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August 12, 2015

Chief Robert Sharpnack
Costa Mesa Police Department
77 Fair Drive
Costa Mesa, CA 92626

Re: Officer-Involved Shooting on Dec. 16, 2014
Fatal Incident involving Julius Pinson
District Attorney Investigations Case # 14-021
Costa Mesa Police Department Case # 14-012439
Orange County Crime Laboratory Case # 14-56415

Dear Chief Sharpnack,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Costa Mesa Police Department Officer (CMPD) Paul McCarthy. Julius "Jay" Pinson, 48, died as a result of his injuries. The incident occurred in the City of Costa Mesa on Dec. 16, 2014.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the fatal, officer-involved shooting of Pinson. 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 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 Dec. 16, 2014, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident, which occurred very late at night, causing the initial response to last until early the next morning. During the course of this investigation, four interviews were conducted, and 11 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: CMPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Pinson; criminal history records related to Pinson including prior incident reports; the personnel records of Officer McCarthy; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has 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 CMPD officers or personnel, specifically Officer

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McCarthy. 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 functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran Deputy District Attorney for legal review. Deputy District Attorneys from the Homicide, TARGET, or Gang Units review fatal, officer-involved shootings and custodial death cases and 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 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. Officer McCarthy gave a voluntary statement to OCDA Investigators on Dec. 22, 2014.

FACTUAL SUMMARY

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.

Pinson lived in Costa Mesa with his girlfriend, Jane Doe, and her 10-year-old son, John Doe Jr. Before Pinson moved to Costa Mesa, he lived with his mother in Hobbs, New Mexico. While he was living there, he met Jane Doe online and developed a friendship with her over the Internet. Pinson told Jane Doe that he had served in the Navy, and that he was injured by an Improvised Explosive Device (IED) in Iraq or Iran. Eventually, Pinson and Jane Doe began dating, and he moved to Costa Mesa to live with her and her son. Around the time of the incident that is the focus of this letter, Jane Doe was divorced from her husband, John Doe. The two were in a custody battle over their son, John Doe Jr. Jane Doe was trying to change the custody agreement so that she could move with Pinson and her son to Florida, and John Doe was trying to block her from doing so.

Two weeks before the incident, during a visit to his father's house, John Doe Jr. asked John Doe to read a script that essentially involved John Doe apologizing to John Doe Jr. for molesting him, and promising not to do so again. While John Doe denied ever doing such a thing, and was concerned by the content of the message, he went along with the script because he did not want to disappoint his son.

Pinson contacted John Doe the day before the incident, Dec. 15, 2014, and requested a meeting. The two met at John Doe's business, and spoke privately there. Pinson informed John Doe that he had *special ops* contacts in the military that would be able to put a bullet through John Doe's eyes. Pinson then told John Doe he had a recording of the scripted conversation he had with his son, and played him that recording. Pinson suggested it would be in John Doe's interest to pay an additional \$500 to Jane Doe in child support, and to stop contesting the custody battle.

Pinson did not directly threaten John Doe with physical harm, or with the release of the audio recording, should John Doe fail to drop the custody battle. However, John Doe felt that based on Pinson's actions both of these threats were

implied. John Doe suspected that Pinson had motivated John Doe Jr. to have the conversation in the audio recording, so that Pinson could later blackmail John Doe with that information. To avoid arousing suspicion, John Doe told Pinson he would talk to his lawyer, drop the custody battle, and contact Pinson later. The next day, Dec. 16, 2014, John Doe contacted CMPD about the incident, and an officer went to his location at approximately 12:40 p.m. to respond to this threat report. John Doe relayed the details of his conversation with Pinson to the officer. The responding officer and another officer followed up on this report by visiting the home of Jane Doe, John Doe Jr., and Pinson, at approximately 3:00 p.m., and interviewing them.

In her interview, Jane Doe told the officer that she was aware Pinson and John Doe had spoken, but did not know what the conversation was about. During an investigation of this incident Pinson was interviewed and told the officer that he knew John Doe Jr. was uncomfortable with visiting his father, but did not know why. When the officer pressed him further, Pinson became vague and evasive. Pinson later suggested to the officer that something sexual had happened between John Do and John Doe Jr., but noted that he was just speculating.

The responding officer then interviewed John Doe Jr. who initially gave a different account of the script that he asked his father to read, which only involved riding bikes. The responding officer pressed John Doe Jr. further, telling him his father had given a different account of the script, and reassured him he would not be in trouble as long as he told the truth. John Doe Jr. then tearfully recounted what was essentially the same story his father provided to the police. John Doe Jr. denied that he had ever been inappropriately touched by anyone, and further stated that while he had written the script, Pinson had given him the idea to do so, and told him to record the conversation with his father. The responding officer determined that John Doe Jr. was not a victim of a crime, as did a CMPD detective who investigated the alleged sexual abuse after the incident that is the subject of this letter.

After these interviews, the CMPD looked into Pinson's record, and learned that he had outstanding warrants from the Hobbs Police Department for criminal sexual penetration, contributing to the delinquency of a minor, embezzlement, and forgery. CMPD determined these warrants were extraditable. An officer was assigned to the case, but was unable to complete the call before his shift ended. Instead, Officer Hans Guenther was assigned to make the arrest, and he contacted Officer McCarthy and the two came up with a plan to safely arrest Pinson, agreeing that they would knock on Pinson's door, and arrest him if he left his apartment willingly, but would not attempt an arrest if Pinson resisted and stayed in his house. The two officers then drove to Jane Doe's home. They arrived at the location and parked their cars at about 10:40 p.m. As they walked to the apartment, they agreed that if the situation became particularly dangerous, Officer McCarthy would use the Taser he was carrying with him at the time. They walked up to the apartment, and Officer Guenther knocked on the door. Jane Doe answered and Officer Guenther asked her for Pinson. Jane Doe asked why the officers were there, and Officer Guenther replied that he wanted to talk with Pinson about the visit earlier that day. Jane Doe went to Pinson, who was in their bedroom on the computer, and told him the police were at the door. Pinson went to the door without saying anything. Officer Guenther asked Pinson if he could step outside to talk with the officers for a moment. Pinson agreed and stepped outside voluntarily. Pinson stood between Officers Guenther and McCarthy, with Officer McCarthy and Pinson both facing Officer Guenther.

While outside the residence, Officer Guenther asked Pinson if he was from New Mexico, and Pinson replied that he was. Officer Guenther asked for Pinson's Social Security Number (SSN), and Pinson provided the last four digits. Officer Guenther asked for the rest of the SSN. Both officers noted, during their later interviews, that Pinson became increasingly nervous as he was asked to provide more information. After Pinson provided the rest of his SSN, Officer Guenther, having verified that Pinson was the person they were looking for, asked Pinson to turn around and face Officer McCarthy, and to put his hands behind his back. Pinson, realizing he was being arrested, started saying "no," and began pulling away. Officer Guenther grabbed Pinson's left wrist and Officer McCarthy grabbed his right arm and they tried to control him, but Pinson was able to prevent the officers from controlling him by turning away from them. Officers Guenther and McCarthy both ordered Pinson to stop resisting, and Jane Doe begged him to do the same. Officer McCarthy attempted to sweep Pinson's leg to get him onto the ground, but was unable to do so.

Officers McCarthy and Guenther eventually pushed Pinson up against the wooden fence of the apartment complex, with Pinson and Officer McCarthy chest to chest. Officer McCarthy then saw a black object in Pinson's right hand, and realized it was a gun. Officer McCarthy yelled twice that Pinson had a gun, and almost immediately afterward, as Officers McCarthy and Guenther continued to wrestle with Pinson, Pinson fired a single shot from the gun. The fired shot did not hit anybody. The fight then went to the ground, with Pinson laying on his stomach and the officers attempting to control him. Officer McCarthy, realizing the situation had become much more dangerous, attempted to control Pinson's gun hand, and to keep the muzzle of the gun pointed away from the officers. As they wrestled, Officer Guenther also tried to put both of his hands on Pinson's gun. While trying to control Pinson, Officer McCarthy took his right hand off Pinson and put it to his [McCarthy's] gun holster. Officer McCarthy discovered that Pinson had released the strap holding the officer's gun in place, and that Pinson actually had a hand on this gun, as well. Officer McCarthy was able to secure his gun in its holster, but as he did so, the officers lost control of Pinson. Pinson raised his gun off the ground in Officer McCarthy's direction. Officer McCarthy drew his gun from his holster and fired one round into Pinson's upper left chest. Almost simultaneously, Pinson fired a round from his gun, hitting himself in the right temple area of his head. Both Officers McCarthy and Guenther provided voluntarily statements after the incident and stated that they were both in fear for their lives while wrestling with Pinson for control of the gun.

After getting hit with the bullets, Pinson fell backwards onto Officer Guenther, pinning his leg to the ground, and stopped moving. Officer McCarthy rolled Pinson over so that Officer Guenther could get free, and they handcuffed Pinson. They did not check Pinson's vitals, because they could see that he was bleeding, that his eyes were wide open, and that he was not breathing.

At around 10:49 p.m., Costa Mesa Fire Department (CMFD) personnel arrived and saw that Pinson was lying face down on the grass, with his hands handcuffed behind his back, that he was not moving, and that he did not appear to be breathing. CMFD personnel wanted to check Pinson's breathing, so they asked Officers McCarthy and Guenther to roll Pinson over. As they did so, Officer Guenther saw that Pinson's gun was beneath him, and picked it up and moved it away from his body, where another officer watched over it. As CMFD personnel checked for signs of life, they saw blood and brain matter from Pinson on the ground. CMFD personnel attached an electrocardiogram to Pinson's body, and found that his heart was "asystolic," indicating that there was no electrical activity in his heart. CMFD found no signs of life, and determined that, because Pinson was not breathing, lacked any electrical activity in his heart, and was spilling brain matter out onto the ground, that life could not be sustained. CMFD personnel pronounced Pinson dead at 10:54 p.m.

None of the witnesses interviewed during the canvasses after the incident had seen the incident actually occur. However, most of them reported hearing a shot, followed by two near-simultaneous shots. The upstairs neighbors of Pinson and Jane Doe reported seeing Pinson lying on the ground handcuffed, and the two police officers looking shaken up. One of Jane Doe's neighbors watched after John Doe Jr. after the incident and reported that Pinson had once told her about some bullets he had that he said would "make a mess." An interview with Jane Doe after the incident revealed that Pinson had told her he moved to California after posting bail for a "bar fight" in Texas. Jane Doe also told the investigators that Pinson mentioned to her that he did not want to go back, and that "he wouldn't go down without a fight." The only reason she could think of for why Pinson would have reacted so violently was an incident in the past with a boss who, according to Pinson, had hired a hitman to kill Pinson. Jane Doe thought it possible that Pinson would rather kill himself than potentially expose Jane Doe and John Doe Jr. to the risk of retaliation by Pinson's boss once he learned of Pinson's location. Jane Doe also told the investigators that Pinson drank 3-5 drinks a night, and drank one beer and some wine the night of the incident. Jane Doe also mentioned that Pinson was on medication for high blood pressure and some unknown medication for pain in his knees.

EVIDENCE COLLECTED

The following items of evidence were collected from the scene and examined:

- Black pen
- Black hat
- Eye glasses

- Baton
- Smith & Wesson, .38 SW SPL, serial number BBN5218 (the gun used by Pinson)
- Swabs from Pinson's hands
- Pinson's clothing
- Two pieces of shirt
- Sweatshirt
- Chain with pendent
- PVS microphone
- *Plumbtesmo* test results from a hole in the fence

The following items of evidence were collected from Officer McCarthy and examined:

- Heckler & Koch, model USP, .40 caliber, semi-automatic pistol, serial number 22-062504, with a Universal Tactical Light M2 flashlight mounted on under the barrel
- One .40 caliber cartridge case with a head stamp of "WIN 40 S&W" from the pistol chamber that failed to eject after being fired
- A fully loaded magazine of (13) cartridges of "WIN 40 S&W" from McCarthy's handgun
- Two magazines from McCarthy's duty belt, each fully loaded with "WIN 40 S&W"

The following items of evidence were collected from Officer Guenther and examined:

- A long sleeved, black, shirt with CMPD patches on both shoulders, a cloth embroidered police badge over the left breast pocket, a cloth name tag embroidered with the name "H. GUENTHER" over the right breast pocket. There was apparent blood on the left sleeve and the front lower left quadrant of the shirt. There was dried dirt and mud on the back of the shirt.
- Black pants that had the pant legs cut up the thigh region by CMPD CSI investigators while GUENTHER was being treated for injuries at Hoag Hospital. The pants had apparent blood and body tissue on the right leg, as well as apparent blood and mud on the left leg.
- Black boots with white socks. Guenther's boots had apparent blood on both of them, as well as apparent blood on one of his white socks.

EVIDENCE ANALYSIS

Firearms Examination

Officer McCarthy's Heckler & Koch pistol and Pinson's Smith & Wesson revolver were both test fired at the Orange County Crime Lab and operated without malfunction in both single and double action.

The bullet from Pinson's upper back was determined to have been fired from Officer McCarthy's Heckler & Koch pistol.

The bullet from Pinson's brain was determined to have been fired from the Smith & Wesson revolver used by Pinson.

Autopsy:

At an autopsy conducted on Dec. 18, 2014, Orange County Sheriff-Coroner forensic pathologist Dr. Etoi Davenport determined that Pinson was shot twice: in the chest and in the head. Dr. Davenport concluded that each of the two gunshot wounds was lethal, and determined that the final cause of death was suicide.

Toxicological Examination

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

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Post-Mortem Blood	0.303%

PINSON'S PRIOR CRIMINAL HISTORY

Pinson's criminal history was reviewed and considered. Pinson had no California Criminal History. However, Pinson did have a New Mexico Criminal Record that dates back to 1992. Pinson has previously been arrested for the following charges:

- Embezzlement
- Fraud
- Theft
- Possession of controlled substance
- Possession of drug paraphernalia
- Failure to appear

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a 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. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." 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 CMPD Officer McCarthy with Julius Pinson.

LEGAL ANALYSIS

The facts in this case are determined by considering the statements of Officers McCarthy and Guenther to the OCDA investigators, which was supplemented by other relevant material and witnesses present at the scene of the incident.

The issue is whether the conduct of Officer McCarthy on Dec. 16, 2014 was criminally culpable and without justification. Without any reasonable doubt, it is very clear to us that Officer McCarthy acted reasonably and justifiably in his interactions with Pinson. As stated above, in order to charge Officer McCarthy 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 Officer McCarthy with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense. If the actions of Officer McCarthy 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 “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 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 Officer McCarthy was facing.

Officer McCarthy was justified in believing that Pinson 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 Pinson in the moments leading up to the shooting. After resisting arrest, Pinson pulled out a gun, and fired one round before being wrestled to the ground. Pinson then attempted to take Officer McCarthy’s gun, and almost succeeded in doing so. Pinson then raised the gun toward one of the officers, increasing substantially the clear and present risk of

death or serious injury. Therefore, and based on the totality of the circumstances, Officer McCarthy reasonably concluded that Pinson was a danger to himself and both officers.

Officers McCarthy and Guenther approached Pinson's home with a plan to make an arrest. Pinson initially escalated the situation from that of a normal arrest by resisting the two officers. Pinson then raised the level of danger exponentially by producing a handgun. Pinson wildly fired one shot, a fact that reasonably impacted the officer's state of mind as the incident continued. Both Officers McCarthy and Guenther stated they believed that they were in a fight for their lives, and that they might very well die if they did not act appropriately. These statements by both officers are reasonable and supported by the objective facts. Moreover, Pinson's attempt to take Officer McCarthy's gun showed Officer McCarthy that Pinson would continue to attempt to use a gun, any gun, thus increasing the danger to all. Pinson's use of the gun, and his attempt to take Officer McCarthy's gun, as well as his size advantage on the two officers as they wrestled on the ground, reasonably foreclosed the possibility of the use of Officer McCarthy's Taser as a viable solution. Pinson overpowered Officers McCarthy and Guenther, and raised the gun off the ground into a position from which he was able to fire in the direction of Officer McCarthy. As such, Officer McCarthy did reasonably believe that Pinson was raising the gun to hurt either himself or the two officers. Officer McCarthy's actions would be considered reasonable self-defense if he were not a police officer. Using the legal analysis above, his status as a peace officer provided even further justification for his actions.

While the coroner determined the final cause of Pinson's death was suicide, Officer McCarthy was in a situation where he could not have known for certain whether Pinson's intent was only to harm himself or to shoot the officers. Officer McCarthy had no time to determine who Pinson actually wanted to harm; he only knew that Pinson was trying to fire a gun and that he was resisting the two officers. Additionally, Pinson had fired wildly already, and so even if he did intend to commit suicide, Officer McCarthy still was justified in using his firearm to ensure the safety of the two officers and the surrounding neighborhood.

It should also be noted that, in order for Officer McCarthy 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 McCarthy did not act in reasonable and justifiable self-defense or defense of another when he shot at Pinson. 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 fairly conclude that it was reasonable for Officer McCarthy to believe that his life and the lives of others were in danger. Therefore, Officer McCarthy did not commit a crime and he was clearly justified when he shot at Pinson.

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 McCarthy, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Pinson on Dec. 16, 2014.

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



LARRY YELLIN
SENIOR DEPUTY DISTRICT ATTORNEY
HOMICIDE UNIT



READ AND APPROVED BY **EBRAHIM BAYTIEH**
ASSISTANT DISTRICT ATTORNEY
SUPERVISING HEAD OF COURT – SPECIAL PROSECUTIONS UNIT