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May 21, 2015

Garden Grove Police Department
Chief of Police Todd Elgin
11222 Acacia Parkway
Garden Grove, CA 92840

Re: Officer-Involved Shooting on November 1, 2014
Fatal Incident Involving John Frank Brantley Jr.
District Attorney Investigations Case # SA 14-018
Garden Grove Police Department Case # 14-13660
Orange County Crime Laboratory Case # FR 14-54504

Dear Chief Elgin,

Please accept this letter detailing the Orange County District Attorney's (OCD A) Office's investigation and legal conclusion in connection with the above-listed incident involving a shooting by on-duty Garden Grove Police Department (GGPD) Corporal Timothy Kovacs. John Frank Brantley Jr., 43, died as the result of his injuries. The incident occurred in the City of Garden Grove on Nov. 1, 2014.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCD A's investigation of the Nov. 1, 2014, fatal, officer-involved shooting of Brantley. This letter includes an overview of the OCD A's investigative methodology, procedures, 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 is criminal culpability on the part of the GGPD officer involved in the shooting. The format of this document has been developed by the OCD A, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Nov. 1, 2014, investigators from the OCD A Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, seven interviews were conducted, and six additional witnesses were contacted in supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: GGPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Brantley; criminal history records related to Brantley, including prior incident reports; the personnel records of Corporal Kovacs; and other relevant reports and materials including audio recordings of the neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all evidence and analyzed it pursuant to the applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of GGPD officers or personnel, specifically Corporal Kovacs. This OCDA investigation does 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. Additional OCDA Investigators assigned to other units are 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, evidence collection, vehicle processing, and hospital investigations as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator case agent 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 to determine whether criminal charges are appropriate. Deputy District Attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting reports. 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 involved officers. Corporal Kovacs provided a voluntary statement to OCDA Investigators on Nov. 1, 2014.

FACTS

As context for its legal analysis, the OCDA provides a summary of the pertinent facts. As noted, OCDASAU obtained these facts through the process outlined above.

On Nov. 1, 2014, at approximately 8:00 a.m., John Doe and his wife, Jane Doe, were inside their residence in Garden Grove. John Doe was asleep in the master bedroom and Jane Doe was working on her computer in another room. John Doe awoke to loud "crashing noises" coming from the master bedroom doors that led to the backyard. After the third "crashing" sound, John Doe saw the bedroom doors to the backyard open forcefully. John Doe exited his bed rapidly and confronted an unknown male, later identified as Brantley.

Jane Doe heard the "crashing noises" as well, but she was unable to identify the source of the sounds. Upon checking the master bedroom, Jane Doe observed John Doe speaking with Brantley. Brantley pleaded with John Doe to let him into the house, but John Doe refused several times. Brantley told John Doe that he was being chased by gang members who wanted to kill him. Concerned, Jane Doe left the bedroom to call 911. Jane Doe went to the front of the house and looked outside to see if anyone appeared to be pursuing Brantley. She did see anyone.

Brantley continued to plead with John Doe to let him inside and John Doe eventually consented. Before allowing Brantley to enter the residence, John Doe retrieved his shotgun which was loaded with four "bird shot" rounds in the tubular magazine, but there was not a round in the chamber. Brantley had a brown box containing unknown items which he carried with him into the residence. John Doe instructed Brantley to walk to the front of the house and wait for the police.

At 8:02 a.m., Jane Doe called 911 and reported the situation. When Brantley reached the front foyer area of the house, he turned and leaned his back against the door. Brantley used a cellular telephone in his possession to call someone he was overheard referring to as "Babe." Brantley told the female that he had been at a laundromat when he was approached by a gang member and asked "where he was from." Brantley went on stating that he had been "chased out" of the laundromat by several gang members, and that he had been "in the wrong place." During this conversation, Jane Doe held out her telephone so the 911 dispatcher could overhear Brantley. It is of note that investigative review of video footage from a nearby laundromat showed Brantley present washing clothes, but did not show him having any interaction with anyone else, or being chased by anybody from the laundromat.

At approximately 8:03 a.m. GGPd dispatched Officers Jason Johnson and Vanessa Brodeur to the Does' residence regarding a burglary in progress. GGPd Corporal Timothy Kovacs and Officer John Raney also responded to the call. Being the senior officer present, Corporal Kovacs took control of the response. At approximately 8:10 a.m., all four officers arrived at the location and set up a perimeter before approaching the front door of the residence. The officers requested that Jane Doe open the door, and GGPd Dispatch advised Jane Doe, who was still on the phone, that police officers were on the scene and instructed her to open the door.

When Jane Doe approached the front door, Brantley blocked her path and pushed her back. Brantley told the Does that they could not open the door because there was a warrant for his arrest. Brantley also wanted more time to speak with his girlfriend on the phone. John Doe, still armed with his shotgun, protested and told Brantley that they would let the police into the house regardless of the warrant. Jane Doe, still on the phone with 911, attempted to open the door a second time and Brantley removed a knife from his jacket pocket and grabbed Jane Doe by the neck. Jane Doe and Brantley struggled at the door, and Brantley threatened to kill her if she or John Doe let the police inside the house. John Doe was unable to fire his shotgun at Brantley due to Brantley's close proximity to Jane Doe and the police standing outside.

Eventually, Jane Doe managed to break away from Brantley's grasp and open the door. John Doe started to aim his shotgun when Brantley rushed him and struggled to gain possession of the firearm. John Doe fell and landed on his back in the hallway, maintaining control of the shotgun. Brantley stood over John Doe and swung his knife at him multiple times, inflicting a three-centimeter stab wound on John Doe's left elbow. Corporal Kovacs, Officers Johnson and Raney entered the residence and heard screaming and struggling in the hallway. Corporal Kovacs and Officer Johnson approached the hallway and observed Brantley and John Doe fighting for control of John Doe's shotgun. Corporal Kovacs identified John Doe as the victim by his ethnicity, dress, age, and demeanor. Corporal Kovacs used his gun-mounted flashlight to illuminate the dark hallway, and he observed that John Doe was bleeding from his left arm. As Brantley and John Doe continued to struggle, the barrel of the shotgun was pointed in the direction of Corporal Kovacs and Officer Johnson. As the struggle continued, John Doe screamed for help and Brantley looked up and stared directly at Corporal Kovacs. Brantley's left hand was by the trigger area of the shotgun, and his right hand was on the fore-end pump area. Brantley made a concerted effort to aim the muzzle of the shotgun at Corporal Kovacs.

At approximately 8:13 a.m., Corporal Kovacs, believing that the lives of John Doe, Officer Johnson, and himself were in imminent danger, fired three successive shots into Brantley's upper torso. As a result of being shot, Brantley immediately released the shotgun and stopped struggling with John Doe. Corporal Kovacs holstered his weapon and moved Brantley to a location suitable for medical aid. GGPd Reserve Officer Dan Edwards, who had responded to the scene, heard the three gunshots as he was taking up a position on the outside of the residence. Officer Edwards announced the incident over the police radio, retrieved a medical aid kit from his patrol unit, and provided medical aid to Brantley until paramedics arrived.

At approximately 8:19 a.m., Garden Grove Fire Department (GGFD) personnel arrived on the scene. The GGFD responding paramedic observed Brantley lying supine on the ground in front of the Does' residence. The paramedic made contact with Brantley at approximately 8:21 a.m. and noticed that Brantley was in full cardiac arrest. Brantley had no heartbeat, no blood pressure, and was not breathing. The paramedic immediately began emergency care

administering Cardiopulmonary Resuscitation (CPR). As the paramedic applied chest compressions, Brantley was ventilated via a breathing mask administered by a second GGFD paramedic. The paramedics observed two apparent gunshot wounds on the right side of Brantley's chest and one on his right mid-axillary.

Brantley was transported via ambulance to the University California, Irvine Medical Center (UCIMC). The paramedics continued CPR in the ambulance and Brantley was placed on an echocardiogram monitor. Brantley's heart was asystolic. An interosseous line was inserted for epinephrine medication. An intravenous line was inserted to administer a saline solution. Brantley's gunshot wounds were cleaned, and an occlusive dressing was applied to the chest wound so as to not interfere with breathing.

At 8:35 a.m., Brantley arrived at UCIMC and his care was relinquished to the Emergency Room staff. The attending registered nurse observed that Brantley was being administered CPR by GGFD paramedics, and he noted a gunshot wound below Brantley's right nipple and on the right side of his chest. The attending physician at UCIMC evaluated Brantley and reported that he was unresponsive and unable to breathe on his own. CPR was continued and an additional intravenous access was attempted. A chest tube was inserted into the right side of Brantley's chest in an attempt to decompress a possible pneumothorax. Brantley was intubated and his airway was verified by use of video laryngoscopy. No medications were administered, nor were any additional surgeries or medical procedures performed. At approximately 8:44 a.m., the attending physician pronounced Brantley dead.

EVIDENCE COLLECTED

The following items of evidence were collected from the scene:

- One Mossberg 500 12-gauge shotgun, serial no. U360178
- One Remington 12-gauge shotgun round
- One folding knife
- Three Winchester .45 caliber +P expended cartridge cases
- One unlit cigarette
- One glass, smoking pipe containing residue

The following items of evidence were collected from Corporal Timothy Kovacs:

- One Glock, Model 21-SF, .45 caliber semi-automatic pistol, serial no. MRX222
- One magazine from the pistol containing 10 rounds, and one round from the chamber of the pistol (13-round capacity magazine normally loaded with 13 rounds along with one round in the chamber)
- Two magazines from the magazine pouch containing 13 Winchester .45 auto +P cartridges

EVIDENCE ANALYSIS

Firearms Examination

Officer Kovacs' Glock Model 21-SF, .45 caliber semi-automatic pistol was test-fired at the Orange County Crime Lab and operated without malfunction.

The three expended cartridge cases from the scene were determined to have been fired from Corporal Kovacs' firearm.

Autopsy

At an autopsy conducted on Nov. 5, 2014, and Orange County Sheriff-Coroner forensic pathologist Dr. Yong-Son Kim determined that Brantley's cause of death was multiple gunshot wounds of the thorax.

Toxicological Examination

A sample of Brantley's postmortem blood yielded the following results:

Drug	Matrix	Results &
Amphetamine	Postmortem Blood	0.0909 $\pm$ 0.0057mg/L
Methamphetamine	Postmortem Blood	1.80 $\pm$ 0.12 mg/L

BRANTLEY'S PRIOR CRIMINAL HISTORY

Brantley had a California Criminal History dating back to 1986, including but not limited to convictions for robbery, first degree burglary, and assault with a deadly weapon. Brantley served four prison terms, as he amassed 11 felony convictions in four separate cases.

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]. To convict an officer of any of these charges, it must be proven beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-42.) Several justifications may apply in any case as 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. The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332-33.)

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 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." (*Id.*) 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 505 permits a person to use deadly force to defend himself or someone else if he reasonably believes the immediate use of deadly force is necessary to defend against imminent danger of being killed or suffering great bodily injury. The law requires that no more force be used than was reasonably necessary to defend against that danger. Furthermore, 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, 641-42.) Furthermore, courts have held 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." (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124; *Tennessee v. Garner* (1985) 471 U.S. 1, 3.)

This limitation was subsequently clarified by the United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386, wherein the High 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 High 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 396-97.)

As discussed below, it is clear in this case that Corporal Kovacs did not commit a crime. On the contrary, Corporal Kovacs' reasonable actions helped control a situation where the lives of innocent people were in danger.

LEGAL ANALYSIS

The analysis in this case is based on Corporal Kovacs' statement to the OCDA investigators, the statements of John and Jane Doe, the statement of Officer Johnson who was present inside the home behind Corporal Kovacs, as well as corroborating items of evidence recovered at the scene.

The issue is whether the conduct of Corporal Kovacs on Nov. 1, 2014 was without justification and therefore criminally culpable. In order to charge Corporal Kovacs with a criminal offense, 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 Corporal Kovacs with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense and/or lawful defense of others. If the actions of Corporal Kovacs were justifiable as lawful self-defense or defense of others, then criminal charges are neither warranted nor permissible.

As held in a relatively 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 court in *Brown* noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* held 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.) This is exactly what Corporal Kovacs was facing.

In this case, Corporal Kovacs does not need any greater authority than an ordinary civilian person would be entitled to. In the narrow dimly lit hallway, it was apparent that Brantley had already stabbed John Doe with a knife, prior to obtaining a positional advantage in the wrestling match for a shotgun; and Brantley started to adjust the trajectory of the shotgun in a manner in which presented an imminent risk of death to Corporal Kovacs and Officer Johnson. Corporal Kovacs was fully justified in his reasonable assessment that Brantley posed a significant threat of death or serious physical injury to himself, John Doe, and Officer Johnson. Specifically, Corporal Kovacs observed Brantley struggling to gain possession of John Doe's shotgun. As the struggle evolved, the barrel of the shotgun was pointed in the direction of Corporal Kovacs and Officer Johnson. Brantley looked up and stared directly at Officer Kovacs before moving his left hand near the trigger of the shotgun and his right hand near the front for-end pump as he attempted to aim the muzzle of the shotgun at the officers. The prospect of being shot with a 12-gauge shotgun is clearly deadly. Officer Kovacs' reaction was clearly reasonable and lawfully justified.

While there was not a round in the 12-gauge shotgun's chamber, as discussed above, a person's right of self-defense is the same whether the danger is real or merely apparent. Here the danger was clearly apparent as well as real, as Corporal Kovacs was forced to make a split-second judgment in tense, uncertain, and rapidly evolving circumstances, about the amount of force that was necessary

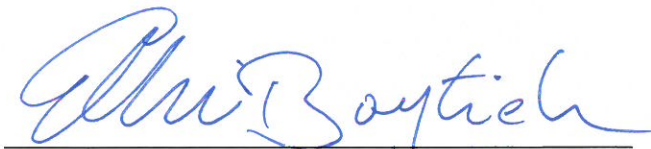
It is of clear note that moments earlier, at the front door, John Doe would have been justified in shooting and using deadly force on Brantley as Brantley wielded a knife at Jane Doe, whom he was holding in a chokehold. John Doe recognized the situational dynamics of a "birdshot" load, with his wife right next to Brantley and the door behind which responding police were situated; and he held fire accordingly. As Jane Doe was able to free herself, Brantley launched his attack on John Doe, overpowering him and posing a severe and imminent threat which was properly neutralized by the legal and justified actions of Corporal Kovacs. There is no conceivable way it can be proven beyond a reasonable doubt that Corporal Kovacs did not act in lawful and justifiable self-defense of himself and others when he shot Brantley. A jury analyzing the facts of this shooting would justly conclude that it was reasonable for Corporal Kovacs to believe that his life and the lives of others were in danger. Corporal Kovacs did not commit a crime, and he carried out his duties as a peace officer in a proper, 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 Kovacs, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Brantley on Nov. 1, 2014, causing his death.

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

Respectfully submitted,


Jim Mendelson
Senior Deputy District Attorney
Homicide Unit
Read and Approved by **Ebrahim Baytieh**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit