



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

MARY ANNE MCCAULEY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

MICHAEL LUBINSKI
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

JEFF MCLAUGHLIN
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

SUSAN KANG SCHROEDER
CHIEF OF STAFF

November 14, 2013

Raul Quezada, Interim Chief of Police
Anaheim Police Department
425 S. Harbor Blvd.
Anaheim, CA 92805

Re: Officer-Involved Shooting on October 21, 2012
Non-Fatal Incident Involving Defendant Pedro Mejia, Jr. and Officer Petropulos
District Attorney Case # 12F13705
District Attorney Investigations Case # S.A. 12-025
Anaheim PD case #s 12-155553 and 12-155610
Orange County Crime Laboratory Case FR #12-55679

Dear Chief Quezada,

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 Chris Petropulos. Pedro Mejia, Jr., age 20 at the time of the incident, Anaheim, survived his injuries. The incident occurred in the City of Anaheim on Oct. 21, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusions resulting from the OCDA's investigation of the Oct. 21, 2012, non-fatal, officer-involved shooting of Mejia. 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 APD Officer Petropulos. 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 Oct. 21, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators interviewed Officer Petropulos and Mejia and conducted 34 other interviews of witnesses, first-responders, and people in the neighborhood. OCDASAU Investigators also obtained and reviewed the following: APD reports; audio, dispatch, and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports; incident scene investigation photographs; medical records and photographs related to the injuries sustained by Mejia; records of Mejia's prior criminal history; Officer Petropulos's personnel file; and other relevant reports and materials.

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 Petropulos. The OCDA will not address 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 consults with his or her supervisor, and this Assistant District Attorney eventually reviews and approves any legal conclusions and resulting memos. The case is often reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor sends 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 Petropulos provided a voluntary statement on Oct. 25, 2012, and APD Officer Ryan Wardle, who was not involved in the incident but responded to the scene, provided a voluntary statement on Oct. 21, 2012. The contents of their statements are delineated below.

FACTS

Mejia was a documented member of a criminal street gang and was known by the moniker "Rhino." This officer-involved shooting incident occurred in a neighborhood "claimed" by the gang. The neighborhood had experienced a recent spike in felony assaults and homicides between Mejia's gang and their rival street gang. As recently as one week before the shooting incident, gang members in Mejia's gang assaulted rival gang members in two separate attacks. One of those assaults resulted in the murder of a rival gang member. The rival gang members had set up a memorial at the murder site, which was located approximately one block from the scene of the Mejia incident. Since the rival gang members had been entering into Mejia's gang's "territory" to visit the memorial, tensions were even higher between the two gangs.

On Oct. 21, 2012, at approximately 1:30 a.m., APD Officer Petropulos and K-9 Officer Wardle were dispatched to the area of South Street and South Olive Street in reference to a loud party complaint. They were both wearing Anaheim Police uniforms and driving marked Anaheim Police vehicles. Officer Petropulos traveled eastbound on East Vermont Avenue to the area of the call. As he approached South Philadelphia Street, he saw two bicyclists and then (within a few seconds) a third bicyclist. All three of them rode northbound on South Philadelphia Street and continued eastbound on East Vermont Avenue. Officer Petropulos accelerated toward the group and illuminated them with his vehicle spotlight in order to get a closer look at them. As he illuminated the group, a fourth bicyclist suddenly appeared in his view. The fourth bicyclist, Mejia, traveled along the same route as the

previous three. As Mejia rode into the beam of the spotlight from Petropulos's police vehicle, he immediately turned and rode southbound on South Philadelphia Street from East Vermont Avenue.

Officer Petropulos followed and attempted to stop Mejia for his violations – riding without lights and running a stop sign – by activating his overhead emergency lights, but Mejia quickly pedaled southbound on the sidewalk of the west curb line of South Philadelphia Street. When Officer Petropulos's vehicle was approximately even with Mejia and his bicycle, Officer Petropulos picked up his radio microphone in order to advise dispatch that he “had a guy splitting” from him. At that point, he saw Mejia slow down, remove his right hand from the handlebar, and reach underneath his shirt. Mejia pulled some kind of dark object, which Officer Petropulos believed to be a gun, out from underneath his shirt and held it against his body. Officer Petropulos maintained a constant but partially obstructed view of Mejia as he paralleled him. Officer Petropulos's view was partially obstructed by trees along the parkway and vehicles parked along the west curb of South Philadelphia Street.

Mejia turned to travel westbound on East Narda Street, leaving the sidewalk for the street. Officer Petropulos noticed that Mejia now had both hands on the bicycle handlebar, but believed that Mejia was still armed. Officer Petropulos attempted to stop Mejia by placing the front of his police vehicle against the rear tire of Mejia's bicycle. This caused Mejia to stop and slide off the back of the bicycle into a standing position. After Mejia dismounted, he stood roughly 12 to 15 feet in front of Officer Petropulos, facing away from him, with his right hand in front of his body. Officer Petropulos was still seated inside his police vehicle. Mejia looked back over his right shoulder, which Officer Petropulos believed he was doing to gauge distance. Believing that Mejia was armed with a handgun and planning to turn around and shoot him, Officer Petropulos fired one round from his department-issued handgun. Officer Petropulos fired through the opening between his driver's side door frame and the police vehicle, striking Mejia in the upper right shoulder. Mejia fell straight forward, landing on his stomach in a prone position with his hands underneath his body and unable to be seen by Officer Petropulos.

Officer Wardle arrived on the scene and handcuffed Mejia with the assistance of another officer. (Officer Wardle's experience of the incident is described below.) Officer Petropulos told Officer Wardle that Mejia “was digging around in his waistband the whole time” and, “I think he threw something back there.” Other personnel located a .38 Smith and Wesson revolver approximately 40 yards from where Mejia was taken into custody, in the front yard of 247 East Narda Street. Mejia passed by this yard on the sidewalk as he made the turn from South Philadelphia Street onto East Narda Street.

APD officers rendered medical aid to Mejia pending the arrival of Anaheim Fire Department (AFD) personnel. Within about four minutes, AFD personnel arrived on scene. For safety reasons, they staged nearby until it was deemed safe to enter the scene. Approximately two minutes later, they were cleared to enter the scene and were directed to Mejia by APD officers. They provided basic life support to Mejia, who appeared to be stable and calm. Mejia was transported by ambulance to University of California, Irvine (UCI) Medical Center in the City of Orange. Mejia's vital signs remained stable while in the ambulance, and he arrived at UCI Medical Center at approximately 1:56 a.m.

An emergency room trauma surgeon treated Mejia. He said that Mejia had gunshot wounds above his right clavicle and at his right scapula that appeared to be in line with each other (i.e. that were produced by the same bullet). He said that neither wound had characteristics, such as stippling, that would allow him to determine which was the entrance wound and which was the exit wound. Mejia received X-rays and CT scans of the wound. No bullet was found in Mejia, but X-rays showed bullet fragments in the wound channel. Mejia did not make any statements to the doctor about the shooting incident, but did give a statement to investigators later. (Mejia's hospital interview is detailed below.)

Mejia was placed in a jail cell at APD. While in the cell, he was observed talking with two other inmates. Their conversation was audio and video recorded. Mejia introduced himself as "Rhino from Small Town." He told the inmates he was shot by the police while possessing a .38 caliber handgun. He told them he was patrolling the neighborhood because he likes to "stay active." He said he was riding his bike when an officer tried to stop him, so he "started booking it." When he realized that the officer had him trapped, he threw the gun away. When the other inmates indicated that it sounded like he technically pulled a gun out on the officer, Mejia laughed and said, "Yeah."

Voluntary, Consensual Statement of Officer Petropulos

Officer Petropulos gave a voluntary, consensual statement to the OCDA on Oct. 25, 2012. (The contents of that statement have largely been incorporated into the aforementioned facts.) At the time of the incident, Officer Petropulos had been a police officer for over 12 and a half years. During his training, Officer Petropulos took courses in officer safety and survival, and he currently attends several gang classes. His experience requires him to talk to gang members almost every day. Consequently, he has come into contact with hundreds gang members during his time as an officer; primarily from the Barrio Small Town and Anaheim Vatos Locos gangs that are predominant in the area.

The incident occurred during Officer Petropulos's regular shift. He was familiar with the area of the incident, having worked in that area since May 2010, and knew of its high incidence of crime and gang presence, specifically the feud and recent shootings between the two rival gangs. These inter-gang tensions put Officer Petropulos on notice that young men riding unlit bicycles at 1:30 in the morning in that area of Anaheim were likely either rival gang members seeking revenge or local gang members running some kind of protection scheme. In either case, Officer Petropulos believed such a person would be armed.

Officer Petropulos, upon spotlighting Mejia, noticed Mejia's eyes widen in recognition of the fact that Officer Petropulos was a police officer. Mejia "saw [him] and took off." As they were traveling south along South Philadelphia Street, Officer Petropulos "saw [Mejia's] right hand come off his bike, go underneath the shirt, and he pulled something out and kept it...up, close to his waistband." In Officer Petropulos's opinion – based on his training and experience – Mejia's behavior, mannerisms, clothing (which was "consistent with gang attire"), and the nature of the surrounding neighborhood all supported the notion that Mejia had likely pulled out a gun.

After Mejia "very quickly...slid off the back of [his] bike into a standing position," he held his right hand in front of him, looking over his right shoulder appearing to "gauge where [Officer Petropulos] was." It was at this point that Officer Petropulos, sitting in his parked car, thought that Mejia was about to fire at him and felt particularly vulnerable and "absolutely scared." Officer Petropulos "wanted to get one shot downrange because [he] didn't have [a] good position" on Mejia. Officer Petropulos fired one round and Mejia "fell almost immediately." Officer Petropulos "thought [Mejia] still had the gun on him and that he was waiting for me to come up on him," so he ordered him to put his hands up. Officer Petropulos did not fire a second round because "[Mejia] was already down" and because he "felt that at least the threat momentarily was stopped." Officer Wardle soon arrived on the scene to handcuff Mejia. Officer Petropulos searched Mejia and found marijuana but no handgun. He left the scene before other personnel located the handgun on the lawn.

Voluntary, Consensual Statement of Officer Wardle

Officer Wardle gave a voluntary, consensual statement to the OCDA on the morning of Oct. 21, 2012. Officer Wardle was working his routine patrol as a K-9 handler. The incident occurred during his regular shift. According to Officer Wardle, he had a heightened awareness of gang activity in the area of the incident due to recent gang-related events, including an officer-involved shooting and a recovery of firearms from gang members. He was aware of the gang's presence in the neighborhood, as well as the ongoing feud between the rival gangs.

Prior to the incident, Officers Wardle and Petropulos were dispatched to a loud party call in the area of West South Street and South Olive Street. They were in separate vehicles. While en route to the residence, Officer Wardle noticed on his police vehicle's GPS that Officer Petropulos was ahead of him, also traveling eastbound on Vermont Avenue. He noticed that Officer Petropulos activated the emergency lights on his vehicle and diverted his course, so Officer Wardle attempted to follow and assist him. Officer Wardle arrived and parked behind Officer Petropulos's vehicle on East Narda Street west of South Philadelphia Street.

Officer Wardle, upon exiting his vehicle, heard Officer Petropulos say (both in person and over the police radio) "Let me see your hands! Don't move!" Officer Wardle ran up to assist Officer Petropulos and noticed Mejia lying on the ground in front of them. Officer Petropulos's firearm was pointed at Mejia. Officer Wardle did not know at that time what had happened. He moved forward to secure Mejia's wrists and noticed Mejia's blood on the street and on his own hands. While securing Mejia's hands, Mejia said to Officer Wardle, "All you cops are crooked," and "I'm not going to die from this; I'll be back." Officer Wardle described Mejia as being lethargic and speaking slowly. He did not notice any odor of alcohol coming from Mejia.

As other police officers began arriving on the scene, Officer Petropulos told Officer Wardle that he thought Mejia threw something. Although Officer Wardle did not search Mejia for weapons, he did notice a small, orange pill container of marijuana between the spokes of Mejia's bike. Officer Wardle was later made aware that police located a handgun in the front yard of the residence in the 200 block of East Narda Street.

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

Three relatives of Mejia provided statements to the APD between the hours of 5:00 a.m. and 6:00 a.m. after the shooting, but none of them witnessed the incident, nor were any of them with Mejia at or near the time of the incident. Investigators also conducted and recorded 27 canvass interviews in the neighborhood. Nobody heard or saw anything leading up to the incident, as most people were sleeping. Some people indicated that they awoke to the sound of a gunshot or the sounds of emergency vehicles.

Mejia's Voluntary, Post-Miranda Statement of Events

On Oct. 21, 2012, at approximately 4:55 a.m., Mejia waived his *Miranda* rights and gave a statement to the OCDA in his hospital room. According to Mejia, he was at home for the majority of the preceding day (Oct. 20, 2012). At approximately 8:00 p.m., he rode his bicycle to a party [at a location he did not disclose] with friends [whose names he did not disclose]. He left after about half an hour and then rode his bicycle to a second party. Mejia stated that his memory mostly stopped there; he admitted to smoking marijuana and drinking a large quantity of vodka throughout the evening. He stated that he did not recall how he ended up at the incident scene, but he did recall being shot, seeing blood, and hearing people talking to him. Mejia stated that he did not know who shot him or for what reason. Mejia stated that he recalled reaching into his right front pants pocket in order to throw away the small amount of marijuana that he was carrying on him. Mejia denied possessing a firearm at the time of the shooting incident. Mejia's statement concluded at approximately 5:25 a.m.

Evidence Collected at the Scene

The following items of evidence found at the scene were marked and collected by an OCCL Forensic Scientist: one loaded .38 Smith and Wesson revolver, one 9mm caliber cartridge case, one black baseball cap with an embroidered "A," one prescription bottle with a white label containing marijuana, one red Bic lighter, two bloodied shirts, and one black "beach cruiser" bicycle. OCCL Senior Forensic Specialists took photographs of the scene and the parties involved, and also collected Officer Petropulos's weapons and ammunition.

Mejia's Prior Criminal History

Mejia's criminal history, dating back to 2006, was reviewed and considered.

Mejia's Post-Incident Conviction

On Nov. 29, 2012, Mejia pleaded guilty in Orange County Superior Court Case No. 12NF3377 to one felony count of being an active participant in a criminal street gang carrying a loaded firearm in public in violation of Section 25850 (a)/(c)(3) of the Penal Code, and one misdemeanor count of street terrorism in violation of Section 186.22(a) of the Penal Code. Mejia offered the following facts as the basis for his guilty plea: "In Orange County, California, on 10/21/12, I while an active participant in [criminal street gang], a criminal street gang of over 3 members which engages in a pattern of criminal activity and has as its primary activities aggravated assault and felony gun possession, carried a loaded firearm in a public place."

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer involved in the shooting include murder (PC 187), attempted murder (PC 664/187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict any officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications apply for the officer's actions. *People v. Banks* (1977) 67 Cal.App.3d 379, 383-84. Several justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 197 provides that use of deadly force by any person is justifiable when used in self-defense or in defense of others. 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 a 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 U.S. 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. The U.S. 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." *Tennessee v. Garner* (1985) 471 U.S. 1, 3. This limitation was, however, subsequently clarified by the United States Supreme Court. The Supreme Court stated that any determination about the reasonableness of force used by an officer "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." *Graham v. Connor* (1989) 490 U.S. 386, 397. Thus, "[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 Supreme Court's commentary in *Graham* is applicable to the interactions between Officer Petropulos and Mejia.

LEGAL ANALYSIS

Officer Petropulos was in a neighborhood he knew to be dangerous and in which gang violence was prevalent. It was 1:30 a.m. on a weekend. He observed Mejia, who was traveling by bicycle with three others, flee from him once Mejia became aware that Officer Petropulos was a police officer. Mejia fit the description of someone likely to be involved in criminal street gang activity based on his actions and clothing. Officer Petropulos saw Mejia reach under his shirt and pull out what he believed to be a gun. A gun was recovered nearby and Mejia admitted

to others that he did indeed possess a gun. Officer Petropulos' view of Mejia when Mejia discarded the weapon on a residential front lawn was obstructed. When Mejia dismounted his bicycle, he behaved in such a way that reasonably led Officer Petropulos to believe that he was about to be shot at inside his patrol car. Officer Petropulos fired only one shot in order to disable Mejia, and then allowed other officers to handcuff Mejia.

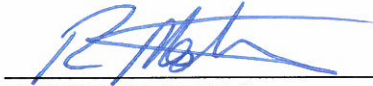
In order for Officer Petropulos to be justly and lawfully charged and convicted with a crime in this incident, it would be the prosecution's burden to prove beyond a reasonable doubt that Officer Petropulos did not act in reasonable and justifiable self-defense or defense of others when he shot at Mejia. As should be apparent from the above-described facts and legal analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would almost certainly conclude that it was reasonable for Officer Petropulos to use the force that he did under those circumstances. There is significant evidence that Officer Petropulos acted reasonably under the circumstances, and this would be the case even if it had not later been shown that Mejia had been armed and was an active criminal street gang member. Officer Petropulos provided a voluntary statement that is credible, reasonable, and strongly supported by the evidence. Further, there is not any conflicting evidence regarding the shooting.

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 the evidence does not support a finding of criminal culpability on the part of Officer Petropulos. On the contrary, there is significant evidence that the officer's actions were reasonable and justified under the circumstances when he shot Mejia on Oct. 21, 2012.

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

Respectfully submitted,



ROBERT MESTMAN
Senior Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **JAIME COULTER**
Assistant District Attorney
Head of Special Prosecutions Unit