



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

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TODD SPITZER

July 9, 2020

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

Re: Officer-Involved Shooting on August 21, 2019  
Fatal Incident involving Luis Herмосillo  
District Attorney Investigations Case # SA 19-018  
Orange County Sheriff's Department Case # 19-032109  
Orange County Crime Laboratory Case # 19-51131

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's Department Deputies Vincent Renzi and Moni Faour. Luis Herмосillo, age 57, died as a result of his injuries. The incident occurred in the City of Stanton on August 21, 2019.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the August 21, 2019, fatal, officer-involved shooting of Luis Herмосillo. 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 Deputy 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 August 21, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, nine interviews were conducted, and 3 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Orange County Sheriff's Department (OCSD) reports; audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; photographs related to the injuries sustained by Luis Herмосillo; criminal history records related to Luis Herмосillo; and other relevant reports and materials including audio recordings of the incident and audio recordings of the conducted neighborhood canvass.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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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 Vincent Renzi. 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 Faour and Deputy Renzi each gave a voluntary statement to OCDA Investigators on August 26, 2019.

### **FACTUAL SUMMARY**

On August 21, 2019, Luis Hermosillo's mother called 9-1-1 at approximately 7:33 p.m., requesting police assistance to her home located in the city of Stanton. She stated that her son, Luis, was drunk, bipolar, breaking things, and armed with a knife. Hermosillo's mother stated she was worried and believed Hermosillo was trying to kill her other son. Deputies were dispatched to the location and advised that the suspect was armed and dangerous.

At 7:37 p.m., Deputy Faour arrived, followed closely by Deputy Renzi. The two deputies made contact with Hermosillo's mother and his sister-in-law near the front of the house. The deputies were told that Hermosillo was armed and also had poured gasoline in the yard. The deputies requested the fire department to begin staging and proceeded through the house to reach the backyard, where both Hermosillo and his brother were located. Deputy Kocher also arrived around this time and followed the other deputies through the house to the backyard. As the deputies entered the backyard, Deputy Faour reported smelling gasoline. Deputy Faour drew his Taser as they entered the backyard and Deputy Renzi drew his gun.

As the deputies entered the backyard, they could hear Herмосillo yelling in the shed across the yard, but could not see him. Herмосillo exited the shed and appeared to be agitated. Herмосillo had a knife in his hand and was waving it around. Herмосillo began approaching Deputy Faour quickly. Deputy Faour repeatedly yelled "stop," but Herмосillo continued to approach Deputy Faour. Deputy Faour fired his Taser, which affected Herмосillo momentarily. However, Herмосillo regained control and removed at least one of the Taser barbs. Herмосillo continued to wave the knife in a slashing manner and advance towards Deputy Faour. At this point, Deputy Faour yelled "go guns, go guns." Deputy Renzi fired four shots at Herмосillo and Herмосillo fell to the ground. The deputies handcuffed Herмосillo, and began to administer CPR and first aid. Anaheim Fire Department arrived and pronounced Herмосillo deceased at 7:50 p.m.

### **VOLUNTARY STATEMENT OF DEPUTIES**

Deputy Faour gave a voluntary statement on August 26, 2019. Deputy Faour stated that as they entered the backyard, he had his Taser drawn and he stepped to his left. A man came out of the shed very agitated and grabbed what appeared to be a knife. The man started swinging the knife around and walking towards Deputy Faour. Deputy Faour stated he issued multiple commands to stop, but Herмосillo kept coming towards him, so Deputy Faour fired his Taser. Deputy Faour saw one of the Taser prongs hit Herмосillo. Herмосillo locked up momentarily, but then regained motion. Deputy Faour stated Herмосillo was no more than 10-12 feet away at the time Herмосillo regained motion towards him. Herмосillo continued advancing towards Deputy Faour aggressively and waving the knife. At that point, Deputy Faour dropped his Taser, told Deputy Renzi to go guns, and began to draw his service weapon. Deputy Faour took one step backward to create space and was bringing his gun up to fire when he heard Deputy Renzi shooting. The subject started to fall down and Deputy Faour took his hand off the trigger, thinking the danger had subsided. Deputy Faour advised dispatch that shots were fired.

Deputy Renzi gave a voluntary statement on August 26, 2019. Deputy Renzi entered the backyard behind Deputy Faour and saw Herмосillo with a knife in his hand. Deputy Renzi stated upon entering the backyard, Herмосillo's focus was immediately directed to the deputies. Herмосillo began walking aggressively towards the deputies with the knife. Deputy Renzi heard Deputy Faour repeatedly order Herмосillo to stop. Deputy Faour then deployed his Taser. When Deputy Faour fired the Taser, Herмосillo hunched over for a moment and then stood up and started walking directly towards Deputy Faour aggressively. Herмосillo was waving the knife wildly in front of him, making slashing motions. Deputy Renzi estimated Herмосillo was less than 7 feet from the deputies at this point. After seeing the ineffectiveness of the Taser and Herмосillo rapidly closing the distance towards Deputy Faour while swinging the knife, Deputy Renzi fired multiple shots. After the shots were fired, Herмосillo fell to the ground, and the deputies handcuffed him. Deputy Renzi stated that he shot because he believed Herмосillo was going to stab Deputy Faour and felt there was no other option based on the ineffectiveness of the Taser and Herмосillo's close proximity to Deputy Faour.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- One cartridge case headstamp "FC" 9mm Luger
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- One black Taser, model X26, serial # X12008383
- One makeshift knife sheath wrapped in black tape
- Taser wire
- One gray Taser blast door
- One makeshift knife wrapped in black tape

- One single edge knife with Taser wire and probe
- One bullet
- One box cutter knife
- One cartridge case headstamp “FC” 9mm Luger

## **AUTOPSY**

On August 28, 2019, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Luis Hermosillo. Dr. Luzi documented four separate gunshot wounds on Hermosillo’s body: middle back, lower left back, left inner upper arm, left outer upper arm. Dr. Luzi concluded that Hermosillo’s cause of death was multiple gunshot wounds.

## **EVIDENCE ANALYSIS**

### **Firearms Examination**

Officer Renzi’s Glock Model 19Gen4 pistol, 9mm Luger caliber, was test fired at the Orange County Crime Lab and fired without malfunction. The four cartridge cases from the scene were determined to have been fired in the Glock pistol.

### **Taser Examination**

Deputy Faour’s Taser International TASER Model X26P, was downloaded and tested. The Taser functioned properly when tested in the laboratory. The download from August 21, 2019 showed the following:

| Sequence # | Local Date | Local Time (unadjusted) | Duration Time | Battery Power (%) |
|------------|------------|-------------------------|---------------|-------------------|
| 101        | 08/21/2019 | 19:48:19                | Armed         | 66                |
| 102        | 08/21/2019 | 19:48:27                | 5             | 66                |

Note: the Taser clock was nine minutes and twenty-nine seconds ahead of the laboratory computer clock.

### **Toxicological Examination**

A sample of Hermosillo’s blood was collected at the Orange County Coroner’s Office. 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            | Postmortem Blood      | Brain               |
|-----------------|-----------------------|---------------------|
| Amphetamine     | 0.154 ± 0.012 mg/L    | 0.201 ± 0.015 mg/kg |
| Ethanol         | 0.142 ± 0.006 % (w/v) |                     |
| Methamphetamine | 1.07 ± 0.08 mg/L      | 1.28 ± 0.10 mg/kg   |
| THC             | 0.0011 ± 0.0002 mg/L  |                     |

## **LUIS HERMOSILLO’S PRIOR CRIMINAL HISTORY**

Luis Hermosillo’s criminal history was reviewed and considered. Hermosillo had a California Criminal History that dates back to 1980. He has previously been arrested for the following charges:

- Grand Theft Auto
- Possess Dangerous Weapon and Controlled Substance
- Obstruct Peace Officer / Obstruct & Resist Executive Officer

- Assault and Battery on Peace Officer
- Fight/Challenge Fight in Public Place
- Assault and Battery
- Disorderly Conduct: Alcohol
- Inflict Corporal Injury to Spouse or Cohabitant
- Burglary
- Under the Influence of a Controlled Substance
- Possess/Purchase for Sale Narcotics - Possession of Drug Paraphernalia
- Receiving Stolen Property
- Battery on Cohabitant / Person
- Trespassing - Trespass: Railroad Property

### **STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against an officer involved in a fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when 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/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 had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are applicable to the circumstances surrounding the interactions of Orange County Sheriff's Deputy Renzi with Luis Hermosillo.

### **LEGAL ANALYSIS**

The facts in this case are determined by considering all the available information, and Deputies Faour's and Renzi's statements to the OCDA investigators, which were supplemented by other relevant materials and witness interviews.

The issue is whether the conduct of Deputy Renzi on August 21, 2019, was criminally culpable and without justification. As stated above, in order to charge Deputy Renzi with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, in order to lawfully charge Deputy Renzi with a crime, the prosecution must be able to prove that he did not act in lawful self-defense or defense of

others. If Deputy Renzi's actions were justifiable and necessary 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 “[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.

Based on the totality of all the available evidence, the prosecution will not be able to prove beyond a reasonable doubt that Deputy Renzi was not justified in believing that Hermosillo posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, particularly the conduct of Hermosillo in the moments leading up to the shooting. When the deputies arrived, Hermosillo appeared agitated, drew a knife, and began waving it wildly while aggressively approaching the deputies. Hermosillo was given several commands to “stop,” but continued to advance. After the warnings were ignored, Deputy Faour deployed his Taser, but it was ineffective. As Hermosillo regained control and removed the Taser barb, he continued to swing the knife wildly in a slashing motion and advanced towards Deputy Faour. At this point, Hermosillo was no more than 7-10 feet away from the deputies and was quickly closing the distance. Deputy Faour reasonably believed he was in imminent danger and began to draw his firearm while yelling “go to guns, go to guns.”

After seeing the ineffectiveness of Deputy Faour's Taser deployment, as well as Hermosillo's continued advances towards Deputy Faour, Deputy Renzi reacted under the reasonable belief that there was an imminent threat of death or serious bodily injury to Deputy Faour. Due to Hermosillo's actions of waving the knife wildly in a slashing motion and aggressively advancing towards Deputy Faour within a distance of less than 7-10 feet, the evidence supports a conclusion that Deputy Renzi reasonably believed Hermosillo's actions indicated an intent to attack Deputy Faour. As such, Deputy Renzi reasonably felt the only effective means of dealing with this threat was to use his service weapon. Deputy Renzi fired multiple times, striking Hermosillo. Hermosillo fell to the ground, and the deputies handcuffed him and began to administer first aid.

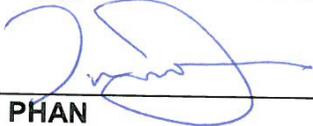
It is crucial to consider the circumstances leading up to the interaction, which ultimately led to Deputy Renzi's belief that there was an imminent threat of death or serious bodily harm to his fellow deputy. The 9-1-1 call placed to dispatch by Hermosillo's mother leading up to the deputies' arrival on scene indicated that Hermosillo was armed with a knife and trying to kill his brother. Upon arrival to the residence, Deputy Faour and Deputy Renzi were alerted by Hermosillo's mother that Hermosillo was dumping gasoline in the backyard and was preparing to light it on fire. These reports gave a reasonable belief that Hermosillo was dangerous and aggressive. This belief was further bolstered by Hermosillo's actions in the backyard. Hermosillo refused to listen to the commands that Deputy Faour repeatedly issued to stop, and continued to move towards the deputies, armed with a knife, and swinging it aggressively. Even after being hit with the Taser, Hermosillo did not back down or back away from the deputies. Hermosillo removed the Taser barb and continued to slash the knife through the air and advance towards Deputy Renzi's partner. The totality of the circumstances in this case indicated that the situation was dangerous, less than lethal means were ineffective, and lethal force was the only effective, reasonable, and necessary option that Deputy Renzi could use to protect his fellow deputy from imminent death or serious bodily injury.

In order for Deputy Renzi 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 Renzi did not act in reasonable and justifiable self-defense or defense of another when he shot at Hermosillo. 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 Renzi to believe that his life and the lives of others, particularly Deputy Faour, were in danger. Therefore, the totality of all the evidence supports a conclusion that Deputy Renzi was legally justified when he shot at Hermosillo.

### **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 prove beyond a reasonable doubt that Deputy Renzi committed a crime, and there is substantial evidence that Deputy Renzi's actions were reasonable, justified, and necessary under the circumstances when he shot Luis Hermosillo on August 21, 2019.

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



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**TOM PHAN**  
DEPUTY DISTRICT ATTORNEY  
GANGS 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**