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June 6, 2014

Chief Carlos Rojas
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on July 30, 2013
Fatal Incident involving Hans Kevin Arellano
District Attorney Investigations Case # S.A. 13-017
Santa Ana Police Department Case # 13-21012
Orange County Crime Laboratory Case # 13-50719

Dear Chief Rojas,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Santa Ana Police Department (SAPD) Officer Jessica Guidry. Hans Kevin Arellano, 22 years old, died as a result of his injuries. The incident occurred in the City of Santa Ana on July 30, 2013.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the July 30, 2013, fatal officer-involved shooting of Arellano. 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 SAPD 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 July 30, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, the OCDASAU interviewed 13 witnesses and contacted 66 additional witnesses during the supplemental canvass interviews. Investigators also obtained and reviewed the following: SAPD reports, audio and video recordings, dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Arellano; criminal history records related to Arellano including prior criminal history records and prior incident reports; the personnel records of Officer Guidry; 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 impartially reviewed all evidence and legal standards available. The scope and findings of this review are expressly

limited to determining whether any criminal conduct occurred on the part of SAPD officers or personnel, specifically Officer Guidry. The OCDA will not be addressing 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 a veteran Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy District Attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Guidry gave a voluntary statement to OCDA Investigators on Aug. 14, 2013.

FACTS

Background of the Area

The incident occurred within the Harbor Place Shopping Center ("Shopping Center") located on the northwest corner of South Harbor Boulevard and West McFadden Street in the City of Santa Ana. The Shopping Center consists of four separate single-story buildings containing restaurants and retail stores. The Shopping Center has been frequented by transients for over a decade and numerous requests from citizens have been made for SAPD to "clean up the area."

Synopsis

On July 29, 2013, SAPD Officer Stephen Chavez was approached by several business owners in the Shopping Center regarding transients that had been congregating behind the dumpsters in the northwest portion of the parking lot. The owner of Café Lu informed Officer Chavez that a male transient, later identified as Arellano, had been in the business and refused to leave. The owner of Café Lu also told Officer Chavez that Arellano had also approached female employees at the Café and they felt uncomfortable.

Officer Chavez inspected the area behind the dumpsters and made contact with several transients. He noticed that they had constructed a "make shift hut" out of some discarded mattresses. Officer Chavez told the transients that they could not sleep behind the dumpsters and that they needed to "move on." Officer Chavez contacted two other SAPD patrol officers and asked them to conduct "high visibility patrol checks" in the Shopping Center that evening.

On July 30, 2013, at approximately 2:45 p.m., Officer Chavez returned to the Shopping Center to conduct a "sweep" through the parking lot. When he arrived, he saw that the mattress structure had been rebuilt. Officer Chavez approached the area behind the dumpsters and saw drug paraphernalia and a small cylindrical "iPod" speaker ("speaker"). No transients were present.

Officer Chavez entered Café Lu to verify that the employees were not experiencing any problems with transients inside of the business. Upon exiting Café Lu, Officer Chavez walked north to a metal utility box atop a raised concrete platform near the dumpsters. Officer Chavez saw Arellano wearing a gray shirt with his back to him, "messing" with the speaker. Officer Chavez asked Arellano what he was doing and Arellano responded, "F*** you." Officer Chavez told Arellano that he could not stay behind the dumpsters and that he needed to "get his s*** together and leave." Arellano replied, "I don't have to do anything. F*** you!" Officer Chavez saw that there was an open "Steel Reserve" malt liquor bottle in a brown paper bag next to Arellano. Officer Chavez informed Arellano that he would be arrested for drinking in public if he did not leave the area. Arellano made another derogatory comment and Officer Chavez again told him to leave the area or he would be taken to jail. Arellano responded, "I don't have to f***** listen to you."

Officer Chavez suspected that Arellano was possibly under the influence of drugs because he appeared "severely agitated" and his skin was "glistening." Officer Chavez broadcast over the police radio that he was out with a "415" (Penal Code section dealing with "Disturbing the Peace"), possibly "5150" (Welfare & Institution Code section dealing with an individual who is a possible danger to himself or others), and under the influence. Officer Chavez identified that he was on "Harbor," but he was unable to provide the hundred-block or specific address because Arellano began to yell. SAPD Officer Guidry heard Officer Chavez's attempted broadcast and Arellano arguing in the background. Officer Guidry used her Automatic Vehicle Location system and estimated that Officer Chavez was at 200 South Harbor Boulevard. She advised Dispatch that she would be en route. Officer Chavez attempted to clarify his location and Arellano continued to yell obscenities and state that he did not need to do what anybody said. Officer Guidry noted that Officer Chavez's voice sounded "stressed." Dispatch stated that Officer Chavez was at 600 South Harbor Boulevard.

Arellano became more agitated and Officer Chavez told him to turn around and place his hands behind his back. Arellano stood up on the raised concrete slab and put his hands on top of the utility box. Officer Chavez told Arellano to place his hands behind his back again, and Arellano turned around and faced Officer Chavez. Officer Chavez began to put his gloves on in order to arrest Arellano.

Arellano became enraged and yelled, "Oh f*** no, I'm not doing that," and ran south past Café Lu to the end of the Shopping Center. Officer Chavez did not pursue Arellano and lost sight of him at the southwest end of the Shopping Center. Officer Chavez contacted Officer Guidry and told her that Arellano had "just split" from him and described Arellano as a male Hispanic wearing dark clothing and running southbound through the parking lot towards McFadden Avenue.

Officer Guidry drove to the McDonald's restaurant parking lot at South Harbor Boulevard and West McFadden Avenue and she was unable to locate Officer Chavez or his vehicle. Officer Guidry observed Arellano on the north sidewalk of South Harbor Boulevard, and he appeared to match the description that Officer Chavez provided to her over the radio. Arellano saw Officer Guidry and ran northbound into the McDonald's restaurant parking lot. Arellano then ran north along the east side of the shopping center and turned west along the north side of a business by the name of Jugo's La Tropicana ("Jugo's").

Officer Guidry pursued Arellano and noted that he was "fast, hyper," and "zig-zagging through the vehicles" in the parking lot. Officer Guidry believed that Arellano had entered the northeast door of Jugo's. Officer Guidry was concerned because Arellano had no fear of being hit by the moving vehicles as he was running in the congested parking lot.

Officer Guidry broadcast that she needed a "Code 3 follow" (request for officers to respond fast with lights and sirens) because she believed that Arellano was possibly under the influence and would be "violent" if she approached him by herself. Officer Guidry stopped her patrol unit facing southwest in front of Jugo's. She exited her vehicle and approached the front door of Jugo's. As she approached the front door, she drew her Glock pistol. Officer Guidry was concerned for her safety because she did not know why Arellano had fled and he had not been searched for weapons.

Officer Guidry stood on the north sidewalk at the doorway to Jugo's and Arellano was approximately seven feet away from her. Arellano immediately began to advance towards Officer Guidry. She pointed her firearm at Arellano and ordered him to stop and show his hands. Arellano responded, "F*** you! F*** you!" and, "Shoot me." Arellano advanced toward Officer Guidry. She back-peddled quickly and repeated her commands to stop. Arellano was non-compliant, and Officer Guidry stated that she feared he was "coming at me to hurt me."

As Arellano approached Officer Guidry, his hands appeared partially "gripped," out in front of his torso in a "grabbing motion." Based on Arellano's size and his aggressive demeanor, Officer Guidry believed that Arellano was going to grab her gun and that she would be in a "fight for her life." Arellano came within three feet of Officer Guidry and she fired one round into his upper chest area. Arellano stopped, dropped to his knees, and fell forward on the pavement.

Officer Chavez arrived at Officer Guidry's location within 30 to 40 seconds and verified that the subject on the ground, Arellano, was the same subject who ran from him earlier. Officer Guidry requested paramedics respond and Officer Chavez began to cordon off the incident scene perimeter and assign duties to the additional officers who began to arrive at the scene.

At approximately 3:10 p.m., Orange County Fire Authority (OCFA) arrived at the scene. Arellano's airway was open but he was not breathing and he had no blood circulation. At approximately 3:15 p.m., an electrocardiogram was affixed to Arellano and the reading was asystole (no cardiac electrical activity). OCFA personnel determined that Arellano was deceased.

The following items were collected from Arellano's body at the scene: a wallet, iPod, baseball cap, portable "Jam" music speaker with cord, and a penny.

Post-Shooting, Voluntary Statement of Jane Doe I

On July 30, 2013, at approximately 3:00 p.m., Jane Doe I was an employee of Jugo's. She was cleaning tables inside of the business when she observed Arellano running northbound along the east walkway outside of the business. Jane Doe I watched as Arellano turned west at the walkway and entered the business through the front, north-facing door.

Upon entering Jugo's, Arellano appeared to "hide near a change machine" located "just inside" to the east of the north entrance door. Jane Doe I then saw Officer Guidry approach the front door of the business and say something to Arellano. Jane Doe I is a Spanish speaker and, therefore, was unable to understand what was said between Officer Guidry and Arellano, but she noted that Arellano became more aggressive and agitated as the conversation continued. Jane Doe I believed that the conversation between Officer Guidry and Arellano lasted for approximately one minute before Officer Guidry un-holstered her weapon and pointed it at Arellano.

Arellano did not raise his hands, and he "puffed out his chest" while advancing toward Officer Guidry in an aggressive manner. At this point, Officer Guidry fired one shot at Arellano. Jane Doe I estimated that Arellano was 12 feet from Officer Guidry at the time of the shooting. It was apparent that Jane Doe I was shaken up by the incident because, after the shooting incident, Jane Doe I ran into the kitchen area of the restaurant and fainted. She did not return to the front of the business until uniformed SAPD officers responded and escorted her outside.

Post-Shooting, Voluntary Statement of Jane Doe II

On July 30, 2013, at approximately 3:00 p.m., Jane Doe II arrived at Jugo's to purchase a beverage. She ordered a juice from the lone female employee and upon receiving her drink, took a seat at the second table to the west of the entrance. She was talking on the phone with her boyfriend when Arellano entered the restaurant. He looked around, smiled at Jane Doe II, turned east, then stood facing north in front of a "juke box" acting as if he was trying to select a song.

Approximately a minute afterwards, Officer Guidry arrived in a police vehicle. She parked and exited her vehicle. According to Jane Doe II, Officer Guidry stood in front of the open driver's door, withdrew her handgun and pointed it at

Arellano, with a two handed grip. Officer Guidry yelled commands at Arellano, similar to, "Put your hands up, come out with your hands up," and other commands that were inaudible to Jane Doe II. Officer Guidry moved from the asphalt parking lot up onto the sidewalk, in front of the restaurant's entrance door. At the same time, Arellano moved away from the juke box, toward the front entrance door as Officer Guidry continued to yell commands at him. As Arellano moved toward the door, he initially put both of his hands up, shoulder height, with his palms facing out. Then he put both hands down toward his front pant pockets and started to "fidget" with the outside of his pant pockets. Arellano then put both of his hands up again, shoulder height, with his palms facing out, then back down to the outside of his front pant pockets, fidgeting with them as he exited the restaurant, approaching Officer Guidry. According to Jane Doe II, Arellano was moving his hands, "really fast," laughing, smiling and didn't appear to be taking the situation seriously. Jane Doe II described Arellano as being a "smart ass."

After Arellano exited the restaurant, he stepped toward Officer Guidry "real fast" and "lunged" at her in a "what's up type lunge," at which time Jane Doe II heard a loud bang. Jane Doe II told Investigators that she had looked away just prior to the loud bang and did not actually see Officer Guidry fire her weapon. Jane Doe II speculated that Arellano must have "frightened her or caught her off guard," referring to Officer Guidry. Jane Doe II concluded that Arellano was trying to intimidate Officer Guidry.

Post-Shooting, Voluntary Statement of Officer Guidry

The majority of Officer Guidry's statement is featured in the Synopsis, *supra*. The following paragraph highlights some of the pertinent factors regarding Officer Guidry's state of mind throughout the incident.

Officer Guidry pursued Arellano with the knowledge that he had fled from Officer Chavez and that he had not been searched for weapons. Moreover, Officer Guidry noted that Arellano was "fast, hyper," and "zig-zagging" through traffic in a reckless fashion. In light of her observations, Officer Guidry determined that it was necessary to approach Arellano with her firearm drawn. As Officer Guidry approached Arellano, she made numerous requests for Arellano to stop and raise his hands. Arellano did not comply; rather, he shouted obscenities at Officer Guidry and approached her briskly, despite ample opportunity to flee. Arellano continued to advance toward Officer Guidry and she believed that he would overpower her and seize her gun. "Fearing for [her] life," Officer Guidry fired one shot at Arellano.

EVIDENCE COLLECTED AT THE SCENE

- A Winchester .45 cartridge case
- Black pants
- A gray T-shirt
- Boxer underwear
- Shoes
- A swab from the knuckle and back of Arellano's left hand
- A wallet
- An iPod
- A baseball cap
- A portable "Jam" music speaker with cord; and
- A penny

VIDEOS

Three videos captured parts of the incident.

Jugo's Camera 1

Arellano runs through the northeast entrance of Jugo's at 3:33:07 p.m. and takes several steps east. Officer Guidry enters the frame at 3:33:13 p.m. with her gun drawn and runs in a southwesterly direction toward the northeast entrance of Jugo's. At the same time, Arellano walks in a northwesterly direction toward Officer Guidry. Arellano exits Jugo's at

3:33:17 p.m. and continues in a northwesterly direction toward Officer Guidry. As Arellano exits Jugo's, Officer Guidry retreats. Arellano drops to his knees at 3:33:21 p.m. and falls forward. There is no audio.

Jugo's Camera 3

Arellano runs through the northeast entrance of Jugo's at 3:33:07 p.m. and takes several steps east. A Jugo's employee, standing approximately eight to 10 feet west of Arellano, takes several steps west as Arellano exits Jugo's at 3:33:17 p.m. A customer appears in the northwest portion of Jugo's at 3:33:22 p.m. and covers her left ear with her left hand as she faces the northeast entrance. The customer turns south while holding a cellular telephone to her right ear, and then walks in a northwesterly direction. There is no audio.

John Doe's Cellular Telephone

John Doe recorded a video of the incident on his cellular telephone while standing on the sidewalk in front of Café Lu. Arellano runs through the northeast entrance of Jugo's and John Doe says, "That fool's going in the restaurant." Another witness says, "He's f***** crazy." John Doe responds, "He's an idiot . . ." Several seconds later, Officer Guidry runs in a southwesterly direction toward the northeast entrance of Jugo's. Both Officer Guidry and Arellano begin shouting and Arellano yells, "F*** you, bitch." Approximately one or two seconds later, Officer Guidry is seen stepping away from the restaurant's door and a shot is fired. Arellano drops to his knees and lays motionless on the ground. John Doe says, "Oh shit, she f***** shot him. She f***** shot this fool. Why did she shoot him? No, why did she shoot him?"

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Arellano's postmortem blood was removed for testing. The following results were obtained:

Drug	Matrix	Results
Ethanol	Postmortem Blood	0.26 % (w/v)

Firearm Examination

Officer Guidry's handgun was test-fired and operated without malfunction.

ARELLANO'S PRIOR CRIMINAL HISTORY

Arellano had a State of California Criminal History Record dating back to 2007, including but not limited to assault and battery, and disorderly conduct.

AUTOPSY

On July 31, 2013, Doctor Aruna Singhani, a forensic pathologist with the Orange County Coroner's Office, conducted a post-mortem examination of Arellano. Doctor Singhani determined that the bullet entered Arellano's sternum and struck his aorta. Doctor Singhani also noted that the gunshot entry wound appeared to be fired at a range closer than five to 10 feet. Doctor Singhani concluded that the cause of death was exsanguination, due to the gunshot wound.

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. Banks* (1977) 67 Cal. App. 3d 379, 383-84.) 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 necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable

cause” to believe that the person has committed a felony. (*People v. Kilvington* (1894) 104 Cal. 86, 89.) The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.)

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 any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect’s felony involves violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.) The court in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony “is of the violent variety, *i.e.*, a forcible and atrocious one which threatens death or serious bodily harm, or there are **other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.**” (*Kortum v. Alkire, supra*, 69 Cal. App. 3d at 333.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he 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 Instructions 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 bodily 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. Conner* (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 evolving.” (*Id.* at 397.) Thus, the Court cautioned that “the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Id.* at 396.)

The United States Supreme Court’s analysis and teachings in the above described *Graham* case are very much applicable to the circumstances surrounding the interactions of Officer Guidry with Arellano.

LEGAL ANALYSIS

The issue is whether Officer Guidry's conduct was criminally culpable and without justification. As stated above, in order to charge Officer Guidry 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 Officer Guidry with a crime, the People must prove beyond a reasonable doubt that she did not act in lawful self-defense. If Officer Guidry's actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

Self-defense justification in Penal Code section 197 provides, in part, that homicide is justifiable "when resisting any attempt to murder any person, or to commit a felony, or do some great bodily injury upon any person." In the *Garner* case discussed above, the United States Supreme Court held that an officer is entitled to use deadly force when the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily harm to the officer or others.

The facts in this case are determined largely by considering the shooting officer's statements to the OCDA Investigators, as well as reviewing all the available evidence including the witness statements and video recordings of the shooting incident.

Officer Guidry was aware that Arellano had fled from Officer Chavez and had not been searched for weapons. When Arellano became aware that Officer Guidry was going to engage him, he ran away through a congested parking lot. When Officer Guidry contacted Arellano, she had her firearm drawn, and Arellano appeared unfazed by her show of force. Officer Guidry made numerous requests for Arellano to stop and raise his hands; however, Arellano never complied. Arellano shouted obscenities at Officer Guidry and approached her briskly. Officer Guidry also noted that Arellano chose not to flee upon exiting Jugo's; rather, he continued directly toward her and "lunged" at her, as described by Jane Doe II. Fearing that Arellano would overpower her and seize her gun, Officer Guidry believed that she had to shoot Arellano to prevent a "fight for her life."

Video footage from Jugo's Camera 1 and John Doe's cellular telephone confirm that Arellano continued to approach Officer Guidry despite the fact that her firearm was drawn and pointed at him. Moreover, both videos indicate that Arellano came **within two to three feet** of Officer Guidry before she fired her weapon. Where potential dangerous, emergency conditions or other exigent circumstances exist, the Supreme Court's definition of reasonableness is comparatively generous to the police. 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, or a suspect the officer reasonably believes to be armed, in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler* (2009) 171 Cal. App. 4th 516, 528.)

It should also be noted that, in order for Officer Guidry to be justly and lawfully charged and convicted with a crime in this incident – be it murder or manslaughter - it is the OCDA's burden to prove beyond a reasonable doubt that Officer Guidry did not act in reasonable and justifiable self-defense or defense of another when she shot at Arellano. A review of all the available evidence collected in this investigation makes such a conclusion unreasonable. A jury reviewing these facts would likely conclude that it was reasonable for Officer Guidry to believe that her life was in danger and that she was thus justified when she shot and killed Arellano.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that we do not have the sufficient evidence to prove beyond a reasonable doubt that Officer Guidry committed a crime when she shot and killed Arellano on July 30, 2013.

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

Respectfully submitted,



Susan A. Price
Senior Deputy District Attorney
Homicide Unit



Read and Approved by **Dan Wagner**
Head of Court - Homicide Unit