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December 6, 2012

Chief John Welter
Anaheim Police Department
425 S. Harbor Boulevard
Anaheim, CA 92805

Re: Officer Involved Shooting on November 4, 2011
Fatal Incident involving Marcel Ceja
District Attorney Investigations Case # SA 11-022
Anaheim Police Department DR # 11-167108
Orange County Crime Laboratory Case # 11-54839

Dear Chief Welter,

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 Anaheim Police Department (APD) Officer David Garcia, in which Marcel Ceja, a 22-year-old Anaheim resident, died as a result of his injuries. The incident occurred in the City of Anaheim on Nov. 4, 2011.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Nov. 4, 2011, fatal officer-involved shooting of Ceja. 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 Anaheim 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 Nov. 4, 2011, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed 68 witnesses and obtained and reviewed the following: Anaheim police reports, Anaheim Fire Department reports, audio recordings, and dispatch and radio traffic recordings; Orange County Sheriff's Coroner reports; 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 Ceja; criminal history records related to Ceja; the personnel records of Officer Garcia; 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 APD officers or personnel, specifically Officer Garcia. The OCDA will not be addressing herein 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. Prosecutors 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 aspect of investigating these types of cases is attempting to interview the officer involved in the shooting. Officer Garcia provided a voluntary statement to OCDA investigators on Nov. 9, 2011.

FACTS

On Nov. 4, 2011, at approximately 11:54 a.m., APD Officer Garcia was assigned as a single-man patrol officer. Officer Garcia was driving his marked patrol unit westbound on Ball Road, west of Belhaven Street. This area is known to have problems with gangs and drug trafficking. Officer Garcia observed three males, including Ceja and a juvenile, walking on the sidewalk. They were wearing baggy sweatshirts with their hoods pulled over their heads. Officer Garcia made eye contact with one of the males, but continued driving west on Ball Road. As Officer Garcia drove by, he decided to make contact with the three males. He drove around the block and when he returned the three individuals had changed direction. Officer Garcia opined they had changed direction to avoid contact with him. Officer Garcia drove eastbound in the westbound lanes of Ball Road and parked along the north curb on the 2300 block of East Ball Road. He picked up his baton, which was wedged between the center console and driver's seat, and exited his patrol car.

Witness #1, a local resident, was trying to turn into the alley but had to wait for Ceja and his two companions to cross the driveway before commencing her turn into the alley. She observed a police car stopped along the north curb, west of the alley. Ceja and his companions looked westbound toward the police car; however, they continued walking eastbound. Witness #1 observed Officer Garcia exit the police car holding a baton and walk toward Ceja and his companions. It appeared to Witness #1 that Officer Garcia was talking with Ceja and his companions, who continued walking eastbound. Witness #1 did not hear the conversation because her car windows were up and the radio and air conditioning were on.

According to the juvenile companion of Ceja, he was walking with Ceja and another male. The juvenile looked over his shoulder and observed a black and white police car pull up against the north curb of Ball Road. He observed the uniformed police officer, Officer Garcia, exit his police car with his baton in his hand and say, "Stop." The juvenile stated that he stopped at the east side of the alley, and Ceja and his other companion stopped at the west side of the alley.

According to Officer Garcia, the three males looked at him, and were approximately 10 to 12 feet east of him. Officer Garcia said, "Hi, do you mind if I talk to you for a second?" Ceja turned and walked toward him as the other two continued walking east. Officer Garcia then observed a large tattoo on the front of Ceja's neck. Ceja had "Dark Side" tattooed on the front of his neck. Officer Garcia thought Ceja may be a gang member based on the tattoo, the neighborhood, and his manner of dress. Officer Garcia focused his attention toward Ceja's two companions. Then, when Ceja was approximately five to seven feet away from Officer Garcia, he turned and ran away. Officer Garcia observed Ceja put his right hand inside his right sweatshirt pocket as he chased after him. Officer Garcia yelled, "Stop, police," and advised dispatch, via his hand-held police radio, that he was in a foot pursuit.

Officer Garcia observed a firearm fly from Ceja's hand as he tripped on a raised grassy knoll while running. Officer Garcia was not sure whether Ceja intentionally threw the handgun or whether he accidentally lost control of the handgun as he stumbled and fell. The handgun tumbled into the shrubbery a couple of feet away. Officer Garcia stopped approximately four to five feet away from Ceja, who was on the ground. Ceja assumed a seated position, turned toward Officer Garcia, and put his left hand into his sweatshirt pocket. Officer Garcia stated that it appeared that Ceja was manipulating something in his pocket and he feared that it was a second handgun. Officer Garcia told Ceja three times to show him his hands. Ceja did not comply. Officer Garcia indicated that he was in fear that Ceja would shoot through the sweatshirt without even removing the handgun from his pocket. Fearing for his life, Officer Garcia fired two shots, striking Ceja.

Ceja was transported to University California Irvine Medical Center by Anaheim Fire Department Paramedics. At approximately 12:15 p.m. he arrived at the emergency room. Ceja was taken to an operating room, where the trauma team performed surgery. At approximately 2:16 p.m. Ceja was pronounced deceased.

Autopsy

On Nov. 7, 2011, the post-mortem examination was performed by Dr. Lawrence Nguyen. Dr. Nguyen identified a total of five entry and exit wounds. He opined that a bullet entered through Ceja's chest and came to rest within the chest cavity. This bullet was recovered during autopsy. A second entry wound was located on the left abdomen with a corresponding exit wound to the right lower back. This bullet was not located during autopsy. A third entry wound was located on Ceja's left wrist with a corresponding exit wound through the left hand. Dr. Nguyen opined that Ceja's hand must have been positioned in front of his body during the shooting incident and that the projectile either entered his chest cavity or abdomen after piercing his hand. The cause of death was multiple gunshot wounds.

Voluntary, Consensual Statement of Officer Garcia

Officer Garcia gave a voluntary, consensual statement to the OCDA on Nov. 9, 2011. He indicated throughout the interview that during the shooting incident, he was in fear for his life. Officer Garcia stated, "He [Ceja] was not running with his hands free. He looked like he was holding something in his sweatshirt pocket." Officer Garcia went on to say, "I saw Ceja pull out a shiny object then I realized, 'Oh s***, it's a gun.'" Shortly thereafter, Officer Garcia indicated that he was not sure if Ceja intentionally tossed the gun or whether he lost control of the gun when he fell onto the grassy knoll.

Officer Garcia contacted dispatch and indicated that the defendant had a gun. After Ceja either threw the gun or lost control of the gun, Officer Garcia indicated he initially thought the danger was averted. Officer Garcia said, "After putting out the 417 (exhibition of a firearm) call, I put out a call that he had pitched the gun, and I expected him to give up at that point." However, Ceja did not give up and follow his commands. Officer Garcia indicated that, instead of giving up, Ceja rolled over to face him and put his left hand into the sweatshirt pocket. Officer Garcia was asked, "What were you thinking at that point?" He answered, "I expected him to give up. Since he was not doing what I expected I immediately started believing he had another gun. I was yelling at him 'Let me see your hands.' He was ignoring my commands." He said that it appeared Ceja was manipulating something in his sweatshirt pocket. Therefore, Officer Garcia indicated he was in fear for his life. He said, "I noticed, what with his hand in his pocket, I

noticed that he was either manipulating something--and fearing that he was going to either bring out a second [gun] and was either going to shoot...pull out the gun or shoot through his sweatshirt pocket. I fired two rounds at him."

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

Witness #2 indicated that he was driving westbound on Ball Road as he saw an officer chasing a subject. He looked back over his right shoulder, in the three o'clock position, and observed Officer Garcia chasing Ceja. He observed Ceja fall onto a sloped grassy area. He observed Officer Garcia pointing his gun at Ceja as he was seated on the grass with his left hand behind supporting himself as he leaned back. Ceja's right hand was completely in his right front shorts pocket. Witness #2 indicated that he thought Ceja was trying to get something out of his pocket but it wouldn't come out. He stated that he could not hear what was being said because the car windows were rolled up as he was driving by but he observed the officer's lips moving while his gun was pointed at Ceja. He indicated that Ceja appeared uncooperative and angry as he yelled at Officer Garcia. Witness #2 stated that he temporarily lost sight of them because an electrical box blocked his view as he drove by. During that time he heard two shots. He looked at his watch and it was 11:55 a.m. Although there is a discrepancy between Witness #2's report and Officer Garcia's description regarding which hand Ceja had in which pocket, both are consistent that Ceja had his hand in his pocket and that he appeared to be manipulating something or trying to remove something from his pocket.

Witness #3, a resident in the area, was at home sitting on her living room couch when she heard yelling outside. She heard two different voices involved, and she described the yelling as "intense." She walked toward her sliding glass door, which faced Ball Road. She observed Officer Garcia, with his weapon drawn, walking diagonally in a northwest direction. From her vantage point she could see Officer Garcia but she could not see Ceja. She indicated that Officer Garcia was yelling commands the entire time, "Stop," and something to the effect of, "Get your hands out of your pockets," or "Don't put your hands in your pockets." Witness #3 could not understand what was being said by Ceja, but his voice was loud and she believed he was shouting obscenities. Witness #3 heard Officer Garcia yell at Ceja at least three times to remove his hands from his pocket before she heard shots fired.

EVIDENCE COLLECTED AT THE SCENE

1. Two expended W-W 9mm Luger cartridge casings located on the north sidewalk, north of Ball Road.
2. Davis Industries, Model P-380, .380 caliber, silver plated semi-automatic pistol, with black grips. The pistol contained a Davis Industries P-380 magazine with two R-P .380 auto ball cartridges. The pistol had one PMC .380 auto hollow point cartridge loaded in the chamber.

EVIDENCE COLLECTED FROM ANAHEIM POLICE OFFICER GARCIA

1. Duty weapon: Glock, Model 17, 9 mm caliber pistol. A cartridge was in the chamber and the magazine contained an additional 15 cartridges. The magazine had a 17-cartridge capacity.
2. Two additional magazines containing 17 cartridges (full capacity).
3. Back-up weapon: Glock, Model 26, 9 mm caliber pistol.

EVIDENCE ANALYSIS

Toxicology Examination

Lidocaine and Lidocaine metabolites, Doxylamine and Methorphan were detected in Ceja's post-mortem blood.

Weapons Examination

Officer Garcia's Duty Weapon: Glock Model 17 Pistol, 9 mm, serial no. KLY746

The semi-automatic Glock pistol was test fired and operated without malfunction.

Pistol from scene: Davis Industries, Model P-380, serial no. APO54334

The semi-automatic Davis Industries pistol was test fired and operated without malfunction. Three .380 caliber cartridges were recovered from the pistol. The same DNA profile was obtained from the slide of the Davis Industries handgun and from the oral swab standard from Ceja. Therefore, the most reasonable conclusion is that the Davies Industries handgun was previously handled by Ceja.

Cartridge Casing Examination

The two W-W 9 mm Luger cartridge cases from the scene were determined to have been fired from Officer Garcia's Glock duty weapon.

Projectile Examination

It could not be determined if the bullet that was recovered during the autopsy of Ceja was fired from Officer Garcia's handgun. The microscopic comparison was inconclusive. The bullet did share class characteristics with Officer Garcia's handgun

CEJA'S PRIOR CRIMINAL HISTORY

Ceja's lengthy California Criminal History was reviewed and considered. Ceja was a documented gang member who had served time in state prison for a 2008 residential burglary conviction. He was convicted of several additional offenses, including a felony conviction for violating Penal Code section 12020(a) (possession of a dangerous weapon).

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder (Penal Code Section 187); 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 affect 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 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 mind, as a reasonable person, an honest fear and conviction that he 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, subsequently clarified 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 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 "[t]he 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 *Graham, supra*, are very much applicable to the circumstances surrounding the interactions of Officer Garcia with Ceja.

LEGAL ANALYSIS

The central issue to be addressed is whether Officer Garcia's act of shooting Ceja was legally justified under a theory of self-defense. In order to justly charge and convict Officer Garcia for this shooting, it would be the prosecution's burden to prove beyond a reasonable doubt that Officer Garcia did not act in lawful self-defense. We conclude that we cannot meet that burden, because there is substantial evidence to support all three elements of the justification, as we will now explain.

The first element of the legal justification of self-defense is that force is used under the actual belief of the necessity to defend oneself. Here, Officer Garcia told investigators that he shot Ceja because he was fearful that Ceja was about to shoot him. Officer Garcia's claim that he was fearful that Ceja would shoot is corroborated by a civilian witness who heard Officer Garcia yelling several times, in an intense voice, "don't put your hands in your pockets" prior to the shooting. Consequently, it could not be proved that Officer Garcia did not honestly believe he needed to shoot Ceja in order to defend himself.

The second requirement for the legal justification of self-defense is that the belief in the necessity to defend oneself is reasonable. We conclude that Officer Garcia's belief that he needed to defend himself was reasonable, based upon the following evidence:

- The location where this consensual encounter took place was known to have a drug trafficking and gang problem.
- Officer Garcia believed that Ceja may be a gang member based on the location of the contact (gang area), his style of dress (baggy sweatshirt with the hood pulled over his head), and the large tattoo on his neck.
- As Ceja got closer to Officer Garcia, he suddenly turned and ran away, which supports an inference that Ceja was involved in some criminal activity that he feared Officer Garcia would detect.
- As Ceja ran, he put his right hand in his sweatshirt pocket.
- As Ceja fled, he tripped and fell. As Ceja fell, Officer Garcia observed Ceja's hand come out of the sweatshirt pocket and a chrome handgun fly out of his hand. The handgun, which turned out to be loaded, landed a few feet away from Ceja in some nearby shrubbery. Fearing for his safety, Officer Garcia drew his duty weapon and pointed it at Ceja. Officer Garcia indicated during his interview that at this point he thought that Ceja would give up.
- Instead, Ceja rolled over onto his bottom and turned to face Officer Garcia. Ceja then placed his left hand into his sweatshirt pocket. Officer Garcia then observed Ceja manipulating something in his pocket. Officer Garcia said he believed that Ceja had a second handgun in his sweatshirt pocket and that he was going to shoot right through the sweatshirt.
- A civilian witness who had been driving in the area also reported seeing Ceja putting his hand into his pocket and looking like he was trying to get something out of his pocket.

Officer Garcia indicated that at this point he was in fear for his life. He yelled at Ceja at least three times to remove his hand, but Ceja failed to comply. We concluded therefore, that Officer Garcia's fear for his own safety was reasonable under the circumstances.

The third element required for the legal justification of self-defense is that the force used be no greater than that which is required under the circumstances as they reasonably appear to the threatened person. Here, the apparent threat as it reasonably appeared to Officer Garcia was that Ceja was about to shoot Officer Garcia. Under these circumstances, it was reasonable for Officer Garcia to respond with lethal force; lesser force would have been ineffective.


To sum up, in order for Officer Garcia to be convicted of a crime for this shooting, it would be the prosecution's burden to prove beyond a reasonable doubt to a unanimous jury that Officer Garcia did not act in reasonable and justifiable self-defense when he shot Ceja. 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 likely conclude that it was reasonable for Officer Garcia to believe that his life was in danger, and thus that he was justified when he shot and killed Ceja.

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 we 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 Garcia, and there is substantial evidence that the officer's actions were reasonable and justified under the circumstances when he shot Ceja on Nov. 4, 2011.

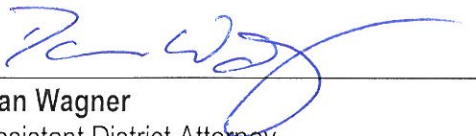
Accordingly, the OCDA is closing its inquiry into this incident.

Respectfully submitted,

A handwritten signature in blue ink, reading "Scott A. Simmons", written over a horizontal line.

Scott A. Simmons
Senior Deputy District Attorney
Homicide Unit

Read and Approved,

A handwritten signature in blue ink, reading "Dan Wagner", written over a horizontal line.

Dan Wagner
Assistant District Attorney
Head of Homicide Unit