



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

February 2, 2022

Chief Ronald Lawrence  
Costa Mesa Police Department  
77 Fair Drive  
Costa Mesa, CA 92626

Re: Officer-Involved Shooting on May 21, 2021  
Non-Fatal Incident involving Keith Alan Riggert II  
District Attorney Investigations Case # 21-001822  
Costa Mesa Police Department Case # 21-008196  
Orange County Crime Laboratory Case # 21-46336

Dear Chief Lawrence,

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 Costa Mesa Police Department Officer Joseph Carboni. Keith Alan Riggert II, age 38 at the time of the shooting, survived his injuries. The incident occurred in the City of Costa Mesa on May 21, 2021.

**OVERVIEW**

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 21, 2021, non-fatal, officer-involved shooting of Keith Alan Riggert II. 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 Costa Mesa Police Department (CMPD) 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 May 21, 2021, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, four interviews were conducted by OCDA Investigators, and 6 digitally recorded interviews were conducted by CMPD officers during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Costa Mesa Police Department reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including officer processing and firearms

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examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Keith Alan Riggert II; criminal history records related to Keith Allan Riggert II, including prior incident reports; the personnel records of Officer Joseph Carboni; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass, Body-Worn Camera (BWC) footage, and Patrol Video System (PVS) footage.

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. 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 Costa Mesa Police Department officers or personnel, specifically Officer Joseph Carboni. The OCDA will not be addressing any possible issue related to policy, training, tactics, or civil liability.

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy not to release the final report regarding the officer-involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his or her case is still pending.

### **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 reviews and approves all officer-involved shootings and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officer Carboni gave a voluntary statement to OCDA Investigators on May 26, 2021.

## **DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE**

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

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

## **FACTUAL SUMMARY**

On May 21, 2021, at approximately 10:08 a.m., Costa Mesa Police Officer Joseph Carboni initiated a vehicle stop of a black 1993 Toyota pick-up truck with California license plate 5AYU010. Officer Carboni had observed the truck while driving south on Newport Boulevard near the merge point with the 55 Freeway. Officer Carboni observed the black pick-up truck drive from the #2 lane across the #3 and #4 lanes and make a right turn onto 19<sup>th</sup> street. Officer Carboni was "worried" based on the "erratic driving" that the Toyota's driver might have been intoxicated. The officer attempted to follow the truck onto 19<sup>th</sup> street but was impeded by traffic. After making a right turn, Officer Carboni caught up to the truck which then made a sudden right turn into the shopping center at 521 West 19<sup>th</sup> Street. As the pick-up was turning into the parking lot, Officer Carboni noticed the brake lights did not work, and he believed that the driver had failed to use his signal. Later review of the Patrol Car Video (PVS) showed the right turn signal was activated as it made the turn. Later testing of the truck confirmed that its brake lights were not working, a violation of the Vehicle Code. Officer Carboni activated his red and blue emergency lights, which then activated the PVS and his Body-Worn Camera (BWC). The Toyota truck parked in a parking stall facing business storefronts. The officer parked directly behind the truck.

Officer Carboni was wearing a Costa Mesa Police Department (CMPD) uniform with cloth patches on both shoulders and a metal breast badge and driving a marked CMPD police vehicle. After parking behind the truck, Officer Carboni exited his vehicle and walked to the rear of another vehicle parked immediately west of the truck. Because the truck's driver had not rolled down his tinted window, Officer Carboni was unable to see inside the truck's cab. After the officer looked towards the truck for five to seven (5-7) seconds, the driver rolled down his window. The officer then approached the driver's door. As the officer was approaching the driver, later identified as Keith Alan Riggert II, the driver made statements to the effect of, "Bro, you really pulling me over?" or "You really fucking pulling me over?" Officer Carboni then asked Riggert for his driver's license and informed him he was stopped because his taillights did not work. Riggert provided his California Driver's License. Officer Carboni then returned to his vehicle and clipped his BWC to his vest. He then called in his stop and provided dispatch with the truck's license plate and his location. Officer Carboni attempted to run a records check of Riggert but was unable to complete it due to technical difficulties. At 10:10 a.m., Carboni requested dispatch complete the records check. Approximately one minute later, at 10:11 a.m., dispatch advised Officer Carboni that Riggert's license was valid, that he was an out-of-compliance registered sex offender, and that he also had a possible arrest warrant out of San Bernardino. Officer Carboni, whilst still in his car, requested the location of his follow-up officer.

Before Officer Carboni's follow-up officer could complete his response, Riggert started his truck. The reverse lights on the truck were activated, and Officer Carboni saw bystanders in the immediate area as the front tires of the truck turned. The officer believed that the truck could not back up without striking his vehicle and the distance between them was such that if Riggert rapidly backed up, the collision could severely injure Carboni. To decrease the distance between the two

vehicles and limit the risk of injury, Carboni pulled his patrol car up closer to Riggert's. Riggert then pulled forward and repositioned his truck. A witness, who was standing two spaces from the truck near her own vehicle, observed Officer Carboni trying to block in Riggert. As Riggert pulled forward, the witness feared he would hit a bystander at the scene. Officer Carboni then accelerated forward as Riggert tried to back up. Officer Carboni trapped the truck between his vehicle and a parked Acura.

Officer Carboni then exited his vehicle and drew his handgun. As he moved towards the driver's side of the Acura, Officer Carboni yelled, "Stop, stop, stop." Riggert then revved his engine and backed into the police unit and the Acura, pushing both vehicles out of the way. Officer Carboni was close enough to be in danger, and a second witness thought Riggert's vehicle might have struck Officer Carboni. At this time, Officer Carboni believed that Riggert would do whatever it took to escape. After ramming Officer Carboni's vehicle out of the way, Riggert's truck was facing the witness and her vehicle. With his gun pointed towards the truck, Officer Carboni heard the truck's engine revving and gears grinding and again yelled, "Stop."

Riggert then accelerated forward at a high rate of speed. Officer Carboni, seeing the truck heading towards the witness, feared for her life and, believing that deadly force was his only option to stop Riggert from killing or seriously injuring her, fired three rounds through the rear driver's side window of Riggert's truck at approximately 10:12:26 a.m. After firing the second round, the officer heard Riggert miss second gear and momentarily slow. Officer Carboni ceased firing because he thought he had hit Riggert and because the truck had passed the witness. The truck then continued east through the parking lot and turned north out of Officer Carboni's sight.

Officer Carboni broadcasted "shots fired" and then contacted the witness, who said she was okay but scared. Officer Carboni stated to the witness, "I thought he was going to run you over," and she replied, "I thought so." Riggert was located at approximately 11:51 a.m. when he walked into Orange Coast Memorial Hospital suffering a gunshot wound to the right shoulder. Riggert was then transferred to UCI Medical Center, where he was treated and released to the Costa Mesa Police Department. Riggert was then transported to Orange County Jail and booked for assault with a deadly weapon on a peace officer. Before being booked at the jail, OCDA investigators interviewed Riggert, who gave statements that were inconsistent with the statements of other witnesses and inconsistent with the BWC and PVS videos.

### **KEITH ALAN RIGGERT II'S INJURIES**

Keith Alan Riggert II suffered a single gunshot wound to his upper right shoulder. The bullet caused damage to Riggert's right scapula. Riggert's condition, however, was stable, and his injuries were non-life-threatening, according to the attending physician. He was released from the hospital on the same day he arrived.

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined:

- EM #1 – One bullet casing, headstamped "WIN 9mm LUGER."
- EM #2 – One bullet casing, headstamped "WIN 9mm LUGER."
- EM #3 – One bullet casing, headstamped "WIN 9mm LUGER."
- EM #4 – Broken red tail lamp fragments
- 142 color digital photographs were booked into evidence under CMPD Case #21008196 along with EM #1 – EM #4

## **EVIDENCE ANALYSIS**

### **Firearms Examination**

Officer Carboni's SIG Sauer Model P320, 9mm, semi-automatic handgun serial #58A161349 was test-fired at the Orange County Crime Lab and fired without malfunction. The pistol was determined to have fired the three cartridge cases recovered from the shooting scene.

### **Projectile Examinations:**

The damaged projectile located on the front passenger floorboard of Riggert's truck is consistent with having been fired from Officer Carboni's pistol. The bullet jacket located on the front passenger floorboard of Riggert's truck could not be identified or eliminated as having been fired from Officer Carboni's pistol due to damage. The apparent bullet jacket fragment found in the camouflage neck gaiter from Riggert's truck was too small for classification and comparison.

### **CODIS SDIS Convicted Offender Hit**

On September 13, 2021, a convicted offender hit was received in DA Investigations Case # 12-001822 that occurred on May 21, 2021. Blood from the back of the truck's driver seat back was matched to the DNA profile of Keith Alan Riggert II.

### **KEITH ALAN RIGGERT II'S PRIOR CRIMINAL HISTORY**

Keith Alan Riggert II's criminal history was reviewed and considered. Riggert had a California Criminal History that dates back to 2008. He has previously been arrested for the following charges:

- Evading a Peace Officer
- Driving with a Suspended License
- False Identification to a Peace Officer
- Sexual Battery: Touch for Sexual Arousal
- Battery
- Grand Theft
- Take Vehicle without Consent
- Arson
- Obstruct Law Enforcement
- Sexual Penetration with Force
- Lewd and Lascivious Act with a Child
- Rape
- Assault with a Deadly Weapon, Not a Firearm, Likely to Cause Great Bodily Injury
- Vandalism

### **KEITH ALAN RIGGERT II'S POST-INCIDENT CONVICTION**

On May 25, 2021, the OCDA filed criminal charges against Keith Alan Riggert II in Orange County Superior Court case 21WF1328, consisting of felony Assault with a Weapon not a Firearm on a Peace Officer, a violation of California Penal Code section PC 245(c); felony Resisting an Executive Officer, in violation of California Penal Code section 69; misdemeanor Resisting a Public or Peace Officer, in violation of California Penal Code section 148(a)(1); misdemeanor Evading a Peace Officer, in violation of California Vehicle Code section 2800.1(a). On June 25, 2021, Complaint Amendment #1 was filed, adding charges consisting of felony Transient Failure to Register Annually Within 5 days of Birthdate in violation of Penal Code Section

290.011(c)/290.018(b) and misdemeanor Failure to Register and Re-Register within 30 Days by Transient in violation of Penal Code section 290.011/290.018(g).

On June 25, 2021, Defendant Keith Alan Riggert II pled guilty to five of the six charges. The charge of evading a peace officer, Vehicle Code 2800.1(a), was dismissed. Defendant was sentenced to 3 years in state prison, given a lifetime driver's license ban, along with restitution and other standard terms and conditions.

### **STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187], 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. 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 the 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 Costa Mesa Police Department Officer Joseph Carboni with Keith Alan Riggert II.

## **LEGAL ANALYSIS**

The facts in this case are determined by considering both Officer Carboni's statements to OCDA investigators, as well as defendant's account of the incident, which were supplemented by other relevant material and witnesses present at the incident and relevant BWC and PVS footage of the incident.

The issue is whether the conduct of Officer Carboni on May 21, 2021, was without justification, which would implicate criminal culpability. As stated above, in order to charge Officer Carboni 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 Carboni with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense of himself or others. If the actions that day of Officer

Carboni 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 Carboni was justified in believing that Keith Alan Riggert II 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 mainly based on the conduct of Riggert in the moments leading up to the shooting. After observing Riggert driving erratically, Officer Carboni believed he may be driving while intoxicated. After contacting Riggert, who was confrontational, Officer Carboni learned that Riggert was an out of compliance sex offender and possibly had an active warrant for his arrest in San Bernardino. Moments after Officer Carboni learned these facts, Riggert started his truck and attempted to reverse it into Officer Carboni's patrol vehicle in order to create room for him to escape. Officer Carboni exited his vehicle with his handgun drawn and ordered Riggert to stop multiple times. A witness, who observed Riggert's actions feared he might drive into civilians at the scene. A second witness also feared that Riggert might have struck the officer with his vehicle as he was trying to back up. After ramming Officer Carboni's vehicle out of the way, Riggert positioned his truck facing the witness and her vehicle, then accelerated at a high rate of speed. Officer Carboni fired three shots and ceased firing because he believed he had hit Riggert and he observed the truck pass the witness.

Officer Carboni feared for the safety of the witness during this incident and he believed that Riggert would do whatever it took to escape. In order to prevent Riggert from striking the witness or another bystander with his vehicle, Officer Carboni fired three shots into Riggert's vehicle. Based on the facts, these beliefs were reasonable and justifiable. Riggert had rammed Officer Carboni's vehicle despite the danger to Officer Carboni and multiple civilians in the area. He also ignored the officer's orders to stop, even as he had his gun drawn. Riggert then accelerated rapidly with his car directed towards the witness.



It should be once again noted that, in order for Officer Carboni 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 Carboni did not act in reasonable and justifiable self-defense or defense of another when he shot at Keith Alan Riggert II. 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 Carboni to believe that his life and the lives of others were in danger. Therefore, Officer Carboni was justified when he shot at Keith Alan Riggert II. Simply stated, Officer Carboni 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 Carboni, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Keith Alan Riggert II on May 21, 2021.

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



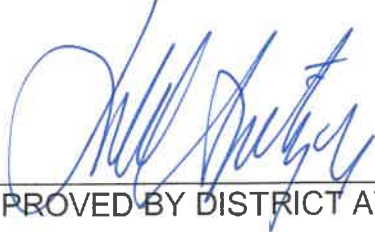
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**MENA GUIRGUIS**  
SENIOR DEPUTY DISTRICT ATTORNEY  
HOMICIDE UNIT



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



2-3-2022

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