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July 12, 2018

Chief Kevin Childe
Fountain Valley Police Department
10200 Slater Avenue
Fountain Valley, CA 92708

Re: Officer-Involved Shooting on October 14, 2017
Non-Fatal Incident involving Matthew Early Snoyman
District Attorney Investigations Case # SA 17-028
Fountain Valley Police Department Case # 17-38709
Orange County Crime Laboratory Case # 17-57576

Dear Chief Childe,

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 Fountain Valley Police Department (FVPD) Sergeants Donald Farmer, James Cataline, and Mike Parsons. Matthew Snoyman, 34, Westminster, survived his injuries. The incident occurred in the city of Fountain Valley on Oct. 14, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Oct. 14, 2017, non-fatal, officer-involved shooting of Snoyman. 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 FVPD officers 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 in law enforcement.

On Oct. 14, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 15 interviews were conducted, and 13 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: FVPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, vehicle processing reports, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Snoyman; criminal history records related to Snoyman, including prior incident reports; Orange County Fire Authority (OCFA) reports, 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 FVPD officers or personnel, specifically Sergeants Farmer, Cataline, and Parsons. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, 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 an officer involved shooting investigation is attempting to obtain voluntary statements from the involved officers. Sergeants Farmer, Cataline, and Parsons each gave a voluntary statement to OCDA Investigators on Oct. 14, 2017.

FACTUAL SUMMARY

On Oct. 13, 2017, at approximately 11:34 p.m., a fatal traffic collision occurred at the intersection of Magnolia Avenue and Mint Avenue, in the City of Fountain Valley. As a result of the collision, the FVPD closed access to specific sections of Magnolia Avenue. Southbound Magnolia Avenue was closed at Edinger Avenue; northbound Magnolia Avenue was closed at Foxglove Avenue.

FVPD placed maintenance trucks equipped with illuminated traffic alerts boards, traffic cones, road closure signs and yellow crime scene tape across Magnolia Avenue, at both Edinger Avenue and Foxglove Avenue. Approximately 450 feet south of Edinger, two additional vehicles (a marked black and white police vehicle and white Ford F-150 parking enforcement truck) were placed across the southbound Magnolia Avenue lanes. The two vehicles involved in the fatal collision were still present at the scene. One vehicle was in the middle of the street, and heavy debris from the accident, including an engine block and car bumper, remained in both the northbound and southbound lanes.

At approximately 5:16 a.m., Sergeants Cataline, Farmer, Parsons, Officers Joseph Zane, Marco Avila and Oscar Valencia, and civilian ride-along Jane Doe, were at the traffic collision scene when they heard the sound of screeching tires and a vehicle accelerating. They looked north and saw a black Dodge Dakota truck, driven by Snoyman, swerving around traffic

cones. Snoyman drove southbound on Magnolia Avenue, through Edinger Avenue, and past the roadblock. They observed Snoyman approaching them at a high rate of speed. Snoyman headed straight for two parked FVPD vehicles just north of the accident scene, and at the last second, swerved abruptly and avoided the parked cars. Snoyman drove through the police tape and struck the accident debris in the road. Snoyman's truck began fishtailing out of control, but continued past the two parked cars heading southbound.

Sergeant Cataline, who was in the roadway approximately 50 yards north of his fellow officers and Jane Doe, realized Snoyman was headed directly towards him. Sergeant Cataline heard Sergeant Parsons yell for him to get out of the way. Unsure of Snoyman's intentions, Sergeant Cataline drew his handgun, turned and ran toward the sidewalk. The other officers and Jane Doe, all standing north of Mint Avenue near a bus stop, turned and ran east toward the block wall. Snoyman's speed was estimated at approximately 60 miles per hour, and the officers were unsure if Snoyman was drunk, confused, or intended to use his vehicle as a weapon. Officer Avila also drew his handgun as he ran for cover.

Snoyman passed all of the uniformed officers and continued south until he reached Mint Avenue. At Mint Avenue, he made an abrupt U-turn and slowed down or came to a brief stop. If Snoyman continued southbound, he could have exited the crime scene without any road obstructions. Instead, his U-turn pointed him back toward the accident debris. The officers were unsure if the U-turn was intentional or if Snoyman simply lost control. After the truck spun around, Sergeant Parsons walked into the center of the roadway, with his flashlight pointed toward the front of Snoyman's truck. Sergeant Parsons intended to contact Snoyman. As Sergeant Parsons approached, Snoyman suddenly accelerated directly at Sergeant Parsons.

Sergeant Parsons drew his weapon, pointed it at Snoyman and yelled, "Stop, stop." Snoyman continued to accelerate directly toward Sergeant Parsons. When Snoyman was approximately 20 feet away, Sergeant Parsons, fearing for his life, fired one round into the driver's side of the front windshield. Sergeant Parsons also heard other gunshots and believed other officers were firing at the truck. As Snoyman continued towards him, Sergeant Parsons dove to the right and fired a second round into the driver's side front windshield from approximately 10 feet away. Sergeant Parsons fell to the ground and Snoyman continued north through the accident debris. Sergeant Parsons told OCDA investigators: "If I stayed where I was, I would have been killed," and that he chose to use lethal force to save his own life.

Sergeant Farmer saw Snoyman headed directly toward Sergeant Parsons, and believed Snoyman was going to hit and kill Sergeant Parsons. Sergeant Farmer fired three rounds at Snoyman as his truck approached Sergeant Parsons. Sergeant Farmer lost sight of Sergeant Parsons and feared he had been struck by Snoyman and was being dragged, so Sergeant Farmer fired two more rounds at Snoyman.

Sergeant Cataline was approximately 40 yards north of Sergeant Parsons when he saw Snoyman accelerate directly at Sergeant Parsons. Believing that Snoyman's acts were intentional and that he was going to strike and kill Sergeant Parsons, Sergeant Cataline fired two rounds at the driver's side of the truck's front windshield. Sergeant Cataline saw his rounds impact the windshield. As Snoyman continued northbound, Sergeant Cataline continued to fire because Snoyman was not slowing and posed a "continuing threat." Sergeant Cataline thought Snoyman recognized the crime scene and the presence of police officers and was intentionally trying to kill a police officer. Sergeant Cataline said he continued to fire at Snoyman as he drove past him because he did not know if Snoyman struck Sergeant Parsons, and feared Snoyman was going to make a U-turn and come back. Once Sergeant Cataline realized the truck was fleeing, he stopped firing.

Officer Zane ran to his police vehicle, activated his overhead emergency lights, and chased Snoyman as he turned east on Edinger and south on Bushard Street, where he yielded. Snoyman exited his truck and was taken into custody without incident. Snoyman displayed objective signs of intoxication at the scene. Snoyman was questioned by a FVPD officer as part of a DUI investigation. Snoyman stated he had two shots of alcohol at work the evening before, had six beers prior to driving, and was on his way to buy more beer. He said he did not remember seeing officers and did not know why he had been shot.

Snoyman was transported to the UCI Medical Center where he was treated for a gunshot wound to his shoulder, and he is expected to make a full recovery.

Snoyman's Statement

Investigators from the OCDA spoke with Snoyman, who said he had no clue why the shooting occurred. He said that he must have dozed off and did not remember a lot. He did not remember seeing the sign truck, police tape, accident scene, or police cars. Snoyman stated that he remembers slamming on his brakes to avoid hitting something, his windshield getting shot at, and being on the ground with the officer. Snoyman did admit, "I was pretty intoxicated."

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Two cartridge cases, Federal brand, .45 auto caliber
- 22 cartridge cases, Federal brand, .40 Smith and Wesson caliber
- Three bullets collected at the scene
- 14 projectiles collected from Snoyman's vehicle

EVIDENCE ANALYSIS

Forensic Alcohol Examination / Toxicology

A sample of Snoyman's blood was collected at 7:10 a.m. on Oct. 14, 2017 and analyzed at the OCCL. Snoyman's blood alcohol content was determined to be .23%. No drugs were detected in Snoyman's blood.

Firearms Examination and Projectile Examinations

Sergeant Cataline's Glock pistol was test fired at the OCCL and fired without malfunction. 17 cartridge cases from the scene were determined to have been fired from his Glock pistol.

Sergeant Farmer's Glock pistol was test fired at the OCCL and fired without malfunction. Five cartridge cases from the scene were determined to have been fired from his Glock pistol.

Sergeant Parsons' SIG Sauer pistol was test fired at the OCCL and fired without malfunction. Two cartridge cases from the scene were determined to have been fired from his SIG Sauer pistol.

A bullet was retrieved from the left front door of the Snoyman's truck and was determined to have been fired from Sergeant Parsons' SIG Sauer pistol.

SNOYMAN'S PRIOR CRIMINAL HISTORY

Snoyman's criminal history, dating back to 2001, was reviewed and considered. In addition to two traffic accidents in 2016 and 2017, Snoyman has previously been arrested for:

- Driving Under the Influence of Alcohol
- Infliction of Corporal Injury upon a Spouse
- Possession of Narcotics Paraphernalia

SNOYMAN'S POST-INCIDENT CONVICTION

On May 23, 2018, the OCDA filed criminal charges against Snoyman in Orange County Superior Court case 18WF1170. Snoyman was charged with two felony counts of assault with a deadly weapon on a peace officer in violation of Penal Code section 245 (c), one misdemeanor count of driving under the influence of alcohol in violation of Vehicle Code section 23152 (a), and one misdemeanor count of driving with blood alcohol level of .08% or higher in violation of Vehicle Code section 23152 (b).

On July 11, 2018, Snoyman plead guilty to all the charges and admitted that he committed assaults with a deadly weapon (vehicle) against peace officers.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal on-duty shooting include attempted murder [Penal Code Section 664/187]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such legal justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

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.

Penal Code Section 835a allows any peace 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 peace 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/she 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/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she 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 peace 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 peace 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 FVPD Sergeants Farmer, Cataline, and Parsons with Snoyman.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Sergeants Farmer, Cataline, or Parsons, on Oct. 14, 2017, was criminally culpable and without justification. As stated above, in order to charge any of the three Sergeants with a criminal violation, it is required that the prosecution be able to prove, beyond a reasonable doubt, that no legal justification existed for their individual conduct. Therefore, in order to lawfully charge Sergeant Farmer, Sergeant Parsons, or Sergeant Cataline with a crime, the prosecution must have a good faith belief in the ability to prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions of Sergeants Farmer, Cataline, or Parsons were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts 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.)

Sergeants Farmer, Cataline, and Parsons were justified in believing that Snoyman posed a significant threat of death or serious physical injury to everyone present at the accident scene, and to Sergeant Parsons in particular. All of the officers and the civilian witness heard and observed Snoyman approach the accident scene. Snoyman's truck was travelling at a high rate of speed, heading southbound on Magnolia Avenue toward a two-car blockade. Police vehicles, crime scene tape, cones, and a large sign truck gave clear notice that the area was not open to traffic. Everyone saw Snoyman's truck swerve and nearly collide with the parked police vehicles, and continue to accelerate southbound on Magnolia Avenue.

Snoyman's truck fishtailed out of control, but maintained its high rate of speed. Snoyman drove through accident debris without slowing. Afraid of being struck by Snoyman, the officers and civilian ran toward the sidewalk. Unsure of the driver's intention, Sergeant Cataline drew his gun out of his holster. Snoyman continued southbound, maintaining an estimated speed of approximately 60 miles per hour, and ultimately made a U-turn. After making the U-turn, Snoyman briefly slowed or came to a stop, but then suddenly accelerated toward Sergeant Parsons, who had intended to contact Snoyman. Sergeant Parsons was vulnerable and in grave danger because he was in the middle of the street, illuminating his flashlight in order to get Snoyman's attention. Rather than continuing southbound away from the accident debris, Snoyman accelerated back toward the crime scene and directly toward Sergeant Parsons. Sergeant Parsons, believing Snoyman intended to run him over, yelled, "Stop, stop." Snoyman was 20 feet from Sergeant Parsons and rapidly approaching, so Sergeant Parsons fired one round at the windshield to protect himself. Sergeant Farmer also saw that Snoyman was accelerating and was afraid Snoyman was going to kill Sergeant Parsons. Sergeant Farmer drew his weapon and fired three rounds at the truck as it approached Sergeant Parsons.

Sergeant Cataline was further north and also observed the truck approaching Sergeant Parsons. Sergeant Cataline was also afraid Snoyman intended to kill Sergeant Parsons, and fired at Snoyman's windshield. When Snoyman was 10 feet from Sergeant Parsons, Sergeant Parsons fired a second round and jumped out of the way.

It is abundantly clear based on the totality of all the evidence that Snoyman drove erratically, at a high rate of speed through an obvious traffic blockade, through police tape, around cones, and almost struck two visible police vehicles.

Snoyman drove over significant accident debris, and appeared to lose control of his truck. Despite a visible police presence and obstructions in the roadway, Snoyman made a U-turn and accelerated from his original direction, directly at Officer Parsons. Snoyman did not respond to verbal commands to stop or change direction when a uniformed police officer waving a flashlight was directly in his path. Based on Snoyman's conduct, it was reasonable for all three Sergeants to fear for their lives and believe that Snoyman intended to harm Sergeant Parsons and other officers present. Snoyman passed within 10 feet of Sergeant Farmer, who stated, "If I stayed where I was, I would have been killed."

In order for Sergeants Farmer, Cataline, and Parsons 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 they did not act in reasonable and justifiable self-defense or defense of another when they shot at Snoyman. As should be apparent from the above-described facts and 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 all three Sergeants to believe that lives of all present, particularly Sergeant Parsons, were in danger. Therefore, Sergeants Farmer, Cataline, and Parsons were justified when they shot at Snoyman, and all three sergeants carried out their duties as peace officers in a reasonable, justifiable and necessary 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 Sergeant Farmer, Sergeant Cataline, or Sergeant Parsons, and there is overwhelming evidence that their actions were reasonable and justified under the circumstances when they shot at Snoyman on Oct. 14, 2017.

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



ERIN ROWE

Deputy District Attorney
Special Prosecutions Unit



Read and approved by **EBRAHIM BAYTIEH**

Senior Assistant District Attorney
Felony Operations II