



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

July 8, 2020

Chief Tom Kisela
Orange Police Department
1107 N. Batavia St.
Orange, CA 92866

Re: Officer-Involved Shooting on December 12, 2019
Fatal Incident involving Erik George Lee
District Attorney Investigations Case # S.A. 19-024
Orange Police Department Case # 19-12-0354
Orange County Crime Laboratory Case # FR 19-56858

Dear Chief Kisela,

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 Police Department Officers Bryce Nielsen and Michael Slaughter. Erik George Lee, age 43, died as a result of his injuries. The incident occurred in the City of Orange on December 12, 2019.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the December 12, 2019, fatal, officer-involved shooting of Lee. 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 Police Department officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On December 12, 2019, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 10 interviews were conducted, and nine additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Orange Police Department reports, audio dispatch and radio traffic recordings, video footage, Orange County Crime Laboratory (OCCL) reports; including toxicology, forensic alcohol examination, taser deployment analysis, officer processing and firearms examination reports, crime scene investigation photographs, medical records and photographs related to the injuries sustained by Lee, criminal history records related to Lee; including prior incident reports involving Lee's mental health, and other relevant reports and materials including audio recordings of the conducted neighborhood canvass. Additionally, video recordings of the incident taken from the patrol cars on scene were reviewed.

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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 on the part of Orange Police Department officers or personnel, specifically Officer Nielsen and Officer Slaughter. 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 or killed 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. Officer Nielsen and Officer Slaughter gave voluntary statements to OCDA Investigators on December 19, 2019.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

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

<http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

On Thursday, December 12, 2019 at approximately 11:20 a.m. Jane Doe called 9-1-1 to report that her 43-year-old son, Erik George Lee, was outside of their residence located at 6978 East Magdalena Drive in the city of Orange. Jane Doe told dispatchers her son has a history of being "5150'd," he currently had a knife, and had told her on the phone that he had cut himself on purpose with the

knife, was bloody, and that he wanted to “commit suicide by cop.” Jane Doe indicated she was afraid to go home and was requesting police assistance.

At approximately 11:22 a.m., Officer Nielsen and Officer Slaughter were dispatched “Code 3” (lights and siren) to the location. The Officers were advised that Jane Doe had reported her son had a knife, and wanted to commit “suicide by cop”. They were also advised he had been “5150’d” before, should be home by himself, and that he was cut and bleeding. Officers were advised Jane Doe was driving home and that Orange Fire had been dispatched to the location for Lee’s self- inflicted injuries.

At approximately 11:28:13 a.m., Officer Nielsen and Officer Slaughter, dressed in full police uniforms arrived on Magdalena and parked their separate marked police vehicles approximately three houses north of 6978 Magdalena and formulated a plan so as to not upset Lee because they were aware he had mental health issues. They then formulated a tactical plan. At 11:28 AM, Officer Nielsen notified dispatch he could see Lee “up the street”. Lee was standing in the center of the street, approximately 75 yards east of him, holding a cloth bag at chest height. Lee’s right hand was inside the bag and his left hand was out of sight, possibly underneath the bag. Officer Slaughter and Officer Nielsen had a quick verbal exchange regarding a tactical plan whereby Officer Slaughter agreed to draw his TASER in the event “less than lethal force” was needed, and Officer Nielsen drew his handgun in the event “lethal force” was required.

Knowing the reporting party had indicated Lee was armed with a knife, officers were attempting to wait for an additional unit before contacting Lee. Officer Nielsen asked dispatch who was the closest backup because he had hoped a sergeant was nearby, because sergeants carry other less-than-lethal weapons (Pepper Ball Gun and 40 mm Sponge Gun) not generally carried by officers.

Before another unit arrived, Lee began to walk toward the officers. Both officers decided that since Lee was walking towards them, they could no longer wait for an additional officer to arrive. They both feared an unsuspecting resident could come outside and inadvertently place themselves in harm’s way. As both officers were walking up the hill towards Lee, Officer Nielsen broadcasted “He’s cooperative so far; walking towards us.” As the officers advanced, neither had their guns drawn at that time. Officer Slaughter was carrying his Taser, but it was by his side and not aimed at Lee. As they were advancing, Officer Nielsen repeatedly told Lee “Let me see your hands.”

Officer Nielsen, based on training he had received related to interacting with mentally ill persons, purposefully spoke to Lee in a calm voice and gave him short concise instructions. Officer Nielsen hoped his calm demeanor and concise instructions would lead to a peaceful resolution. Officer Nielsen repeated again and again “Let me see your hands” in a loud but calm manner, but Lee refused and continued walking towards the officers. Officer Nielsen believed that Lee was armed with a knife and that the knife was concealed in the bag. As Lee continued walking very purposefully towards the officers, Officer Nielsen repeatedly stated “Let me see your hands. Let me see your hands. Do it now. Let me see your hands. Do it now.” Lee refused and continued walking towards the officers. At approximately 11:29 AM, the officers realizing Lee was no longer “cooperative,” and the officers began retreating backwards in an attempt to maintain their distance and give Lee additional time to comprehend and follow commands.

Both officers continued to tell Lee “Let me see your hands” and “Get your hands out of the bag”. Lee refused and continued towards them. Officer Slaughter described Lee as having “a thousand yard stare” and “looking right through them.” Both officers stopped backing up as they neared the front of Officer Nielsen’s police vehicle. Officer Slaughter indicated that he did not want to back up past their vehicles, for fear Lee would arm himself with one of the weapons stored inside his vehicle.

At approximately 11:29 AM, Officer Slaughter moved towards the north curb line and pointed his Taser at Lee. Officer Slaughter believed he was further than 25 feet away from Lee and outside the range of the Taser. He yelled at Lee "Police, show me your hands!" Lee refused. Officer Slaughter feared Lee was "going to cause us great bodily harm". He described Lee as "a man on a mission." As Lee continued to advance towards Officer Nielsen, Officer Nielsen raised his handgun to shoulder height, pointed it directly at Lee and yelled "Get back, get back, let me see your hands, do it now!" Lee continued to advance. With Lee 15-20 feet away from Officer Nielsen and closing on him, Officer Nielsen indicated that he feared the long sleeved sweatshirt Lee wore and the bulky bag he carried would render the Taser ineffective. Officer Nielsen yelled "Show me your hands!" When Lee failed to comply, Officer Nielsen indicated that he feared Lee was going to kill him and his partner, Officer Nielsen fired seven rounds. Officer Nielsen saw the rounds strike the pavement behind Lee and feared his shots might have missed. Lee turned his body to the left and Officer Nielsen fired another round. Simultaneously with Officer Nielsen firing, Officer Slaughter discharged his Taser. Officer Slaughter saw the probes fly through the air and fall short of Lee. Officer Slaughter dropped his Taser, transitioned to his handgun, and broadcast "shots fired." Officer Nielsen stated in his interview "If I hadn't shot him right then he was going to keep coming towards us and trying to kill myself and my partner and I truly believe that was his goal."

Lee, with the bag still in his hands, stumbled towards the south sidewalk. He regained his balance, turned toward the officer and displayed a large butcher knife in his right hand. Officer Slaughter said he was "in absolute fear for his life." He knew Lee had been now shot several times, yet he refused to follow commands and drop the knife. Both officers yelled "Drop the knife", "Put it down" and "get down" however Lee refused to comply. Lee began to walk slowly toward the officers. He had the knife in his right hand at chest height. Both officers yelled for Lee to drop the knife. Lee did not comply and continued to move towards them with the butcher knife. With approximately 10 feet separating Lee and the officers, Officer Nielsen and Officer Slaughter fired their weapons. Officer Nielsen fired approximately six (6) rounds and Officer Slaughter fired four (4) rounds. When Lee collapsed to the ground, both officers stopped firing. Officer Nielsen broadcasted "shots fired" and requested paramedics.

At approximately 11:31 AM, Officer Nielsen and Officer Slaughter approached Lee. Officer Slaughter kicked the knife lying on the ground to the left away from Lee, and Officer Nielsen kicked another knife lying to the right of Lee. Officer Nielsen ran to get a first aid kit while Officer Slaughter rolled Lee over. At approximately 11:31 AM, Orange Fire Department paramedics were on scene. They approached Lee in the roadway and began to treat him. There was a knife with a blue handle and approximate 7-inch blade to Lee's right and a meat cleaver with an 8-inch blade to his left. Lee's clothing was cut off and Lee had suffered gunshot wounds to his chest, neck, and shoulder. Lee was non-responsive, had no respirations and no pulse. CPR was initiated, a 12 lead heart monitor was attached but Lee had flat-lined. He was pronounced deceased at 11:41 AM by the attending paramedic.

OC Fire Captain Carl Collins, who was on scene after receiving a call from OPD regarding an individual with possible psychiatric problem was interviewed. Captain Collins stated he and his unit had been assigned to stage (standby close so Officers can clear the scene and make sure it is safe for the paramedics to render aid if needed). Captain Collins saw a civilian pulling out of a driveway in a white SUV and wanted to ensure her safety, so he parked his rig blocking the street and let her know that something was going on. Captain Collins saw the two officers with their backs to him, and he could see Lee facing him with his right arm raised and he had a tool with a large blade in it. The Fire Captain saw the officers with their guns drawn and he could see Lee on foot moving towards the officers making some type of "aggressive or threatening motion" with the weapon he had in his

right hand. Captain Collins stated Lee brought it up to shoulder height or above shoulder height. He saw Lee's left arm waiving while Lee was in an aggressive stance. He saw Lee move towards the officers and while he could not hear the shots due to his headset, he saw puffs of smoke and then saw Lee fall to the ground. He indicated once Lee dropped to the ground, he saw no more shots fired.

Jane Doe, Lee's mother, was interviewed and told investigators that her son has a history of being 5150'd, cutting himself with a knife, and has spoken many times prior to the date of this incident of dying by "suicide by cop." Jane Doe stated Lee was diagnosed with Tourette's syndrome, Bipolar disorder, and was supposed to be taking medication, however he often did not, causing him to get very angry. Jane Doe indicated Lee has had two separate hospitalizations due to his psychiatric disorder and that he had trouble sleeping, would become violent and lose control.

Jane Doe told Officers that she and Lee had gotten into an argument in the morning about a trip to Arizona and that Lee was very upset, agitated, and had called her on the phone many times in an agitated state while she was working. Jane Doe indicated she stopped answering her phone when Lee called one of her tenants to speak to Jane Doe. Jane Doe then called Lee while driving home, and Lee told her "you really hurt me this time" and reported that he had cut himself "real bad." Jane Doe told Lee she wanted to call Kaiser or call the police to take him to the hospital. Jane Doe stated she called 9-1-1 and told them that she was not driving home because she was afraid and that her son had cut himself, and told her he was going to have "the police shoot him."

John Doe, Lee's father, was interviewed and told investigators his son suffered from Tourette's and ADHD for many years, and takes 4-5 medications, however Lee does not know how to manage his anger and has been cutting himself for years. On the morning of the incident, Lee and his mother Jane Doe got into an argument at approximately 7:00 AM, but John Doe was unsure of what the argument was about. At approximately 9:00 AM, Lee and John Doe returned from the store and Lee stayed in the car on the phone with Jane Doe. Lee then came into the home and retrieved a knife from the kitchen and repeatedly began cutting his arm. John Doe believed Lee cut himself six (6) times. John Doe told Lee to clean himself up and Lee told him he cut himself because Jane Doe made him mad. John Doe called Jane Doe to come home, but was unable to reach her. Lee sat on the couch for approximately 15 minutes and then grabbed a canvas bag and a meat cleaver and went outside and stood in the middle of the street and waited for the police to come.

John Doe did not know Lee had the cleaver until he saw Lee pull it out of the canvas bag. John Doe stood in the driveway and told Lee to give him the cleaver, but Lee refused. John Doe was fearful Lee would use the cleaver on him. A short time went by and John Doe heard the police sirens and saw the police arrive. John Doe did not know who called the police. Lee said "Bye" to John Doe and walked towards the officers. John Doe stood away from Lee and hid behind his GMC Envoy vehicle because he knew something was going to happen. John Doe "knew that was it" and stated it looked like Lee was getting ready to commit suicide. John Doe heard the officers repeatedly tell Lee to put the cleaver down, but Lee wouldn't. John Doe stated the police shot the ground and repeatedly told Lee to put the cleaver down, but he refused and Lee still wouldn't put the cleaver down. The officers then shot at Lee again and struck Lee causing him to stagger to the ground and land on his face. John Doe stated the Officers told Lee "loud and clear" to put the cleaver down and that Lee was approximately 20 feet away from officers while holding up the cleaver.

Jane Doe 2, a neighbor who was identified as the woman in the white SUV, told Investigators initially on scene that she witnessed the shooting. Jane Doe 2 described leaving her home to pick up her son, when she saw a male Asian with bags in his hand. She did not recognize him as anyone she

knew but thought it might have been an autistic man who lived in a residence near her home. She stated she saw two bags in his hands; one in each hand and she saw a metallic item in one hand. She thought it might have been a cheese grater. Jane Doe 2 then saw the police and she turned around to see what was happening. She saw the police officers get out of their vehicle and she saw Lee walking towards the police officers. She thought the officers told Lee to stop, but he kept walking aggressively towards the officers. (It should be noted this witness was interviewed subsequent to this initial interview and told OCDA investigators the same information, except she indicated she did not feel that Lee was advancing towards the police in an aggressive manner and never raised the object in his hand.) She could not hear anything, but saw the officer's mouths moving. She saw both officers with their guns out and said they shot 5 rounds, and did not know which officer shot or if both did. She stated she believed Lee fell down but could not say if he fell forward or backward. She stated Lee got back up and officers shot again. She stated they only fired 1 shot after he got back up and she did not know which officer shot. She indicated 20 seconds passed between the first series of shots until the last single shot was fired. She said she got freaked out and left the housing tract.

The police canvassed the neighborhood and interviewed many neighbors, some of whom heard and saw nothing, others reported hearing gunshots, but none had actually seen the events leading up to the shooting. There was one witness who had seen a male Asian standing in the street earlier giving him "the stink eye".

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One Taser with wire and probe
- One Taser with probe
- One grey Taser blast door
- One grey Taser blast door
- One Glock 15 round capacity magazine with live cartridges
- One cartridge case, headstamped "WIN 40 S&W"
- One tan bag with green handles, with apparent blood and holes in it
- One meat cleaver with wood handle and 8 inch blade
- One kitchen knife with plastic handle and 7 inch blade
- One bullet and bullet fragments

- 9 projectiles collected from autopsy
- Glock 22 pistol, .40 Smith & Wesson caliber, magazines and cartridges (Officer Slaughter's weapon)
- Glock 22 pistol, .40 Smith & Wesson caliber, magazines and cartridges (Officer Nielsen's weapon)

AUTOPSY

On December 16, 2019, Forensic Pathologist Dr. Aruna Singhania of the Orange County Coroner's Office conducted an autopsy on the body of Lee. The autopsy revealed Lee sustained eight gunshot wounds. Dr. Singhania also documented multiple superficial and distinct crisscross cutting wounds on the Lee's forearm covering an area of 9 inches by 3 inches. The cause of death was found to be multiple gunshot wounds in the chest, upper arm, two in the back, and one to the left lower thigh area.

EVIDENCE ANALYSIS

Firearms Examination

Officer Nielsen's Glock 22 pistol was test fired at the Orange County Crime Lab and fired without malfunction. Officer Slaughter's Glock 22 pistol was test fired and operated without malfunction. Officer Nielsen handgun was determined to have fired 13 cartridge cases located at the scene. Officer Slaughter's handgun was determined to have fired 4 cartridge cases located at the scene.

Taser Examination:

The Taser International Model x26P was examined along with a discharged cartridge. The illuminator, laser dot sight, and automatic five second pulse operated properly. The lever safety operated properly. The data stored in the TASER was downloaded using the manufacturer's software. One activation was recorded on the TASER on December 12, 2019. The TASER clock is 25 minutes 39 seconds ahead of the computer clock (based on the time synchronization during the download of the date from the TASER). The data showed on December 12, 2019 at 11:55:16 (unadjusted time) there was one activation recorded.

Toxicological Examination

A sample of Lee's blood was collected at the Orange County's Coroner's Office during the autopsy. 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
Pregabalin	Postmortem Blood	1.98 +0.21 mg/L
7-Aminoclonazepam	Postmortem Blood	Detected

LEE'S PRIOR CRIMINAL HISTORY

Lee's criminal history was reviewed and considered. Lee had a California Criminal History that dates back to 1999. He has previously been arrested for battery in violation of Penal Code section 242 on two separate occasions: January 25, 1999, and November 26, 2001.

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/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 applicable to the circumstances surrounding the interactions of Orange Police Department Officers Slaughter and Nielsen with Lee.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officer Slaughter and Nielsen's statements to the OCDA investigators, which was supplemented by other relevant material and witnesses present at the incident, as well as the video recording of the incident.

The issue is whether the conduct of Officer Slaughter and Officer Nielsen on December 12, 2019 was without legal justification making them criminally culpable. As stated above, in order to charge Officer Slaughter and/or Officer Nielsen 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 Officer Slaughter and/or Officer Nielsen with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of Officer Slaughter and Officer Nielsen were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a recent case, it is well settled that "[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.

Both Officer Slaughter and Officer Nielsen were reasonably justified in believing that Lee posed a significant threat of death or serious physical injury to himself and others, and moreover the Officers themselves. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Lee in the moments leading up to the shooting. Lee had armed himself with a knife and a meat cleaver after cutting his arm repeatedly in an agitated state. Lee told his father he was upset with his mother and refused to give his father the knife he had just used to cut his own arm. Lee had concealed his hands and the weapons he held in each hand and had told his mother he intended to have the police shoot and kill him. When both officers arrived, they had been informed that Lee suffered from mental illness and that he had a knife and wanted to "commit suicide by cop." Armed with this information, the Officers proceeded with caution, came up with a plan to use non-lethal force if necessary, and attempted to speak in a calm manner so as to not upset Lee when contacting him. As evidenced by the video footage of this incident, the officers repeatedly told Lee to show them his hands. Lee refused. Lee was looking at the officers like "a man on a mission" and with a "thousand yard stare." The officers saw Lee aggressively walking toward them concealing his hands and refusing to show them what if anything was in his hands. The officers themselves retreated backwards so as to create more distance and give themselves more time to react to whatever Lee was intending to do, however, Lee never stopped advancing on them, causing them to close in on their patrol cars. Fearing Lee would be able to reach any weapons in their vehicles, the Officers stopped retreating and attempted to defend themselves. This was both reasonable and necessary under the totality of all the circumstances.

The officers told Lee repeatedly again to "Get back! Get back! Drop the knife! Do it now!," but Lee refused and continued moving towards the officers. Fearing for their lives and the safety of their partners and the people in the neighborhood, the officers shot at Lee. The prosecution will not be able to prove beyond a reasonable doubt that it was not necessary, reasonable, or justified for the officers to do so. The Taser was shot simultaneously which did not stop Lee from advancing either. Lee then held up a large meat cleaver and still refused to stop advancing or drop the weapon. The officers fired again at Lee and the prosecution will not be able to prove beyond a reasonable doubt that it was not necessary, reasonable, or justified for the officers to do so. After being shot again, Lee finally fell down and stayed down, dropping both weapons. Both of these officers were reasonable in their belief that they were going to be killed and justified in using deadly force to defend themselves and the lives of others.

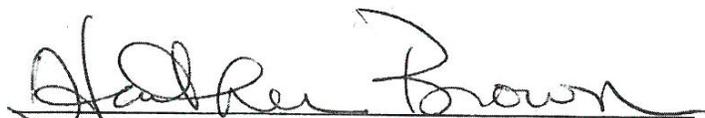
It should also be noted that, in order for Officer Slaughter and/or Officer Nielsen to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that Officer Slaughter and Officer Nielsen did not act in reasonable and justifiable

self-defense or defense of another when each shot at Lee. 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 and necessary for Officer Slaughter and Officer Nielsen to believe that their lives and the lives of others were in danger. Therefore, there is a lack of sufficient evidence to prove beyond a reasonable doubt that Officer Slaughter and/or Officer Nielsen committed a crime when they shot at Lee. On the contrary, the weight of all the evidence and the surrounding circumstances support the conclusion that the officers acted justifiably, reasonably and as necessary.

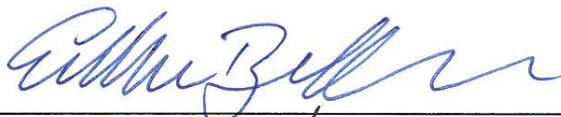
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officer Slaughter or Officer Nielsen, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Lee on December 12, 2019.

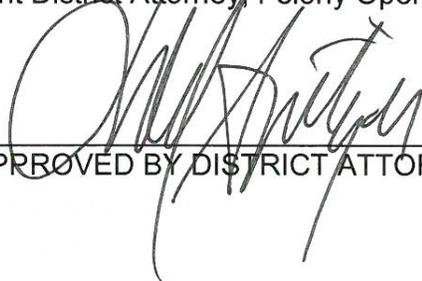
Accordingly, the OCDA is closing its inquiry into this incident.



HEATHER BROWN
SENIOR DEPUTY DISTRICT ATTORNEY
HOMICIDE UNIT



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



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