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October 11, 2016

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Officer-Involved Shooting on Feb. 15, 2016
Fatal Incident involving Brandon Lee Witt
District Attorney Investigations Case #SA 16-007
Orange County Sheriff's Department Case #16-037674
Orange County Crime Laboratory Case #FR 16-42420

Dear Sheriff Hutchens,

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 Orange County Sheriff's Department (OCS) Deputy Nicholas Petropoulos. Brandon Lee Witt, 39, died as a result of his injuries. The incident occurred in the City of Yorba Linda on Feb. 15, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 15, 2016, fatal officer-involved shooting of Witt. 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 OCS deputy involved in the shooting. The format of this letter was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Feb. 15, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, nine interviews were conducted, and 35 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: dashboard camera recordings, audio recordings, OCS reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCC) 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 Witt; criminal history records related to Witt; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of Orange County Sheriff's Department deputies or personnel, specifically Deputy Petropulos. The OCDA will not be addressing any possible issues relating to 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 duties 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, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as 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, who 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. Deputy Petropulos gave a voluntary statement to OCDA Investigators on February 18, 2016.

FACTUAL SUMMARY

On Feb. 15, 2016, at 12:47 p.m., Deputy Petropulos located an occupied suspicious vehicle in a parking lot behind the Extended Stay America, located at 22711 Oakcrest Circle, in Yorba Linda. Deputy Petropulos observed an individual, later identified as Witt, sitting in a gold Toyota Avalon talking to another individual. The vehicle did not have a front license plate, which is required by state law. Deputy Petropulos drove around to the other side of the parking lot before returning to the area. Witt's vehicle had been moved across the lot, facing a different direction. The individual that Witt had been talking to moved several spots away near another vehicle.

At approximately 12:48 p.m., Deputy Petropulos parked his patrol vehicle to the rear and to the left of Witt's vehicle. Deputy Petropulos' dashboard camera recorded the audio from the encounter. However, the video recording did not capture the incident because Deputy Petropulos' patrol vehicle was not directly facing Witt's vehicle.

Deputy Petropulos approached Witt's door, explained to him the reason for the contact, and ordered him to turn off his car. Witt grabbed a metal file-like device and explained to Deputy Petropulos that he did not have a key to operate the vehicle. Deputy Petropulos asked Witt for identification and if he was on probation or parole. Witt stated that he did not have identification and denied being on probation or parole.

Deputy Petropulos asked Witt if he knew either of the two individuals standing nearby in the parking lot, John Doe and Jane Doe. Witt stated that he did not, but later in the encounter Jane Doe said that she did in fact know Witt. When Deputy Petropulos asked Witt why he was not telling the truth, he began questioning if Deputy Petropulos was a police officer and asked to speak to his supervisor. Deputy Petropulos suspected Witt was under the influence of a controlled substance based on his behavior, appearance, and demeanor.

Throughout the encounter, Deputy Petropulos continuously ordered Witt to get out of the car, turn the car off, keep his hands where he could see them, not to put the car in drive, and to place the car in park. Witt repeatedly disobeyed those commands. Deputy Petropulos saw Witt reaching around near the floor board of the vehicle and in between the seats several times.

At approximately 12:55 p.m., Deputy Petropulos radioed a request for emergency backup. With his gun drawn, Deputy Petropulos grabbed Witt's wrists. John Doe, who at that time was walking from the parking lot to the hotel, witnessed Deputy Petropulos "lunge" toward Witt's door to grab his wrists. John Doe believed that Witt's hands were near the top of the steering wheel at that time. Deputy Petropulos yelled, "You just tried to throw the car in drive!" Witt stated that he was sorry and that he was scared. Deputy Petropulos warned Witt that he would shoot him if he put the car in drive again and ordered Witt to keep his hands outside the window. Deputy Petropulos told Witt that he was not going to shoot him as long as he followed his commands.

At approximately 12:56 p.m., Deputy Brian Callagy arrived on scene and parked directly behind Witt's vehicle. The dashboard camera on Deputy Callagy's patrol vehicle recorded approximately 35 seconds of audio and video leading up to the shooting. As Deputy Callagy parked his car up against the rear bumper of Witt's vehicle, Deputy Petropulos looked over his right shoulder and re-holstered his gun. Deputy Petropulos was struggling with Witt and Deputy Callagy immediately ran to the driver's side door to assist, and he did so by grabbing Witt's left arm. At this time, Witt put the car in reverse and backed into Deputy Callagy's patrol vehicle. Deputy Petropulos ordered Witt to, "get [his] [expletive] car in park, now!" Witt replied that, "[he was] trying to" and that "[he had] been assaulted before." Deputy Petropulos yelled, "Stop [expletive] reaching around! You're gonna' get shot! You're gonna' get shot [expletive]!" and re-drew his weapon. Witt says, "Please don't." Deputy Petropulos says, "Put it in park then!" Witt again states that he had "been shot before." After a few seconds go by, Witt shifted the car into drive and started moving forward. As the car lurched forward, Deputy Petropulos was still partially inside the window. Deputy Petropulos can be heard saying, "I'm gonna' shoot him," as he pointed his gun at Witt. Witt says, "No, please don't!" The vehicle continued moving forward, causing Deputy Petropulos to collide into Deputy Callagy, who stumbled backward. Deputy Petropulos then fired one shot at Witt. As soon as the shot was fired, Deputy Petropulos separated from the vehicle and it pulled off to the right side of the camera, out of view.

Witt's vehicle accelerated to the right into a drainage ditch. The gas pedal appeared to be pressed down, causing the tires to continue spinning. At approximately 12:57 p.m., Deputy Petropulos radioed "shots fired." Deputy Petropulos could see Witt leaning over the passenger seat and became concerned that he might be armed and attempting to lure them toward the vehicle. Once additional units arrived, Deputy Petropulos and Deputy Callagy approached Witt with their weapons drawn while two other deputies pulled him from the car. Witt was unresponsive.

At 1:06 p.m., Anaheim Fire Department (AFD) personnel arrived on scene and treated Witt for a single gunshot wound. At 1:17 p.m., AFD transported Witt by ambulance to Orange County Global Medical Center (OCGMC). At 1:34 p.m., AFD arrived at OCGMC with Witt. The ER physician initiated advanced lifesaving care on Witt, but Witt remained unresponsive. The ER physician opened up Witt's chest and located a large hole in his heart. At 1:40 p.m., the ER physician pronounced Witt dead.

The Toyota Avalon was found to be registered to Witt. A search of the vehicle revealed, among other items, a printer, computer equipment, counterfeiting paper, counterfeit U.S. currency in denominations varying from \$5 to \$100 bills, and drug paraphernalia consistent with a methamphetamine pipe.

Jane Doe left the scene prior to being interviewed and has not been located. The vehicle she was standing near during Deputy Petropulos' encounter with Witt was later determined to be stolen.

Voluntary Statement of Deputy Petropulos

Deputy Petropulos gave a voluntary, consensual statement to the OCDA on Feb. 18, 2016. The following is a summary of Deputy Petropulos' statement.

Deputy Petropulos was conducting a patrol check of the Extended Stay America because there had been a significant problem with drug use in the hotel and parking lot. Deputy Petropulos had previously encountered a lot of probationers and parolees and subjects with warrants for their arrest around the hotel. During the patrol check, Deputy Petropulos observed a male sitting in a gold 4-door Toyota Avalon with the door open talking to a male subject standing nearby. As Deputy Petropulos drove by, he could see that the car did not have a front license plate. In his rear view mirror, Deputy Petropulos saw the male subject standing next to the vehicle deliberately watching him as he drove away. Deputy Petropulos became concerned that the two individuals, aware of his presence, might leave the parking lot. Deputy Petropulos parked his vehicle near the exit of the parking lot and waited for either subject to drive away. After a period of time, Deputy Petropulos drove back around to the rear parking lot to make contact with the two individuals. Deputy Petropulos observed that the vehicle had been moved into a parking spot across the lot. The same male subject was still in the driver's seat. The other male subject was standing next to a vehicle two spots over with a female.

Deputy Petropulos approached the male driver, later identified as Witt. After having a brief conversation with Witt, Deputy Petropulos believed that he was possibly under the influence of a controlled substance based on his agitated behavior, rapid speech, muscle rigidity, and constricted pupils. Deputy Petropulos asked Witt for identification, but Witt said he did not have any. Deputy Petropulos then asked if Witt was on probation or parole and he stated that he was not. When Deputy Petropulos asked Witt to turn off the car, Witt grabbed a metal pen like file device with a point on the end of it and said that he needed it to shut off the vehicle because there were no keys. Deputy Petropulos determined that he needed to investigate the matter further as a possible stolen vehicle. Deputy Petropulos told Witt to keep his hands where he could see them, but Witt continued to move his hands erratically. Witt placed his hands down between his legs, up under the dash board, and between the seat and center console several times. Deputy Petropulos again told Witt to keep his hands visible. Deputy Petropulos started feeling uncomfortable because of Witt's movements and where he was putting his hands.

When asked, Witt denied knowing the male or female subject (John Doe and Jane Doe) standing two car spaces away. Moments later, Jane Doe approached Witt's vehicle and Deputy Petropulos told her to stop. Jane Doe stated that she needed a baby bottle from Witt. When asked why he would lie about knowing the two individuals, Witt did not provide an answer. Witt continued to reach down between the seats, along the right side of his seat, down by his feet, and under the dashboard. Deputy Petropulos stepped back from the vehicle to read the rear license plate while maintaining focus on Witt's hands. Deputy Petropulos put the call out that he was on an occupied vehicle at the Extended Stay America and gave out the license plate immediately. Deputy Petropulos repeatedly told Witt to show him his hands. Deputy Petropulos asked Witt several times to step out of the vehicle, but he refused.

Witt said that he did not believe Deputy Petropulos was an actual police officer. Deputy Petropulos provided his name, identification number, and showed the patch on his uniform. When Witt said that he was out of his jurisdiction, Deputy Petropulos showed him the Yorba Linda decal painted on the side of the patrol vehicle. When Witt requested a supervisor, Deputy Petropulos called for OCSO Sergeant Tim Way to respond to the location. Witt said that he had been falsely imprisoned by a person falsely impersonating a police officer before and that he had been shot in the leg by that person.

Witt deliberately moved his hands back down below the seat, between his legs, and the floor board area under the dash. Deputy Petropulos drew his weapon, believing that Witt was attempting to retrieve a weapon. Witt became startled and said that he would show him his hands, placing them outside the vehicle near the left side-mirror. Deputy Petropulos holstered his weapon and grabbed Witt's wrists. Witt immediately started pulling his wrists back inside the vehicle. During the physical struggle, Deputy Petropulos' main objective was to control Witt's wrists to prevent him from accessing a weapon. Witt pulled Deputy Petropulos' head and shoulders into the vehicle.

Deputy Petropulos saw Deputy Callagy pulling into the parking lot from the west side of the hotel. Witt was able to free his right hand, which was concerning to Deputy Petropulos. Witt shifted the vehicle into reverse during the physical struggle. When Deputy Callagy arrived, he parked his patrol vehicle directly behind Witt's vehicle to prevent him from backing out. Deputy Petropulos continued struggling with Witt and ordering him to exit the vehicle. Deputy Callagy exited his vehicle and attempted to assist in controlling Witt's hands and remove him from the vehicle. Witt continued resisting and broke free from Deputy Petropulos' grip. Deputy Petropulos' right arm and shoulder were still in the vehicle at this point. Deputy Petropulos drew his weapon again and told Witt that he needed to comply and that reaching around the vehicle would get him shot. Witt continued to reach down to the floor board area under the dashboard, between the seat and the center console. Witt put the vehicle in drive and quickly reached down with his right hand. Deputy Petropulos repeatedly ordered Witt to put the car in park and to stop reaching around. Witt reached around in an area that Deputy Petropulos could not see and hit the gas pedal. Deputy Petropulos pulled the trigger on his service weapon because he was unable to see Witt's right hand or what he was reaching for.

At the time he fired his weapon, Deputy Petropulos still had his right arm in the vehicle, attempting to gain control of Witt. Deputy Petropulos indicated that he felt extremely vulnerable and exposed through the window and believed that he would have been shot if Witt had a weapon.

Witt's vehicle drove up the curb and turned right on to a grass embankment before crashing into a drainage ditch. The vehicle was still accelerating, creating a large cloud of white smoke. Deputy Petropulos feared that Witt may have accessed a weapon. Both Deputies maintained a position of cover in fear that Witt might be attempting to lure them in or exit the vehicle with a weapon. Deputy Petropulos could see Witt leaning over the passenger's seat with his hands under several items. Additional deputies arrived and removed Witt from the vehicle. Once the deputies determined Witt did not have a weapon on him, they placed him in handcuffs and began to render first aid.

After the incident, Deputy Petropulos had a bruise on his left forearm, a light scratch, and soreness in his right arm and shoulder area. Additionally, one of the points on his badge was bent.

Voluntary Statement of Deputy Callagy

Deputy Callagy gave a voluntary, consensual statement to the OCDA on Feb. 18, 2016. The following is a summary of Deputy Callagy's statement.

Deputy Callagy could see Deputy Petropulos up against the driver's side door when he arrived in the parking lot. Deputy Callagy saw that Witt's reverse lights were on so he parked his patrol vehicle up against the bumper to prevent Witt from backing out. When Deputy Callagy's bumper made contact, Witt looked back in his direction. Deputy Petropulos had his gun drawn, but re-holstered it as soon as Deputy Callagy arrived. As Deputy Callagy approached the vehicle, he told Witt to shift the car from reverse to park. Deputy Petropulos had hold of Witt's left wrist, and Deputy Callagy grabbed Witt's right wrist and attempted to put him in a wrist lock. Witt continued pulling away and Deputy Callagy lost his grip. Witt's hand immediately reached under the dashboard as if he was reaching for something. Deputy Callagy thought Witt was reaching for a weapon.

Deputy Petropulos pulled out his gun at this time and told Witt that he was going to shoot him. Deputy Callagy grabbed Witt's left arm and wrist to prevent him from reaching into the car. Witt was able to reach down with his right hand and shift the car into drive. Witt kept pulling away and the car started moving forward. Deputy Callagy remembered Deputy Petropulos colliding with him right before Deputy Petropulos fired the shot, causing Deputy Callagy to stumble backward. Deputy Petropulos told Deputy Callagy that Witt was "reaching around the car."

Once Witt's vehicle came to a stop, Deputy Callagy gave commands to Witt to show his hands. Deputy Callagy was worried that Witt had a weapon and was waiting for them to approach the vehicle. Deputy Callagy and Deputy Petropulos waited for additional deputies to arrive before removing Witt from the vehicle.

Statement of John Doe

John Doe was not located during the canvass, but was located and interviewed several months later. The following is a summary of John Doe's statement.

John Doe relayed being in the parking lot of the Extended Stay America with Jane Doe. When John Doe exited the hotel, he saw Witt seated in a gold Toyota. John Doe knew Witt, but had not seen or talked to him for well over a year. John Doe stopped and spoke with Witt for approximately five minutes then continued to Jane Doe's car which was parked in the far south end of the parking lot. While John Doe stood at the front of Jane Doe's car, he saw Witt park approximately three to four parking spaces (15 to 20 feet) east of him. When Witt parked, a marked OCSD patrol car pulled in behind him. Deputy Petropulos exited the vehicle and made contact with Witt.

John Doe heard Petropulos ask Witt if the car was his and what he was doing. John Doe described Witt as real nervous and not sitting still. John Doe heard Deputy Petropulos tell Witt "repeatedly" to stop moving and keep his hands where he could see them. John Doe heard Witt continually ask Petropulos to "just let him go". John Doe described Deputy Petropulos as getting "more and more irate" with Witt. John Doe described Witt and Deputy Petropulos as "going back and forth". Deputy Petropulos gave Witt commands to stop moving and to keep his hands where he could see them and Witt refused to follow them. John Doe saw Deputy Petropulos suddenly "lunge" into the open driver door window and try to grab Witt's arms. John Doe believed Witt's hands were toward the upper part of the steering wheel when Deputy Petropulos lunged into the car. It was at this point that John Doe decided to walk back to the room. John Doe was approximately halfway across the parking lot (20 to 30 feet) when he turned and saw Deputy Petropulos step back from the car, pull his handgun, and yell commands at Witt. John Doe could not recall what Deputy Petropulos said.

John Doe turned and began to walk faster toward the hotel. As John Doe got near the building he saw another OCSD unit drive past him and toward Deputy Petropulos and Witt. As John Doe got to the opposite side of the building he heard a "dull pop". John Doe did not believe the "dull pop" he heard was a gunshot.

EVIDENCE COLLECTED

In connection with the shooting incident, the following items of evidence were collected and examined:

- One black PVR microphone
- One pair of Nike tennis shoes, one pair of black shorts, and one dark colored t-shirt
- One 40mm caliber casing
- One blue HTC smartphone with a cracked screen
- Apparent blood swabs from interior driver area of the Toyota Avalon
- Deputy Petropulos' duty weapon, a Glock, model 22, .40 caliber pistol

AUTOPSY

On February 21, 2016, independent Forensic Pathologist Dr. Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Witt. Dr. Luzi identified the following injuries on Witt:

- Gunshot wound through and through the left arm.
- Gunshot wound with a trajectory through the left chest, the fourth rib, left lung, heart, diaphragm and liver.

Dr. Luzi stated that a gunshot wound to the heart was the cause of Witt's death.

EVIDENCE ANALYSIS

Firearms Examination

Deputy Petropulos's Glock pistol was test fired at the OCCL and fired without malfunction. The fired cartridge case from the Toyota Avalon was determined to have been fired from Deputy Petropulos' Glock pistol.

Toxicological Examination

A sample of Witt's blood was collected at OCGMC. An OCSD forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Amphetamine	Postmortem Blood	0.125 ± 0.008 mg/L
Methamphetamine	Postmortem Blood	1.16 ± 0.08 mg/L

WITT'S PRIOR CRIMINAL HISTORY

Witt's criminal history was reviewed and considered. Witt had a California Criminal History that dates back to 1996. He has previously been arrested for the following charges:

- Burglary
- Grand theft person
- Manufacture controlled substance
- Possess paraphernalia
- Possess controlled substance
- Fictitious instrument
- Fraud
- Under the influence of a controlled substance
- Domestic violence battery

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

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

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 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. This 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." The Court of Appeal 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 p. 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/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 OCSD Deputy Petropulos with Witt.

LEGAL ANALYSIS

The facts in this case are determined by considering the video and audio recordings of the incident, both Deputy Petropulos' and Deputy Callagy's statements to the OCDA investigators, statements of other witnesses present at the scene, and other relevant evidence.

The issue in this case is whether the conduct of Deputy Petropulos on February 15, 2016 was criminally culpable and without justification. As stated above, in order to charge Deputy Petropulos 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 officers' conduct. Therefore, in order to lawfully charge Deputy Petropulos with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions that day of Deputy Petropulos 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 fairly recent case, it is well settled that "unlike 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/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.)

Deputy Petropulos was justified in believing that Witt 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 Witt in the moments leading up to the shooting.

When Deputy Petropulos initially approached Witt and asked him to turn off the engine, Witt grabbed a pointed metal object and claimed that it was necessary to shut off the vehicle. Deputy Petropulos suspected that the vehicle might be stolen and decided to investigate the matter further. Deputy Petropulos could see that Witt was exhibiting objective symptoms that he was under the influence of a controlled substance. Additionally, there were two other individuals in the parking lot at the time of the encounter who Deputy Petropulos believed were associated with Witt. Deputy Petropulos called for additional units because of Witt's behavior and the presence of the two other individuals.

During the encounter, Deputy Petropulos gave the following commands to Witt: open the door (two times); step out of the car (ten times); turn off the car (three times); keep your hands on the wheel (five times); keep your hands outside of the car (five times); keep your hands where I can see them (four times); keep your hands on the mirror (two times); keep your hands right there (four times); don't put the car in drive (one time); put the car in park (five times); and stop reaching around (two times). Witt's failure to comply with Deputy Petropulos' multiple commands escalated the incident and created the justifiable fear that Deputy Petropulos experienced.

Witt continued to reach around in his vehicle in a suspicious manner. In an attempt to prevent Witt from reaching around in his vehicle and potentially accessing a weapon, Deputy Petropulos grabbed Witt's wrists. As the struggle continued, Witt physically pulled Deputy Petropulos into the window of the vehicle. As Deputy Petropulos struggled to get control of Witt's wrists, he could see Deputy Callagy pulling up behind Witt's vehicle. Deputy Callagy grabbed Witt's left arm through the driver's side window. Despite both deputies' attempts to control Witt's movement and remove him from the vehicle, Witt was able to break free and put the car in drive. This justifiably concerned Deputy Petropulos because he was still being held inside the driver's side window by Witt as the car moved forward. Witt continued to move the vehicle forward despite Deputy Petropulos' commands to stop.

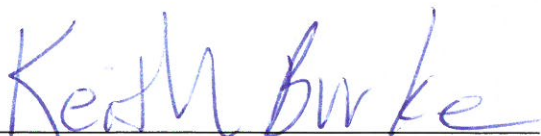
Therefore, based on the totality of the circumstances, Deputy Petropulos feared for his life and Deputy Callagy's life when he drew his handgun and fired a single shot at Witt. Witt immediately released his grip on Deputy Petropulos. At the time he fired his gun, Deputy Petropulos saw Witt's hand reaching down towards the floorboard of the vehicle and believed he was attempting to arm himself with a weapon. Witt's passenger side seat and floorboards were covered with trash and other items. Deputy Petropulos warned Witt that he was going to shoot if he did not stop reaching around in the vehicle. Deputy Petropulos was in a vulnerable position and reasonably believed that he would have been shot if Witt had a gun.

It should also be noted that in order for Deputy Petropulos 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 Deputy Petropulos did not act in reasonable and justifiable self-defense or defense of another when he shot at Witt. 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 Deputy Petropulos to believe that his life was in danger. Therefore, Deputy Petropulos was legally justified when he shot Witt.

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 Deputy Petropulos, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Witt on Feb. 15, 2016.

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



Keith Burke

Senior Deputy District Attorney
Homicide Unit



Read and approved by **Ebrahim Baytieh**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit