and the officers indicated, reasonably based on all the available evidence, that they believed Nava would exit the vehicle and open fire.

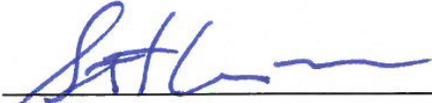
Both Officers Pedersen and Staymates reasonably feared their lives were in danger multiple times during the pursuit when Nava pointed the gun directly at them. Multiple witnesses also saw Nava pointing the gun out of window and at the officers. Video surveillance and BWC footage also corroborate the officers' account of Nava's reckless driving pattern, his failure to yield, and the officers' reasonable belief that Nava was intending to fire a gun at them. Both officers stated that they did what they believed was necessary in order to stop the threat, and the conduct of the officers in doing so was reasonable.

It should also be noted that, in order for Officers Staymates and Pedersen 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 Officers Staymates and Pedersen did not act in reasonable and justifiable self-defense or defense of another when they shot at Nava. 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 Officers Staymates and Pedersen to believe that their lives and the lives of others in the area were in danger.

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 a lack of sufficient evidence to show beyond a reasonable doubt criminal culpability on the part of Officers Staymates and Pedersen when they fatally shot Nava on July 21, 2018.

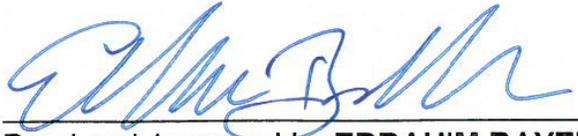
Accordingly, the OCDA is closing its inquiry into this incident.



SCOTT WOOLDRIDGE

Deputy District Attorney

TARGET/GANGS Unit



Read and Approved by **EBRAHIM BAYTIEH**

Senior Assistant District Attorney – Operations IV