



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

December 28, 2021

Commissioner Amanda L. Ray
California Highway Patrol
601 North 7th Street
Sacramento, CA 95811

Re: Officer-Involved Shooting on October 15, 2020
Fatal Incident involving Armando Sabat
District Attorney Investigations Case # SA 20-025
California Highway Patrol Case # CHP C20-601-008
Orange County Crime Laboratory Case # 20-52480
Orange County Coroner's Office Case # 20-05369-DB

Dear Commissioner Ray,

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 California Highway Patrol (CHP) Officer Jonathan Torres. Armando Sabat, age 71, died as a result of his injuries. The incident occurred in the City of Los Alamitos on October 15, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the October 15, 2020, fatal, officer-involved shooting of Armando Sabat. 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 CHP officer 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 October 15, 2020, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 12 interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: CHP reports, Long Beach Police Department reports, Los Alamitos Police Department reports, Seal Beach Police Department reports, Cypress Police Department reports, Orange County Fire Authority Reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, officer processing and firearms examination reports; crime scene

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

MAIN OFFICE
300 N. FLOWER STREET
SANTA ANA, CA 92703
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 835-7624

CENTRAL OFFICE
401 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3952

investigation photographs; medical records and photographs related to the injuries sustained by Sabat; criminal history records related to Sabat 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, and if the use of force was consistent with the law, on the part of CHP officers or personnel, specifically Officers Torres. The OCDA will not be addressing any possible issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

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

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Both Officer Torres and his partner, Officer Robinson, gave voluntary statements to OCDA Investigators on October 15, 2020.

FACTUAL SUMMARY

On Wednesday, October 14, 2020 at approximately 10:00 am, an employee with the California Department of Transportation (Cal Trans) found a homeless encampment on the cloverleaf area of the westbound Katella onramp to the southbound I-605 freeway in Los Alamitos. The Cal Trans employee requested CHP to respond to make contact with the subject at the encampment. When the CHP arrived, no one was present in the encampment.

The following day, Thursday, October 15, at approximately 8:45 am, the same Cal Trans employee went to the encampment to check on his team and see if there was anyone inside the encampment. As he approached, the Cal Trans employee called out to see if anyone was present inside the encampment. From inside the encampment, Sabat poked his head out of a makeshift

tent which consisted of multiple tarps, drop-clothes, blankets, and strings attached to trees which kept the tent straight on all four corners. The Cal Trans employee told Sabat that he needed to leave and Sabat responded that he could not leave at the present time. Sabat was then informed that the CHP would be there in approximately 15 minutes.

At approximately 9:11 am, CHP Officers Jonathan Torres and Gary Robinson were dispatched to the incident location regarding a male transient (Sabat). Officers Torres and Robinson were in separate CHP marked patrol vehicles assigned to a Cal Trans overtime detail.

At approximately 9:15 am, Officers Torres and Robinson spoke to Cal Trans workers and were directed towards Sabat's encampment. The tent was located in an area thick with trees, bushes and plants. Officers Torres and Robinson ordered Sabat to exit his tent several times. Sabat responded he was getting dressed but did not exit the tent. Officer Robinson believed Sabat sounded angry and agitated about being asked to leave the tent. Both officers continued to request that Sabat exit and identify himself for several minutes without compliance.

At approximately 9:21 am, Officer Torres removed his sunglasses and bent over to look inside the tent. Officer Torres saw Sabat fully dressed on his hands and knees. When Officer Torres looked inside the tent a second time, Sabat was beginning to exit the tent on his hands and knees with a large revolver in his right hand. While crawling out of the tent, Sabat pointed the firearm directly at Officer Torres. In response, Officer Torres reached for his firearm. Officer Torres then heard a pop from the revolver and instantly felt a stinging sensation to the left side of his face. Officer Torres' left eye went completely shut and he believed he had been shot. Officer Torres felt he was seriously injured and may be killed. In response, Officer Torres began to return fire at Sabat. As he was firing at Sabat, Officer Torres walked backwards in an attempt to get out of the area. Officer Torres fired a total of eight gunshots at Sabat in a northeast direction.

Officer Robinson told Investigators that he saw Sabat stick his hand out of the tent and point a revolver at Officer Torres. Officer Robinson heard gunshots and saw sparks from Sabat's revolver. The sound startled Officer Robinson, and he fell backwards and heard what he believed to be Officer Torres firing back at Sabat. Officer Robinson regained his balance and began to retreat. Officer Robinson did not discharge his firearm during this incident and he was uninjured.

Sabat remained in the tent while Officers Torres and Robinson retreated and took cover behind a Cal Trans truck. Once Officers Torres and Robinson reached cover they did not see Sabat or any movement from inside the tent. Once back up units arrived, Officer Torres checked his left eye and found what appeared to be a combination of mud and a slimy material inside his eye (possibly grease from Sabat's revolver). Upon further evaluation at the hospital, medical staff was unable to identify the substance that hit Officer Torres' left eye. Officer Torres' left eye was red and slightly swollen but no additional injuries to his eye were noted.

Officers from the CHP, Long Beach Police Department, Los Alamitos Police Department, Seal Beach Police Department, Cypress Police Department and the Orange County Fire Authority (OCFA) responded to the shooting. When additional units arrived, it was unknown whether Sabat had been struck by gunfire and he had been last seen going back into his tent as Officers Torres and Robinson moved to cover. Sabat was still believed to be in the tent and he was not obeying officer commands to exit the encampment. As a result, Sabat was treated as a barricaded suspect.

OCFA and police officers at the scene discussed how to safely make entry into the encampment. At approximately, 12:10 pm, OCFA officers used an aerial ladder and high pressure hose to sweep

the tent off Sabat who had yet to come out of the tent or respond to commands. Four minutes later, a CHP arrest team made contact with Sabat who was face down with his head submerged in excess water that came from the high pressure hose. Sabat was handcuffed and placed in a recovery position. An OCFA paramedic contacted Sabat and conducted an initial medical evaluation. Upon contact, Sabat did not have a pulse, had no respiratory activity, and was asystole. At approximately 12:19 pm, Sabat was pronounced dead on scene by the OCFA paramedics.

An F. LLI PIETTA 1860 Army .44 caliber black powder revolver [serial number P130405] was found partially buried in dirt, leaves, and other debris under Sabat's head. The revolver was recovered with five (5) of the six (6) cylinders loaded and one (1) cylinder empty. An expended percussion cap was also recovered at the scene.

During the investigation of this case, it was determined that Sabat purchased the 1860 Army Old Silver, black powder .44 revolver from the E.M.F. Company, Inc. in Santa Ana on August 1, 2019. In addition to the revolver, Sabat also purchased a black powder flask. The purchase was confirmed through records of E.M.F. Company, Inc. and company employee interviews.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One cartridge case, head stamped FEDERAL 40 S&W
- One cartridge case, head stamped FEDERAL 40 S&W
- One F. LLI PIETTA 1860 Army .44 caliber black powder revolver with a 8 inch barrel, serial number P130405
- Smith & Wesson, M&P .40 caliber, semi-automatic handgun, serial #HXV5943
- Two (2) fifteen (15) round magazines and ammunition
- One Bowie style knife with a ten (10) inch blade found in a sheath on Sabat's person
- One black jacket
- One green shirt
- One pair of black pants
- One belt
- MISC items found on Sabat's person
- One pair of Oakley sunglasses from CHP Officer Jonathan Torres
- Blue suitcase
- Green "East West USA" backpack
 - Seventy dollars and fourteen cents United States Currency
 - One hundred and forty-three dollars United States Currency in bills
 - Two (2) plastic bags containing black powder pistol ammunition, percussion caps, lubricant and paraphernalia
 - California Identification Card, Wells Fargo Debit Card, Bank of West ATM card and other identifying documents in the name of "Armando Sabat"
 - AT&T ZTE cellular telephone
 - Micro SD card and packaging
 - Daisy pellet container, "Baracuda Hunter Extreme" pellet container, red leather pistol holster packaging
 - Brown Metal black powder flask containing black powder
 - Empty cardboard box for an 1860 Army (Old Silver Steel" .44 BBL black powder revolver serial #P130405
- Detonated percussion cap
- Black powder flask

AUTOPSY

On October 19, 2020, Forensic Pathologist Dr. Aruna Singhania of the Orange County Sheriff-Coroner's Office conducted an autopsy on the body of Sabat. Dr. Singhania determined that Sabat had sustained multiple gunshot wounds. There was an entry and exit wound to the back scalp area of Sabat's head, one (1) wound in the left upper back, one (1) below the left shoulder, one (1) in the right back area, two (2) in the chest area, and two (2) gunshot wounds in the left groin area.

Dr. Singhania determined that three of the gunshot wounds were fatal (two chest and the left upper back), the others contributed to the hemorrhage and shock. The cause of death was perforation of the heart, left lung, diaphragm, liver, and spleen due to multiple gunshot wounds to the torso and head.

EVIDENCE ANALYSIS

Firearms Examination

Officer Torres' Smith & Wesson pistol was test fired at the Orange County Crime Lab and fired without malfunction. The pistol was determined to have fired both cartridge cases found at the scene and the five bullets that were recovered from the autopsy of Sabat. The three jacket fragments, three lead fragments and lead core from autopsy were unsuitable for comparison to the pistol due to their size and lack of marks. One jacket fragment, OCCL-8 could not be identified or eliminated as having been fired from the pistol. The fragment lacked the quality and quantity of marks due to damage. The results of the comparison were inconclusive.

The Pietta Model 1860 Army Black powder Revolver Serial Number #P130405 recovered at the scene was tested and analyzed at the Orange County Crime Lab. The revolver was disassembled with five (5) of its six (6) capacity cylinders capped and loaded. The OCCL Firearms Section unloaded two (2) of the loaded chambers. One (1) had a cap, powder, a lead ball, and apparent grease. The other chamber had a cap, powder, a wad, and a lead ball with apparent grease. The black powder revolver was test fired using the three (3) loaded chambers and operated without malfunction. The revolver was impact tested and at no time did the cocked hammer release without direct trigger pressure.

Toxicological Examination

A sample of Sabat's blood was collected at the Orange County Sheriff-Coroner Forensic Science Center. 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
Diphenhydramine	Postmortem Blood	0.0948 + 0.0088 mg/L
Caffeine	Postmortem Blood	Detected
Chlorpheniramine	Postmortem Blood	Detected
Loperamide	Postmortem Blood	Detected
Amphetamine and Related	Postmortem Blood	Presumptive Positive

SABAT'S PRIOR CRIMINAL HISTORY

Sabat's criminal history was reviewed and considered. Sabat had a California Criminal History that dated back to 1981. Sabat suffered the following prior convictions:

- PC 245(a)(1) - Assault with a Deadly Weapon (1981)
- PC 12025 – Carrying a Concealed Weapon on Person/Vehicle (1982)
- PC 12031(a) - Carrying a Loaded Firearm in Public (1982)
- PC 647(a)- Annoy / Molest Children (1985)
- PC 415(3) - Use of Offensive Words in a Public Place (1986)
- PC 415(1) - Fighting or Challenging to Fight in a Public Place (1987)
- PC 171B – Bring or Possess a Weapon in Court (1996)
- VC 12500(a) - Driving Without a Valid License (2005)

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

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

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when done in compliance with California Penal Code section 835a. California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officer make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation

independently, and use other available resources and techniques if reasonably safe and feasible to do so.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

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

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

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

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of CHP Officer Torres with Sabat.

LEGAL ANALYSIS

The facts in this case are determined by considering both Officer Torres' statements to the OCDA investigators, which was supplemented by additional percipient witness statements and relevant physical evidence related to this incident.

The issue is whether Officer Torres, on October 15, 2020, was criminally culpable and his conduct without justification. As stated above, in order to charge Officer Torres with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for his conduct. Therefore, in order to lawfully charge Officer Torres with a

crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If Officer Torres' actions on October 15, 2020 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.

Officer Torres was justified in believing that Sabat posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but heavily based on the conduct of Sabat during the course of the shooting.

Officers Torres and Robinson requested that Sabat exit his encampment for several minutes without response or compliance, and Officer Robinson believed Sabat sounded agitated. When Officer Torres leaned in towards the tent to check on Sabat, Sabat pointed his revolver directly at Officer Torres' face. As Officer Torres reached for his gun, Sabat fired at him and he was struck by a substance from Sabat's revolver. Officer Torres believed he had been shot and felt a stinging sensation on the entire left side of his face and was unable to see out of his left eye. Officer Torres responded with lethal force because it matched the level of force that Sabat had initiated against him. Officer Torres believed that if he hadn't returned fire, he would have been killed or seriously injured.

It should also be noted that, in order for Officer Torres 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 Torres did not act in reasonable and justifiable self-defense or defense of another when he shot Sabat. 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 Officer Torres to believe that his life and the lives of others were in danger. Therefore, Officer Torres was legally justified when he shot Sabat. Simply stated, Officer Torres did not commit a crime; to the contrary, he carried out his duties as a peace officer in a reasonable and justifiable manner.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officer Torres and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Armando Sabat on October 15, 2020.

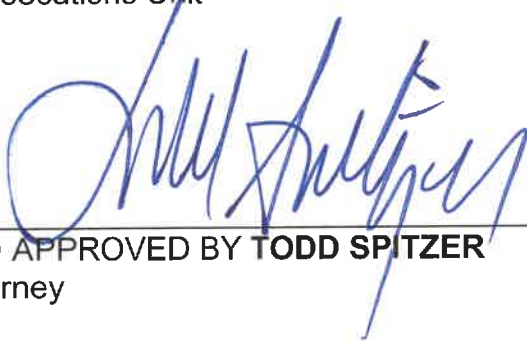
Accordingly, the OCDA is closing its inquiry into this incident.



JEFF MOORE
Senior Deputy District Attorney
Gangs Unit



READ AND REVIEWED BY **BARBARA KIM**
Assistant District Attorney
Special Prosecutions Unit



READ AND APPROVED BY **TODD SPITZER**
District Attorney